

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

JENNIFER SPIVEY FOLEY, as  
Personal Representative of the Estate  
of SCOTT RYAN SPIVEY, )

Plaintiff, )

vs. )

CHARLES WELDON BOYD and  
KENNETH WILLIAMS, )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2024-CP-26-03798

**DEFENDANT'S BRIEF IN  
SUPPORT OF IMMUNITY**

**SUMMARY OF ARGUMENT**

Defendant Bradley Williams is entitled to immunity under South Carolina's Protection of Persons and Property Act for three independent reasons.

First, Scott Spivey was the initial aggressor. Prior to the encounter on Camp Swamp Road, Spivey repeatedly brandished a firearm at motorists on a public highway. Under settled South Carolina law, the right of self-defense belongs only to one who is without fault in bringing on the difficulty. *See State v. Glenn*, 429 S.C. 108, 116, 838 S.E.2d 491, 495 (2019).

Second, Spivey never withdrew. To reclaim the right of self-defense, an initial aggressor must withdraw in good faith and communicate that withdrawal in an objectively perceptible manner. *See State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). Spivey did neither. His conduct on Camp Swamp Road, abruptly stopping his vehicle, exiting while armed, and racking his firearm, constituted escalation, not retreat.

Third, even assuming arguendo that Spivey withdrew, Williams independently satisfies all four elements of self-defense: he was without fault in bringing on the difficulty, reasonably perceived imminent danger of death or serious bodily injury, had no duty to retreat under the circumstances, and in fact attempted to retreat before resorting to the use of force.

**COURTESY OF AN ANONYMOUS FOIA  
AROUND AND FIND OUT SPONSOR**

## ARGUMENT

### **I. SPIVEY WAS THE INITIAL AGGRESSOR**

South Carolina law is clear that the right to claim self-defense belongs only to a person who is without fault in bringing on the difficulty. *See State v. Glenn*, 429 S.C. 108 S.E.2d 491, 495. A person who provokes or initiates an assault forfeits the right to assert self-defense. *See id.* Likewise, because self-defense requires the absence of aggression, *see State v. Grantham*, 224 S.C. 41, 77 S.E.2d 291 (1953); *State v. Cervantes-Pavon*, 426 S.C. 442, 827 S.E.2d 564 (2019), the inquiry focuses on who brought on the difficulty. Here, neither Williams nor Boyd initiated the aggression.

Rather, Spivey introduced deadly force into the situation. Prior to the encounter on Camp Swamp Road, he engaged in repeated acts of aggression, including brandishing a firearm at strangers on a public highway. Pointing and displaying a firearm at motorists is unlawful and inherently escalatory conduct. By introducing the threat of deadly force without legal justification, Spivey brought on the difficulty and thereby forfeited any claim to self-defense unless he effectively withdrew from the encounter.

### **II. SPIVEY NEVER WITHDREW – AND THEREFORE CANNOT CLAIM SELF-DEFENSE**

Even an initial aggressor may regain the right to self-defense, but only if he (1) actually withdraws from the conflict, (2) does so in good faith, and (3) communicates that withdrawal in an objectively perceptible manner. *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999); *State v. Graham*, 260 S.C. 449, 196 S.E.2d 495 (1973). Spivey satisfied none of these requirements. As *Bryant* makes clear, subjective intent is legally insufficient; the withdrawal must be objectively perceptible to the other party.

#### **A. No Actual Withdrawal**

First, there was no actual withdrawal. Turning onto Camp Swamp Road did not constitute an unequivocal cessation of hostilities. As the Supreme Court emphasized in *State v. Young*, 429 S.C. 155, 838 S.E.2d 516 (2020), conduct that is “more akin to a temporary retreat than an unequivocal cessation” does not restore self-defense rights. Here, Spivey sped away, executed an unlawful right turn from the left

lane onto Camp Swamp Road, abruptly stopped in the roadway, exited his vehicle while armed, and had his firearm racked. This was not disengagement; it was tactical repositioning followed by deliberate escalation.

Moreover, Kenneth Williams testified that a white truck turned onto Camp Swamp Road first and that Spivey followed that vehicle, supporting the reasonable inference that Spivey was pursuing the truck rather than disengaging from Boyd and Williams. Critically, Kenneth Williams further testified that brush and trees disrupted Boyd and Williams' line of sight once Spivey turned onto Camp Swamp Road, preventing them from perceiving any alleged withdrawal. There was therefore no objectively perceptible disengagement.

#### **B. No Good Faith**

Second, Spivey did not act in good faith. Even if his turn onto Camp Swamp Road could be characterized as retreat, good faith requires a genuine intention to cease the conflict. Spivey did not slow to de-escalate, remain inside his vehicle, unrack his weapon, or discard it upon exiting. Instead, he stopped his vehicle and exited armed with the same weapon he had previously brandished at the defendants. Good faith demands an honest desire to end the encounter, not a brief pause followed by taking a more advantageous armed position. Nothing in Spivey's conduct reflects an intent to disengage.

#### **C. No Communication**

Third, Spivey failed to communicate any withdrawal in an objectively perceptible manner. When Boyd and Williams arrived on Camp Swamp Road, they observed Spivey already outside his vehicle. Upon seeing them, Spivey made no effort to signal retreat. He did not drop his weapon, raise his hands, or otherwise indicate peace. The South Carolina Supreme Court has held that a party discarding a weapon is ineffective if the act is not perceived by the opposing party; here, there was no attempt at communication whatsoever, showing that subjective intent to withdraw is meaningless without objective communication to the adversary. *See Bryant*, 336 S.C. at 345-46, 530 S.E.2d at 322. Instead, Spivey exited his vehicle while armed and moved the firearm upward toward the occupants of the approaching vehicle, conduct that would reasonably be perceived as escalation, not withdrawal.

This stands in sharp contrast to *State v. Hendrix*, 270 S.C. 653, 244 S.E.2d 503 (1978), where the Supreme Court found sufficient withdrawal when the defendant explicitly ordered the deceased away, unmistakably communicating a desire to disengage. Spivey issued no verbal command, made no conciliatory gesture, and did not drop, holster, or lower his weapon. Rather, he fled while armed, continued brandishing the firearm, drove erratically, and upon stopping, escalated the encounter by abruptly exiting his truck and drawing his weapon. Such conduct does not constitute withdrawal under any recognized legal standard; it reflects a continuation of the very aggression that initiated the confrontation. Accordingly, Spivey remained the aggressor and did not regain the right to claim self-defense.

### **III. EVEN IF SPIVEY WITHDREW, WILLIAMS INDEPENDENTLY SATISFIES SELF-DEFENSE**

Even setting aside Spivey's status as the initial aggressor, and assuming arguendo that he effectively withdrew under South Carolina law, Williams independently satisfies the requirements for self-defense immunity.

To justify the use of deadly force, a defendant must establish four elements: (1) he was without fault in bringing on the difficulty; (2) he actually believed he was in imminent danger of death or serious bodily injury, or actually was in such danger; (3) a reasonably prudent person of ordinary firmness and courage would have entertained the same belief; and (4) he had no other probable means of avoiding the danger. *State v. Glenn*, 429 S.C. 108, 116, 838 S.E.2d 491, 495 (2019). Williams satisfies each element.

#### **A. Williams Was Without Fault**

First, Williams was without fault in bringing on the difficulty. To bar a claim of self-defense, the defendant must have committed an unlawful act reasonably calculated to provoke the confrontation. *State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007). The inquiry is twofold: what unlawful act did the defendant commit, and was it reasonably calculated to produce the occasion?

Here, Williams committed none. He remained inside the vehicle, did not brandish a firearm, did not threaten Spivey, did not exit the vehicle first, and kept his firearm inside his bag until after Spivey

fired. Notably, the first time Williams had a direct line of sight to Spivey was when Spivey's truck pulled alongside and Spivey was already aiming a firearm directly at Williams, who was seated closest to that side of the vehicle. When Spivey approached their vehicle, Boyd and Williams slowed down to create distance. At no point during Boyd's 911 call, or in any other evidence, did Williams encourage pursuit or confrontation; if anything, he directed Boyd to slow down. Even if following another vehicle on a public highway could be characterized as imprudent, it cannot reasonably be characterized as conduct calculated to provoke a deadly confrontation. Williams had no reason to anticipate that reporting an individual who was committing felonies to law enforcement would result in that individual stopping on a side road, exiting armed, and opening fire. The causal link required by *Santiago* and *Slater*—that the defendant's conduct was reasonably calculated to produce the occasion—is wholly absent.

*i. Mere Lack of Judgment Is Insufficient*

Moreover, mere lack of judgment is insufficient to constitute bringing on the difficulty. In *State v. Douglas*, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014), the South Carolina Court of Appeals made clear that poor judgment creating an opportunity for conflict does not bar a self-defense claim; only misconduct knowingly calculated to provoke the confrontation will suffice. At most, Plaintiff argues that Defendants should have disengaged entirely. That assertion reflects hindsight, not legal fault.

*ii. Defendants Acted Under a Civic Duty*

Additionally, Williams and Boyd acted pursuant to a recognized civic duty. From early common law, citizens who witness a felony may apprehend or summon assistance. *State v. Nall*, 304 S.C. 332, 338, 404 S.E.2d 202, 206 (Ct. App. 1991). Spivey committed multiple felonies in public view. Boyd and Williams contacted law enforcement, followed to report Spivey's location, and attempted to guide officers to him. They did not provoke a confrontation; rather, they acted consistently with a longstanding civic obligation.

This principle is directly supported by *State v. Dickey*, where the South Carolina Supreme Court held that a security guard who followed a trespasser outside while acting in good faith was not at fault in bringing on the difficulty because he was lawfully exercising his authority. *State v. Dickey*, 394 S.C. 491,

499, 716 S.E.2d 97, 101 (2011). Mere following, without threats or aggression, was insufficient to establish fault. *See id.* The parallel here is clear: acting under a lawful civic duty cannot constitute unlawful provocation.

### **B. An Imminent Deadly Threat Existed**

As to the second element of self-defense, an imminent deadly threat existed. The precise sequence of gunfire is legally irrelevant. The question is not who discharged first, but whether a reasonable person in Williams' position would have believed deadly force was necessary to prevent imminent death or great bodily injury. An armed individual stood outside the vehicle with a firearm in hand. A witness observed Spivey move the arm holding the firearm upward toward the vehicle's occupants. Williams perceived that movement, immediately ordered Boyd to retreat, and when Spivey fired his weapon, Williams drew his firearm from his bag and returned fire. The law does not require a person to wait for a muzzle flash or absorb the first round before defending himself. Imminence arises when a weapon is directed, or is being directed, toward an individual. *See State v. Starnes*, 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000). South Carolina's Protection of Persons and Property Act protects those who reasonably act to prevent imminent death or great bodily injury. Williams' perception was both actual and objectively reasonable.

### **C. No Other Probable Means of Avoiding the Danger**

Third, Williams had no other probable means of avoiding the danger. Under S.C. Code Ann. § 16-11-440, he had no duty to retreat because he was lawfully present and not engaged in unlawful activity. Nevertheless, his immediate reaction upon perceiving the threat was to order retreat. Upon seeing Spivey exit armed and observing the firearm racked, Williams repeatedly instructed Boyd to "back up." A person seeking to escalate a confrontation does not order retreat; a person bringing on the difficulty does not attempt to withdraw. This contemporaneous reaction is compelling evidence of a defensive, rather than aggressive, intent.

Williams was a passenger, not the driver; he did not control the vehicle's speed or direction and could not even see the speedometer from his seat. From his vantage point, he could not see Spivey's full

body. When he observed the firearm racked and then saw the upward movement of the weapon toward the vehicle, he reasonably perceived a genuine and immediate lethal threat. Deadly force was used only in response to that threat.

Accordingly, Williams independently satisfies each element of self-defense and is entitled to immunity under South Carolina law.

### **CONCLUSION**

At the moment deadly force became necessary, Spivey was armed and standing outside his vehicle, and he had moved the arm holding his firearm upward toward the occupants of Williams' vehicle. Williams immediately attempted to order retreat by directing the driver to back away, yet an imminent threat of deadly force was present. Under South Carolina's Protection of Persons and Property Act, such circumstances constitute lawful defensive conduct. The Act protects individuals who reasonably act to prevent imminent death or great bodily injury; it does not shield initial aggressors, nor does it require a person to be shot first or to absorb a bullet before defending himself.

Here, Spivey introduced deadly force into the encounter, never effectively withdrew, and escalated the confrontation. Williams, by contrast, was a passenger who neither controlled the vehicle nor brandished a weapon until after shots were fired. His response was therefore lawful and squarely within the protections afforded by South Carolina law.

Respectfully submitting,

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