

JUDGMENT

IT IS THE JUDGMENT OF THE COURT THAT:

___ The defendant is found guilty of the offense of

AND the defendant shall pay costs.

[] Execute on Costs.

___ Defendant is sentenced to be confined in the Knox County Detention Facility or equivalent institution for a period of _____

___ Defendant shall pay a fine of \$ _____

___ Defendant shall pay restitution of \$ _____

___ LIC. Taken in Court _____

___ LIC. REV. _____

___ Supervised probation thru the Knox County Probation Office. [] Until Restitution Paid.

___ The charge is dismissed.

___ The charge will be dismissed upon payment of costs by the defendant.

___ The defendant is bound to the Grand Jury pursuant to the attached record of Preliminary Examination.

Bond \$ _____

___ Diversion _____

___ Other: _____

This the _____ day of _____

Judge _____

___ Defendant's probation is/is not revoked due to following conditions:

Judge _____

Date _____

NO. @1463697

STATE OF TENNESSEE

VS

JAYLEN MCCOLLOUGH (ALIAS) -
IDN 1559265

2030 GRAND AVE, APARTMENT
404, KNOXVILLE, TN 37916

Offense:

AGGRAVATED ASSAULT, TCA Section
39-13-102, CLASS C FELONY

 COPY

Issued this 09th day of October, 2022.

RETURN

Came to hand and executed by arresting the defendant this
9th day of October, 2022 at 03:28 AM

KPD

2.2 2366

Case Setting:

SERVED BY A KNOX
COUNTY SHERIFF'S OFFICER
OCT 09 2022

Bail is set at: \$2500 Appearance Conditions:
MUST SUBMIT BIOLOGICAL SPECIMEN; NO
CONTACT/COMMUNICATION WITH VICTIM

Bail set this 10th day of October, 2022. 
DUSTIN SEAN DUNHAM, Magistrate

Atty. for Def. _____

Officer available court dates after: 11/07/2022

WAIVER OF ATTORNEY

I understand that I have the right to an attorney and that if I am indigent and cannot afford an attorney the Court will appoint an attorney to represent me. It is my desire to waive my right to an attorney in this case.

WAIVER AND PLEA

I understand that I have the right to be tried in Criminal Court upon an indictment or presentment by the Grand Jury. I also have the right to a trial by jury. I desire to waive these rights and to be tried in General Sessions Court on this warrant.

I Plead _____ to the charge on this warrant.

Signature _____

NOTICE: The Tennessee rules of the Criminal procedure provide that there is no appeal from a plea of guilty, except as to sentence.

Mackey & McClintock enhancement explained

The District Attorney General does not object to this case being tried in General Sessions Court.

Signature _____

___ This warrant is canceled at the request of the District Attorney General.

___ This warrant is amended to charge the offense of:

___ By agreement of the parties.

___ By motion of the STATE.

Date _____

Judge _____

Co-Defendants:

AFFIDAVIT OF COMPLAINT

DEFENDANT: JAYLEN MCCOLLOUGH (ALIAS) - IDN 1559265

AFFIANT: ZACHARY DENSON - IDN 1533944

THE AFFIANT, AFTER FIRST BEING DULY SWORN ACCORDING TO LAW, STATES THAT A CRIMINAL OFFENSE HAS BEEN COMMITTED IN KNOX COUNTY, TENNESSEE, BY THE DEFENDANT. FURTHER, AFFIANT MAKES OATH THAT THE ESSENTIAL FACTS CONSTITUTING THE SAID OFFENSE ARE AS FOLLOWS:

THE DEFENDANT COMMITTED THE OFFENSE OF AGGRAVATED ASSAULT, IN VIOLATION OF TCA SECTION 39-13-102. THIS INCIDENT OCCURRED ON OR ABOUT SUNDAY, OCTOBER 09, 2022 AT 15:28 AT 2030 GRAND AVE. ON 10/09/2022 AT 15:28 HOURS, OFFICER Z. DENSON (2366) AND OFFICER J. REED (2291) RESPONDED TO AN ASSAULT AT 2030 GRAND AVE. UPON ARRIVAL, THE VICTIM, ZION SPENCER, MADE CONTACT WITH OFFICERS ON THE STREET IN FRONT OF THE APARTMENT BUILDING. MR. SPENCER HAD BLOOD AND SWELLING ON HIS MOUTH, AND HAD MULTIPLE MISSING AND BROKEN TEETH.

MR. SPENCER STATED THAT HE HAD BEEN DRINKING WITH FRIENDS THAT LIVE IN THE COMPLEX, WENT TO GET ITEMS FROM A VEHICLE AND DID NOT REALIZE HE HAD GONE TO A DIFFERENT BUILDING ON THE WAY BACK. HE STATED THAT HE WENT TO WHAT HE BELIEVED WAS HIS FRIENDS APARTMENT ON THE TOP FLOOR OF THE BUILDING AND KNOCKED. WHEN NO ONE ANSWERED, HE STATED HE OPENED THE UNLOCKED DOOR AND STEPPED INSIDE. MR. SPENCER THEN STATED THAT HE IMMEDIATELY REALIZED THAT HE HAD ENTERED THE WRONG APARTMENT, AND APOLOGIZED BEFORE CLOSING THE DOOR AND BEGAN WALKING BACK TOWARDS THE STAIRS IN THE COMMON AREA. MR. SPENCER SAID THAT AN UNKNOWN MALE PURSUED HIM OUT OF THE APARTMENT AND STARTED GETTING AGGRESSIVE. MR. SPENCER STATED HE APOLOGIZED AGAIN AND TOLD THE MALE HE DIDN'T HAVE TO BE A DICK ABOUT IT. HE THEN STATED AS HE WAS WALKING AWAY, HE HEARD FOOTSTEPS BEHIND HIM. HE TURNED AROUND AT THE TOP OF THE STAIRS APPROXIMATELY 30 FEET FROM THE DOOR, AND WAS PUNCHED IN THE FACE. HE FELL BACKWARDS DOWN THE STAIRS AND LOST CONSCIOUSNESS. MR. SPENCER STATED HE REGAINED CONSCIOUSNESS AND SECOND MALE AND A FEMALE WERE ATTEMPTING TO HELP HIM TO HIS FEET. THE FEMALE WAS LATER FOUND TO BE RYAN CASTLIN. OFFICERS OBSERVED BLOOD ON THE STAIRS LEADING TO THE TOP FLOOR OF THE BUILDING.

OFFICERS ATTEMPTED TO MAKE CONTACT WITH THE OCCUPANTS OF THE APARTMENT BUT WERE UNSUCCESSFUL. OFFICERS MADE CONTACT WITH MS. CASTLIN, IN HER CAR IN THE PARKING LOT AND SHE ADMITTED TO BEING THE GIRL/FRIEND OF THE DEFENDANT. JAYLEN MCCOLLOUGH, MS. CASTLIN CALLED MR. MCCOLLOUGH BACK TO THE SCENE. MR. MCCOLLOUGH WALKED BACK TO THE SCENE WITH HIS RIGHT HAND IN BANDAGES AND BLOOD SHOWING THROUGH THE BANDAGE. MR. MCCOLLOUGH WAS READ HIS MIRANDA WARNING AND DID NOT ANSWER ANY QUESTIONS. MR. MCCOLLOUGH WAS TAKEN INTO CUSTODY WITHOUT INCIDENT. THIS OCCURRED IN KNOXVILLE, KNOX COUNTY, TN. A CITATION WAS NOT ISSUED BECAUSE OFFENSE IS A FELONY.

The defendant is hereby instructed that if the defendant's charge is dismissed, a no true bill is returned by a grand jury, the defendant is arrested and released without being charged with an offense, or the court enters a nolle prosequi in the defendant's case, the defendant is entitled, upon petition by the defendant to the court having jurisdiction over the action, to the removal and destruction of all public records relating to the case without cost to the defendant.

2.9.2366

ZACHARY DENSON, AFFIANT 800 HOWARD BAKER JR AVE, KNOXVILLE, TN 37915
Phone #: (865) 215-7000

Personally sworn to and subscribed by the affiant before me this
09th day of October, 2022.


ROBERT A. COLE, Magistrate

ARREST WARRANT @1463697

TO THE DEFENDANT:
Jaylen McColough (ALIAS), based on the affidavit of complaint filed in this case, there is probable cause to believe that, in violation of T.C.A. §39-13-102, you have committed the offense of AGGRAVATED ASSAULT, Class C Felony.


TO THE LAWFUL OFFICER:

You are therefore commanded in the name of the State of Tennessee to immediately arrest the defendant named above and bring the defendant to this court to answer the charges.

Issued this 09th day of October, 2022.

WITNESSES
ZION SPENCER -




ROBERT A. COLE, Magistrate

VICTIM

FILED
IN THE GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE,)
)

v.)
)

JAYLEN MCCOLLOUGH,)
)

Defendant.)
)

2022 OCT 26 PM 3:59

GENERAL SESSIONS COURT
CRIMINAL DIVISION
KNOXVILLE, TN
No. @1463697

 COPY

FILED
BY MIKE HAMMOND
2022 OCT 26 AM 3:58
GENERAL SESSIONS COURT
CRIMINAL DIVISION
KNOXVILLE, TN

MOTION TO SET PRELIMINARY HEARING DATE WITHIN 30 DAYS

Comes the Defendant, Jaylen McCollough, by and through undersigned counsel, pursuant to Tennessee Rule of Criminal Procedure 5(d)(3) and hereby moves this court to set a preliminary hearing date before November 10, 2022. In support thereof Mr. McCollough shows the following:

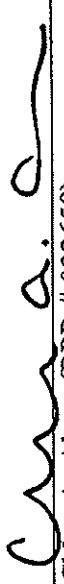
- (1) Mr. McCollough was arrested on October 9, 2022.
- (2) He appeared before a magistrate on October 10, 2022.
- (3) At no point since his arrest has Mr. McCollough waived his right to a preliminary hearing, nor does he do so now. Likewise, Mr. McCollough does not consent to any extension of time in setting his preliminary hearing.
- (4) There has been no finding that a preliminary hearing is unnecessary under Rule 5(e).
- (5) Mr. McCollough is statutorily entitled to a hearing within 30 days of his appearance before the magistrate. *See* Tenn. R. of Crim. Pro. 5(d)(3)
- (6) Mr. McCollough maintains his innocence in this matter and seeks a hearing before the Knox County General Sessions Court at the earliest possible setting.
- (7) Counsel has conferred with counsel for the State and suggests a date of November 1, 2022 for the Court to hear this motion and set a new date for a preliminary hearing.

FILED
BY MIKE HAMMOND
2022 OCT 26 PM 3:00
GENERAL SESSIONS COURT
CRIMINAL DIVISION
KNOXVILLE, TN

While this motion is being filed on October 26, 2022, counsel for the State was made aware this motion would be filed on October 24, 2022.

Respectfully submitted this 26th day of October, 2022.

THE LAW OFFICE OF CHLOE A. AKERS, ESQ.

By: 
Chloe A. Akers (BPR # 032658)
Attorney for Jaylen McCollough
618 S. Gay Street, Ste. 105B
Knoxville, TN 37902
(865) 304-0573
chloe@chloakerslaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon all parties in interest, via hand delivery and email, as follows:

Assistant District Attorney Sean McDermott
400 Main St., Ste. 168
Knoxville, TN 37902
(865)-215-2515
Via Email: Sean.McDermott@knoxcounty.org

This the 26th day of October, 2022.

THE LAW OFFICE OF CHLOE A. AKERS, ESQ.

By: 
Chloe A. Akers

IN THE GENERAL SESSIONS COURT FOR KNOX COUNTY, TENNESSEE

STATE OF TENNESSEE,

v.

JAYLEN MCCOLLOUGH,

Defendant.

 COPY

No. @1463697

FILED BY MIKE HAMMOND
2022 OCT 26 AM 3:58
GENERAL SESSIONS COURT
CRIMINAL DIVISION
KNOXVILLE, TN

FILED BY MIKE HAMMOND
2022 OCT 26 PM 3:00
GENERAL SESSIONS COURT
CRIMINAL DIVISION
KNOXVILLE, TN

MEMORANDUM OF LAW

Comes the Defendant, Jaylen McCollough, by and through undersigned counsel, and hereby files this Memorandum of Law in anticipation of his reliance on the statutorily recognized defense of self-defense. Given that this matter involves the unique intersection of issues involving forcible entry and the legal definition of curtilage, Mr. McCollough files this memorandum to provide the Court with the relevant statutory framework and caselaw necessary for an evaluation of probable cause.

INTRODUCTION

On October 9, 2022, Mr. McCollough was arrested and charged with one count of Aggravated Assault in violation of Tenn. Code Ann. § 39-13-102. According to the warrant, the complaining witness, Zion Spencer, had been drinking at a friend's apartment that afternoon.¹ Mr. Spencer told officers that after leaving his friend's apartment to get something from a car parked outside, he became disoriented and wound up in a different building. Despite being in a building

¹ Knoxville Police Department body camera footage shows Mr. Spencer in possession of an empty vodka bottle. Mr. Spencer admitted he had been drinking, and that the empty bottle belonged to him. Officers later remarked that Mr. Spencer appeared intoxicated.

on the other side of the complex, Mr. Spencer told officers he nonetheless thought he was at the right place, which is why he opened the door to Mr. McCollough's residence.

Mr. Spencer claimed that after opening the door to Mr. McCollough's apartment, he immediately left when he realized he was not at his friend's residence. Mr. Spencer told officers that as he was walking away, he heard footsteps behind him, turned around at the top of a flight of stairs thirty feet from the front door, and was punched in the face before falling backward down the stairs.

Mr. McCollough will present evidence that contradicts Mr. Spencer's version of events. This evidence includes the testimony of two eyewitnesses, neither of whom were interviewed by law enforcement. The first witness is Warren Burrell, Mr. McCollough's roommate. Mr. Burrell, like Mr. McCollough, had not been drinking that day. He was inside his bedroom in the rear of the apartment when he heard an unfamiliar voice coming from the living room. When walked out of his bedroom, Mr. Burrell saw Mr. Spencer standing inside the living room. He also saw Mr. McCollough, who had been watching television at the time, standing in front of the living room couch repeatedly telling Mr. Spencer to leave the apartment. According to Mr. Burrell, Mr. Spencer was not making much sense and appeared intoxicated.

After Mr. McCollough told Mr. Spencer to leave multiple times, Mr. Burrell observed Mr. McCollough walk toward Mr. Spencer, who began backing up in the direction of the front door but was still refusing to leave. At that point the second witness, Mr. McCollough's girlfriend Ryan Castlin, opened the other bedroom door, which was located just a few feet from the front door. She observed Mr. Spencer standing in the doorway facing Mr. McCollough. She observed Mr. McCollough repeatedly telling Mr. Spencer to get out of the apartment, but Mr. Spencer was not responding to his demands. Eventually, Mr. Spencer backed up enough to clear the doorframe, at

which point Mr. McCollough was able close the front door and keep Ms. Castlin safe inside the apartment.

While standing just outside the front door in the individual vestibule area of his apartment, Mr. McCollough continued to demand that Mr. Spencer leave. According to Mr. Burrell, Mr. Spencer started to become more aggressive and belligerent. Mr. Spencer then threatened to come back inside the apartment. After threatening to re-enter the property, Mr. McCollough punched Mr. Spencer one time in the face. Mr. McCollough and Mr. Burrell both report that at the time he was punched, Mr. Spencer was standing within two feet of their front door, that he never turned his back and left the apartment at any time, and that he was nowhere near the top of the stairs at the time of the interaction.

LEGAL ISSUE

It is a general legal defense to a criminal prosecution when a defendant's conduct is justified. T.C.A. § 39-11-601. A person is justified in using force, including force intended to cause death or serious bodily injury, against another individual if, “ (A) the person has a reasonable belief that there is an imminent danger of death or serious bodily injury; (B) the danger creating the belief of imminent death or serious bodily injury is real, or honestly believed to be real at the time; and (C) the belief of danger is founded upon reasonable grounds.” T.C.A. § 39-11-611(b)(2). While a person acting in self-defense outside the home must meet the requirements listed in subsections (A) through (C), a person acting in self-defense within the home is, “entitled to a presumption that the fear of imminent death or serious bodily injury was reasonable.” *State v. Williams*, 2013 Tenn. Crim. App. LEXIS 644, *31 (Jan. 15, 2013).

Specifically, the law states that “any person using force intended or likely to cause death or serious injury within a residence, business, dwelling or vehicle is presumed to have held a

reasonable belief of imminent death or serious bodily injury...when that force is used against another person who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence, business, dwelling or vehicle, and the person using defensive force knew or had reason to believe that an unlawful and forcible entry occurred.” T.C.A. § 39-11-611(c).

A. Unlawful and Forcible Entry

It is unlawful to enter or remain on property, or any portion of property, without the consent of the owner. T.C.A. § 39-14-405. Force is defined under the law to mean, “compulsion by the use of physical power *or* violence and shall be broadly construed to accomplish the purposes of this chapter.” T.C.A. § 39-11-106(a)(14) (emphasis added). Thus, the law sets forth two distinct ways in which force can be accomplished and instructs courts to broadly construe this definition. As such, “‘compulsion by the use of physical power’ may indeed be force, but it need not be violence. A theft of a wallet from the pocket or purse of an unknowing or unresisting victim, for example, may require ‘compulsion by the use of physical power’ but not violence.” *State v. Fritz*, 19 S.W.3d 213, 216 (Tenn. 2000) (internal citations omitted). This distinction is reiterated in the jury instruction for self-defense, which specifically defines violence in the context of physical force to mean the type of force that may cause damage, injury, or abuse. *See* T.P.I. § 40.06(a) (2022 ed.). However, physical power need not cause any such result.

B. Definition of Curtilage

In the self-defense statute, a residence is defined as, “a dwelling in which a person resides, either temporarily or permanently...or any dwelling, building, or other appurtenance within the curtilage of the residence.” T.C.A. § 39-11-611(a)(9). The section on self-defense defines curtilage as “the area surrounding a dwelling that is necessary, convenient and habitually used for family purposes and for those activities associated with the sanctity of the home.” T.C.A. § 39-11-

611(a)(4). Black's Law Dictionary defines "appurtenance" as "[s]omething that belongs to or is attached to something else" and provides by way of example, a garden that is an appurtenance to the home. *Black's Law Dictionary* (9th Ed. 2009).

As it relates to self-defense employed in the curtilage of one's residence, in *State v. Bottenfield*, the Court of Criminal Appeals reversed a trial court's decision not to instruct the jury on the presumption of reasonableness in the self-defense statute when the defendant shot a man twenty feet from the entrance of her home. *Bottenfield*, 692 S.W.2d 447 (Tenn. Crim. App. 1985). In that case, the man had been inside the home previously and threatened to come back inside. The appellate court specifically held that "one's own home or dwelling includes the curtilage thereof." *Id.* at 452. Likewise, in *State v. Edwards*, the appellate court reversed the trial court for failure to include the reasonableness presumption of the self-defense instruction, concluding that a dwelling includes the curtilage of the home. *Edwards*, 1991 Tenn. Crim. App. LEXIS 688, *4 (Aug. 30, 1991). Both decisions relied on the fact that each complainant had previously entered the defendant's residence before force was later employed in an area considered to be curtilage.

CONCLUSION

It has long been accepted that the "purpose of a preliminary hearing is to determine whether probable cause exists to believe that a crime has been committed and that the accused committed the crime." *State v. Lee*, 693 S.W.2d 361, 363 (Tenn. Crim. App. 1985). "The difference in proof notwithstanding, the basic purpose of the preliminary hearing and the trial are not 'totally separate...' but rather deal with precisely the same issue: whether or not the accused is guilty of the crimes for which he or she is charged." *State v. Echols*, 2014 Tenn. Crim. App. LEXIS 1076, *36 (Nov. 26, 2014) (quoting *State v. Howell*, 868 S.W.2d 238, 251 (Tenn. 1993)).

In this case, evidence will be presented to fairly raise the issue of self-defense. In fact, the warrant itself raises this issue. As such, to prevail at a preliminary hearing, the State must prove to the Court, by a preponderance of evidence, that when Mr. McCollough punched Mr. Spencer, he was *not* acting in self-defense. *State v. Sims*, 45 S.W.3d 1, 9 (Tenn. 2001); see also *State v. Allen*, 69 S.W.3d 181, 187-88 (Tenn. 2002); *Williams v. State*, 2009 Tenn. Crim. App. LEXIS 316 (applying the supreme court's holding in *Allen* to conclude a that an instruction on a defense must be given if fairly raised by the proof.)


Mr. McCollough will introduce evidence to prove that he was sitting inside his own home on the afternoon of October 9th, 2022, when Mr. Spencer, a man he did not know who appeared to be intoxicated and belligerent, opened the door to his apartment and walked inside without permission. When Mr. Spencer turned the doorknob and pushed open the door, he acted forcibly by using physical power. When he entered the residence without consent, he acted unlawfully. At that point, the law presumes Mr. McCollough is justified in using force against Mr. Spencer.

However, before using force, Mr. McCollough repeatedly demanded that Mr. Spencer simply leave the apartment, but Mr. Spencer remained inside, only backing away once Mr. McCollough walked toward him. Eventually, while standing just outside the front door in the individual vestibule area of the residence, Mr. Spencer became more aggressive and threatened to come back inside the apartment. Mr. McCollough then punched him one time, using justifiable force against Mr. Spencer, a trespasser who was standing squarely on the curtilage of the property threatening to come back into Mr. McCollough's home.

All evidence referenced herein will be presented to the Court by Mr. McCollough at the preliminary hearing. Argument in favor of a dismissal of this charge will be made at the conclusion of the presentation of all proof.

Respectfully submitted this 26th day of October, 2022.

THE LAW OFFICE OF CHLOE A. AKERS, ESQ.

By: 
Chloe A. Akers (BPR # 032658)
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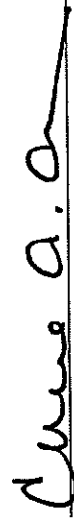
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon all parties in interest, via hand delivery and email, as follows:

Assistant District Attorney Sean McDermott
400 Main St., Ste. 168
Knoxville, TN 37902
(865)-215-2515
Via Email: Sean.McDermott@knoxcounty.org

This the 26th day of October, 2022.

THE LAW OFFICE OF CHLOE A. AKERS, ESQ.

By: 
Chloe A. Akers