

Wednesday, Jan. 10, 1990

Sumter County woman granted new trial

Accidental shooting allowed for by court

By MARGARET N. O'SHEA
Staff Writer

The state Supreme Court has granted a new trial to a Sumter County woman who claimed she didn't mean to shoot her lover's wife.

Joyce Lee McCaskill probably wouldn't have been convicted in 1987 if the jury had known she had a right to own a gun and a right to defend herself, the high court said in a unanimous opinion filed late Monday.

It created for the first time in South Carolina the legal concept that a death can be accidental even if the weapon involved was deliberately taken up in self-defense.

That issue had never been considered because most people who try to convince a jury that they killed in self-defense don't also claim that they didn't mean to do it, defense attorney

Jack B. Swerling said.

The McCaskill case stemmed from a domestic squabble over a man.

Court records show that the argument started after Donna Scott came to the home that Ms. McCaskill shared with Glenn Scott and disclosed that she planned to reconcile with her ex-husband. Scott admitted that he also wanted a reconciliation.

During the emotional scene that followed, Scott shoved Ms. McCaskill, and Mrs. Scott slapped her. She admitted to the jury that when she ran into a bedroom and got the gun to protect herself and her unborn child if she had to.

Glenn testified that the gun went off when he tackled Ms. McCaskill.

The bullet struck Mrs. Scott, who later died in a hospital emergency room.

Ms. McCaskill was convicted of voluntary manslaughter and possession of a weapon during a violent crime. She was sentenced to 20 years in prison, including a concurrent five-year term on the weapons charge.

"This case presented a novel issue to the court because in order to avail yourself of the defense of accident, one must be engaged in a lawful enterprise," Swerling said. "We took the position that her arming herself in self-defense was a lawful enterprise, and the court in this case held for the first time in South Carolina that if someone arms himself in self-defense and the gun then goes off accidentally, the jury should then be instructed on both principles of the law and how they relate to each other."

The Supreme Court said that Circuit Judge C. Anthony Harris told the jury what law applied when a person used a weapon in self-defense, but didn't go far enough. The doctrine of self-defense allows a person to use a weapon to protect himself against a clear and present danger when he believes his life is threatened.

"The trial judge erred in failing to charge that (Ms. McCaskill) had a right to possess a weapon in her home," Associate Justice David W. Harwell wrote in the unanimous opinion.

"The trial judge also erred in failing to charge that if (Ms. McCaskill) lawfully armed

herself in self-defense because of a threat to her safety created by (Mrs. Scott), and the gun accidentally discharged, the jury would have to find her not guilty."

Among other opinions filed Monday and Tuesday, the Supreme Court upheld without comment the life sentence given Kamathene Adonia Cooper in 1987 after he'd spent three years on Death Row for a murder he confessed he'd committed "for no particular reason."

The death sentence was overturned because of errors in Cooper's first trial in the Sumter County slaying of Rheupert Wallace Stewart in 1984.

The Supreme Court also ruled that the State Board of Medical Examiners could not use a confidential memorandum to persuade a judge to force disclosure of an addiction center's treatment records.

The ruling allowed Fenwick Hall, Inc., at Charleston to keep confidential its file on an unnamed doctor, who was under investigation by the state board for alleged professional misconduct.