

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

68177

APPEAL FROM CHESTERFIELD COUNTY
Court of General Sessions

J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2013-000148

The State of South Carolina, Appellant,

v.

Graham Franklin Douglas, Respondent.

MOTION TO DISMISS APPEAL AND
INCORPORATED MEMORANDUM OF LAW

The State has attempted to appeal the decision of the Honorable J. Michael Baxley to dismiss the charges against the Respondent Graham Douglas pursuant to the Protection of Persons and Property Act, S.C. Code § 16-11-410, et seq. Judge Baxley gave actual notice of his ruling to dismiss the matter by filing a letter with the Chesterfield County Clerk of Court on November 5, 2012. The State waited until January 14, 2013, to file its Notice of Appeal. For this reason, the Respondent asks this Court to dismiss the appeal as untimely pursuant to Rule 203(b)(2) of the South Carolina Appellate Court Rules.

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SC Court of Appeals

STATEMENT OF FACTS

On May 31, 2011, the decedent Charles Smith violently attacked the Respondent in his home. The Respondent was forced to shoot the decedent to save himself. When law enforcement arrived, the Respondent was charged with murder and possession of a weapon during a crime.

On April 23, 2012, counsel for the Respondent filed a motion to dismiss pursuant to the Protection of Persons and Property Act in the Chesterfield County Court of General Sessions.

On October 2, 2012, a pretrial immunity hearing was held before Judge Baxley pursuant to *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). Third Circuit Solicitor Ernest A. Finney, III, and Assistant Solicitor Tyler B. Brown appeared on behalf of the State. The undersigned counsel appeared on behalf of the Respondent. The hearing proceeded for two days and a number of witnesses were called by both parties. At the conclusion of the hearing on October 3, 2012, Judge Baxley took the matter under advisement and withheld ruling.

On October 31, 2012, Judge Baxley's assistant emailed counsel that a ruling in the matter would be made available through the Chesterfield County Clerk of Court's Office on November 5, 2012.

On November 5, 2012, Judge Baxley filed a letter with the Clerk of Court giving notice to the parties of his decision to grant immunity pursuant to the Protection of Persons and Property Act. A copy of this letter is attached as Exhibit 1. Judge Baxley's letter outlines his ruling to grant immunity and specifies the facts and law which support his ruling. Pursuant to Judge Baxley's letter, the charges against the Respondent were dismissed and the undersigned counsel was instructed to prepare a formal written order. The State was given opportunity to review the

Respondent's proposed order "for mistake of fact or misstatement of the State's position."

On November 8, 2012, counsel for the Respondent emailed an electronic copy of the proposed Order of Dismissal to Judge Baxley. Counsel for the State was carbon copied on this email. A copy of this email is attached as Exhibit 2.

On November 14, 2012, Solicitor Finney faxed a letter to Judge Baxley requesting the Court reconsider its decision to dismiss the charges. A copy of Solicitor Finney's letter is attached as Exhibit 3.

On December 18, 2012, Judge Baxley's law clerk emailed the parties an electronic copy of his final order. A copy of this email is attached as Exhibit 4. Pursuant to this email, the State was given another opportunity to comment on the Order of Dismissal. Comments were due by 5:00 p.m. on December 27, 2012.

At 3:28 p.m. on December 27, 2012, Solicitor Finney emailed Judge Baxley an electronic copy of a letter requesting the Court amend its Order concerning certain facts raised at the hearing. A copy of this email and letter is attached as Exhibit 5. The letter acknowledges the Solicitor has received and reviewed the Court's Order of Dismissal, but does not request the Court deny immunity or reverse its decision to dismiss the charges.

On January 4, 2013, the Court filed its Order Granting Immunity and Dismissing Criminal charges. A copy of this order is attached as Exhibit 6. On January 14, 2013, the State filed its Notice of Appeal.

The Respondent hereby moves to dismiss the State's appeal as untimely filed pursuant to Rule 203(b)(2), SCACR.

ARGUMENT

I. THIS COURT SHOULD DISMISS THE STATE’S APPEAL BECAUSE THE STATE FAILED TO TIMELY FILE ITS NOTICE OF APPEAL PURSUANT TO RULE 203(b)(2), SCACR.

A motion to dismiss due to an appellant’s failure to timely file a notice of appeal is essentially a jurisdictional motion. “The requirement of service of a notice of appeal is jurisdictional, i.e., if a party misses a deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ a delinquent party by extending or ignoring the deadline for service of the notice.” *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

A motion to dismiss pursuant to the Protection of Persons and Property Act must be heard pre-trial. *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). In ruling on a *Duncan* motion, the trial court’s decision is immediately appealable by either party. In this case, the Court granted immunity, and therefore the State has appealed this pre-trial ruling.

An appeal from a General Sessions pre-trial ruling raises a special provision of Rule 203(b)(2) of the South Carolina Appellate Court Rules regarding the service of a notice of appeal.

Pursuant to Rule 203(b)(2):

. . . In those cases in which the State is allowed to appeal a pre-trial order or ruling, the notice of appeal must be served ***within ten (10) days of receiving actual notice of the ruling or order***; provided, however, that the notice of appeal must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief.

Rule 203(b)(2), SCACR (emphasis added). “In all other [General Sessions] cases, the notice of appeal shall be served on all respondents ***within ten (10) days after receipt of written notice of entry of order or judgment.***” *Id.*

While the rules for serving a Notice of Appeal from a pre-trial ruling versus a regular General Sessions case are similar, the difference is critical. If the State appeals a pre-trial ruling, the ten-day statute of limitation begins to run when the State receives actual notice of the ruling. Therefore, the State cannot wait until it receives “written notice of the entry of judgment” before it appeals a pre-trial ruling. The State must file the Notice of Appeal within ten days of actual notice of the Court’s ruling on the pre-trial motion.

In the present action, the Court gave notice of its ruling by filing a letter with the Chesterfield Clerk of Court on November 5, 2012. In this letter, the Court states “. . . Defendant Graham Douglas is entitled to immunity from criminal prosecution pursuant to the [Protection of Persons and Property] Act, codified as S.C. Code Ann. § 16-11-410, and accordingly, Defendant’s motion to dismiss is granted.” In response, the State acknowledged receipt of the Court’s ruling in a letter dated November 14, 2012: “We are in receipt” of your letter which was received on November 5, 2012, regarding your decision to provide immunity to Graham Douglas in the killing of Charles Eden Smith.” By the State’s admission, it received actual notice of the Court’s ruling on November 5, 2012.

Pursuant to Rule 203(b)(2), SCACR, the State had until November 15, 2012, to file its notice of appeal. The State did not file its Notice of Appeal within ten days, but waited instead until January 14, 2013, to file its Notice of Appeal. Therefore, the State failed to timely file its Notice of Appeal pursuant to Rule 203(b)(2), SCACR. In failing to timely file a Notice of Appeal, the State has essentially deprived this Court of jurisdiction. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).


With this in mind, the Respondent Graham Douglas respectfully requests this Court dismiss

dismiss the State's appeal as lacking jurisdiction due to the State's failure to timely serve its Notice of Appeal.

CONCLUSION

For all the reasons stated above, this Court should dismiss the State's appeal because the Notice of Appeal was not timely filed.

MOORE, TAYLOR & THOMAS, P.A.



S. Jahue Moore
/M. Brooks Biediger
1700 Sunset Boulevard
Post Office Box 5709
West Columbia, SC 29171
(803) 796-9160

Attorneys for Respondent Graham Douglas

West Columbia, South Carolina

June 17, 2013.

Exhibit 1

**Letter from Judge Baxley
filed on November 5, 2012**



State of South Carolina
The Circuit Court of the Fourth Judicial Circuit

J. MICHAEL
BAXLEY
JUDGE

531 EAST CAROLINA AVENUE
HARTSVILLE, SOUTH CAROLINA 29550
TELEPHONE: (843) 383-4114
FAX: (843) 383-4116
E-MAIL: jbxleyj@sccourts.org

For release on November 5, 2012

The Hon. Ernest A. Finney, III, Solicitor
Tyler B. Brown, Esq., Assistant Solicitor
Third Judicial Circuit Solicitor's Office
141 North Main Street
Sumter, SC 29150

S. Jahue Moore, Esq.
M. Brooks Biediger, Esq.
Moore, Taylor & Thomas, P.A.
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171

M.W. Cockrell, III, Esq.
Cockrell Law Firm, PC
Olde Towne Centre
BARRISTER BUILDING
159 Main Street
Chesterfield, SC 29709

Re: State v. Graham F. Douglas, 2011-GS-13-0627; 2011-GS-13-0628
Prosecution for Murder

Gentlemen:

The Defendant's Motion to Dismiss pursuant to the Protection of Persons and Property Act (the "Act") in the above listed cases has been under advisement. Please accept this letter as notice of the Court's decision.

Having fully considered the pleadings, controlling law, memoranda submitted by the parties, arguments of counsel, and all the evidence presented, the Court finds that Defendant Graham Douglas is entitled to immunity from criminal prosecution pursuant to the Act, codified as S. C. Code Ann. § 16-11-410, and accordingly, Defendant's motion to dismiss is granted. More specifically, the Court finds that the defense has proven, by a preponderance of the evidence, that Defendant Graham Douglas falls within the scope of the "Stand Your Ground" provision contained within the Act, and is entitled to immunity from criminal prosecution thereunder. See S.C. Code Ann. § 16-11-440(C) (Supp. 2010); see also State v. Duncan, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011) (stating that in determining immunity under the Act the proper standard of proof is a preponderance of the evidence). Given the testimony elicited at

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CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

A True Copy, Attest
Faye L. Sellers
CLERK OF COURT C.P. & S.C.
CHESTERFIELD COUNTY, S.C.

the *Duncan* hearing, this Court finds based on the evidence in the record that it was reasonable for Defendant Douglas to believe that deadly force was "necessary to prevent death or great bodily injury to himself." § 16-11-440(C). The Stand Your Ground protection is accorded to any individual not engaged in an unlawful activity who is attacked in a place where he/she has a right to be, and provides that there is no duty for such individual to retreat from the attack, and further permits the use of deadly force if he/she reasonably believes such force is necessary to prevent death or great bodily injury to himself/herself. *See id.* On the issue of whether Defendant Douglas was engaged in an unlawful activity at the time of this incident, the Court finds that he was not. While there is reliable evidence in the record that Defendant Douglas was under the influence of alcohol when this event occurred, there is no specific evidence of a blood alcohol or breath alcohol level for him, nor is this Court aware of any law that prohibits the use of alcohol by adults in their own residence. Thus, this Court finds Defendant Douglas is entitled to the immunities intended by the Act.

Please be aware that this Court has not afforded relief to Defendant Douglas under the "Castle Doctrine" portion of the Act, § 16-11-440(A). Although Defendant Douglas was in his own residence when this incident occurred, there is no evidence that victim Eden Smith at the time of his death had unlawfully or forcefully entered the Douglas residence, or was in the process of attempting to forcibly remove Defendant Douglas from the residence, one of which is required under the Castle Doctrine. *See id.* Attorney Moore's argument on behalf of Defendant Douglas that Mr. Smith's entry into the residence automatically became unlawful when the altercation erupted or when allegedly asked to leave is denied as unsupported by the facts in the record or prevailing case law. To the contrary, the evidence shows Mr. Smith was an invitee into the Douglas residence.

The dismissal of this criminal prosecution against Defendant Douglas is based on the following findings of fact from the record:

- 1) the greater physical strength and superior physical condition of Mr. Smith as compared to that of Defendant Douglas;
- 2) the gross intoxication of Mr. Smith at the time of the incident, with a blood alcohol level of .216 (.240 when calculated from ocular fluid), which according to toxicologist Shannon Sorrells of SLED would result in aggression, violence, emotional instability, and mood swings;
- 3) the multiple substantial injuries suffered by Defendant Douglas in the fight, including a bruised right eye, severe bruising on both arms, a cut on the right knee sufficient to draw blood, a bite mark to the leg, and a blow to the head;
- 4) a history of assaultive behaviors by Mr. Smith against various individuals including police officers, resulting in several previous criminal charges and convictions;
- 5) at least one prior incident in which Mr. Smith had committed an assault and battery against Defendant Douglas, not the subject of a criminal conviction, which was not disputed by members of Mr. Smith's family who were allegedly present when such occurred;
- 6) a lack of prior criminal charges for assaultive behavior by Defendant Douglas, with no evidence of a history of or propensity for interpersonal violence;

- 7) the close quarters in which the physical altercation occurred, leaving little room for escape or evasion; and
- 8) the forensic evidence at the scene, including blood spatter, gunshot residue and stippling, and the location of the body of Mr. Smith, while open to other interpretations, is consistent with the version of events testified to by Defendant Douglas that Mr. Smith was the aggressor and was imminently advancing upon Defendant Douglas at the time of the shooting.

In reaching this decision, the Court is fully aware that only two individuals were present when the fight that led to the death of Mr. Smith occurred, and only Defendant Douglas has survived to tell his version of events. Thus, the Court has discounted the portions of the testimony of Defendant Douglas that are either self-serving or subjective, and attempted instead to rely upon objective evidence and the testimony of other witnesses.

The Court is further acutely aware that the Protection of Persons and Property Act takes the unprecedented step of removing the longstanding fact-finding role from a jury in cases such as these, and places this responsibility upon the Court. Moreover, the burden of proof is shifted to the Defendant, and reduced to a preponderance of the evidence. This is a relatively new concept in South Carolina jurisprudence and a matter of first impression within this circuit. In reaching this decision, the Court reiterates that this decision is by a preponderance of the evidence, and readily recognizes that there is direct and circumstantial evidence in this record that mitigates in favor of Victim Eden Smith, raises questions about the relationship between Mr. Smith and Defendant Douglas, as well as raises questions about the events of the evening in question. These factors have challenged the Court to the best of its ability as finder of fact to weigh the evidence fairly and impartially and reach a result consistent with the greater weight of the evidence and the mandates of the Act. The profound implications of this decision make it a difficult one; however, after weighing all the evidence, this Court finds that Defendant Douglas is entitled to the protections of the Act, and that the defense has proven by a preponderance of the evidence that Defendant Douglas falls within the scope of the Act. Consequently, this Court must grant Defendant Douglas immunity from any criminal prosecution arising from the death of Eden Smith.

The Court is being called upon to speak for the community in this instance, and thus it should be emphasized that this decision is a legal one, and is not intended to exonerate Defendant Douglas of any and all moral responsibility for what has happened. The events of May 31, 2011 are tragic. In granting the Defendant's Motion to Dismiss, the Court in no way condones the actions of Defendant Douglas on that day. In fact, the irresponsible conduct and misjudgment of Defendant Douglas have contributed to an event that resulted in the death of a friend, ravaged two families, and divided a close knit community. It is the hope of this Court, in the aftermath of this decision, that Defendant Douglas will strive to the utmost of his ability to atone for the damage he has caused to friends, family, and community.

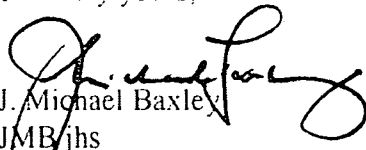
Because this decision is directly appealable, rather than having judgment rendered by this letter, Attorneys Cockrell and Moore are requested to prepare a proposed formal Order within thirty (30) days of the date of this letter detailing the decision stated herein, containing appropriate facts in evidence and supporting legal citations, and forward the same to opposing

counsel. Solicitor Finney is not asked to agree or consent to this proposed Order, but is requested to review it for mistake of fact or misstatement of the State's position. Thereafter, Attorney Moore is asked to forward the proposed Order electronically to this office in Word format for signature, which will then be reviewed, finalized, signed, and returned to Attorney Cockrell for filing and formal service on the parties.

Defendant Douglas is hereby immediately released from house arrest and all other restrictive terms and conditions of his bond. Moreover, the State is directed to mark the indictment as "Dismissed by Judicial Order" and return to Defendant Douglas any personal property of his or his family that is currently in possession of the State relating to these charges.

Thank you to both sides of this case for your civility and professionalism in presenting this difficult and highly contested matter to the Court.

Sincerely yours,


J. Michael Baxley
JMB/jhs

cc. The Honorable Faye L. Sellers (for filing)

Exhibit 2

**Email from Counsel for Respondent
Dated November 8, 2012**

Brooks Biediger

From: Brooks Biediger
Sent: Thursday, November 08, 2012 8:54 AM
To: 'JBaxleyj@sccourts.org'; 'jbaxleylc@sccourts.org'
Cc: 'efinney@sumtercountysc.org'; 'finneyiii@aol.com'; 'tylerbrown84@gmail.com'; 'tbrown@sumtercountysc.org'; Jake Moore
Subject: State v. Douglas; Proposed Order
Attachments: Order.docx

Dear Judge Baxley,

I have attached for your consideration our proposed order in this matter. We hope this encompasses the issues you addressed in your letter. If there are any corrections that need to be made, please let us know.

By copy of this email, I am sending Solicitor Finney and Assistant Solicitor Brown a copy of the order for their review.

Thank you very much for your consideration and guidance with this difficult case. If there is anything else you need for our office, please do not hesitate to ask.

Yours very truly,
M. Brooks Biediger

Moore, Taylor & Thomas, P.A.
P.O. Box 5709
West Columbia, South Carolina 29171
Telephone: 803-796-9160
Fax: 803-791-8410

Exhibit 3

**Letter from Solicitor Finney
Dated November 14, 2012**



FAX COVER SHEET Third Judicial Circuit

Ernest A. Finney, III, Solicitor
Sumter County Courthouse
141 N. Main Street
Sumter, South Carolina 29150

Phone No: (803) 436-2188
Fax No.: (803) 436-2189

To: The Honorable J. Michael Baxley
The Honorable Faye L. Sellers
M. W. Cockrell, III
M. Brooks Biediger
S. Jahue Moore

From: Ernest A. Finney, III

Fax #: 843-383-4116
843-623-6944
843-623-5700
803-791-8410

Pages including cover sheet: 5

Subject: State vs. Graham Douglas

Date: 11/14/ 2012

COMMENTS: Please let me know if you need anything else. Thanks



State of South Carolina
Solicitor of the Third Judicial Circuit

Ernest A. Finney, III
Solicitor

Sumter County Courthouse
141 North Main Street
Sumter, South Carolina 29150

Phone (803) 436-2185
Fax (803) 436-2236

November 14, 2012

VIA US MAIL AND FACSIMILE
The Honorable J. Michael Baxley
531 East Carolina Avenue
Hartsville; SC 29550

RE: STATE V. GRAHAM DOUGLAS
Ind. No.: 2011-GS-13-627; 2011-GS-13-628

Dear Judge Baxley:

We hope this letter finds you well. We are in receipt of your letter which was received on November 5, 2012, regarding your decision to provide immunity to Graham Douglas in the killing of Charles Eden Smith. Respectfully, we ask this court to reconsider the decision to provide immunity, and to allow this case to move forward for a jury trial for the reasons outlined below:

- 1.) The Court states that one of its reasons for providing immunity is the greater physical strength and superior physical condition of the victim over the defendant. We ask the Court to reconsider this position on the grounds that that it is not supported by the record. The record is clear that at the time of Charles Eden Smith's death, he was 5'11", and weighed 150. On that same night, the Defendant was booked into the Chesterfield County Detention Center, where he was noted as being 6'2" and 190 pounds. The only testimony provided to this court as to Charles Eden Smith having any physical advantage whatsoever over the Defendant was the testimony provided by the Defendant in which he claimed that the victim could bench press 500 pounds. It would be an error for this court to provide immunity while relying solely on the self serving testimony provided by the defendant to bolster his case while ignoring the clear facts on the record. For this reason, we respectfully request this Court to reconsider its position to provide immunity based on superior strength and physical condition.
- 2.) The Court next states that the gross intoxication of Charles Eden Smith is a reason for immunity to be provided. The State objects to this on the grounds that it ignores the fact

State v. Graham Douglas

reliable testimony shows that the Defendant was also highly intoxicated on the night of the incident, and therefore was prone to the same behavioral tendencies testified to by SLED lab technician Shannon Sorrells. Further, it is important to note that while Ms. Sorrells did provide that alcohol can lead to the tendencies of aggression, violence, emotional instability, and mood swings, she also was clear in stating that this is not how every individual acts, but instead, is only possible behavioral tendencies.

- 3.) The Court next finds that the "substantial injuries" suffered by the defendant is grounds for immunity to be provided. Respectfully, the State contends that "substantial injuries" is not the standard in which immunity should be provided, but instead, fear of death or **great bodily injury** (see §16-11-440(c), SC Code of Laws). Great bodily injury is "bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ." §16-11-430(2), SC Code of Laws. None of the injuries listed by the defendant are injuries that are, or would reasonably cause fear of Great Bodily Injury as defined. It is also important to note that the most substantial injury listed by the Court, that being the blow to the head, is unsubstantiated by anything other than the defendant's testimony. He provided that he became dizzy following his being slammed against the refrigerator and subsequently dropped. This is not substantiated by any medical records that he received any head trauma, and to be sure, when booked at the Chesterfield County Detention Center, a questionnaire was provided where it asked if he needed medical attention. His answer was in the negative. It is also worth noting that the Defendant was intoxicated at the time of this incident, which would be a strong explanation as to the Defendant feeling dizzy and/or disoriented. Further, the means by which these injuries were sustained are unsubstantiated by the crime scene, given the condition of the refrigerator in which he was "slammed into," and the lack of signs of struggle in the kitchen.
- 4.) This Court further found that Charles Eden Smith had a history of assaultive behaviors, and this was a reason for which immunity should be provided. The testimony by various Law Enforcement Officers was admitted over State's objections, and served no purpose in the hearing other than to taint the view of this Court as to the character of Charles Eden Smith. The standard was not – and should not be – what Law Enforcement is aware of as far as the assaultive behaviors of the victim, but instead what the defendant is aware of. This court erred by allowing the testimony of Law Enforcement to provide the substantial outline of the victims prior assaultive behaviors, and the defendant should not be provided immunity based on this error. Further, even assuming the defendant was fully aware of all of Charles Eden Smith's prior behavior, it should not be ignored that the defendant still spent time with Smith, invited him into his home, and provided him alcohol.

State v. Graham Douglas

- 5.) The Court also relies on the testimony of the defendant that he had been attacked in the past by Charles Eden Smith, and that this is uncontested by the Smith family who was allegedly present at the time of the attack. The State believes that this court should consider three things as to this attack. First, this alleged "attack" resulted in no injuries to the Defendant for which any medical records were provided to corroborate his story. Secondly, even taking Douglas at his word, what is clear is that he did not have to take any action to defend himself, which appears to cut against the Defendant's testimony that he was left no option but to use deadly force in defending himself in the present incident. Finally, to establish immunity, the defendant must establish by a preponderance of the evidence that he acted in self defense. For this Court to find that we did not contest this contention inherently shifts the burden from the defendant to the state, and therefore, the State respectfully disagrees with the Courts contention and ask that this Court reconsider its position on this matter.
- 6.) The Court found that the Defendant lacked prior charges/convictions for assaultive behavior on his criminal history. This point is uncontested by the State.
- 7.) The Court next finds that the close quarters of the residence left little room for escape or evasion. Respectfully, the State believes the Court ignores the facts that the defendant not only passed by the back door of the house to go into the bedroom and get the gun, but also, once inside the bedroom, the defendant did not take the obvious option of simply closing the bedroom door. Going out the back door would have taken the defendant outside of the residence, therefore providing an escape, and at bare minimum, shutting the door would have provided a means for evasion. Because the defendant did not take either of these obvious options, he equally should not get either of these benefits in the consideration for immunity.
- 8.) This Court also finds that forensic evidence supported the testimony of the defendant, and therefore supports his argument for immunity. The State objects to this on the grounds that while some evidence falls in line with the testimony of the defendant, other portions of evidence clearly do not. The defendant contends he was thrown against the refrigerator with inhuman strength, but the vases remain on top of the refrigerator unremoved, and the refrigerator looks undisturbed. There are no other signs of struggle in the kitchen. The defendant is noted in his first plea of self defense to Law Enforcement that the victim came at him with a gun, and the victim was found with a gun next to his hand, but it was soon clear that the gun next to the victim's hand was the murder weapon, and the only pistol at the scene of the murder. All of these points, along with all of the points raised in the above seven paragraphs raise substantial questions of fact that should only be answered by the jury, and certainly do not reach the standard required to be

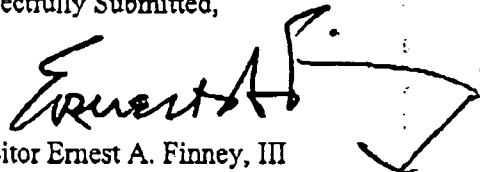
State v. Graham Douglas

reached by this court. For these reasons, as well as the reasons enumerated in the State's Motion to Deny Immunity, the State believes Immunity should clearly be denied, and asks this Court to find similarly.

- 9.) Finally, the most significant and compelling reason to allow this case to proceed to the jury for a final determination of the facts lies in the evidence not contemplated by the Court's proposed order, which is the clothing found at the residence of the Defendant. The SLED lab verified that the pants believed to belong to Charles Eden Smith on the bed in the back room had both men's blood on the waist band and leg. Additionally, the blue khaki pants worn by the Defendant earlier in the day were also found to have blood from both men on the pants leg. No credible testimony was received by the Court to explain why either man was wearing different clothing when law enforcement arrived, or how and why each man had changed from the blood covered clothing described above. With the low burden of proof established by the statute, the Defendant must establish a reasonable explanation for the actions that led each man to leave blood evidence on different items in different areas of the residence. The Defendant has failed to reach this burden in this matter, among many others enumerated above, and for these reasons, this Court should deny immunity, and allow this matter to proceed to a jury.

For these above stated reasons, as well as the reasons outlined in the State's closing arguments and memorandum in opposition of immunity, we respectfully request that this court re-consider its request for defense counsel to draft an opinion providing immunity, and instead ask this court to deny immunity and allow this case to be heard by a jury.

Respectfully Submitted,



14

Solicitor Ernest A. Finney, III
Assistant Solicitor Tyler Bryant Brown
Third Judicial Circuit of South Carolina

CC: The Honorable Faye L. Sellers (FOR FILING) (VIA US MAIL AND FACSIMILE)
S. Jahue Moore (VIA FACSIMILE)
M. Brooks Biediger (VIA FACSIMILE)
M.W. Cockrell, III (VIA FACSIMILE)

Exhibit 4

**Email from Judge Baxley
Dated December 18, 2012**

Brooks Biediger

From: Baxley, J. Michael Law Clerk (James H. Scruggs, III) [JBaxleyLC@sccourts.org]
Sent: Tuesday, December 18, 2012 11:55 AM
To: Brooks Biediger; Finney, Ernest A. III; 'finneyiii@aol.com'; 'tylerbrown84@gmail.com'; 'tbrown@sumtercountysc.org'; Jake Moore; M. W. Cockrell, III (mwc@cockrelllawfirm.com)
Cc: Baxley, J. Michael Secretary (Jamie L. Capell)
Subject: State v. Douglas - Order Granting Immunity
Attachments: State v. Douglas - Order Granting Immunity.docx

Counsel,

Attached for your review and any comment is the proposed final order in State v. Douglas. Thank you for your patience while substantial revisions were made to the previous proposed Order. Given the fact that there is no General Sessions motion equivalent to Rule 59(e), Judge Baxley wishes to give both sides an opportunity to comment, if you wish, on the Court's specific findings prior to issuance of the Order. We would ask that you submit any comment, proposed revisions, or misstatement or your party's position to us via email (JBaxleylc@sccourts.org) no later than 5:00 pm on Thursday, December 27 as we hope to issue the final Order before the new year. If more time is needed, please advise. This communication and proposed Order is not being forwarded for filing to the Clerk, and to avoid confusion, we ask that your final comments be handled in the same manner. Thank you, and we look forward to hearing from you.

Sincerely,
Jamie Scruggs

James H. Scruggs, III
Law Clerk to the Honorable J. Michael Baxley
Circuit Court of the Fourth Judicial Circuit
531 E. Carolina Avenue
Hartsville, South Carolina 29550
Telephone: 843.383.4114
Fax: 843.383.4116
jbaxleylc@sccourts.org

From: Brooks Biediger [mailto:brooks@mttlaw.com]
Sent: Tuesday, October 09, 2012 11:00 AM
To: Baxley, J. Michael; Baxley, J. Michael Law Clerk (James H. Scruggs, III); Finney, Ernest A. III; 'finneyiii@aol.com'; 'tylerbrown84@gmail.com'; 'tbrown@sumtercountysc.org'
Cc: Jake Moore; 'mwc@cockrelllawfirm.com'
Subject: State v. Graham Douglas

Gentlemen,

Attached you will please find an electronic copy of Defendant's Reply to State's Memorandum in Opposition. We will be sending a hard copy out for service and filing with today's mail.

Thank you all for your consideration. If there is anything else you need with this, please let me know.

Thanks,
Brooks

M. Brooks Biediger
Moore, Taylor & Thomas, P.A.
P.O. Box 5709
West Columbia, South Carolina 29171
Telephone: 803-796-9160
Fax: 803-791-8410

Exhibit 5

**Email and Letter from Solicitor Finney
Dated December 27, 2012**

Brooks Biediger

From: Ernest Finney [efinney@sumtercountysc.org]
Sent: Thursday, December 27, 2012 3:28 PM
To: Baxley, J. Michael Law Clerk (James H. Scruggs, III); Brooks Biediger; finneyiii@aol.com; tylerbrown84@gmail.com; Tyler B. Brown; Jake Moore; mwc@cockrelllawfirm.com
Cc: Baxley, J. Michael Secretary (Jamie L. Capell)
Subject: RE: State v. Douglas - Order Granting Immunity
Attachments: letter to Judge Baxley.pdf

Judge Baxley,

Attached, please find the State's response to your proposed order. We thank you for your cooperation and hard work on this matter.

Sincerely

Ernest A. Finney, III
Solicitor, Third Judicial Circuit
141 North Main Street
Sumter, South Carolina 29150
(803) 436-2188
Fax: (803) 436-2236

From: Baxley, J. Michael Law Clerk (James H. Scruggs, III) [mailto:JBaxleyLC@sccourts.org]
Sent: Tuesday, December 18, 2012 11:55 AM
To: Brooks Biediger; Ernest Finney; 'finneyiii@aol.com'; 'tylerbrown84@gmail.com'; Tyler B. Brown; jake@mttlaw.com; M. W. Cockrell, III (mwc@cockrelllawfirm.com)
Cc: Baxley, J. Michael Secretary (Jamie L. Capell)
Subject: State v. Douglas - Order Granting Immunity

Counsel,

Attached for your review and any comment is the proposed final order in State v. Douglas. Thank you for your patience while substantial revisions were made to the previous proposed Order. Given the fact that there is no General Sessions motion equivalent to Rule 59(e), Judge Baxley wishes to give both sides an opportunity to comment, if you wish, on the Court's specific findings prior to issuance of the Order. We would ask that you submit any comment, proposed revisions, or misstatement or your party's position to us via email (JBaxleylc@sccourts.org) no later than 5:00 pm on Thursday, December 27 as we hope to issue the final Order before the new year. If more time is needed, please advise. This communication and proposed Order is not being forwarded for filing to the Clerk, and to avoid confusion, we ask that your final comments be handled in the same manner. Thank you, and we look forward to hearing from you.

Sincerely,
Jamie Scruggs

James H. Scruggs, III
Law Clerk to the Honorable J. Michael Baxley
Circuit Court of the Fourth Judicial Circuit
531 E. Carolina Avenue
Hartsville, South Carolina 29550
Telephone: 843.383.4114

Fax: 843.383.4116

jbaxleylc@sccourts.org

From: Brooks Biediger [<mailto:brooks@mttlaw.com>]

Sent: Tuesday, October 09, 2012 11:00 AM

To: Baxley, J. Michael; Baxley, J. Michael Law Clerk (James H. Scruggs, III); Finney, Ernest A. III; 'finneyiii@aol.com'; 'tylerbrown84@gmail.com'; 'tbrown@sumtercountysc.org'

Cc: Jake Moore; 'mwc@cockrelllawfirm.com'

Subject: State v. Graham Douglas

Gentlemen,

Attached you will please find an electronic copy of Defendant's Reply to State's Memorandum in Opposition. We will be sending a hard copy out for service and filing with today's mail.

Thank you all for your consideration. If there is anything else you need with this, please let me know.

Thanks,
Brooks

M. Brooks Biediger

Moore, Taylor & Thomas, P.A.

P.O. Box 5709

West Columbia, South Carolina 29171

Telephone: 803-796-9160

Fax: 803-791-8410

The State of South Carolina



SOLICITOR

Ernest A. Finney, III
Solicitor

Third Judicial Circuit
Sumter County Courthouse
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Phone: (803) 436-2185
Fax: (803) 436-2189

December 27, 2012

Honorable J. Michael Baxley
Presiding Judge of the Fourth Judicial Circuit
531 East Carolina Avenue
Hartsville, South Carolina 29550

Re: State v. Douglas- Chesterfield County

Dear Judge Baxley:

I have reviewed the proposed Order submitted by e-mail on the date of December 18, 2012. Without waiving any prior objections made to the reasoning and conclusions of this order, the State respectfully requests that this Court re-consider the following points, as we believe that they are not supported by the record, or that they do not accurately reflect the facts that are on the record.

On page six, in footnote number two, the court found both that (a) the ceilings were approximately six feet, five inches high, and (b) that the entranceway between the kitchen and the bedroom does not have a door. In regards to the ceilings, we have no recollection of anything on the record being submitted outlining the height of the ceilings. This point is wholly unsupported by facts, and we would ask that any approximation on height be removed. Secondly, as it pertains to the entranceway from the kitchen to the bedroom, a door did exist, and can be clearly seen in pictures which were placed into evidence. Equally, on page 11, the Court finds that there was only approximately 86 square feet of floor space after taking into account for appliances and cabinets. There is absolutely nothing in the record to support this statement. The State would ask that these findings be removed.

On page eight (and in the pages leading up to page eight), the Court notes that the Defendant had been drinking alongside the victim throughout the day, and that he was noted by law enforcement as being highly intoxicated, as well as through his own acknowledgment. The Court fails to attribute any of the qualities of aggressiveness or

violent behavior, emotional instability, and mood swings to the Defendant because the State did not have any Blood Alcohol Level, and we would respectfully request that this Court re-consider that position. The record is clear that he was highly intoxicated, he acknowledged drinking heavily throughout the day, and because of this, he should be placed under the same scrutiny as the victim has been placed. To fail to do so would be an ignoring of clear facts on the record. Also, in that same section, the Court finds that the Defendant was "cooperative, passive, and remorseful." The State submits that this is not supported by the record, but instead, Law Enforcement's testimony was that he was highly emotional, repeatedly ignored Law Enforcements orders and advice to remain silent, and was clearly acknowledging culpability.

In section three on page eight, this Court notes that the defendant had a sprained thumb. While the other injuries listed for the defendant appear to be a stretch as to the extent of them, there is nothing on the record indicating that his thumb was sprained. Also, on page nine, while the testimony as to the defensive wounds found on the victim could not rule out that they were possible offensive wounds, the pathologist was abundantly clear that they were more attributable to defensive wounds.

We would also ask that the record clearly show that the State objected throughout any and all testimony of prior assaultive behavior, especially assaultive behavior for which Graham Douglas was not present to witness himself, as they had no relevance to what happened on the night of Charles Eden Smith's murder.

Finally, this Court's order requires the State to return all evidence belonging to the Defendant immediately upon issuance of this order. We would ask that that requirement be removed. As this Court is aware, the State is respectfully exploring an appeal to the decision of the trial court, and in the event that this Court is overturned by a higher court, this evidence and its chain of custody will be an essential element of the trial of Graham Douglas. The State would ask that this Court change the language to instead require the State to return the evidence upon the exhaustion of all appeals.

Respectfully Submitted,

Ernest A. Finney, III
Solicitor

CC: S. Jahue Moore
M. Brooks Biediger
M.W. Cockrell, III

Exhibit 6

**Order Granting Immunity and
Dismissing Criminal Charges,
Filed January 4, 2013**

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF GENERAL SESSIONS

State of South Carolina,

2011-GS-13-627

2011-GS-13-628

vs.

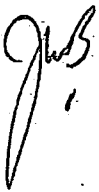
Graham Franklin Douglas,

**ORDER GRANTING IMMUNITY
AND DISMISSING CRIMINAL
CHARGES**

Defendant.

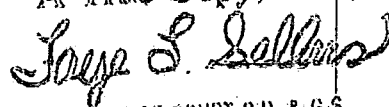
2013 JAN 10
FAYE L. ELLIS
CLERK OF COURT
CHESTERFIELD COUNTY, SC

The Defendant Graham Franklin Douglas is charged with the murder of Charles Eden Smith and possession of a weapon during the commission of a violent crime, these charges arising out a shooting incident at the home of the Defendant on May 31, 2011. This matter is before the Court on the Defendant's Motion to Dismiss pursuant to the Protection of Persons and Property Act (the "Act"), S.C. Code Ann. § 16-11-410, *et seq.* For the reasons set forth herein, the Defendant's motion is granted and the criminal charges against the Defendant are dismissed.

 The motion was tried before this Court on October 2-3, 2012, in Chesterfield, South Carolina. Due to the recusal of the Fourth Circuit Solicitor because of a prior working relationship with the Defendant, the State was represented by Third Circuit Solicitor Ernest A. Finney, III and his Assistant Solicitor Tyler B. Brown. The Defendant was represented by attorneys S. Jahue Moore, M. Brooks Biediger, and M. W. Cockrell, III.

I. STATEMENT OF DECISION

The Protection of Persons and Property Act, according to the statement of purpose contained within the Act, was promulgated to permit "law-abiding citizens to protect themselves from intruders and attackers without fear of prosecutionfor acting in defense of themselves." S.C. Code Ann. § 16-11-420(B). The Act grants criminal and civil immunity for the use of force, including deadly force, to repel such an attack.

A True Copy, Attest

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

The Defendant claimed protection in this case under two specific subsections of the Act, subsections 440(A) and 440(C). Under subsection (A), commonly known as the "castle doctrine," a reasonable fear of imminent death or great bodily injury is presumed on behalf of an individual who uses deadly force against another who unlawfully and forcibly enters a dwelling, or removes or attempts to remove that individual from the dwelling. Subsection (C), on the other hand, the "stand your ground provision," provides that an individual, who is not engaged in illegal activity, has no duty to retreat if he is attacked in any place where he has a right to be, and further, that he may use deadly force "if he reasonably believes it is necessary to prevent death or great bodily injury to himself." To be immune from prosecution, the Defendant must prove that his actions fall within the scope of the Act. *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). In passing on a pre-trial immunity motion, the Court sits as trier of fact, and hears the case non-jury as an action at law, but the burden of proof is upon Defendant by a preponderance of the evidence. *Duncan*, 392 S.C. at 411, 709 S.E.2d at 665.

Grub
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In making this ruling, for the reasons stated herein, this Court specifically finds and concludes that the Defendant is not entitled to the "castle doctrine" protections of S.C. Code § 16-11-440(A) because there is no evidence of unlawful entry, but is entitled to the "stand your ground" protections of S.C. Code § 16-11-440(C), even though the incident in question occurred within the Defendant's residence.

Stated succinctly, this Court finds, pursuant to S.C. Code § 16-11-440(C), the Defendant has met the burden of proof to show that he was in reasonable fear of death or great bodily harm at the time he shot and killed Eden Smith. This "stand your ground" protection is afforded to the Defendant because he was not engaged in an unlawful activity and was attacked in a place where he had a right to be. There is no duty of such individual to retreat from attack, and the law

allows the use of deadly force if the person attacked reasonably believes such force is necessary to prevent death or great bodily injury. This Court finds the Defendant did believe deadly force was necessary in order to prevent death or great bodily injury, and that such belief was reasonable under the circumstances, and that he acted lawfully to protect himself. Under these findings, the Defendant is immune from prosecution pursuant to the Act.


Further, although the Court is aware that this dispositive decision will be disputed, the Court finds that this conclusion furthers the ends of justice in this difficult case for all concerned. In consideration of notions of judicial economy, this Court perceives, on this set of facts, that the State is highly unlikely to be able to meet the beyond a reasonable doubt burden of proof standard required to unanimously convince a trial judge and jury to render a conviction for murder, manslaughter, or any other criminal charge against Defendant arising from this unfortunate incident.

II. THE COURT'S RESPONSIBILITY AS FACT FINDER

JWS
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The Protection of Persons and Property Act removes the longstanding fact-finding role from a jury in cases such as these, and places this responsibility upon the Court. The exercise of this responsibility in this case has given the Court even greater respect for the role of juries in our justice system and the difficult decisions required of citizens who come forward to serve in the pivotal role of juror.

In deciding the facts of this case, the Court reiterates that this decision is by a preponderance of the evidence, and readily recognizes that from the same set of facts, the State has argued both direct and circumstantial evidence that mitigate in favor of victim Eden Smith. Specifically, the State has raised questions and issues concerning: the nature of the relationship between the two men, and by implication, the origin of the argument that led to the incident; to

what degree the participants were clothed at the time of the shooting; whether certain evidence was moved prior to the arrival of police; the ability of the Defendant to have exited the scene as opposed to shooting the victim; the difficulty to ascertain impact of the substantial intoxication of both parties into the course of events that evening; and, other perceived inconsistencies in the evidence before the Court. These factors have challenged the Court to the best of its ability as finder of fact to weigh the evidence fairly and impartially and reach a result consistent with the greater weight of the evidence and the mandates of the Act. In determining the facts of this case, the Court is fully aware that only two individuals were present when the fight that led to the death of Eden Smith occurred, and only Defendant Douglas has survived to tell his version of events. Thus, the Court has discounted the portions of the testimony of Defendant Douglas that are either self-serving or wholly subjective, and attempted instead to rely upon objective evidence from the scene and the testimony of other witnesses.

The profound implications of this decision make it a difficult one; however, after weighing all the evidence, this Court finds that Defendant Douglas is entitled to the protections of the Act, and that the defense has proven by a preponderance of the evidence that Defendant Douglas falls within the scope of the Act. The following facts are established from the testimony and evidence before the Court, by a preponderance of that evidence. Where evidence is taken solely from the Defendant and no other source is available, that evidence is noted as "according to the Defendant." As will be discussed later in this Order, while the Court below provides the Defendant's version of what happened between the two men once inside Defendant's residence, this narrative is not the deciding factor in reaching the Court's decision, and the Court looks to evidence at the scene to objectively assess such testimony. This is particularly true as to those

portions of Defendant's testimony that portray Eden Smith as the sole cause of the shooting incident.

III. STATEMENT OF THE FACTS

On the morning of May 31, 2011, Charles Eden Smith (Smith) and Graham Franklin Douglas (Defendant) went to Green River Country Club near Chesterfield to play golf. Both men had known each other for several years. Defendant had been in an on-again, off-again romantic relationship with Smith's younger sister for approximately fifteen years, and both families knew each other relatively well in the small Chesterfield community. A copious amount of alcohol was consumed by both men while they played golf that morning and into the early afternoon of the hot day.¹ According to Defendant, a medium-sized bottle of vodka was shared between the two while on the golf course, and on the way home from the golf course, another similar-sized bottle of vodka was purchased for consumption.

JMB
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After playing golf, the two men returned to the Defendant's residence. Defendant poured the second bottle of vodka into a Brita filtered pitcher and placed it in the refrigerator, a method of vodka preparation that helps to speed inebriation. The two continued to drink vodka throughout the remainder of the afternoon while reclining in lawnchairs in the backyard. At approximately 5:00 p.m., Defendant's father, Leon Douglas, returned after work to his home, immediately adjacent to Defendant's home, less than one hundred (100) feet away. According to Defendant, when his father came home, Smith and Defendant moved inside Defendant's residence so that his father would not see the two drinking alcohol. The foregoing facts are relatively undisputed.

¹ Mr. Smith had a blood alcohol level of .216 at the time of the incident (.240 when calculated from ocular fluid).

According to Defendant, the following series of events then occurred. At some point during the early evening, Smith had to use the restroom, which is located in Defendant's bedroom.² Several minutes passed before Smith emerged from the bathroom. As Smith walked from the bedroom back into the kitchen, he was holding a bottle of the anti-anxiety medication Clonazepam, stating "look what I found," and refused to give it back. Defendant attempted to grab the bottle from Smith, who then began to switch the pill bottle between his right and left hands, taunting Defendant. The event escalated when Smith walked over to the kitchen table, placed the pill bottle in the center of the table, and continued to snatch it away when Defendant would lunge for the bottle. Agitated, Defendant yelled, "G** d****, give me my medicine!" Hearing this, Smith "snapped" and responded with force, grabbing Defendant by his biceps and pinning him. Defendant testified that the degree of force and strength employed by Smith in that instant caused Defendant's knees to buckle, and he fell to the floor, striking his head. Smith then attacked Defendant on the floor, kneeling over him, punching him in the eye, and biting him on the left leg. Defendant ordered Smith to leave the house, but Smith continued the assault. Defendant crawled into his bedroom, immediately adjacent to the room in which the fight was occurring, retrieved his .38 caliber pistol from a dresser drawer and placed it beside him as he sat momentarily recuperating on the bed. After a moment, Defendant walked to the threshold separating the bedroom from the kitchen and again instructed Smith to leave. Given the close quarters of the house, Defendant was just a few feet from Smith, who was then standing in the kitchen area. Smith advanced rapidly and aggressively towards Defendant, who raised the pistol and fired generally at Smith when Smith was about two feet from Defendant, striking Smith in

*JB
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² Defendant's residence is very small. It is an old sharecropper's dwelling. By observation during a visit to the scene, the ceilings are less than eight feet high. Defendant's bedroom is immediately adjacent to the kitchen. The entranceway between the kitchen and the bedroom has a door; however, the bathroom located within the bedroom does not have a door.

the chest. Defendant then ran out of his house, across the yard, and into his parents' home where he called 911. EMS arrived shortly and by that time Smith had stopped breathing. Defendant was arrested and taken into custody.

IV. DISCUSSION OF THE FACTS

We will never know exactly what happened within the close confines of Defendant's residence on that tragic day. In an attempt to impartially determine whether Defendant is entitled to the protections of the Act, the Court relies upon the following nine specific objective issues and areas of analysis, some of which go beyond the immediate facts of the incident.

1. The superior physical condition of Smith.

The evidence reveals that Defendant was larger than Smith. Defendant's booking report notes that he was six feet two inches tall, weighed 190 pounds, and was thirty-two years of age. Smith's autopsy revealed he was five feet eleven inches tall, weighed an estimated 155 pounds, and was twenty-seven years of age. Photos of the two reveal, however, that Defendant was in poor physical condition and out of shape, while Smith was well-muscled and in a much superior physical condition. Smith's aunt Sandra Sue Smith, with whom Smith lived, testified that Smith routinely worked out at the local YMCA for strength conditioning. Defendant testified that he was aware that Smith worked out regularly and could bench press substantial weight. Defendant showed no evidence of any physical conditioning. The strength of Smith is evident from the photographs of massive bruises on the upper arms of Defendant, which this Court finds were caused when Smith grabbed the Defendant by both arms. Based upon the testimony and evidence, this Court finds that while Defendant was the larger of the two men, Smith was substantially stronger and in optimal physical condition, while Defendant was just the opposite.

Jan B
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2. Gross intoxication of Smith.

The evidence reveals that at the time of his death, Smith had a blood alcohol level of .216. When measured from ocular fluid, that level was determined to be .240, three times the legal limit. According to the testimony of toxicologist Shanna B. Sorrells of SLED, such a level of intoxication would most probably lead to aggressive and violent behavior, emotional instability, and mood swings. This behavioral evidence bears directly upon the issue of the Defendant's claimed belief of being in imminent fear of serious bodily harm requiring the use of deadly force for his protection.

In making the above findings, the Court is aware that Defendant was also under the influence of alcohol at the time of this incident, as he had been drinking with Smith all day. Multiple sources reveal that Defendant was intoxicated, including his own testimony; unfortunately, law enforcement did not obtain a specific blood alcohol level for the Defendant, either by consent or by force, even though Defendant was in police custody. Based on the lack of direct evidence of the blood alcohol level for Defendant, the Court declines to attribute to Defendant the likelihood of violent and aggressive behavior resulting therefrom during the shooting incident, as there is no evidence of such behavior after police arrived on scene and during the lengthy time Defendant was in custody. To the contrary, Defendant was generally cooperative, passive, and remorseful throughout the aftermath of the incident.

3. Multiple injuries sustained by Defendant.

The evidence is clear that prior to the shooting, Defendant sustained multiple bodily injuries including a bruised right eye, severe bruising on both arms, a swollen thumb, a cut on the right knee sufficient to draw blood, a blow to the head, and a bite mark to the leg. As there were only two people in the room, and these multiple wounds clearly were not self-inflicted, this

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Court finds these wounds were either directly inflicted by Smith or caused by Smith's actions. At autopsy, Smith was found to have less than a dozen very small, circular contusions on the backs of his hands and forearms, characterized by the pathologist as "potential defensive wounds." On cross examination, the pathologist could not rule out these being offensive wounds. Smith had no substantial injury other than the single fatal bullet wound to the chest. Comparing the injuries of the two men, this Court finds from the evidence that the Defendant fared much worse in the altercation prior to the fatal shot, and because Smith had no incapacitating wounds prior to that shot, the Defendant's claimed belief that serious additional injury was about to be inflicted upon him if he did not act to protect himself was reasonable, and is supported by the evidence in this case.

4. History of assaultive behaviors by Smith.

Myrtle Beach police officer William J. Stair testified during Defendant's case in chief, and recounted an incident in Horry County where Smith had been arrested, was being transferred between jails cells at the Detention Center, and began to fight with officers during the cell transfer. According to Stair, it took four male police officers to subdue Smith, and he attempted to bite one of the officers on the leg during the melee. Smith later pled guilty to assault on a police officer as a result of this incident. Additionally, Sgt. Roy Drake of the Cheraw police department testified to an incident where he arrested Smith for biting a female victim on the shoulder, and a taser had to be used at that time to subdue Smith. At the jail following that incident, two police officers were required to force Smith into a cell. According to Sandra Sue Smith, at the time of his death Smith was awaiting sentencing on a rape charge. Smith also had previous convictions for armed robbery and burglary. The Court finds that this history of assaultive and confrontive behavior, even against law enforcement officers, supports the

contention of Defendant that Smith assaulted him and was the aggressor during the incident that led to the shooting. The State objected to the introduction of these prior incidents on the basis of relevance, but these objections were overruled by the Court.

5. Prior assault by Smith against Defendant.

The Defendant testified to a prior assault committed upon him by Smith in the summer of 2006 that occurred at Smith's home, was witnessed by others, and was forcibly stopped by members of Smith's family. This testimony was not disputed by those witnesses, who were present in the courtroom, but were not called to controvert this testimony during the State's case. According to the Defendant, he was visiting at Smith's parents' home, standing in the kitchen, when Defendant uttered the expletive "G**d****," upon which Smith "snapped" and became violent, slamming Defendant against the pantry door. Smith was pulled off of Defendant by Smith's mother and sister. The Court finds this uncontradicted evidence goes to the reasonable belief within the Defendant at the time of the shooting that he was in imminent danger of further serious bodily injury if he did not act to protect himself.

J.B.
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6. No prior criminal charges nor history of violence by Defendant.

The record in this case reveals that the Defendant had never been arrested prior to this incident, and there is no evidence of any past violent behavior of any kind on his part. With no history of violence, there is nothing in the record that would lead the Court to believe Defendant would have been prone to violence absent reasonable provocation. The evidence reveals that at the time of the incident, Defendant fired a single shot from a gun loaded with two bullets, supporting Defendant's contention that he used only as much force as was necessary to protect himself.

7. Close quarters of the altercation.

The Court had the opportunity to visit and inspect the location where the shooting took place. The house is very small. The kitchen in which the altercation occurred can only be described as tiny, measuring eleven feet by ten feet, with a low ceiling height. When one takes into account built-in cabinets and appliances, the floor space within the room is further reduced. Pathologist Janice E. Ross testified that the gun was within two feet of Smith when fired. Based upon the close quarters involved and the location of the bedroom doorway from which Defendant fired the pistol, there was no reasonable way for Defendant to have retreated at that moment. While Defendant was not required to retreat under South Carolina law, the lack of ability to retreat at the moment of the shooting is relevant to the claimed belief of Defendant that he was in imminent danger of serious bodily injury.

8. Forensic evidence at the scene:

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The Court has considered the forensic evidence at the scene, and finds that such evidence is consistent with the Defendant's version of the facts. There was gunshot residue and stippling on the Smith's body, indicating he was shot at close range. The entrance wound reveals Smith would have been facing the Defendant at the time the shot was fired, and the angle of the bullet's path within the body indicates Smith was inclined toward Defendant when shot. Blood spatter on the cabinets five to seven feet away from Smith's body, and lack of smear or drag marks on the floor, indicate Smith's body was not moved or re-positioned after he fell. While the forensic evidence may be the subject of dispute and open to other interpretations, the Court finds it is consistent with the version of events testified to by Defendant.

9. Defendant was in his own residence.

There is no dispute that this incident wholly occurred within the dwelling of the

Defendant, where the Defendant had an absolute right to be. The Court finds the Defendant is entitled to a degree of control over the presence and activities of others within such residence, may demand of others to leave at any time, and has the responsibility to maintain order within the household. Moreover, Defendant is entitled to an appropriate expectation of security within his own residence. Conversely, a visitor to the home is expected to be mindful of these prerogatives of the owner, to behave accordingly, and to remain peaceful and orderly therein.

V. DISCUSSION OF EVIDENCE MITIGATING AGAINST DEFENDANT

As stated above, the prosecution raised several factual issues in favor of Smith during the course of the hearing, and the Court has fully considered these issues in reaching its decision. The following is not intended to be an exhaustive review of the State's arguments, but is offered to highlight the more convincing of their positions. The Court will not attempt to refute the State's arguments in this narrative, as they raise valid issues, but herein reiterates that after considering the totality of the evidence in the case, by a preponderance of that evidence, the Court finds for Defendant.

JLB
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1. The location of the weapon appears suspicious.

When police officers arrived on scene, they found the body of Smith sprawled on the kitchen floor, with a pistol immediately at his right hand, at such an angle as to appear the pistol had been released from the hand. This was unusual to SLED agent James Lee Johnson, because if Smith had been holding the gun, his fall would have propelled it far from the right hand. If Defendant was holding the gun, there would be no reason for the gun to be so close to Smith's right hand. The State's explanation for the pistol's location is that it was placed there by Defendant after the shooting in a poorly-reasoned effort to create the appearance that Smith had possession of the gun.

2. Inconsistent statements by the Defendant.

At trial, Chesterfield County Deputy Sheriff Dana Wallace testified that Defendant stated shortly after the shooting, "He came at me with a gun and I shot him." This is directly inconsistent with Defendant's testimony at trial. Moreover, the evidence is clear that there was only one gun involved during the altercation, and it was in the possession of the Defendant. The State argues that this undermines the credibility of Defendant, is consistent with Defendant attempting to physically place the gun in Smith's hand at the scene, and strongly inculpatates Defendant as to the shooting.

3. Defendant could have exited the dwelling prior to retrieving a weapon.

The Defendant testified that after he had fallen to the floor and been beaten, he crawled into his bedroom and obtained his pistol from the bedside table. The layout of the small residence is such that he could just as easily have crawled out the back door and escaped the premises, avoiding the fatal shooting.

4. Clothing evidence at the scene is unexplained.

When police arrived at the scene, the body of Smith was clad only with a pair of black socks and cargo shorts, with no underwear. The shorts were at an odd angle, only partially pulled up on one side, leading the prosecution to ask the Defendant on cross-examination if he had put the shorts on Smith after the shooting, which was denied. The Defendant's shirt was improperly buttoned and jeans unzipped, contended by the State to be evidence of being hastily thrown on. Defendant emphatically denied a sexual relationship with Smith, and no direct evidence was put forth by the State of such a relationship, in spite of the innuendo of its questions to Defendant. Other clothing found at the scene created a confusing tangle of evidence. Pants belonging to Smith found on the bed in the back room had both men's blood on

them. Blue pants worn by Defendant earlier in the day, also found in the back room, had blood from both men on the leg. Testimony did not satisfactorily explain the fact that both men were wearing different clothes from when they played golf, nor the blood of both men being on both sets of pants found in the bedroom.

VI. ADDITIONAL FINDINGS NECESSARY TO THIS DECISION

The question of whether the Defendant was engaged in an unlawful activity at the time of the incident, and thus not entitled to a "stand your ground" immunity, has been raised. On this point, the Court finds that Defendant was under the influence of alcohol when the fatal shot was fired, which Defendant freely admits, but the Court is unaware of any law prohibiting the use of alcohol by an adult while in his own home. The Court finds Defendant was not engaged in an unlawful activity at the time of the shooting.

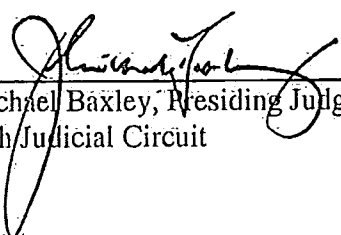
The Court finds that Defendant's testimony as to the facts of the shooting and the events that led to the shooting is credible, as it is generally consistent with forensic evidence at the scene and other evidence in the case. After a review of all the evidence, the Court specifically finds, by a preponderance of the evidence, the Defendant was acting in self-defense at the moment of the shooting. In reaching this decision, the Court has considered the testimony as a whole, the circumstantial and direct evidence, as well as the voluminous exhibits placed into the record during the trial. On this point, the Court further finds that, at the moment of the shooting, Smith was volatile, violent, aggressive, and imminently advancing upon Defendant with the intent to commit further bodily injury upon Defendant. As a result, the Court specifically finds that Defendant's claim of fear of further serious bodily injury at the hands of Smith at the moment he shot Smith was reasonable under the circumstances.

JB
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The Court is being called upon to speak for the community in this instance, and would be remiss in not emphasizing that this decision is a legal one, and is not intended to exonerate Defendant Douglas of any and all moral responsibility for what has happened. The events of May 31, 2011 are tragic. In granting the Defendant's Motion to Dismiss, the Court in no way condones the actions of Defendant Douglas on that day. In fact, the irresponsible conduct and misjudgment of Defendant Douglas earlier in the day have contributed to a series of events that resulted in the death of a friend, ravaged two families, and divided a close knit community. Nevertheless, according to the plain and unambiguous language of the Act, the Court finds the Defendant entitled to the protections of the Act.

IT IS ORDERED, ADJUDGED, AND DECREED that the Defendant Graham Douglas is entitled to immunity from prosecution in this case pursuant to S.C. Code § 16-11-440(C). The charges against Graham Douglas are hereby dismissed. The Clerk of this Court shall mark the indictment "Dismissed by Judicial Order." Graham Douglas is hereby released from house arrest and any and all other conditions of his bond. After the exhaustion of any appeals arising from this Order, the State shall return to Graham Douglas any of his confiscated personal property or any property belonging to his family now in possession of the State.

IT IS SO ORDERED.



J. Michael Baxley, Presiding Judge
Fourth Judicial Circuit

Hartsville, South Carolina

December 31, 2012

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTERFIELD COUNTY
Court of General Sessions

The Honorable J. Michael Baxley, Circuit Court Judge

Case No. 2013-000148

The State of South Carolina,.....Appellant,

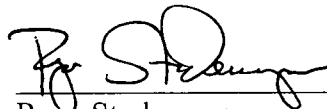
v.

Graham Franklin Douglas,.....Respondent.

PROOF OF SERVICE

I certify that I served the Respondent's Motion to Dismiss, by hand delivery to the following address on June 18, 2013:

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South Carolina Attorney General's Office
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Columbia, S.C. 29211
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June 18, 2013

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VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: The State of South Carolina vs. Graham Franklin Douglas
Appellate Case No. 2013-000148

Dear Mrs. Kitchings:

You will please find enclosed for filing with your office the Respondent's Motion to Dismiss, along with a filing fee, in the above-referenced matter. Please file the original and six (6) copies and return the remaining copies to our courier for service.

By copy of this letter, I am serving the opposing counsel with the same.

It is my understanding the deadline to file the Respondent's Initial Brief is stayed pursuant to Rule 240(b), SCACR, until this motion is ruled upon. If I am incorrect, please let me know.

Thank you very much for your consideration. Please let me know if there is anything else you need in this regard.

Yours very truly,

A handwritten signature in black ink, appearing to read "M. Brooks Biediger", is written over the typed name.

M. Brooks Biediger

MBB

Enclosures

cc: Alphonso Simon, Jr., Esquire (w/ copy of encl.)