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**S.C. Supreme Court**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Spartanburg County

J. Derham Cole, Circuit Court Judge

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Opinion No. 2014-UP-332 (S.C. Ct. App. filed 9/17/2014)  
11-GS-42-1933

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THE STATE,

RESPONDENT,

V.

MICHAEL ANTHONY ROGERS,

PETITIONER

APPELLATE CASE NO. 2014-002518

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APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Michael Rogers, Appellant.

Appellate Case No. 2011-201326

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SC OFFICE OF  
APPELLATE DEFENSE

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Appeal From Spartanburg County  
J. Derham Cole, Circuit Court Judge

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Unpublished Opinion No. 2014-UP-332  
Heard January 7, 2014 – Filed September 17, 2014

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**AFFIRMED**

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Chief Appellate Defender Robert Michael Dudek, of  
Columbia, for Appellant.

Attorney General Alan Wilson and Senior Assistant  
Deputy Attorney General Salley W. Elliott, both of  
Columbia, for Respondent.

---

**PER CURIAM:** Michael Rogers appeals his conviction for voluntary  
manslaughter, arguing the circuit court erred in denying his motion to dismiss

under the defense of habitation and the Protection of Persons and Property Act ("the Act").<sup>1</sup> We affirm.

We find Rogers did not preserve the defense of habitation argument for appellate review because he never argued he was immune from prosecution pursuant to defense of habitation in either his pretrial motion to dismiss or at any time during his trial. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the [circuit court]. Issues not raised and ruled upon in the [circuit] court will not be considered on appeal."); *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("[A] party may not argue one ground at trial and an alternate ground on appeal."); *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 694 ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground.").

Additionally, Rogers argues he was immune from prosecution by referencing the Act and comparing the instant case to *State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011).<sup>2</sup> We disagree and find the circuit court properly denied Rogers' motion to dismiss because Rogers failed to carry his burden of proof and establish by a preponderance of the evidence that he was permitted to use deadly force under any section of the Act or other applicable provision of law. *See* S.C. Code Ann. § 16-11-450(A) (Supp. 2013) ("A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force . . ."); S.C. Code Ann. § 16-11-440(A) (Supp. 2013) ("A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person: (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and (2)

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<sup>1</sup> *See* S.C. Code Ann. §§ 16-11-410 to -450 (Supp. 2013).

<sup>2</sup> In *Duncan*, our supreme court held a defendant is immune from prosecution under the Act when he is justified in using deadly force to prevent the victim from unlawfully and forcibly entering his home. 392 S.C. at 411, 709 S.E.2d at 665.

who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred."); S.C. Code Ann. § 16-11-440(C) (Supp. 2013) ("A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime . . . ."); *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013) (stating that for a defendant to be entitled to immunity under the Act, "[c]onsistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist . . . ."); *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011) ("A person is justified in using deadly force in self-defense when: (1) The defendant was without fault in bringing on the difficulty; (2) The defendant . . . actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief . . . ; and (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance." (citation omitted)); *State v. Hewitt*, 205 S.C. 207, 212, 31 S.E.2d 257, 258 (1944) ("[O]ne attacked, *without fault on his own part*, on his own premises, has the right in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense." (emphasis added)).

**AFFIRMED.**

**SHORT, WILLIAMS, and THOMAS, JJ., concur.**

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IN THE COURT OF APPEALS

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SC OFFICE OF  
APPELLATE DEFENSE THE STATE,

RESPONDENT,

SC Court of Appeals

V.

MICHAEL ANTHONY ROGERS,

APPELLANT

APPELLATE CASE NO. 2011-201326

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

Opinion No. 2014-UP-332

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, appellant requests rehearing because the Court may have overlooked the fact that the judge ruled in a written order immediately prior to trial *without the opportunity for trial counsel to argue the evidence and law at the earlier pre-trial immunity hearing.*<sup>1</sup> See R. 124, ll. 1-23; r. 126-130; Amended Supp. R. 1-5. Further, the Court may have misapprehended the fact that this was a trespass case because the decedent refused to leave, and therefore the defense of habitation which is implicit in the "stand your ground" immunity statute

<sup>1</sup> Judge Cole briefly mentioned at the beginning of appellant's trial that he denied appellant's motion to dismiss by written order. Counsel Allen responded that he was notified by email that day and had discussed it with his client. R. 132, ll. 2-13.

was applicable. The evidence showed appellant had repeatedly demanded that the decedent leave appellant's mobile home. Instead of leaving appellant's home, the decedent attacked appellant with a knife which ultimately resulted in a struggle over the knife with injuries to appellant and a fatal wound to the decedent. This evidence entitled appellant to immunity pursuant to S.C. Code §16-11-450. The judge's ruling essentially treating appellant and the decedent as equals when appellant had every right to expel the decedent from appellant's home based on the decedent's conduct towards his girlfriend. The decedent's attack on appellant, ignored the purpose of the immunity statute, and as well as appellant's defense of habitation **implicit in the statute. R. 129.**

This Court's summary opinion is respectfully difficult to understand regarding specific holding on this issue, and that alone is reason to grant rehearing and issue an opinion specifically applying the facts to the law. Since it appears the Court's emphasis that appellant had to be "*without fault on his own part*" constitutes a factual finding against appellant by this Court, the Court should grant rehearing to explain how appellant's actions after the decedent attacked him in appellant's own home, where the appellant had ordered the decedent to leave, and the decedent attacked him instead, were not protected under the immunity statute. State v. Michael Rogers, 2014-UP-332 (filed September 17, 2014) at p. 3.

In the Motion to Dismiss filed pursuant to S.C. Code §16-11-450 on August 18, 2011, defense counsel argued appellant was in his own home, and not engaged in unlawful conduct. Appellant was removing or attempting to remove the decedent because he knew or had reason to know an unlawful and forcible act was occurring or had occurred. The decedent attacked appellant, who had no duty to retreat, and had a right to stand his ground, and meet force with force, where he reasonably believed his actions were necessary to prevent death or great bodily injury to himself or another person to prevent the commission of a violent crime as defined in S.C. Code §16-1-60.

Appellant therefore argued he was immune from prosecution under S.C. Code §16-11-450(A). R. 1-3.

The facts adduced at the evidentiary hearing supported the allegations in the immunity motion. Tonya Lowery, appellant's girlfriend at the time of the incident, testified that she went to appellant's trailer sometime after 11:00 pm on the night of November 12, 2010. R. 15, ll. 2-17; R. 16, ll. 23-25. When she arrived, appellant, Jackie Lance, and John Ryan ("the decedent") were at the home. R. 16, ll. 4-11. The three were drinking. R. 16, ll. 14-15. The decedent came up from behind Tonya and "put his arms around below my chest. And I asked him to please take his hands off, you know, because that just wasn't appropriate, especially in front of [appellant]" R. 18, ll. 6-12.

Upon witnessing the unwanted touching, appellant said, "Get your hands off my woman." R. 19, ll. 1-3. The next thing Tonya knew, appellant had pushed the decedent who fell onto the stereo. R. 18, ll. 13-15. Appellant was on top of the decedent. R. 18, ll. 15-16. Tonya asked appellant to stop because "he proved his point." R. 18, ll. 16-17. Appellant got off the decedent and the two stood up. Then the decedent **kicked appellant between the legs** and the two started fighting again. R. 18, ll. 18-22. Eventually, Tonya and Jackie Lance were able to separate the two. Tonya took appellant to the bathroom to clean up and try to calm him down. R. 19, ll. 15-20.

Then, all of a sudden Jackie decided that she wanted to leave to go to the store. R. 19, l. 21 - 20. l. 6. After Jackie left, **appellant demanded that the decedent leave his home**. He asked three times. R. 20, ll. 9-14; R. 33, ll. 3-14.

Tonya continued, "**And then [the decedent] swung**" at [appellant]. Tonya "couldn't handle the fact that they were fighting" and left through the back door of the trailer. R. 20, ll. 19-24. She walked around to the front of the trailer and entered the front door. Appellant said, "dial 911, I

accidentally stabbed him.” The decedent was on the floor. R. 21, ll. 1-3. She dialed 911. R. 22, ll. 8-9. Appellant tried to help the decedent by getting towels to help stop the bleeding and doing mouth to mouth when the decedent stopped breathing. R. 24, ll. 1-7.

Appellant testified that the decedent spent the night before the incident at appellant’s trailer because he was too drunk to drive home. R. 40, ll. 9-25. When the decedent woke up the morning of November 12, 2010 he immediately returned to drinking and continued to drink throughout the day and that night. R. 42, ll. 3-13.

On the night of the incident, appellant, Jackie, whom appellant had just met that day, the decedent, and Tonya were at appellant’s trailer talking. R. 41, l. 22 – 42, l. 2. Appellant excused himself to use the bathroom. On his way out of the bathroom he noticed the decedent was “leaning against Tonya from behind with his arms around her waist.” The decedent was pressed up against her with his head bent towards her shoulder saying something to her. R. 42, l. 23 – 43, l. 7. “And I was angry. I said what do you think you’re doing. And I pushed him against the stereo.” R. 43, ll. 8-16. The men began fighting. They stopped for a moment and then began fighting again. R. 43, l. 21 – 45, l. 9. Eventually, the fighting just ended. R. 45, ll. 9-10.

Appellant remembered that he went to the bathroom to clean up. He was bleeding from his lip and face. R. 45, ll. 11-17. While appellant was in the bathroom, the decedent asked for the keys to decedent’s truck because Jackie wanted to leave. The decedent gave the keys to Jackie, who then left in the truck. R. 45, l. 24 – 46, l. 6. When appellant returned to the kitchen from the bathroom, “I told [the decedent] he had to leave. I kept telling him you gotta get out of here. I don’t care if . . . Jackie got your truck, leave. You want to wait for her . . . you wait somewhere else, *but I want you out of my house.*” R. 48, ll. 1-9. (emphasis added). *Then out of nowhere, the decedent hit appellant.* “He got me right in the jaw big time.” R. 48, ll. 10-14. (emphasis added). Appellant

responded by hitting the decedent back and a fight ensued. “[H]e just kept coming at me and coming at me. And knowing me, I was fighting back for the simple reason to get him to stop. I wanted to get him off me.” R. 48, l. 18 – 49, l. 1.

Appellant did not know where the knife came from. “I can only speculate on that, where it came from. But I had noticed it in his hand. And we fought over it.” R. 49, ll. 3-6. Eventually, appellant got the knife out of the decedent’s hand. Appellant was in fear for his safety. R. 70, ll. 14-15.

There was blood everywhere. Appellant tried to stop the bleeding for the decedent. “I tried to save his life. I took a rag and I put it on his chest.” He told Tonya to call 911. R. 72, ll. 13-25. Appellant was cut on his left and right forearm and also had cuts on his knuckles and bruising to his face. He also broke a tooth when the decedent punched him in the jaw. R. 49, l. 19 – 51, l. 23. Appellant does not remember stabbing the decedent. “It wasn’t an intentional thing.” R. 54, ll. 19-24.

The knife belonged to appellant, who used it to open mail, and he must have left it on the table where he kept his mail. He not know how the decedent got ahold of the knife. R. 52, ll. 12-22; R. 56, l. 17 – 57, l. 6.

Jackie Lance was at appellant’s trailer that night. Jackie was only at the trailer for ten to fifteen minutes before the altercation broke out. The decedent was very intoxicated. He walked up and “it looked like he leaned on [Tonya] to catch his balance. He was not trying to touch her in any kind of way.” R. 79, l. 12 – 80, l. 3. Appellant came around the corner in a rage and jumped on the decedent. “[Appellant] threw him to the ground, [the decedent’s] whole head bounced off of a stereo system.” Appellant was on top of the decedent and kept hitting him and hitting him. Appellant was “yelling: ‘You M.F. ‘r this, you disrespecting my woman.” R. 80, ll. 4-14.

Appellant eventually got off the decedent and the fight broke up. When the men stood up, *the decedent kicked appellant between the legs* and the fight ensued further. Jackie claimed the decedent was staggering and could not defend himself. He had been drinking and taking nerve medication. R. 81, l. 6 – 82, l. 19.

Jackie remembered there being **three episodes of fighting** before she “couldn’t take it anymore,” and left.

Judge Cole issued an Order Denying the Motion for Dismissal dated October 3, 2011. The Order concluded:

After a consideration of the evidence presented this Court finds that the defendant has failed to carry his burden of proof. He has failed to establish by a preponderance of the evidence that he was acting lawfully as it may be reasonably determined that he engaged in an unlawful assault and battery upon Ryan. He has failed to establish by the preponderance of evidence that he was the victim of an unprovoked attack in his home by one who was not an invited guest. He has failed to establish by the preponderance of evidence that he reasonably believed the use of deadly force was necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime.

Order at 4-5. R. 129-130.

The judge also concluded that appellant did not have the right to use this level of force, and “his own testimony was that he does not know how Ryan [the decedent] came to be cut or stabbed and therefore by inference was not under any belief, reasonable or otherwise, that such force was necessary to prevent death or great bodily injury which might reasonably be caused by acts of Ryan.”<sup>2</sup> R. 129.

The evidence was undisputed that the decedent attacked appellant in his own home. He was ordered to leave, and he attacked appellant instead. The ruling of the trial court turns the immunity statute, and the stand your ground provision, on its head. The evidence in this case demonstrates that the decedent was trespassing at the time of the deadly altercation and that appellant was trying

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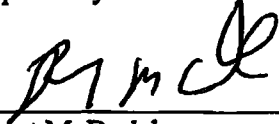
<sup>2</sup> This is, respectfully, not a logical conclusion disqualifying appellant from immunity where appellant feared for his safety, *in his own home*, and the decedent “[j]ust *kept coming at me and coming at me* . . . I can only speculate [where the knife came from] but I had noticed it in his hand. And we fought over it.” R. 48, l. 18 – 49, l. 1; r. 70, ll. 14-15. (emphasis added).

to protect himself from attack. Appellant had demanded that the decedent leave his mobile home and the decedent refused.

The facts of this case are similar to the facts in State v. Duncan, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011). In Duncan, the victim was a guest in Duncan's home. The victim made improper comments about a photograph of Duncan's daughter in a cheerleading outfit and, as a result, Duncan asked the victim and his girlfriend to leave his home. The decedent left as requested, but a few minutes later he returned. It was a rational inference that the decedent attempted to enter the home through a screened porch door. Duncan was cursing at the decedent to get away, and Duncan shot the decedent in the face. Id. at 406-407, 709 S.E.2d at 663. The trial court granted Duncan's motion to dismiss pursuant to S.C. Code §16-11-450, and our Supreme Court affirmed holding that Duncan was immune from prosecution under the Act. The same result should apply in this case, particularly since it was undisputed the decedent attacked appellant in his own home whereas in Duncan the decedent only making a crude remark about Duncan's daughter before being ordered to leave, and leaving.

Appellant should not be penalized because the decedent contemptuously refused a legitimate direction to leave. While the decedent was originally an invited guest, appellant made it clear that the decedent was no longer welcome on the property and thus was a trespasser. Appellant was defending himself from attack within his own home after he had asked the decedent to leave. Rehearing should be granted where since the summary opinion of this Court makes it difficult, if not impossible, to understand the Court's application of the facts of this case to the law of immunity.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek  
Chief Appellate Defender

This 2nd day of October, 2014.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Spartanburg County  
J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL ANTHONY ROGERS,

APPELLANT

APPELLATE CASE NO. 2011-201326

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Salley W. Elliott, Esquire at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2<sup>nd</sup> day of October, 2014.



Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 2<sup>nd</sup> day  
of October, 2014.

Rhonda Deneve Foxworth (L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 17, 2021.

# The South Carolina Court of Appeals

The State, Respondent,

v.

Michael Rogers, Appellant.

Appellate Case No. 2011-201326

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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr. J.

H. B. W... J.

J. Derham Cole J.

Columbia, South Carolina

FILED

cc:

Salley W. Elliott, Esquire  
Robert Michael Dudek, Esquire  
Alan McCrory Wilson, Esquire  
The Honorable J. Derham Cole

October 23, 2014

VGT

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY

J. Derham Cole, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

MICHAEL ANTHONY ROGERS,

APPELLANT

Appellate Case No. 2011-201326

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RECORD ON APPEAL

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF GENERAL SESSIONS  
2011-GS-42-1933

State of South Carolina, )  
 )  
-vs- )  
 )  
Michael Anthony Rogers, )  
Defendant )

MOTION TO DISMISS PURSUANT  
TO SECTION 16-11-450, SOUTH  
CAROLINA CODE OF LAWS

TO: DANNY N. FULMER, JR., ASSISTANT SOLICITOR FOR THE SEVENTH JUDICIAL  
CIRCUIT:

YOU WILL PLEASE TAKE NOTICE that on the tenth day after service or at such  
other time as scheduled by the Court, the Defendant, Michael Anthony Rogers, by and through his  
undersigned counsel, will move for an order to dismiss the above-reference indictment and charge  
pursuant to Section 16-11-450, South Carolina Code of Laws (1976)(Suppl.), and *State v.*  
*Duncan*, \_\_\_ S.C. \_\_\_, 709 S.E.2d 662 (2011).

CA

The Defendant's motion is based upon the following:

1. On or about November 12, 2010, the Defendant was arrested for the alleged  
murder of John William Ryan. This incident is alleged to have occurred on November 12, 2010,  
at [REDACTED], Roebuck, South Carolina at approximately 11:30 p.m.

2. The Defendant will present evidence that the Defendant, John William Ryan,  
Jackie Lance, and Tonya Lowery were all at the Defendant's home at [REDACTED]  
[REDACTED] Roebuck, South Carolina. Mr. Ryan had been drinking alcoholic beverages to excess.  
When Mr. Ryan put his arm around Ms Lowery, both she and the Defendant objected, and the  
Defendant told Mr. Ryan not to touch her in that manner. Furthermore, the Defendant ordered  
Mr. Ryan to leave his home.

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SPARTANBURG COUNTY  
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D. HOPE BLANCHLEY

3. Instead of leaving the home as ordered, Mr. Ryan, who was extremely intoxicated, attacked the Defendant. Mr. Ryan and the Defendant fought briefly. At some point, Ms Lance left the Defendant's home. The Defendant again ordered Mr. Ryan to leave the home. Again, Mr. Ryan attacked the Defendant. At some point Mr. Ryan obtained a knife or some object and cut the Defendant on the arm. During the last assault by Mr. Ryan, the Defendant possessed or obtained a knife and cut Mr. Ryan. As a result of a cut he received, Mr. Ryan died of exsanguination.

4. Shortly after Mr. Ryan was cut, the 911 operator received a call about the need for an ambulance at the Defendant's home. While awaiting the ambulance, the Defendant assisted Mr. Ryan by putting a towel over the wound in Mr. Ryan's chest area and applying pressure, in accordance with the instructions as directed by the 911 operator.

*CA* In support of this motion, the Voluntary Statement of Tonya Lowery dated November 13, 2010, is attached. The Defendant reserves the right to submit additional evidence in support of this motion. The evidence establishes the following:

- A. The Defendant at all times during the incident was in his own dwelling or residence and/or in a place where he had a right to be;
- B. The Defendant at all times during the incident was not engaged in an unlawful activity;
- C. The Defendant was removing or attempting to remove John William Ryan, a non-resident of that location, against his will from the Defendant's dwelling or residence;
- D. The Defendant knew or had reason to believe that an unlawful and forcible act was occurring or had occurred;

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SPARTANBURG COUNTY  
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I. HOPE L. ACKLEY

E. The Defendant was attacked by John William Ryan; had no duty to retreat; had the right to stand his ground; had the right to meet force with force; and reasonably believed that his actions were necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60, South Carolina Code of Laws (1976)(Suppl.).

Therefore, the Defendant requests an order finding that the Defendant was justified in using deadly force and is immune from criminal prosecution pursuant to Section 16-11-450(A), South Carolina Code of Laws.

Respectfully submitted,



Clay T. Allen  
Circuit Public Defender  
Seventh Judicial Circuit Public Defender Office  
366 North Church Street, Suite 3000  
Spartanburg, South Carolina 29303  
(864) 596-2561

August 18, 2011  
Spartanburg, South Carolina

CLERK OF COURT  
SPARTANBURG COUNTY  
2011 AUG 18 PM 2:53  
M. HOPE BLACKLEY

CASE#	VOLUNTARY STATEMENT		PAGE 1 of 4
STATEMENT OF:	Tanya Lee Bell Lowery	AGE: 44	DATE: 10-13-10
ADDRESS:	[Redacted] Spartanburg SC 29376		
PHONE #	DOB:	SSN: [Redacted]	

Mike and I have been drinking is Dirty or Purple I was at his house on Thursday night and John was there. John had been drinking too much and Mike let him spend the night so he wouldn't be drinking and driving. I spent the night there too. I went home in the morning. I came back to Mike's earlier in the day on Friday to get a cigarette. I told Mike that I couldn't stay because my daughter was sick. Jackie was at the trailer when I went over and left. I went back home and stayed until tonight when I went back. I got there and Mike, John, and Jackie were there. I went in and leaned against the bar and Mike was standing on the other side of the bar. John walked up behind me and put his arms around me. I told John not to do that. Mike said something like "Take your hands off my woman" and came around the bar. I think that Mike shoved John and John fell into the stool. John got up and the two of them were talking. Mike told John "I'm telling you don't touch my woman"

I have read this statement consisting of 4 pages(s) and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement.

This statement was completed at 1:50 A M. on the 13th day of November 20 10.

WITNESS: [Signature]

Tanya Lowery  
Signature of person giving voluntary statement

BORN to before me this 13th day of November 20 10

[Signature] (Seal)  
Notary Public of South Carolina

My Commission expires: 03-30-2015


FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
M. HOPE BLACKLEY  
2011 AUG 18 PM 2:53

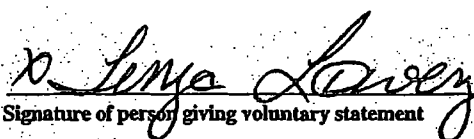
CASE#	VOLUNTARY STATEMENT		PAGE 2 of 4
STATEMENT OF:	Tranna Lee Bell Lowery	AGE: 44	DATE: 10-13-10
ADDRESS:	[Redacted] Rockneck SC 29376		
PHONE #	DOB:	SSN: [Redacted]	

John then kicked Mike between the legs. They started fighting and Mike had blood on his face but I don't know where it came from. I was trying to separate them while this was happening. Jackie was just standing around and I heard Jackie tell Mike "I know he threw the first blood but let's just let this go." I took Mike into the bathroom for him to clean up. He just splashed some water in his face. He was looking for his cigarettes and I told him that he had some in the bedroom and I gave him a cigarette. He came back into the kitchen and Jackie had been using John's phone. She said she was going to the store and asked Mike if he needed anything. I told her that he needed a pack of cigarettes. She asked where John's keys were and Mike was in the bathroom. John couldn't find his keys and Mike had come back in and threw them up on the counter. John told her to take the keys and she left. I told John that he shouldn't be letting her use his truck.

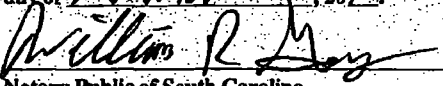
I have read this statement consisting of 4 pages(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement.

This statement was completed at 1:50 A M. on the 13<sup>th</sup> day of November 20 10

WITNESS: 

  
Signature of person giving voluntary statement

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2011 AUG 18 PM 2:53  
M. HOPE BLACKLEY

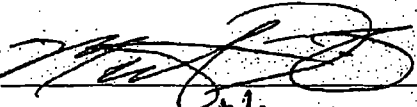
VORN to before me this 13<sup>th</sup>  
day of November, 2010  
 (Seal)  
Notary Public of South Carolina  
My Commission expires: 03-20-2015

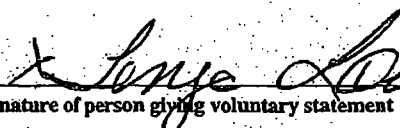
CASE#	VOLUNTARY STATEMENT		PAGE 3 of 4
STATEMENT OF:	Tanya Lee Bell Lowery	AGE: 44	DATE: 11-13-10
ADDRESS:	[REDACTED] Reebuck SC 29376		
PHONE #	[REDACTED]	DOB: [REDACTED]	SSN: [REDACTED]

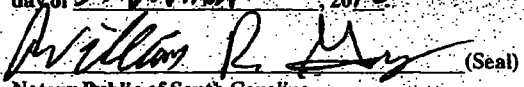
He said that she was just going to the store. Mike was in the kitchen and Mike started telling John that he wanted him out of his house. He said that "you aren't going to be reaching my woman and you've got to get out." I told Mike that he couldn't leave because she was gone in his truck. He kept saying that he wanted him out of there, that he wanted him out of there now. John swung and hit Mike in the face. They started fighting again and I tried to separate them but I couldn't. I went out the back door and walked around the trailer. I came back in the front door and John was on the floor on his back with a puddle of blood under him. Mike told me to call 911 that he didn't mean to stab him. I called from Mike's cell phone and called 911 and John was trying to get up. Mike told him not to get up and he had gotten a towel to try and help him. John stood up and made it to the bar. He leaned on the bar and fell back in the floor. He layed in the floor laughing and Mike was trying to

I have read this statement consisting of 4 pages(s) and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement.

This statement was completed at 1:50 A M. on the 13<sup>th</sup> day of November 2010

WITNESS: 

  
Signature of person giving voluntary statement

WORN to before me this 13<sup>th</sup> day of November 2010  
 (Seal)  
 Notary Public of South Carolina  
 My Commission expires: 03-30-2015

FILED  
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 SPARTANBURG, SOUTH CAROLINA  
 2011 AUG 18 PM 2:53  
 M. HOPE BLACKLEY

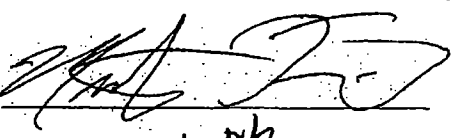
CASE#	VOLUNTARY STATEMENT		PAGE 44
STATEMENT OF:	Danya Lee Bell Lowery	AGE: 44	DATE: 11-13-10
ADDRESS:	Rtebuck sc 29376		
PHONE #	DOB:	SSN:	

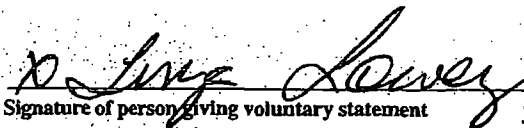
help him. I kept telling them do hurry, and Mike told me that he stopped coughing and then he did CPR. John coughed one more time and then the ambulance pulled up. End of statement J2

This was written by William Gony for Danya Lee Bell Lowery at her request. x Serge Lowery

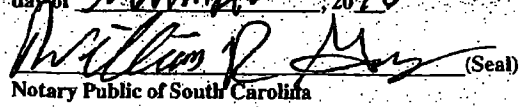
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This statement was completed at 1:50 A M. on the 13th day of November

WITNESS: 

  
Signature of person giving voluntary statement

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ARTAMUNEE COUNTY  
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NOPE BLACKLEY

SWORN to before me this 13th day of November 2010  
 (Seal)  
Notary Public of South Carolina

My Commission expires: 03-30-2015

1 STATE OF SOUTH CAROLINA )  
 2 COUNTY OF SPARTANBURG ) IN THE COURT OF GENERAL SESSIONS

3 The State, )  
 4 -vs- ) TRANSCRIPT OF RECORD  
 5 Michael Anthony Rogers, ) 2011-GS-42-1933  
 6 Defendant. ) September 2, 2011  
 7 ) Spartanburg, South Carolina

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B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE

A P P E A R A N C E S:

DANNY FULMER, ESQUIRE  
 Attorney for the State

CLAY T. ALLEN, ESQUIRE  
 Attorney for the Defendant

Linda D. Moffitt  
 Circuit Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	Photograph		98
S-2	Photograph		98
S-3	Photograph		98
S-4	Photograph		98
S-5	Photograph		98
S-6	Photograph		98
S-7	Photograph		98
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
D-1	Autopsy report		5
D-2	SLED report		5
D-3	Photograph		45
D-4	Photograph		45
D-5	Photograph		45
D-6	Photograph		45
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1 (Autopsy report marked Defendant's Exhibit No. 1; SLED  
2 report marked Defendant's Exhibit No. 2.)

3 THE COURT: This is State vs. Michael Anthony Rogers.  
4 Mr. Allen, you represent the defendant.

5 MR. ALLEN: Yes, Your Honor.

6 THE COURT: Assistant Solicitor Fulmer is here on  
7 behalf of the state.

8 This is the defendant's motion.

9 MR. ALLEN: Yes, Your Honor. If it please the Court.  
10 At this time we're prepared to present evidence in  
11 support of our motion.

12 The first thing is I have -- the solicitor and I have  
13 agreed to stipulate to the admissibility of the autopsy  
14 report, which I have marked as Defense Exhibit 1, the  
15 autopsy report of Dr. Wren of John William Ryan. That's  
16 the decedent in this case.

17 And we've also agreed to stipulate for the purpose of  
18 this hearing the blood toxicology report of Robert Sears of  
19 SLED that's dated December 1 of 2010. That's marked as  
20 Defense Exhibit 2 as well. This is the blood of the  
21 decedent, John Christopher Ryan, the toxicology report.

22 And I offer them into evidence at this time for this  
23 hearing as Defense Exhibits 1 and 2.

24 May it please the Court. At this time we are prepared  
25 to call Tonya Lowery to the stand.

Tonya Lowery  
Direct examination by Mr. Allen

1 THE COURT: Okay.

2 TONYA LOWERY, having been  
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. ALLEN

5 Q You are of course Tonya Lowery, is that correct?

6 A Yes, I am.

7 THE COURT: Spell your last name for the benefit of  
8 the reporter.

9 THE WITNESS: L-O-W-E-R-Y.

10 Q Ms. Lowery, if you would, just try to talk loud enough  
11 to reach all the way over here. You don't necessarily have  
12 to lean into the microphone to do that, and hopefully if I  
13 can hear you, I think the Court can hear you as well.

14 How old are you, ma'am?

15 A Forty-five.

16 Q Where do you live in Spartanburg County?

17 A [REDACTED] in Roebuck.

18 Q Now, we're here today in connection with the case of  
19 Michael Anthony Rogers and the demise of John William Ryan  
20 or John Christopher Ryan, is that correct?

21 A Yes.

22 Q Were you present on -- when this event occurred?

23 A Yes, I was.

24 Q Where was that?

25 A It was at my Michael Roger's address, [REDACTED]

Tonya Lowery  
Direct examination by Mr. Allen

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[REDACTED]

Q [REDACTED]?

A In Roebuck also.

Q In Roebuck, South Carolina, Spartanburg County?

A Uh-huh. It's right down the street from me, about four doors down.

Q All right. Did he live with anyone at that address?

A No.

Q Mr. Ryan did not live there?

A No.

Q Now, I want to talk to you about that day.

Well, did this occur in the nighttime or in the daytime?

A In -- it was at night.

Q At night. Tell us. That was on the 12th of November, I believe --

A Yes, it was.

Q -- the past year. Now, when I ask you a question you have to answer out loud. Okay?

A Yes.

Q Just nodding the head -- we have to have a verbal response for the court reporter.

A Okay.

Q Thank you.

Now, tell me. When did you arrive at [REDACTED]

Tonya Lowery  
Direct examination by Mr. Allen

1 [REDACTED]?

2 A I'm not exactly sure what time it was that evening.  
3 It was -- the news was on. I don't know. I think it was  
4 the 11:00 o'clock news. I'm not sure, because my daughter  
5 had the T.V. on, my daughter and my mom. And they shared  
6 the same room.

7 And I wanted to get a cigarette. I was going to walk  
8 were over there and get a cigarette, and they were over  
9 there. And I decided I'd walk over there because my  
10 daughter had the light on and I couldn't sleep.

11 Q When you say you were going to walk over there, where  
12 was over there?

13 A To Michael Rogers.

14 Q Michael Rogers' home.

15 A Yes. That's where they all were.

16 Q And what type of home is this?

17 A It's a trailer.

18 Q Mobile home?

19 A Yes.

20 Q Now, how far away did you live from this address?

21 A Just walking distance. I'm not sure. I was on -- I  
22 live on one street, and it's a street beside the street I  
23 was on. It's just walking distance. It ain't a half a  
24 block.

25 Q Now, when you arrived was anyone there at [REDACTED]

Tonya Lowery  
Direct examination by Mr. Allen

1 [REDACTED]?

2 A Yes.

3 Q Who was that?

4 A Michael was there, Jackie, and Ryan -- John.

5 Q When you say Michael, you meant, of course, the  
6 defendant, Michael Rogers.

7 A Yes.

8 Q And Jackie -- you're referring to whom?

9 A Jackie Lance -- I believe is her last name.

10 Q And --

11 A And John Ryan.

12 Q John Ryan. Did you stay for any length of time there?

13 A Yes. When I come in, I come in. Like I said, I was  
14 going to get a cigarette and everything. And they had been  
15 talking and drinking and stuff, which I don't drink.

16 And I was talking to them and everything. And -- and  
17 I kept asking for a cigarette. And Michael -- and Mike and  
18 Jackie were talking and stuff and -- and I just sat there  
19 and talked to them for a few minutes. And -- and I started  
20 talking to Mike over the bar and all.

21 Q Now, how long had you known Mr. Rogers?

22 A I met him, I believe, in June this past year.

23 Q Okay. What was the nature of your relationship? Were  
24 y'all dating; were you seeing each other; or just friends?

25 A Yeah. We were seeing each other.

Tonya Lowery  
Direct examination by Mr. Allen

1 Q And by seeing each other you meant like you were going  
2 out in a romantic type situation, or dating in other words?

3 A Yeah. We were close, yeah.

4 Q And how long have you known Mr. Ryan?

5 A Approximately the same amount of time.

6 Q Okay. What was the nature of your relationship with  
7 Mr. Ryan?

8 A I was just a friend of his. I -- I met him through  
9 another friend of mine. He used to take my brother back  
10 and forth to work. And I was over at my friend's house one  
11 day, and he walked up behind me and everything, and we  
12 started talking and -- and I just -- when I was over there,  
13 I would go over there with my friend to visit.

14 I've -- I've lived with mom like 20 something years.  
15 So I like to have friends and I like to listen to music and  
16 stuff. And my friend -- he would work from like 2:30 to  
17 12:00, so I'd go to his house to listen to music, and have  
18 many times. And that's how I run into, met John. He come  
19 up behind me one day and we started talking and just became  
20 friends.

21 Q Did you have a romantic --

22 A No.

23 Q -- relationship with John?

24 A No.

25 Q Now, let's go back to the night that you came in. You

Tonya Lowery  
Direct examination by Mr. Allen

1 said there had been some -- they had been drinking and  
2 maybe some talking, right?

3 A Uh-huh.

4 Q And what, if anything, unusual happened?

5 A Well, when me and Mike -- we were talking, and they  
6 were across the bar. I didn't know it, but John had  
7 approached from behind, and I didn't see him or anything.  
8 I didn't even hear him supposedly, which shocked me. And  
9 he come up from behind me, and he had put his arms around  
10 below my chest. And I asked him to please take his hands  
11 off, you know, because that just wasn't appropriate,  
12 especially in front of Mike.

13 And then Mike come around, and the next thing I know  
14 they got into it. He pushed him. And he was -- John fell  
15 where the stereo was, and Mike was on top of John at the  
16 time. And I asked Mike to get off because, you know, they  
17 didn't need to be fighting. He proved his point, you know.

18 So, and then he had got off of John. And then Mike  
19 had just had surgery not too long ago. And he was over  
20 there. And John kicked Mike between the legs, and they  
21 started fighting again. And Jackie helped me get them  
22 separated and --

23 Q Let me interrupt a second here.

24 Before Michael pushed John were there any words  
25 exchanged or did anybody say anything?

Tonya Lowery  
Direct examination by Mr. Allen

1 A The only thing that Mike said is, you know, get  
2 your -- you know, get your hands off my woman, you know,  
3 she told you to get your hands off. That's all that I  
4 remember. I don't know if John swung or nothing, because  
5 he was behind me, but I do know that he was pushed into the  
6 stereo.

7 Q Okay. You mentioned that Michael had had surgery. Do  
8 you know the general nature?

9 A Prostate surgery.

10 Q Now, after the kick between the legs -- and I think  
11 you said Michael -- did he fight back?

12 A Yeah. They -- they got into it again and -- and  
13 Jackie was there at the time, and so she helped me separate  
14 them.

15 And I told them, I said, "Mike," I said, "come back  
16 here. You need to clean up." Because he had blood on his  
17 face. And I told him, I said, "You need to clean up and  
18 everything and calm down." And I got him a cigarette and  
19 everything. And I said let's just go in here and calm down  
20 and talk.

21 And Jackie wanted to go to the store, and I didn't  
22 know why she wanted to go to the store because they had  
23 been fighting. And I didn't want her to leave, but she  
24 insisted on going to the store all of a sudden.

25 Q Did she leave?

Tonya Lowery  
Direct examination by Mr. Allen

1 A Yeah.

2 Q Do you know how she left?

3 A In John's truck. She wanted the keys, and John  
4 said -- gave her the okay to take his truck. And she had  
5 his phone I believe because I couldn't find his phone. She  
6 was talking on a phone, so I assume she had his phone too.

7 Q Now, after you -- after Jackie left what, if anything,  
8 happened?

9 A Well, we come into the kitchen, and she had left. And  
10 Mike asked John to leave. And he said -- he told John he  
11 wanted him out of his house. And John -- and I told Mike.  
12 I said he can't leave, he ain't got a way to go. And --  
13 and he kept telling him I want you out of my house. He  
14 asked Mike three times.

15 And then John swung. And I was in the kitchen. And  
16 when he swung I was right there at the kitchen. I couldn't  
17 go out to the living room because they were right there. I  
18 had to go down the hall.

19 And I went out the back door because I -- like I said,  
20 I couldn't get to the living room. And I was upset. So I  
21 went out the back door. And I couldn't handle the fact  
22 that they were fighting. And I'm not used to being around  
23 people fighting. And I went out the back door. And I was  
24 upset. And I didn't know how long Jackie was going to be.

25 But I went around, and went around to the front door

Tonya Lowery  
Direct examination by Mr. Allen

1 because I knew they were in the kitchen. And that's when I  
2 walked in the front. And Mike said dial 9-1-1, I  
3 accidentally stabbed him. And John was in the floor.

4 Q Now, at the time right before you went out the back  
5 door -- at the time you said that you saw John swing -- did  
6 you see anything else like how he was swinging? Did he  
7 have -- was he swinging with his fist?

8 A He swung with his fist. He had punched Mike in the  
9 face. That's why I exited out back, because I was afraid I  
10 was going to get hit because they were right there fighting  
11 with each other.

12 Q Is this kitchen -- is this a big kitchen or a small  
13 kitchen?

14 A No. It's a small kitchen.

15 Q And when you saw the swing --

16 A I was on the left side of Mike. I mean, that's the  
17 only way I had to go, was out the hall because they were  
18 right there.

19 Q How far -- how far away do you think you were from  
20 Michael or John?

21 A I mean, I was right there with both of them. The  
22 kitchen table's there. There's just a little hall and the  
23 refrigerator. There's no room.

24 Q All right. Now, you -- now, you left, and you ran  
25 around the home and came in the front door?

Tonya Lowery  
Direct examination by Mr. Allen

1 A Yeah. I went around and went in the front door. I  
2 don't know how -- exactly how long I was outside because I  
3 was upset, but, I mean, I didn't leave or nothing. I went  
4 around the front, and I was dreading going in. And I went  
5 in because I figured they was still fighting.

6 And, like I had said, I went in. And that's when Mike  
7 said I accidentally stabbed him, dial 9-1-1. And John was on  
8 the floor. And I -- and I picked up the phone and I dialed  
9 9-1-1. And then John stood up. And that's when I saw the  
10 stab wounds.

11 And -- and he told me -- I told him he needed to sit  
12 down or lay down, because there was a lot of blood. And he  
13 said, no, I'm fine, I'll be okay. And I said, no, you're  
14 not. I said you're not.

15 And then he kept -- and he walked over to the bar and  
16 he put his cell phone on the bar. And I said you're not  
17 going to be okay. And -- and he fell in the floor.

18 Q And where did you see -- where did you see the wound  
19 at?

20 A Right here.

21 Q Right here. And you're indicating --

22 A On the left side.

23 Q On the left side. Was it between the shoulder --

24 A I -- it was just right here. That's all I know. It's  
25 just --

Tonya Lowery  
Direct examination by Mr. Allen

1 Q All right. And as I understand, you said that John  
2 stood up. And was he -- where was he standing at?

3 A Right there -- the refrigerator.

4 Q Okay. Was he propping himself up on anything?

5 A No. He was standing on his own.

6 Q Okay. And what caused him if you know -- what caused  
7 him to fall again?

8 A He didn't -- he, he -- he walked. He took like two or  
9 three steps, and he put his elbow on the bar. And when he  
10 put his elbow on the bar he just fell over. I think it was  
11 from loss of blood, because he lost a lot of blood.

12 Q Now, when you -- referring to a bar, is this a  
13 built-in --

14 A Yeah, it was.

15 Q -- counter-type thing?

16 A Yeah.

17 Q Has cabinets underneath it in the kitchen. Does it  
18 separate --

19 A The -- the kitchen from the living room.

20 Q The kitchen from the living room. After John fell,  
21 what then did you do?

22 A I was still on the phone with the paramedics. They  
23 kept waiting to see if they were coming. And I was  
24 standing at the door. And Mike said, he said tell them to  
25 hurry. And said I did. And he -- Mike got a towel. His

Tonya Lowery  
Direct examination by Mr. Allen

1 towels hung in the kitchen. And he got a towel and put it  
2 over his wound.

3 And he started coughing. And then he stopped  
4 breathing. And Mike did mouth to mouth. And he come back,  
5 and he was breathing again. And he -- and he stopped  
6 again, and he did it again. And then finally the  
7 paramedics come.

8 And I walked out, and I said would y'all please come  
9 on, because the police hadn't got there. And the  
10 paramedics were just sitting in the ambulance, you know.  
11 And they finally come in. And I said can I come out, I  
12 just want out of here. And they said yeah.

13 And I was -- I was sitting at the table outside on the  
14 porch. And I was trying to call home, because I didn't  
15 want to get locked out. I couldn't find my key, and I --  
16 and I couldn't get the phone to work. Mike's phone  
17 wouldn't work long enough to make -- to get the paramedics  
18 on there. It had been on charge.

19 And the paramedic come to the door, and I jumped  
20 because I thought it was John. I thought he maybe had  
21 stood back up at the door. And she let -- she said can I  
22 help you. I said, yeah, can I use your phone. I said I  
23 got to call home. I said I didn't want to get locked out.  
24 And she dialed the number for me.

25 Q Well, let me ask you. At any time that evening did

Tonya Lowery  
Cross-examination by Mr. Fulmer

1 you see any cuts or wounds on Mike?

2 A No. I wasn't looking. I mean, he had on a shirt.

3 John didn't. John didn't have a shirt on.

4 MR. ALLEN: One second, please, Your Honor.

5 (Pause.)

6 Q When you saw John -- I'm talking about back in the  
7 kitchen before you left out the back door -- when you saw  
8 John swing at Mike did you see if there was any connection,  
9 if he -- if he hit Mike?

10 A Yeah. He -- he hit him in the face. That's -- that's  
11 why -- that's why I exited out the door, because they were  
12 fighting.

13 MR. ALLEN: One second, please, Your Honor.

14 (Pause.)

15 MR. ALLEN: No other questions for the purpose of this  
16 motion.

17 CROSS-EXAMINATION

18 BY MR. FULMER

19 Q Ms. Lowery, had -- had John ever hugged you before or  
20 touched you in a way that you didn't think was appropriate  
21 before?

22 A No, not that inappropriate, no.

23 Q Do you think the way that he -- the way that you say  
24 he hugged you, do you think that was inappropriate, what he  
25 did?

Tonya Lowery  
Cross-examination by Mr. Fulmer

1 A It might have been to Mike because he was my  
2 boyfriend, but, I mean, he just come up from behind me and  
3 I wasn't expecting it, and he'd been drinking. But, I  
4 mean, John used to drink. But normally he didn't hug me or  
5 nothing, but, I mean.

6 Q I guess -- did he do it in a sexual way, I guess is  
7 what I'm asking.

8 A Well, if -- if you weren't from my position, you might  
9 would have thought so, because you couldn't see. He didn't  
10 touch my breasts, no, but, I mean, nobody else could have  
11 seen that, you know, because I was leaning on the bar.

12 But as far as John trying to harm me, no, I mean, I  
13 know that personally. I mean, me and John were close. He  
14 was a good friend of mine. All I wanted him to do was quit  
15 drinking.

16 Q Had you been around him earlier that -- this same day?

17 A I had been over at Mike's house earlier that day, but  
18 I was only over there for just a few minutes.

19 Q Was -- were -- was John drinking at that time earlier  
20 in the day?

21 A Yes, I think so.

22 Q Had he been over at John -- at Mike's the day before  
23 drinking as well?

24 A Yes, but it wasn't until later on that evening around  
25 five or six, I believe.

Tonya Lowery  
Cross-examination by Mr. Fulmer

1 Q So -- so the previous night did John spend the night  
2 at Mike's house?

3 A Yes.

4 Q So this was the second day that John spent at Mike's  
5 house.

6 A Yes.

7 Q The previous night did you spend the night at Mike's  
8 house?

9 A I stayed until early in the morning, and then I left  
10 because my daughter had been sick, and I told him I  
11 couldn't stay any longer.

12 Q The previous evening was there drinking going on  
13 throughout that evening?

14 A Yes.

15 Q Were you included, or just John?

16 A No. I don't drink.

17 Q You don't drink at all?

18 A Once in a rare blue moon I might have a drink, but  
19 it's very -- I mean, I -- it's been like three years. I  
20 promised my daughter I would quit.

21 Q Okay. Let's go to the night of the fight. When Mike  
22 became angry because John put his arm around you, Mike  
23 pushed John first?

24 A As far as I know, yes. I mean, like I say, I have no  
25 idea if John swung, but I doubt it. But, I mean, he was

Tonya Lowery  
Cross-examination by Mr. Fulmer

1 behind me. As far as I know Mike pushed him, because he  
2 was behind me. I mean, I don't know.

3 Q And John fell?

4 A Yeah.

5 Q Once John was on the ground did Mike hit him?

6 A Yes.

7 Q Where did he hit him?

8 A In the face.

9 Q More than once?

10 A Yes.

11 Q Be fair to say repeatedly?

12 A But they were both -- they were both. I mean, John  
13 was punching too. But, I mean, that's why I told them both  
14 to quit, because Mike had a busted lip and stuff. And I  
15 told him they needed to quit, they needed to quit fighting.  
16 I felt bad. I mean, all of this was going on over a hug.  
17 That's what I felt. And it just was senseless.

18 Q During this first episode while John was on the floor,  
19 I guess Mike was on top of him?

20 A Yeah.

21 Q Was Mike getting the best of John at that point?

22 A I think it was about both -- about the same. That's  
23 what I told him, because his -- his lip was busted and  
24 stuff, so.

25 Q When you say his, who do you mean?

Tonya Lowery  
Cross-examination by Mr. Fulmer

1 A Mike's.

2 Q What about John? Was he bleeding at this point?

3 A A little bit, but not much. I don't know why because  
4 I guess -- because he was -- I don't know. It just seems  
5 like he was bleeding more. I don't know if he -- I don't  
6 know, because he had cut teeth or something. I don't know.

7 Q Okay. After -- after the first fight did they get up  
8 and separate?

9 A Yeah. I got them separated. They -- they stopped  
10 fighting that first time, and they started again the second  
11 time.

12 Q How long do you think between the first fight and the  
13 second fight?

14 A Just a few minutes, I guess. I don't know.

15 Q Okay. Were any words exchanged between the two of  
16 them during this time?

17 A No.

18 Q Did they appear to be cooling off?

19 A They really didn't have any cooling-off periods. It  
20 just didn't seem like they -- they just stopped. I mean,  
21 they just continued.

22 The only time there was cooling-off periods is when I  
23 took Mike to the bathroom and told him to rinse off and get  
24 him a cigarette, because I couldn't understand why Jackie  
25 was leaving.

Tonya Lowery  
Cross-examination by Mr. Fulmer

1 Q That was after the second fight?

2 A Yeah.

3 Q So would you describe the second fight basically as a  
4 continuation of the first fight?

5 A Yeah.

6 Q Okay. After the second fight, is that when you took  
7 Mike to the bathroom?

8 A Uh-huh.

9 Q Was he bleeding at that point?

10 A Mike, yeah. That was from the first fight. He had  
11 blood on his lip and on his hands.

12 Q Did you notice a cut on Mike at that point?

13 A I -- no, I didn't notice no cut, no, I mean U don't --  
14 uh-uh.

15 Q He didn't complain of being cut to you?

16 A No.

17 Q While this was going on what was Jackie doing?

18 A She helped separate them the first two fights, but she  
19 left. Like I said, after that she decided she was going to  
20 go to the store. I didn't know what she was going to the  
21 store for. And she asked Mike if he needed anything.

22 Q And what did Mike say?

23 A And I don't remember if he said anything. I told him  
24 he needed some cigarettes, because he didn't have no  
25 cigarettes, have any there.

Tonya Lowery  
Cross-examination by Mr. Fulmer

- 1 Q While this was going on was there a dispute between  
2 Mike and John about cigarettes?
- 3 A Not that I know of, no.
- 4 Q Mike actually had John's keys at this point, is that  
5 right?
- 6 A Yes.
- 7 Q Were they in his pocket?
- 8 A I don't remember.
- 9 Q But when Jackie was looking for John's keys it was  
10 Mike who had them?
- 11 A That's who she went to for them, yeah.
- 12 Q Was Jackie already gone before the -- what you're  
13 describing as the third fight started?
- 14 A Yes. She left.
- 15 Q How long had she been gone?
- 16 A Not long at all.
- 17 Q A few seconds, maybe a minute, something like that?
- 18 A No. I -- probably ten minutes maybe. I'm not sure.  
19 I don't know. I -- I don't know.
- 20 Q What was going on?
- 21 A I just know it just seemed like, I mean, after it  
22 happened, because thinking, God, where is she, because I  
23 was waiting on the paramedics because I figured she would  
24 pull up. And she -- she didn't pull up. And I couldn't  
25 figure out where she was. I figured she'd be back from the

Tonya Lowery  
Cross-examination by Mr. Fulmer

1 store by now and couldn't figure out why she was gone so  
2 long.

3 Q But you think it was about ten minutes between the  
4 time that -- after Jackie left before they started fighting  
5 again?

6 A Uh-huh, yeah, that long.

7 Q Okay. What was going on in that ten minutes?

8 A Huh?

9 Q Can you tell me what happened during that time?

10 A The only thing, like I said, I took him back there to  
11 rinse off, rinse his face and his hands. And I gave him a  
12 cigarette. I just told him just to calm down, you know.

13 Q And this was while you were in the bathroom at this  
14 time.

15 A Uh-huh.

16 Q So was -- did Mike spend those ten minutes in the  
17 bathroom?

18 A No. I mean, afterwards we come in the kitchen.

19 Q And where was John then?

20 A He was in there.

21 Q In the kitchen?

22 A Uh-huh.

23 Q Were they speaking to each other?

24 A As soon as he come in there he wanted to leave, kept  
25 asking him to leave. And that's when I told him he

Tonya Lowery  
Cross-examination by Mr. Fulmer

1 couldn't leave, that Jackie had taken his truck.

2 Q When you said that did Mike have a response?

3 A He just kept telling him to leave. He kept telling  
4 him he wanted him out of there.

5 Q Did John ever say anything?

6 A No. The only thing he did was swing. And I couldn't  
7 understand why he was swinging. I mean, I didn't know why  
8 they -- it just didn't make sense to me.

9 Q So immediately --

10 A I tried --

11 Q Immediately after Mike asked John to leave, John swung  
12 at Mike?

13 A Yeah. He asked him like three times, and then he  
14 swung.

15 Q And what did you do at that point?

16 A I had to exit out the back door because it was right  
17 there at the kitchen. I didn't have a choice.

18 Q Why didn't you try to break them up this time?

19 A Because they were right there. They were swinging  
20 right there. They were swinging. I mean, before it --  
21 they kicked and stuff. And I had somebody else to help me.  
22 And they were right there. I mean, he just swung.

23 I just would've been punched in the face if I'd done  
24 something. I was scared to try to do it by myself. But  
25 I'd had all I could take that night.

Tonya Lowery  
Cross-examination by Mr. Fulmer

1           They kept fighting and kept fighting, and I didn't  
2 think they were going to stop. They just kept on fighting.  
3 And I figured Jackie would be pulling up any minute and we  
4 could separate them again. But, I mean, she didn't. I  
5 never dreamed it was going to end up like this.

6 Q       Did you ever see a knife before you went out?

7 A       No. I didn't see one when I come in. I didn't see  
8 one when I come in.

9 Q       Mike ever tell you he had a knife?

10 A       No. I mean, he didn't have to. I mean, when I come  
11 in there I saw he was stabbed, I mean. I didn't why know  
12 where the weapon went. All I knew was he was stabbed and  
13 he was bleeding. I assumed it was under the refrigerator  
14 because we's right there at the refrigerator, is where John  
15 was.

16 Q       When you went out the back door of the trailer were  
17 Mike and John still on their feet fistfisting?

18 A       I -- yeah.

19 Q       They were both standing up?

20 A       Yeah. I assume. I mean, like I said, they swung. I  
21 don't know. Once he swung I went out the side because I --  
22 I was scared. I mean, it's right there. And I just  
23 couldn't deal with it any more. My nerves were shot.

24 Q       How long do you think it took you to get from the back  
25 door to walk around the trailer to come in the front door?

Tonya Lowery  
Cross-examination by Mr. Fulmer

1 A I don't know. I have no idea. I just -- I just  
2 walked. I just -- I had no idea. Not long. Maybe -- all  
3 I know is they were just fighting. I went around the back  
4 and went around to the side and come in the front door. I  
5 mean, it wasn't.

6 Q Did you stop along the way?

7 A I stopped at the back steps when I first got out  
8 because I was upset because I was thinking I couldn't  
9 handle this, the fighting all the time. I couldn't stand  
10 it any more. I wanted to go home. I wanted to just go  
11 home. And I said I can't go home, I can't leave them  
12 fighting. So I come back around.

13 Q Do you think it was less than a minute that it took  
14 you to walk around the trailer?

15 A I -- no. It was -- I imagine it was more. I don't  
16 know how long. I don't know.

17 Q Did you hear anything inside the trailer while you  
18 were walking around?

19 A Yeah. I mean, I could hear them rumbling around.  
20 That's why, you know, I just --

21 Q Did you hear any yelling?

22 A No. They just -- I could just hear them fighting.  
23 That's all I could hear. And I -- and I couldn't handle it  
24 any more. I can't handle watching people fight.

25 Q When you came in the front door, what did you see?

Tonya Lowery  
Cross-examination by Mr. Fulmer

1 A I saw Mike. He was standing over John, and he said  
2 dial 9-1-1, I accidentally stabbed him.

3 Q He said accidently?

4 A Uh-huh.

5 Q Did you see a knife at that point?

6 A No, I didn't see a knife. All I did, as soon as he  
7 said that I grabbed the phone and I started dialing because  
8 I saw John in the floor, and then I saw blood. And then I  
9 knew it wasn't good when he stood up. I knew it wasn't.

10 Q Did you ever see Mike walk down the hallway to the  
11 dryer?

12 A No.

13 Q Ever see him place a knife under the dryer?

14 A No.

15 Q Did you ever see him go to the bedroom across from the  
16 dryer?

17 A No, I never saw that, no.

18 Q Did you ever see Mike pick up a glass bottle of  
19 Canadian whiskey in a paper sack?

20 A He had a bottle of whiskey that he had brought into  
21 the kitchen back when him and Jackie and them were there  
22 drinking. But I don't -- you know, I don't even remember,  
23 you know, him putting it up or -- or if he left it on the  
24 table or what. I remember him pouring that. He poured  
25 that one. I was there. I don't know what it was. It

Tonya Lowery  
Cross-examination by Mr. Fulmer

- 1 was -- it was in a paper bag, but, I mean...
- 2 Q Did he drink any of that after he was cut?
- 3 A I have no idea.
- 4 Q Did you see him?
- 5 A No, I didn't see him drink nothing, no. I saw him  
6 pour it in a glass, him and Jackie, a glass, you know,  
7 prior, you know, to everything happening. But, you know,  
8 no.
- 9 Q Do you have any idea how the -- the bottle with blood  
10 on that bottle got into the bedroom drawer?
- 11 A No, I don't.
- 12 Q After this happened did you ever tell anybody that  
13 John killed Mike -- I mean, I'm sorry -- Mike killed John  
14 for you because he loved you?
- 15 A No.
- 16 Q Never made that statement?
- 17 A No.
- 18 Q Have you ever told a version of this story where you  
19 were actually inside the trailer --
- 20 A No, I haven't.
- 21 Q -- when the stabbing took place?
- 22 A No, I haven't. I wasn't inside the trailer.
- 23 MR. FULMER: One moment, Your Honor.
- 24 (Pause.)
- 25 MR. FULMER: That's all, Your Honor.

Tonya Lowery  
Redirect examination by Mr. Allen

1 REDIRECT EXAMINATION

2 BY MR. ALLEN

3 Q You talked to the officers early that morning after it  
4 happened, correct, the 13th of November?

5 A Yeah.

6 Q Do you recall writing a statement? I've got part of  
7 the statement here.

8 A No. I didn't write it. The officer wrote it.

9 Q The officer wrote it.

10 A Yes.

11 Q You signed it.

12 A Yeah.

13 Q And you told the officers what had happened?

14 A Uh-huh.

15 Q Okay. I'm going to point to a line that's on page  
16 three of four where you're talking about John swinging and  
17 hitting Mike in the face and you tried to separate them but  
18 you couldn't. And then what's that next line say, or that  
19 sentence say?

20 A "I went out the back door and walked around --

21 Q The trailer.

22 A -- to the front."

23 Q Came back in the front door.

24 MR. ALLEN: That's all I have, Your Honor, on  
25 redirect.

Michael Anthony Rogers  
Direct examination by Mr. Allen

1 THE COURT: Okay. You can step down.

2 MR. ALLEN: Your Honor, for the purposes of this  
3 motion we do call Mr. Rogers.

4 THE COURT: Okay.

5 MICHAEL ANTHONY ROGERS, having  
6 been first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. ALLEN

8 MR. ALLEN: Your Honor, I neglected to ask. Can  
9 Ms. Lowery be excused? I don't think we have any further  
10 need of her for this hearing.

11 THE COURT: She can be if they have sufficient  
12 officers to take her back.

13 (Whereupon, the witness was excused.)

14 Q You are Michael Anthony Rogers, correct?

15 A Correct.

16 Q Mr. Rogers, on the night of the 12th of November of  
17 2010 where did you live?

18 A [REDACTED].

19 Q In Roebuck?

20 A Roebuck, South Carolina.

21 Q Of course that's in Spartanburg County, correct?

22 A Yes, sir.

23 Q What type of home was it?

24 A A mobile single-wide trailer -- mobile home.

25 Q Were you purchasing it, renting it?

Michael Anthony Rogers  
Direct examination by Mr. Allen

1 A I was renting it. I had been there over a year, over  
2 a year.

3 Q Over a year?

4 A Yes, sir.

5 Q Who else lived with you at that mobile home?

6 A I had no -- no one else but myself.

7 Q Now, the night of the 12th of November up to -- well,  
8 let's just start a little bit earlier.

9 Was John Ryan over at your mobile home on the night of  
10 this incident the 12th of November?

11 A Yes, he was.

12 Q And how long had he been there?

13 A He was there 24 hours prior. He was there a day  
14 earlier.

15 Q A day earlier?

16 A Yes, sir.

17 Q He spent the night?

18 A Yes, sir.

19 Q Okay. Had he moved his stuff in?

20 A No, sir.

21 Q Was he residing there as his permanent place?

22 A No, sir. The only reason he spent the night, because  
23 he -- he was too drunk to drive and I didn't want him to  
24 drive home. And that's the only reason why I let him stay  
25 at my home that night.

Michael Anthony Rogers  
Direct examination by Mr. Allen

- 1 Q How long have you known John?
- 2 A I had just met him that day through Tonya.
- 3 Q And Tonya being who -- Tonya Lowery?
- 4 A Tonya Lowery, yes, correct.
- 5 Q And what was your relationship with Ms. Lowery?
- 6 A We were more than friends. We were -- we were seeing
- 7 each other in a romantic way.
- 8 Q Now, up to the time before Tonya -- or did Tonya come
- 9 to your home that evening?
- 10 A Which evening is that, sir?
- 11 Q The 12th, the night this happened.
- 12 A Yes. He did.
- 13 Q Tonya?
- 14 A Yes, yes, she did; yes, she did, yes.
- 15 Q When she arrived was there anyone else in your home?
- 16 A Yes, Jackie. I don't know, really know, her last
- 17 name. I had just met her also that day.
- 18 Q Okay. From the time that -- let's just take it from
- 19 the time that Tonya arrived at your home that night.
- 20 A Okay.
- 21 Q What happened?
- 22 A Well, Tonya come in. You know, and there was -- we
- 23 were just all talking, sitting around just really talking.
- 24 Q We being who?
- 25 A Jackie, myself and Tonya.

Michael Anthony Rogers  
Direct examination by Mr. Allen

1 Q What about John?

2 A And John was there, yes. John was there also.

3 Q What had been going on? Had you been drinking?

4 A Yes, we, we -- I -- I had some. John had -- he had  
5 his share.

6 Q What do you mean by his share?

7 A Well, when he had gotten up in the morning, which I  
8 assumed he was going to leave, he already -- he started  
9 drinking before I even got up. And anyway it just -- I  
10 guess it just escalated, kept going on, going on and going  
11 on. I don't know. I mean, he seemed okay at times, and at  
12 other times he didn't. I don't know. It was hard to  
13 judge.

14 Q Okay. Now, what about Jackie? Did she drink with  
15 y'all?

16 A Yeah. She had -- she had a drink.

17 Q And Tonya?

18 A Tonya didn't. No, she did not.

19 Q Now, so after you were sitting around talking, what  
20 if, anything -- I'm talking about something unusual that  
21 led up to this incident that we're all here about, what  
22 happened up to that point?

23 A I had to go. I had to excuse myself. I had to go to  
24 the bathroom. I used the bathroom. On my way out I  
25 noticed John leaning against Tonya from behind with his

Michael Anthony Rogers  
Direct examination by Mr. Allen

1 arms around her waist.

2 Well, I couldn't really see his arms because of the  
3 breakfast nook bar -- is -- is probably a little bit above  
4 the waist. It's probably midway. But he was behind her  
5 and he had his head -- it was bent into the crit (sic) of  
6 her shoulder and head like he was saying something to her  
7 and everything, but he was pressed up against her.

8 And I said what the -- I probably swore. And I  
9 probably -- and I told him what the -- you think you're  
10 doing. And I went up to him and I separated. I pushed  
11 him.

12 When I pushed him he fell into my stereo. And when I  
13 turned around the corner where the breakfast nook is, they  
14 were pressed up, and he was pressed right up against her.  
15 And I was angry. I said what do you think you're doing.  
16 And I pushed him against the stereo.

17 Q And then what happened?

18 A John fell into the speakers. That's what he fell  
19 into. And I said, ah, man, I was mad about him banging  
20 into the speakers. So I went over and I kinda tried to get  
21 him up to get him off of the speakers. And he swung and I  
22 swung. And we got into it. It happened quick.

23 Q Okay. Now, did that swinging between the two of you  
24 last for a long time?

25 A No, not really.

Michael Anthony Rogers  
Direct examination by Mr. Allen

1 Q Okay. Then what happened?

2 A How that had stopped was -- Tonya was correct when she  
3 stated that she's the one that told me to stop. I had told  
4 the officers I got the better of him at this time, and  
5 which I had done. And I thought it was going to be over  
6 with.

7 Q What did you do?

8 A They told me -- I -- they're telling me to let him up,  
9 let him up. Past experience, you don't let -- you don't  
10 let the person up who just tried to finish doing whatever.  
11 But, anyway, I let him up. As soon as I let him up it  
12 started all over again. It was the second one.

13 Q And how did that start?

14 A It really -- it was like it never even stopped. It's  
15 just one led right into the other.

16 Q Well, what I mean is when you let him up did you start  
17 hitting on him again.

18 A No, no.

19 Q What happened?

20 A It was just -- it just -- I can't really say. I mean,  
21 he just -- he come back at me. And I just protected  
22 myself.

23 I went back at him also. He came at me. I went at  
24 him. It was just -- the reason why he just had stopped,  
25 because I had let him up. And then if he'd just stood away

Michael Anthony Rogers  
Direct examination by Mr. Allen

- 1 it would have been fine. It would have been over with.
- 2 Q You say he came back at you. Do you mean --
- 3 A In an aggressive manner, yes.
- 4 Q Shake your hand, or what?
- 5 A No. In aggressive manner.
- 6 Q Okay. Now, how long did that last?
- 7 A It wasn't long. It was not long at all. We
- 8 exchanged, what 40, 60 seconds, not even -- not even a
- 9 minute. You know, it was just it ended.
- 10 Q And then what did you do after it ended?
- 11 A I went to the bathroom, and I -- I was bleeding.
- 12 Q Where?
- 13 A Just on my lip. That was it, just my face, a little
- 14 bit on my face. It was nothing and -- and I was upset.
- 15 Q And then what happened after you -- did you come out
- 16 of the bathroom?
- 17 A Yes, I did.
- 18 Q Who all was present when you came out of the bathroom?
- 19 A Just Ms. Lowery.
- 20 Q And anybody else?
- 21 A No.
- 22 Q John was not there?
- 23 A John, excuse me, yes, John, yes. I'm sorry.
- 24 Q What about -- what about Jackie? Was she still there?
- 25 A No.

Michael Anthony Rogers  
Direct examination by Mr. Allen

1 Q Do you know when or how she left?

2 A Yes. I know that I had given her the keys. I had  
3 thrown them to -- thrown them that way.

4 Q Why did you do that?

5 A They asked for them. John wanted his keys, and I  
6 wanted him to leave.

7 Q How did -- did you --

8 A I don't know. Okay.

9 Q Did you tell John anything about leaving? And, if so,  
10 how did that happen?

11 A I asked -- I had asked him to leave after the  
12 confrontation.

13 Q After what confrontation?

14 A The second one before I went and wiped my face -- to  
15 leave my home.

16 Q Did you ask him to leave?

17 A Yeah. I asked him one time to leave.

18 Q How did you ask him to leave?

19 A I said leave, and leave my fre -- f'ing house.

20 Q And what, if anything, did he say or do?

21 A He didn't respond.

22 Q After you came back from the bathroom -- well, first  
23 of all, let's talk about, a little bit about, the layout of  
24 your mobile home. The bathroom is located where in  
25 connection with the kitchen?

Michael Anthony Rogers  
Direct examination by Mr. Allen

1 A It's a -- this is a single -- it's a single-wide.  
2 It's right behind -- it's the kitchen, and then it's a  
3 little narrow hallway to the right.

4 Q To the right?

5 A Yes, enough for a -- for a -- the hallway's wide  
6 enough for a runner of a carpet. And then on the left-hand  
7 side, maybe it is about 3 feet, and then on the left-hand  
8 side it opens up a little bit where there's a washer and  
9 dryer. And right after the -- the dryer -- is my bathroom  
10 to the left. And -- and to the right is the door to go  
11 back down the stairs to get outta the house.

12 Q Okay. Now --

13 A Say it's about four -- it's about maybe 4 feet.  
14 The whole -- the whole thing is probably about six -- 6 to  
15 7 feet long, the hallway.

16 Q So when you're coming out of the bathroom you pass?

17 A You pass the dryer. You gotta -- coming outta the  
18 bathroom you have to bear a right. The dryer's right  
19 there, right in front of the door of the -- of the  
20 bathroom. And then you got your washer.

21 You got to bear a right. And then you take maybe  
22 three steps, and then you're automatically in the kitchen  
23 where the kitchen table is off the left. My refrigerator  
24 is off to the right. And it's a narrow -- there was a  
25 place where you could walk to get to the living room area.

Michael Anthony Rogers  
Direct examination by Mr. Allen

1 Q All right. Now, when you came back out of the  
2 bathroom did you go into the kitchen?

3 A Yes, I did.

4 Q And what happened then?

5 A I told John he had to leave. I kept telling him you  
6 gotta get out of here. I don't care if Tonya ain't, I  
7 mean, Jackie got your truck, leave. You want to wait for  
8 her, outta your truck, you wait somewhere else, but I want  
9 you out of my house.

10 Q What, if anything, did John do when you told him that?

11 A I don't know. I was -- when I had been saying that I  
12 -- I was facing the refrigerator. And when I had turned  
13 around he sockered me. He got me right in -- he got me  
14 right in the jaw big time.

15 Q With what?

16 A His fist.

17 Q Okay. And then what happened?

18 A I -- I hit him back because I wanted him to stop.

19 I -- why -- why even initiate it all over again?

20 Q What did you hit him with?

21 A I hit him with my hands.

22 Q Okay. And when then what happened?

23 A He started fighting. I mean, I -- he just kept coming  
24 at me and coming at me. And knowing me, I was fighting  
25 back for the simple reason to get him to stop. I wanted to

Michael Anthony Rogers  
Direct examination by Mr. Allen

- 1 get him off of me.
- 2 Q Okay. How did it stop?
- 3 A I don't know how. And I told this to the officers. I  
4 don't really know where the knife came in. I only can  
5 speculate on that, where it came from. But I had noticed  
6 it in his hand. And we fought over it.
- 7 And the next thing I know there's blood. There's --  
8 there's just blood. And I -- I got the knife out of his  
9 hand. Eventually I got the knife out of his hand. We had  
10 stopped fighting. I got the knife out of his hand.
- 11 Q Do you know how John received the wounds on his chest?
- 12 A Again, this is speculation, I mean.
- 13 Q Well, I can't ask you to speculate. But do you know  
14 how he got the wound?
- 15 A Yeah. Through the fight.
- 16 Q Do you remember -- do you think you remember cutting  
17 him?
- 18 A No, I do not.
- 19 Q Did you get cut?
- 20 A Yes, I did.
- 21 Q Where?
- 22 A On my left forearm.
- 23 Q Okay. Did you get cut anywhere else?
- 24 A On my right forearm on the top.
- 25 Q I'm going to show you some pictures.

Michael Anthony Rogers  
Direct examination by Mr. Allen

1           Let me ask you this. Did you have any other injuries  
2 that night or did you get any other injuries that night?

3 A       Just besides the beating, I mean, the bruising.

4 Q       I'm going to ask you to look at Defense Exhibit 3. Is  
5 this -- do you recall -- do you know what this is? There  
6 are two pictures. Do you know what these pictures are?

7 A       Yes, sir.

8 Q       What are they?

9 A       They are cuts and they are bruises. They're cuts on  
10 my knuckles and they're cuts on my right forearm and near  
11 the pinkie side.

12 Q       All right. So the -- the top picture is a picture of  
13 your right forearm.

14 A       Yes, sir.

15 Q       And do -- do you know where these were taken? Do you  
16 remember when these were taken?

17 A       Spartanburg Regional.

18 Q       At the hospital?

19 A       Yes.

20 Q       Okay. Taken when, that --

21 A       That evening, I mean, after -- after the altercation.

22 Q       Okay. And the bottom picture is a -- shows your hand.

23 A       Yes.

24 Q       Okay. Defense Exhibit 4, can you tell me what the top  
25 picture is?

Michael Anthony Rogers  
Direct examination by Mr. Allen

- 1 A That's a picture of my knuckle. It's a bruise. It's  
2 a cut on my right finger.
- 3 Q Your right finger?
- 4 A My right pinkie.
- 5 Q And the bottom picture again, another?
- 6 A It's cuts on my forearm, on the outside of the  
7 forearm.
- 8 Q Okay. Your right arm?
- 9 A Yes, my right arm.
- 10 Q Defense Exhibit 5 are pictures of what?
- 11 A My left forearm.
- 12 Q And it shows?
- 13 A Severe, awful gash on my left forearm of 3 or  
14 4 inches.
- 15 Q Okay. Also on Defense Exhibit 6, the top picture is  
16 another picture of that same cut?
- 17 A Yes.
- 18 Q What's the -- the bottom picture is a picture of what?
- 19 A That's my tooth, sir. It got cracked and it got  
20 broken from getting punched in the face.
- 21 Q Okay. And Defense Exhibit 7 is a picture of what?
- 22 A My jaw -- my teeth again and my jaw where I had gotten  
23 hit where you can see the bruise.
- 24 Q Are all of these pictures a fair and accurate  
25 portrayal or representation of what these injuries looked

Michael Anthony Rogers  
Direct examination by Mr. Allen

1 like that night?

2 A Yes, yes, sir.

3 MR. ALLEN: I offer Defense Exhibits 3, 4, 5, 6 and 7  
4 into evidence at this time, Your Honor --

5 MR. FULMER: No objection, Your Honor.

6 MR. ALLEN: -- for the purpose of this hearing.

7 (Photographs marked Defendant's Exhibits Nos. 3  
8 through 7.)

9 Q Did you -- you say you eventually got the knife away  
10 from John, is that correct?

11 A Yes.

12 Q Did you take a look at that knife?

13 A Yeah. I know what knife it was.

14 Q What knife was it?

15 A It belonged to me.

16 Q Where was it before this incident with John began, do  
17 you know?

18 A I -- I -- I thought it was in my pocket, but it  
19 could'a -- it couldn't have been. I used it for cutting my  
20 mail open.

21 Q Where do you keep your mail?

22 A Right on the kitchen table.

23 Q After you told John to leave your home that night did  
24 you ever tell him that he could -- that you changed your  
25 mind and that he could stay?

Michael Anthony Rogers  
Direct examination by Mr. Allen

- 1 A No, sir.
- 2 Q Did he leave?
- 3 A No, sir.
- 4 Q Did John ever kick you that night?
- 5 A Yes, sir.
- 6 Q Do you remember when that occurred?
- 7 A After I pushed him in the stereo.
- 8 Q Where did he kick you?
- 9 A In the groin.
- 10 Q I'm not trying to ask a funny question, but did that  
11 hurt?
- 12 A Yes, sir.
- 13 Q How bad?
- 14 A Extremely.
- 15 Q Why is that?
- 16 A I just finished having prostate cancer, and I had  
17 surgery a month prior.
- 18 Q In relationship to your size, how big or small was  
19 John?
- 20 A John's a bigger man than myself. He's taller than I  
21 was. I'm only 5'7". At the time I -- I was recovering  
22 from the cancer. I had lost extremely a lot of weight. I  
23 weighed only 189 pounds or 184 pounds. I'm sure John was  
24 over 200 pounds.
- 25 Q How much taller than you was he?

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

1 A Maybe 6'11", maybe 6'10".

2 Q Six --

3 A I mean, excuse me, five. Excuse me. I'm sorry.  
4 Five.

5 Q Five?

6 A Yeah, I believe he might have been. He was taller  
7 than myself.

8 Q Okay. And his age? Was it your age, was it --

9 A No. He's -- I'm -- at the time I was 53 and he was  
10 44. So I -- I got some years on him -- 11 years.

11 Q You're older than him?

12 A Yes, sir.

13 MR. ALLEN: One second, please, Your Honor.

14 (Pause.)

15 MR. ALLEN: No other questions for the purpose of this  
16 motion, Your Honor. Thank you.

17 CROSS-EXAMINATION

18 BY MR. FULMER

19 Q Mr. Rogers, you say you don't remember stabbing John  
20 in the chest?

21 A No. It wasn't -- no. I -- no. It wasn't an  
22 intentional thing.

23 Q Do you remember stabbing him in the back?

24 A No.

25 Q Do you admit that you stabbed him in the back?

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

1 A Apparently it was -- yeah. He had wounds on the back,  
2 on his back, that I -- that I'm aware of now. But I assume  
3 that happened during the altercation and fighting with the  
4 knife.

5 Q At what point does -- does your memory cease with  
6 regard to the fight?

7 A What do you mean by cease? I don't understand.

8 Q Well, you can remember a lot of things about what's  
9 going on that night. But when it comes to how John got  
10 stabbed you say you can't remember how it happened.

11 A I'm not -- well, I'm not saying. What I'm saying is  
12 that I don't know where the knife came from, how the cuts  
13 happened to myself or to him. I don't -- I can't explain  
14 it.

15 We were in a (sic) altercation. I know that -- I  
16 can't -- I can't explain it. I'm not going to sit here and  
17 say that I know exactly how he got stabbed. I was  
18 fighting. I was trying to get the knife away from him.

19 Now, if that -- if that took me going across his chest  
20 -- that's what apparently happened. I went across his  
21 chest. I don't know. I can't say.

22 I didn't take the knife and go like this and stab him  
23 purposely like this. It wasn't done that way at all. I  
24 never had that knife in my hand to do that.

25 The only time I had gotten that knife to put in my

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

1 hand was after when he had stopped fighting and resisting  
2 me enough that I could overpower him to take it away,  
3 period.

4 Q You're sure you didn't stab him in the manner you just  
5 suggested, but you don't know exactly how you did stab him?

6 A I -- I didn't have the hand -- the knife in my hand  
7 like that at the time. I couldn't have. It happened so  
8 fast, everything happened so fast. I spoke this. I told  
9 the officers this. I have nothing to hide. I spoke what  
10 happened that evening. And go back and look at that. I  
11 don't know how it happened.

12 Q When you say you can't explain it, what you mean is  
13 you don't have a justification for it.

14 A No. That's not -- that's not true.

15 MR. ALLEN: Objection. Argumentative, Your Honor.

16 THE COURT: Sustained.

17 Q How did the knife get out of your pocket?

18 A I'm not sure. I put it -- I use it. My mail delivery  
19 that day, I usually leave it on my -- my kitchen table, and  
20 I open my mail with that. But I normally do keep it in my  
21 pocket. Yes, I do. I carry it. I have it in my pocket.  
22 Yes. That's where I thought it was.

23 Q Do you think he put his hand in your pocket?

24 A No. He did not -- he did not. He never went in my  
25 pocket. I had to take it outta my own pocket and put it on

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

1 the table.

2 Q But you don't have a specific recollection of doing  
3 that?

4 A Na. I remember opening my mail that even -- that  
5 afternoon. But, you know, that's it. I opened my mail  
6 with it that afternoon. I know I did.

7 Q Let's go back in time to the previous day. You say  
8 that was the first time you'd ever met John.

9 A The day prior.

10 Q What were y'all doing that day?

11 A How I met him?

12 Q Right, right.

13 A He wanted me -- he came over and he had -- his truck  
14 was loaded with -- he thought it was scrap metal, but it  
15 was a lot of garbage. I mean, it was just junk. And he  
16 needed a hand getting rid of it. So I told him I would  
17 help him.

18 Tonya Lowery asked me would I, you know, help him out  
19 and give him a hand, and I did. I said yes, I would.

20 Q Was he drinking that day?

21 A Yes, he was. He started drinking. Yes, he was.

22 Q Was he drinking pretty much the whole time he was  
23 around you?

24 A Not when I first met him -- not, not, not when I --  
25 when I first met him when I was, you know, this is John.

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

1 John, this is, you know --

2 Q You don't think he had been drinking at that point  
3 that day. Is that what you're saying?

4 A No, he wasn't. This is -- na. This -- this is the  
5 day before, yes.

6 Q Correct. But after you two got together that day he  
7 began to drink at some point?

8 A Yes, he did.

9 Q And he drank until he went to sleep that night, didn't  
10 he?

11 A That's correct.

12 Q Did he go to sleep or did he pass out?

13 A I can't say. I showed him where the spare bedroom  
14 was, and he went there. And I didn't hear anything of him  
15 until I awoke the next morning.

16 Q You testified earlier that the reason you let him stay  
17 the night was because he was too drunk to drive home.

18 A Absolutely.

19 Q Did his mother call him the previous night?

20 A I'm not sure. I -- I'm not aware of the call. I know  
21 he had spoken with somebody on the phone. I don't know who  
22 he was speaking with.

23 Q Did she offer to come and pick him up and take him  
24 home?

25 A I wasn't aware of that.

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

- 1 Q Did you tell her not -- that she was not allowed on  
2 your property?
- 3 A No. I never said that.
- 4 Q She could not come and pick him up?
- 5 A No. I did not.
- 6 Q You never made that statement?
- 7 A No. I did not.
- 8 Q The police later recovered John's guitar in your  
9 trailer. Do you know why he brought his guitar with him?
- 10 A He knew I played guitar. I showed him my guitars.
- 11 Q If you just met him, how did he know that you played  
12 guitar?
- 13 A I told him I played guitar. As a matter of fact, I  
14 had my acoustic guitar right in my living room when he  
15 asked me you play. And I yeah. And I played for him. And  
16 he was just learning. And I told him I could teach him a  
17 few things.
- 18 Q And so he shows up with a guitar and then he finds out  
19 that you also play guitar?
- 20 A I don't know about that. I just know that I showed  
21 him. I showed -- I played for him. I played for him, and  
22 I told him I would teach him. He said he had one.
- 23 Q Had you known him prior to this?
- 24 A No, I hadn't known him. I know of him.
- 25 Q Had --

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

- 1 A I knew of him. I knew of him through Tonya. That's  
2 the only way. I've never met him personally.
- 3 Q Do you have an automobile?
- 4 A No, I do not.
- 5 Q Do you have a driver's license?
- 6 A No, I do not.
- 7 Q Did you go anywhere else the previous day other than  
8 the dump?
- 9 A Yes. I went with John.
- 10 Q Did you drive?
- 11 A Not that day.
- 12 Q Where did you go?
- 13 A We went to the store.
- 14 Q What did you go to the store for?
- 15 A John wanted to get beer.
- 16 Q You're still referring to the previous day?
- 17 A Yes. That's what y'all are referring to, isn't it?
- 18 Q Yes.
- 19 A Okay.
- 20 Q And John drove that day.
- 21 A Yes.
- 22 Q Earlier in your testimony you said from past  
23 experience you know not to let a guy up off the ground.  
24 Can you tell me what you meant by that?
- 25 A Well, I -- I've let people up and after I've gotten up

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

- 1 they come back and wailed on me, and I took a beating. So  
2 I think twice about it.
- 3 Q But in this case you were getting the best of John.  
4 Those were your words to the police.
- 5 A Yes, I was, I was. And I had stopped.
- 6 Q Well, what do you mean by getting the best? Were you  
7 getting ahead?
- 8 A I'm saying I -- I overpowered him. I -- I -- I -- I  
9 would -- was getting the be -- the best of the fighting.
- 10 Q Were you striking him with your fist in his face?
- 11 A Yes, yes.
- 12 Q Did you hit him anywhere else?
- 13 A I might have. I was probably hitting him more so in  
14 the face.
- 15 Q How long do you think that first altercation lasted?
- 16 A I can't say. A couple of minutes maybe. I don't  
17 know. It wasn't long.
- 18 Q A couple. Did you each get worn out or --
- 19 A No.
- 20 Q -- did John give up?
- 21 A No.
- 22 Q But when you -- you say you let him up, was he still  
23 trying to hit you at that point in time?
- 24 A Yes.
- 25 Q And you let him up anyway?

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

- 1 A Yes, because they broke it up. They, Tonya and  
2 Jackie, got next to us.
- 3 Q Were they holding John back?
- 4 A No. They didn't have to.
- 5 Q Because he had ceased to fight at that point.
- 6 A When I let him up.
- 7 Q And was it Jackie and Tonya trying to break up this  
8 fight?
- 9 A They had spoken to me, said Mike it's enough, he's had  
10 enough. And I stopped.
- 11 Q At that point you stand up?
- 12 A I stood up.
- 13 Q Okay. What happened next?
- 14 A John got up himself.
- 15 Q What did he do?
- 16 A We -- it -- it was so -- I don't know -- words were  
17 probably said. Next thing you know, another altercation.  
18 I mean, maybe pushed. I don't know. I really can't say.  
19 It was -- it happened so fast and everything.
- 20 Q You say he kicked you. At what point did he kick you?
- 21 A After hitting the stereo.
- 22 Q Was he laying on the ground at the time he kicked at  
23 you?
- 24 A No.
- 25 Q So this was -- did the kick occur -- was that the

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

- 1 instigation for the second fight? Would that be fair to  
2 say?
- 3 A No.
- 4 Q Can you tell me exactly in time when the kicking  
5 occurred?
- 6 A After he -- after he fell into the stereo.
- 7 Q He got up and kicked you.
- 8 A Yes.
- 9 Q And then you continued to fight.
- 10 A And then that's -- then we fought.
- 11 Q Okay. Then you fought again.
- 12 A Yes.
- 13 Q And it's at that point that you go into the bathroom,  
14 after that fight is over?
- 15 A The second one, yes, which was very brief.
- 16 Q And at that point are you cut on your forearm --
- 17 A No.
- 18 Q -- when you're in the bathroom?
- 19 A No, no, sir, no.
- 20 Q Can you tell me why you told the police that you -- at  
21 that point you said your arm was cut and you went in the  
22 bathroom?
- 23 A I ne -- I never stated that.
- 24 Q You gave the police several versions, but that was the  
25 one version of what you told the police.

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

1 A No. I did not.

2 Q You never told them that.

3 A No, I did not. At the time I told them when I was  
4 cut, was when -- after the altercation with John. I told  
5 them I did go in the bathroom. I did because I had to wipe  
6 the blood. It was coming out -- it was bleeding. I was  
7 bleeding all over. That's when I went in the bathroom --

8 Q You were bleeding all over?

9 A -- the second time. Well, I was getting blood all  
10 over my clothes, everything else.

11 Q Wait a minute. You went in the bathroom once or  
12 twice?

13 A I went to the bathroom twice, once with Ms. Lowery  
14 when she wiped my face. And I came out, and that's what  
15 caused the confrontation the third time when Ms. Lowery was  
16 going out of the -- out of the -- out of the trailer.

17 I was in the ba -- bathroom prior to that altercation  
18 when she went out after the second fight when I we -- I  
19 went and my lip was bleeding and I wiped up. And when I  
20 came back out in the kitchen, that's when John swung at me  
21 after I asked him three or four times to leave, just get  
22 out.

23 Q Either time when you entered the bathroom was your arm  
24 cut?

25 A Excuse me?

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

1 Q Either time when you entered the bathroom, was your  
2 arm cut at that time?

3 A Yeah, the second time, the time after -- the last  
4 altercation with John when I went to the bathroom that's --  
5 that's when my arm was cut. I was -- I was bleeding all  
6 over the floor.

7 Q You're talking about now after you stabbed John?

8 A No. I did not stab John.

9 Q How did he get stabbed?

10 A During the altercation.

11 Q Was anybody else there besides you?

12 A No.

13 Q So it was you and John and a knife. And John ends up  
14 with a knife in his chest. But you didn't stab him.

15 A There wasn't a knife in his chest, sir.

16 Q Well, he had a wound that was a little over 5 inches  
17 long.

18 A Yes.

19 Q Deep. Excuse me.

20 Why did you tell the police that when you came out of  
21 the bathroom you had a knife in your hand?

22 A When I came out -- what time did I come out of the  
23 bathroom, sir?

24 Q Before you stabbed John.

25 A That's not true.

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

1 Q You didn't tell the police that?

2 A No, I did not.

3 Q Can you explain how the bottle of liquor with the  
4 blood on it got into your bedroom dresser?

5 A I put it there.

6 Q Why did you do that?

7 A I -- to be honest with you, after John was beaten out  
8 like that, I grabbed -- I was going to grab everything off  
9 the table. There was blood everywhere. I picked that -- I  
10 took that up, and I took a hit and I went to my bath -- my  
11 bedroom where I put it in the drawer.

12 Q Why did you put the knife under the washer -- under  
13 the dryer?

14 A I didn't -- I didn't mean to. I didn't put it in  
15 there underneath the dryer.

16 Q You didn't put it there.

17 A No. I -- it got kicked underneath there. I told the  
18 officers where it was. They thought -- they thought it was  
19 looking underneath the washer. I had told them it was --  
20 where it was. They assumed it was under the washer. I  
21 spoke to them, and I told them specifically where it was.

22 Q Well, when the officers found the knife it was closed.

23 A That's right. I closed the knife.

24 Q And then it got kicked under the washer?

25 A I closed the knife.

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

- 1 Q And kicked it under the dryer.
- 2 A I took the knife with me when I went into the -- my  
3 bathroom to take care of my cut. And I had -- that's when  
4 I had closed the knife.
- 5 Q How did it get underneath the dryer?
- 6 A My -- my sink and -- and doorways -- it's less than  
7 3 -- 3 feet away. And I knew it. It must have fell off  
8 the thing, the counter. And I didn't care. And I walked  
9 out into the kitchen.
- 10 The only thing when they say they couldn't find it in  
11 the bathroom, that's when I said it was going to be under  
12 the dryer.
- 13 Q Well, did you wash it off before you put it underneath  
14 the dryer?
- 15 A No. I closed it, and I had washed myself.
- 16 Q But you didn't wash the knife blade off?
- 17 A No.
- 18 MR. FULMER: May I approach Your Honor?
- 19 Q This is a picture of the knife as the police found it.
- 20 A Yeah.
- 21 Q It appears to have been washed.
- 22 A Appears there's a lot of blood on it too.
- 23 Q Well, I see a few, maybe two drops, of blood.
- 24 A I did not.
- 25 MR. ALLEN: Your Honor, I would object to the -- what

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

1 it appears like. I'm not sure if I would even agree with  
2 that assessment, or you can't even tell it's been washed, I  
3 mean. I'm not sure if that's an appropriate question, in  
4 other words. It's argumentative.

5 THE COURT: Well, he can ask him questions, but you  
6 can't testify, Mr. Fulmer.

7 MR. FULMER: Yes, sir, Your Honor.

8 Q Does that knife appear as though it's been washed to  
9 you?

10 A Not to me.

11 Q Is it covered in blood?

12 A It's not covered, no.

13 Q Given the amount of blood that was in your -- in your  
14 tailer that night and the amount of blood that John lost,  
15 would you expect that knife to be covered in blood if that  
16 was the knife that was used to stab John?

17 A I can't -- I can't speculate.

18 Q Did you tell the officers where the knife was?

19 A Yes, I did on their arrival. I said I wasn't -- I  
20 wasn't sure. I said look in the bathroom. I wasn't sure  
21 at first. I wasn't even -- I wasn't even sure, period, at  
22 where it was. I said look. I never -- I never  
23 specifically said. I said look.

24 Q But you didn't tell them to look under the dryer?

25 A Again, said washing machine or dryer. I don't know --

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

- 1 Q The washer and dryer are side by side.
- 2 A Yes, sir.
- 3 Q Okay. But you're still not sure how that knife got  
4 underneath the dryer.
- 5 A Like I said, I might have kicked it underneath there.  
6 I didn't place -- I never placed it with my hand underneath  
7 there.
- 8 Q The day of the stabbing, had John been drinking all  
9 that day?
- 10 A Yes.
- 11 Q What time did he start drinking?
- 12 A I don't know what time he got up. I got up probably  
13 about 10:00 or 11:00.
- 14 Q But he started drinking about when he woke up?
- 15 A When I -- when I had gotten up he had had a beer.
- 16 Q What time was -- what time did the police arrive?
- 17 A I'm not sure.
- 18 Q Close to midnight?
- 19 A I imagine.
- 20 Q Had John been drinking all day?
- 21 A Pretty much.
- 22 Q Was he drunk?
- 23 A Yes.
- 24 Q Was he unsteady on his feet?
- 25 A At times.

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

1 Q He really wasn't a match for you, was he, in that  
2 condition?

3 A I wouldn't say that, no.

4 Q Well, you said you got the best of him.

5 A Yes. I did.

6 Q So would it be fair to say he really wasn't a match  
7 for you?

8 A No. I'm just a better fighter.

9 Q So why would you need a knife then?

10 A A knife for what?

11 Q The knife that you took from John, according to what  
12 you say, and stabbed him.

13 A I did not stab John.

14 Q Were you in fear for your safety at this time?

15 A I was in fear of -- yes, I was.

16 Q Even though you just stated that you had gotten the  
17 best of him and you were a better fighter.

18 A I got the -- I got the best of John, Mr. Ryan, in the  
19 first altercation.

20 Q And apparently you got the best of him in the last  
21 altercation. Can you explain how he has knife wounds on  
22 his back?

23 A No, I cannot. I guess -- I cannot. To my knowledge  
24 they're superficial anyway. I mean, it could have been the  
25 wrestling, with the wrestling. He were wrestling over the

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

1 knife. I'm trying to get -- this man is not -- y'all are  
2 trying to portray this man as somebody really smart. He  
3 had some strength. I'm trying to get this knife away from  
4 him, plain and simple.

5 Q How long was Tonya outside the trailer?

6 A I can't say. To walk around my home it'd probably  
7 take about maybe 20 seconds, if that. I can't say.

8 Q Had the knife appeared at the time she left?

9 A Excuse me?

10 Q Had the knife come out? Did you see the knife before  
11 Tonya left?

12 A No, I did not.

13 Q So can you describe that sequence of events starting  
14 with the time that Tonya leaves out the back door?

15 A I wasn't even aware Tonya had left when I was fighting  
16 John until I had seen her come in the front door. When I  
17 was fighting John I assumed that she was behind me. I  
18 didn't even know.

19 I said -- I seen the front door, walking through the  
20 front door, I said what the heck, you know. That's when I  
21 told her to call 9-1-1. How did you get there? I mean --  
22 I mean, I didn't even know she took off. I thought she was  
23 behind me all the time through the whole altercation which  
24 probably took -- I don't know. Everything happened so fast  
25 it was just minutes. It wasn't really long at all.

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

1 Q But by the time Tonya came around you'd already  
2 supposedly gone to the bathroom and washed off the knife  
3 and put it underneath the dryer.

4 A No, sir.

5 Q She said she didn't see a knife when she came in the  
6 front door.

7 A She did not -- I guess not. I guess she didn't. When  
8 I asked Ms. Lowery to call 9-1-1, I hadn't been to the  
9 bathroom yet.

10 Q So you still had the knife.

11 A Yes.

12 Q She just didn't see it.

13 A Apparently not. Before I went to that bathroom I  
14 tried to stop the bleeding for John. I tried to save his  
15 life. I took a rag and I put it on his chest. I told her  
16 to call 9-1-1. I didn't want this man to die. I told 'em  
17 to hurry up.

18 Q It was too late at that point though, wasn't it?

19 A I don't know when he passed away. I don't know. I  
20 have no idea. But I tried. I did my -- my best. I -- God  
21 give me the strength to do whatever I have to do to save  
22 this man. I did whatever I could do. I gave him mouth to  
23 mouth, and I couldn't save him. It's not my fault. It  
24 could have been me down there. It just so happened it just  
25 wasn't me.

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

- 1 Q Well, just so happened because he didn't stab you.  
2 You stabbed him.
- 3 A I did not stab John. He got cut in the altercation.
- 4 Q An altercation with you.
- 5 A With me.
- 6 Q With a knife that was your knife.
- 7 A It was my knife.
- 8 Q Mr. Rogers, you say you didn't stab John. You said he  
9 was cut during the altercation. Is that fair?
- 10 A Yes.
- 11 Q Okay. According to the autopsy report this chest  
12 wound was 5.6 inches deep.
- 13 A Deep is not -- isn't that long way -- as far as what  
14 my attorney told me.
- 15 Q Deep into his body cavity.
- 16 A Said he it was no -- it was no puncture in the body  
17 cavity, as far as my attorney told me. It was elec -- a  
18 long cut. As far as I -- I'm knowing. I don't -- I don't  
19 know. I cannot -- I cannot say -- I cannot say.
- 20 Q Well, I am just reading --
- 21 A They're trying to put words in my mouth, and I cannot  
22 say. I don't know. You keep asking me, asking me, asking  
23 me. I cannot answer that question for you.
- 24 Q You have a clear recollection of trying to save his  
25 life, don't you?

Michael Anthony Rogers  
Cross-examination by Mr. Fulmer

1 A Yes.

2 Q You have a clear recollection of the fistfight that  
3 went on and your cut on your arm.

4 A I don't know how I got that cut. I mean, I don't even  
5 remember getting the cut until after. I didn't even know I  
6 even had the cut until after when -- when it stopped. I  
7 didn't even know I was bleeding until I was trying to stop  
8 his bleeding.

9 Q Do you have an explanation as to why your memory gets  
10 so fuzzy during the time that John is stabbed and killed?

11 A What I'm stating is that it happened so fast, you're  
12 talking minutes. You're talking just minutes. It wasn't a  
13 long period of time.

14 We -- it wasn't a round one, you know, waiting for  
15 round two. It was nothing like that -- three-minute  
16 rounds. It -- it just happened so fast. It was -- I  
17 can't. You're asking me to -- to answer you something I do  
18 not know.

19 MR. FULMER: That's all the questions I have, Your  
20 Honor.

21 MR. ALLEN: No further questions, Your Honor.

22 THE COURT: You may step down.

23 MR. ALLEN: That's the defendant's showing on this  
24 motion.

25 THE COURT: All right. Mr. Fulmer.

Jackie Lance  
Direct examination by Mr. Fulmer

1 MR. FULMER: Your Honor, the state would call Jackie  
2 Lance.

3 JACKIE LANCE, having been  
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. FULMER

6 Q Ms. Lance, how old are you?

7 A Twenty-five.

8 Q Where do you live?

9 A I live at [REDACTED], is my mailing address. I  
10 just moved to [REDACTED].

11 Q Where were you living back on November the 12th?

12 A [REDACTED].

13 Q And where is that in relation to Carolina Drive  
14 Extension?

15 A It's also on the same road. It's just like there's a  
16 red light. And I live on the opposite side. There's a few  
17 miles difference in his residence and mine.

18 Q Are you --

19 A My sister lived on the other side of Mike.

20 Q She lived on Carolina Drive Extension?

21 A No. She lived on Fortune Drive. That was the little  
22 road off to -- to the side of it.

23 Q Okay. So Fortune Drive, Carolina Drive Extension and  
24 Horton Drive where Ms. Tonya Lowery lived --

25 A They're all back to back.

Jackie Lance  
Direct examination by Mr. Fulmer

1 Q All in walking distance of each other?

2 A Right.

3 Q So you were familiar with Carolina Drive Extension and  
4 Fortune Drive.

5 A Yes, I am, uh-huh.

6 Q Can you tell me how you first came in contact with  
7 John and Mike back on that day?

8 A I was walking from my sister's. I did not see John or  
9 Tonya at the time. And my phone had died. I was trying to  
10 call my sister to come and pick me up and give me a ride to  
11 the store. I did not feel like walking. Usually I did.  
12 It got hot. I was tired. So I just called her. I was  
13 going to call her. I seen him standing on his porch. He  
14 had a phone. My phone was dead. I asked him to use his  
15 phone. He let me. I mean, he was --

16 Q You say, he. You're referring --

17 A Mike.

18 Q Mike.

19 A He was nice enough about that or whatever. My sister  
20 didn't pick up the phone. We stood there and talked for a  
21 few minutes, but I went on about my business.

22 Q Okay. And then what happened?

23 A I mean, like what did I do? What else did I do that  
24 day or --

25 Q When did you next see Mike or John?

Jackie Lance  
Direct examination by Mr. Fulmer

1 A Later on that day I was walking. I started to walk to  
2 the store, there again. Like I said, we lived within  
3 walking distance of everything.

4 Everybody knows everybody. We grew up, you know,  
5 around the same neighborhood or whatever. And I was  
6 speaking to Tonya on the phone telling her I was going to  
7 get some cigarettes. And she -- they offered me a ride and  
8 they picked me up.

9 I bought Mike a pack of cigarettes because they gave  
10 me a ride to my friend's house, a paraplegic, which I  
11 cleaned his house. I gave him the cigarettes, a little bit  
12 of gas money and they -- we all went back.

13 I wanted to go home. They had to stop at the trash  
14 dump. They had another car there, so it was altercation  
15 there. And then the police were called. They talked --  
16 the guys talked -- the other people out of, you know,  
17 talking to the police. They exchanged insurance  
18 information or whatever. And there was no talking to the  
19 police at that dump right at that time.

20 So then we all go back. And they were both drinking.  
21 When they said that, we sat at the table. Yes, I did sit  
22 at that table. And there was no knife on that table  
23 whatsoever. I will state that because I was sitting there.

24 Q Okay. Well, let's back up a little bit.

25 You knew who Mike was from the neighborhood, is that

Jackie Lance  
Direct examination by Mr. Fulmer

1 right?

2 A Right.

3 Q And you knew who John was?

4 A No.

5 Q You'd never seen John before.

6 A No, sir. I'd never met neither one of them prior to  
7 this, prior to that day.

8 Q What about Tonya?

9 A I've known Tonya from the neighborhood.

10 Q So there was a trip to the dump. Mike's driving at  
11 that point in time?

12 A I really don't remember who was driving.

13 Q But it's in John's truck?

14 A Yes.

15 Q Okay. And then at some point in the evening you're  
16 back at -- you're with them at Mike's house?

17 A Yes.

18 Q Okay. Is John drinking at this point?

19 A They were both drinking.

20 Q Do you remember about what time of the night this was?

21 A I don't remember a specific time, no, sir.

22 Q Was it dark?

23 A Yes, sir.

24 Q Were you drinking with them?

25 A No, sir. He poured me a shot, Mike did, as well as

Jackie Lance  
Direct examination by Mr. Fulmer

1 hisself. Then that's when I realized that they were all  
2 drinking out of the same bottle. I do not drink after  
3 people.

4 So there -- and it was not done behind his back. It  
5 was not done secretively. No one -- it was not like I  
6 slipped anything on him. When he poured that in my drink  
7 or whatever he was drinking a mixed drink. So I just  
8 looked at him kinda and I reached over and dumped it back  
9 in his cup. I never drank anything while I was there.

10 Q Did you see Tonya drinking?

11 A No, sir.

12 Q How long were you there before an altercation broke  
13 out?

14 A Not long. Maybe ten or 15 minutes, if that long.

15 Q And tell me who is in the trailer at this point.

16 A Me, Tonya, Mike and John.

17 Q Okay. And what does John do?

18 A I mean, to be honest, that man was so messed up he  
19 couldn't even -- he couldn't have defended hisself. And  
20 the rage that Mr. Mike was in he, he could not have.

21 Now, and when they keep saying that he put his arms  
22 around Tonya in some kind of sexual way, that's not what  
23 happened at all.

24 Q Can you tell me what did happen?

25 A Yes, sir, I can. Tonya was on this side of this bar,

Jackie Lance  
Direct examination by Mr. Fulmer

1 the side I was standing on. And when John walks up it  
2 looked like he leaned on her to catch his balance. He was  
3 not trying to touch her in any kind of way.

4 And then that's when Mike come around the corner in  
5 such rage I backed away. He scared me. And he jumped on  
6 John. He threw him to the ground, his whole head bounced  
7 off of a stereo system.

8 Then he jumps on top of him and just keeps hitting him  
9 and hitting him and hitting him. And that's when Tonya  
10 grabbed the back of his pants. And I'm trying to get him  
11 to where they can stop hitting this man. It was obvious he  
12 could not fight back. He kept continuing to hit him and  
13 yelling you M.F.'r this, you disrespecting my woman. And  
14 I'm begging him to please stop.

15 So he finally lets him go. Oh, no, that's -- no. I'm  
16 sorry. I stuck my arm in between them trying to get him  
17 stop hitting him in the face because by this time he'd done  
18 knocked John's glasses off. The man's head was literally  
19 bouncing off the floor he kept hitting him so much.

20 And when I put my arm between, he actually hit me  
21 trying to hit John again. And when he hit me I threw my  
22 hands up. I was like, oh, no, you know, because I did not  
23 want to get hurt. I did not know this man.

24 What I was told is they'd known each other for years,  
25 they were good friends. So I'm thinking, you know, this is

Jackie Lance  
Direct examination by Mr. Fulmer

1 just going to blow over.

2 If I had any idea that that was -- that he was going  
3 to stab him when I walked out of that door I would have  
4 called the police while I was leaving. I did not even know  
5 that that was that bad.

6 He was violent. And then when John did get to his  
7 feet, John did kick him between the legs, which to me was  
8 deserved. He had sat there and beat that man in this face,  
9 in his head, all in the floor. And we tried to separate  
10 him and pull him off of him. And he would not stop. He  
11 had every chance to get off of him, and he did not.

12 Once he did get off of him, he just kept jumping back  
13 on him. Once he jumped back on him after he kicked him  
14 between the legs he got him down again still steady beating  
15 him and beating him and calling him all kind of names,  
16 yelling at him that he disrespected his woman. And that's  
17 what happened. It was not a sexual pass whatsoever. That  
18 man was just trying to catch himself.

19 Q How -- how many episodes of fights do you remember?

20 A I remember three.

21 Q So they fought, broke up, fought, broke up.

22 A Right.

23 Q Okay. You think it was three episodes.

24 A The third one -- like I said, the second one was when  
25 John kicked him. The third one was he went down the

Jackie Lance  
Direct examination by Mr. Fulmer

1 hallway. Tonya followed behind him. I don't know what  
2 they were doing down there. You know, it's not my home. I  
3 really ain't never been there before in my life. So I  
4 never -- I did not know how the trailer was set up.

5 All I could see was the kitchen and the living room.  
6 And there was another door out to like -- where you walk in  
7 the front door to the right, maybe a bedroom.

8 And when he come back down the hallway it was, like I  
9 said, with such force and rage I there again backed up.  
10 And he jumps on him again. This time John was not swinging  
11 back. I mean, he couldn't. He couldn't defend hisself  
12 against him.

13 Q Because he was drunk?

14 A Yes. And he was taking nerve medication. Like I  
15 said, he said they were prescribed to him. And I remember  
16 saying you don't need to take 'em while you're drinking,  
17 because he was offering them to me, and which I told him  
18 no. He was staggering. He could not have defended  
19 hisself.

20 Q After this, what you remember being the third  
21 altercation, what did you do?

22 A That's when I was -- I kept telling them all they was  
23 crazy and I was going home. I don't care if I had to walk.  
24 And they keep saying -- he said that he gave me the keys.  
25 No, he did not. John did. John said you did not walk

Jackie Lance  
Direct examination by Mr. Fulmer

1 here, you should not have to walk home.

2 He chucked me the keys. He said go on home and wait  
3 about ten or 15 minutes and come back, it'll blow over. So  
4 I agreed to that.

5 I go to my house. I sat and smoked a cigarette. My  
6 nerves were really bad, I mean, from catching them fight  
7 the way they did. And, like I say, I just smoked my  
8 cigarette. And I went back out the door. I told my  
9 roommate that was going back to check on -- you know, to  
10 take him his truck.

11 And when I went to pull there was police everywhere by  
12 the time I went to my house and smoked a cigarette and came  
13 back. They were putting up caution tape out in the yard.  
14 And the police motioned me on, you know, to go around them,  
15 so I did. And then I went home. I rolled the windows  
16 down. I put the keys in the floorboard. That way if he  
17 come to get his truck he could have it.

18 I had to work the next morning. I was getting ready  
19 to go for work when the officer showed up to tell -- you  
20 know, to get my side of what happened.

21 And it was not -- I kept asking was he okay and they  
22 kept telling me he was in the hospital. They did not tell  
23 me at this time he was dead.

24 After I gave them my testimony and my statement,  
25 that's when they told me that he was in the morgue, that

Jackie Lance  
Direct examination by Mr. Fulmer

1 Mike had stabbed him to death -- or after I had walked out  
2 the door.

3 Q Did you ever see a knife?

4 A No, sir.

5 Q When you left was there a fight going on or was there  
6 a break in the action?

7 A There was a break in it.

8 Q How long do you think you were gone before you  
9 returned?

10 A Not long. I'll say maybe 12 minutes tops. That's  
11 from the time I walked out the door, got to my house,  
12 smoked my cigarette and came back. Within minutes he had  
13 killed him. And that's why I said when I was sitting right  
14 there at the table there was no knife on that table. I  
15 never seen a knife, period, throughout the whole night. I  
16 never saw a knife.

17 Q Did you ever hear Mike tell John to leave his trailer?

18 A No, sir. I actually heard him tell him he could not  
19 leave because he could not drive.

20 Q Because of his drinking?

21 A His state of condition, yes, sir. He actually got  
22 mad, even more mad, at John when he gave me his keys and  
23 told me I could go.

24 Q Why do you think that was?

25 A I think because he wanted to keep his truck.

Jackie Lance  
Direct examination by Mr. Fulmer

1 Q Do you think that's why he was hanging out with John?

2 MR. ALLEN: Objection as to what she thinks as being  
3 speculative.

4 THE COURT: Sustained.

5 Q Other than the kick between the legs did you ever see  
6 John make --

7 A No, sir.

8 Q -- good contact or contact with Mike?

9 A No, sir, I did not. All I saw was him beating on him.  
10 And his head just kept bouncing. His glasses had fell off  
11 his face during -- before the second altercation I had  
12 picked his glasses up, and I handed them back to him. And  
13 I kept asking him was he all right. And he was  
14 real collective about it like, yeah, I'm okay, I'm okay.  
15 He kept telling me he was all right the whole time.

16 Q At this time did you know Tonya to be Mike's  
17 girlfriend?

18 A At this time, yes, I did.

19 Q After this happened did you ever have an occasion to  
20 hear Tonya talking about what had happened?

21 A Yes, I did.

22 Q What did you hear her say?

23 A She came to my sister's residence on Fortune Drive,  
24 and I had pulled up in the yard. I was walking up. She  
25 was standing there talking to several people in the

Jackie Lance  
Direct examination by Mr. Fulmer

1 neighborhood bragging about how John -- Mike had killed  
2 John over her and, I mean, that was her man and he had  
3 killed -- I mean, it was just terrible.

4 She sat there and described how he was stabbed, where  
5 he was stabbed. And that's how I knew about the wounds to  
6 back, because she said that he kept stabbing him over and  
7 over. I don't know how many times he was stabbed total.  
8 She just said it was in the chest and in the back and that  
9 he got to his feet near a bar and he fell back down three  
10 to four times and he bled to death.

11 But she was telling us that he stabbed him to death,  
12 she was there and that she saw him put the knife under the  
13 washer or dryer. The only time that she stated towards us  
14 that she walked out of the house was when she called 9-1-1,  
15 because she walked out on the porch to give them  
16 directions.

17 Q So in the version of the story you heard later she  
18 never said she walked out of the trailer.

19 A I never heard that, no, sir. From what she said and  
20 that everyone stated she was there the whole time. But she  
21 witnessed first hand of everything.

22 Q That's all I have. Please answer any questions  
23 Mr. Allen may have for you.

24  
25

Jackie Lance  
Cross-examination by Mr. Allen

1 CROSS-EXAMINATION

2 BY MR. ALLEN

3 Q You've known Tonya for a while, haven't you?

4 A I've known -- well, I mean, I wouldn't say awhile.

5 But I knew her around the neighborhood, yes.

6 Q You've known her for over a year?

7 A Like I said, I really couldn't say. She just lived in  
8 the same neighborhood as my sister. We weren't really  
9 friends. We were just acquaintances.

10 Q Within walking distance of where you were living,  
11 correct?

12 A I mean, you could say that, but that'd be a good  
13 little walk.

14 Q Well, correct me if I'm wrong. Didn't you testify  
15 earlier that every -- all of these residences were within  
16 walking distance?

17 A Well, they are. Back from my sister's residence  
18 towards Mike's, it wasn't two blocks. My residence was on  
19 down the road through the red light, as I stated.

20 Q Yeah. But when --

21 A So, yes -- well, I mean, yes, I can walk there. It's  
22 like 2 or 3 miles --

23 Q Okay.

24 A -- which I do walk a lot. That's nothing to walk to  
25 me.

Jackie Lance  
Cross-examination by Mr. Allen

- 1 Q And you walked to your sister's before.
- 2 A Several times.
- 3 Q Okay. And you walked to the store before.
- 4 A Several times.
- 5 Q And your sister, you say, lives --
- 6 A She lived on Fortune Drive right below Mike.
- 7 Q Right below Mike.
- 8 A Yes.
- 9 Q Close to Mike.
- 10 A Right.
- 11 Q Near Mike, I mean, like next door to Mike or something
- 12 like that?
- 13 A No, sir. Like a block from him, or two.
- 14 Q A block from him. All right. Now, but you -- is it
- 15 fair to say that -- that you and Tonya do not get along?
- 16 A No, sir. We do not. I mean, well, we have not in the
- 17 past.
- 18 Q I'm sorry?
- 19 A We have not got along in the past. There was one
- 20 incident where we had not gotten along till the whole time
- 21 I had known her. Other than that, yes, we did.
- 22 Q Okay. And at this time you were not getting along
- 23 with her when this event occurred.
- 24 A I was getting along with her because she was the
- 25 reason I was there. I did not know the guys. I did Tonya.

Jackie Lance  
Cross-examination by Mr. Allen

1 Q Tonya was in the truck when they stopped to pick you  
2 up earlier that day?

3 A Which time? Because they come twice.

4 Q Okay. Well, the time that you ended up over at Mike's  
5 home -- correct me if I'm wrong -- but didn't you get  
6 picked up?

7 A No. Tonya was in not in the truck. They had went in,  
8 and I was sitting outside in the truck waiting on her to  
9 come out. They were taking a really long time.

10 So that's when I got out and went and knocked upon the  
11 door. They were all -- when they opened the door there  
12 were all sitting there drinking or whatever. And that's  
13 when Tonya had walked up. The first words out of her mouth  
14 was she wanted a cigarette, which I had got her a pack of  
15 cigarettes for taking me to my friend's house.

16 Q So you -- when you went there Tonya was not there.

17 A No. But it was not even five minutes, she had walked  
18 up.

19 Q Okay.

20 A Because I had just walked in the door, and she walked  
21 up behind me.

22 But earlier that day when I had met Mike, Tonya had  
23 walked up there again because I think she thought that I  
24 was trying to talk to her boyfriend. And that was not the  
25 case. I just needed a phone. And he was nice enough to

Jackie Lance  
Cross-examination by Mr. Allen

1 let me use his phone, which I did thank him for.

2 Q Okay.

3 A And then that's when I stated that she was his  
4 girlfriend and they were seeing each other.

5 Q At the time when you used the telephone did you see  
6 John there?

7 A No.

8 Q He was not in the home at all?

9 A No, sir.

10 Q Was his truck there?

11 A I didn't see his truck, no.

12 Q And that was about what time when you --

13 A I can't recall, sir. That was months ago. It was --  
14 it was still -- it was not dark. It was nowhere near it.  
15 Maybe three or four. I would say anywhere between two to  
16 four.

17 Q Okay. And that was the day, right, I mean, that was  
18 the day of the incident, right?

19 A Yes, sir.

20 Q Okay. It's your testimony that when you went in to  
21 use Mike's phone to call --

22 A I never went inside. It was his cell phone. He was  
23 standing on his porch.

24 Q He was standing on his porch, and you were calling  
25 your sister --

Jackie Lance  
Cross-examination by Mr. Allen

- 1 A Uh-huh, my other sister.
- 2 Q -- who lives --
- 3 A I have two sisters. One stayed on Fortune. One  
4 stayed right beside me on South Avenue.
- 5 Q Well, you called your sister that lived within a block  
6 of Mike?
- 7 A No. I was walking from her house.
- 8 Q Towards your house?
- 9 A Towards the mid -- yeah. The little Kangaroo station.
- 10 Q Now, I want to go through this a little bit. So as I  
11 understand, you're saying that Mike never told John to get  
12 his hands or to stop leaning on or don't touch --
- 13 A No, sir.
- 14 Q -- Tonya.
- 15 A No, sir.
- 16 Q Okay. You're saying that he just came up and hit you,  
17 is that correct?
- 18 A No. He come around the bar in a rage. He was  
19 screaming you M.F.'r, was the first words out of his mouth.
- 20 Q Uh-huh.
- 21 A I dare you disrespect her, and that's when he jumped  
22 on him.
- 23 Q Okay.
- 24 A He threw him to the ground, and his head bounced off  
25 of a stereo.

Jackie Lance  
Cross-examination by Mr. Allen

1 Q John fought back?

2 A And then he continued to beat him. No. He couldn't  
3 fight back.

4 Q He couldn't fight back.

5 A No, sir. He never even hit him back.

6 Q Because he was drunk?

7 A They were both drunk but this -- I think it was the  
8 medication and the alcohol that made him react so slowly,  
9 because like he was just like slow acting in everything he  
10 did. It was not just their altercation. It was just in  
11 general.

12 Q All right. Now --

13 A I mean, honestly my five-year-old could have beat him  
14 up.

15 Q Your five-year-old could have beaten him up.

16 A More than likely, yes, sir.

17 Q Okay. Now, you were -- but John got back to his feet.

18 A Yes, he did stumbling and staggering the whole time.

19 Q And he kicked Mike between the legs.

20 A Yes, and he about lost his balance when he kicked him.

21 Q And he kicked Mike hard between the legs.

22 A No, it was not hard. I mean, if it was hard it would  
23 have stopped him a little bit.

24 Q It's --

25 A He went back at him even harder. So when he kicked

Jackie Lance  
Cross-examination by Mr. Allen

1 him he basically caught him in his pants. I mean, he made  
2 connection with him, but there was no way he really hurt  
3 him.

4 Q Even if -- but Mike had had surgery about a month or  
5 so before.

6 A I'm unaware of this. I do not know these people.

7 Q Now, and at this point you wanted to leave the house?

8 A Yeah, I wanted -- yeah, I wanted to leave when they  
9 started -- I mean, when he first came around. I could  
10 leave anyway. I didn't want to be there. That's why I got  
11 out and knocked on the door, because I wanted to go home.

12 Q You didn't really know these folks.

13 A No. I knew Tonya.

14 Q Yeah. But you didn't know the guys fighting.

15 A No.

16 Q So you didn't want to be around them while they're  
17 fighting.

18 A No, sir. And they scared me, especially when I tried  
19 separate them and he hit me.

20 Q So you certainly would have -- so you wanted to leave  
21 even if you had to walk back to where you --

22 A Yeah, I sure would have, yes, sir.

23 Q But you didn't --

24 A Anyone in my position would have.

25 Q But you didn't, you say.

Jackie Lance  
Cross-examination by Mr. Allen

- 1 A I didn't what?
- 2 Q You didn't leave.
- 3 A Yes, sir. I left.
- 4 Q Okay. But you didn't walk home.
- 5 A No, sir.
- 6 Q In fact, you asked --
- 7 A I did not ask anyone. I said I'm leaving, you are all  
8 crazy, and I will walk, I do not care. That was when John  
9 said, like, no, you don't have to walk. He said you didn't  
10 walk over here. That was his exact words to me.
- 11 Q And did John hand you the keys?
- 12 A Yes, he did.
- 13 Q So you left in his truck --
- 14 A Yes, I did.
- 15 Q -- to go back to your house.
- 16 A I sure did.
- 17 Q And had you known that this thing would have gotten  
18 worse than it was involving a knife or involving somebody,  
19 you would have called the police, right?
- 20 A Yes, I would have.
- 21 Q Okay.
- 22 A Maybe I should have anyway.
- 23 Q But you're telling us that to your best guess about 12  
24 minutes or so later you went back there. You saw police  
25 there.

Jackie Lance  
Cross-examination by Mr. Allen

- 1 A Right, 12 to 15 minutes.
- 2 Q You saw police there.
- 3 A Yes, I did.
- 4 Q How many police?
- 5 A They were everywhere.
- 6 Q Did you --
- 7 A They motioned me around their car, and I went on back  
8 to my house.
- 9 Q Did you see an ambulance?
- 10 A No. I don't recall seeing an ambulance. All I  
11 remember is all the lights.
- 12 Q Okay. But you didn't stop and say, hey, wait a  
13 minute, this truck belongs to somebody.
- 14 A No, I did not.
- 15 Q Okay. Let me ask you the question.  
16 You didn't stop to say, hey, this truck belongs to  
17 somebody that's in that mobile home.
- 18 A No, sir.
- 19 Q You didn't stop to say, hey, I may know something  
20 about this, let me talk to y'all, right?
- 21 A No, sir. I was scared. The police were there. So, I  
22 mean, they were doing their job. Why did I need to stop?  
23 I thought they were just fighting. I had no clue he had  
24 killed him.
- 25 Q Okay. And you left and did not even -- and you took

Jackie Lance  
Cross-examination by Mr. Allen

1 the truck back where?

2 A To my house, which I -- like I said, I rolled the  
3 windows down and put the keys in the floorboard.

4 Q And the next morning you --

5 A I had his phone. His phone was in the truck. I tried  
6 to call what I think was his mom several times. I tried to  
7 call other people that was in the phone to let them know  
8 what was going on or what I had saw, and no one -- I got in  
9 touch with no one.

10 Q You knew his mom.

11 A I didn't know anyone.

12 Q You knew his mom's telephone number.

13 A It was in the phone.

14 Q Whose phone?

15 A His phone.

16 Q Where was his phone?

17 A In the truck.

18 Q How did you know it was his mother's number?

19 A Because it said mom.

20 Q Okay. Did you leave a message?

21 A I don't remember.

22 Q Now, so the next morning -- is it your testimony that  
23 you went to the police?

24 A No, sir. I was getting dressed for work.

25 Q They came to you?

Jackie Lance  
Cross-examination by Mr. Allen

- 1 A They came to me.
- 2 Q When you came into the house that night and saw them  
3 drinking, how long were you sitting there at the table  
4 before there was any kind of fight?
- 5 A Anywhere between maybe five to ten minutes. It wasn't  
6 long.
- 7 Q Not long at all?
- 8 A No.
- 9 Q Maybe shorter than five to ten minutes?
- 10 A Maybe shorter, but I doubt it. I sat there for a  
11 minute. We were talking, and they were telling me about  
12 that they were friends and just talking in general. No one  
13 was fighting. Everyone was smiling, laughing. It just did  
14 not look like a violent situation to me, but it turned that  
15 way very quickly.
- 16 Q While you were talking with them basically, I guess,  
17 looking like you normally do in a conversation -- is that  
18 right?
- 19 A Sure.
- 20 Q You're looking at Mike when he talked.
- 21 A I suppose so. I was mainly paying attention towards  
22 Tonya.
- 23 Q You were paying most of the attention toward Tonya, is  
24 that right?
- 25 A Uh-huh.

Jackie Lance  
Cross-examination by Mr. Allen

1 Q You were not taking mental note of everything that was  
2 in the house, correct?

3 A No, sir.

4 Q You were not taking mental note of where everything  
5 was in the kitchen.

6 A No. Like I said, that's not true. I mean, the first  
7 thing I do personally when I walk into any room is I will  
8 look around to see what I see. And sitting at that table,  
9 there was no knife on it.

10 Q What was on the table?

11 A There was maybe like a little napkin holder dispenser  
12 thing like whatever around the table, his bottle of liquor  
13 and a couple of shot glasses.

14 Q Anything else?

15 A Not that I recall.

16 Q Well, you made a mental note of it. What about the  
17 mail?

18 A I didn't see any mail on the table either.

19 Q Any papers?

20 A No, sir.

21 Q So it was a pretty clean table.

22 A Yes. It was a very clean house.

23 Q A very clean house?

24 A Uh-huh, which part I was in. I had not been all the  
25 way through his house, nor did I want to be.

Jackie Lance  
Cross-examination by Mr. Allen

1 MR. ALLEN: One second, please, Your Honor.

2 (Pause.)

3 Q This conversation that you say you heard Tonya have  
4 was over at your sister's house, right?

5 A Yes, yes, sir, it was.

6 Q Which sister?

7 A Her name is Pamela Lance. She resided -- like I said,  
8 she lived on Fortune Drive.

9 Q This was the sister that lived on Fortune Drive.

10 A Yes, it was.

11 Q Now, I may be confused again, but that's the one  
12 within a block of where Mike was living or --

13 A Yes.

14 Q Pamela Lance.

15 A Yes. And then on a separate occasion she had run into  
16 another sister of mine at a store and was also bragging  
17 about it to my sister Jessica.

18 Q Your sister Jessica.

19 A Yes. Jessica actually knew where they hid the weapon  
20 and everything. From what she was saying, was she was in  
21 the house the whole time.

22 There was never no exiting of the back door, that she  
23 saw him stabbing him and that she saw him put the knife  
24 under the dryer, or the washer rather, whichever. I don't  
25 know if that was true or not. That's what she was saying.

Jackie Lance  
Cross-examination by Mr. Allen

1 Q Okay.

2 A And it was in pretty good detail. So if it was lies,  
3 she has a very detailed imagination.

4 Q And was all of this being said during the time that  
5 you and Tonya were not getting along?

6 A At this time -- well, there was only one incident  
7 where we did not get along, only one out of the whole time  
8 I had known her.

9 Q All right.

10 A And we -- we settled that that day. So anywhere after  
11 that, we had no altercations with each other.

12 Q I see. Y'all were friends then.

13 A No. I wouldn't call her a friend either. I just knew  
14 her.

15 Q Just knew her.

16 A Right.

17 Q Okay. Didn't want to be friends with her.

18 A I didn't care to, no, sir.

19 Q These conversations that you say you heard Tonya  
20 engage in with your sister --

21 A Uh-huh.

22 Q -- of course you knew the police had been called,  
23 right?

24 A Excuse me?

25 Q You knew the police had been investigating this case.

Jackie Lance  
Cross-examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q I mean, after all, you went down to the police station  
3 and gave a statement, right?
- 4 A I never went to the police station, no, sir. They  
5 came to my house.
- 6 Q And you signed a statement.
- 7 A I sure did.
- 8 Q Okay. At your house.
- 9 A Yes, sir.
- 10 Q I see. So you did not call the police to say, hey, I  
11 got more information for you, did you?
- 12 A No, sir. Sir, I did not want to be brought into none  
13 of it. I did not ask for them to start fighting. I didn't  
14 even want to be here today.
- 15 Q I understand.
- 16 A I mean, and I surely didn't want that man to kill that  
17 man five seconds after I walk out the door. That man could  
18 not defend hisself. Like I said, my child could have  
19 jumped on him. It was uncalled for. It was -- he already  
20 beat him up. Why did he have to stab him too?
- 21 Q And that man could have left that residence, right?
- 22 A How could he have left?
- 23 Q Mr. Ryan could have gotten on his feet and walked out,  
24 correct? Nothing stopped him.
- 25 A No. He could have maybe stumbled out. Walked out,

Jackie Lance  
Cross-examination by Mr. Allen

1 no.

2 Q But he could have gotten out of that residence, right?

3 You would have -- you would have helped him.

4 A If that's what you want to say.

5 Q Wouldn't you have helped him out? You had his keys.

6 A Sure, I would have.

7 Q Okay.

8 A But like I said, I just wanted to leave. They're big  
9 men. I had done been hit by one of them. I wanted to go  
10 home.

11 Q And Mr. Ryan was bigger than Mr. Rogers.

12 A Maybe a little taller. Bigger, no. I think Mike was  
13 bigger and definitely stouter.

14 Q You would not have wanted Mr. Ryan to cut Mr. Rogers  
15 either, would you?

16 A No, sir. But I really don't think he did.

17 Q Okay. You didn't see -- but you didn't see a knife.

18 A No, I didn't.

19 Q You didn't see any cuts being made.

20 A No, sir.

21 Q So you got no way of coming to a police like that  
22 except just what you believe, right?

23 A Well, with what I saw and the state of mind that that  
24 man was in and that he was in I really -- no. I'm -- I'm  
25 thinking to myself, no, sir, I did not think that man cut

Jackie Lance  
Redirect examination by Mr. Fulmer

1 him at all. I do not think that man had that knife at all.

2 I think he did. I think he cold-bloodily killed him.

3 Q And you don't have any --

4 A And I think Tonya was an accessory to it.

5 Q You're just making -- what you're saying is based on  
6 what you saw previously.

7 A And basically what I was told by Tonya, yes.

8 Q I see. No more questions. Thank you.

9 REDIRECT EXAMINATION

10 BY MR. FULMER

11 Q Did you ever read the statement that Tonya gave to the  
12 police?

13 A No, sir.

14 Q So you didn't know whether she told the police she had  
15 been inside or outside of the trailer.

16 A No, sir. Today was the first time I had ever heard of  
17 the back door actually. I heard about the stabbing and him  
18 having the knife and her being there the whole time, her on  
19 the phone with the police and on the porch telling them how  
20 to get there, but there was never, ever nothing said about  
21 her exiting the back door and coming back through the  
22 front.

23 Q And did you ever hear Mike tell John to leave the  
24 trailer?

25 A No, sir.

Sean Nix  
Direct examination by Mr. Fulmer

1 Q Thank you.

2 THE COURT: Okay. Step down.

3 MR. FULMER: Call Sean Nix.

4 SEAN NIX, having been first  
5 duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. FULMER

7 Q Deputy Nix, where do you work?

8 A Spartanburg County Sheriff's Office.

9 Q How long have you worked there?

10 A A total will be 11 years next year.

11 Q What's your -- what's your role there? What do you  
12 do?

13 A I am currently a crime scene investigator.

14 Q Were you involved in the investigation of the murder  
15 at [REDACTED] --

16 A Yes, sir.

17 Q -- back in November, the one we've been talking about  
18 her today?

19 A Yes, sir.

20 Q Did you make some photographs of that scene?

21 A Yes, sir.

22 MR. FULMER: May I approach Your Honor?

23 Q These photographs if you can look through those --

24 A Sure.

25 Q -- and let me know if those are the ones you took at

Sean Nix  
Direct examination by Mr. Fulmer

1 the scene.

2 A Yes, sir.

3 Q Thank you.

4 MR. FULMER: Your Honor, the state would like to enter  
5 these into evidence.

6 MR. ALLEN: For the purpose of this motion hearing  
7 I've got no objection. That's not to say that I agree to  
8 the admissibility of those photos to be shown to a jury, or  
9 at least not all of them. I would object to that. But for  
10 the purpose of this hearing, no.

11 THE COURT: Okay. Well, they are -- all of this  
12 evidence is solely for the purpose of this hearing.

13 MR. ALLEN: Yes, sir.

14 (Photographs marked State's Exhibits Nos. 1 through  
15 8.)

16 Q While you were processing the scene at [REDACTED]  
17 [REDACTED] did you get a phone call from William Gary?

18 A I believe, yes. I'm sorry. Yes, I did.

19 Q Did he ask you to search the residence for a second  
20 knife?

21 A Yes, sir.

22 Q Other than the knife that's depicted in these  
23 photographs and has been described and claimed by  
24 Mr. Rogers, were you able to find another knife?

25 A The only other knives found at the residence were in a

Sean Nix  
Cross-examination by Mr. Allen

1 kitchen drawer.

2 Q Were they typical kitchen knives?

3 A Yes, sir.

4 Q Did you see any blood on them?

5 A No, sir.

6 Q Did they appear to be recently washed?

7 A No, sir.

8 Q Did you thoroughly search the entire residence?

9 A Yes, sir.

10 Q Did you move around the furniture?

11 A Yes, sir. I even moved the refrigerator.

12 Q Did not find another knife in the residence?

13 A No, sir.

14 Q Thank you.

15 MR. FULMER: That's all I have, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. ALLEN

18 Q Did you look for -- did you search at any point during  
19 this investigation the pockets of the decedent, Mr. Ryan?

20 A No, sir. Usually a body belongs to the coroner. So  
21 anything on it stays on it. We don't mess with it unless  
22 they do.

23 Q Did you notice anything on the kitchen table or on  
24 the -- on the kitchen table or the dining room table?

25 A I understand what you're saying, Mr. Allen.

Sean Nix  
Cross-examination by Mr. Allen

- 1 Q Did you notice anything on -- on that, on the table?
- 2 A There were a number of items on the table.
- 3 Q Papers?
- 4 A Yes.
- 5 Q Like mail?
- 6 A Yes.
- 7 Q Okay. It was in kind of a messy array, wasn't it?
- 8 A I wouldn't say messy, just typical clutter of a house.
- 9 Q But didn't just simply have like a napkin holder and a
- 10 couple of implements like salt and pepper shaker and some
- 11 glasses, did it?
- 12 A There was more than that, yes, sir.
- 13 Q A good bit more.
- 14 A I wouldn't say a good bit, but there was just more.
- 15 Q Now, in your looking around the residence you didn't
- 16 see any container that might be -- had been a container for
- 17 nerve pills for Mr. Ryan, did you?
- 18 A Not that I recall, sir.
- 19 Q Okay. Or any items that might be described by some
- 20 folks as nerve pills, did you?
- 21 A Not that I recall, sir.
- 22 MR. ALLEN: No other questions.
- 23 MR. FULMER: I don't have any.
- 24 THE COURT: Step down.
- 25 MR. FULMER: The state calls Susan Kolmer.



Susan Mary Comer  
Direct examination by Mr. Fulmer

1 me, I want to know where my son's at.

2 And she said everything's going to be all right,  
3 Susan, just -- they're just having a little beer and a  
4 little guitar playing.

5 So I let that night go. My gut instinct was to go get  
6 him, find him, call the police. But he's 42. I can't do  
7 that.

8 Q How did you know Tonya Lowery prior to this?

9 A I had met her. My son was giving her a ride. It  
10 seemed like he was the taxi cab of the city -- giving her a  
11 ride home where she had been walking past his trailer, and  
12 which was on Black -- South Blackstock. And she lived  
13 pretty far, and she was walking it.

14 So they stopped at my house and introduced me and  
15 talked a little bit, and he told me where she -- he was  
16 taking her. And that's how I met her.

17 Q How long ago was this before this night that you're  
18 referring to now? In other words, how long had you known  
19 of Tonya if you know the lady?

20 A Maybe three or four months. She would -- she would  
21 stop by John's and talk to him. It was no  
22 boyfriend-girlfriend thing.

23 Q Did your son drink basically every day?

24 A Yes, he did.

25 Q Would it have been unusual for him not to drink?

Susan Mary Comer  
Cross-examination by Mr. Allen

1 A Yes. He drank every day. He was an alcoholic. And I  
2 tried to watch after him for that reason.

3 Q So it would have been exceptional if at midnight or  
4 close to midnight he wasn't pretty well drunk.

5 A Sometimes he drank around the clock and passed out.  
6 He said that his body shook, so that he could drink. It  
7 would calm him down.

8 Q Do you know whether or not he took any -- something  
9 that might be called a nerve pill? Was he on any kind of  
10 medication?

11 A He had restless leg syndrome, and I tried to take the  
12 pills and issue the pill to him when he wasn't drinking.  
13 But that wasn't always successful. You know, they were  
14 made out to him. And sometimes I even took his truck and  
15 locked it in my back yard.

16 Q Thank you. Please answer any questions Mr. Allen has.

17 CROSS-EXAMINATION

18 BY MR. ALLEN

19 Q With respect to the nerve pill, do you know what they  
20 were?

21 A I -- I really don't.

22 Q You didn't know what the prescription was for?

23 A I want to say Klonzopin (sic), but I don't -- I'm not  
24 sure.

25 Q Okay.

Susan Mary Comer  
Cross-examination by Mr. Allen

- 1 A If -- I'm not sure if I'm saying it right.
- 2 Q You weren't part of his treatment. I mean, you took
- 3 him to the doctors for that or anything like that for
- 4 these.
- 5 A Yes, I did.
- 6 Q Did you tell the doctor that he was an alcoholic?
- 7 A Yes.
- 8 Q As I understand it, isn't it true that Klonopin, the
- 9 medication you're talking about, is not supposed to be used
- 10 in someone who is an alcoholic or drinks alcohol or may
- 11 have liver damage?
- 12 A Yes. I told the doctor that I would try to issue the
- 13 pills to him when he was not drinking.
- 14 Q The doctor talked to you then about that?
- 15 A Yes. We --
- 16 Q He's not supposed to be drinking alcohol with that?
- 17 A Yes.
- 18 Q And when you say your son drank -- and, I mean, it's
- 19 fair to say that he drank to excess.
- 20 A Yes.
- 21 Q Got drunk.
- 22 A Yes.
- 23 Q And that sometimes he would get violent or fights --
- 24 A No. I didn't say that.
- 25 Q No, no. I'm asking -- I'm asking.

Susan Mary Comer  
Cross-examination by Mr. Allen

- 1 A No. He was never a fighter.
- 2 Q Oh, never a fighter.
- 3 A Never. People would -- you know, if there was a fight  
4 he would end up with the worst end of it.
- 5 MR. ALLEN: One second, please, Your Honor.
- 6 (Pause.)
- 7 Q You did not receive any calls on the day or night of  
8 the incident we're talking about, the 12th of November, did  
9 you?
- 10 A Did I receive a call?
- 11 Q Yes, ma'am.
- 12 A If it's on my cell. I don't know what time you're  
13 talking about. Would it be day, night, what?
- 14 Q At any time during the day of November 12th, which is  
15 the date of this incident, did you talk to anybody over the  
16 telephone in relation to, you know, about John or about  
17 this incident on that day?
- 18 A No, not until 3:00 in the morning when the coroners  
19 came to my door.
- 20 Q So up until the time that -- so from the time that you  
21 got the call the day before -- and I believe you said that  
22 your son called you, is that right?
- 23 A No, I didn't say my son called me. I called my son.  
24 I got off work.
- 25 Q I'm sorry. You called your son the day before.

William Gary  
Direct examination by Mr. Fulmer

1 A Yes.

2 Q And that's when the phone was handed off to Tonya,  
3 right?

4 A Yes, because he was so drunk he couldn't talk.

5 Q So from that time until you heard from the coroner the  
6 next morning you didn't get any telephone calls or  
7 communications to the best of your knowledge.

8 A If I did it would be on the house phone. It would be  
9 on the cell phone which I -- it's in my purse, and it's out  
10 in another room. I don't sleep or keep my cell phone  
11 beside my ear all of the time.

12 Q You don't -- you did not get any messages.

13 A No, not that I know of.

14 Q Voice.

15 MR. ALLEN: Thank you, Your Honor.

16 THE COURT: You may step down.

17 MR. FULMER: The state calls William Gary, Your Honor.

18 WILLIAM GARY, having been  
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. FULMER

21 Q Investigator, where do you work?

22 A Spartanburg County Sheriff's Office.

23 Q How long have you worked there?

24 A Sixteen and a half years.

25 Q What's your job there?

William Gary  
Direct examination by Mr. Fulmer

1 A I'm an investigator in the violent crimes division at  
2 the sheriff's office.

3 Q Did you investigate the death of John Rogers or John  
4 Ryan?

5 A I did.

6 Q How did you become involved in that?

7 A I was -- it was my week to call for incidents that  
8 occurred when they needed an investigator to respond. And  
9 I was called about this incident.

10 Q Did you respond to the scene?

11 A I did.

12 Q Was Mr. Rogers on the scene when you got there?

13 A No, he was not.

14 Q Did you go into the scene at that time?

15 A Not at that time. I had called another investigator  
16 to do a search warrant for the scene.

17 When I first got there I was briefed by the officers  
18 as to what they were told had occurred. Basically, got  
19 enough information for a search warrant, gave that  
20 information to Investigator Letterman. And then I started  
21 the interviewing Ms. Lowery in my vehicle parked out in  
22 front of the residence waiting on the search warrant.

23 Q So you took the statement from Ms. Lowery.

24 A Yes, sir.

25 Q Did you also take a statement from Jackie Lance?

William Gary  
Direct examination by Mr. Fulmer

1 A Yes, sir, the next day.

2 Q At some point were you able to talk with the  
3 defendant?

4 A I was.

5 Q Prior to speaking with him did you tell him his  
6 Miranda rights?

7 A Yes, went over -- we went over -- myself and --  
8 Investigator Matt Davis also came out to assist in this.  
9 And he and I went -- went in the interview room with him,  
10 went over the preinterrogation waiver form we have at the  
11 sheriff's office. And Mr. Rogers signed that he both  
12 understood his rights and agreed to waive his rights at  
13 that time and speak with us about the incident.

14 Q Did he appear to be intoxicated at that time?

15 A I'd been -- I'd been told there was some drinking.  
16 You could smell some alcohol on him. So I made sure to go  
17 over that with him to see, you know, if he felt like he was  
18 actually intoxicated, taking any medication, feeling the  
19 effects of the alcohol, that he understood what he was  
20 doing.

21 I was able to understand what he was telling me. He  
22 wasn't slurring his words very badly. He wasn't stammering  
23 for things to say or having trouble staying awake, things  
24 that you see with typical intoxication. And he told me  
25 that he was not feeling the effects of the alcohol, wasn't

William Gary  
Direct examination by Mr. Fulmer

1 taking any other medication with it, that he understood  
2 exactly what was going on there that day.

3 Q And did he give you a statement?

4 A Not a written statement. We were doing a verbal  
5 interview, but we were not able to provide or obtain a  
6 written statement from him.

7 Q What did he tell you verbally?

8 A A number of things that -- he actually -- there's  
9 about three different versions of the story that he tells  
10 that took place.

11 He went over the -- that day where Ms. Lance had come  
12 over. They went to the dump, went riding around. They  
13 took her to a house to do some work or something there, had  
14 come back to the house that evening.

15 Ms. Lowery came over, and they were mixing some drinks  
16 and all. And he said they saw John put Tonya around -- or  
17 John put his arms around Tonya. He didn't like it. He  
18 said he confronted him and pushed him down. And said he  
19 got the best of him when he pushed him down, got on top of  
20 him.

21 Basically, actually his exact words were I'm not going  
22 to lie to you, I was really getting the best of him. And  
23 he told John that he would stop if it was over. He thought  
24 it was over.

25 And the first story, he said that he got up. As he

William Gary  
Direct examination by Mr. Fulmer

1 was getting up John was getting up, said John hit him a  
2 couple of more times in the face and he realized that he  
3 was cut on the arm. And that's the reason why he wasn't  
4 there when I got there. He actually was transported to  
5 Regional for some treatment to some injuries that he had.

6 And-but he said he -- he didn't have a choice. He  
7 pulled his knife from his pocket and stabbed John. And  
8 that's when he told Tonya to call 9-1-1. That was the  
9 first version that he gave.

10 After that -- he didn't mention going to the bathroom.  
11 And after previously interviewing Tonya I wanted to find  
12 out about that. So that's why I went into that. You know,  
13 I talked to Tonya. And she mentioned something about going  
14 to the bathroom and cleaning up. You know, did you go into  
15 the bathroom, and he said, yeah, I did go into the  
16 bathroom. And I said, okay, so you went to the bathroom,  
17 you know, let's -- let's start over.

18 What happens again, you know, you go the bathroom, and  
19 then how does all of this transpire. And he said that  
20 after the first fight and they separated he goes in the  
21 bathroom to do some cleaning up.

22 He comes back in, and he's come up to the hall in the  
23 kitchen. He said that John attacked him as he came into  
24 the kitchen. And he said he hit him in the face and that's  
25 when he saw that he was cut. And that's when he pulled his

William Gary  
Direct examination by Mr. Fulmer

1 knife out and stabbed John.

2           And I had asked him previously, and I asked him again  
3 here, well, tell me what -- what John cut you with, what --  
4 you know, describe it. He tells me he never saw what John  
5 had that he cut him with, never saw a knife, couldn't  
6 describe anything that would have cut him at all that he  
7 had.

8           So, you know, I was talking to him some more about it,  
9 and during that it started over about the fight. And he  
10 said that at one point he got away from him and went into  
11 the bathroom. And while he was the bathroom he noticed  
12 that his arm was cut. So now he's noticing it there.  
13 And he -- and he said he still -- he still told him he  
14 didn't see John with anything that could have cut him.

15           So he goes -- at this point he says he pulls his knife  
16 out of his pocket while he's in the bathroom. And he went  
17 back up the hall to confront John with the knife in his  
18 hand.

19           And the way he was holding his hand, it's like we've  
20 seen in training and all when someone is holding a knife  
21 that's open, that they're trying to conceal the blade or  
22 they run the blade up their arm and they can have it  
23 turned. But he -- he was actually showing me how he was  
24 carrying the knife.

25           He had it turned, his hand turned, like this is how I

William Gary  
Direct examination by Mr. Fulmer

1 was walking up -- and like he would -- the position you see  
2 where someone's trying to conceal the blade and all of that  
3 but where it's open.

4 So I asked him about that, about it being -- you know,  
5 the blade's already open and, you know, why are you opening  
6 the blade before you go up there, you know, you're going  
7 looking for a fight or whatever.

8 He said he didn't open the blade, that -- that it's  
9 got a thumb -- he stuttered or whatever -- but a thumb  
10 notch on the blade where it can be opened with one hand  
11 just my flicking that. So he said I didn't need to open  
12 the blade because I can -- I can just do that.

13 That's when I asked him, well, you know, if you were  
14 back there away from him, you know, there's -- there's  
15 nothing going on in the bathroom, why go out to confront  
16 him with a knife and not pick up your phone and call  
17 someone and say, hey, this guy just cut me in my house,  
18 please send me some help. And he didn't really respond to  
19 that.

20 Q Did you ask him to give a written statement at some  
21 point?

22 A I was going to get to that. We were working on  
23 obtaining a buccal from him for a D.N.A. standard. And I  
24 believe he -- maybe he just misunderstood what was going  
25 on. But when the -- he had signed a consent to search for

William Gary  
Cross-examination by Mr. Allen

1 that.

2 When the crime scene technician went in there to take  
3 it he started yelling he wasn't going to give his D.N.A.,  
4 he's not raped anybody. And he actually got a little bit  
5 too irate to -- to do anything else with him.

6 At that point he was -- while they were -- while I was  
7 waiting on them to do that I was on the phone trying to  
8 find out, you know, are we going -- are they going to be  
9 charges with this. That's when I informed him that he was  
10 going to be going to jail for murder.

11 Q Did you recover a guitar that belonged to John Ryan  
12 from the residence?

13 A Yes, sir. When I -- when I went to -- by his mother's  
14 residence and spoke with her, she advised me they'd been by  
15 his apartment and noticed that his guitar was missing and  
16 described it to me. And I said, well, I'm -- I know I saw  
17 a couple of guitars over there, I think, I'll go look. And  
18 so I went over there and found one exactly as they  
19 described as being his. And so I returned it to the mother  
20 from there.

21 Q Okay. Answer any questions Mr. Allen has, please.

22 CROSS-EXAMINATION

23 BY MR. ALLEN

24 Q When you began your interview with Mr. Rogers he did  
25 not appear to be too drunk, or drunk, right?

William Gary  
Cross-examination by Mr. Allen

- 1 A No, sir. You could tell he'd been drinking, but he  
2 did not seem to be drunk, no, sir.
- 3 Q Okay. So he appeared to understand what was going on,  
4 right?
- 5 A Yes, sir.
- 6 Q And understand what you were talking about, right?
- 7 A Yes, sir.
- 8 Q Because you wouldn't have talked to him otherwise --
- 9 A No.
- 10 Q -- is that correct?
- 11 A No, sir.
- 12 Q Now, when you were talking with Mr. Rogers you were in  
13 the sheriff's department, correct?
- 14 A Yes, sir.
- 15 Q And in the sheriff's department interview room.
- 16 A Yes, sir.
- 17 Q And in the interview room at the sheriff's  
18 department -- or let me ask you this. In the sheriff's  
19 department do they have tape recorders?
- 20 A Yes, sir.
- 21 Q And they have tapes.
- 22 A Yes, sir.
- 23 Q That could be used during interrogation.
- 24 A They could be.
- 25 Q Okay. And they're available for officers to use

William Gary  
Cross-examination by Mr. Allen

1 during interrogation, correct?

2 A If the officer chooses, yes, sir.

3 Q Okay. And of course you knew you were investigating a  
4 death case.

5 A Yes, sir.

6 Q You did not use a tape recorder?

7 A I never have.

8 Q So you chose not to, is that right?

9 A Yes, sir.

10 Q You never asked Mr. Rogers if he told John anything  
11 during the fights or between the fights, correct?

12 A Asked him if he told?

13 Q If he said anything to John. You never asked him  
14 about it.

15 A I'm sure during the conversation we, you know, didn't  
16 have any -- I don't know. As far as -- and I think you're  
17 getting at to ask me if he asked him to leave. I never  
18 asked him that question.

19 Q So you never asked him if he asked or if he told John  
20 to leave.

21 A No, sir.

22 Q Mr. Rogers told you they lived at that location, that  
23 mobile home, correct?

24 A Yes, sir.

25 Q You found -- or as chief investigator -- I guess

William Gary  
Cross-examination by Mr. Allen

1 you're the chief investigator on this case, correct?

2 A Yes, sir.

3 Q You subsequently got the contents of Mr. Ryan's wallet  
4 if he had one, or his papers.

5 A If we have it I've never -- I don't remember looking  
6 through it. I think the coroner's office may have those  
7 actually.

8 Q All right. When you looked through the house you  
9 didn't find -- other than a guitar, you didn't find any  
10 personal effects of Mr. Ryan's, did you?

11 A Not that I recall, no, sir.

12 Q When you were asking Mr. Rogers questions, of course  
13 at first you -- I presume that you were asking open-ended  
14 kind of questions like tell-me-what-happened kind of thing.  
15 Is that what you're saying?

16 A Yeah. It basically started out as tell me what  
17 happened.

18 Q Right. And you would let him talk. And of course  
19 what he was saying might lead you to another question,  
20 right?

21 A Yes, sir.

22 Q Now, when you were talking about what you called  
23 different versions -- and what I was thinking about while  
24 you were testifying about going into the bathroom the first  
25 time, I mean, he told you about that when you specifically

William Gary  
Cross-examination by Mr. Allen

1 asked him about going into the bathroom, right?

2 A Yes, sir.

3 Q And that was after you had learned some information  
4 from Ms. Lowery.

5 A Yes, sir.

6 Q Correct?

7 A Yes, sir.

8 Q And he readily told you about that, right?

9 A After he was asked about it, yes, sir.

10 Q I'm sorry?

11 A After he was asked about it.

12 Q After -- right. I mean, in other words, he didn't  
13 have to sit there and think and hem and haw for a while  
14 before he answered the question, right?

15 A No, no.

16 MR. ALLEN: Nothing further, Your Honor.

17 MR. FULMER: I don't have anything, Your Honor.

18 MR. ALLEN: Step down.

19 MR. FULMER: That's all from the state, Your Honor.

20 THE COURT: Okay. Anything else?

21 MR. FULMER: No, sir, Your Honor.

22 MR. ALLEN: Nothing in reply, Your Honor.

23 END OF REQUESTED TRANSCRIPT OF RECORD.

24

25

Certificate

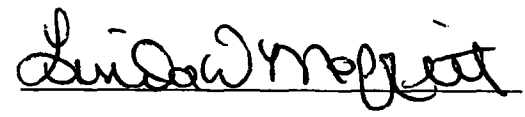
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 2nd day of September 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 1, 2011



Linda D. Moffitt  
Circuit Court Reporter

<b>STATE OF SOUTH CAROLINA</b>	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF <b>SPARTANBURG</b>	)	
The State of South Carolina,	)	
	)	
Prosecutor,	)	<b>ORDER</b>
	)	
-vs-	)	<b>Denying Motion for Dismissal</b>
	)	
Michael Anthony Rogers,	)	
	)	Indictment No. <b>2011-GS-42-1933</b>
Defendant.	)	

This matter was before this Court on motion of the defendant, by and through Circuit Public Defender Clay T. Allen, for an order dismissing the above-referenced indictment and charge now pending against the defendant pursuant to *S. C. Code Section 16-11-450* and *State v. Duncan*, \_\_\_SC\_\_\_, 709 SE2d 662 (2011). At the hearing held in this matter the defendant appeared with Mr. Allen. The State was represented by Danny N. Fulmer, Assistant Circuit Solicitor for the Seventh Judicial Circuit.

**Salient Facts**

On or about November 12, 2010, the defendant was arrested and charged with the crime of Murder in the death of John William Ryan. The defendant asserts that he was attacked by the decedent in his own home; he had the right to stand his ground and no duty to retreat and; reasonably believed that his conduct was reasonable and necessary to avoid death or great bodily harm to himself or another or to prevent the commission of a violent crime. The defendant asserts that he is immune from prosecution pursuant to *S. C. Code Section 16-11-450(A)* because he was justified in using deadly force under the circumstances of the event.

**Applicable Law**

“A person who uses deadly force as permitted by ... law is justified in using deadly force and is immune from criminal prosecution ... for the use of deadly force, unless the person against whom deadly force is used is a law

enforcement officer acting in the performance of his official duties ..." S. C. Code Section 16-11-450(A)

"A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime ..." S. C. Code Section 16-11-440(C)

"A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered a dwelling, residence, or occupied vehicle; and who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred." S. C. Code Section 16-11-440(A)(2)

### **Discussion**

Tanya Lowery testified that on November 12, 2010 she arrived at the defendant's residence around 11:00 p.m. The defendant, Jackie Lance, and John Ryan were present in the home talking and drinking. At the time of the event she and the defendant were dating steadily. When Ryan approached her from behind the defendant said "Get your hands off my woman", then pushed Ryan into the stereo and on to the floor striking him with his fists several times as he stood over him. The women were successful in stopping the attack at which time Lance left the residence while Lowery went outside. Lowery heard fighting resume and when she went back inside Rogers said, "Call 911, I accidentally stabbed him."

Rogers testified that upon returning from a visit to the bathroom he saw Ryan behind Lowery and upon asking "What are you doing?" pushed Ryan into the stereo and a fight ensued. After a brief interlude, at the insistence of the women, Rogers cursed at Ryan demanding that he leave the residence. Ryan

struck Rogers in the face with his fist after which the fighting resumed. Rogers testified that Ryan had a knife which they fought over and suddenly blood appeared. Rogers was cut on the left and right forearms and Ryan was stabbed. Rogers testified that he does not know how Ryan was cut or stabbed.

Jackie Lance testified that she saw Ryan lean on Lowery "like getting his balance" because he was drunk. Rogers yelled at Ryan about "disrespecting his woman", pushed him into the stereo and striking him repeatedly with his fists. Ryan tried to defend himself but was drinking, taking "nerve" medication, drunk, staggering, and as a result of this condition unable to defend himself against the physical attack.

The presumption of reasonable fear of imminent peril in the use of deadly force as provided for in *Section 16-11-440 (A)* is not applicable under the facts as presented in this case because Ryan did not unlawfully or forcefully enter nor was he in the process of unlawfully and forcefully entering the residence of Rogers. Ryan gained entry into the home by invitation from Rogers and had in fact spent the night before in the home. In order to be immune from prosecution for the death of Ryan the burden is therefore upon Rogers to prove by a preponderance of the evidence that at the time he committed any act resulting in Ryan's death he; (1) was not engaged in any unlawful activity; (2) was attacked in his home by Ryan and; (3) reasonably believed that the use of deadly force was necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined by statute. *S. C. Code Section 16-11-440(C)*

The immunity from prosecution as now provided for by statute is based upon a codification of the common law "Castle Doctrine". *S. C. Code Section 16-11-420(A)* Under the doctrine "one who is attacked, *without fault on his part*, on his own premises, has the right in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense." *State v. Dickey*, 380 SC 384 (Ct. App. 2008) Application of the "castle doctrine" defense is legally analogous to the doctrine of "self-defense". In order for the defense of self-defense to be made out it is necessary that the person employing the use of deadly force be without fault in bringing on the immediate difficulty that resulted in the need for employing the use of deadly

force in response to an attack. A person cannot provoke or initiate an attack by another and then claim the right of self-defense in the employment of deadly force in responding to the attack caused by such provocation. State v. Jackson, 384 SC 29 (2009)

In the present case the evidence establishes that Ryan was an invited guest in the home of Rogers at the time that he was physically assaulted by Rogers. It may be reasonably inferred from the testimony that Rogers believed Ryan was engaged in an inappropriate physical touching of Lowery although there is evidence in the record which reasonably disputes that fact. Even if Ryan made some physical contact with Lowery, the evidence does not establish that the assault and battery committed by Rogers was reasonably necessary in protecting Lowery from any harm committed by Ryan. It is reasonable to infer that any assault or battery committed by Ryan against Rogers was provoked by and in response to the assault and battery committed by Rogers against Ryan. There is no evidence in the record to establish that Rogers reasonably believed the employment of deadly force was necessary to prevent death or great bodily harm to Rogers. His own testimony was that he does not know how Ryan came to be cut or stabbed and therefore by inference was not under any belief, reasonable or otherwise, that such force was necessary to prevent death or great bodily injury which might reasonably be caused by the acts of Ryan.

#### Conclusion

This Court has had ample opportunity to observe each witness as they testified and to consider; (1) the demeanor of each witness during their testimony; (2) each witness' testimony in light of any other testimony as well as statements made by a witness whether provided in court or out of court; (3) any bias or prejudice of a witness and any interests of the witness in the outcome of this matter; (4) any outside influences brought to bear upon a witness most probably affecting the credibility of the witness's testimony and; (5) the inherent probability of the truthfulness of the testimony. After a consideration of the evidence presented this Court finds that the defendant has failed to carry his burden of proof. He has failed to establish by the preponderance of evidence that he was acting lawfully as it may be reasonably determined that he engaged

in an unlawful assault and battery upon Ryan. He has failed to establish by the preponderance of evidence that he was the victim of an unprovoked attack in his home by one who was not an invited guest. He has failed to establish by the preponderance of evidence that he reasonably believed the use of deadly force was necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime.

Based upon the evidence presented and after consideration of the applicable statutory and case law, this court finds the defendant's **motion to dismiss** should be and **is** therefore **denied**.

October 3, 2011

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**J. DERHAM COLE, Presiding Judge**  
The Seventh Judicial Circuit Court

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	
 The State,	)	
	)	TRANSCRIPT OF RECORD
-vs-	)	2011-GS-42-1933
	)	
Michael Anthony Rogers,	)	
	)	October 4, 5 and 6, 2011
Defendant.	)	Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE; and a jury

A P P E A R A N C E S:

DANNY NELSON FULMER, JR., ESQ.  
Attorney for the State

CLAY T. ALLEN, ESQ.  
Attorney for the Defendant

Margaret A. Woods  
Circuit Court Reporter

**ORIGINAL**

## MOTIONS AND MATTERS

1 MR. ALLEN: No, Your Honor, not at this time.

2 THE COURT: Alright, Mr. Allen, you are aware that I have  
3 denied the defendant's motion to dismiss this case pursuant to  
4 16-11-450, copy of the order's been provided to you?

5 MR. ALLEN: Yes, Your Honor. Yes, Your Honor, I'm aware  
6 of that, I believe I received it by e-mail today ---

7 THE COURT: It's just been filed but I I ---

8 MR. ALLEN: Yes, sir.

9 THE COURT: --- you were notified of it before it was  
10 filed by e-mail. I just wanna be certain that you're -- you  
11 are aware that that motion was denied.

12 MR. ALLEN: Yes, Your Honor, I'm aware that was denied  
13 and I've also discussed it with my client.

14 THE COURT: Okay. Alright, anything else before we  
15 begin?

16 (No response.)

17 THE COURT: Alright, let's bring the jury in and ask  
18 Mrs. Manatis to take the foreperson's seat, Mrs. Manatis.

19 THE BAILIFF: Yes, sir.

20 (The following takes place in the presence of the jury.)

21 THE BAILIFF: Mrs. Manata, Manata.

22 THE COURT: She's not in here.

23 THE BAILIFF: She's not in here yet.

24 THE BAILIFF: She didn't ---

25 THE COURT: Well ---

## VERDICT

1 JURY FORELADY: Yes, I have.

2 THE COURT: And did you sign your name and date it?

3 JURY FORELADY: Yes, I have.

4 THE COURT: If you'll please hand that up by way of the  
5 bailiff.

6 (Whereupon, the jury forelady complied.)

7 THE COURT: You may publish the verdict.

8 THE CLERK: Case Number 2011-GS-42-1933 the State vs.  
9 Michael Anthony Rogers, the verdict is guil -- guilty under  
10 voluntary manslaughter -- manslaughter signed by the foreperson,  
11 dated October 6th of 2011. Ladies and gentlemen of the jury,  
12 is this your verdict and still your verdict, if so please  
13 raise your right hand.

14 (Whereupon, the jury raised their hands.)

15 THE CLERK: So say you all.

16 THE COURT: Does the defendant wish to have the jury  
17 polled?

18 MR. ALLEN: Request polling, Your Honor.

19 THE COURT: Alright, poll the jury please, ma'am.

20 THE CLERK: Ladies and gentlemen, I will ask -- I will  
21 pose a question to you after which I ask you to stand  
22 individually and respond to the question the question being is  
23 this your verdict and still your verdict. Juror Number 1,  
24 Roger Anthony?

25 JUROR NUMBER 1: Yes, it is.

## MOTIONS AND MATTERS

1 well as on the essentially that the State failed to put up  
2 sufficient evidence to sustain the charge, especially they had  
3 not proven beyond a reasonable doubt or disproved beyond a  
4 reasonable doubt the defense of self-defense as well as my  
5 motion for a dismissal that was made and heard back in  
6 September and ruled upon prior to the beginning of the case,  
7 specifically that motion to dismiss under the Castle Doctrine,  
8 those are the grounds for my motion for a new trial.

9 THE COURT: Alright, each of those motions are denied.

10 MR. ALLEN: Yes.

11 THE COURT: Any other matters to be presented by the  
12 State?

13 MR. FULMER: No, Your Honor.

14 THE COURT: Alright, Mr. Allen, I'll hear from you and  
15 Mr. Rogers.

16 MR. ALLEN: Would you prefer the client be seated or to  
17 stand?

18 THE COURT: You can stand if you'd like.

19 MR. ALLEN: Okay.

20 THE COURT: I'll leave it up to you. Do ya'll have the  
21 sentencing sheet?

22 (Whereupon, the document was handed to the Court.)

23 THE COURT: Alright, Mr. Allen.

24 MR. ALLEN: Your Honor, if it please the Court, you've  
25 heard my client is 54-years-old. He is originally from

## MOTIONS AND MATTERS

1 Massachusetts. He was raised up there in New Bedford I  
2 believe it was. He graduated from high school, he's also  
3 attended a culinary school up there, has done work in not only  
4 the fishing industry up there but also he has done  
5 construction-type work. He came to South Carolina in 1996 I  
6 believe it was. He has been working -- he initially worked  
7 with his brother and they have some sort of pallet, they were  
8 making pallets and then he, his brother-in-law, excuse me, and  
9 then he was trained as an electrician and also has done some  
10 work as an electrician. While working as an electrician in  
11 the late nineties I believe it was, he was as he describes it  
12 electrocuted, he was shocked, that caused him to fall off of  
13 the place where he was working and he further injured his  
14 back. He had had some back difficulty before that time, had  
15 some operations and as a result of his injuries from that work  
16 accident it's my understanding he was ultimately determined to  
17 be disabled after a period a time where he was receiving  
18 workers comp. and he applied for disability as well. Your  
19 Honor, he's got two adult children. He's got a child by his  
20 first wife who is herself an adult and she has one child, his  
21 grandson is about 2-years-old as I understand it, he also has  
22 a son who's about 18-years-old by his second wife who is  
23 present in ---

24 (Attorney/client conference held off the record.)

25 MR. ALLEN: --- he had a son in Massachusetts. He is

## SENTENCE

1 married but that he and his wife are -- have been separated  
2 for about four and a half, five years and so of course were  
3 separated at the time that all this occurred. Your Honor,  
4 you've heard the facts of the case and and what led up to all  
5 of this and I would ask the Court to consider the fact that  
6 this is first time my client has been in trouble, significant  
7 trouble like this and ask the Court to be as lenient with him  
8 as possible under all the circumstances of the case. Thank  
9 you.

10 THE COURT: Alright, Mr. Rogers, is there anything you'd  
11 like to add to what your lawyer's told me?

12 THE DEFENDANT: Yes, Your Honor. I'd like to ask the  
13 victim's mom, Lord, this musta been awful for her, if she  
14 could find it in her heart to forgive me. It wasn't meant to  
15 be, Your Honor, I never meant to take this man's life. I'm so  
16 sorry for the heartache I caused everybody: my family, my mom,  
17 it's gonna kill her, I'm sure this is -- musta took a toll on  
18 Mr. Ryan's mom and family also. I apologize.

19 (Pause.)

20 THE COURT: Alright, on Indictment 2011-1933 an  
21 indictment for murder wherein you have been found guilty by  
22 the jury of voluntary manslaughter, sentence of the Court is  
23 you, Michael Anthony Rogers, be confined to the South Carolina  
24 Department of Corrections for a period of 21 years, give him  
25 credit for any time he's entitled to pursuant to 24-13-40.

137

WITNESSES

Spartanburg County Sheriff's Office

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

ARREST WARRANT NUMBER

5. CHECKED WARRANTS

M751084

6. CHECKED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

MAR 20 2011

VERDICT

Guilty - voluntary manslaughter

Jamela Manchie

Foreperson of Petit Jury

Date:

October 6, 2011

DOCKET NO. -

11-GS-42-1933  
The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

Mar 28 2011

TERM

THE STATE

vs.

Michael Anthony Rogers

Indictment for  
MURDER

SC Code: 16-03-0010, 0020

CDR CODE: 0116

CLASS: FEL-EXM: FEL/F

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY

2011 MAR 29 AM 10:00

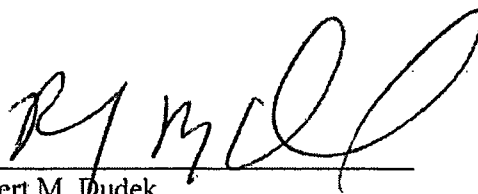
M. HOPE BLACKLEY



## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 27th, 2013



Robert M. Dudek  
Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

MICHAEL ANTHONY ROGERS,

APPELLANT

Appellate Case No. 2011-201326

---

FINAL BRIEF OF APPELLANT

---

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ATTORNEY FOR APPELLANT

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The court erred in denying appellant’s Motion to Dismiss pursuant to S.C. Code §16-11-450 where the evidence showed appellant had repeatedly demanded that the decedent leave appellant’s mobile home and where, instead of leaving appellant’s home, the decedent attacked appellant with a knife which ultimately resulted in a struggle over the knife and injuries to appellant and a fatal wound to the decedent.....5

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in denying appellant's Motion to Dismiss pursuant to S.C. Code §16-11-450 where the evidence showed appellant had repeatedly demanded that the decedent leave appellant's mobile home and where, instead of leaving appellant's home, the decedent attacked appellant with a knife which ultimately resulted in a struggle over the knife and injuries to appellant and a fatal wound to the decedent?

## STATEMENT OF THE CASE

Appellant was indicted by the Spartanburg County grand jury for the offense of murder. R. 137. Prior to trial, appellant filed a Motion to Dismiss Pursuant to S.C. Code Section 16-11-450 on August 18, 2011, arguing he was immune from prosecution because he was justified in using deadly force under the circumstances of the case. R. 1. An evidentiary hearing on the motion was held before the Honorable J. Derham Cole on September 2, 2011. The motion was denied by Judge Cole by order dated October 3, 2011, which he referenced prior to trial. R. 132, ll. 2-11; R. 126.

Appellant's case was called to trial before Judge Cole on October 4, 2011, and a jury. Clay T. Allen represented appellant. Danny Fulmer was the assistant solicitor. R. 131. On October 6, 2011, the jury found appellant guilty of voluntary manslaughter. R. 133, ll. 8-11. Judge Cole sentenced appellant to twenty-one year imprisonment. R. 136, ll. 20-21.<sup>1</sup>

This appeal follows.

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<sup>1</sup> These citations refer to page numbers from the trial transcript dated October 4-6, 2011. All other citations are to the pre-trial hearing transcript dated September 2, 2011 unless otherwise noted.

## ARGUMENT

The court erred in denying appellant's Motion to Dismiss pursuant to S.C. Code §16-11-450 where the evidence showed appellant had repeatedly demanded that the decedent leave appellant's mobile home and where, instead of leaving appellant's home, the decedent attacked appellant with a knife which ultimately resulted in a struggle over the knife and injuries to appellant and a fatal wound to the decedent.

### **Relevant Facts**

As noted, defense counsel Allen filed a Motion to Dismiss pursuant to S.C. Code §16-11-450 on August 18, 2011. R. 1. An evidentiary hearing on the motion was held on September 2, 2011.

At the hearing, Tonya Lowery, appellant's girlfriend at the time of the incident, testified that she went to appellant's trailer at 660 Carolina Drive Extension sometime after 11:00 pm on the night of November 12, 2010. R. 15, ll. 2-17; R. 16, ll. 23-25. When she arrived, appellant, Jackie Lance, and John Ryan ("the decedent") were at the home. R. 16, ll. 4-11. The three were drinking. R. 16, ll. 14-15. Tonya testified that the decedent came up from behind her and "put his arms around below my chest. And I asked him to please take his hands off, you know, because that just wasn't appropriate, especially in front of [appellant]" R. 18, ll. 6-12.

Upon witnessing the improper and unwanted touching, appellant said, "Get your hands off my woman." R. 19, ll. 1-3. The next thing Tonya knew, appellant pushed the decedent who fell onto the stereo. R. 18, ll. 13-15. Appellant was on top of the decedent. R. 18, ll. 15-16. Tonya asked appellant to stop because "he proved his point." R. 18, ll. 16-17. Appellant got off the decedent and the two stood up. Then the decedent kicked

appellant between the legs and the two started fighting again. R. 181, ll. 18-22. Eventually, Tonya and Jackie Lance were able to separate the two. Tonya took appellant to the bathroom to clean up and try to calm him down. R. 19, ll. 15-20.

Tonya continued that all of a sudden Jackie decided that she wanted to leave to go to the store. Tonya did not want Jackie to leave because the men had been fighting, but Jackie insisted on leaving. Jackie left in the decedent's truck. R. 19, l. 21 – 20. l. 6.

After Jackie left, appellant demanded that the decedent leave his home. Tonya told appellant that the decedent could not leave because Jackie had taken the decedent's truck. Appellant "kept telling him I want you out of my house." He asked three times. R. 20, ll. 9-14; R. 33, ll. 3-14.

Tonya continued, "And then [the decedent] swung" at [appellant]. Tonya "couldn't handle the fact that they were fighting" and left through the back door of the trailer. R. 20, ll. 19-24. She walked around to the front of the trailer and entered the front door. Appellant said, "dial 911, I accidentally stabbed him." The decedent was on the floor. R. 21, ll. 1-3. She dialed 911. R. 22, ll. 8-9. Appellant tried to help the decedent by getting towels to help stop the bleeding and doing mouth to mouth when the decedent stopped breathing. R. 24, ll. 1-7. Tonya never saw a knife that night. R. 34, ll. 6-8.

Appellant was the next to testify. He testified that the decedent spent the night at appellant's trailer on November 11, 2010, the night before the incident, because he was too drunk to drive home. R. 40, ll. 9-25. When the decedent woke up the morning of November 12, 2010 he immediately began drinking and continued to drink throughout the day and that night. R. 42, ll. 3-13.

On the night of the incident, appellant, Jackie, who appellant had just met that day, the decedent, and Tonya were at appellant's trailer talking. R. 41, l. 22 – 42, l. 2. Appellant excused himself to use the bathroom. On his way out of the bathroom he noticed the decedent "leaning against Tonya from behind with his arms around her waist." The decedent was pressed up against her with his head bent towards her shoulder saying something to her. R. 42, l. 23 – 43, l. 7. "And I was angry. I said what do you think you're doing. And I pushed him against the stereo." R. 43, ll. 8-16. The men began fighting. They stopped for a moment and then began fighting again. R. 43, l. 21 – 45, l. 9. Eventually, the fighting just ended. R. 45, ll. 9-10.

Appellant remembered that he went to the bathroom to clean up. He was bleeding from his lip and face. R. 45, ll. 11-17. While appellant was in the bathroom, the decedent asked for the keys to decedent's truck because Jackie wanted to leave. The decedent gave the keys to Jackie, who then left in the truck. R. 45, l. 24 – 46, l. 6. When appellant returned to the kitchen from the bathroom, "I told [the decedent] he had to leave. I kept telling him you gotta get out of here. I don't care if . . . Jackie got your truck, leave. You want to wait for her . . . you wait somewhere else, *but I want you out of my house.*" R. 48, ll. 1-9. (emphasis added). *Then out of nowhere, the decedent hit appellant.* "He got me right in the jaw big time." R. 48, ll. 10-14. (emphasis added). Appellant responded by hitting the decedent back and a fight ensued. "[H]e just kept coming at me and coming at me. And knowing me, I was fighting back for the simple reason to get him to stop. I wanted to get him off me." R. 48, l. 18 – 49, l. 1.

Appellant testified that he did not know where the knife came from. "I can only speculate on that, where it came from. But I had noticed it in his hand. And we fought over

it.” R. 49, ll. 3-6. Eventually, appellant got the knife out of the decedent’s hand. Appellant was in fear for his safety. R. 70, ll. 14-15.

There was blood everywhere. Appellant tried to stop the bleeding for the decedent. “I tried to save his life. I took a rag and I put it on his chest.” He told Tonya to call 911. R. 72, ll. 13-25. Appellant got cut on his left and right forearm and also had cuts on his knuckles and bruising to his face. He also broke a tooth from being punched in the jaw. R. 49, l. 19 – 51, l. 23. Appellant does not remember stabbing the decedent. “It wasn’t an intentional thing.” R. 54, ll. 19-24.

The knife belonged to appellant. He uses it to open mail and must have left it on the table where he keeps his mail. Appellant does not know how the decedent got ahold of the knife. R. 52, ll. 12-22; R. 56, l. 17 – 57, l. 6.

Jackie Lance was the next to testify. She stated that she had never met appellant or the decedent prior to the day of the incident. She knew Tonya from the neighborhood. R. 77, l. 25 – 78, ll. 9.

Jackie was at appellant’s trailer that night. Appellant and the decedent were drinking. Appellant poured Jackie a drink, but she didn’t drink it. Tonya was also present. R. 78, l. 15 – 79, l. 11. Jackie was only at the trailer for ten to fifteen minutes before the altercation broke out. The decedent was very intoxicated. He walked up and “it looked like he leaned on [Tonya] to catch his balance. He was not trying to touch her in any kind of way.” R. 79, l. 12 – 80, l. 3. Appellant came around the corner in a rage and jumped on the decedent. “[Appellant] threw him to the ground, [the decedent’s] whole head bounced off of a stereo system.” Appellant was on top of the decedent and kept hitting him and hitting him. Appellant was “yelling: ‘You M.F. ‘r this, you disrespecting my woman.’” R. 80, ll. 4-

14. Appellant eventually got off the decedent and the fight broke up. When the men stood up, the decedent kicked appellant between the legs and the fight ensued further. The decedent was staggering and could not defend himself. He had been drinking and taking nerve medication. R. 81, l. 6 – 82, l. 19.

Jackie remembered there being three episodes of fighting before she “couldn’t take it anymore.” The decedent did not want her to walk so he let her borrow his truck. R. 82, l. 20 – 83, l. 4. She went home and smoked a cigarette and then told her roommate she was going to go back to return the truck. When she arrived back at the trailer “there were police everywhere” so she returned back home. R. 83, ll. 5-17. She never saw a knife that night. “There was no knife on that table.”

This was the main testimony at the hearing. Judge Cole issued an Order Denying the Motion for Dismissal dated October 3, 2010. The Order concluded:

After a consideration of the evidence presented this Court finds that the defendant has failed to carry his burden of proof. He has failed to establish by a preponderance of the evidence that he was acting lawfully as it may be reasonably determined that he engaged in an unlawful assault and battery upon Ryan. He has failed to establish by the preponderance of evidence that he was the victim of an unprovoked attack in his home by one who was not an invited guest. He has failed to establish by the preponderance of evidence that he reasonably believed the use of deadly force was necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime.

Order at 4-5. R. 129-130.

Judge Cole briefly mentioned at the beginning of appellant’s trial that he denied appellant’s notion to dismiss by written order. Counsel Allen responded that he was notified by email that day and had discussed it with his client. R. 132, ll. 2-13.<sup>2</sup>

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<sup>2</sup> This citation refers to page numbers from the trial transcript dated October 4-6, 2011.

## Discussion

Pursuant to S.C. Code §16-11-450(A), “a person who uses deadly force as permitted by the provision of this article or another applicable law is justified in using deadly force and is *immune from criminal prosecution . . .* for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer . . .” The proper standard in determining immunity under the act is a preponderance of the evidence. State v. Duncan, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011).

Appellant was permitted to use deadly force in this case under the defense of habitation, and the judge abused his discretion by ruling otherwise. “As the defense of habitation provides, defending one’s home or premises means ending an unwarranted intrusion though the use of reasonably necessary means of ejection.” State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) (citing State v. Bradley, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923)). “For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejection were reasonable under the circumstances.” Id. at 124, 651 S.E.2d at 323. “The defense of habitation does not require that a defendant reasonably believe that he or his property was in imminent danger sustaining serious injury or damage.” Id.

The evidence in this case demonstrates that the decedent was trespassing at the time of the deadly altercation and that appellant was trying to protect himself from attack. Appellant had demanded that the decedent leave his mobile home and the decedent refused.

The facts of this case are similar to the facts in Duncan. In Duncan, the victim was a guest in Duncan’s home. The victim made improper comments about a photograph of Duncan’s daughter in a cheerleading outfit and, as a result, Duncan asked the victim and his

girlfriend to leave his home. The decedent left as requested, but returned a few minutes later he returned. It was rational inference that the decedent attempted to enter the home through a screened porch door. Duncan was cursing at the decedent to get away, and Duncan shot the decedent in the face. Id. at 406-407, 709 S.E.2d at 663. The trial court granted Duncan's motion to dismiss pursuant to S.C. Code §16-11-450, and our Supreme Court affirmed holding that Duncan was immune from prosecution under the Act. The same result should have occurred in this case.

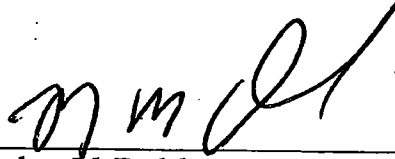
The evidence shows that an altercation broke out between appellant and the decedent because the decedent inappropriately touched appellant's girlfriend. During a break in the altercation, appellant repeatedly demanded that the decedent leave his home. Unfortunately, the decedent refused and instead attacked appellant inside appellant's kitchen. According to appellant, the decedent had a knife, which the two struggled over, ultimately ending in injuries to appellant and fatal wound to the decedent. Appellant was "fighting back for the simple reason to get him to stop. I wanted to get him off me."

The only difference between the facts in this case and the facts in Duncan are that the decedent in Duncan heeded Duncan's request to leave his home, where the decedent in this case failed to do so. Appellant should not be penalized because the decedent contemptuously refused a legitimate direction to leave. While the decedent was originally an invited guest, appellant made it clear that the decedent was no longer welcome on the property and thus was a trespasser. Appellant was defending himself from attack within his own home after he had asked the decedent to leave. Appellant should have been found immune under the Act.

CONCLUSION

Based on the foregoing arguments, appellant's conviction should be overturned and his motion to dismiss granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek  
Chief Appellate Defender

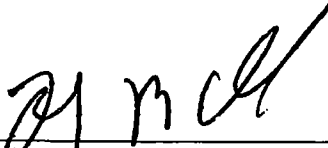
ATTORNEY FOR APPELLANT

This 15th day of April, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

April 15<sup>th</sup>, 2013



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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Spartanburg County  
J. Derham Cole, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

MICHAEL ANTHONY ROGERS,

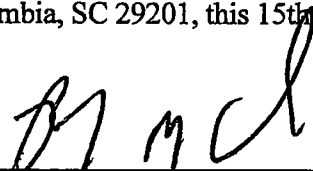
APPELLANT

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CERTIFICATE OF SERVICE

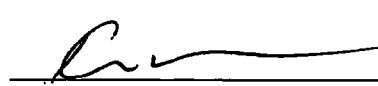
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The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 15th day of April, 2013.

  
\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 15th day of April, 2013.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina

My Commission Expires: October 2, 2013.

STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
J. Derham Cole, Circuit Court Judge

---

Appellate Case No. 2011-201326

THE STATE, .....RESPONDENT,

vs

MICHAEL ANTHONY ROGERS, .....APPELLANT.

---

FINAL BRIEF OF RESPONDENT

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**The issue Appellant presents on appeal was waived when Appellant failed to immediately appeal from the denial of his motion for immunity and is also unavailable for appellate review because it was not raised to and ruled upon by the trial court; nevertheless, the trial court properly determined that S.C. Code Ann. § 16-11-450 did not provide Appellant immunity from prosecution when the victim was not unlawfully or forcibly entering Appellant’s home, when Appellant was not removing or attempting to remove the victim from his home, and when Appellant was not acting lawfully but was engaged in an unlawful assault and battery.** ..... 3

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## RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

**The issue Appellant presents on appeal was waived when Appellant failed to immediately appeal from the denial of his motion for immunity and is also unavailable for appellate review because it was not raised to and ruled upon by the trial court; nevertheless, the trial court properly determined that S.C. Code Ann. § 16-11-450 did not provide Appellant immunity from prosecution when the victim was not unlawfully or forcibly entering Appellant's home, when Appellant was not removing or attempting to remove the victim from his home, and when Appellant was not acting lawfully but was engaged in an unlawful assault and battery.**

## STATEMENT OF THE CASE

In March 2011, Appellant was indicted in Spartanburg County for murder. By motion dated August 18, 2011, Appellant moved to dismiss the murder charge asserting that he was immune from prosecution pursuant to S.C. Code Ann. Section 16-11-450 and State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). A pre-trial hearing on the motion was convened before the Honorable J. Durham Cole on September 2, 2011, during which testimony was presented on the issue of Appellant's motion to dismiss the murder charge on the ground he was immune from prosecution. The motion was denied by written order and the matter proceeded to trial on October 4 – 6, 2011, before the Honorable J. Durham Cole, and a jury. Appellant was found guilty of voluntary manslaughter. He was sentenced by Judge Cole to imprisonment for twenty-one (21) years. Appellant filed and served notice of appeal after the conviction and sentence. This appeal follows.

## ARGUMENT

**The issue Appellant presents on appeal was waived when Appellant failed to immediately appeal from the denial of his motion for immunity and is also unavailable for appellate review because it was not raised to and ruled upon by the trial court; nevertheless, the trial court properly determined that S.C. Code Ann. § 16-11-450 did not provide Appellant immunity from prosecution when the victim was not unlawfully or forcibly entering Appellant's home, when Appellant was not removing or attempting to remove the victim from his home, and when Appellant was not acting lawfully but was engaged in an unlawful assault and battery.**

By written motion, Appellant moved pursuant to S.C. Code Ann. §16-11-450 and State v. Duncan, 392 S.C. 404, 709, S.E.2d 662 (2011), for a pre-trial determination of immunity from prosecution and dismissal of the charge on the grounds that Appellant was in his dwelling, asked the victim to leave, was at all times engaged in lawful activity, was attempting to remove the deceased from his home, had reason to believe an unlawful and forcible act had or was occurring, was attacked by the victim, had no duty to retreat, had the right to stand his ground, had the right to meet force with force, and believed his actions were necessary to prevent death or serious bodily injury or to prevent the commission of a crime. (R. p. 1). A pre-trial hearing regarding Appellant's motion was held on September 2, 2011 during which witness testimony and documentary evidence were presented. Following the hearing, the trial judge issued an order denying Appellant's motion to dismiss, finding that immunity created by S.C. Code Ann. Section 16-11-450 was not applicable. (R. p.126).

Relying on State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007), Appellant now argues on appeal that he was permitted to use deadly force pursuant to the defense of habitation and, therefore, was not required to reasonably believe that he was in eminent danger of sustaining serious bodily injury or that his property was in danger of damage. The State submits that this Court need not consider the issue presented on appeal because

Appellant waived the right to challenge the denial of immunity when he proceeded to trial without taking an immediate appeal from the ruling. The State also submits that the issue presented on appeal was not preserved for appellate review because it was not raised to and ruled upon by the trial court. Alternatively, the State submits the trial court properly determined Appellant failed to establish that he was immune from prosecution and correctly denied the motion to dismiss.

First, the State notes Appellant moved pursuant to S.C. Code Ann. Section 16-11-450 and State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), for a pre-trial determination of immunity from prosecution. The motion was denied after a full pre-trial hearing. The case was called for trial. Prior to proceeding with the trial and upon inquiry from the trial court, Appellant acknowledged receipt of the order denying the motion. After acknowledging the court's denial of immunity, Appellant thereafter remained silent when the trial court asked if there were any matters for consideration prior to proceeding with trial. (R. p. 132 lines 2 - 16). Appellant thereafter proceeded to trial and was convicted of voluntary manslaughter.

The State submits that it was incumbent upon Appellant to directly appeal from the denial of his motion for immunity from prosecution and that his failure to do so bars appellate review. The issue of immunity was rendered moot when Appellant proceeded to trial without challenging the ruling and there is no applicable remedy available to him on the issue of the trial court's denial of his request for immunity. In support of its argument, the States notes that in State v. Duncan, the South Carolina Supreme Court stated that the only means to enforce a claim of immunity from prosecution under the Protection of Persons and Property Act is to pursue the issue pre-trial. It also determined

that an order granting or denying a motion to dismiss under the Act is immediately appealable because it is in the nature of an injunction. See State v. Duncan, 392 S.C. at 407 N2, 709 S.E.2d at 663. Because Appellant failed to appeal or otherwise pursue the issue after the trial court ruled that the immunity provision of the Act did not apply, he waived any and all challenges to the order denying his request for immunity. Appellant's motion and the ruling on the motion became moot when Appellant proceeded to trial without challenging the trial court's denial of his request for immunity. The issue thereafter became a jury question pertaining to applicability of Appellant's defense and not a matter of immunity. See State v. Duncan, 392 S.C. at 410, 709 S.E.2d at 665 (stating that the legislature intended for defendants to be **shielded from trial** if they use deadly force as outlined under the immunity provisions on the Act).

Second, the State submits that Appellant failed to properly preserve the issue he now offers on appeal in support of immunity from prosecution because the issue was not presented to and ruled upon by the trial court. See State v. Hudgins, 319 S.C. 233, 460 S.E.2d 388 (1995) (stating issues not presented to and ruled upon by the trial court will not be considered on appeal). Appellant may not argue one ground in support of a motion to the trial court and then present a different ground on appeal. See Creech v. S.C. Wildlife and Marine Resources Dep't., 328 S.C. 24, 49 S.E.2d 571 (1977) (a defendant cannot argue on appeal an issue in support of a motion when the issue was not presented to the trial court). Appellant argued to the trial court that he should be immune from prosecution pursuant to S.C. Code Ann. section 16-11-450 because he was in his dwelling, asked the victim to leave, was at all times engaged in lawful activity, had no duty to retreat, had the right to stand his ground, and believed his actions were necessary

to prevent death or serious bodily injury or to prevent the commission of a crime. (R. p.1). The trial court denied the request for immunity by written order. (R. p.126). On appeal, Appellant now argues that he was permitted to use deadly force under the defense of habitation, that he was not required to establish that he reasonably believed he and/or his property were in imminent danger of sustaining injury or damage and that the trial judge abused his discretion in ruling otherwise. Appellant did not present this issue to the trial judge in support of his motion to dismiss and, in fact, argued that he believed his actions were necessary to prevent death or serious bodily injury or to prevent the commission of a crime. Appellant may not now present a new legal theory and position contrary to that argued to the trial judge. Id.; see also State v. Lee, 293 S.C. 536, 362 S.E.2d 24 (1987) (stating that although the defense of habitation and self-defense are analogous, the defenses are not identical); State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (Ct. App. 2010) (same). Accordingly, this Court should decline to consider the issue advanced by Appellant on appeal.

Alternatively, the State submits that the trial court properly determined Appellant was not entitled to immunity from prosecution under Protection of Persons and Property Act. See S.C. Code Ann. section 16-11-410 et seq. (Supp.2012). As noted by our Supreme Court in State v. Duncan, our General Assembly intended to codify the common law Castle Doctrine which recognizes that “a person’s home is his castle” and determined that it is proper for law-abiding citizens to protect themselves from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves or others. Duncan at 407, 709 S.E. 2d at 64; see also Section 16-11-420 (B) (Supp. 2012).

Additionally, section 16-11-440 of the Protection of Persons and Property Act provides in pertinent part that:

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

(B) The presumption provided in subsection A does not apply if the person:

(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling . . . ;

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(3) who uses deadly force is engaged in an unlawful activity or is using the dwelling . . . to further an unlawful activity . . .

Additionally, the immunity provision offered by Appellant in support of his motion provides:

(A) A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer . . . .

The record before this Court reflects that Tonya Lowery was called as a witness at the hearing in support of Appellant's motion to dismiss the murder indictment. Ms. Lowery testified that she and Appellant were romantically involved and that she and the victim were close friends. (R. p.13, line 18- p. 17, line 24; p. 26, lines 8 - 15). She testified that the victim had been with Appellant since the previous day drinking and that

the victim spent the previous night at Appellant's home but did not live with Appellant. (R. p. 26, line 16 – p. 27, line 14). Lowery testified that she was present at Appellant's mobile home on November 12 and that Appellant, the victim, and Jackie Lance were present and had been drinking alcohol when she arrived at approximately 11:00 p.m. (R. p.15, line 2-p. 16, line 15). Lowery testified that the victim approached her from behind as she spoke with Appellant over the kitchen bar. Lowery stated that the victim put his arms around her below her chest and she asked the victim to remove his hands. (R. p.18, lines 4-15). She testified that Appellant said "get your hands off my woman" and then pushed the victim causing the victim to fall into Appellant's stereo. Appellant got on top of the victim and began punching the victim in the face. Lowery asked them to stop and Appellant did. (R. p. 18, lines 11- p. 19, line 6; p. 28, lines 3 - 20). Lowery stated that this fight lasted a few minutes. (R. p. 29, lines 2-14). However, the victim then kicked Appellant between the legs and they began fighting again. (R. p.18, lines 11- p. 19, line 6; p. 28, lines 3 - 20). Lowery and Jackie were able to separate Appellant and the victim, and Lowery walked Appellant to the bathroom to remove blood and for Appellant to cool down. (R. p. 19, lines 4 – 20; p. 29, line 18 – p. 30, line 18). Lowery testified that this second fight was really a continuation of the first fight. (R. p. 30, lines 3 – 5). Lowery also testified that she did not see any cuts on Appellant when she took him to the bathroom after the second fight and that Appellant did not complain of cuts. (R. p. 29, line 18 – p. 30, line 16).

Lowery testified that Jackie then left for the store in the victim's truck. (R. p.19, line 15-p. 20, line 6; p. 30, line 17 - 25). She stated that Appellant had the keys. (R. p. 31, lines 4-11). When Lowery and Appellant exited the bathroom and returned to the

kitchen, Appellant asked the victim three times to leave the home. (R. p. 20, lines 9-14; p. 32, line 18 – p. 33, line 14). The victim was in the kitchen at the time. (R. p. 32, lines 7 – 25). Lowery informed Appellant that the victim could not leave because Jackie had the victim's truck. (R. p. 20, lines 9-14). Lowery testified that the victim hit Appellant in the face with his fist and the two began fist fighting. Lowery left the home through the back door. Lowery circled the home and returned through the front door. (R. p.20, line 15 - p. 22, line 4; p. 25, lines 6 –12; p. 33, lines 6 – 22; p.34, lines 16 - 35). When she entered the front door of the home, she found the victim on the floor in a pool of blood with Appellant standing over him. Appellant directed Lowery to dial 911 and advised her that he "accidentally stabbed" the victim (R. p. 20, line 25 - p. 21, line 3; p.22, lines 4-10; p. 34, lines 6 – 12; p. 35, line 25 – p. 36, line 4). Lowery did not see a knife. (R. p. 36, lines 5 – 6). After Lowery dialed 911, the victim stood up and walked toward the bar but fell. Lowery observed stab wounds on the victim and a lot of blood. (R. p. 22, lines 7 – p. 23, line 11; p. 25, line 3). She stated that Appellant placed a towel over the victim's wounds and attempted to resuscitate the victim. (R. p. 24, lines 1-7).

Appellant testified during the pre-trial hearing that he was renting the mobile home in which the incident occurred and that he lived alone (R. p. 37, lines 1-6). He testified that the victim had been in his home for twenty-four hours, having spent the previous night because the victim was too intoxicated to drive. (R. p. 40, lines 7-25; p. 57, line 7 – p. 58, line 18). Appellant stated that he met the victim through Lowery the day before the incident. He also stated that he had a romantic relationship with Lowery. (R. p. 41, lines 1-17). Pertaining to the day of the incident, Appellant testified that he and the victim had been drinking since that morning and that Lowery and Jackie was present

in the home that evening when the events in question began. (R. p. 41, line 8-p. 42, line 16). Appellant testified that he saw the victim lean against Lowery from behind and place his arms around her waist, pressing against Lowery. Appellant stated that the victim's actions made him angry and that he asked the victim what he was doing and pushed the victim, causing the victim to fall against the stereo speakers. (R. p. 42, line 19 - p.43, line 19). Appellant testified that he became angry about the stereo speakers and tried to get the victim off and the victim swung at Appellant. Appellant testified that he and the victim "got into it." (R. p. 43, lines 18-22). Lowery asked them to stop, Appellant thought it was over, and allowed the victim to get up. The victim then "came back at Appellant" and Appellant protected himself and "went back" at the victim. (R. p.44, lines 1-25). He stated that this second altercation lasted 40-60 seconds. (R. p.44, line 16- p. 45, line 10). Appellant stated that his lip was bleeding when he went to the bathroom with Lowery and that he was upset. (R. p.45, lines 10-14; p. 46, lines 1-12). Appellant testified that he asked the victim to leave but the victim did not respond. (R. p.46, lines 9-21). He testified that when he came out of the bathroom, he repeatedly asked the victim to leave even though he knew Jackie had the victim's truck. Appellant said he wanted the victim to wait somewhere else. (R. p.46, lines 1-12; p. 48, lines 1-9; p.52, line 23- p. 43, line 3). Appellant testified that the victim then "sockered" him in the jaw with his fist. Appellant hit the victim with his hand because he wanted the victim to stop. He testified that they started fighting, the victim kept coming at him and Appellant stated that he was fighting to get the victim to stop. (R. p.48, line 17-p. 49, line 1). Appellant testified that he did not know how the knife was introduced into the fight but stated he noticed it in the victim's hand and they fought over it. (R. p. 49, lines 3-6). Appellant

stated that the next thing he knew, there was blood and the victim was wounded. He did not remember cutting the victim. He removed the knife from the victim's hand. (R. p. 49, lines 7-18). Appellant also stated that his left forearm was cut and that he suffered other injuries including bruises and cuts on his knuckles as well a broken tooth. (R. p. 49, lines 6-24; p. 50, lines 1-11; p. 51, lines 1-14; p. 51, lines 18-20). Appellant testified that the knife in question belonged to him and he thought the knife was in his pocket. He testified that he uses it to open mail and stated that there was mail on the kitchen table. (R. p.52, lines 12-22). He testified that the victim kicked him in the groin after Appellant pushed the victim into the stereo and that the kick was painful because he was recovering from prostate surgery. (R. p.53, lines 4-19). He also testified that the victim is a larger and younger individual. (R. p. 53, line 18- p. 54, line 7; p. 55, line 8-12).

On cross-examination Appellant testified that he did remember stabbing the victim. Appellant stated that the stabbing was not intentional. (R. p. 54, lines 19-24). Appellant admitted that the victim had wounds and assumed it was the result of the altercation and fight with the knife; however, Appellant denied he purposely had the knife in his hand to stab the victim. (R. p.55, lines 1-24). He testified that the only time he had the knife in his hand was when he could overpower the victim and take the knife. (R. p. 55, line 22- p. 56, line 3). Appellant denied that the victim put his hand in Appellant's pocket for the knife and stated that he thought he put the knife on the table. (R. p. 56, line 23- p.57, line 6). Appellant admitted that he does not own an automobile or possess a driver's license and that he struck the victim with his fist. (R. p. 60, line 3- p. 61, line 14). He testified that the first fight lasted only a couple of minutes and that the victim stopped fighting when Appellant let him up. (R. p. 61, lines 6-21). Appellant

testified that after the victim stood up, words were exchanged and another altercation ensued with the victim kicking Appellant. (R. p. 62, line 11 - p.63, line 12). He denied telling law enforcement officers that he had the knife in his hands when he exited the bathroom to confront the victim. (R. p. 65, lines 13-25). He also denied that he washed the blade but admitted the blade was not covered with blood when found under the dryer. (R. p. 65, line 13- p.69, line 7; p. 60, lines 12 – 25; p. 67, lines 16 - 17). He denied that he put the knife under the dryer. (R. p. 60, line 12 – p. 69, line 7). Appellant admitted the victim had been drinking all day and was unsteady on his feet at times. (R. p. 69- lines 14 - 25). He also stated “got the best of” the victim in the first altercation but also stated that he feared for his safety. He could not explain how the victim received knife wounds but admitted he still had the knife in his hand when Lowery re-entered the home through the front door. (R. p.70, lines 1-24; p.72, lines 7 - 12). Appellant admitted the victim was cut in the altercation with Appellant and that the knife belonged to Appellant. (R. p.72, line 7- p. 73, line 10).

Jackie Lance was called as a witness by the State and testified that she was in Appellant’s home when the altercation began. She stated that Appellant and the victim were drinking, that she was seated at the kitchen table and did not see a knife. (R. p.77, lines 20-23; p. 97, line 23 – p. 98, line 22). She testified that she knew Lowery but only knew who Appellant was “from the neighborhood.” (R. p.77, line 24- p. 78, line 19). She stated that the altercation between Appellant and the victim began 10-15 minutes after her arrival and that Lowery was present at the time. (R. p.79, lines 12-16). She testified that the victim was “too messed up” to defend himself and described Appellant as being in a rage. (R. p.79, lines 17-20). She stated that she saw the victim lean on Lowery to

catch his balance. Jackie did not believe the victim was trying to touch Lowery. (R. p. 80, lines 1-13). She described that Appellant was in a rage and jumped on and threw the victim to the ground causing the victim's head to bounce off the stereo. (R. p.80, lines 4-7; see also p. 91, lines 10 - 20). Thereafter, Jackie observed Appellant jump on top of the victim and repeatedly hit the victim causing the victim's head to bounce from the impact. She stated that Lowery grabbed Appellant's pants to stop him. She described Appellant as violent and stated that the victim did not fight back. (R. p.80, lines 8-25; p.81, lines, 6-11; p. 92, lines 10 - 15 ). She testified that when the victim was permitted to get up, the victim kicked Appellant in the groin and Appellant jumped on the victim again and was "steady beating" the victim and calling the victim names. (R. p. 81, lines 12-25).

Thereafter, Appellant and Lowery went down the hall. However, Appellant returned with "force and rage" and jumped on the victim again. Jackie stated that the victim was not "swinging" and or attempting to defend himself because he was too intoxicated. She described the victim as staggering. (R. p. 82, line 1-19). Jackie stated that the victim provided the keys to his truck and asked her to return in 10-15 minutes. (R. p. 82, line 22-p.83, line 4). When Jackie returned, law enforcement officers were present and motioned her around. (R. p. 83, lines 11-17). Jackie never saw a knife and, stated there was a "break" in the action when she left. (R. p. 84, lines 3-16). She testified that Appellant became angry when the victim provided his keys to Jackie and she did not observe the victim make any contact with Appellant except the kick to the groin. (R. p. 84, line 17-p.85, lines 15). Lowery testified on cross-examination that she believed the Appellant had the knife and killed the victim in cold blood and that Lowery was an accessory. (R. p.

103, lines 1-7). She also testified that she never heard Appellant ask the victim to leave. (R. p. 103, lines 23 – 24).

Officer Nix was asked to search for a second knife but only found knives stored in a kitchen drawer without the appearance of blood or recent washing. He also recalled seeing papers like mail on the kitchen table. (R. p. 105, line 16 – p. 106, line 13; p. 107, lines 1 – 6).

The victim's mother also testified that she tried to locate the victim and his truck the night before the incident but that Lowery and Appellant refused to provide the location so that she could pick up the victim and his truck. (R. p. 108, line 4 – p.109, line 7). She stated that the victim was an alcoholic and used alcohol to calm tremors. (R. p. 109, line 23 – p.110, line 15).

Officer Gary testified that Appellant gave verbal statements with three different versions of events. In the first statement, Appellant said he saw the victim put his arms around Lowery and Appellant did not like it so he pushed the victim down, got on top of the victim and "got the best of him." Appellant related that he got up but the victim hit Appellant twice. Appellant then realized he had a cut on his arm and he had no choice but to pull the knife out of his pocket and stab the victim. Appellant said he then asked Lowery to call 911. (R. p. 116, line 4 – p. 117, line 9). When questioned about going into the bathroom, Appellant said he went into the bathroom after the first fight to clean up and that the victim hit his face as Appellant returned to the kitchen, Appellant saw that he was cut and pulled out the knife and stabbed the victim. (R. p.117, line 10 - p. 118, line 1). When asked how he was cut, Appellant admitted he never saw the victim with a

knife or anything that could have cut him. He then stated that he saw the cut on his arm when he went into the bathroom and not when he entered the kitchen but still admitted he did not see the victim with anything that could be used to administer the cut. Appellant said that he pulled the knife out of his pocket while in the bathroom, concealed the blade in his hand, and confronted the victim with it. (R. p. 114, line 23 – p.120, line 12).

Appellant did not respond when asked why he confronted the victim with the knife. (R. p. 119, line 13 – 19).

The trial judge in this case determined that the victim was an invited guest in Appellant's home and was physically assaulted by Appellant without lawful basis and that the victim's physical response was provoked by Appellant's assault. The judge concluded that Appellant failed to establish that he reasonably believed the use of deadly force was necessary to prevent death or great bodily harm and, in fact, admitted he did not know how the victim. The trial court concluded Appellant failed to establish by a preponderance of the evidence that he was acting lawfully but, instead, was engaged in an unlawful assault upon the victim.

The testimony presented during the pre-trial hearing as outlined above supports the trial court's denial of immunity. The victim was an invited guest in Appellant's home and was not and had not unlawfully or forcibly entered Appellant's home. In fact, Appellant and Lowery prevented the victim's mother from locating the victim and taking him home the night before. Although Appellant testified that he asked the victim to leave, Appellant was told that the victim could not leave because Jackie had his truck. Appellant also asked the victim to leave as he was engaged in an unlawful attack upon the victim and out of anger because the victim put his arms around Appellant's girlfriend

and not because Appellant reasonably feared for his safety or was attempting to eject the victim from the premises. Instead, the evidence reflects that Appellant physically attacked the greatly intoxicated victim in a rage over Appellant's girlfriend and stereo. The victim was merely defending against Appellant's unlawful physical attacks. Appellant admitted he got "the best" of the victim in the altercation and never testified that he stabbed the victim to defend himself against intrusion, to force the victim from the home or because the victim posed a danger. In fact, Appellant stated he never saw the victim with a weapon, claimed he did not know where the knife came from, and stated that the stabbing of the victim was unintentional or accidental. Appellant clearly was not without fault in bringing about the altercation that led to the victim's stabbing death. Appellant's immunity claim is simply not supported by the evidence and was properly denied.

Although the defense of habitation is not preserved for appellate review because it was not raised to or ruled upon by the trial court, the State submits that the defense of habitation is not applicable to the issue of Appellant's immunity. Immunity is statutorily created and governed. The defense of habitation cannot be relied upon to require dismissal of a charge before trial on the ground of immunity from prosecution. Nevertheless, defense of habitation does not provide immunity because Appellant was not without fault in bringing on the incident and never claimed that he was attempting to remove the deceased from his home. He stated that he did not know how the deceased was stabbed and also claimed the stabbing was accidental. The defense of habitation is simply inapplicable to the facts of the case. See State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (Ct.App. 2010); State v. Sullivan, 345 S.C. 169, 547 S.e.2d 183 (2001); State

v. Rye, 375 S.C. 119, 651 S.E.2d 321(2007); State v. Lee, 293 S.C. 536, 362 S.E.2d 24 (1987); State v. Moultrie, 273 S.C. 532, 257 S.E.2d 730 (1979); State v. Bradley, 126 S.C. 528, 120 S.E. 240 (1923).

**CONCLUSION**

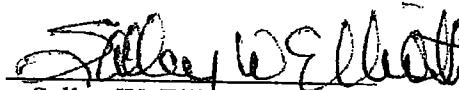
For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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Columbia, South Carolina  
April 10, 2013

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
J. Derham Cole, Circuit Court Judge

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Appellate Case No. 2011-201326

THE STATE, .....RESPONDENT

v.

MICHAEL ANTHONY ROGERS, .....APPELLANT.

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**CERTIFICATE OF COUNSEL**

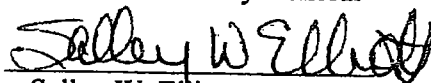
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The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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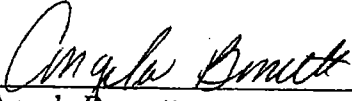
**PROOF OF SERVICE**

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I, Angela Bennett, Legal Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated April 10, 2013, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Robert M. Dudek, Appellate Defender  
S.C. Commission on Indigent Defense  
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I further certified that all parties required by Rule to be served have been served.  
This 10th day of April, 2013.

  
\_\_\_\_\_  
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