STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTERFIELD COUNTY
The Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2013-000148

THE STATE

APPELLANT,

V.

GRAHAM FRANKLIN DOUGLAS,

RESPONDENT.

PETITION FOR REHEARING

Comes now Appellant, above named, by and through the Attorney General of South Carolina, and pursuant to Rule 221(a), SCACR, hereby respectfully petitions this Court to rehear this matter.

1. Appellant respectfully submits this Court misapprehends Appellant's argument in finding the interpretation of the statute proposed by the State does not construe the term "another place" in context. As noted in Appellant's Brief, when read in conjunction with the other subsections of S.C. Code Ann. § 16-11-440, it is clear that "another place" in subsection S.C. Code Ann. § 16-11-440(C) refers to places that do not include a defendant's residence, dwelling, or occupied vehicle.

S.C. Code Ann. § 16-11-440(A) states:

> (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.

S.C. Code Ann. § 16-11-440(A) (emphasis added). In subsections (B), (D), and (E), the statute specifically refers to the application of the presumption in subsection (A), reflecting that it applies to only a dwelling, residence, or occupied vehicle. In light of the specific references to dwelling, residence, or occupied vehicle in those other subsections, Appellant submits that it clear that "in another place" in subsection (C) refers to a place other than a dwelling, residence, or occupied vehicle. This is further supported by the example of another place provided in subsection (C), one's "place of business," which does not fit within the definition of a dwelling, residence, or occupied vehicle.

This interpretation is not inconsistent with the intent of the Act as listed in S.C. Code Ann. § 16-11-420. The main intent of the Act, which was to codify the Castle Doctrine and expand it to include occupied vehicles and places of business, are accomplished when S.C. Code Ann. § 16-11-440 is read and the words contained in the statute are given their plain and ordinary meanings. The Castle Doctrine is extended to occupied vehicles under the provisions of S.C.

Code Ann. § 16-11-440(A), and the Doctrine is extended to places of business in S.C. Code Ann. § 16-11-440(C).

> "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). In doing so, we must give the words found in the statute their "plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Id. at 499, 640 S.E.2d at 459. Thus if the words are unambiguous, we must apply their literal meaning. Id. at 498, 640 S.E.2d at 459.
>
> However, "the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." S.C. State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). We therefore should not concentrate on isolated phrases within the statute. Id. Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose. State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct.App.2008), aff'd, 386 S.C. 339, 688 S.E.2d 569 (2010). In that vein, we must read the statute so "that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous," id. at 377, 665 S.E.2d at 651, for "[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law" id. at 382, 665 S.E.2d at 654.

CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

Appellant submits that this Court's interpretation of "another place" does not take into consideration the General Assembly's intent as reflected in S.C. Code Ann. § 16-11-440. Clearly, the General Assembly in drafting S.C. Code Ann. § 16-11-440 made a distinction between "dwelling, residence, or occupied vehicle" and another place. Otherwise, the legislature would have included those specific terms in S.C. Code Ann. § 16-11-440(C) as was done in each of the other subsections in S.C. Code Ann. § 16-11-440. Otherwise, the General

Assembly would have included dwelling, residence, and occupied vehicle with place of business in S.C. Code Ann. § 16-11-440(C). Appellant respectfully submits that this Court's interpretation of "another place" renders the term meaningless. Specifically, under this interpretation, "another" is rendered surplusage.

Appellant submits that the interpretation of "another place" made by this Court ignores the distinction between the presumptions afforded by S.C. Code Ann. § 16-11-440(A) and S.C. Code Ann. § 16-11-440(C). In S.C. Code Ann. § 16-11-440(A), the defendant "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 facts of the case fit within the scenarios outlined in paragraphs (1) and (2) of S.C. Code Ann. § 16-11-440(A). In essence, a defendant proves the third prong of self-defense when 440(A) applies. The presumption afforded under S.C. Code Ann. § 16-11-440(C) is different. It sets forth that a defendant does not have a duty to retreat when he is attacked in another place where he has a right to be.

Appellant respectfully submits this Court's finding that the intent outlined in S.C. Code Ann. § 16-11-420 intends to provide the protections of the Act even when the attackers are initially invited into the home and later place the homeowner in reasonable fear of death or great bodily injury is contradicted by S.C. Code Ann. § 16-11-440(B). If the General Assembly truly intended the Act to cover scenarios similar to the one presented in Respondent's case, then

440(B) would not limit the application of 440(A) when the person against whom deadly force has the right to be in the residence, dwelling or occupied vehicle. See, e.g., State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013)(noting that victim was a social guest at dwelling where shooting occurred and was therefore rightfully there; thus, S.C. Code Ann. § 16-11-440(B) applied and the defendant was not entitled to the presumption afforded under S.C. Code Ann. § 16-11-440(A)).

Further, this Court's interpretation of the term "another place" is inconsistent with how the term is interpreted in other contexts in criminal law. For instance, South Carolina appellate courts have consistently held that defendants are entitled to alibi charges when there is evidence they were in another place when the crime for which they were charged occurred. See State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980); Riddle v. State, 308 S.C. 361, 363, 418 S.E.2d 308, 309 (1992). Implicit in those opinions is that the definition of another is consistent with the first definition listed by this Court.

Finally, Appellant submits the second and third definitions of "another" from the dictionary do not support this Court's conclusion that "another place" necessarily includes dwelling, residence, or occupied vehicle.

2. Appellant submits this Court has overlooked the fact that Respondent never testified to knowing any of the details of the two instances that were presented through the testimony of Sgt. Drake and Officer Stair in finding that the error in admitting the testimony was harmless. While Respondent did testify that he knew Smith had a criminal history, he only indicated that he knew about some

charges through Smith's sister, and that he learned about the charge relating to the biting of a female from Smith in a grocery store. (R. pp. 21, 67-8). Respondent never indicated that he was aware of any of the specific details of any of the other charges, let alone the facts testified to by Stair and Drake. In light of the lack of details provided by Respondent during his testimony regarding the incidents involving Stair and Drake, those two witnesses' testimony was not cumulative to Respondent's testimony as they presented information and details not provided by any other witness.

Furthermore, Appellant respectfully submits this Court overlooks the trial court's failure to limit its use of the testimony of Sgt. Drake and Officer Stair for the purposes allowed under State v. Day, 341 S.C. 410, 535 S.E.2d 431 (2000). Instead, the trial court essentially found the victim was the aggressor because the two incidents showed he had a propensity for acting aggressively and violently. The use of the improper testimony was not harmless.

3. Appellant respectfully submits this Court erred in finding the circuit court did not abuse its discretion in finding Respondent reasonably believed shooting the victim was necessary to prevent great bodily injury. First, the reliance upon the distinction between the circuit court's assessment of Respondent's case and the trial court's assessment State v. Butler, 407 S.C. 376, 755 S.E.2d 457 (2014), is misplaced. The findings of the circuit court in this case would necessarily differ from the trial court in Butler because the issue on appeal in Butler was related to a directed verdict motion. Thus, in Butler, the trial court was not required to assess the evidence upon a preponderance standard; instead, the trial court had

to assess whether there was any evidence to support the charge going to the jury.

Second, Appellant submits this Court's finding that the circuit court's determination was supported by the record overlooks the fact the injuries suffered by Respondent did not support a finding he was facing great bodily injury. The testimony at the hearing indicated that Petitioner suffered bruises to his arms, a bruised eye, a cut to one of his legs, and a possible bite mark. Respondent also attempted to contend he also suffered a head injury. None of these injuries were serious enough to warrant medical attention. Respondent testified that he did not believe he needed treatment for his injuries. (R. pp. 97-8). Also, none of those injuries impaired Respondent's ability to flee the house after he shot Smith. (R. p. 53). Respondent suffered no lasting damage relating to any of those injuries. Further, Respondent's testimony indicated that Smith stopped the alleged assault and went to the dining room area. (R. p. 49). There was no testimony or evidence establishing that Smith had a weapon during the confrontation immediately prior to the shooting.

4. Appellant respectfully submits this Court overlooked the clear evidence of the Respondent's intoxication and aggressive behavior in finding the circuit court appropriately declined to attribute any aggressive behavior to Respondent at the time of the shooting. Appellant would note that Respondent's testimony indicated that he was subject to acting aggressively and suffering from severe mood swings on the day of the shooting. Respondent noted in his testimony that the physical confrontation between him and the victim started after Respondent

snapped and yelled at the victim for not giving returning his medicine. (R. pp. 44-6).

The trial court failed to consider the fact that Respondent shot the victim as evidence of the impact his intoxication may have had on his decision making, even though (as acknowledged by the court later in the order) Respondent could have either exited the house or simply closed the door to the bedroom. Respondent's father described him as being on the verge of a nervous breakdown after the shooting. (R. p. 214). Nor did the court take into account what effect Respondent's medication, taken before law enforcement arrived on the scene, would have had on interactions with law enforcement after the shooting. Also, the court's assessment that Respondent was cooperative with law enforcement was undermined by his apparent attempt to claim he shot Smith because Smith had a gun, which was not supported by the evidence. (R. pp. 309-10, 336).

Altogether, for the reasons stated above, Appellant requests this Court reconsider its opinion and reverse the circuit court's Order Granting Immunity.

Respectfully submitted,

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January 7, 2015

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The Honorable J. Michael Baxley, Circuit Court Judge

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THE STATE

APPELLANT,

V.

GRAHAM FRANKLIN DOUGLAS,

RESPONDENT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Appellant, certify that I have served the within Petition for Rehearing on the Respondent by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid to his attorneys of record, S. Jahue Moore, Sr., Esq., M. Brooks Biediger, Esq., Margaret A. "Meg" Hazel, Esq., 1700 Sunset Blvd., Post Office Box 5709, West Columbia, South Carolina 29171.

I further certify that all parties required by Rule to be served have been served.

This 7th day of January, 2015.

ALPHONSO SIMON, JR.
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RECEIVED
JAN 07 2015
SC Court of Appeals

January 7, 2015

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *The State v. Graham Franklin Douglas*
Appeal from Chesterfield County
Appellate Case No. 2013-000148

Dear Ms. Kitchings:

Enclosed for filing in your office are the originals and six (6) copies of the Petition for Rehearing in the above-referenced case, together Certificates of Service.

Thank you for your assistance in this matter.

Sincerely,

Alphonso Simon, Jr.
Assistant Attorney General

AS:dmd
Enclosures
cc: S. Jahue Moore, Sr., Esq. (w/two copies of encls.)
M. Brooks Biediger, Esq. (w/two copies of encls.)
Margaret A. "Meg" Hazel, Esq. (w/two copies of encls.)
The Honorable Ernest A. Finney, III, Solicitor, Third Judicial Circuit (w/copy of encls.)
Trisha Allen, Victim Services (w/copy of encls.)