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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
General Sessions Court

The Honorable Michael J. Baxley, Circuit Court Judge

Appellate Case No. 2013-000148

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

v.

Graham Franklin Douglas.....Respondent.

RETURN TO APPELLANT'S PEITION FOR REHEARING

Respondent Graham Franklin Douglas respectfully submits this Return to the State's Petition for Rehearing with respect to the Court's rulings in Opinion No. 5286. The decision of the Court is sound. For the reasons set forth below and for the reasons stated in the Respondents' Brief and the Opinion, this Court's decision should stand.

STATEMENT OF THE CASE

For the purposes of this filing, the Respondent generally adopts and incorporates the facts and procedural history as set forth in the Opinion of the Court of Appeals in this matter, as well as the Statement of the Case and Statement of Facts from the Respondent's Final Brief in this matter.

ARGUMENT

I. The Court Properly Applied the Protection of Persons and Property Act and Found the Act Does Not Exclude a Person's Own Dwelling from the Protections of the Stand Your Ground Provision

The State claims the Court erred in interpreting S.C. Code § 16-11-440(C), and that it does not apply to a person who acts in self defense within the walls of his own home. This argument contradicts the General Assembly's intent behind enacting the Protection of Persons and Property Act and would lead to the absurd result that a person loses his right to stand his ground once he enters his own home. The State is incorrect. The Court properly applied S.C. Code § 16-11-440(C) and held a person has a right to stand his ground in his own home.

"All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Broadhurst v. City of Myrtle Beach Election Comm'n,* 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). "Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers." *TNS Mills, Inc. v. S.C. Dep't of Revenue,* 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998).

An appellate court will reject the interpretation of a statute that would lead to an absurd result the legislature could not have intended. *Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Def.,* 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008); *Kiriakides v. United Artists*

Communications, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) (when construing a statute, the Court will reject meaning that would lead to an absurd result not intended by the legislature).

The Court properly analyzed the section in question:

> (C) 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 as defined in Section 16–1–60.
> § 16–11–440(A), (C) (emphases added).

The State rehashes it's argument that "another" place does not include the home. However, the court correctly explained that "another" can also be defined as "being one more in addition to one or more of the same kind." *State v. Douglas,* No. 2013-000148, 2014 WL 7273646, at *11 (S.C. Ct. App. Dec. 23, 2014). The court went one to state that using this inclusive definition would give meaning to the entire statute:

> Words in a statute must be construed in context. Thus, the [c]ourt may not, in order to give effect to particular words, virtually destroy the meaning of the entire context; that is, give the particular words a significance [that] would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent.

Id. at *12 (internal quotations and citations omitted). The Court went on to analyze the General Assembly's intent for the act:

> (A) It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle *and to extend the doctrine to include* an occupied vehicle and *the person's place of business.*
> (B) The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from

> intruders *and attackers* without fear of prosecution or civil action for acting in defense of themselves and others.
> (C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.
> (D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested *and safe within their homes, businesses, and vehicles.*
> (E) The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion *or attack.*

S.C. Code Ann. § 16-11-420. (emphases added by the court). The court correctly stated that the intent of the Act was to protections to those facing "intruders but also attackers, including those who are initially invited into the home and later place the homeowner in reasonable fear of death or great bodily injury." *Id.*

In addition, the State's reliance on *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) is misplaced. The Appellants read that case to state that a social guest was not entitled to protection under S.C. Code Ann. § 16-11-440 (A), but to Subsection. B. However, the opinion states: "Because Collins was a social guest and rightfully in the apartment, subsection (A) is inapplicable to Appellant, and he is therefore defaulted into subsection (C), which deals with the use of force by one who is attacked in another place where he has a right to be." *Id.* Therefore, Subsection C is the default for when Subsection A doesn't apply to the circumstances.

The State also misconstrues *State v. Robbins,* 275 S.C. 383, 375, 271 S.E.2d 319, 320 (1980). The State asserts that to interpret the term "another" to include the home is inconsistent with other interpretations in criminal law. They use the example: "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." Petition, p. 5. This construction stretches the boundaries of common sense interpretation. A person cannot be in two places at

once, thus the interpretation of "another" to mean a different place. However, a person can be attacked in multiple places. The court was correct in holding: "[t]herefore, the more inclusive definition of 'another' is the proper definition to employ in interpreting section 16–11–440(C). *Douglas* at *12. This Court should deny the State's petition for rehearing.

II. The Court Properly Admitted the Testimony of Sgt. Drake and Officer Stair.

The State again presents the argument that the evidence presented by Sgt. Drake and Officer Stair was not cumulative and was improperly admitted. This Court correctly found that the evidence was admissible, stating:

> [i]n the murder prosecution of one pleading self-defense against an attack by the deceased, evidence of other *specific instances of violence* on the part of the deceased are not admissible unless they were directed against the defendant or, if directed against others, were so closely connected at point of time or occasion with the homicide as reasonably to indicate *the state of mind of the deceased at the time of the homicide, or to produce reasonable apprehension of great bodily harm.* Whether a specific instance of conduct by the deceased is closely connected in point of time or occasion to the homicide so as to be admissible is in the trial [court's] discretion and will not be disturbed on appeal absent an abuse of discretion resulting in prejudice to the accused.

Douglas at *8, *citing State v. Day,* 341 S.C. 410, 419–20, 535 S.E.2d 431, 436 (2000) (emphases added by court). The court went on to quote testimony from the Respondent, showing that the evidence was "relevant to Smith's state of mind and Respondent's state of mind at the time of the shooting and ... was cumulative to Respondent's previous testimony ..... Respondent previously testified that, prior to the shooting, he was aware of these incidents as well as other, more serious instances of Smith's violence...." *Id.* at *9. In addition, the Court correctly held that: "the fact that Smith had a history of violent behavior was well-established—without objection from the State—prior to the admission of Sergeant Drake's and Officer Stair's testimony." *Id.* Therefore, this testimony was properly admitted.

III. The Court Properly Found that Respondent Reasonably Believed He Was Facing Great Bodily Harm.

The State now claims that the court used an improper standard to find that Respondent reasonably believed he was in danger of great bodily harm. This is the first time the State has raised this argument.

"The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Jean H. Toal, Shahin Vafai & Robert Muckenfuss, *Appellate Practice in South Carolina* 309 (1999) (citing *Arnold v. Carolina Power & Light Co.,* 168 S.C. 163, 167 S.E. 234 (1933)). "Appellants had the opportunity to present their arguments and evidence when this case was originally heard by the trial court." *Kennedy v. S. Carolina Ret. Sys.,* 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). Therefore, this argument is improperly before this Court.

The State also rehashed the argument that Respondent's injuries did not show great bodily harm. However, having suffered great bodily injury is not required to employ self-defense. The statute reads:

> (C) 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 as defined in Section 16–1–60.

S.C.Code Ann. § 16–11–440(A), (C) (emphases added).

There is no requirement that a person must suffer before acting in self-defense. "Once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act." *State v. Hendrix,* 270 S.C.

653, 244 S.E.2d 503 (1978). Similarly, "[the accused] doesn't have to wait until his assailant gets the drop on him, he has the right to act under the law of self-preservation and prevent his assailant (sic) getting the drop on him." *State v. Rash,* 182 S.C. 42, 50, 188 S.E. 435, 438 (1936). A victim is not required to risk serious injury before self-defense is warranted. *State v. Frazier,* 401 S.C. 224, 234, 736 S.E.2d 301, 306 (Ct. App. 2013).

IV. The Court Properly Considered Any Evidence of Respondent's Intoxication.

The State again argues that the court failed to consider Respondent's intoxication. This is in error.

The standard for evaluating whether an accused had a reasonable belief that deadly force was necessary is an objective standard. *See Curry,* 406 S.C. at 371 n. 4, 752 S.E.2d at 266 n. 4 (setting forth the elements of self-defense and stating "if his defense is based upon his belief of imminent danger, a *reasonably prudent man* of ordinary firmness and courage would have entertained the same belief" (emphasis added)). The Court thoroughly considered any evidence of Respondent's intoxication, noting that:

> Given Respondent's previous violent experience with Smith in the summer of 2006, perhaps Respondent should have known that sharing almost two full bottles of vodka with Smith was a bad idea. However, Respondent's condonation of, and participation in, this drinking binge did not amount to "bringing on the difficulty." One who merely does an action [that] affords an opportunity for conflict is not thereby precluded from claiming self-defense. Fault implies misconduct, not lack of judgment. Before an act may cause forfeiture of the fundamental right of self-defense it must be willingly and knowingly *calculated to lead to conflict.*

Id. at *13, n. 8 (internal citations omitted, emphasis added by court). Therefore, the Court did consider evidence of Respondent's intoxication, and found that it did not contribute to a lack of judgment or to cause the conflict.

The State also incorrectly implies that Respondent's behavior after the shooting should have bearing on whether or not Respondent was in fear of great bodily harm before the shooting. In one example, it asserts that because Respondent was close to a "nervous breakdown" after shooting (R. 214), he was somehow in error for protecting himself. There are only three elements to establish protection of self in these circumstances:

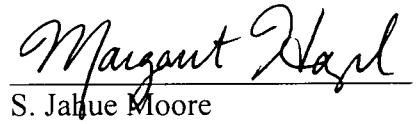
> First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life.

Douglas at *4 (citations omitted). None of these elements require examination of behavior after the incident. Therefore, the Court properly evaluated this evidence.

CONCLUSION

For the reasons stated above, the Court should deny the Appellant's Petition for Rehearing.

Respectfully submitted,



S. Jahue Moore
M. Brooks Biediger
Margaret "Meg" Hazel
Moore Taylor Law Firm, P.A.
Post Office Box 5709
West Columbia, SC 29169
Telephone: (803)796-9160
Facsimile: (803)791-8410
Attorneys for Respondent

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

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PROOF OF SERVICE

I certify that I have served a filed the Return to the Appellant's Petition for Rehearing on the parties listed below by depositing a copy in the United State Mail, postage prepaid, on February 13, 2015, addressed as indicated below.

Alphonso Simon, Jr.
Assistant Attorney General
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

MOORE TAYLOR LAW FIRM, P.A.

BY: _____
S. Jahue Moore
M. Brooks Biediger
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEYS FOR RESPONDENT

West Columbia, South Carolina
February 13, 2015.

MOORE | TAYLOR
LAW FIRM

S. Jahue Moore†
J. Mark Taylor*
C. Vance Stricklin, Jr.
James Edward Bradley†
Sheila McNair Robinson
Robert D. Hazel
Christian G. Spradley
C. David Sawyer, Jr.
William H. Edwards
Stanley L. Myers
Jane H. Downey•
S. Jahue Moore, Jr.
John C. Bradley, Jr.
Melissa K. Moore
William B. Fortino
Ralph Nichols Riley, Jr.
M. Brooks Biediger
Amber Cary Fulmer
Sarah Taylor Cassidy
Margaret "Meg" Hazel
Billy C. Coleman (Ret.)

February 13, 2015

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: State vs. Graham Franklin Douglas
Appeal from Chesterfield County
Appellate Case No. 2013-000148

Dear Ms. Kitchings:

Enclosed for filing with your office is the Respondent's Return to Petition for Rehearing.

By copy of this correspondence, we are serving the Attorney General's Office with the same.

Yours very truly,

M. Brooks Biediger

MBB
Enclosures
cc: Alphonso Simon, Jr., Esq. (w/ encls.)

1700 Sunset Boulevard, West Columbia SC 29169 | PO Box 5709, West Columbia SC 29171
TEL 803.796.9160 FAX 803.791.8410 www.mooretaylorlaw.com