STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Chesterfield County
Court of General Sessions
J. Michael Baxley, Circuit Court Judge

Opinion No. 5286 (S.C. Ct. App. filed December 23, 2014)
Rehearing Denied February 19, 2015
Appellate Case No. 2013-000148

THE STATE OF SOUTH CAROLINA,

PETITIONER,

V.

GRAHAM FRANKLIN DOUGLAS,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner hereby certifies that the petition for rehearing was made, and that the Court of Appeals ruled upon the petition for rehearing on February 19, 2015. (App. 101-110, 124).

QUESTION PRESENTED

1. Whether the Court of Appeals erred in affirming the circuit court's grant of immunity under the Protection of Persons and Property Act when the grant of immunity was based upon the improper application of the presumption afforded under S.C. Code Ann. § 16-11-440(C) where the homicide occurred inside the defendant's residence?

2. Whether the Court of Appeals erred in affirming the circuit court's grant of immunity when the circuit court abused its discretion in relying upon the testimony of two law enforcement officers regarding violent incidents involving the victim when the testimony was improper character evidence, and its admission and consideration was not harmless because it was not cumulative to any testimony presented and its consideration was unfairly prejudicial?

STATEMENT OF THE CASE

Respondent Graham Franklin Douglas ("Respondent") was arrested for Murder (2010-GS-23-6119) and Possession of a Weapon during the Commission of a Violent Crime (2010-GS-23-6119). On April 24, 2012, Respondent filed a Notice of Motion and Motion to Dismiss pursuant to the Protection of Persons and Property Act. (R. pp. 424).

An evidentiary hearing on the Motion was held before the Honorable J. Michael Baxley, Circuit Court Judge, on October 2-3, 2012. Respondent was present and was represented by S. Jahue Moore, Esquire, M. Brooks Biediger, Esquire, and M.W.

Cockrell, III, Esquire. The State was represented by Solicitor Ernest A. Finney and Assistant Solicitor Tyler B. Brown, Esquire, both of the Third Judicial Circuit.

Judge Baxley informed the parties of his decision to grant immunity by letter. (R. pp. 427-30). By letter dated November 14, 2012 and filed November 19, 2012, the State requested the judge reconsider his decision to grant immunity. (R. pp. 431-34). On January 4, 2013, the trial court filed its Order Granting Immunity and Dismissing Criminal Charges. (R. pp. 435-49). Petitioner subsequently filed its Notice of Appeal.

Petitioner perfected the appeal with the filing of a Final Brief of Appellant. In that brief, Respondent raised four issues:

1. Whether the court abused its discretion in admitting and relying upon testimony regarding two incidents involving the victim that were irrelevant and improper character evidence, in finding that the defendant was entitled to immunity from prosecution?

2. Whether the court erred in its assessment of the evidence of intoxication as supporting the grant of immunity when the testimony did not support the findings made by the court and the court did not assess the impact of the Respondent's intoxication in assessing the reasonableness of his actions?

3. Whether the court erred in finding the defendant was reasonable in believing he was imminently facing great bodily injury when there was no evidence in the record to support such a finding?

4. Whether the court erred in granting immunity under S.C. Code Ann. § 16- 11-440(C) when the shooting occurred inside of the defendant's residence?

(App. 1-35). Respondent filed a Final Brief of Respondent. (App. 36-70). Petitioner also filed a Final Reply Brief of Appellant. (App. 71-9).

The South Carolina Court of Appeals heard oral argument on September 10, 2014. On December 23, 2014, the Court of Appeals issued a published opinion affirming the circuit court's grant of immunity under the Protection of Persons and Property Act.

(App. 80-100). Petitioner subsequently filed a Petition for Rehearing. (App. 101-110). Respondent filed a Return to the Petition for Rehearing. (App. 115-23). The South Carolina Court of Appeals subsequently denied the Petition for Rehearing on February 19, 2015. (App. 124-25). This Petition follows.

Relevant facts:

On May 31, 2011, Respondent Graham Douglas ("Respondent") shot and killed Eden Smith in Respondent's home. Smith was shot in the chest, and the projectile went through his heart. (R. p. 347). The injury caused excessive internal bleeding. (R. p. 347).

Respondent's Testimony Regarding Event

According to Respondent, he and Smith met to play golf on May 31, 2011. (R. pp. 27-8). Smith met Respondent at Respondent's home, a sharecropper's cabin that was located behind his parents' house. (R. pp. 15-7, 28). The two may have eaten snacks before they left to go to the golf course. (R. p. 29).

After Smith arrived, he and Respondent went to a convenience store, where Respondent purchased two cups of ice and a pack of cigarettes. (R. p. 29). According to Respondent, Smith had brought a bottle of vodka with him, and the two consumed the bottle while they were playing golf. (R. pp 29-30). After the two completed their round, they went to a liquor store to purchase another bottle of vodka. (R. p. 30). They then drove back to Respondent's house. (R. p. 30). After they arrived at Respondent's home, Respondent indicated they filtered the bottle of vodka, and consumed at least part of the bottle in his back yard. (R. p. 31-2). According to Respondent, when his father arrived

to his parents' home, Respondent and Smith went inside Respondent's house.[1] (R. p. 40). Respondent indicated that he had less than one cup of vodka while they were in his back yard. (R. p. 39). He did not know how much Smith had outside.

Some time after Respondent and Smith re-entered Respondent's house, Smith used Respondent's bathroom, which was located in Respondent's bedroom. (R. pp. 41-2). Respondent noted that his bathroom does not have a door, so Smith closed and locked the bedroom door. (R. pp. 41-2). Respondent testified that Smith stayed in the bathroom for more than ten minutes. (R. p. 42). According to Respondent, when Smith came out of the bathroom and bedroom, he had a bottle of Respondent's medication.[2] (R. p. 43). Respondent testified that Smith would not give Respondent the medicine. (R. p. 44). Instead, according to Respondent, Smith kept Respondent from retrieving the medication several times and taunted Respondent. (R. pp. 44-5, 91). Respondent testified, "[f]inally, I said god damn it, give me my medicine." (R. p. 45, l 4). Respondent then stated that Smith "snapped," and "went crazy."[3] (R. p. 45, l 7). "He turned around and grabbed me by my shoulders, and threw me up against the refrigerator." (R. p. 45, ll 11-12).

Respondent claimed that he was scared to death. Respondent also asserted that his knees buckled, and Smith was holding Respondent up by his biceps. (R. p. 46). When Smith let go of Respondent, Respondent fell to the floor. (R. p. 47). Respondent

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[1] Respondent indicated that the two went inside because he did not believe his father would have been pleased to see him either drinking alcohol or spending time with Smith. (R. pp. 39-40).

[2] Respondent testified that it was either Molzapam or Clonazepam, which was used for sleep and anxiety. (R. p. 43).

[3] Respondent noted during cross-examination that Smith had neither threatened nor harmed him before Respondent said "god damn." (R. p. 88). He further testified that there was no confrontation between him and Smith prior to the confrontation over the pill bottle. (R. p. 109).

testified that he was dazed after he hit his head on the floor in front of his refrigerator. (R. p. 47). Respondent testified that he believed Smith struck him in one of his eyes. (R. p. 48). Respondent also claimed that Smith bit him. (R. p. 48). Respondent testified that he told Smith to leave and to leave him alone several times. (R. p. 49). Respondent crawled to his bedroom. (R. pp. 49, 92-3). Respondent asserted that he again told Smith to leave the house. (R. p. 50). Respondent then went to his dresser drawer and retrieved his pistol. (R. p. 50). Respondent testified that he stood up in his bedroom, held the gun beside him, and told Smith to leave in very stern words. (R. pp. 50-1, 93). According to Respondent, he was approximately two feet away from the kitchen at that time. (R. p. 51). Smith did not leave. Respondent testified that Smith started to advance towards him. (R. pp. 51, 95). At some point, Respondent cocked the gun, lifted it, and the gun fired. (R. p. 51). Respondent indicated that Smith was approximately one yard away when the gun fired. (R. p. 51). Respondent testified he fired the gun only once, and Smith fell afterwards. (R. p. 52). Respondent claimed that he had no memory of pulling the trigger. (R. p. 95).

After the Shooting

After the shooting, Respondent testified that he initially froze; he then knelt down and saw Smith was trying to breathe. (R. p. 53). Respondent then ran to his parents' house and called 911. (R. pp. 53, 74). According to both Respondent and his father, his father was the one who spoke with the 911 operator because Respondent was having a panic attack. (R. pp. 53, 210). Respondent took some Clonazipam after he called 911, but before police arrived. (R. pp. 54, 74).

Respondent's father, Leon Douglas, testified that on May 31, Respondent barged into the back door of his house and used the phone. (R. pp. 209-10). The elder Douglas testified that Respondent then stated that Smith had been shot, then ran out the back door and went back to Respondent's house. (R. pp. 210-11). Mr. Douglas gave the 911 operator and EMS directions to the house. (R. pp. 210-11). He then went into the back door at Respondent's house and saw the victim dead on the floor. (R. p. 211). He recalled seeing a gun near Smith's body. (R. p. 211).

Deputy Dana Wallace was the first deputy sheriff to arrive on the scene. (R. pp. 308-09). He testified that when he got to the house, Respondent and his father were standing in the backyard of Respondent's house. (R. p. 309). Respondent told Wallace that "he come at me with a gun and I shot him." (R. p. 309, ll 15, see R. pp. 321-22). Wallace indicated that Respondent was highly intoxicated and disheveled. (R. pp. 309-10). Wallace had two other deputies detain and Mirandize Respondent. (R. p. 311).

Investigator Scott of the Chesterfield County Sheriff's Office testified that Respondent told him that the victim was coming at him with a gun, and Respondent asserted he shot the victim in self-defense. (R. pp. 336, 341). Scott noted that he did not ask Respondent any questions or interrogate him. (R. p. 336). Investigator Jordan testified Respondent did not make any statements to him that he acted in self-defense or that Smith had attacked him. (R. p. 184). Respondent did repeatedly tell Jordan that he shot Smith. (R. p. 192). Jordan testified that he heard Respondent tell Investigator Scott that he was a murderer, that he shot Smith, and that he had to shoot Smith before Smith shot him. (R. pp. 199-200).

The Victim

Wallace saw the victim's body laying on the floor in the kitchen. (R. p. 311). He noted that the victim was ten to fifteen steps away from the back door. (R. p. 311). A pistol was near the victim's right hand on the floor. (R. pp. 311, 329, 330). The victim was not wearing a shirt, and the beige cargo shorts he was wearing were not pulled all the way up. (R. pp. 312-13). He noted there was a tear on each side of the pants. (R. p. 314). Wallace also indicated that the victim was not wearing any underwear or shoes. (R. pp. 314-15). He noticed blood on the front right side of the shorts, and a spot of blood on the back of the shorts and on the left front pocket area. (R. pp. 315-16). Wallace also indicated there was a wet spot in the front of the victim's pants. (R. pp. 319-20).

SLED Agent James Johnson was involved in a search of Respondent's house after the shooting. (R. pp. 142-43, 147). He testified that when they searched the house, Smith's body was still on the kitchen floor. (R. p. 147). Johnson testified that the body was stretched out on the floor of the kitchen; the victim's head was turned towards the dishwasher, both of his arms were spread out from his body, and his leg was up and bent. (R, pp. 147-48). A firearm was next to Smith's right hand.[4] (R, p. 148). Johnson noted that Smith was not wearing a shirt, and he was not wearing shoes. (R, p. 154).

Investigator Jordan also indicated that he saw a firearm by Smith's right hand. (R. pp. 179-80). It appeared to Jordan that the firearm had not been opened. (R. pp. 179-80). Jordan was informed by EMS that the gun had been moved slightly when they were assessing Smith's condition. (R. p. 180). Jordan also noted that Smith was only wearing

[4] Johnson noted that he was informed the gun had been moved by EMS, but not by much. (R. p. 169).

cargo pants and black socks. (R. p. 181). Jordan noted that the pants were halfway down Smith's body, and Smith was not wearing underwear. (R. p. 181).

The pathologist testified that the gunshot wound was intermediate range. There was stippling around the wound, and the end of the gun was probably a couple of feet away from the victim's skin. (R. pp. 349-50). The pathologist also found multiple bruises on the arms and back of the victim's hand, and noted they were in the areas of defensive wounds. (R. pp. 347, 348). The pathologist also stated there was a small bruise on the victim's left knee. (R. p. 349).

Smith had a blood alcohol content of .216.[5] (R. pp. 300, 371).

Physical Condition of Respondent after the Shooting

Wallace did not notice any injuries on Douglas at the scene. (R. p. 322). Respondent did not tell Wallace that he had been bruised or who bruised him. (R. pp. 327-28).

Scott testified that he noticed some discoloration under Respondent's right eye when he saw him that day. (R. pp. 334-35). He did not see any blood or any scratches on him. (R. pp. 334-35). He did see that Respondent had bruises on both of his arms. (R. p. 340).

Agent Johnson testified that he went to the detention center to take photos of Respondent for injuries. (R. p. 155). Johnson noticed that Respondent had a small bruise on his knee, and there did not appear to be any significant injuries to Respondent's upper body. (R. p. 156). There did not appear to be any dark purple marks, no black eye, and

[5] This was based on the level from the iliac vein. (R. pp. 304-05). An ocular fluid test was also done, and the victim's blood alcohol content in the ocular fluid was .24. (R. pp. 306, 371).

no scratches. (R. p. 156). Johnson did note that he saw a visible injury to Respondent's eye, a scrape on his knee, and a little discoloration on his right arm. (R. pp. 164-65, 167). He also indicated that he did not see a bite mark. (R. pp. 156, 167).

Investigator Wayne Jordan of the Chesterfield County Sheriff's Office testified that he observed Respondent at the scene. (R. pp. 171, 172). Jordan saw Respondent had a scrape across his right knee that had dried blood, and Respondent's left eye was a little swollen. (R. pp. 173-74). He also noted that Respondent was very intoxicated and unsteady on his feet. (R. p. 175). Jordan noted that Respondent made no statements about being injured. (R. pp. 184-85). Jordan indicated that Respondent had a fresh injury above his eye, and he noticed some bruising on Respondent's arms. (R. pp. 201-02, 204-05). Jordan also stated that he did not observe a bite mark, though he noted that he did not look for one. (R. pp. 203-04).

Leon Douglas testified that Respondent's clothes appeared skewed, his face was puffy, and his right knee appeared to be bloody. (R. p. 213). He noted that Respondent did not appear to be hindered by any injuries when he was running to and from Douglas' house.

Agent Kenley testified that he and his partner went to the detention center on the night of the incident to photograph Respondent. (R. pp. 250-51). Kenley noticed a little bruise around one of Respondent's eyes, but did not see anything bloody or purple on his face. (R. p. 251). Kenley noted that Respondent had some bruises and a small cut on his right knee. (R. pp. 252-53). He saw bruising on Respondent's biceps, but did not see any damage to the back of Respondent's arms. (R. p. 253). Kenley also noted that there was

no indication that Respondent's injuries were self-inflicted. (R. p. 257). He also noted there was a bruise on Smith's right hand. (R. pp. 265-66).

Respondent testified that he did not get any treatment for his injuries at the jail. (R. p. 97). He did not need stitches in his leg, and none of his cuts, bruises or contusions required medical treatment. (R. p. 98). Respondent acknowledged that he did not have any serious permanent disfigurement resulting from his confrontation with Smith, nor did he have any protactile loss or impairment of a function of a part of his body. (R. p. 99). Brandy Teal, an LPN at the Chesterfield Detention Center who treated Respondent On June 2, 2011, testified that Respondent had bruising on his upper arms and a black right eye. (R. pp. 126-27). She indicated that his bruises were the size of a baseball. (R. p. 127). He did not have any other injuries, and he did not receive any medication or treatment for the bruising. (R. p. 131).

Forensic Evidence

Gunshot residue was found on Smith's left palm. (R, pp. 199,392-93, 395). No gunshot residue was found on Respondent. (R. pp. 195-97, 389-92, 395).

Agent Karl Kenley of SLED processed the scene with Sabrina Felkers. (R. pp. 242-43). He noted that there was blood evidence in the kitchen. (R. p. 244). There was a blood smear under the countertop, and there was blood spatter on the cabinet. (R. pp. 244-46). He indicated that there were a few chairs overturned and the dishwasher was damaged. (R. p. 250). A vase that was located on the top of the refrigerator appeared to not be disturbed. (R. p. 85).

Blood of the victim was found on a pair of Respondent's pants recovered at the scene. (R. pp. 260-64, 270-80). Also, blood from Respondent was found on pants belonging to the victim at the scene. (R. pp. 260-64, 270-80).

Order Granting Immunity

The court granted immunity. In so doing, it noted that it found the following as favoring a finding of immunity: (1) the superior physical condition of the victim; (2) gross intoxication of the victim; (3) multiple injuries sustained by Respondent; (4) the history of assaultive behaviors by the victim; (5) the prior assault by the victim against Respondent; (6) no prior criminal charges nor history of violence by Respondent; (7) close quarters of the altercation; (8) forensic evidence at the scene; and (9) Respondent was in his own residence. (R. pp. 441-46). The court did note that several factors weighed against granting immunity, including (1) the location of the weapon appeared suspicious; (2) the inconsistent statements by Respondent; (3) Respondent could have exited the dwelling prior to retrieving a weapon; and (4) the clothing evidence at the scene was unexplained. (R. pp. 446-48).

Court of Appeals Opinion

The Court of Appeals affirmed the circuit court's grant of immunity. In finding the circuit court did not err in granting immunity based upon the application of S.C. Code Ann. § 16-11-440(C), the Court of Appeals stated,

> The State places emphasis on the word "another" in the phrase "another place where [the accused] has a right to be" in subsection (C) of section 16–11–440. The primary definition of "another" is "different or distinct from the one first considered." Merriam Webster's Collegiate Dictionary 51 (11th ed. 2003). This definition would arguably modify "place," as used in section 16–11–440(C), in such a way as to make "dwelling, residence, or occupied vehicle" and "another place" mutually exclusive. This is the interpretation the State proposes. On the other hand,

> the second and third definitions of "another" are "some other" and "being one more in addition to one or more of the same kind," respectively. Id. The third definition is more inclusive and arguably would not eliminate "dwelling, residence, or occupied vehicle" as a possible "place" where the person using deadly force has a right to be pursuant to section 16–11–440(C).
>
> ...
>
> The General Assembly's use of this language in section 16–11–420 clearly indicates its intent to provide the protections of the Act to persons within their own home facing not only unwelcome 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. Further, the language of section 16–11–440(C) itself indicates that its application is not limited to businesses. Therefore, the more inclusive definition of "another" is the proper definition to employ in interpreting section 16–11–440(C). See Sparks, 406 S.C. at 128, 750 S.E.2d at 63 ("A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." (citation and quotation marks omitted)); Broadhurst, 342 S.C. at 380, 537 S.E.2d at 546 ("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." (citation omitted)).
>
> Based on the foregoing, the circuit court correctly interpreted section 16-11-440(C) to apply to Respondent.

(App. 98, 99-100). The Court of Appeals also found the circuit court did not abuse its discretion in finding Respondent reasonably believed shooting the victim was necessary to prevent great bodily harm to himself and Respondent acted in self-defense. The Court of Appeals found that any error by the circuit court in admitting the testimony of two law enforcement officers regarding prior bad acts of the victim was harmless. The Court of Appeals further found that circuit court did not commit reversible error in its handling of the evidence regarding the intoxication of both the victim and Respondent.

ARGUMENT

I. CERTIORARI SHOULD BE GRANTED BECAUSE THE COURT OF APPEALS ERRED IN HOLDING S.C. CODE ANN. § 16-11-440(C) CAN APPLY WHEN THE HOMICIDE OCCURS IN A DEFENDANT'S RESIDENCE, DWELLING, OR OCCUPIED VEHICLE.

Certiorari should be granted to review whether the Court of Appeals erred in holding that the presumption afforded under S.C. Code Ann. § 16-11-440(C) applies when the homicide at issue occurs in a defendant's residence, dwelling, or occupied vehicle. This determination by the Court of Appeals presents a novel question of law in this State. The Court of Appeals' opinion in this case is the first to hold that one may be entitled to immunity when the homicide occurred inside one's residence, dwelling, or occupied vehicle and S.C. Code Ann. § 16-11-440(A) does not apply. The only other opinion that has been published concerning this question was in State v. Manning, Op. No. 5228 (S.C.Ct. App. filed May 7, 2014)(Shearouse Adv.Sh. No. 18, at 16), which was withdrawn by the Court of Appeals by Order filed June 26, 2014. In the initial opinion in Manning, the Court of Appeals held that § 16-11-440(C) could not apply because "another place" necessarily referred to somewhere other than one's residence, dwelling or occupied vehicle.[6] Petitioner submits the Court of Appeals erred in finding the presumption in §440(C) applies and in affirming the grant of immunity based upon the application of that presumption.

Both the Court of Appeals and the Circuit Court erred in finding Respondent was entitled to immunity from prosecution under S.C. Code Ann. § 16-11-440(C). Since the

[6] After rehearing, the Court of Appeals filed an unpublished opinion affirming the conviction in Manning, but remanding the case to the circuit court for an immunity hearing. State v. Manning, No. 2010-176707, 2014 WL 6488708 (S.C.Ct.App. Nov. 19, 2014). Both parties are seeking certiorari in the Manning case.

entire incident that led to the shooting occurred inside Respondent's home, Respondent was not "in another place," as is required for immunity under the statute. As a result, the circuit court's reliance upon S.C. Code Ann. § 16-11-440(C) as the basis for granting immunity was an error of law and should be reversed.

Respondent was not entitled to immunity under S.C. Code Ann. § 16-11-440(C) because his residence does not constitute "another place" that would allow for immunity under the statute. 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.

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. State v. Duncan, 392 S.C. 404, 408, 709 S.E.2d 662, (2011); Mid–State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. Id. When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Duncan, 392 S.C. at 408-09, 709 S.E.2d at 664; Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).

> "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).

S.C. Code Ann. 16-11-440(C) states:

> 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.

(emphasis added). At issue is whether Respondent's residence qualifies as "another place" where he had a right to be in order to be eligible for immunity under this provision of the Act in accordance with S.C. Code Ann. § 16-11-450(A). It does not.

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, It is 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. Since subsection (C) does not apply to one's residence, the court's finding that Respondent was entitled to immunity under subsection (C) was in error.

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 Court of Appeals' interpretation of "another place" does not properly 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 General Assembly would have included dwelling, residence, and occupied vehicle with place of business 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. The Court of Appeals' interpretation of "another place" renders the term meaningless. Specifically, under this interpretation, "another" is rendered surplusage.

The interpretation of "another place" made by the Court of Appeals also 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, covering the fourth element of self-defense.

The Court of Appeals' 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, the Court of Appeals' interpretation of the term "another place" is inconsistent with how the term is interpreted or used in other contexts in South Carolina 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 primary definition listed by the Court of Appeals in its opinion.

Finally, Petitioner submits the Court of Appeals' citation to the primary definition of "another" clearly reflects that its interpretation of the word it ultimately adopts is not consistent with the plain and ordinary meaning of the term. Further, the second and third definitions of "another" from the dictionary do not support the Court of Appeals' conclusion that "another place" necessarily includes dwelling, residence, or occupied vehicle. The Court of Appeals basically admits as much when it indicates that the definition that it ultimately relies upon is only arguably more conclusive. Altogether, this Court should grant certiorari to resolve this novel question of law.

II. THIS COURT SHOULD GRANT CERTIORARI AND REVIEW THE COURT OF APPEALS' DETERMINATION THAT ANY ERROR BY THE CIRCUIT COURT IN CONSIDERING THE TESTIMONY OF OFFICER STAIR AND SGT. DRAKE IN ASSESSING WHETHER RESPONDENT WAS ENTITLED TO IMMUNITY WAS HARMLESS.

The Court of Appeals erred in finding the circuit court did not abuse its discretion in admitting the testimony of Officer Stair and Sgt. Drake; the testimony was inadmissible evidence of specific incidents of violence that were not directed against Respondent, and were not closely connected in point in time to the homicide in this case. The consideration of the testimony of the two officers was unfairly prejudicial.

Whether a defendant is entitled to immunity under the Protection of Persons and Property Act must be decided prior to trial if either party moves for a determination regarding the Act's application to a defendant's case. State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). "[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." Id. at 411, 709 S.E.2d at 665.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001) (citing State v. Cutter, 261 S.C. 140, 199 S.E.2d 61 (1973). State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Wilson, 345 S.C. at 6, 545 S.E.2d at 829. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). Review is limited to determining whether the trial judge abused his discretion. Id. The appellate court may not re-evaluate the facts based on its own view of the preponderance of the evidence, but must determine whether the trial

judge's ruling is supported by any evidence. Wilson, 345 S.C. at 6, 545 S.E.2d at 829; see generally Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991) ("In law actions, the lower court must be affirmed where there is "any evidence" to support its findings.").

The admission of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). To constitute an abuse of discretion, the conclusions of the trial court must lack evidentiary support or be controlled by an error of law. State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166-67 (2007).

How the issue arose at the hearing

During his direct testimony, Respondent testified that he was aware that the victim had a criminal history of violent acts, and indicated that he was aware that the victim had previously been charged with burglary, armed robbery, assaulting a woman, assaulting to police officers, and a charge relating to some sort of criminal sexual misconduct. During cross-examination, Respondent stated that he learned of Smith's criminal charges from Smith's sister. (R. p. 67). He also noted that the day after Smith was arrested for biting a female in Cheraw and a police officer, he ran into Smith at a Bi-Lo grocery store. Respondent indicated that Smith showed him where he had been fingerprinted and told Respondent that he had bitten someone. (R. p. 68).

The defense later presented testimony from William Joseph Stair, a police officer with the City of Myrtle Beach. (R. pp. 132-39). After some identification questions were asked, the defense asked Officer Stair if he was involved in an incident with Smith. (R. p. 133). The State objected. (R. p. 133). In response, Respondent argued that the

testimony that was being offered was of a prior assault of which Respondent had testified he was aware. (R. p. 134). Respondent argued that where the issue of self-defense is raised, and where the issue of the rationale and reasonableness of the defendant's conduct is at issue, the defendant's knowledge of prior violent acts by the victim would bear on the reasonableness of the defendant's conduct in attempting to repel the victim. (R. p. 134). Respondent further stated that he was attempting to place in the record testimony that supports his testimony that he knew of the prior bad acts.

The State responded by noting that it had no objection to Respondent's testimony regarding his understanding of Smith's history. The objection was to the testimony of this particular officer telling the Court something that he did not tell Respondent. (R. p. 134). The court overruled the objection. (R. p. 135).

Officer Stair went on to testify that on December 14, 2007, he was dispatched to Broadway at the Beach. (R. p. 137). Smith was placed under arrest for public intoxication, disorderly conduct, and resisting arrest. (R. p. 137). While in the jail cell, Smith attempted to damage the lights in the cell, and Smith would not comply with requests that he walk to the front of the cell. (R. p. 137). Stair testified that he and others had to drag Smith to the front cell, and when Smith was placed on the ground in the cell to remove his cuffs, Smith started struggling and attempted to bite Stair's leg. (R. pp. 137-38).

The State also objected to the introduction of Officer Stair's report regarding the incident based on the same arguments. (R. p. 139). The court overruled the objection. (R. p. 139). Smith was charged with assaulting a police officer because he lunged

towards an officer after he refused to comply with their orders. (R. p. 140). Stair noted that Smith pled guilty to all of the charges. (R. p. 141).

Later during the hearing, the defense presented the testimony of Sergeant Roy Drake of the Cheraw Police Department. (R. pp. 217-221). Sgt. Drake testified that he was familiar with an incident in which Smith was arrested for assaulting a female. The State objected to Sgt. Drake's testimony, specifically stating that it was raising the same objection that it had to the testimony from Officer Stair. (R. p. 218). For the same reasons given previously, the court overruled the objection. (R. pp. 218-19).

Sgt. Drake went on to testify that Smith was arrested for assaulting a female. Smith was alleged to have bitten the woman on the shoulder. (R. p. 219). Drake also testified that Smith was not a problem for law enforcement until he got to the jail. Drake indicated that Smith was sobbing about his dead sister and would not comply with a request that he remove an arm band. (R. p. 219). Drake further testified that Smith had to be forcibly put in the cell, and Drake attempted to use a Taser on Smith. (R. pp. 219-21). It was also noted that Smith was highly intoxicated that night. (R. p. 220).

After quoting some of Respondent's testimony from the hearing, the Court of Appeals found that any error made by the circuit court in admitting the testimony of the two officers was harmless.

> Therefore, 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. Any error in admitting details of the 2007 and 2010 incidents beyond what Respondent already knew was harmless. See State v. Williams, 321 S.C. 455, 463, 469 S.E.2d 49, 54 (1996) (holding improperly admitted testimony was cumulative to the other, properly admitted evidence and was therefore harmless).

(App. 95).

The Court of Appeals erred in finding the circuit court did not abuse its discretion in utilizing the testimony of the two officers in assessing whether Respondent was entitled to immunity. The testimony was not cumulative to the testimony from Respondent, and its admission was improperly prejudicial.

Generally, "[e]vidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion. Rule 404(a), SCRE. An exception to this rule arises when the evidence is of the character of the victim. Specifically, "[e]vidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same," is admissible for the purpose of proving action in conformity therewith. Rule 404(a)(2), SCRE. However,

> [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. State v. Brown, 321 S.C. 184, 467 S.E.2d 922 (1996); State v. Amburgey, 206 S.C. 426, 34 S.E.2d 779 (1945). 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 judge's discretion and will not be disturbed on appeal absent an abuse of discretion resulting in prejudice to the accused. Id. (citing State v. Peak, 134 S.C. 329, 133 S.E. 31 (1926)).

State v. Day, 341 S.C. 410, 419-20, 535 S.E.2d 431, 436 (2000).

The Court of Appeals was correct in finding that the admission of the testimony of Officer Stair and Sgt. Drake was improper. However, the Court of Appeals erred in finding the consideration of the testimony was cumulative and not prejudicial. First, neither instance presented by Stair or Drake involved an act of violence directed towards

the Respondent. The assault involved in the December 2007 incident in Myrtle Beach was directed towards the officers at the detention center. The assault(s) in the 2010 Cheraw incident were directed at a female who was bitten and the two officers who were involved in processing Smith at the city jail.

Second, there was no testimony or evidence establishing Respondent knew the details of these two incidents when he shot and killed the victim. 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, while the court asserted the testimony may go to the credibility of Respondent, the court's ultimate use of the testimony in granting immunity had nothing to do with Respondent's testimony or credibility. Drake's and Stair's testimony could not be related to Respondent's state of mind. There was no testimony or evidence presented at the hearing to show that Respondent was aware of the details of the incidents reported by Stair and Drake at the time of the shooting. Furthermore, the trial court failed to limit its consideration 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. Altogether, the court's admission of the testimony was clearly improper. This Court should grant certiorari to review this issue.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court grant this petition for writ of certiorari.

Respectfully submitted,

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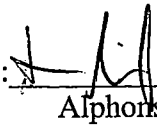
By: 
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April 7, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Chesterfield County
Court of General Sessions
J. Michael Baxley, Circuit Court Judge

Opinion No. 5286 (S.C. Ct. App. filed December 23, 2014)
Rehearing Denied February 19, 2015
Appellate Case No. 2013-000148

THE STATE

PETITIONER,

V.

GRAHAM FRANKLIN DOUGLAS,

RESPONDENT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Petitioner, certify that I have served the within Petition for Writ of Certiorari 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 April, 2015.

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April 7, 2014

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, South Carolina 29211

Re: *State v. Graham Franklin Douglas*
Appeal from Chesterfield County
Court of Appeals' Appellate Case No. 2013-000148

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Petition for Writ of Certiorari in the above-referenced case, together with two copies of the Appendix. Also included are two (2) copies of the Record on Appeal.

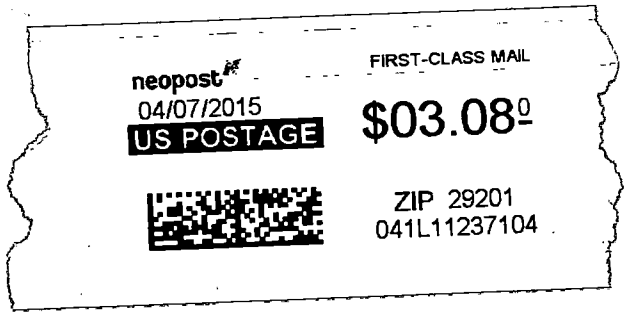
By copy of this letter I am serving opposing counsel with the above documents.

Thank you for your assistance in this matter.

Sincerely,

Alphonso Simon, Jr.
Assistant Attorney General

AS:dmd
Enclosures
cc: The Honorable Jenny A. Kitchings, Clerk, South Carolina Court of Appeals (w/copy of Petition)
S. Jahue Moore, Esq. (w/two copies petition and appendix)
M. Brooks Biediger, Esq. (w/two copies of petition and appendix)
Margaret A. "Meg" Hazel, Esq. (w/two copies of petition and appendix)
The Honorable Ernest A. Finney, III, Solicitor, Third Judicial Circuit (w/copy of petition)
Trisha Allen, Victim Services (w/copy of petition)



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