

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHESTERFIELD COUNTY  
Court of General Sessions

The Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2015-000606

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JUN - 8 2015

S.C. Supreme Court

The State of South Carolina,.....Petitioner,

v.

Graham Franklin Douglas,.....Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUES ON APPEAL ..... 1

STATEMENT OF THE CASE ..... 1

STATEMENT OF FACTS ..... 2

ARGUMENT ..... 6

I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT’S DISMISSAL OF THE CHARGES PURSUANT TO THE PROTECTION OF PERSONS AND PROPERTY ACT BECAUSE S.C. CODE § 16-11-440(C) APPLIES TO A DEFENDANT’S RESIDENCE..... 6

A. This issue is not a novel issue of law due to State v. Curry. ..... 6

B. This is not a novel issue of law pursuant to the intent of the Protection of Persons and Property Act..... 8

II. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT’S ADMISSION OF TESTIMONY FROM OFFICER STAIR AND SERGEANT DRAKE..... 11

CONCLUSION ..... 13

## TABLE OF AUTHORITIES

### CASES

<i>Broadhurst v. City of Myrtle Beach Election Comm'n</i> , 342 S.C. 373, 537 S.E.2d 543 (2000).....	9
<i>Kiriakides v. United Artists Comm'ns, Inc.</i> , 312 S.C. 271, 440 S.E.2d 364 (1994).....	9
<i>Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Def.</i> , 380 S.C. 219, 670 S.E.2d 371 (2008).....	9
<i>State v. Curry</i> , 406 S.C. 364, 752 S.E.2d 263 (2013).....	7, 8
<i>State v. Day</i> , 341 S.C. 410, 535 S.E.2d 431 (2000).....	12
<i>State v. Douglas</i> , 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014).....	7, 8, 10, 12, 13
<i>TNS Mills, Inc. v. S.C. Dep't of Revenue</i> , 331 S.C. 611, 503 S.E.2d 471 (1998).....	9

### STATUTES

S.C. Code Ann. § 16-11-420 ...	10, 11
S.C. Code Ann. § 16-11-440(C) ...	6, 9

## STATEMENT OF ISSUES ON APPEAL

- I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S DISMISSAL OF THE CHARGES PURSUANT TO THE PROTECTION OF PERSONS AND PROPERTY ACT BECAUSE S.C. CODE § 16-11-440(c) APPLIES TO A DEFENDANT'S RESIDENCE
  
- II. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S ADMISSION OF TESTIMONY FROM OFFICER STAIR AND SERGEANT DRAKE

## STATEMENT OF THE CASE

On May 31, 2011, the Respondent Graham Franklin Douglas was arrested and charged with the murder of the decedent Eden Smith (hereinafter "decedent"). On April 23, 2012, counsel for the Respondent filed and served its Motion to Dismiss pursuant to the Protection of Person's and Property Act, S.C. Code § 16-11-410, et seq.

The Respondent's motion was heard from October 2-3, 2012, before the Honorable J. Michael Baxley in the Chesterfield County Court of General Sessions. Appellant was represented by S. Jahue Moore, M. Brooks Biediger, and M. W. Cockrell, III. Due to the recusal of the Fourth Circuit Solicitor's Office, the Appellant was represented by Third Circuit Solicitor Ernest A. Finney, III, and Assistant Solicitor Tyler B. Brown.

On January 4, 2013, Judge Baxley issued his order granting immunity and dismissing the Respondent's criminal charges. The present appeal followed shortly thereafter.

The appeal was heard before the Court of Appeals on September 10, 2014. On December 23, 2014, the Court issued a unanimous opinion affirming Judge Baxley's

order dismissing the indictments. The State petitioned the Court for a rehearing. The petition was denied by the Court. This Petition for Certiorari followed.

### **STATEMENT OF FACTS**

The Respondent Graham Douglas is a thirty-four year old man from Chesterfield, South Carolina. (R. 14). He lives in a small house located at 1311 Jackson Road West in Chesterfield (the “house” or “residence”). (R. 14). The residence is owned by his parents who live in a house next door. The residence is an old share-cropper’s house. (R. 15). It is a small, two-bedroom house with very low ceilings. (R. 17). While his parents have owned the house for some time, the Respondent began living there in 2009. (R. 16).

The Respondent knew the decedent Eden Smith for approximately eighteen years prior to the incident. (R. 20). They met through the decedent’s sister. The Respondent dated the decedent’s sister on and off for approximately fifteen years before the incident. (R. 20). While they were acquaintances, the Respondent and decedent were not close friends. (R. 21).

The Respondent knew the decedent had a history of violence and run-ins with law enforcement. (R. 21). He knew the decedent had been previously charged with burglary, armed robbery, assaulting a woman, assaulting two police officers, and criminal sexual conduct. (R. 21).

In 2006, the decedent assaulted the Respondent. (R. 22). The attack happened in the decedent’s parent’s house. (R. 22). During the assault, the decedent threw the Respondent up against a pantry. (R. 22). The decedent then began strangling the Respondent and had to be pulled off by his sister and mother. (R. 23). The decedent had apparently been provoked by the Respondent’s use of the words “God damn.” (R. 23).

The Respondent is a law school graduate. (R. 17). He suffers from a severe form of dyslexia and attention deficit disorder. (R. 18). His learning disabilities give him a great deal of trouble. He has taken and failed the bar exam a number of times. (R. 34). He experiences difficulty speaking, reading, spelling, and has a difficult time communicating. (R. 18). The influence of a stressful situation tends to exacerbate these symptoms. The Respondent also suffers from anxiety, panic attacks, and chronic insomnia. (R. 19-20) He is prescribed anti-anxiety medication. (R. 18).

### **Day of the Incident**

On the morning of May 31, 2011, the decedent picked up the Respondent from his house to play a round of golf at a nearby country club. (R. 28). While playing golf, the men drank heavily. (R. 29). They shared a medium sized bottle of vodka on the course. (R. 29).

After golf, the men returned to the Respondent's house and continued drinking. (R. 31). They picked up a second bottle of vodka on the drive home. (R. 30). The two continued drinking outside into the afternoon. (R. 31).

At approximately 5:00 p.m., the Respondent's father arrived at his home next door. (R. 40). The pair went back inside because he did not want his father to know he was drinking.

Once inside, the two continued drinking and talking in the dining area adjacent to the kitchen. (R. 40). SLED toxicology analysis would later determine the decedent was grossly intoxicated with a blood alcohol concentration of .240. (R. 371). At some point, the decedent left and went to the bathroom. (R. 41). The bathroom is located in the

Respondent's bedroom, which is adjacent to the kitchen area. (R. 41). The decedent closed the bedroom door and locked it when he went in. (R. 42).

Several moments passed and the decedent did not come back. (R. 42). The Respondent called out for the decedent, but to no response. (R. 42).

When the decedent finally came out, he was holding a bottle of Clonazepam and said "look what I found." (R. 43). The Respondent asked for the medication back, but the decedent refused. (R. 44). The Respondent attempted to take the bottle from the decedent, but the decedent kept it away and began taunting the Respondent. (R. 44).

The Respondent finally yelled, "God damn it, give me my medicine!" (R. 45). Upon hearing this, the decedent snapped. (R. 45). The decedent grabbed the Respondent by his upper arms and shoved the Respondent up against his refrigerator. (R. 45). The Respondent's legs buckled and he fell to the floor, striking his head. (R. 46).

The decedent continued the attack, kneeling over and punching the Respondent as he lay on the floor. (R. 48). The blow to the head stunned the Respondent, and he was not able to effectively fight back against the powerful attacker. (R. 47). At some point, the decedent bent over and bit the Respondent on the leg. (R. 48). It would later be determined the Respondent suffered traumatic injury to his eye, both arms, elbow, and legs. (R. 361). The Respondent was also experiencing the symptoms of a concussion, but no medical aid was rendered. (R. 365). According to the State's forensic pathologist Janice Ross, the Respondent suffered significant injury due to the decedent's attack. (R. 358).

The Respondent told the decedent to leave his house, but the decedent refused and continued attacking. (R. 49).

The Respondent crawled to his bedroom and sat on his bed to regain his senses after the attack. (R. 49). He grabbed a .38 caliber revolver from his dresser and ordered the decedent to leave his house. (R. 50). The decedent refused to leave and remained in the kitchen area. (R. 50).

The Respondent walked to the threshold between his bedroom and the kitchen and ordered the decedent to leave again. (R. 51). The decedent refused to leave again. (R. 51). Instead, the decedent aggressively charged towards the Respondent. (R. 51). The decedent crossed the small kitchen area in an instant. (R. 52).

The Respondent raised his pistol and fired in the general direction of the advancing decedent. (R. 51). By the time of the shot, the decedent was only a few feet from the Respondent. (R. 51). The forensic autopsy later confirmed the decedent was within an intermediate range when he was shot. (R. 349). The shot struck the decedent in the chest, killing him. (R. 53).

The Respondent ran to his parent's house next door and called 911. (R. 53). When the police arrived, the Respondent was arrested and charged with murder.

## ARGUMENT

I. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S DISMISSAL OF THE CHARGES PURSUANT TO THE PROTECTION OF PERSONS AND PROPERTY ACT BECAUSE S.C. CODE § 16-11-440(C) APPLIES TO A DEFENDANT'S RESIDENCE

a. **This issue is not a novel issue of law due to State v. Curry.**

The State's main argument in its petition rests on the interpretation of a single word in the Protection of Persons and Property Act: another. According to the State, if interpreted one way, the word "another" excludes the application of the Protection of Persons and Property Act if a person is attacked within his own home. Essentially, the State is asking the Court to adopt the view that a law abiding citizen who is attacked in his own home may **not** stand his ground and invoke the provisions of S.C. Code § 16-11-440(C) ("subsection C"). According to the State, if that same law abiding citizen were attacked anywhere else he lawfully had the right to be - except his own home - he would then be protected by this code section. Under this interpretation of the statute, a law abiding citizen is disqualified from invoking the stand your ground provision simply because he is attacked in his own home. The State's interpretation of subsection (C) does not make sense and was properly discarded by the Court of Appeals.

In its unanimous opinion affirming the trial court's dismissal of the indictments, the Court of Appeals properly evaluated subsection (C) and determined that this section, like all the other sections in the Protection of Persons and Property Act, protects an individual in his own home in addition to other places. The State claims the Court of Appeals interpretation of the word "another" is incorrect and presents a novel question of law. For the reasons stated herein, the Court of Appeals correctly interpreted the statute and there is no novel question of law.

An analysis of this Court's decision in State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), illustrates that this is not a novel issue of law. There are many similarities between Curry and Douglas: 1 - In both cases, the decedent had been invited into the home, and was therefore a social guest of the defendant; 2 - In both cases, the decedent had assaulted the defendant; 3 - In both cases, the defendant was assaulted in a place he had a right to be.

However, the cases differ in a number of ways as well: 1 - In Curry, there was no evidence that the defendant had been injured. One witness stated that "there was no blood or injury, and the fight appeared to be over." Curry, 406 S.C. at 369, 752 S.E.2d at 265. However, in Douglas, the court noted that "Smith grabbed [Douglas] by his upper arms and threw him up against the refrigerator, causing [Douglas] to hit his head." Id. The court noted that "photographs of [Douglas'] injuries show severe bruising on [his] upper arms," that "[Douglas] likely had a concussion," and that the decedent "struck [Douglas] in the eye." Douglas at 314, 768 S.E.2d at 236; 2 - In Curry, the decedent was shot six times in the back, though Curry testified he was lunging toward him. Curry at 369, 752 S.E.2d at 265. However, in Douglas, the attacker was shot once in the chest. Douglas at 314, 768 S.E.2d at 236; 3 - In Douglas, the defendant told the attacker to leave the house several times. Id. In Curry, there was no evidence that the defendant asked the decedent to leave.

More importantly, both the Supreme Court in Curry and the Court of Appeals in Douglas used the statute at issue in the very same manner. The Curry court stated regarding S.C. Code Ann. § 16-11-440:

the presumption of subsection (A) does not apply if the victim has an equal right to be in the dwelling or residence.

S.C.Code § 16–11–440(B). 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.

Curry at 370, 752 S.E.2d at 266. (emphasis added). The Supreme Court notes that because the **attacker** was a social guest, that the **victim/defendant** has a right to immunity under subsection (C). The Supreme Court did not place any limitations on this defaultment into subsection (C). The Supreme Court did **not** state that the victim had to be in a different home or his own home. The Supreme Court put no additional qualifications on the default into subsection (C) whatsoever. The Court simply states that subsection (A) did not apply because the attacker was a social guest, and because he was a social guest, the **victim/defendant is therefore defaulted into subsection (C)**.

The Court of Appeals used this reasoning in Douglas. Therefore, this is not a novel issue of law, but one that has already been addressed by this Court<sup>1</sup> and in favor of Mr. Douglas in this case. Therefore, the Court should deny the State's petition for writ of certiorari.

**b. This is not a novel issue of law pursuant to the intent of the Protection of Persons and Property Act.**

The State claims the Court of Appeals erred in interpreting subsection (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

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<sup>1</sup> Ultimately, the Curry court held that the defendant had not established all of the remaining elements of self-defense. In Douglas, the court affirmed the trial court's finding that Douglas had acted in self-defense. Douglas at 318-22, 768 S.E.2d at 238-41.

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 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. This is not a novel issue of law because the intent behind the Protection of Persons and Property Act was codified by the legislature. In light of the General Assembly's statement of intent, the Court of Appeal correctly concluded section 16-11-440(C) protects individuals within their own homes.

“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 its 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, 411 S.C. 307, 330, 768 S.E.2d 232, 245 (Ct. App. 2014). The court went on 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 330-331, 768 S.E.2d at 245 (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.* This is a correct interpretation of the word "another" in section 16-11-440(C) because it uses the overall context and legislative intent of the Act. Therefore, this is not a novel issue of law and the Court should deny the State's petition for writ of certiorari.

## II. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S ADMISSION OF TESTIMONY FROM OFFICER STAIR AND SERGEANT DRAKE

The State again presents the argument that the evidence presented by Sgt. Drake and Officer Stair was not cumulative and was improperly admitted. The State also claims the Court of Appeals held the admission of the testimony was improper. Pet. Cert. 23.

As a threshold matter, the Court of Appeals did not hold the testimony inadmissible. There was no finding by the Court of Appeals that the testimony should not have been admitted. Instead, the Court of Appeals held that *even if* the testimony were inadmissible, it would have been harmless given the context of the testimony regarding the decedent's history of violence:

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 the details of the 2007 and 2010 incidents beyond what Respondent already knew was harmless.

Douglas at 326, 768 S.E.2d at 243.

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.

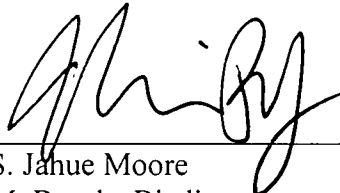
Douglas at 324, 768 S.E.2d at 242, citing State v. Day, 341 S.C. 410, 419–20, 535 S.E.2d 431, 436 (2000) (emphases added by court). The court went on to quote testimony from the Respondent, showing that the evidence was "relevant to Smith's state of mind and Respondent's state of mind at the time of 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 325, 768 S.E.2d at 242. 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 and this Court should deny the State's petition for writ of certiorari.

**CONCLUSION**

The Court of Appeals correctly affirmed Judge Baxley's Order dismissing the indictment pursuant to the Protection of Persons and Property Act. This matter contains no novel question of law. The Court of Appeals decision is consistent with a prior decision of this Court and the statute under review. The unanimous decision of the Court of Appeals is proper and this Court should deny the State's petition.

Respectfully submitted,



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PROOF OF SERVICE

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I certify that I have served a filed copy of the Petition for Writ of Certiorari on the parties listed below by depositing a copy in the United State Mail, postage prepaid, on June 8, 2015, addressed as indicated below.

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