

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHESTERFIELD COUNTY
Court of General Sessions

SC SUPREME COURT

J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2015-000606

The State of South Carolina Petitioner,

Graham Franklin Douglas Respondent.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON CERTIORARI

The Court of Appeals correctly affirmed the circuit court's dismissal of the charges pursuant to Protection of Persons and Property Act because South Carolina Code Section 16-11-440(C) applies to a Defendant's residence.

STATEMENT OF THE CASE

On May 31, 2011, Respondent Graham Franklin Douglas (“Respondent”) 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.

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, 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. A Petition for Certiorari followed. By Order filed November 5, 2015 this Court granted the Petition for Certiorari as to Question I of the Petition.

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 and was properly decided by the Court of Appeals

The Court of Appeals affirmed the circuit court's grant of immunity. *State v. Douglas*, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014). The Court's opinion held as a matter of law that the circuit court did not err in granting immunity based on the application of South Carolina Code Ann. Section 16-11-440(C). The Court of Appeals also found that the circuit court did not abuse its discretion in finding that Respondent reasonably believed shooting the victim was necessary to prevent great bodily harm to himself and that Respondent acted in self defense. (App. 80-100). The opinion of the Court of Appeals should be affirmed by this Court.

State's main argument in its Petition and Brief 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 was 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. For the reasons stated herein, the Court of Appeals correctly interpreted the statute. The opinion of the Court of Appeals should be affirmed by this Court.

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 and that this issue was decided correctly by the Court of Appeals. 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 properly used this same reasoning in Douglas. Therefore, this is not a novel issue of law, but one that has already been addressed and correctly decided by this Court¹ in favor of Respondent.

b. This is not a novel issue of law pursuant to the intent of the Protection of Persons and Property Act and was properly decided by the Court of Appeals

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 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

¹ 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.

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.*

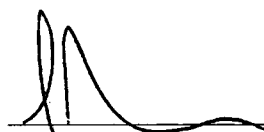
S.C. Code Ann. § 16-11-420. (emphases added by the court). The court correctly stated that the intent of the Act was to protect those facing "intruders but also attackers, including those who are initially invited into the home and later place the homeowner in reasonable fear of death or great bodily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

correctly interpreted and applied South Carolina Code Section 16-11-440(C) and the opinion of the Court of Appeals should be affirmed by this Court.

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 should be affirmed by this Court.

Respectfully submitted,



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PROOF OF SERVICE

I, Lynn G. Ivey, an employee of Moore Taylor Law Firm, P.A., certify that I have served the Brief of Respondent on the parties listed below by depositing a copy in the United State Mail, postage prepaid, on January 13, 2016, addressed as follows:

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January 13, 2016