

**ORIGINAL**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY  
Court of General Sessions

Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2015GS2400728

**RECEIVED**  
MAR 01 2016  
SC Court of Appeals

The State, ..... Respondent.  
v.  
Alphonso Morgan, Jr. .... Appellant.

**SUPPLEMENTAL STATEMENT OF APPELLATE DEFENSE  
PURSUANT TO RULE 203(d)(1)(B)(iv)**

Appellant was granted an immunity hearing pursuant to the Protection of Persons and Property Act. The hearing was held between February 1, 2016 and February 3, 2016. Immunity was denied on February 3, 2016. Appellant pled guilty to a reduced charge on February 5, 2016. Counsel W. Townes Jones, IV, filed this appeal, and correctly informed this Court that appellant has an issue arising from his immunity hearing. In addition, Appellate Defense is aware of this appeal and, ultimately, will be handling the matter.

The Assigned Appellate Defender will argue that Appellant Morgan was entitled to immunity under S.C. Code § 16-11-440(A) and (C) as argued by trial counsel at the pre-trial immunity hearing. Undersigned counsel understands the testimony was virtually undisputed that appellant was attacked inside of the backseat of the vehicle. The Defendant's assertion of immunity under 440(A) had significant evidentiary support for each element. Proof of self-defense by a preponderance of the evidence, on the other hand, was made difficult by deficiencies in the investigation. In other words, the Defendant had the necessary proof under S.C. Code § 16-11-440(A) and (C), but the elements of self-defense were more difficult.

In *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 ((2011), the Supreme Court held that “by using the words ‘immune from criminal prosecution,’ the legislature intended to create a **true immunity**, and not simply an affirmative defense.” **Appellant’s position is that he was immune from further prosecution after the immunity hearing. Therefore, any proceeding subsequent to the immunity hearing, including the guilty plea, was void ab initio.**

**WHEREFORE**, an appeal should be permitted to allow full briefing on these important legal immunity from prosecution arguments.

Respectfully submitted:

March 1, 2016



ROBERT M. DUDEK  
Chief Appellate Defender

Other Counsel of Record:

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And

David Stumbo  
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STATE OF SOUTH CAROLINA  
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THE STATE,

RESPONDENT,

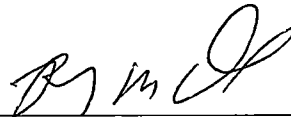
V.

ALPHONSO MORGAN, JR.,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Supplemental Statement of Appellate Defense Pursuant to Rule 203(d)(1)(B)(iv) in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and David Matthew Stumbo, at Eighth Circuit Solicitor's Office, PO Box 516, Greenwood, SC 29648, this 1st day of March, 2016.




Robert M. Dudek

Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me  
this 1st day of March, 2016.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: July 3, 2023.

CC: W. Townes Jones, IV, Esquire  
James W. Bannister, Esquire  
Alphonso Morgan, Jr, 257372