

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
APPEAL FROM FLORENCE COUNTY

RECEIVED

D. Craig Brown, Circuit Court Judge

FEB 18 2016

SC Court of Appeals

---

Appeal Number 2014-001391

DAVID WELLS WOODY

Appellant,

v.

State of South Carolina ... Respondent.

---

FINAL BRIEF OF APPELLANT

---

Rose Mary Parham  
Parham Law Firm, LLC  
541 West Evans Street  
Post Office Box 1514  
Florence, South Carolina 29501  
(843) 407-7757 (office)  
(843) 407-7757 (facsimile)  
[rosemaryparham@sc.rr.com](mailto:rosemaryparham@sc.rr.com)  
South Carolina Bar No. 17034

Attorney for Appellant Damon Moody

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES.....	3,4
STATEMENT OF ISSUES ON APPEAL.....	5
STATEMENT OF CASE.....	6
STATEMENT OF FACTS.....	7
ARGUMENT.....	13
I.    REFUSAL TO ALLOW MEANINGFUL CROSS- EXAMINATION OF ALLEGED VICTIM JERMICHAEL WRIGHT WAS REVERSIBLE ERROR.....	15
II.   REFUSAL TO ALLOW MEANINGFUL CROSS- EXAMINATION OF STATES’S CHIEF WITNESS TABITHA DURANT WAS REVERSIBLE ERROR.....	19
III.  TRIAL COURT ERRED IN NOT ALLOWING DURANT TO BE CROSS-EXAMINED REGARDING HER MENTAL ILLNESS.....	21
IV.  TRIAL COURT ERRED IN NOT DISMISSING CASE PURSUANT TO THE PROTECTION OF PERSONS AND PROPERTY ACT.....	22
V.   REFUSAL TO CHARGE DEFENSE OF HABITATION TO THE JURY WAS REVERSIBLE ERROR.....	23
CONCLUSION.....	26

**TABLE OF AUTHORITIES**

**CASES**

*Carroll v. State*, 916 S.W.2d 494 (Crim. App. Tex. 1996).....17

*Chambers v. Mississippi*, 410 U.S. 284 (1973).....15

*Davis v. Alaska*, 415 U.S. 308 (1974).....15, 16

*Delaware v. Van Arsdall*, 475 U.S. 673 (1986).....17

*Giglio v. United States*, 405 U.S. 150 (1972).....11, 21

*Greene v. Wainwright*, 634 F.2d 272 (5<sup>th</sup> Cir. 1981).....17, 21

*State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000).....16

*State v. Bradley*, 126 S.C. 528, 120 S.E. 240 (S.C.1923).....12, 23, 24

*State v. Brewington*, 267 S.C. 97, 226 S.E.2d 249 (1976).....16

*State v. Bryant*, 391 S.C. 225, 705 S.E.2d 465 (2010).....23

*State v. Burriss*, 334 S.C. 256, 513 S.E.2d 104 (1999).....25

*State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013) .....23

*State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011).....23

*State v. Gaines*, 380 S.C. 23, 667 S.E.2d 728 (2008).....25

*State v. Jones*, 343 S.C. 562, 541 S.E.2d 813 (2001).....16

*State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007).....25

*State v. Rye*, 375 S.C. 119, 651 S.E.2d 321 (2007).....12, 24

*State v. Saltz*, 346 S.C. 114, 551 S.E.2d 240 (2001).....16

*State v. Sotomayor*, 2007 WL 3239142 (N.J.Super.A.D. 2007).....17

*State v. Spano*, 69 N.J. 231 (1976).....18

*State v. Turner*, 373 S.C. 121, 644 S.E.2d 693 (2007).....15

*State v. Wiggins*, 330 S.C. 538, 500 S.E.2d 489 (S.C.1998).....25

*United States v. Butt*, 955 F.2d 77 (1st Cir.1992).....21

*United States v. Jimenez*, 256 F.3d 330 (5th Cir.2001).....21

*United States v. Lopez*, 611 F.2d 44 (C.A.Md. 1979).....22

**STATUTES AND RULES**

South Carolina Code §§ 16–11–410, 16–11440(C), and 16–11–450.....22, 23

South Carolina Rule of Evidence Rule 608(b).....10, 20

South Carolina Rule of Evidence Rule 608(c).....10, 16, 20

**OTHER AUTHORITIES**

98 C.J.S. Witnesses § 460.....16

## STATEMENT OF ISSUES ON APPEAL

- (1) Did the trial court err in precluding Moody from cross-examining alleged victim Jermichael Wright regarding his arrest for Assault and Battery and the deal he received from the State for Pretrial Intervention and dismissal of the charge?
- (2) Did the trial court err in refusing to permit Moody to cross-examine State's chief witness Tabitha Durant regarding (1) her arrest for Breach of Trust with Fraudulent Intent and Conspiracy to Commit Insurance Fraud; (2) the fact that Moody reported her crime to law enforcement; (3) the deal Durant received from the State for Pretrial Intervention and dismissal; and (4) Durant's husband's charge related to this case being dismissed?
- (3) Did the trial court err in preventing Moody from cross-examining Durant regarding her mental competence and prior commitment to a mental institution?
- (4) Did the trial court err in not finding Moody statutorily immune under the Defense of Persons and Property Act?
- (5) Did the trial court err in refusing to charge the jury on the common law defense of habitation?

## STATEMENT OF CASE

On July 12, 2013, Moody was arrested on three charges of Pointing and Presenting a Firearm at a Person and three charges of Assault and Battery Second Degree. Moody was later indicted for only the three counts of Pointing and Presenting a Firearm.

On June 16, 2014, Moody's jury was empaneled and pretrial motions were heard. After hearing testimony and arguments regarding Moody's pretrial motion to dismiss the Indictment based upon Moody's immunity under the Protection of Persons and Property Act, Judge Brown denied Moody's motion to dismiss, and the case proceeded before the jury.

On June 19, 2014, the jury convicted Moody of the two counts of Pointing and Presenting with regard to Jermaine and Jermichael Wright and acquitted Moody of the Pointing and Presenting charge as to Ontario McClellan. Judge Brown sentenced to Moody to five years confinement on each count suspended to two and three years probation, respectively, upon the service of 45 days per count, with said sentences to run consecutively.

Notice of Appeal was timely filed on June 25, 2014.

## STATEMENT OF FACTS

On June 13, 2013, the Defendant, Damon Moody (“Moody”), an off-duty Francis Marion Police Officer, was at his home, located at 1313 Gilbert Drive, in Florence, South Carolina. (R. p.189 line 10). Moody lived on the property with his wife and infant child. He and his wife had lived at their home for two years and shared the land with Moody’s mother-in-law, Tabitha Durant (“Durant”) (R. pp. 189-190), each having their own trailers on the property that were positioned in an “L” formation. (R. p. 190 lines 15-19). The land upon which Moody and Durant lived was owned and titled in the name of Durant’s father, John Head. (R. p. 453 line 8).

Moody had served as a law enforcement officer since 2008 and had previously received the Medal of Valor, the highest honor in law enforcement. (R. 219 lines 12-15). Moody owned and trained four Belgian Malinois for police organizations and kept them in outdoor pens next to his trailer. (R. pp. 191-192). These police dogs were a significant monetary and time investment for Moody. (R. p. 192 lines 2-4).

During the afternoon, Moody was awakened to a commotion outside. (R. p. 192 lines 5-9). Moody then let his indoor German Shepherds outside. As he let the German Shepherds back in, Moody noticed a pitbull barking, nipping at the kennels, and biting Moody’s Belgian Malinois through the front kennel. (R. pp. 192, 392, 423). The one year-old, male pitbull (R. p. 391, line 13) was owned by Jermichael Wright (“Jermichael”), fiancée to Moody’s sister-in-law and invited

guest of Durant. Moody had problems with the same pitbull more than five times previously. (R. pp. 192-193).

Moody yelled at the pitbull, but the pitbull continued to attack his Malinois. (R. p. 193 lines 18-21). At that point, Moody grabbed a .22 caliber handgun, walked outside, and fired it several times into the ground in front of the kennels to scare the pitbull away. (R. pp. 193, 393-394). Prior to this date, Moody had to fire a gun to chase away the same pitbull. (R. pp. 193-194).

Moody hollered for Jermichael to get his dog. (R. p. 194, line 18). Moody then placed his gun inside his home and walked over to speak with Jermichael about the pitbull still running around. Jermichael was standing on Durant's deck with brother, Jermaine Wright ("Jermaine"). Moody stated that Jermichael immediately became aggressive and that Jermaine knocked Moody off of Durant's deck. (R. pp. 196, 408-409, 438). The two brothers then proceeded to shove and "chest bump" Moody around the pool, through the yard, and back over towards Moody's dog kennels and trailer. (R. p. 197, lines 8-20)

Witnesses agree that Moody's dogs continued to bark, that it was extremely hot that day, and that the pitbull was still running around unrestrained. (R. p. 119, 392, 412, 418, 507). Moody then returned to his trailer, put a gun in his pocket, put a leash over his shoulder, and came back outside to tend to his overheated dogs. (R. p. 119, lines 1-21). As Moody retrieved "Sniper" from the kennel on the leash and walked toward the water hose (R. p. 199, lines 1-22), Jermichael yelled that if Moody came one step closer with his dog, he was going to put a

bullet between his (Moody's) eyes. Moody stated that Jermichael then made a furtive movement toward his waistband (R. p. 200, lines 3-13), prompting Moody to draw his gun, which had a laser sight, point it at Jermichael, and yell, "Hands, hands, hands, show me your hands!" (R. p. 200, lines 17-25). Moody stated that he was two feet from the 5x5 foot deck off his back door when he drew his gun. (R. p. 222, lines 11-25). Jermichael admitted that he had shown Moody his gun before and that Moody knew he had guns. (R. pp. 123, 401, 508).

Jermichael and Jermaine each recalled saying something to Moody as he retrieved "Sniper" from the kennel. Jermaine did not recall the details of what he said or what the Jermaine said. (R. pp. 121-122, 142, 415-416). Jermichael did not recall what Jermaine said but did recall asking what Moody was going to do with the dog. (R. pp. 121-122, 506).

Jermichael Wright then called 911. The Florence County Sheriff's Office and an officer with the South Carolina Department of Public Safety responded, interviewed witnesses, and filed reports. Jermaine and Jermichael's friend, Ontario McClellan, who was in Durant's above-ground pool, told law enforcement that Moody also pointed the gun and laser at him. Officers did not arrest Moody on June 13, 2013, but did arrest Durant's husband, who was on scene, for interfering with their investigation. (R. pp. 175, 258-259).

During the pretrial hearing Durant, one of the State's chief witnesses, admitted the following under oath: (1) that she had been committed to a mental institution (R. pp. 171, 262-263); (2) that in December 2013 she was arrested for

Breach of Trust with Fraudulent Intent and Conspiracy to File a False Insurance Claim (R. pp. 172-174, 254); (3) that she called the SLED agent on this case and let him know of her arrest (R. p. 175, lines 1-12); (4) that the State offered her PTI and an agreement to dismiss those charges (R. pp. 172-173); (5) that the State sent her a favorable letter regarding her PTI one week before this trial began (R. pp. 174, 256); and (6) that her husband's charges stemming from the date of this incident were later dismissed (R. pp. 175, 258). However, during the trial of the case, defense counsel was not permitted to cross-examine Durant pursuant to Rule 608(c) regarding any of these aforementioned issues. S.C.R.E. (R. pp. 252-256). Further, defense counsel was precluded from proffering testimony of Durant's daughter regarding her mother's mental status and/or competence. (R. pp. 265-266). Defense counsel was prohibited from cross-examining Durant about her knowledge of Moody tape-recording her and reporting her crimes to law enforcement. (R. pp. 269-272). Finally, defense counsel was also prohibited from cross-examining, or even inquiring into, Durant's conduct underlying her Breach of Trust and Conspiracy charges, both of which are offenses relating to truthfulness under Rule 608(b). SCRE. (R. pp. 227-229, 372, 374). Moody preserved the issues for appeal. (R. pp. 227-229, 269-272, 372, 521, 610).

Moody made similar objections with regard to Jermichael Wright. On October 30, 2013, Jermichael was arrested for Assault and Battery by the Florence County Sheriff's Office, and the victim was sent to the hospital. (R. pp. 251-252). The State gave Jermichael Pretrial Intervention and dismissed his charges.

Defense counsel was not permitted to cross-examine Jermichael as to his potential bias in favor of the State or explore his being the aggressor in the fight. Both issues were preserved for appeal. (R. pp. 521, 610).

The Attorney General's office argued that the dismissals and diversionary programs were not admissible to show bias because Jermichael, Durant, and Durant's husband were prosecuted by the 12<sup>th</sup> Circuit Solicitor's Office, and Moody's case, despite having originated in the 12<sup>th</sup> Circuit Solicitor's Office (R. p. 255), was being prosecuted by the Attorney General's Office. Defense counsel argued that all of the cases, including Moody's, originated in the 12<sup>th</sup> Circuit and that all charges were brought in the name of the State of South Carolina. (R. pp. 255-257). Counsel pointed out that the analysis should focus on the perspective of the particular witness being favorably treated and that the witness who had been charged by the State, was being favorably treated by the State, and was now testifying for the State. (R. pp. 257, 259).

Judge Brown accepted the State's argument and anchored his ruling on the fact that the conduct leading to the various charges against the various witnesses occurred after the witnesses made their original statements to law enforcement. All issues were preserved for appeal, and Moody was not allowed to cross-examine Jermichael or Durant as to these issues at trial. (R. pp. 252-257, 260, 265-266, 521, 610).

Finally, with regard to all three of the dismissals referenced above and despite *Brady* and *Giglio* motions filed in this case, Moody was not provided any

of the information or records pertaining to these arrests and dismissals until the day of jury selection, June 16, 2014. (R. pp. 252-253).

Despite having filed a pretrial motion requesting that the State provide anything in the testifying officers' personnel files that might have a bearing on truthfulness and raising the same issue before the Court pretrial, the trial court refused to request that the State check the testifying officers personnel files for any information that might have a bearing on their truthfulness. (R. pp. 268-269). Moody objected and preserved this issue for appeal (R. p. 269, lines 10-15).

During the pretrial hearings, Judge Brown declined to give Moody statutory immunity under the Defense of Persons and Property Act. (R. pp. 244-246). Judge Brown conceded that the "testimony of the defendant and the witnesses varied substantially." (R. pp. 243-244). Defense counsel argued that immunity under the Act would extend to a person in the curtilage of their home. (R. pp. 238, 285-286). In ruling, the Court failed to address curtilage stating that the "uncontroverted testimony elicited from this stand was that there was no attempt or no attack in a dwelling, residence, or occupied vehicle." (R. p. 244, lines 9-12).

The trial court also denied Moody's request to charge the jury on the defense of habitation and the common law Castle Doctrine. With regard to the defense of habitation, Moody cited *State v. Rye*, 375 S.C. 119, 651 S.E.2d 321 (2007) and *State v. Bradley*, 126 S.C. 528, 120 S.E. 240 (1923) and requested the following charge: "A person may use deadly force to protect his home. Thus, he may use deadly force to eject a trespasser who is in his house or in the area

immediately surrounding his house. For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejection were reasonable under the circumstances. Stated differently, unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger [of] sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser." (Tr. 590).

Moody also requested a charge that the absence of the duty to retreat extends to the curtilage of the home, which charge included a definition of a "curtilage." (R. pp. 644-645) All of the aforementioned charges were denied and preserved for appeal. (R. pp. 646-648).

### ARGUMENT

This entire case rests upon the credibility of only a few witnesses. Aside from the 911 tape and Moody's guns that were seized, there is no physical or circumstantial evidence in this case. For this reason, the trial court's repeated refusal to allow proper cross-examination of the State's witnesses constituted reversible error.

From the very beginning, Moody admitted to pointing his gun at Jermaine and Jermichael Wright. He stated that when he went to get his dog from the kennel, Jermichael stated, while reaching and making a furtive movement toward

his waistband, "If you come one step closer with that dog, I am going to put a bullet between your eyes." Moody, a trained police officer, reacted quickly, drawing his gun on Jermichael and yelling "Hands, hands, hands. Show me your hands!"

Jermichael and Jermaine do not dispute that Jermichael's pitbull was running uncontrolled around the yards. Jermichael and Jermaine do not dispute that it was hot and that Moody's dogs were clearly annoyed, barking, and jumping up on the kennels. Jermichael and Jermaine do not dispute that they argued and had a physical confrontation with Moody. Jermichael and Jermaine do not dispute that Moody came out of his trailer with his gun *in his pocket* and a leash over his shoulder. Jermaine and Jermichael do not dispute that Moody went to get his dog from the kennel. What Jermichael and Jermaine dispute are the next few seconds leading up to Moody drawing his gun and what, if anything, was said prior to that moment. Interestingly enough, each brother recalls words being said but are vague as to the details. (R. pp. 121-122, 415-416, 506). Why is this? Because, if the brothers told the truth, Moody was justified in drawing his gun.

According to other witnesses' testimony, such as Regan Mott (R. pp. 397-399), Tyree Porter (R. pp. 427-428), and Tyquan Porter (R. pp. 434, 441), they were in the house and were not outside to hear the exchange of words in the seconds prior to Moody drawing his gun. Durant testified that she was outside nearby but says she was not paying attention and did not see Moody point the gun at the brothers at all. (R. p. 466, lines 7-13). Again, why is this? Because, if

Durant told the truth about what she really heard and what she really saw, Moody was justified in drawing his gun.

For these reasons, effective cross-examination of Jermichael and Durant, two of the only three witnesses who were in a position to see and hear those moments, was absolutely essential during trial. However, it was not allowed. This prohibition gutted the defense of the case and violated Moody's right to confront his witnesses.

I. REFUSAL TO ALLOW MEANINGFUL CROSS-EXAMINATION OF ALLEGED VICTIM JERMICHAEL WRIGHT WAS REVERSIBLE ERROR

The trial court's refusal to allow any cross-examination regarding Jermichael Wright's arrest for Assault and Battery and his subsequent pretrial diversion deal with the State of South Carolina prior to testifying in this case violated Moody's rights under the Confrontation Clause of the United States Constitution and constituted reversible error. The Confrontation Clause of the Sixth Amendment guarantees the right of an accused in a criminal prosecution to be confronted with the witnesses against him. *See State v. Turner*, 373 S.C. 121, 130, 644 S.E.2d 693 (2007). A defendant's right to confront and cross-examine witnesses is "among the minimum essentials of a fair trial." *See Chambers v. Mississippi*, 410 U.S. 284, 294-95 (1973). The right of confrontation "means more than being allowed to confront the witness physically." *Davis v. Alaska*, 415 U.S. 308, 315 (1974). Indeed, "[t]he main and essential purpose of confrontation

is to secure for the opponent the opportunity of cross-examination.” *Id.* at 316. Through cross-examination, a defendant has the opportunity to discredit the witness's motivations by “revealing possible biases, prejudices or ulterior motives.” *Id.*

The standard of review for the admissibility of evidence is abuse of discretion. *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001).

Under Rule 608(c), “Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.” This subsection of Rule 608 preserves South Carolina precedent holding that generally, “anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony.” *State v. Brewington*, 267 S.C. 97, 226 S.E.2d 249 (1976) (citing 98 C.J.S. Witnesses § 460).

In *State v. Jones*, 343 S.C. 562, 541 S.E.2d 813 (2001), our Supreme Court found that the trial judge committed reversible error under 608(c) in refusing to allow cross-examination regarding a prosecution witness’ prior dismissed conduct in order to attempt to expose the witness’ bias and prejudice in an unrelated case. The Court found that the excluded evidence had “a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity” of the witness’ testimony.

The *Jones* Court distinguished *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000), stating “[i]n *State v. Aleksey*, *supra*, the defendant sought to impeach

an eyewitness about specific charges which had been dismissed against her in New Jersey...Obviously, there was no connection between the prosecutor's office in New Jersey which had dismissed the charges and the solicitor's office [in South Carolina] which was prosecuting the defendant.”

Similarly, in *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986), the Supreme Court found that by prohibiting all inquiry into the possibility that a witness would be biased as a result of the State's dismissal of a pending public drunkenness charge, the trial court violated the defendant's rights secured by the Confrontation Clause. The Court reasoned that had the trial court not cut off all questioning about an event that the State conceded had taken place, a jury might reasonably have found that such furnished the witness a motive for favoring the prosecution in his testimony. *Id.* See also *State v. Sotomayor*, 2007 WL 3239142, (N.J.Super.A.D. 2007) (trial court committed reversible error and violated the defendant's right to confront witnesses against him when it ruled that defense counsel could not ask state witness about charges being dismissed unless counsel could establish that dismissal was result of agreement to testify); *Carroll v. State*, 916 S.W.2d 494 (Crim. App. Tex. 1996) (prohibiting defendant from cross-examining state's witness concerning pending criminal charges violated defendant's right to confront the witnesses against him); *Greene v. Wainwright*, 634 F.2d 272 (5<sup>th</sup> Cir. 1981) (if a prosecution witness is presently or recently under actual or threatened criminal charges or investigation leading to such charges, the person against whom the witness testifies in a criminal case has an absolute right

to bring those circumstances out on cross-examination or otherwise so that the jury will be fully apprised as to the witness' possible motive or self-interest with respect to the testimony he or she gives); *State v. Spano*, 69 N.J. 231, 234-35 (1976) (reversing trial court ruling that precluded the defense from cross-examining a State's witness about her arrest for drug possession and her admission into conditional discharge program. The Court reasoned that "the conditional dismissal of the criminal charge ... could have motivated her to testify in support of the State's case.")

In this case, Jermichael was a crucial witness for the State, and credibility of witnesses was a critical issue before the jury. Jermichael was the alleged victim, and his version of the events on June 13, 2013, directly contradicted that of Moody. Further, Jermichael's testimony at trial was far more detailed in favor of the State than his original statement to law enforcement.

Moody sought to cross-examine Jermichael regarding his potential bias in favor of the State of South Carolina for being offered Pretrial Diversion. Jermichael was arrested in October 2013 by the Florence County Sheriff's Office, the same agency who initiated the investigation against Moody.

It is irrelevant that Jermichael, Durant, and Durant's husband were prosecuted by the 12<sup>th</sup> Circuit Solicitor's Office, and Moody's case, despite having originated in the 12<sup>th</sup> Circuit Solicitor's office, was prosecuted by the Attorney General's Office. All of the cases, including Moody's, originated in the 12<sup>th</sup>

Circuit, and all charges were brought in the name of the "State of South Carolina." The witnesses were testifying for the same entity they saw on their warrants.

The analysis should focus on the perspective of the particular witness being favorably treated. That is, it should focus on the fact that the witness who is now testifying for the State, had previously been charged by the State, and was now being favorably treated by the State.

In prohibiting this line of cross-examination, the trial court based its ruling on the fact that the conduct leading to the various charges against the various witnesses occurred after the witnesses made their original statements to law enforcement. This position ignores the fact that the original "statements," though favorable to themselves and incriminating of Moody, were merely barebones compared to the more detailed, nuanced, and pro-State versions which later emerged at trial. The fundamental point remains that the State retained leverage over these testifying witnesses because it had charges against them. That is, the witnesses had a motive to render their versions increasingly and consistently pro-State regardless of how the events actually unfolded the day of the incident. In short, the trial court's analysis fails to account for the basic fact that from these witness' perspectives, they continued to have a motive to render pro-State testimony through the moment they actually testified at trial.

For these reasons, the Court's prohibition against any inquiry as to bias, prejudice, or ulterior motive violated Moody right to confront his witnesses.

## II. REFUSAL TO ALLOW MEANINGFUL CROSS-EXAMINATION OF STATES'S CHIEF WITNESS TABITHA DURANT WAS REVERSIBLE ERROR

Just as Moody was prohibited from cross-examining Jermichael, the Court also prohibited Moody from cross-examining his mother-in-law, Durant, as to her bias against him, her bias in favor of the State of South Carolina, and her prior bad act of fraud, which had a bearing on her character for truthfulness.

*Moody would renew his law and argument in the preceeding section here.*

Durant was also a critical witness for the State, and the entire trial hinged on the credibility of witnesses. For these reasons, Moody should have been able to explore Durant's 608(c) bias against him for Moody reporting Durant's insurance fraud to law enforcement. Moody should have also been allowed to explore Durant's 608(c) bias for the State given the fact that: (1) Durant received a "sweet heart deal" from the State for her fraudulent conduct, and (2) her husband's charges for his conduct at the scene of this incident were later dismissed. Durant's potential prejudice, bias, and ulterior motive is further evidenced by the fact that after her State case was dismissed, her trial testimony was significantly different and more detailed when compared to the statement she gave law enforcement the day of the incident.

The conduct of Durant's breach of trust and conspiracy to commit insurance fraud was also an appropriate and significant matter for cross-examination under 608(b) as it was a prior bad act having a bearing on Durant's character for truthfulness.

For these reasons, the Court's prohibition into any inquiry as to Durant's potential bias, prejudice, or ulterior motive related to the above-referenced matters violated Moody rights under the Sixth Amendment, and his conviction should be reversed. Moreover, the cumulative effect of the State's failure to provide Moody with any of the above-referenced information regarding Durant, Durant's husband, and Jermichael prior to jury selection and despite repeated requests by Moody constituted a violation of *Giglio v. United States*, 405 U.S. 150 (1972).

### III. TRIAL COURT ERRED IN NOT ALLOWING DURANT TO BE CROSS-EXAMINED REGARDING HER MENTAL ILLNESS

*Moody renews his earlier arguments in this section.*

The fact that a critical State's witness was committed to a mental institution and the matter of her mentally competence generally were clearly proper subjects of cross-examination. A majority of courts have adopted the rule that "a defendant has the right to attempt to challenge [a witness's] credibility with competent or relevant evidence of any mental defect or treatment at a time probatively related to the time period about which he was attempting to testify." *United States v. Jimenez*, 256 F.3d 330, 343 (5th Cir.2001); *see also United States v. Butt*, 955 F.2d 77, 82 (1st Cir.1992). The reason for this rule is that: [T]he jury should, within reason, be informed of all matters affecting a witness's credibility to aid in their determination of the truth. It is just as reasonable that a jury be informed of a witness's mental incapacity at a time about which he proposes to testify as it would

be for the jury to know that he then suffered an impairment of sight or hearing. *Greene v. Wainwright*, 634 F.2d 272, 276 (5th Cir.1981).

A party seeking to cross-examine a witness concerning mental impairment should make an offer of proof of the evidence which it seeks to develop on that question. *United States v. Lopez*, 611 F.2d 44 (C.A.Md. 1979). The decision of a trial court on allowability of cross-examination of witness concerning his or her mental condition may be reversed only for abuse of discretion. *Id.*

In this case, Durant was committed to a mental institution after the incident and before she testified. Further, the Court refused to allow Moody to proffer any testimony by Durant's daughter regarding her mother's mental health and institutionalization. (Tr. 218-219). Therefore, the trial court's refusal to allow Moody to pursue this line of cross-examination combined with the court's rejection of any efforts by Moody to offer proof of, or even inquire into, the issue constitutes an abuse of discretion by the trial court. For these reasons, this is an additional ground upon which Moody's convictions should be reversed.

#### IV. TRIAL COURT ERRED IN NOT DISMISSING CASE PURSUANT TO THE PROTECTION OF PERSONS AND PROPERTY ACT

Moody moved to have his charges dismissed pursuant to the Protection of Persons and Property Act ("Act"), which purports to codify the common law Castle Doctrine. See S.C. Code §§ 16-11-410, 16-11440(C), and 16-11-450 (Supp. 2011). A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this Court reviews under

an abuse of discretion standard. *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). The trial found that in looking at Section 16-11-440(c) of the Act, Moody was not entitled to statutory immunity because he was not without fault in bringing on the difficulty. (Tr.199). *See State v. Curry*, 406 S.C. 364, 752 S.E.2d 26 (2013).

Moody was entitled to immunity under the Act because his actions were lawful and reasonable under the circumstances. Jermichael's one year-old, male pitbull was running around Moody's property attacking Moody's police dogs in the kennels. The Wright brothers did nothing to remedy the situation and threatened "to put a bullet between Moody's eyes" when Moody armed himself to check on his overheated dogs. Further, when Moody drew his gun to defend himself, he was standing within seven feet of his own trailer. Moody's actions were legal and appropriate given the circumstances. Moody clearly had a right under the Act to protect himself from the Jermichael, Jermaine, and the pitbull while on his own property.

#### V. REFUSAL TO CHARGE DEFENSE OF HABITATION TO THE JURY WAS REVERSIBLE ERROR

Although South Carolina's Protection of Persons and Property Act creates a statutory immunity that is to be determined pre-trial, the Act, according to Justice Pleicones, "leaves in tact the common law defenses of habitation, of others, and of self-defense." *State v. Curry, supra, Justice Pleicones opinion, concurring in part and dissenting in part.*

The defense of habitation provides that defending one's home or premises means ending an unwarranted intrusion through the use of reasonably necessary means of ejection. *State v. Bryant*, 391 S.C. 225, 705 S.E.2d 465 (2010); *State v. Bradley*, 126 S.C. 528, 120 S.E. 240, 242 (S.C.1923). A person defending himself from imminent attack on his own premises is entitled to a charge of defense of habitation. *Bradley* at 242. For the defense of habitation to apply, a defendant need only establish that a trespass occurred and that his chosen means of ejection were reasonable under the circumstances. *Id.* Unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he or his property was in imminent danger of sustaining serious injury or damage; rather, the defense of habitation provides that one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser. *Id.* Although self-defense and defense of habitation are analogous, it is insufficient to charge only self-defense when a charge on defense of habitation is warranted. *Id.*

Citing *State v. Rye*, 375 S.C. 119, 651 S.E.2d 321 (2007) and *State v. Bradley*, 126 S.C. 528, 120 S.E. 240 (1923), Moody requested the following charge: "A person may use deadly force to protect his home. Thus, he may use deadly force to eject a trespasser who is in his house or in the area immediately surrounding his house. For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejection were reasonable under the circumstances. Stated differently, unlike the defense of

self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger [of] sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser.”

Moody also requested that under the defense of habitation, the absence of a duty to retreat also extends to the curtilage of one's home. *See State v. Wiggins*, 330 S.C. 538, 500 S.E.2d 489 (S.C.1998). “‘Curtilage’ includes outbuildings, yard around dwelling, garden.” *Id.* at 494 n. 15 (internal citation omitted).

The law to be charged to the jury is determined by the evidence presented at trial. *State v. Gaines*, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008). If there is any evidence to support a jury charge, the trial judge should give a requested charge on the matter. *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. *Gaines*, 380 S.C. at 31, 667 S.E.2d at 732. The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand constitutes an error of law. *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 167 (2007).

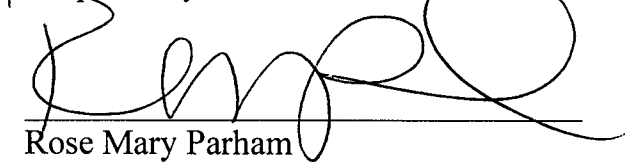
To have warranted a jury instruction for the defense of habitation, there had to be an unwarranted intrusion or trespass on Moody's property. There clearly was. Jermichael's pitbull was biting at Moody's dog through the kennel and continually running around the yard throughout the incident. Further, Jermaine

and Jermichael shoved Moody around the pool and back toward Moody's kennels and trailer. Finally, according to Moody's version of events, Jermichael threatened to put a bullet between Moody's eyes and made a gesture toward his pants as if reaching for a gun. What could be more of an unwarranted intrusion than a bullet headed at one's forward, two bullies pushing one around his own yard, and an inherently dangerous, violent animal running around one's property free of restraint? This was clearly a question of fact for the jury decide, and it was reversible error to fail to submit the charge to the jury.

### CONCLUSION

Based upon the foregoing, the case should have been dismissed pre-trial pursuant to the Castle Doctrine, or in the alternative, reversed for the above-referenced errors during the trial.

Respectfully submitted,



Rose Mary Parham  
Parham Law Firm, LLC  
541 West Evans Street  
Post Office Box 1514  
Florence, South Carolina 29501  
(843) 407-7757 (office)  
(843) 407-7757 (facsimile)  
[rosemaryparham@sc.rr.com](mailto:rosemaryparham@sc.rr.com)  
South Carolina Bar No. 17034

Attorney for Appellant Damon Moody

STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM FLORENCE COUNTY  
Court of General Sessions

D. Craig Brown, Circuit Court Judge

---

CASE NUMBER: 2014-001391

---

RECEIVED  
FEB 18 2016  
SC Court of Appeals

DAMON MOODY,

APPELLANT,

vs.

STATE OF SOUTH CAROLINA,

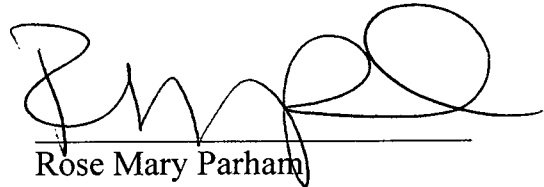
RESPONDENT.

---

CERTIFICATE OF COUNSEL

---

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCAR and with the South Carolina Supreme Court's order dated August 13, 2007.



---

Rose Mary Parham  
SC Bar Id. 17032  
Parham Law Firm, LLC  
P.O. Box 1514  
Florence, SC 29503  
Phone: (843) 407-7757  
[rosemaryparham@sc.rr.com](mailto:rosemaryparham@sc.rr.com)

February 16, 2016

CERTIFICATE OF SERVICE

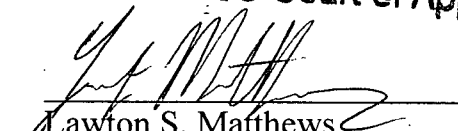
I, Lawton S. Matthews, hereby certify that a copy of the Appellant's Final Brief was served on counsel for the Respondent this 17<sup>th</sup> day of February 2016, via U.S. mail, postage prepaid, at the following address:

J. Benjamin Aplin, Esq.  
Interim Senior Asst. Deputy Attorney General  
P.O. Box 11549  
Columbia, SC 29211

**RECEIVED**

FEB 18 2016

**SC Court of Appeals**

  
Lawton S. Matthews  
Parham Law Firm, LLC