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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDANT

V.

THOMAS DUKES,

APPELLANT

APPELLATE CASE NO 2016-002363

APPELLANT PRO SE BRIEF

THOMAS DUKES
Appellant

711 Parkhurst Ln
Lexington, SC 29072
(803) 530-9443

FACTS

1. The charges against Appellant were in retaliation to Appellant's public criticism of the Lexington County Sherriff's Department enforcement of traffic laws in Appellant's neighborhood and are a violation of Appellant's First Amendment rights. Assistant Solicitor Todd Wagoner mentioned Appellant's website during the trial. Page 100, line 1 of the transcript.
2. Appellant at no time initiated contact with Anthony Smith.
3. The statements made by Deputy Stacy Gadson to obtain the arrest warrant (Exhibit 1) for Appellant's arrest are baseless and false. Deputy Gadson arrived on scene 32 minutes after the first Deputy, Captain Daniel Currance, arrived and after Appellant's handgun was removed from his vehicle by Investigator Patricia Stoner (Exhibit 2).
4. Appellant met the requirements for self-defense. Appellant allowed Anthony Smith to drive ahead after Anthony Smith chased Appellant down on the first occasion and through no fault of Appellant, Anthony Smith re-engaged and chased Appellant down for a second time after Appellant passed Anthony Smith that was caught in traffic. Anthony Smith was intent on making continuous acts of unwanted contact as evidenced on the dash cam video.
5. Appellant was not afforded a pretrial immunity hearing.
6. Appellant had chosen to represent himself pro se due to limited monetary resources but at the encouragement of Assistant Solicitor Robert Elam, did obtain a Public Defender, Elizabeth Fullwood, which subsequently provided an inadequate legal defense based on necessity and failing to bring out important details. Appellant believes there was collusion and tampering of evidence.

7. Assistant Solicitor Robert Elam failed to provide all requests under the Brady Motion filed by the Appellant.
8. The Legislature does not require that the Appellant wait to be physically attacked. The State v. Shannon Scott, Appellant Case No. 2013-002124 (Exhibit 3).
9. On February 8, 2013, Appellant was rear ended on his way to work by a driver surfing the internet on her cell phone. The driver never attempted to slow down and caused Appellant to rear end the vehicle in front of him. Appellant's dog was also injured in the wreck. Because of the failure to obtain a reasonable settlement, an action was filed, 2014-CP-32-01216. During the course of the litigation, Appellant was the subject of witness intimidation on three occasions. At that point, Appellant began carrying a handgun in a zippered bag in the luggage compartment of his vehicle. This can be verified with Judge William Keesley's office as well as with Lexington County Sheriff's Department, Sergeant Barry Sowards, whom was assigned to the incident by Judge William Keesley.
10. Anthony Smith provided a false name to the 911 Dispatcher. He stated his name was Alfonso Smith.
11. By making unwanted contact and following Appellant, Anthony Smith met the definition of Stalking under South Carolina 16-3-1700: (C) "Stalking" means a pattern of words, whether verbal, written, or electronic, or a pattern of conduct that serves no legitimate purpose and is intended to cause and does cause a targeted person and would cause a reasonable person in the targeted person's position to fear: (1) death of the person or a member of his family; **(2) assault upon the person** or a member of his family; **(3) bodily injury to the person** or a member of his family; (4) criminal sexual contact on the person

or a member of his family; (5) kidnapping of the person or a member of his family; or (6) **damage to the property of the person** or a member of his family. (D) "Pattern" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Anthony Smith was not charged.

12. Anthony Smith was driving on a suspended license and extensive criminal history.

Appellant was not engaged in any unlawful activity and had a right to be driving on the highway. Anthony Smith was not charged for driving under suspension.

13. South Carolina Protection of Person and Property Act. **SECTION 16-11-420.** Intent and

findings of General Assembly. (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.

14. Appellant was not required or under any obligation to retreat as the Trial Judge stated.

15. South Carolina 16-23-20 Unlawful carrying of handgun; exceptions.

(9) **a person in a vehicle** if the handgun is:

The Legislature made their intent clearly by stating a 'person in a vehicle.'

(15) a person while transferring a handgun directly from or to a vehicle and a location specified in this section where one may legally possess the handgun. Appellant was enroute to his work location owned by Appellant family. Appellant thought of and could have led Anthony Smith to that location rather than stopping at the convenience store.

16. Appellant was not in his vehicle with the handgun when Deputies arrived on scene.

Appellant put his handgun on the floorboard due to Anthony Smith's presence and was unable to retrieve the black zippered bag without exiting the vehicle and entering from the passenger's door. Captain Curran arrived on scene approximately 20 seconds after Appellant entered the convenience store (Exhibit 2 and timestamp on dash cam video). Appellant was not allowed to open or enter his vehicle as instructed by deputies nor allowed to secure his handgun.

17. If Appellant was not 'detached' from his vehicle as the Trial Judge stated, then the South Carolina Protection of Person and Property Act followed the Appellant into the convenience store by virtue of the same reasoning.

18. Anthony Smith was not made available at the trial. Appellant believes Anthony Smith is employed as a Captain with the City of Columbia Fire Department. Instead, Appellant was told by Elizabeth Fullwood that Anthony Smith was in jail in Virginia on human trafficking charges. Regardless, Anthony Smith could have been brought from Virginia for the trial.

19. Since Anthony Smith was not available to testify and The State has only Appellant's statement, Appellant believes *Corpus Delicti* applies in that The State relied on Anthony

Smith's statements or false statements made by Deputy Gadson, to obtain an arrest warrant then failed to make him present for the trial.

20. During the trial, Inv. Stoner did commit perjury stating Appellant's handgun was not in its holster. Page 53, lines 1 -3 of the transcript. Appellant notified Elizabeth Fullwood of the perjury during the trial but was told to be quiet.
21. Appellant notified Major Johnny Jones of the Lexington County Sheriff's Department of Inv. Stoner's perjury asking for an investigation and offering to take a polygraph (Exhibit 4)
22. After no response from Maj. Jones, Appellant then contacted the South Carolina Law Enforcement Division for assistance. In a letter from Captain Thomas Robertson, SLED only investigates matter of criminal misconduct only after receiving a request from the Solicitor (Exhibit 5)
23. Appellant notified Solicitor Rick Hubbard of the perjury and requested an investigation (Exhibit 6). To date, Appellant has heard nothing.
24. Under South Carolina 23-31-210 (5) "Concealable weapon" means a firearm having a length of less than twelve inches measured along its greatest dimension that must be carried in a manner that is hidden from public view in normal wear of clothing **except when needed for self-defense, defense of others, and the protection of real or personal property.** A handgun is no longer a concealed weapon when it is out for self-defense purposes so the CWP requirement does not apply as Appellant's handgun was being used for self-defense while in his vehicle whether he was 'detached' or not.
25. Having a concealed weapons permit does not automatically make a handgun secure if the handgun is left on the floorboard, see The State v. Donald Vinson Myers (Exhibit 7). In

this case, the handgun was left on the floorboard of an unlocked vehicle, unattended vehicle on a public highway. Appellant's handgun was in a locked vehicle, on private property, protected by an eighty pound Black Lab.

26. When Appellant was told by Captain Currence, a handgun must be in a glove box or console, Appellant told Captain Currence he did not keep his handgun in either place. Appellant did not have a copy of South Carolina Law with him and did not want to argue with Captain Currence.
27. The State has set a dangerous precedent on how a person may behave on the highways of South Carolina by allowing a driver harass any driver as Anthony Smith conducted himself towards Appellant, without any fear of consequences.

CONCLUSION

The State has set a dangerous precedent on how a person may behave on the highways of South Carolina by allowing a driver harass any driver as Anthony Smith conducted himself towards Appellant, without any fear of consequences. The Trial judge erred in his decision as woulda, coulda, shoulda doesn't apply while being threatened driving a vehicle on a busy highway with limited or no options to avoid a person intent on making unwanted contact that could have distracted Appellant causing serious injury to Appellant or other drivers. Appellant's dash cam is forward looking only. The Trial Judge nor prosecutors had no knowledge of the traffic behind Appellant.

The Legislature and the Constitution of South Carolina have made clear the right to

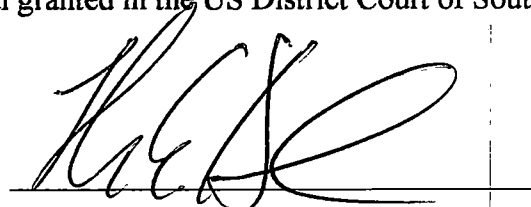
self-defense and the right to bear arms. South Carolina does not require a concealed weapon permit for self-defense. Appellant believes any reasonable person would take measures to protect oneself against a threat as Anthony Smith posed.

The Lexington County Sheriff's Department failed to do a proper investigation because they were intent on retaliating against Appellant that they did not charge Anthony Smith with driving under suspension or stalking.

The Appellant observed the case previous to his and watched the Defense Attorney for that case, make numerous motions, only to be denied by the same Trial Judge and watching the Jury finding the defendant in that case not guilty, would have never consented to a Bench Trial having not been informed the Trial Judge was a former prosecutor.

Appellant is aware of the rampant corruption at all levels of government in the State of South Carolina and Lexington County (Pascoe v. Wilson).

Given the lack of adequate defense provided by Appellant's Court appointed attorney (Brown v. Lexington County) by failing to bring before the Court pertinent facts as above and the failure of The State to produce Anthony Smith as a witness, Appellant asks that Appellant's conviction be reversed or a new trial granted in the US District Court of South Carolina.



Thomas E. Dukes

Appellant Pro Se

This 31st day of July, 2017

EXHIBIT 1

ARREST WARRANT

2015A3210800418

STATE OF SOUTH CAROLINA

County/ Municipality of

Lexington

THE STATE
against

Thomas Edmund Dukes

Address:
Lexington, SC 29072-7886

Phone:
Sex: M Race: Height: 5 8 Weight: 185
DL State: SC DL #: 1605
DOB: 1956 Agency ORI #: SC0320000
Prosecuting Agency: Lexington County Sheriff
Prosecuting Officer: S. T. Gadson - 1506
Offense: Weapons / Unlawful carrying of pistol

Offense Code: 0044
Code/Ordinance Sec: 16-23-0020, 0050

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Lexington County Summary Court Center
139 East Main Street
Lexington, SC 29072

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ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
 County/ Municipality of
Lexington

Personally appeared before me the affiant S. T. Gadson who being duly sworn deposes and says that defendant Thomas Edmund Dukes did within this county and state on or about 10/26/2015 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Lexington) in the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Unlawful carrying of pistol

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 10/26/2015 the def Thomas Dukes did commit the offense of unlawful carrying of a handgun. The def while driving did present a firearm ((Taurus Millennium PT 111 Pro Cal 9mm serial number TDR40229 to Anthony Smith who was the driver in a separate vehicle. This incident occurred during a civil dispute in which defendant became enraged at Anthony Smith while driving on the roadway. Law enforcement responded and def admitted to presenting the firearm and voluntary statements were collected by law enforcement. Law enforcement took possession of the firearm which was located in plain view on the floorboard of the def's vehicle and was not secured in the proper manner that the statue alludes nor does def possess a CWP. The incident took place on or about the 1400 block of Northlake Dr. in Lexington County SC. Case number 150-20718

Signature of Affiant

STATE OF SOUTH CAROLINA
 County/ Municipality of
Lexington

Affiant's Address P O Box 639
Lexington, SC 29071-
Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 10/26/2015 defendant Thomas Edmund Dukes did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Lexington) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Unlawful carrying of pistol

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 10/27/2015
Signature of Issuing Judge (L.S.)
Bradley Stewart Melton
Judge Code: 7321

Judge's Address 139 East Main Street, Suite A
Lexington, SC 29072-
Judge's Telephone (803)785-2594

Issuing Court: Magistrate Municipal Circuit

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EXHIBIT 2

Event ID: 2015-292673 Call Ref #: 973 CIVIL DISPUTE at 6230 BUSH RIVER RD

L9	E70592	D	Dispatched	10/26/15 08:27:5			JAENE
L9	E70592	A	Arrived	10/26/15 08:27:5			JAENE
L283	E71607	A	Arrived	10/26/15 08:31:2			JAENE
L283	E71607	D	Dispatched	10/26/15 08:31:2			JAENE
L222	E74350	A	Arrived	10/26/15 08:40:5			Unit:L222
L274	E71506	D	Dispatched	10/26/15 08:59:2	Stat/Beat: N3		Unit:L274
L274	E71506	A	Arrived	10/26/15 08:59:2	Stat/Beat: N3		Unit:L274
L283	E71607	C	Cleared	10/26/15 09:16:1		BACK	JAENE
L222	E74350	C	Cleared	10/26/15 09:18:3		BACK	Unit:L222
L274	E71506	L	Location Change	10/26/15 09:33:3	417 PINEY GROVE RD		JAENE
L274	E71506	C	Cleared	10/26/15 10:30:5		RW	Unit:L274
L9	E70592	C	Cleared	10/26/15 10:41:1		BACK	JAENE

Event Log

Unit	Empl ID	Type	Description	Time Stamp	Comments	Close Code	User
		TR	Time Received	10/26/15 08:23:41	By: E911		CLAMPJ
		ENT	Entered Street	10/26/15 08:23:41	2108 N LAKE DR		CLAMPJ
		CHG	Changed Street	10/26/15 08:23:43	1962 N LAKE DR --> 6230 BUSH RIVER		CLAMPJ
		ENT	Entered Nature	10/26/15 08:23:47	CIVIL DISPUTE ONE HALF		CLAMPJ
		AMS	APCO Meds Started	10/26/15 08:23:48	Case Started		CLAMPJ
		FF	Fast Forward to LAW	10/26/15 08:23:59	LAW		CLAMPJ
		CHG	Changed Nature	10/26/15 08:24:08	CIVIL DISPUTE ONE HALF --> CIVIL DI		CLAMPJ
		AMS	APCO Meds Error	10/26/15 08:24:09	Unable to Start Case		CLAMPJ
		ARM	Added Remarks	10/26/15 08:24:22			CLAMPJ
		ADV	UNIT ADVISED OF CAL	10/26/15 08:24:34			JAENE
		ARM	Added Remarks	10/26/15 08:24:34			JAENE
		ARM	Added Remarks	10/26/15 08:24:40			CLAMPJ
		ARM	Added Remarks	10/26/15 08:24:45			CLAMPJ
		VCH	Viewed Call History	10/26/15 08:25:08	Location Information		JAENE
		ARM	Added Remarks	10/26/15 08:25:18			CLAMPJ
		ARM	Added Remarks	10/26/15 08:25:32			CLAMPJ
		ARM	Added Remarks	10/26/15 08:25:45			CLAMPJ
		ARM	Added Remarks	10/26/15 08:25:57			CLAMPJ
		CHG	Changed CallerName_C	10/26/15 08:26:06	AT&T MOBILITY --> [REDACTED]		CLAMPJ
		FIN	Finished Call Taking	10/26/15 08:26:17			CLAMPJ
		ARM	Added Remarks	10/26/15 08:26:51			CLAMPJ
		VHQ	Vehicle Query	10/26/15 08:29:48	Tag:DRQ978 State: SC Type: PC		JAENE
		ENT	Entered VehicleID	10/26/15 08:29:49	DRQ978		JAENE
		ENT	Entered LicenseType	10/26/15 08:29:49	PC		JAENE
		ENT	Entered VehicleState	10/26/15 08:29:49	SC		JAENE
		DLQ	Driver License Query	10/26/15 08:33:24	OLN: State: SC Name: DUKES, THOM		JAENE
		ENT	Entered memoNmCom	10/26/15 08:33:36	XREF		JAENE
		DLQ	Driver License Query	10/26/15 08:33:46	OLN:0004790605 State: SC		JAENE
		ARM	Added Remarks	10/26/15 08:38:14			JAENE
		ARM	Added Remarks	10/26/15 08:38:58			JAENE
		CHG	Changed PrimeUnit	10/26/15 09:17:31	L222 --> L274		JAENE
		RPT	Requested Report#	10/26/15 09:17:31	LCSD Report #15-020718		JAENE

EXHIBIT 3

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Shannon Scott, Respondent.

Appellate Case No. 2013-002124

Appeal From Richland County
Maité Murphy, Circuit Court Judge

Opinion No. 5483
Heard September 8, 2016 – Filed May 3, 2017

AFFIRMED AS MODIFIED

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, Assistant
Attorney General Alphonso Simon, Jr., Solicitor Daniel
Edward Johnson, all of Columbia, for Appellant.

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Respondent.

KONDUROS, J.: The State appeals the circuit court's finding Shannon Scott was immune from prosecution for the murder of Darrell Niles (Victim) based on section 16-11-440(A) and (C) of the South Carolina Code (2015). The statute

codifies the common law "Castle Doctrine" and "Stand Your Ground" defenses, respectively.¹ We affirm as modified.

FACTS/PROCEDURAL BACKGROUND

On the night of April 17, 2010, Scott's teenage daughter, Shade, went to a party at a teen club in Columbia accompanied by Rosalyn Fuller's teenage daughters, Ashley, Asia, and Ave, and two other friends, Denzel D. and Antonio B. Fuller was with Scott at his home in Columbia, and the teens were to return to Fuller's home after they left the club.²

During and shortly after the party, Shade was involved in a confrontation with another girl, Teesha D. Shade's group left the club in a 1993 Grand Marquis driven by Denzel. They were followed by a group of females, including Teesha, in a silver Ford Expedition sport utility vehicle (SUV). The SUV chased the Grand Marquis, following it down numerous streets and into different neighborhoods. During the chase, Shade called her father and told him they were being followed by a group of girls with a gun. Ashley texted and then called her mother to say they were being followed by Teesha.³ The teens were instructed to drive to Scott's home.

Apparently, unbeknownst to the two groups, a third vehicle, a burgundy Honda, was following the chase from a bit of a distance. Victim was driving the Honda, and Eric W. was a passenger. According to Eric, Victim wanted to ensure the girls in the Grand Marquis got home safely.

When the group arrived at Scott's house, they pulled the Grand Marquis into the backyard and, at Fuller and Scott's instruction, entered the house through the back door and into the kitchen. Testimony as to these and subsequent events is conflicting, but the record demonstrates the SUV drove by Scott's house, turned around, and drove back by the house with its lights off. The Honda was also in close proximity to Scott's house. Scott entered his roommate's bedroom, retrieved his roommate's gun, and shot from the front stoop of the house. One of these shots struck and killed Victim. Police came to the house in response to a 911 call Fuller

¹ Sections 16-11-410 to -450 (2015) are known as the Protection of Person and Property Act (the Act).

² Scott was engaged to Fuller at the time of the incident.

³ According to testimony in the record, a dispute had been ongoing between Shade and Teesha.

made during the incident. Scott described the SUV and indicated it had shot at the house. He did not indicate he had fired in response. Scott later turned himself in to police and was indicted for murder. He moved for immunity under section 16-11-440(C) of the South Carolina Code (2015).

At the immunity hearing, Asia testified she heard gunshots after the SUV started driving back toward the house with the lights off. Ave indicated she saw a gun hanging out the window of the SUV and saw shots fired. Denzel and Antonio testified they heard a gunshot as they were getting out of the car. Ave, Denzel, and Antonio admitted they had not mentioned hearing gunshots as they exited the car in their initial statements to police.

Fuller testified she saw the SUV drive by the house and turn around in the parking lot of the Allstate Insurance building at the end of the street. She also observed a car behind the SUV when it entered the neighborhood and testified the car made the same turn as the SUV. Fuller stated she heard a gunshot as the teens were entering the house. She called 911 while Scott retrieved the gun from his roommate's bedroom and then heard Scott say "don't do it, don't do it" and afterward another shot. Likewise, Fuller admitted she had not mentioned hearing a shot as the teens were exiting the car in her initial statement to police.

Scott testified he heard a "pow" as Fuller was getting the teens into the house. Afterward, he went into his roommate's room and took his roommate's handgun from the nightstand, and Fuller called 911. Lenny Williams, Scott's roommate, testified Scott came into his room and grabbed his gun and then he heard some gunshots. Williams's girlfriend, who was also present, corroborated that testimony. Scott stated he ran outside the front door to the front step of the house and as the SUV drove back toward his house, he fired a warning shot and told them not to come any farther. He stated the vehicles continued to move slowly and both stopped in front of his house. He heard another shot and saw arms hanging out of the SUV's window. He then ducked behind the front hood of his vehicle parked in the front yard, fired two or three times, and returned inside the house. Scott testified he shot to defend himself and did not remember exactly where he was aiming.

In addition to Teesha, Kiwiana C. and Kyasia C. were in the SUV that night. Kiwiana admitted following the Grand Marquis and firing a gun. However, she told police she heard a shot while the SUV was parked in the Allstate parking lot

and fired her gun into the air in response.⁴ Teesha told police that as they drove into the neighborhood and past Scott's house, she saw a black female along with a heavy set male in the yard. She further stated she heard a gunshot while parked at the Allstate building and then heard a second shot. Teesha stated Kiwiana then fired her gun into the air once. Kyasia denied to police anyone in the SUV fired first and indicated she heard two shots before Kiwiana fired her gun into the air once. The girls admitted they thought about performing a drive-by shooting. Kiwiana even swapped places with the fourth girl⁵ in the SUV for this purpose, but they changed their minds. Kyasia told police that as they left the neighborhood, they passed a burgundy Honda with its passenger door open.

Eric, the passenger in Victim's car, testified they had followed the SUV but when it went past Scott's house, Victim turned left into a cul-de-sac to turn around. Eric testified that as the Honda came back down the cul-de-sac, he could see Scott in the yard and could tell he was light-skinned and had a gun. He indicated the SUV was directly in front of Scott's house and Scott was shooting at the SUV. He provided he did not see any shots fired from the SUV and neither he nor Victim had a gun that night.

After hearing the testimony summarized above, the circuit court determined Scott was entitled to immunity from prosecution under subsections (C) and (A) of section 16-11-440. Regarding its finding of immunity under subsection (C), the circuit court stated:

When the Defendant fired the shot, he reasonably believed he was being attacked with deadly force directed at his home. ~~There is absolutely no requirement that the defendant wait to be attacked by those that instigated the deadly circumstances. The Legislature intended that the defendant should not have to wait to be fired upon.~~

.....

I hereby conclude that the Defendant is entitled to the grant of immunity under the Act because he and his

⁴ None of the SUV occupants testified at the immunity hearing, but they gave statements to police after the incident.

⁵ The identity of the fourth SUV occupant is not revealed in the record.

family were clearly under attack and that they had every reason to believe that the attack would have continued from both [Kiwiana] and potentially the victim but for the actions of the Defendant. The Legislature clearly did not intend for any father to stand idly by as his family lay on the kitchen floor in fear of being shot and killed.

The circuit court's order further stated Defendant "is entitled to statutory immunity under the 'Stand Your Ground' provision because [he] was reasonable to be in fear of the Victim."⁶

This appeal followed.

STANDARD OF REVIEW

"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 of review." *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). "A preponderance of the evidence stated simply is that evidence which convinces as to its truth." *Semken v. Semken*, 379 S.C. 71, 75, 664 S.E.2d 493, 496 (Ct. App. 2008). "An abuse of discretion occurs when the decision of the trial court is unsupported by the evidence or controlled by an error of law." *Maybank v. BB&T Corp.*, 416 S.C. 541, 567, 787 S.E.2d 498, 511 (2016).

LAW/ANALYSIS

The State contends the circuit court erred in finding Scott was entitled to immunity under section 16-11-440(C) of the South Carolina Code (2015) because the statute requires the defendant to be attacked prior to using deadly force and no evidence supports a finding Scott was attacked by Victim. Under the unique circumstances of this case, we disagree.⁶

Section 16-11-440(C) states:

⁶ Because we affirm the circuit court's ruling pursuant to subsection (C), we decline to address the circuit court's finding of immunity pursuant to subsection (A). *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding the "appellate court need not address remaining issues when disposition of prior issue is dispositive").

~~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).

The parties agree Scott was not engaged in an unlawful activity at the time of the shooting. Additionally, he was in a place he had a right to be—inside his home and immediately outside his home. The State correctly maintains the statute's plain language excuses a defendant's obligation to retreat only if he is attacked. Scott may have reasonably believed the SUV and/or Honda was a threat so as to justify a claim of self-defense.⁷ However, that is a different question than whether he was attacked so as to excuse his duty to retreat in this case. At times, the circuit court's order conflates the two questions and is therefore erroneous to the extent it relies on Scott's perception of danger from the SUV and/or Honda *driving by* as an attack sufficient for granting immunity under subsection (C).⁸

⁷ To claim self-defense a defendant must demonstrate he (1) was without fault in bringing on the difficulty; (2) actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; and (3) had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. *State v. Curry*, 406 S.C. 364, 371 n.4, 752 S.E.2d 263, 266 n.4 (2013).

⁸ We agree with the concurrence that a defendant must establish the elements of self-defense in order to prevail on a claim for immunity. The clear language of section 16-11-440(C), however, also requires that the defendant be actually attacked. See *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning."). While we acknowledge the facts of this case are unique, and the question of a perceived threat and an attack may sometimes overlap, absent a showing that a defendant has been attacked, a request

However, the circuit court made numerous factual findings based on its view of the evidence and credibility determination of the witnesses—including the occupants of the SUV shot first. Although the testimony and evidence regarding the sequence of events is conflicting and muddled, this court generally defers to the credibility findings of the circuit court. *See USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 652-53, 661 S.E.2d 791, 796 (2008) ("[N]oting the circuit court judge, who saw and heard the witnesses, is in a better position to evaluate their credibility and assign comparative weight to their testimony."). We conclude the circuit court's determination someone in the SUV shot first did not rise to the level of an abuse of discretion based on the applicable preponderance of the evidence standard. Therefore, the events of that night are within the purview of subsection (C) as Scott's conduct was in response to an attack, not just the vehicles driving by the home.⁹

The State argues *Victim* did not attack Scott and therefore his shooting Victim could not fall within the confines of subsection (C). However, the State conceded at oral argument that if Scott shot an occupant of the SUV other than the shooter, that conduct would be justified. In essence, the State contends Scott intentionally and specifically aimed at the Honda and fired. Constrained by our standard of review, we cannot agree.

Fuller testified a second set of headlights was behind the SUV and she saw that car make the same exact turn as the SUV had made at the Allstate building. However, she had not mentioned a second car in her initial statement to police. Scott testified he saw the SUV coming down the street and headlights behind it. He observed the SUV turn around in the Allstate lot but did not see where the second car turned around. He recalled that when he came back to the stoop, both vehicles were then facing the opposite direction from which they had entered the neighborhood. He testified they were stopped in front of his house. Scott stated he shot to defend himself and did not remember directly where he was aiming or whether he shot two or three times because he was being shot at himself.

for immunity, pursuant to subsection (C), which would excuse the duty to retreat, must fail, and a defendant must present his evidence of self-defense to a jury.

⁹ The State largely conceded at oral argument that the circuit court's factual findings were controlling and limited its argument to whether or not Scott was justified in using force specifically against Victim under subsection (C), not whether evidence supported a finding the SUV occupants shot first.

Eric, the passenger in Victim's car, testified the Honda followed the SUV onto Scott's street. However, he indicated the car never passed in front of Scott's house but turned left onto a cul-de-sac just before reaching Scott's yard and turned around. Eric testified that as the Honda exited the cul-de-sac, he saw Scott shooting at the SUV. He further testified Scott shot "at the car we [were] in," but he never saw Scott look in the direction of the car.

After hearing all the testimony and reviewing the evidence, the circuit court found:

Victim's vehicle at the scene showed that the bullet went through the driver's side window. This would be more consistent with the vehicle being directly in front of [Scott's] home traveling in the same direction as the SUV which had turned around to do the drive by. . . . Victim's car was found running with the lights on, just past [Scott's] house where it had run off the road and into brush. The passenger door was open where [Eric] fled the scene. Unfortunately, law enforcement failed to conduct any meaningful accident reconstruction of the scene that would clearly indicate where . . . Victim's car was at the time that the fatal shot was fired.

....

The Court finds credible [Scott's] testimony that both the Honda and SUV drove past his home and turned around and stopped in front of his residence.

Again, the evidence regarding the location of the SUV and Honda when Scott fired his weapon is conflicting and somewhat unclear. However, the circuit court found the Honda was directly in front of the house moving along the same path as the SUV. *See USAA Prop. & Cas. Ins. Co.*, 377 S.C. at 652-53, 661 S.E.2d at 796 ("[N]oting the circuit court judge, who saw and heard the witnesses, is in a better position to evaluate their credibility and assign comparative weight to their testimony."). This finding negates the State's contention the vehicles were so far apart Scott's fatal shot could have only been the result of an intentional act. We conclude the circuit court did not abuse its discretion in finding by a preponderance of the evidence Scott was entitled to immunity pursuant to subsection (C).

CONCLUSION

The circuit court did not err in finding Scott immune from prosecution pursuant to subsection (C). We decline to address the circuit court's ruling under subsection (A). To the extent the circuit court's order equates Scott's belief the SUV or Honda posed a threat with an attack, the order is vacated. Based on our standard of review and the circuit court's factual determinations regarding the events of that tragic night, the circuit court is

AFFIRMED AS MODIFIED.

LOCKEMY, C.J., concurs.

MCDONALD, J., concurring in a separate opinion. I concur in the result reached by the majority. I agree that Scott responded to an attack as opposed to a perceived threat; however, I respectfully write separately because I do not agree that the circuit court's order conflates the questions of self-defense and immunity under the Protection of Persons and Property Act (the Act).¹⁰ Instead, the circuit court's self-defense analysis was a necessary predicate to the finding of immunity under section 16–11–440(C) of the South Carolina Code (2015). The circuit court's examination of Scott's reasonable belief that he and the girls were being attacked with deadly force was necessary to this self-defense analysis. Thus, I would not vacate the portion of the circuit court's ruling addressing the threat posed by the "drive-by" vehicles and Scott's perception of this threat.

Recently, our supreme court clarified that the immunity of section 16–11–440(C) extends to a person attacked in his own residence and examined the Legislative purposes of the Act. In *State v. Jones*, the court explained:

Under the Castle Doctrine, "[o]ne attacked, without fault on his part, on his own premises; has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense." *State v. Gordon*, 128 S.C. 422, 425, 122 S.E. 501, 502 (1924)) (citation omitted). The

¹⁰ S.C. Code Ann. §§ 16–11–410 to –450 (2015); *see id.* § 16–11–450(A) (stating, in relevant part, "[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force").

Legislature explicitly codified the Castle Doctrine when it promulgated the Act and extended its protection, when applicable, to include an occupied vehicle and a person's place of business. See S.C. Code Ann. § 16-11-420(A) (2015) ("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.").

416 S.C. 283, 291, 786 S.E.2d 132, 136 (2016) (alteration in original). The court enunciated its belief that "a decision that prohibits a person, who is attacked in his or her residence, from seeking immunity under the Act would not only be in direct contravention of the provisions of the Act but would undoubtedly infringe on the person's Second Amendment right to bear arms,^[11] which was specifically identified in section 16-11-420(C) as a foundational basis for the Act." *Id.* at 297-98, 786 S.E.2d at 140; see *District of Columbia v. Heller*, 554 U.S. 570, 628, (2008) ("[T]he inherent right of self-defense has been central to the Second Amendment right.").

Because the supreme court found subsection (C) applicable in *Jones*, the question became whether there was "evidence to support the judge's ruling that Jones acted in self-defense." *Id.* at 300-01, 786 S.E.2d at 141. "Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. Therefore, the defendant must demonstrate the elements of self-defense, save the duty to retreat, by a preponderance of the evidence." *Id.* at 301, 786 S.E.2d at 141 (quoting *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013));¹² see also *State v.*

¹¹ U.S. Const. amend. II ("A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."); S.C. Const. art. I, § 20 (providing in part that "[a] well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed").

¹² Where section 16-11-440(A) applies, "there is no requirement that the defendant prove he believed he was in imminent danger of losing his life or sustaining serious bodily injury given the presumption of reasonable fear of imminent peril of death or great bodily injury is included in subsection (A)."

Douglas, 411 S.C. 307, 318, 768 S.E.2d 232, 238 (Ct. App. 2014) (recognizing that "immunity under the Act 'is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence,' save the duty to retreat." (quoting *Curry*, 406 S.C. at 371–72, 752 S.E.2d at 266–67)); *Curry*, 406 S.C. at 372, 752 S.E.2d at 267 ("While the Act may be considered 'offensive' in the sense that the immunity operates as a bar to prosecution, such immunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence.").

As the circuit court's examination of Scott's reasonable belief that he and the girls were being attacked with deadly force was necessary to its self-defense analysis, a predicate to the court's finding of immunity, I would affirm both the subsection (C) grant of immunity and the circuit court's analysis.

Jones, 416 S.C. at 301, 786 S.E.2d at 141. Here, as in *Jones*, the consideration is whether subsection (C) applies.

EXHIBIT 4

Thomas E Dukes

From: Thomas E Dukes <thomas.dukes@windstream.net>
Sent: Wednesday, November 16, 2016 7:30 PM
To: 'jjones@lcsd.sc.gov'
Cc: 'efullwood@lex-co.com'
Subject: Inv. Stoner

Inv. Stoner stated today under oath, stated that my handgun was not in its holster when she entered my vehicle.

I wish someone from internal affairs to contact me regarding this so a polygraph can be made.

I will also like to take one regarding this.

Thank you,

TE Dukes

EXHIBIT 5

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

December 29, 2016

Thomas E. Dukes
711 Parkhurst Lane
Lexington, SC 29072

Dear Mr. Dukes:

The South Carolina Law Enforcement Division (SLED) is in receipt of your letter dated December 12, 2016.

SLED investigates matters of *criminal misconduct* only after receiving a request from a Solicitor, the Attorney General's Office or the law enforcement agency of jurisdiction. Therefore, SLED will not conduct a criminal investigation into this matter.

You may be best assisted by consulting an attorney in this matter.

With best regards,

Thomas H. Robertson, Captain
Investigative Services
South Carolina Law Enforcement Division

THR/se



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7588

EXHIBIT 6

**Thomas E. Dukes
711 Parkhurst Lane
Lexington, South Carolina 29072
(803) 530-9443**

February 16, 2017

Rick Hubbard, Solicitor
205 East Main St.
Suite 305
Lexington, SC 29072

RE: Appeal, The State v Thomas E Dukes, Case # 216-gs-31-00477

Mr. Hubbard:

According to Captain Thomas H Robertson, Investigative Services of the South Carolina Law Enforcement Division, SLED only conducts matters of criminal misconduct after receiving a request from a Solicitor (enclosed). I have been unable to verify that in the South Carolina Code of Laws, Title 23, Chapter 3. Therefore, in the above mentioned case, I request that you ask the South Carolina Enforcement Division to initiate an investigation regarding perjury (Page 42, lines 1 – 3, of the transcript) and the possible tampering of evidence by Lexington County Sheriffs Department and/or, Investigator Stoner. Why would a holster be confiscated? Is it illegal to have a holster in a vehicle? Why didn't she confiscate the carry bag with the extra clip and ammunition? I am also requesting chain of custodies for all evidence provided to the LCSD by me as well as all other Brady material your office has failed to provide.

Also, regarding this appeal, the Judge stated I wasn't far enough to be 'detached' from my vehicle. Not sure why that's not in the transcripts as everything should have been transcribed. If that were the case, I would be afforded the protection of the Protection of Persons and Property Act of South Carolina as I feared for my personal safety.

Because your prosecutor stated I didn't appear to be in fear, AFTER, I exited my vehicle and had my back to the door, he and my incompetent attorney failed to mention that LCSD arrived on the scene 20 seconds after I entered the convenience store, long before you see me on the video in the store. Your prosecutors knew and withheld this information from the Court. The evidence is in the video and dispatch log. Nor did my incompetent counsel mention that I have advanced black belts in Taekwondo and Shaolin Kempo. So no, I wasn't in fear AFTER I exited my vehicle where I was previously in an un-escapable situation and was in a place of refuge. The threat was still active as long as Anthony/Alphonso Smith was in sight.

The person molesting and stalking me while I was driving to work, where I was legally allowed to be and in violation of no laws, was driving on a revoked license, had outstanding warrants and had an extensive criminal history, but no arrest was made by the LCSD. This person is currently in a Virginia jail for human trafficking and could have been made available for testimony.

Thomas E Dukes
February 16, 2017
Page 2

I am afforded the same protection in my vehicle as I am in my home or place of business and have not obligation to retreat (South Carolina Protection of Persons and Property Act).

Definition of a concealed weapon:

Section 23-31-210

(5) "Concealable weapon" means a firearm having a length of less than twelve inches measured along its greatest dimension that must be carried in a manner that is hidden from public view in normal wear of clothing **except when needed for self-defense, defense of others, and the protection of real or personal property.**

These charges and the prosecution of this case were and are in retaliation of my public criticism of Sheriff Jay Koon and the Lexington County Sheriff Department, through my website, <http://sheriffkoon.com>

I look forward taking a polygraph (Section 23-3-15(6)) with Inv. Stoner and Capt. Currence.

Are you as corrupt as the LCSD or are you an advocate of justice (State v Quattelbaum)?

On the bright side, I now I can molest, curse, stalk you, your wife, any Judge, any politician, any LCDS Deputy without worry of prosecution.

Thank you,

Thomas E Dukes

Cc: The Honorable Eugene Griffith, Jr.
Thomas H Robertson

EXHIBIT 7

AGENCY I.D.
SC032SP00

INCIDENT REPORT

CASE NUMBER
1993-141097

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNIT #	TYPE VICTIM	
1. Driving under the Influence (90D)		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	Highway/Road/Alley		<input type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst. <input type="checkbox"/> Government <input type="checkbox"/> Reg. Organ. <input type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off.	
2.		<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO				
3.		<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO				
INCIDENT LOCATION (CITY, BLDG. OR APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE		
OLD CHAPIN RD AT BEECHCREEK							
INCIDENT DATE	24 HR. CLOCK	DATE	24 HR. CLOCK	DISPATCH DATE/TIME	24 HR. CLOCK	DISPATCH DATE/TIME	24 HR. CLOCK
2/22/2016	20:00	2/23/2016	00:03	2/22/2016	8:06:00 PM	2/23/2016	8:36:00 AM
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH.
		#1		*JSOU			
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.		
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH.
Society/Public		#1		*JSOU			
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.			
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.		
VISIBLE INJURY (MCT. 1)		<input type="checkbox"/> YES <input type="checkbox"/> NO	EXPLANATION	COMPLAINT OF NON-VISIBLE INJURIES: <input type="checkbox"/> YES <input type="checkbox"/> NO			
VICTIM (NO. 1) USING ALCOHOL		<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK.	DRUGS	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. TYPE:			
TWO-MAN VEH. <input type="checkbox"/>		ONE-MAN VEH. <input type="checkbox"/>	DETECTIVE/PLASMT. <input type="checkbox"/>	OTHER <input type="checkbox"/>	ALONE <input type="checkbox"/>	ASSISTED <input type="checkbox"/>	J - Jurisdiction, S - State, O - Out of State, U - Unknown
SUBJECT NO. 1		NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.
		MYERS, DONALD VINSON		W	M	70	N
		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.		
			LEXINGTON	SC	29072		
SUBJECT (NO. 1) USING ALCOHOL		<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK.	ARRESTED NEAR OFFENSE SCENE	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK.	DATE/TIME OF OFFENSE	DATE/TIME OF ARREST	
SUMMONS		DRUGS	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK. TYPE:	TOTAL # ARRESTED:			
<p>ON 2-22-2016 AT 2000 HOURS, I WAS NOTIFIED OF A SINGLE VEHICLE COLLISION ON OLD CHAPIN ROAD AT BEECHCREEK ROAD. I WAS NOTIFIED THAT THE DRIVER OF THE VEHICLE HAD BEEN TAKEN TO HIS RESIDENCE AT [REDACTED] I STOPPED BY THE COLLISION SCENE WHILE EN ROUTE TO THE RESIDENCE AND TOOK A BRIEF LOOK IN THE VEHICLE. I COULD SMELL A STRONG ODOR OF ALCOHOL IN THE VEHICLE AND OBSERVED A PISTOL ON THE DRIVER'S SIDE FLOOR BOARD. I ASKED THE SEVERAL FIREMEN ON SCENE TO STAND BY FOR ANOTHER TROOPER TO ARRIVE. I WENT TO [REDACTED] AND SPOKE WITH DONALD VINSON MYERS. MR. MYERS STATED HE HAD AN ACCIDENT ON THE WAY HOME BECAUSE AN UNKNOWN VEHICLE RAN HIM OFF OF THE ROAD. MR. MYERS SAID HE WAS NOT INJURED AND</p>							
JURISDICTION OF THEFT				JURISDICTION OF RECOVERY			
PROPERTY EST.		TOTAL VALUE					
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
MISSED							
FORGED							
SUBJECT IDENTIFIED		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	SUBJECT LOCATED	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	ACTIVE <input type="checkbox"/> ADM. DROPPED <input type="checkbox"/> UNFOUNDED	ARRESTED UNDER 18	<input type="checkbox"/> EX-CLEAR UNDER 18
						<input checked="" type="checkbox"/> ARRESTED 18 AND OVER	<input type="checkbox"/> EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH. 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRADITION DENIED. 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION. 5. <input type="checkbox"/> JUVENILE NO CUSTODY							
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
ROWE, ROBERT H JR		2/22/2016	A35	HARRELL, JN, CARROLL S III		2/23/2016	214
				FOLLOWUP OFFICER			
				INVESTIGATION <input type="checkbox"/> YES <input type="checkbox"/> NO			

AGENCY I.D.
SC032SP00

SUPPLEMENTARY INCIDENT REPORT

CASE NUMBER
1993-141097

NGIC
NO. INTD.

<input type="checkbox"/> ORIGINAL REPORT	<input type="checkbox"/> SUPPLEMENTAL REPORT	<input type="checkbox"/> ADDITIONAL VICTIMS	<input type="checkbox"/> ADDITIONAL STOLEN PROPERTY
<input type="checkbox"/> COPIES ORIGINL	<input type="checkbox"/> CASE STATUS CHANGE	<input type="checkbox"/> ADDITIONAL OFFENDERS	<input type="checkbox"/> ADDITIONAL RECOVERED PROPERTY

PAGE 2 of 2 PAGES

NARRATIVE

WAS THE ONLY OCCUPANT IN THE VEHICLE AT THE TIME OF THE COLLISION. I ASKED MR MYERS HOW MUCH HE HAD TO DRINK AND HE STATED ONE DRINK AT UNO'S IN LEXINGTON. I THEN ASKED HIM IF HE HAD ANYTHING TO DRINK SINCE THE COLLISION AND HE SAIDED "NO". I THEN HAD HIM EXIT HIS RESIDENCE AND PERFORM STANDARDIZED FIELD SOBRIETY TESTS IN HIS GARAGE AREA. HE WAS READ HIS MIRANDA RIGHTS AND THEN GIVEN THE HGN TEST. HE HAD EQUAL TRACKING IN BOTH EYES AND ALSO LACK OF SMOOTH PURSUIT. HE HAD NYSTAGMUS AT MAXIMUM DEVIATION AND ONSET PRIOR TO 45 DEGREES. HOWEVER, SOMETIMES HE WOULD NOT LOOK AT MY PEN WHILE I WAS ADMINISTERING THE TEST SO I HAD TO STOP AND REPEAT THE INSTRUCTIONS. HE HAD NO VERTICAL NYSTAGMUS. I THEN ASKED HIM TO PERFORM THE ONE LEG STAND AND HEEL TO TOE. MR MYERS STATED HE HAD LLG PROBLEMS AND COULD NOT PERFORM EITHER TEST. HE WAS THEN OFFERED THE FINGER DEXTERITY TEST. HE MISCOUNTED AND TOUCHED THE WRC'S FINGER SEVERAL TIMES. I WALKED BACK TO MY PATROL VEHICLE FOR A SECOND AND MR. MYERS RE-ENTERED HIS RESIDENCE. I ASKED MR. MYERS TO COME BACK OUT INTO THE GARAGE AND SAY HIS ABC'S. HE WAS UNABLE TO SAY HIS COMPLETE ABC'S TWICE. MR. MYERS WAS THEN PLACED UNDER ARREST FOR DUI AND READ HIS MIRANDA RIGHTS. HE HAD SOME TOBACCO IN HIS MOUTH, SO I TOOK HIS HANDCUFF OFF TO HAVE HIM REMOVE IT FROM HIS MOUTH. HE WAS THEN PLACED BACK INTO BOTH HANDCUFFS AND PLACED IN THE FRONT SEAT OF MY PATROL VEHICLE. I TRANSPORTED MR. MYERS BACK TO THE SCENE FOR A BRIEF SECOND BEFORE TRANSPORTING HIM TO ALVIN S. GLENN DETENTION CENTER. ONCE WE ARRIVED AT THE DETENTION CENTER, HE WAS ADVISED OF HIS IMPLIED CONSENT RIGHTS AND OFFERED A DATAMASTER TEST. MR. MYERS WAS OBSERVED FOR TWENTY MINUTES AND PROVIDED A BREATH SAMPLE AT 22:08:12 AND REGISTERED .09% BAC. MR. MYERS WAS THEN GIVEN A COPY OF HIS IMPLIED CONSENT RIGHTS AND HIS BREATH ALCOHOL ANALYSIS TEST REPORT. MR. MYERS WAS THEN RELEASED TO THE CUSTODY OF THE ALVIN S. GLENN DETENTION CENTER.

VED # 16BW038657
SUMMONS # 51020213009

JURISDICTION OF THEFT		JURISDICTION OF RECOVERY	
-----------------------	--	--------------------------	--

ADMINISTRATIVE

SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	SUBJECT LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ARRESTED UNDER 16 <input type="checkbox"/> ARRESTED 18 AND OVER	<input type="checkbox"/> EX-CLEAR UNDER 16 <input type="checkbox"/> EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRAJURISDICTION DEVICED 4. <input type="checkbox"/> OTHER TIMELY DECLINE TO COOPERATION 5. <input type="checkbox"/> JUVENILE-NO CUSTODY					
REPORTING OFFICER ROWE, ROBERT H JR	DATE 2/22/2013	UNIT NUMBER 435	APPROVING OFFICER PARSONSON, CARROLL S III	DATE 2/22/2013	UNIT NUMBER SG1
FOLLOWUP INVESTIGATION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 28, 2017

RECEIVED

AUG 02 2017

SC Court of Appeals

Thomas Edmund Dukes
711 Parkhurst Lane
Lexington SC 29072

Re: The State v. Thomas Dukes
Appellate Case No. 2016-002363

Dear Mr. Dukes:

Your counsel has filed a brief indicating that this appeal is without merit and moves to be relieved as your counsel. *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L.E.2d 493 (1967). The records in this office reflect counsel has served you with a copy of the brief and record on appeal.

You may, within forty-five (45) days of the date of this letter, file with this Court a *pro se* brief addressing any issues you believe the Court should consider in this appeal. Upon receipt of your *pro se* brief or the expiration of forty-five (45) days, this appeal will be submitted to the Court for its consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

cc: John Benjamin Aplin, Esquire
Alan McCrory Wilson, Esquire
Taylor Davis Gilliam, Esquire