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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Greenwood County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

Alphonso Morgan, Jr.

APPELLANT

APPELLATE CASE NO 2016-000269

RECORD ON APPEAL

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PAGES 501-588

INDEX

INDEX .....	i
PLEA HEARING TRANSCRIPT DATED FEBRUARY 1-5, 2016.....	1
OPENING STATEMENT BY MR. BANNISTER.....	4
OPENING STATEMENT BY MR. STUMBO.....	10
TESTIMONY	
THOMAS GILCHRIST	
Direct examination by Mr. Bannister.....	13
Cross examination by Mr. Brown.....	41
Redirect examination by Mr. Bannister.....	61
ERNEST MCCAULEY	
Direct examination by Mr. Jones.....	65
Cross examination by Mr. Stumbo.....	83
COURTNEY LOCKHART	
Direct examination by Mr. Jones.....	110
Cross examination by Mr. Brown.....	119
Redirect examination by Mr. Jones.....	138
Recross examination by Mr. Brown.....	140
CLIFTON ROBINSON	
Direct examination by Mr. Bannister.....	142
Cross examination by Mr. Stumbo.....	153
Redirect examination by Mr. Bannister.....	163
BRETT WOODARD	
Direct examination by Mr. Jones.....	164
Cross examination by Mr. Brown.....	174
Redirect examination by Mr. Jones.....	178
TONYA FULLER	
Direct Examination by Mr. Jones.....	180
Cross examination by Mr. Stumbo.....	191
LENWOOD RAMSEY	
Direct examination by Mr. Bannister.....	197
Cross examination by Mr. Brown.....	209

Redirect examination by Mr. Bannister .....	222
<b>DEMOND BROWN</b>	
Direct examination by Mr. Jones .....	225
Cross examination by Mr. Stumbo .....	231
<b>VICTORIA MEEK</b>	
Direct examination by Mr. Jones .....	242
Cross examination by Mr. Stumbo .....	247
Redirect examination by Mr. Jones .....	250
<b>BRENT WILLIAMS</b>	
Direct examination by Mr. Bannister.....	254
Cross examination by Mr. Stumbo .....	286
Redirect examination by Mr. Bannister.....	300
Recross examination by Mr. Stumbo.....	303
<b>HUGH BUTLER</b>	
Direct examination by Mr. Jones .....	304
Cross examination by Mr. Stumbo .....	314
<b>TONY THOMAS</b>	
Direct examination by Mr. Jones .....	317
Cross examination by Mr. Brown.....	328
Redirect examination by Mr. Jones .....	336
<b>SHAY SIMON</b>	
Direct examination by Mr. Jones .....	338
Cross examination by Mr. Stumbo .....	347
Redirect examination by Mr. Jones .....	353
<b>ALPHONSO MORGAN</b>	
Direct Examination by Mr. Jones .....	354
Cross examination by Mr. Brown.....	383
Redirect examination by Mr. Jones .....	402
<b>CALVIN WELLS</b>	
Direct examination by Mr. Brown.....	403
Cross examination by Mr. Bannister .....	408
<b>DEMECUS SAYLES</b>	
Direct examination by Mr. Stumbo .....	410
Cross examination by Mr. Jones.....	419
Redirect examination by Mr. Stumbo.....	442
Examination by the Court.....	444

COURTNEY SMITH	
Direct examination by Mr. Stumbo .....	444
Cross examination by Mr. Bannister .....	447
DRINA MORGAN	
Direct examination by Mr. Brown .....	449
Cross examination by Mr. Bannister .....	460
Redirect examination by Mr. Brown .....	470
SHANINA WILLIAMS	
Direct examination by Mr. Brown .....	473
Cross examination by Mr. Bannister .....	484
Redirect examination by Mr. Brown .....	492
CLOSING ARGUMENT BY MR. BANNISTER .....	495
CLOSING ARGUMENT BY MR. STUMBO .....	510
VERDICT .....	538
SENTENCING .....	553
MOTION ASSERTING STATUTORY IMMUNITY FROM PROSECUTION FILED JANUARY 26, 2016 .....	554
IMMUNITY HEARING MEMORANDUM AND PRE-TRIAL BRIEF DATED FEBRUARY 1, 2016 .....	556
NOTICE OF APPEAL FILED FEBRUARY 16, 2016 .....	575
SUPPLEMENTAL STATEMENT PURSUANT TO RULE 203(d)(1)(B)(iv) FILED MARCH 1, 2016 .....	577
RESPONSE TO APPELLANT'S SUPPLEMENTAL STATEMENT FILED MARCH 3, 2016 .....	580
SENTENCE SHEET .....	585
INDICTMENT .....	586
CERTIFICATE OF COUNSEL .....	588

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:**

**STATE'S EXHIBIT NO. 4  
(RECORDING OF APPELLANT'S STATEMENT)**

1 are now all on the inside which makes it seem as if  
2 Clifton Robinson, Demond Brown and Shay Simon were on one  
3 side of this altercation and the rest of the crowd was on  
4 the other side of the altercation. So here are the  
5 disputed facts about what happened while Al Morgan was  
6 gone. Clifton Robinson got beat up. None of the State's  
7 witnesses will admit that Clifton Robinson got beat up;  
8 Crip. However, he testified, he said he got hit from  
9 behind, pulled down to the ground and that they were  
10 beating on him. Shay Simon saw it. Shay Simon and Crip  
11 told Al on the phone that Crip had been jumped. Courtney  
12 Lockhart was a witness to this and if you got to take a  
13 third party who doesn't seem to really be on one side or  
14 the other, if you'll recall Ernest McCauley saw the guy  
15 with the scar on his face on the ground getting beaten.  
16 Well, that's Crip, because he's the only one that's got  
17 the scar on his face. Disputed fact in this portion  
18 that's important is that Jamaal Aiken was the one who hit  
19 or pulled Crip to the ground. If it hadn't been Jamaal,  
20 we would have heard a name from some of the State's  
21 witnesses who are related to the Aiken's, because they  
22 could have said no, it wasn't him, it was somebody else.  
23 The absence, the fact that they won't even admit that an  
24 altercation occurred with Clifton Robinson, I think, is a  
25 clear indication that it was Jamaal Aiken that got in that

1 fight. That it was Jamaal Aiken who hit Ernest in the  
2 head. If it wasn't, we wouldn't have got, we would have  
3 gotten a name from some of the State's witnesses as to who  
4 it was. It is just like the, being intoxicated, having  
5 the stolen pistol, the marijuana, the facts that we should  
6 all be in agreement on but which are detracting somewhat  
7 from the memory of Mr. Aiken are simply either unknown by  
8 the State's witnesses or denied outright. I think that's  
9 a significant fact for the Judge, for Your Honor to  
10 consider in looking at the overall credibility. And  
11 here's my point, because I'm getting to move into where  
12 the facts that are consistent. When something comes from  
13 the State's witnesses that supports our version of what  
14 happened and our request for immunity, then you got to  
15 know that that is something that actually happened. What  
16 does that lead us to? So now we're to that critical,  
17 critical, critical time-period. Everybody's outside the  
18 front door. Al Morgan is pulling up. What do we agree  
19 on? We agree that Al Morgan came back, because he was  
20 going to pick up Shay Simon and Crip. That was the phone  
21 call. We heard that even from Mr. Aiken's girlfriend. Al  
22 Morgan was in the backseat of Ramsey's Impala and he never  
23 got out. There hadn't been a single witness that said he  
24 got out of the car. Jamaal Aiken left the front door and  
25 regardless of how far it was, he walked to the Impala's

1 back door. Brent Williams was close with him. That comes  
2 from Brent and from Drina Morgan. Mr. Aiken is the one  
3 that opened the back door. I don't believe there's really  
4 any inconsistency in that. Drina Morgan right now is the  
5 only witness who has said that the back door didn't come  
6 open. Brent Williams said that Mr. Aiken opened the back  
7 door and the unknown witness that we now know is the  
8 discredited Mr. Sayles that talked to Hugh Butler on the  
9 scene and gave the license tag said initially on-scene  
10 that there was an argument, that the guy who got shot  
11 opened the door, and then there was a shot that followed  
12 or it was door opened, argument, then there was a shot.  
13 So the door was opened by Mr. Aiken which puts him within  
14 a few feet of Al Morgan. We also know that Mr. Aiken was  
15 armed with a stolen pistol. Brent Williams said in his  
16 initial interview with the investigator, this is at the  
17 hospital before he's had any time to talk with other  
18 family members really and come up with any different  
19 scenario than maybe what happened, admitted at least that  
20 Mr. Aiken asked Al, quote, a question. Al Morgan did not  
21 say anything. Brent Williams says, and so does everybody  
22 else frankly, the shot came from inside the vehicle's  
23 backseat. The bullet wound is consistent, according to  
24 the pathologist with Mr. Aiken being bent over having  
25 opened the door and reaching in with his left hand. Mr.

1 Aiken fell down close to the car. Mr. Morgan shut the  
2 door and told Ramsey to drive off, which they did. Ramsey  
3 drove off, ultimately ending up back at the house and he  
4 was arrested. So where really is the dispute about what  
5 happened in the parking lot just before shots? Really, if  
6 we got it down to just what is the essence of this case?  
7 It is after Jamaal Aiken has opened the door, what is the  
8 question that he asked and did he bend over into the car.  
9 So Al says somebody at the door to the Cabstand said there  
10 he goes, referring to him which is what brought Mr.  
11 Aiken's attention to the black Impala to begin with.  
12 Aiken had to come to Ramsey's vehicle and he did it acting  
13 highly agitated. That is testimony from Mr. Gilchrist.  
14 That is testimony from Al Morgan. That is testimony from  
15 Mr. Ramsey. He was highly agitated. He was acting  
16 consistent with someone who had been in a couple of  
17 fights, three altercations inside, intoxicated on a  
18 combination of alcohol and marijuana. The other disputed  
19 fact would be what was Aiken's question that Brent  
20 Williams said he asked Al? Well, you've got Thomas  
21 Gilchrist, Ramsey, and Al Morgan all saying it was words  
22 to the effect of what the F you going to do now? Most  
23 importantly, I think, is to consider that Mr. Gilchrist  
24 who was interviewed within a short period of time by law  
25 enforcement after the shot had been fired said the same

1 thing. He was consistent. What the F you going to do?  
2 That was the words that were said and that's in the  
3 initial statement that comes from Mr. Gilchrist. Hugh  
4 Butler's unknown witness who, again, I say would be the  
5 now discredited Mr. Sayles says that there was an argument  
6 prior to the shot being fired. And so I guess the final  
7 disputed fact would be that Aiken was, in fact, bending  
8 over and reaching into the back seat to get at Mr. Morgan.  
9 However, while I'm on that, it's not necessary for us to  
10 prove that that was, in fact, the position he occupied in  
11 order to trigger self-defense or the Protection of Persons  
12 and Property Act, defense of vehicle. All we've really  
13 got to have is that there is a threat that is presenting  
14 itself and that there is an attempted entry into the  
15 vehicle. The other point I would make is that the State's  
16 hypothetical to the pathologist on this issue had Mr.  
17 Aiken back five, maybe six feet from the vehicle. That's  
18 inconsistent with any of the testimony that we heard from  
19 the witnesses about where Mr. Aiken was standing, in  
20 particular Brent Williams who has him right at the door.  
21 Morgan was prone in the backseat. To me, I'm sure that's  
22 going to be a disputed fact, but that seems like an easy  
23 one. He couldn't get at the pistol in his waistband while  
24 he's sitting straight up. He had to lean over in order to  
25 pull it out from and do, extricate it from underneath the

1 waistband. Furthermore if he hadn't done that, if he  
2 hadn't been leaning over, if he's where the State wants  
3 him to be which is sitting straight up in the backseat,  
4 the gunshot should have come from outside the back door  
5 where it was opened. In other words, to hold the gun and  
6 to put it at the angle that was necessary to shoot, to be  
7 consistent with the bullet wound, the trajectory, the gun  
8 has to be held up a little bit and that puts it outside  
9 the edge of the car. When you got pretty much everybody  
10 saying no, the gunshot occurred inside the car. You also  
11 have Bug and Ramsey both saying that he was leaned over in  
12 the backseat. Al Morgan was in fear of serious bodily  
13 injury or death. Here, I want to remind the Court that we  
14 get certain statutory presumptions. Once there is an  
15 attempted entry, then Mr. Morgan is entitled statutorily  
16 to the presumption that he is in fear of serious bodily  
17 injury or death and that the deceased has as his intent  
18 the object of committing a violent crime on this  
19 individual. So statutory presumptions aside, here's what  
20 Al Morgan knew. He knew that Crip had been jumped by this  
21 group inside the Cabstand. Thus, demonstrating that they  
22 were already in a mood for violence. He also knew that  
23 all of Mr. Aiken's crowd is still there at the door and he  
24 believed, that is Mr. Morgan believed, that this animosity  
25 was gang-related. Defendant's Exhibit number 9, we have

1 Brent Williams with his thumb over his hand and four  
2 fingers pointed down. As he told us, he was showing off  
3 his tattoo on his wrist. So with that summary of the  
4 facts, just touching back on where are we in the law.  
5 According to the Douglas, the first thing we got to do is  
6 show Your Honor that we're entitled to self-defense, then  
7 do we get defense of vehicle under the act and, of course,  
8 stand your group which is assumed by that. Self-defense,  
9 was Mr. Morgan at fault in bringing on the difficulty?  
10 There is absolutely nothing that he did that was unlawful  
11 and designed to provoke an attack. There was nothing that  
12 happened in the parking lot. He's got a, even if he  
13 potentially did something in the bar, he has withdrawn by  
14 going home. The fact that he never came out of the back  
15 of the vehicle, never said anything, it's just not an  
16 issue in the case. So the next element can be proved two  
17 different ways. Was he actually in danger or did he  
18 reasonably believe that he was in danger? He was actually  
19 in danger, because he was being accosted by a person who  
20 was drunk, had marijuana in his system and was armed with  
21 a stolen pistol. He believed that he was in danger,  
22 because he knew that Mr. Aiken had, and his group and  
23 already engaged in a prior altercation with Crip, that is  
24 that they had jumped him. We now know that there were a  
25 couple of melees that were going on inside the bar, not

1 just Crip, but also Demond Brown, and Ernest McCauley at  
2 the door. Finally, did he have a duty to retreat? Well,  
3 in self-defense he would, but only if there is somewhere  
4 to go. He's stuck in the car, so no retreat is available.  
5 The fact that he's leaning over is as far as he can go  
6 anyway. So when it comes to the elements of self-defense,  
7 it is our position that we certainly have proved these by  
8 a preponderance of the evidence. Again, our legal  
9 position would be at that point we're entitled to immunity  
10 under the statute itself but following with Douglas and  
11 moving into, okay, what does the act say about what we  
12 also have to prove. Under the act for defense of vehicle,  
13 he could not be engaged, that is Mr. Morgan, in unlawful  
14 conduct. There must be an occupied vehicle. An attempt  
15 to enter or actual entry. An attempt to remove or actual  
16 removal. The attempt must be unlawful and forceful and he  
17 must have reasonable fear of bodily injury. I'll start  
18 with not engaged in unlawful conduct and I point Your  
19 Honor to two sources. I anticipate that what you will  
20 hear is that Mr. Morgan was engaged in unlawful conduct,  
21 because he was carrying a pistol on his person without a  
22 concealed weapons permit. The law is that pointing and  
23 presenting a firearm shall not be construed to bridge the  
24 right of self-defense. At the moment when self-defense  
25 was necessary for Mr. Morgan, by presenting the pistol, he

1 is not violating the law. And then State vs. Crosby, this  
2 is a 2003 case. This was actually dealing with, I  
3 believe, a felon who was in possession of a firearm, who  
4 had had to pull it out in order to defend himself. And  
5 the law in our state is that even if you are in unlawful  
6 possession of a weapon, once you pull it out for  
7 self-defense, you are now deemed to be lawful in having to  
8 respond that way. And that does make sense. If you will  
9 look back just briefly at the legislative intent that  
10 we're supposed to expand the Castle Doctrine to include  
11 your vehicle. If the vehicle is your home in this  
12 situation, then you don't have to have a concealed weapons  
13 permit to carry around a pistol in your own home for  
14 purposes of self-protection. A small point, but one I  
15 wanted to make. So back to the act and this is my last  
16 slide. So occupied vehicle, I think that's without  
17 dispute. Was there an attempt to enter? Well, there's  
18 nobody, no competent evidence that Jamaal Aiken was not  
19 the one that opened the door. Was the attempt unlawful  
20 and forceful and did Mr. Morgan have a reasonable fear of  
21 serious bodily injury? The statute provides those in the  
22 presumptions. Once you've got an illegal entry, you get  
23 these two automatically. And then I've already talked  
24 about not being engaged in unlawful conduct. The final  
25 thing I will say is that there was one shot, Judge. As

1 close as they were, if Mr. Morgan was bent on taking Mr.  
2 Aiken's life, I suggest that the waste is not where you  
3 get shot and you don't stop shooting after one. This  
4 bullet path and where Mr. Aiken could have been shot are  
5 all indicative of a defensive measure on behalf of Mr.  
6 Aiken. Thank you. That's it.

7 THE COURT: All right.

8 MR. STUMBO: Judge, I'll try to remain brief, and I  
9 don't have a PowerPoint slide, but I would like to raise  
10 some points related in response to what Mr. Bannister  
11 discussed. Judge, our position is very clearly here that  
12 immunity under the statute does not apply. It certainly  
13 doesn't under the facts. It doesn't apply under the law  
14 in this case. And the third argument I'm going to make is  
15 one of public policy, Judge. First of all and the facts,  
16 Mr. Bannister and Mr. Jones are fine lawyers, fine  
17 advocates for their client. But as hard as they've tried  
18 in the pretrial brief and during this case to spin the  
19 facts to make Jamaal Aiken look like he's this guy this  
20 night running around a mob of people looking to get in  
21 fights with people, pistol-whipping, just mayhem coming  
22 from Jamaal Aiken. It's just not consistent with what  
23 we've heard this week, Judge, from many of the witnesses.  
24 I believe that Mr. Bannister even somewhat admitted that  
25 putting Jamaal in this fight inside the bar is really,

1 it's speculating that he was involved in this fight. In  
2 fact, the most unbiased witnesses I think in this case,  
3 there's a reason why Mr. Calvin Wells, who's the owner of  
4 this bar, wasn't put up by the defense. And one of the  
5 reasons is he's one of the most unbiased people there and  
6 he describes Jamaal during this altercation in the club as  
7 being one of the ones that was helping them, helping them  
8 keep the peace, helping get Brent away from there and  
9 getting him out of there. And Jamaal was never described  
10 by anybody, other than by a couple of defense witnesses in  
11 being aggressive in any manner the entire night,  
12 particularly inside the bar. So just taking a big picture  
13 view of this spinning of the facts that our victim in this  
14 case, Jamaal Aiken or Smooth, was somehow provoking folks  
15 that night and being violent and aggressive is just not  
16 accurate, just not true and not consistent with the  
17 testimony we've heard, Judge. Judge, on the facts, I'll  
18 start with that. The very fact that we have so many  
19 disputed facts in this case and all the orange slides that  
20 Mr. Bannister put up highlighted disputed facts that are  
21 really at the heart of this case. And, Judge, honestly,  
22 the fact that there's that many disputed facts on very  
23 critical issues is a reason why immunity shouldn't be  
24 granted here. These are ultimately issues that if  
25 self-defense is raised, it should be raised at trial in

1 front of a jury. And I know, Your Honor, has to sit  
2 somewhat as a Judge in the facts in an immunity hearing  
3 and that's your role here. But because we have so many  
4 disputed facts as to several questions and I'm just going  
5 to throw a few of these out here. First of all, there's  
6 discrepancies as to what happened inside the club and the  
7 altercations inside the club. There's some witnesses that  
8 talk about this popping on the hat. Al Morgan talks about  
9 that. The only other person that apparently sees that is  
10 Lenwood Ramsey. But there's other witnesses, including  
11 Brent and those that were around them that said that never  
12 even happened. Judge, as to what started the fight and  
13 who was involved in the fight, we know that Brent Williams  
14 and Demond Brown were involved with this fight, and  
15 everyone was consistent as to that. But even Mr. McCauley  
16 who the defense called says he remembers one guy on the  
17 ground and four girls on top of him, which seems to be  
18 very inconsistent with the other testimony we've heard.  
19 So, Judge, there's great discrepancies as to the  
20 altercation inside the club. One thing I would say is  
21 consistent is that there's only speculation that even puts  
22 Jamaal in those altercations. And the most credible  
23 witnesses we heard from the witness stand actually have  
24 him as the peacemaker. Let's break this fight up. Let's  
25 try to get Brent out of here and to his car. To me,

1 Judge, this Johnny-come-lately testimony from Mr. McCauley  
2 about Jamaal hitting him with a pistol to me was not  
3 credible, Judge, and not consistent with the other  
4 witnesses we heard, including Calvin Wells. If he was hit  
5 and, ultimately, had to go get medical treatment for that  
6 which he didn't do until three weeks later, Judge, I would  
7 say based on the testimony I've heard, that was more  
8 likely Brent still fighting and hyped up after his fight  
9 with them trying to get him out the door. There's nothing  
10 really credible that says that Jamaal is the one that hit  
11 him. Judge, the second issue that is, needs to be  
12 decided, I believe by a jury here, because we have varying  
13 accounts is what happened as Jamaal gets outside, Smooth,  
14 how he approaches the black Impala. The black Impala  
15 clearly, according to witnesses, pulls in the parking lot,  
16 turns back towards facing the road here, right in front of  
17 the Cabstand. And as you can tell, Judge, from  
18 Defendant's Exhibit 1, this is tight quarters in here.  
19 This is a small parking lot. It's full of cars. There's  
20 not really a whole lot of room to go. In fact, Lynwood  
21 says I got to wait for this car to back out before I can  
22 even get in. So when he pulls in and Jamaal and Brent and  
23 some of the girls that had come outside are right there by  
24 the car. So, Judge, there is varied testimony as to how  
25 Jamaal walked to the car and the manner in which he did

1 so. Most of the witnesses, Judge, described him as  
2 walking, not running towards the car and not necessarily  
3 doing so in an aggressive manner which leads to the next  
4 discrepancy, which Mr. Bannister admitted. What did  
5 Jamaal say, if anything? You know, Drina Morgan and  
6 Shanina, Nicole and Brent, all three of those witnesses  
7 testified that Jamaal really didn't say anything  
8 aggressive, to their recollection. It was simply he was  
9 walking towards the car. The third discrepancy as I  
10 believe is as to who necessarily opened the door. Now,  
11 their witnesses say Jamaal opens the door. Brent says he  
12 thinks Jamaal opens the door, but he's standing several  
13 feet away. What's consistent is the door came open. We  
14 have one witness who came much later on, Mr. Sayles, who  
15 we think doesn't have a real good memory of what happened  
16 and we certainly didn't put him up on the basis of we  
17 thought that he was completely accurate. That's not our  
18 theory of the case, Judge. We do believe the door came  
19 open. But there are discrepancies in the testimony as to  
20 who opened the door and how it was opened. Was it opened  
21 in an aggressive manner. It's quite possible, Judge, that  
22 Jamaal Aiken, our victim here, wasn't going to the car to  
23 start a fight. There's some testimony that knew Al was  
24 coming back. And Brent said Al told us before he left,  
25 he's coming back up here. It's entirely possible, Judge,

1 that Jamaal is approaching the car to let him know what  
2 was going on inside and hey, there's some talk the cops  
3 are coming. There are several witnesses that are right  
4 there by the car that do not describe Jamaal going  
5 aggressively to that black Impala. And we think that's a  
6 huge issue in this case, Judge, that, quite frankly is  
7 unclear. It's certainly not enough to reach a  
8 preponderance of the evidence to grant immunity here.  
9 And, certainly, they can argue to a jury at trial. Judge,  
10 the last discrepancy and I think this is the major one  
11 here is the only real witness that describes Jamaal as  
12 reaching in, trying to drag this defendant out of the car  
13 is the defendant himself. And, Judge, if you listen to  
14 his statement to law enforcement this morning which is  
15 part of the record in this case now, he doesn't really  
16 describe it that way. Now, he did on the stand this week.  
17 He said, well, it was either him or me. That's how dire  
18 this was. You know, that I had to do it. I didn't have  
19 any choice but to kill him, to shoot him. Judge, that's  
20 not what I heard in his statement to Lieutenant Dixon that  
21 he gave in March 2014. In fact, he seems to say in that  
22 case that he really doesn't give an explanation as to why  
23 he shot Jamaal. And, in fact, he says I guess it's  
24 something I'll have to live with. And, I guess, it's  
25 something his family will have to live with. He almost

1 sounds in his statement to law enforcement, he never says  
2 the words him or me, I was in fear for my life, any of  
3 that, to my recollection in his statement to law  
4 enforcement, Judge. The first time we've heard that from  
5 Al Morgan is here this week on the stand all of a sudden  
6 when it becomes convenient to need that in a Castle  
7 Doctrine motion. But his statement to Lieutenant Dixon,  
8 essentially said, you know, I'm not sure why I did it.  
9 And, in fact, this is where we're going to transition,  
10 Judge, from the facts into the law here. There's a couple  
11 of issues here that I think are very important. The act  
12 itself requires a reasonable belief on the behalf of the  
13 person trying to assert immunity that he had a reasonable  
14 fear of imminent threat, of death or bodily injury.  
15 Judge, I think it's very interesting that the two other  
16 witnesses that we've heard from this week that were in the  
17 car with him which would be Thomas Gilchrist or Bug and  
18 Lenwood Ramsey, who was driving the car, both of those  
19 witnesses have not testified in any way, shape, or form  
20 that they were in fear. So if the two other occupants of  
21 the car don't have that sort of fear, then I'm not sure  
22 that under the statute, ultimately, you go to not only an  
23 actual belief but does a reasonably prudent man of  
24 ordinary firmness or courage, would that, kind of a  
25 reasonable man standard. And, Judge, I think you look to

1 the two other people in the car with this defendant who do  
2 not indicate that they had any fear of Jamaal Aiken. And,  
3 in fact, in Al Morgan's own statement to law enforcement,  
4 he said he didn't have a problem with Jamaal. He had  
5 never had any confrontation with him and didn't have a  
6 problem with him. And so, Judge, I didn't think we're  
7 anywhere close to a preponderance of the evidence on the  
8 issue of whether there's a reasonable fear of imminent  
9 threat. Judge, the big question here for them to get the  
10 presumption of reasonable fear in a vehicle is this, did  
11 Jamaal Aiken, was he in the process of unlawfully and  
12 forcefully entering that vehicle. And that's straight out  
13 of the statute in §440, 16-11-440 (A) (1). Was Jamaal Aiken  
14 in the process of unlawfully and forcefully entering that  
15 vehicle. And I think really the only person that's  
16 testified to that effect that there is an unlawful and  
17 forceful, which I would interpret, Judge, the threatening  
18 entry is Al Morgan himself on the witness stand this week.  
19 He doesn't describe it that way, even in his statement to  
20 Lieutenant Dixon. Judge, the other issue and I'm not  
21 going to spend a lot of time on this is was Jamaal or was  
22 Alphonso Morgan, one, under a self-defense, common law  
23 self-defense theory? Was he at fault at bringing on the  
24 difficulty, one. And, secondly, was he engaged in  
25 unlawful behavior? And I respect Mr. Bannister greatly.

1 He's a fine lawyer and the way I think he argues this and  
2 he cited the Crosby case that says, well, if you're acting  
3 in self-defense even if you're unlawfully carrying a  
4 pistol, well, it's okay. No harm, no foul. Judge, I  
5 don't necessarily think that that's imported here to, in  
6 an immunity setting and here's why. Judge, and this is  
7 where we're going to into kind of overlapping into a  
8 public policy argument. The legislature passed this  
9 statute, Judge, not for people like Alphonso Morgan. And,  
10 Judge, the very fact that he flashed that gun to Crip, his  
11 buddy in the bar before he left, shows an intent on his  
12 behalf. To me, it shows before he even left what was on  
13 his mind, that if there was another fist fight that night,  
14 if there was any more threat to him or threat to his  
15 friends, that he was going to jerk that pistol and he was  
16 going to use it which is what he ultimately did a few  
17 minutes later when he came back. Judge, there is no  
18 question that if Mr. Morgan had been caught by law  
19 enforcement in that bar with that pistol tucked in his  
20 waistband that night that he could have been arrested for  
21 unlawful carrying of a pistol. No question about that  
22 that he was engaged in unlawful activity when he was in  
23 the bar before this happened. And, Judge, I would submit  
24 to you while he was in the car without a concealed weapons  
25 permit and we've had cases to this effect. There again,

1 Judge, when I, you know, when those traveling cars with  
2 guns and they are transporting a gun, where is it supposed  
3 to be? It's supposed to be in the glove box. That wasn't  
4 where it was. It was in his waistband, because he was  
5 ready to roll that night. He was ready to use it. And,  
6 Judge, so I would submit to you that the very fact that  
7 after the call he knew what was going on in that bar.  
8 It's clear even from Shay Simon's testimony that she told  
9 him what was going on. There was a fight up there and  
10 there had been people jumped and there was a fistfight  
11 going on. That's the way she described it. You need to  
12 come pick us up. So when he asked Lenwood Ramsey to take  
13 him back up there, he knew what situation he was walking  
14 back into and he was walking back into that situation with  
15 a gun.

16 THE COURT: Well, he didn't walk. That's a  
17 mischaracterization of what happened.

18 MR. STUMBO: Well, he drove. Right. But he went, he  
19 entered back into that situation. I'm using walking back  
20 into it as a term of art here, Judge, not literally. When  
21 he went back to that club that night, he knew what was up  
22 there. He knew that there was a fight going on. He had a  
23 gun tucked in his waistband and he was ready to use it,  
24 Judge. And it is absolutely incomprehensible to me, based  
25 on everything we've heard before this week, until now all

1 of the sudden we have a story of Jamaal Aiken or Smooth  
2 trying to get at him in the car. There is no question,  
3 Judge, that Jamaal Aiken should still be alive today. And  
4 I think most of the witnesses would testify that that  
5 night, he didn't act in any way to provoke the response  
6 that he got. Quite frankly, Judge, those, and this is my,  
7 I think the legislative intent is not, is clear based on  
8 what I've seen in the case law. But, Judge, the  
9 legislature did not pass the Protection of Persons and  
10 Property Act to protect people who bring pistols to  
11 gunfights and that's what Alphonso Morgan did that night,  
12 ultimately. He came back to a situation where he knew his  
13 friends had been in a fight and he brought a gun to it and  
14 unprovoked, as Jamaal Aiken approaches the car, he pulls  
15 that pistol and shoots and kills him. And, Judge, quite  
16 frankly, we believe that's an unjustified killing. That  
17 the legislature if, their intent and it says this in the  
18 opening subsection of the act. This is in 16-11-420(b)  
19 and it uses the term that it's proper for law abiding  
20 citizens to avail themselves of the protections of this  
21 act.

22 THE COURT: Well, don't they both come in there with  
23 unclean hands. They both got guns on them. Nobody sees  
24 them, but they both got guns. They shouldn't have had  
25 them.

1 MR. STUMBO: Yes. But I'll say another  
2 uncontroverted fact and I left this out earlier, Judge.  
3 Nobody, the only testimony I've heard of anybody  
4 presenting a gun that night was Crip saying that Al showed  
5 the gun. No one knew that Jamaal had a gun. He never  
6 presented a gun.

7 THE COURT: But everybody else has that same benefit.

8 MR. STUMBO: Right. You're right. Nobody knew  
9 nobody had a gun except Crip knew the defendant had one.  
10 That's correct. But the only one that's dead here is  
11 Jamaal; a man who never pulled a gun out who was acting as  
12 a peacemaker that night. And he's the one that got shot  
13 and killed. And so, Judge, you know, these are the very  
14 critical issues of fact that Mr. Bannister had in his  
15 orange slides are issues that, quite frankly, need to be  
16 decided by a jury, Judge. And because they are disputed,  
17 I think, you know, the most credible witnesses we heard  
18 this week were these guys in the bar that talk about how  
19 peaceful Jamaal was and he was the guy trying to get  
20 everybody out. And to me, that shows his state of mind as  
21 opposed to the state of mind to a guy who had already  
22 flashed the gun before he even left the bar.

23 THE COURT: Well, you keep saying that. He flashed  
24 it to his friend.

25 MR. STUMBO: That's correct.

1 THE COURT: As a friend. You, you, that's not an  
2 aggressive move. That's, I want to get out of here,  
3 that's mischaracterizing how they testified. Everybody  
4 else knew nothing of that. That's not an aggressive move.  
5 You keep saying that.

6 MR. STUMBO: I understand.

7 THE COURT: Explain this to me.

8 MR. STUMBO: Yes, sir.

9 THE COURT: The prior trouble with Qualo and he got  
10 punched by Qualo and caught eight stitches. Why was the  
11 relationship between Qualo and the decedent not presented  
12 to the Court.

13 MR. STUMBO: Well, Judge, I could put his parents up  
14 and tell you that he doesn't have a brother. Jamaal's an  
15 only child. So the fact that Al is under the impression  
16 that Qualo is Smooth's brother is just not accurate.

17 THE COURT: He's convinced of it. He said it twice.  
18 Why wasn't that presented to me?

19 MR. STUMBO: Judge, quite frankly, right now I'm not  
20 even sure we know exactly who Qualo is. That's why it's  
21 not presented.

22 THE COURT: Well, I don't understand you not knowing.

23 MR. STUMBO: And I don't know if I could present to  
24 you to tell you the guy that punched him that night. And  
25 I don't want to put something in front of you that's

1 misleading, but we do know that Jamaal is an only child or  
2 did not have a brother, Judge. I mean, he, whoever this  
3 Qualo fellow is is not his brother. He wasn't there at  
4 the bar that night. We know that. He wasn't at the club  
5 that evening. I don't believe we've heard any testimony  
6 to that effect.

7 THE COURT: Yeah. I remember it. But that fact and  
8 belief was held by the defendant.

9 MR. STUMBO: Correct. But, Judge, and here's another  
10 thing. One reason why we didn't go real deeply into that  
11 prior incident is, Judge, that was a fistfight that  
12 didn't, there again, didn't involve a gun.

13 THE COURT: I'm just asking. He had an understanding  
14 or belief that they were kin, and that wasn't presented.

15 MR. STUMBO: Well, it was presented in the statement  
16 that we gave.

17 THE COURT: Yeah. Right.

18 MR. STUMBO: That's the only reason we know about it  
19 is because he said that--

20 THE COURT: All right. I understand both of your  
21 arguments.

22 MR. STUMBO: Quite frank, I believe bringing Qualo  
23 into the equation here based on how little we know about  
24 him, Judge, would just add to the confusion. I guess,  
25 that's my answer to your question if your question is why

1 I didn't bring him.

2 THE COURT: I guess I'm surprised y'all didn't answer  
3 that in the negative if that was presented in that tape  
4 that it was.

5 MR. STUMBO: Judge, I think the witnesses that would  
6 have been brought to do that would be his mother and  
7 father who've been here all week.

8 THE COURT: I understand. But the fact that nobody  
9 said anything about it is shocking. It just wasn't  
10 mentioned but the investigator heard him say it twice.

11 MR. STUMBO: Right.

12 THE COURT: It was never explained.

13 MR. STUMBO: Well, we didn't put the investigator up  
14 yesterday, we were trying to save time. We probably could  
15 have gone back into more of the background, Judge, in  
16 brief or we could have done that. I think we wanted to  
17 put the statement in. We could have put the investigator  
18 up and exposed him to cross and had all that fleshed out.  
19 But I think, you know, at that point, you know, we think  
20 that the facts in dispute here are enough in and of  
21 themselves to deny immunity. And, quite frankly, give  
22 Your Honor a basis for denying it because there is such a  
23 discrepancy as to exactly what happened outside that bar  
24 when he approached the car. And I would hope that that's  
25 been at least, you know, clear that that's been our

1 position in this case. There are multiple witnesses that  
2 describe Jamaal's behavior that night, Judge, and multiple  
3 ones that describe his behavior as being that of, one of a  
4 man of peace and not a man of aggression.

5 THE COURT: And that man, the same man had a pistol  
6 in his pocket.

7 MR. STUMBO: That's correct. That he never pulled  
8 out and showed to anybody, Judge. So he could have been  
9 probably charged with unlawful carrying that night, too.  
10 Both ways, and we would agree to that. But right now,  
11 Jamaal Aiken is six feet under. He's not the one trying  
12 to assert that he's immune from prosecution under the  
13 Persons and Protection and Privacy Act; Al Morgan is.

14 THE COURT: I think that it is consistent that the  
15 two people involved in the actual incident had very little  
16 involvement with one another.

17 MR. STUMBO: Correct.

18 THE COURT: They really didn't. Very little.

19 MR. STUMBO: Which makes this even more tragic,  
20 ridiculous. Yeah. Judge, it's ridiculous that Jamaal  
21 Aiken is dead.

22 THE COURT: All right. I've heard enough.

23 MR. BANNISTER: I keep hearing that there's been no  
24 evidence that Jamaal Aiken pulled out his pistol and  
25 that's simply inaccurate. You have to take the logical

1 step and the only hard object Mr. Aiken had on his person  
2 was a pistol and that Mr. McCauley got hit in the head  
3 with something he described as very hard. A man who has  
4 been in prison and presumably has enough experience with  
5 getting hit with a fist to know the difference and saw a  
6 black handle or a black object pointing only out from the  
7 fist. There is evidence that that happened. And I want  
8 to make myself available if there are any questions you've  
9 got that I hadn't covered, in particular, and maybe about  
10 how the stature procedurally works.

11 THE COURT: I understand how the stature works and  
12 procedure. But I'm comfortable that, I don't think or I  
13 am going to rule that the immunity under the statute is a  
14 question. It has not been proven by a preponderance and  
15 that this case needs go on and let a jury hear it and sort  
16 it out. There's some disputed facts here that the Court  
17 would be uncomfortable saying that's what happened. I  
18 think twelve people can hear this thing. And so that's  
19 what we are going to do. This is definitely an unusual  
20 case and it's a tragedy that two people had so very little  
21 involvement with one another beforehand. I find that's  
22 just remarkable to me. So I'm not going to grant immunity  
23 under the statute.

24 MR. BANNISTER: Thank you.

25 MR. STUMBO: Thank you, Judge. And I'm not going to

1 go any further, but I would say, you know, I remember when  
2 I was coming up and we had fistfights. People would go  
3 out in the field, they'd settle it and everybody would go  
4 home and end up having long prosperous lives at the end of  
5 it. And to me, the tragedy for me as Solicitor is we have  
6 these situations now where people don't walk away and  
7 because of guys carrying guns at fistfights. So just as a  
8 matter of public policy, we're going to continue to pursue  
9 relief. Thank you, Your Honor.

10 THE COURT: All right.

11 MR. STUMBO: And it is up first on the trial docket  
12 for next week.

13 THE COURT: Don't go Judge shopping. I'll be here.

14 MR. STUMBO: Yes, sir.

15 February 5, 2016.

16 MR. STUMBO: Your Honor, I think we're ready to call  
17 the defendant, Alphonso Morgan. Judge, let me know when  
18 you're ready.

19 THE COURT: Oh, I'm ready now.

20 MR. STUMBO: Thank you, Your Honor. If it please the  
21 Court, before you stands Alphonso Morgan. I know we've  
22 already been in court already this week a good bit on this  
23 case with his attorneys, Mr. Townes Jones and Mr. Jim  
24 Bannister. Mr. Morgan is before you this morning, Your  
25 Honor, to plead on the murder indictment that's in your

1 hand. But he's pleading to a voluntary manslaughter as a  
2 lesser-included offense. He is pleading straight up to  
3 that charge, Judge, and the State's ready to proceed.

4 THE COURT: Okay. Your name is Alphonso Morgan, Jr.?

5 MR. MORGAN: Yes, sir.

6 THE COURT: I have an indictment number,  
7 15-GS-24-728. It's for murder and it reads in part that  
8 you while in Greenwood County on the 14th day of November  
9 of 2013 did kill one Jamaal Aiken by means of shooting, in  
10 Greenwood County. As a proximate result passed away on  
11 November 15th of 2013 and this is in violation of Code  
12 Section 16-3-10. It is my understanding that you are  
13 going to enter or tender a plea to the lesser-included  
14 offense of voluntary manslaughter under that same code  
15 section. Is that correct?

16 MR. MORGAN: Yes, sir.

17 THE COURT: Mr. Jones, you and Mr. Bannister  
18 represent Mr. Morgan?

19 MR. JONES: Yes, Your Honor.

20 THE COURT: And y'all have apprized him of the  
21 elements of voluntary manslaughter and the potential  
22 punishment he faces?

23 MR. JONES: Yes, Your Honor.

24 THE COURT: And y'all have presented a very thorough  
25 case on the Castle Doctrine and have thoroughly reviewed

1 and investigated, interviewed numerous witnesses and are  
2 very aware of all the facts, circumstances involving this  
3 incident?

4 MR. JONES: Your Honor, we have conducted an  
5 extensive investigation and effort at assessing what we  
6 believe to be evidence, facts, truth. I would like to say  
7 to the Court at this point in time that in explaining to  
8 Al Morgan, you know, this charge, you know, he understands  
9 that it is reduced from murder and that murder requires  
10 malice. It requires the element of ill-will and malicious  
11 intent and devoid, a heart that is devoid of the right of  
12 another human being to live and he's not having to plead  
13 to that element of murder; that this is manslaughter.  
14 It's still an intentional killing but one done so,  
15 primarily in this case we believe, in a sudden heat of  
16 passion brought on by a sufficient legal provocation by  
17 the victim in this case. And I have talked to him about  
18 that and that this is a case where we have gone over the  
19 elements of manslaughter; it being still intentional.  
20 That it carries from two to thirty years. That it's a  
21 most serious offense and it's a violent offense which  
22 would require him, whatever sentence Your Honor imposes  
23 today to not be eligible for parole until he's served  
24 eighty-five percent of whatever you sentence him to today.  
25 But to answer your question about having prepared, Mr.

1 Bannister and I, along with Al and his family, his  
2 brother, Greg, his mom and dad have been instrumental in  
3 assisting us in preparing that motion, along with a  
4 private investigator, Jimmy Powers. And it has involved,  
5 needless to say, a lot of effort, a lot of ups and downs,  
6 you know, he was with me the entire time during the  
7 process of the motion this week, Monday, Tuesday, and  
8 Wednesday. And he saw what the testimony was, what the  
9 evidence was and how the Court viewed it and as a result  
10 of that and some other facts that we took into  
11 consideration, he decided that he wanted to go forward  
12 with this plea today.

13 THE COURT: Okay. And you and Mr. Bannister agree  
14 with his decision to enter this plea to this offense?

15 MR. BANNISTER: We do, Your Honor.

16 THE COURT: Okay.

17 MR. JONES: I do, Your Honor.

18 THE COURT: All right. Mr. Morgan, I'm going to have  
19 you placed under oath.

20 ALPHONSO MORGAN, being  
21 first duly sworn, testified as follows:

22 THE COURT: All right. Mr. Morgan, in the last 24  
23 hours or the last 48 hours, did you take any alcohol,  
24 drugs or medications?

25 MR. MORGAN: No, sir.

1 THE COURT: Are you clear-headed right now?

2 MR. MORGAN: Yes, sir.

3 THE COURT: Do you suffer from any disabilities  
4 whether either mental, physical or emotional ones which  
5 would affect your understanding of why you're here today  
6 and the questions that I am asking you right now? You  
7 okay?

8 MR. MORGAN: Yes, sir.

9 THE COURT: Now, as you know, the lawyers have  
10 explained to you and we've partially been through the  
11 process on a preliminary motion, which was basically a  
12 two-day hearing.

13 MR. MORGAN: Yes, sir.

14 THE COURT: But you have the right to plead not  
15 guilty and have a jury trial on the actual charge that  
16 you're facing, and you understand that?

17 MR. MORGAN: Yes, sir.

18 THE COURT: During a trial, the State bears the  
19 burden of proving your guilt beyond a reasonable doubt.  
20 That's a different burden than the issues that we were  
21 presenting this week.

22 MR. MORGAN: Yes, sir.

23 THE COURT: The State must call its witnesses and  
24 present its evidence first and you don't have to disprove  
25 anything, nor can you be forced to testify in your own

1 defense. The State would not be allowed to call you as a  
2 witness, nor is the State allowed to comment on your  
3 silence if you choose to not testify. Now, if you wish to  
4 enter this plea, you must give up or waive your rights to  
5 defend this voluntary manslaughter at trial. You  
6 understand that?

7 MR. MORGAN: Yes, sir.

8 THE COURT: Understanding your rights to defend  
9 yourself at trial, are you waiving those rights here today  
10 in order to enter this plea before me?

11 MR. MORGAN: Yes, sir.

12 THE COURT: And are you giving up your rights to  
13 defend yourself at trial freely and voluntarily?

14 MR. MORGAN: Yes, sir.

15 THE COURT: All right. Solicitor, normally I come  
16 and ask for a factual basis for this and seeing I've heard  
17 two days of testimony, if you'll just hit the highlights  
18 just for the record.

19 MR. STUMBO: I will, Judge.

20 THE COURT: We got a very sufficient record from the  
21 stand your ground Castle Doctrine hearing we've had.

22 MR. STUMBO: Will do, Judge, and I'll be brief. I  
23 know you've heard many witnesses this week who filled you  
24 in what happened that night. But it was on November the  
25 13th or, excuse me, November the 14th, in the evening,

1 2013. It happened down at the Cabstand or what's  
2 officially called, I think, the Triangle Senior Club and  
3 Social Club, sometimes often called the Senior Club, I  
4 believe, too, we heard. Judge, Jamaal Aiken is the victim  
5 in this case or Smooth, as he was known to his friends.  
6 Smooth went to the Cabstand that night with his fiancé,  
7 Nicole Williams, who's here behind me, amongst a host of  
8 other friends. They went to the bar or the club. By all  
9 accounts, Your Honor, Jamaal was very calm, dapping up as  
10 they say when he comes in even with the defendant and  
11 everyone was getting along just fine inside the bar that  
12 night or in the club. At some point, his fiancé's brother  
13 ends up getting in a fight with another individual in the  
14 club who was not directly connected to the case but  
15 testified this week, Demond Brown. As a result of this  
16 altercation, a number of the individuals, including Brent  
17 Williams who's Nicole's brother, and Jamaal and others  
18 ended up out in the parking lot. The defendant had been  
19 there earlier but left; when he came back in a black  
20 Impala with Lenwood Ramsey and Thomas Gilchrist, also  
21 known as Bug. They pull into the parking lot. As we've  
22 heard this week, Judge, there has been a number of  
23 disputed facts about what happened in that very short few  
24 seconds in the parking lot. But in any case, Jamaal Aiken  
25 was shot and killed by Alphonso Morgan right there outside

1 of the black Impala or there at the doorway of the rear  
2 passenger part of the car where Alphonso Morgan was  
3 sitting. Very quickly after that, the vehicle left and  
4 went several blocks away to Lenwood Ramsey's house. The  
5 tag was taken down by someone in the parking lot, who we  
6 believe now to be the individual by the name of Demecus  
7 Sayles. Police end up descending on the house and put Mr.  
8 Morgan in custody. At that time, take statements from  
9 Lenwood Ramsey and Bug or Thomas Gilchrist and several of  
10 the other people that were involved that night. Jamaal was  
11 able to get away and get into the car of Nicole and Brent  
12 Williams. And Nicole, his fiancé, took him to the  
13 hospital where he, Jamaal Aiken, who we do have a picture  
14 of him here today, Your Honor, I believe one was put into  
15 evidence earlier this week, Jamaal died on the operating  
16 table right here at Self Hospital that night. Judge,  
17 that's a brief recitation of the facts. So we, obviously,  
18 have some family members that want to address Your Honor  
19 at the appropriate time.

20 THE COURT: All right.

21 MR. STUMBO: If you want to come back to us and thank  
22 you for hearing from us, Judge.

23 THE COURT: All right. And the court record as to  
24 those facts are consistent with the facts presented at the  
25 Castle Doctrine hearing except we left out the other

1 challenged facts that the defense put forward. Those are  
2 the facts consistent with the facts that was heard earlier  
3 this week. Mr. Morgan, the only negotiations in this case  
4 to get you to plead guilty after the hearing this week  
5 were a reduction from murder to voluntary manslaughter.  
6 Other than that negotiation of the charge was stepped  
7 down, and I think you're pleading just to that one charge.  
8 Anything, any other charges will be dismissed. Were any  
9 promises made to you to get you to plead guilty other than  
10 change murder down to voluntary manslaughter?

11 MR. MORGAN: No, sir.

12 THE COURT: Now, you understand if I accept your plea  
13 on voluntary manslaughter, you'll be classified at the  
14 Department of Corrections as a violent offender. And as a  
15 violent offender, you're not entitled to the, all the  
16 programs that nonviolent offenders are entitled to. Do  
17 you understand that?

18 MR. MORGAN: Yes, sir.

19 THE COURT: You also understand as a violent  
20 offender, you're not entitled to parole. You'll have to  
21 serve eighty-five percent of the sentence the Court gives.  
22 And after you've served eighty-five percent, you could be  
23 eligible for a community release at that time. Do you  
24 understand that?

25 MR. MORGAN: Yes, sir.

1 THE COURT: You also understand that if I accept your  
2 plea, you will have a big strike or most serious  
3 conviction on your record that the State can use against  
4 you if any future serious offenses or most serious  
5 offenses or you're accused of, in that you could be  
6 subject to the State asking for a life without parole for  
7 a second most serious conviction or two small serious  
8 convictions if they, if that comes to pass in the future.  
9 Do you understand that?

10 MR. MORGAN: Yes, sir.

11 THE COURT: So this big strike can be used against  
12 you from now on by the State to enhance future punishment.  
13 Do you understand?

14 MR. MORGAN: Yes, sir.

15 THE COURT: Now, have you had enough time to discuss  
16 the ramifications of being declared a most serious  
17 conviction on your record and be classified as a violent  
18 offender; did you go over this plea with your lawyers?

19 MR. MORGAN: Yes, sir.

20 THE COURT: And you've had enough time to discuss  
21 with them your defenses you may have if the case went to  
22 trial and what could be presented because, arguably, their  
23 posture is to present a self-defense type argument to a  
24 jury for a jury to consider. You understand that?

25 MR. MORGAN: Yes, sir.

1 THE COURT: And understanding everything your lawyers  
2 have told you and advised you on the law and as you  
3 understand the facts, has it been your decision, after  
4 having enough to talk with them, to enter this plea of  
5 voluntary manslaughter?

6 MR. MORGAN: Yes, sir.

7 THE COURT: Do you need any further time to speak to  
8 them now?

9 MR. MORGAN: No.

10 THE COURT: And it appears to me that your parents  
11 have also been involved in some of those conversations,  
12 perhaps not all of them but enough of them. Is that true?

13 MS. MORGAN: I'm his mother. That's his aunt.

14 MR. MORGAN: Yeah.

15 THE COURT: So are you comfortable that you've had  
16 sufficient time to talk to your lawyers and your folks  
17 about entering this plea?

18 MR. MORGAN: Yes, sir.

19 THE COURT: Do you understand if I accept this plea,  
20 you're going to have limited number of days in which to  
21 file a notice of intent to appeal if you believe something  
22 procedurally has been done improperly?

23 MR. MORGAN: Yes, sir.

24 THE COURT: Are you pleading guilty to voluntary  
25 manslaughter, freely and voluntarily?

1 MR. MORGAN: Yes, sir.

2 THE COURT: And you're pleading guilty to voluntary  
3 manslaughter, because you did, in fact, commit that  
4 offense as described by the State?

5 MR. MORGAN: Yes, sir.

6 THE COURT: Regarding indictment 15-GS-24, indictment  
7 728, I find Alphonso Morgan, Jr., has made a free, knowing  
8 and intelligent plea of guilt to the offense of voluntary  
9 manslaughter. He's entered that plea with advice of  
10 counsel of two very competent lawyers who has had ample  
11 time to speak with him. Are you satisfied with the advice  
12 of counsel your attorneys have given you thus far?

13 MR. MORGAN: Yes, sir.

14 THE COURT: He's entered his plea with advice of  
15 counsel of attorney of whom he states he's satisfied and  
16 the State has provided a factual basis to support this  
17 plea. All right. I think what I want to do, I want to  
18 hear from the victims. And then I want to hear from Mr.  
19 Bannister and Mr. Morgan, in whichever order y'all deem  
20 appropriate. So, Solicitor, hear from your side first.

21 MR. STUMBO: Yes, sir. And I'll introduce them to  
22 you here now. Just before I do, Judge, I think the  
23 witnesses that we heard from this week bore this out, even  
24 ones that the defense brought that Jamaal Aiken was a  
25 fairly, a very peaceful guy even that night. He was one

1 of the ones trying to get people out of the bar, which  
2 makes what happened in the parking lot almost  
3 inexplicable, I think, to our side as to why Jamaal was  
4 shot.

5 THE COURT: It seemed to me that the two least likely  
6 people to get involved in something like this are the ones  
7 that end up involved with it on both sides.

8 MR. STUMBO: Correct.

9 THE COURT: More aggressive behavior by friends of  
10 both sides.

11 MR. STUMBO: Right.

12 THE COURT: If you were to gauge it ahead of time  
13 who'd be involved in somebody shot somebody, they'd be the  
14 last two picked on both sides.

15 MR. STUMBO: That's correct, Judge, and I think  
16 that's a great point and we're still trying to figure out  
17 exactly why Jamaal Aiken or was known as Smooth, and that  
18 is the kind of guy he was, Smooth is no longer with us  
19 here today but his family members are here and they loved  
20 Jamaal very much. And they are here today, and it has  
21 been a long week for them hearing all of these facts and  
22 they have been very patient with me and with the Court and  
23 the system here this week. And I just commend them for  
24 that and they have been very patient with us and we are  
25 thankful for the relationships that my office has been

1 able to build. First, Judge, I'm just going to go kind of  
2 right to left here. I'm going to introduce Tracy Aiken,  
3 who is Jamaal's mother. At this time, Judge, she'd like  
4 to say something to you.

5 MS. AIKEN: I just want to say to the defendant that  
6 did not know Jamaal. He wasn't that type of person that  
7 they painted him to be this week. And, Al, you knew this  
8 and when you took Jamaal's life, you also took our life.  
9 That was our only child, our only child, and if you would  
10 have come forth and admit maybe I made a mistake, I'm  
11 sorry, I could have forgiven you. But to stand up and  
12 tell some of the stuff that we heard this week, you know  
13 it's not true. You know it's not true. And right now, I  
14 cannot find in my heart to forgive you. I cannot for what  
15 you did, you know.

16 THE COURT: And, pardon me, Ms. Aiken. I'm sorry. I  
17 don't, I understand your sentiments, but I need you to  
18 tell me more than you, opportunity to speak with him.

19 MS. AIKEN: To speak with him.

20 THE COURT: He's accepting responsibility by entering  
21 that plea up to a large degree to a lot of this saying I'm  
22 at fault by saying what he just said to me. I don't have  
23 any idea how bad it hurts.

24 MS. AIKEN: It hurts.

25 THE COURT: Being a mother and a father, I have three

1 children of my own. I understand it must be a tremendous  
2 pain, but tell me anything you'd like for me to consider  
3 also.

4 MS. AIKEN: Your Honor, it hurts. It hurts so bad to  
5 know, to know that we have lost our only child for no  
6 reason. And I could see if Jamaal had have been a bad  
7 person or the person they painted him to be this week. He  
8 was not that type of person. He was not. He didn't  
9 deserve to go the way he left us. He didn't, and I just  
10 want the Court to know he's not a bad person. He wasn't.  
11 He wasn't.

12 THE COURT: Now, what's been presented to me in the  
13 case, he was a good person. I mean, he was very peaceful,  
14 so I don't think that's a question for me to, I'm not  
15 challenged by that. I find that very easy to believe.

16 MR. STUMBO: Next, Your Honor, is Greg Aiken,  
17 Jamaal's father.

18 MR. AIKEN: I have fought for two years and almost  
19 three months to seek justice for my son leaving us  
20 November 2013. From day-one, the picture was painted that  
21 Jamaal was a criminal. Day-one, police gave information  
22 to the index journal a deceased black young man got  
23 killed. Everything was put in the paper that Jamaal had  
24 this, Jamaal had that. We never saw anything about what  
25 Jamaal was shot with in the index journal. Didn't come

1 out till court time and from day-one, I have fought with  
2 Greenwood Police Department. I have fought with the  
3 Greenwood justice system. And today, we may get a little  
4 relief, but we won't get enough justice for losing our  
5 child, because if you give him fifty years today, it's not  
6 going to bring Jamaal back. If you give him a hundred  
7 years today, it's not going to bring Jamaal back. But,  
8 Judge, what I would like for you to do and this just  
9 coming from my heart, you just said you had three  
10 children. Just put yourself in our position. We are  
11 law-abiding citizens. My wife and I have no record ever  
12 in Greenwood County as far as criminals. We raised our  
13 son to be the same way, peaceful, get along with  
14 everybody, and try to do the right thing. He was  
15 peaceful, and I certainly believe that that night,  
16 although the picture been painted that he was a criminal,  
17 he was angry, he was aggressive, I would go to my grave  
18 today saying that Jamaal got shot out of that car and that  
19 door never came open. I would go to my grave saying that  
20 our son did not open the car door, the door of that car  
21 and get shot. I don't care what the picture been painted.  
22 You see the smile. You see the smile. That was all the  
23 time. Everybody knew him as Smooth, easy going, didn't  
24 talk that much, and I just do not believe today that he  
25 deserved to die that way. And I want you to find it in

1 your heart to give this man as much time as you can,  
2 because no matter what you give him, we're not going to be  
3 satisfied. We're not going to be, we got to live with  
4 this the rest of our lives losing our only child, and I've  
5 cried. I've been in the hospital. I've almost lost my  
6 job behind all of this since my son got killed. I mean,  
7 it's just, it's just been a rough go at it and I just want  
8 you to find in your heart to give him as much time as you  
9 can give him. Because I feel like what he getting now, he  
10 should have gotten years ago, but it came to this so he  
11 could get time and go to jail. And also, Your Honor, I  
12 want to think, I mean, I don't want to think, but two days  
13 after we buried Jamaal, his brother and father came to our  
14 house. We opened up our house to them for them to come in  
15 and sit down and they talked about him. I mean, they kind  
16 of throwed him under the bus. You know, he's been in  
17 trouble. You know, he been making bad decisions. Well,  
18 if you know this why uphold him in a situation like this.  
19 I mean, we, they caught us at our most vulnerable time in  
20 our life and we kind of opened up to them. And then they  
21 turned around and they going to do what they have to do to  
22 do it, but they turned around and like a stab in the back,  
23 because they come in and we opened up to them, and then  
24 this is what we get. We got to come face them in the  
25 courtroom standing behind him when they know he done

1 wrong. And that's all, pretty much all I got to say.

2 MR. STUMBO: Your Honor, lastly, we have Nicole  
3 Williams. Her first name is Shanina, but she goes by  
4 Nicole. You've heard from her this week, and she'd like  
5 to address, Your Honor.

6 MS. WILLIAMS: I just want to let you know Jamaal was  
7 a great guy. I met him when I was 14 and he was my  
8 best-friend, and he took him from me unnecessary, and I  
9 have to deal with it every day. Some nights I don't get  
10 no sleep. Some mornings, I don't want to go to work. I  
11 just want to give up, but I know that's not what he  
12 wanted. So all for him, I keep moving. But it's going to  
13 forever hurt, and I'll never forgive him long as I live  
14 and that's all I got to say.

15 MR. STUMBO: Your Honor, you have on your sheet, and  
16 I didn't bring this up earlier. Mr. Morgan does have  
17 several prior convictions, the last one in 2012 which was  
18 years ago for failure to stop. There's possession of  
19 cocaine. There's two of those. Simple assault and  
20 battery on his record, as well Judge, but you have those  
21 before you. We thank you for hearing from us, Judge, and  
22 I mentioned this at the end of the Castle Doctrine motion  
23 the other day and, quite frankly, our position and my  
24 office, we got to stop this in Greenwood. We had a year  
25 in 2013 where there is just all these guys, young guys

1 bringing guns to fistfights. And, you know, back when we  
2 were coming up, Judge, if two guys had a problem with each  
3 other, they'd have it out in a field somewhere and  
4 everybody'd walk away and they'd have long prosperous  
5 lives. Because these guys are bringing guns to these  
6 situations now, there's people like Jamaal Aiken who go to  
7 their grave way too early. And we're going to keep in our  
8 office, along with law enforcement doing everything we can  
9 to try to turn that around in this town and in this  
10 circuit, Judge. Thank you for hearing from us and the  
11 family.

12 THE COURT: Unfortunately, it's too common of a  
13 problem in all communities across the state with people  
14 carrying guns and they shouldn't be. They really  
15 shouldn't be. I'd like to say this is the first time I've  
16 seen something like this, but it's not. It's a common  
17 problem, an awfully common problem. All of us as a state  
18 need to work together to try to prevent this from  
19 happening to other families. This is tragic. I mean,  
20 these, this family over here is not a winner. I mean,  
21 everybody's losing. So, all right, Mr. Bannister, I'll  
22 hear from you now.

23 MR. BANNISTER: Yes, Your Honor, and I will be brief.  
24 I think that the first thing I'd like to say that the  
25 effort that we made in the courtroom throughout this week

1 was not to paint Mr. Aiken in a bad light. It was simply  
2 to bring to the Court some of the facts that were  
3 pertinent and those facts are often tragically like a lot  
4 of the people that we see in here, are good people that  
5 made bad decisions under the influence of drugs, alcohol  
6 and some cases it's mental illness. I'd say that's 95  
7 percent of the people you see in here that are tendering a  
8 plea to a crime is they're good people, but once you've  
9 got a blood/alcohol level of .12 and you mix in marijuana  
10 with it, good people are capable of making poor decisions.  
11 We have always seen this case as one that involved  
12 self-defense, obviously, as we presented. And I think the  
13 plea here is a recognition that in this case there was a  
14 threat at the door and that the plea is a recognition that  
15 maybe it was an overreaction to the threat that was there.  
16 You know, he did have a gun and they both were armed and  
17 there had been prior altercations but at the end of the  
18 day, what I think fits voluntary manslaughter is a legal  
19 provocation of self-defense. But in this case it just got  
20 a little bit of an overreaction. Had it been another  
21 second or two to find out what was going on, maybe things  
22 turn out differently. But don't forget that while there  
23 are maybe two dozen different places where things could  
24 have, just a small change would have resulted in there  
25 being maybe no altercation or being no shot fired. The

1 big one was walking to the car and opening the back door  
2 and that was not our client's choice. That's all I have  
3 to say about the aspects of the self-defense side.

4 MR. JONES: Your Honor, if you would allow me to  
5 briefly address some mitigating factors in addition to  
6 that. And before I do, I'd like this Court to know that  
7 I've known Al for probably 15 years. I've known his mom  
8 for over 20 years and his dad. His mom and his dad, like  
9 Jamaal's parents are pillars of this community who are  
10 people you can count on, who do good for others, who are  
11 church-going, law-abiding, hardworking productive members  
12 of the Greenwood community. His brother is also in that  
13 same type of person, Greg Morgan, military, hardworking,  
14 conscientious member of the community. And, Al, you heard  
15 the convictions that Solicitor Stumbo presented to you,  
16 but in spite of those, he is known in this community not  
17 as a gang banger, if you will, you know, a gang member or  
18 as a drug dealer or as a, you know, somebody that's  
19 looking for trouble. He's just the opposite. He has five  
20 children. In the club that night, there were two women  
21 arguing over his affection or lack thereof. He would much  
22 rather spend his time in the evening with friends or a  
23 girlfriend. He was really not the kind of person that  
24 would pursue this type of activity and action. Testimony  
25 was clear that when he saw things getting a little bit

1 tense there, whether it was between the women or one of  
2 the men and the women, he got up with his group and left,  
3 Judge. Testimony was presented and it was not  
4 contradicted that about a month-and-a-half prior to this  
5 incident, he was hit in the face receiving eight stitches  
6 and walked away from that altercation and assault. So I'm  
7 confident and this plea reflects that he did not return to  
8 the Cabstand to harm someone, much less kill someone. He  
9 came there to pick up somebody. And the fear that had  
10 become heightened in his mind and emotional state over the  
11 previous couple of months and during the course of that  
12 evening, and given the phone call from Shay Simon talking  
13 about, you know, an assault taking place in the club.  
14 This fear was heightened and, unfortunately, you know, it  
15 was part of what Mr. Bannister said was a quick reaction,  
16 a slightly overreaction to a threat that he truly  
17 perceived was at him. So, Judge, we mention these things  
18 to you so that you won't lose sight of a lot of the facts  
19 that came in during the Castle Doctrine hearing, the stand  
20 your ground hearing in an effort to try to mitigate this  
21 as what it was, not premeditated, not desirous of it, but  
22 a reaction. And like the Solicitor and you have  
23 commented, you know, guns are part of the problem and they  
24 are. Unfortunately, United States Congress, Senate, South  
25 Carolina Senate and a lot of solicitors don't want to

1 change the gun laws in this state, all right? I'm not  
2 saying this one is one of those, but I'm just saying there  
3 are a lot of that, you know. We can start by telling the  
4 young people don't arm yourselves, but when the people in  
5 charge making the laws and running the country are saying  
6 you not only can carry a gun, but you can take it into a  
7 church, or a school, or a nightclub or anywhere you want  
8 to, is a little bit of an inconsistent bit of preaching  
9 that we're doing. Not anybody here today, but just  
10 overall, Judge, to give you kind of the mindset. But back  
11 to a couple of quick points and I'll be closing up. On  
12 Al's behalf, he comes from very good people. Judge, I'd  
13 like you briefly, I have a piece of art that Al himself  
14 fashioned. That is of his five children, and then a  
15 photograph of his three youngest, his 10-year-old  
16 daughter, his eight-year-old daughter, and his  
17 one-year-old son.

18 THE COURT: He drew this?

19 MR. JONES: Yes, sir. He did.

20 THE COURT: Amazing.

21 MR. JONES: And he's an artist, I think. I mean,  
22 anybody who can do that's got artist, I put artist by  
23 their name.

24 THE COURT: I would say you're right. He's an  
25 artist.

1 MR. JONES: Judge, back to briefly the facts of this  
2 case. Unfortunately, it is my belief and I believe that  
3 the facts during the hearing bore out that there was a lot  
4 of blame to go around the evening of November the 14th,  
5 2013, that resulted in the tragic loss of life, the tragic  
6 death of Jamaal Aiken, a lot of blame to go around.  
7 Without naming parties, you heard the testimony. You  
8 heard some of the activity. You know, maybe Shay Simon  
9 should fall in there. Maybe Brent Williams should fall in  
10 there. There are a number of people that we couldn't  
11 figure out and still haven't figured out why Brent and  
12 Jamaal and the four or five women accompanying them  
13 decided to go the Old Folks Home that night, the first  
14 time they'd ever been. But having said that, Judge, with  
15 the blame to go around, the one person as you pointed out  
16 earlier that is willing to accept responsibility for his  
17 part in that tragedy is standing before you here today  
18 facing a significant sentence. What we're going to ask  
19 you to do is to take into consideration the mitigation  
20 that we've presented and the circumstances that we've  
21 presented that would posture this. Judge, one of the  
22 difficulties we had in making our decision when Mr. Aiken,  
23 Sr., mentioned, you know, I'll never believe that my son  
24 opened the door or that it even came open. Well, law  
25 enforcement, Greenwood City Police Department had seized

1 that vehicle within 15 minutes of this incident. That  
2 door knob was never tested for DNA or fingerprints. The  
3 inside of the backseat of that vehicle was never tested  
4 for gunshot residue to see the positioning of where that  
5 gun was when it was fired, unfortunately. Because just as  
6 it may have shed some light in Mr. Aiken, it also could  
7 have shed some positive light for Al Morgan and his  
8 version of what took place, and we never had it. For  
9 whatever reason, we couldn't get it. So in closing,  
10 Judge, I'd like you to know this as well and to the Aiken  
11 family. When I first met with Al in early December of  
12 2013, we talked and he agreed with me completely that  
13 unlike most of the people, I go to the jail and talk to  
14 who wants to get out, who wants a bond, that this would  
15 not be anything to do any time soon. Give this family  
16 time to go through the grieving process. Don't be selfish  
17 about that. Judge, I want you also to know, because the  
18 family didn't get a chance to hear this, I don't think.  
19 It was in the possession of the State. I don't know if  
20 they've heard it. But you listened to it Tuesday evening  
21 and that was a statement that Jamaal, while still in  
22 prison, went back to Detective Dixon and gave him, I mean,  
23 Al, while still in prison. Went back to Detective Dixon  
24 and gave him, and I, you listened to it and so if what I  
25 say does not fall in line with your recollection, use your

1 recollection in deciding, but this is Detective Dixon.

2 All right. I don't have any further questions. This  
3 is your time. I'll give you a chance. Whatever you'd  
4 like to say at the end of the statement if you'll give me  
5 one. And Al said, I just, it hurt. Was just the way, you  
6 know, it happened and it's something I've got to live with  
7 for the rest of my life, you know. The family's got to  
8 deal with it, too. I've got to deal with it. My family's  
9 got to deal with it. I just hate that it happened the way  
10 that it happened.

11 THE COURT: And his tone of his voice was very much  
12 remorseful in my listening to it. It was, that was  
13 sincerely said.

14 MR. JONES: And he and his family have wanted me to  
15 convey that to Jamaal's parents and family from the  
16 beginning, and so, you know, tragedy. Responsibility.  
17 We're asking for measured and tempered justice in this  
18 case in Your Honor's wisdom.

19 THE COURT: I recognize that had, it's just a  
20 tragedy. With no guns, it may not have happened.

21 MR. JONES: In closing, Your Honor, if I might, Ms.  
22 Morgan wanted me to let the Court know that this is  
23 directed to the family of Jamaal Aiken that she prays  
24 every single day for that family, for his parents, loved  
25 ones and she has since this and it's not a false

1 presentation on her part. She truly wishes that this had  
2 never happened.

3 THE COURT: Anything from you, Mr. Morgan?

4 MR. MORGAN: I want to apologize and say I'm sorry.

5 THE COURT: All right. I will accept the plea as  
6 freely and voluntarily given. Considering everything,  
7 there's nothing I can give them that's going to bring  
8 that, your son back. And I'm sorry for that. But  
9 considering everything I have been told, the sentence of  
10 the Court is that Mr. Morgan will be confined for an  
11 active term of twenty-five years and that's suspended upon  
12 the service of twelve and a half years. Cost and  
13 assessment imposed. Probation, thirty-six months after  
14 his community supervision ends. And he gets credit for  
15 his pretrial confinement before this case became a plea.  
16 Good luck to everybody and I'm sorry. I can't fix a  
17 tragedy, I hope this brings closure for you.

18 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
	)	INDICTMENT NOS.:
The State of South Carolina,	)	2013A2420101159; -60
	)	2015GS2400728
Plaintiff,	)	2016GS2400079
	)	<b>MOTION ASSERTING STATUTORY</b>
v.	)	<b>IMMUNITY FROM PROSECUTION</b>
	)	<b>S.C. CODE § 16-11-450 AND</b>
Alfonso Morgan, Jr.,	)	<b>DEMAND FOR PRE-TRIAL HEARING</b>
	)	
Defendant.	)	

2016 JAN 26 AM 8:57

FILED GENERAL SESSIONS  
8TH JUDICIAL CIRCUIT  
GREENWOOD, SC

**TO:** EUGENE C. GRIFFITH, JR., CIRCUIT COURT JUDGE 8<sup>TH</sup> CIRCUIT, AND  
YATES BROWN, ASSISTANT SOLICITOR FOR THE 8<sup>TH</sup> CIRCUIT

The Defendant, by and through the undersigned attorney, moves the Court at a time convenient to be heard, but prior to trial, for an Order granting the Defendant immunity from prosecution for the above-referenced charges.

This Motion is based on S.C. Code § 16-11-450(A), which states in pertinent part that:

**“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.”**

The facts of this case indicate that the Defendant was within his right to use deadly force pursuant to the common-law of self-defense, (*State v. Davis*, 282 S.C. 45, 317 S.E.2d 452 (1984)), and the statutory right to use deadly force pursuant to S.C. Code §16-11-440(A) and (C). *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011); *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (S.C. 2013); and *State v. Douglas*, 411 S.C. 307, 318, 768 S.E.2d 232, 238-239 (Ct. App. 2014).

As such, the Defendant is entitled to a hearing on this issue of immunity and the grant of immunity from prosecution.

WHEREFORE the Defendant demands a hearing pre-trial to determine the applicability of immunity from prosecution pursuant to S.C. Code § 16-11-450(A).

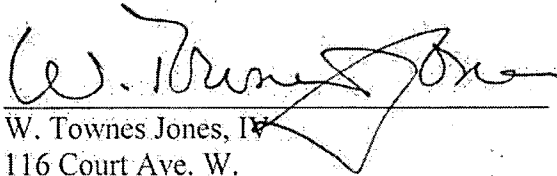
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-and-



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Greenwood, SC 29646

ATTORNEYS FOR THE DEFENDANT

January 25, 2016

STATE OF SOUTH CAROLINA )

COUNTY OF LAURENS )

The State of South Carolina, )

Plaintiff, )

v. )

Alfonso Morgan, Jr., )

Defendant. )

IN THE COURT OF GENERAL SESSIONS  
EIGHTH JUDICIAL CIRCUIT

INDICTMENT NOS.:

2013A2420101159; -60

2015G 52400728

2016G 52400079

IMMUNITY HEARING

MEMORANDUM

AND

PRE-HEARING BRIEF

FILED GENERAL SESSIONS  
 8th JUDICIAL CIRCUIT  
 GREENWOOD, SC  
 2016 FEB -1 PM 4:21

**TO:** EUGENE C. GRIFFITH, JR., CIRCUIT COURT JUDGE 8<sup>TH</sup> CIRCUIT, AND  
DAVID STUMBO, SOLICITOR FOR THE 8<sup>TH</sup> CIRCUIT

The Defendant, Alfonso Morgan, by and through the undersigned Attorneys, submit this Immunity Hearing Memorandum and Pre-Hearing Brief pursuant to both Rule 4(a), S.C.R. Crim. P. and the previously filed Motion Asserting Statutory Immunity From Prosecution filed on January 26, 2016.

**PROCEDURAL HISTORY/ISSUES IN CONTROVERSY**

On the night of November 14, 2013, Alfonso Morgan (hereinafter "Morgan"), was attacked in the backseat of a vehicle by an armed man named Jamall Aiken (alias "Smooth") (hereinafter "Aiken" or "the Deceased"). Morgan shot the deceased once to stop the attack. The shot proved to be fatal. On that same night, Morgan was arrested for Murder and Possession of a Weapon During the Commission of a Violent Crime. On January 26, 2016, Morgan filed his "Motion Asserting Statutory Immunity From Prosecution." As required, a pre-trial hearing is set for the week of February 1, 2016. *See, State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011).

In this case, Morgan's conduct on the night of November 14, 2013, meets the elements of common-law self-defense. *State v. Davis*, 282 S.C. 45, 317 S.E.2d 452 (1984) (self-defense elements). In addition, Morgan's conduct on the night of November 14, 2013, meets the

provisions of "Defense of Vehicle" and "Stand Your Ground" contained in the Protection of Persons and Property Act. *S.C. Code Ann.* §16-11-440(A) and (C). As a result, Morgan asserts that he is entitled to immunity from prosecution pursuant to the Protection of Persons and Property Act. *S.C. Code Ann.* § 16-11-450(A).

#### UNANSWERED QUESTIONS OF LAW

South Carolina Code § 16-11-450(A) states in pertinent part that:

**"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."**

(Emphasis added). The term "or" indicates that there are two different sources of immunity for a person who uses deadly force.

First, the language "**as permitted by the provisions of this article,**" includes the factual scenarios described in *S.C. Code* § 16-11-440.

South Carolina Code § 16-11-440 has two separate provisions, found in sub-section (A) and sub-section (C), describing scenarios where deadly force is permitted. These sub-sections overlap to some extent, but ultimately describe two different types of confrontations. Sub-section (A) can best be described as the "Defense of Vehicle" immunity whereas sub-section (C) can best be described as the "Stand Your Ground" immunity.

Second, "**as permitted by . . . another applicable provision of law**" includes the common-law concept of self-defense. The common-law provision of self-defense permits the use of deadly force, and is, therefore, included in the statutory grant of immunity.

These two separate sources for potential immunity should, according to statutory interpretation, be applicable independently.

However, the Supreme Court's latest opinion on the legislative intent of the Protection of Persons and Property Act seems to indicate that immunity from prosecution is predicated on an accused demonstrating the elements of self-defense first. *See, e.g., State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (S.C. 2013).

The Court of Appeals, following up on the language of *Curry*, has held that a defendant must first demonstrate the elements of self-defense. Statutory immunity then requires an additional showing based on the statutory subsections contained in the Protection of Persons and Property Act. *State v. Douglas*, 411 S.C. 307, 318, 768 S.E.2d 232, 238-239 (Ct. App. 2014).

On the other hand, the Supreme Court has left open the question of whether the Protection of Person's and Property Act extends beyond the Castle Doctrine. "The full reach of the Act and whether the statutory provisions in the Act extend beyond the common law Castle Doctrine are questions for another day." *Curry*, 406 S.E.2d at 374, 752 S.E.2d at 267. It is Morgan's legal position that the Act does, in fact, extend beyond the Castle Doctrine. And, while he is entitled to immunity based alternatively on Defense of Vehicle, Stand Your Ground or self-defense, the analysis below will follow the current interpretation espoused in *Douglas*.

Morgan was acting in self-defense. Additionally, Morgan's conduct also falls squarely into the act's immunity provisions for "Defense of Vehicle" and/or "Stand Your Ground."

#### FACTS

On the night of November 14, 2013, Alphonso Morgan was the backseat passenger in a car belonging to Linwood Ramsey. Thomas Gilchrist occupied the front passenger seat. They were parked at a local bar/club, called "The Cab Stand", to pick up Clifton Robinson. This was Morgan's second time coming to the Cab Stand that night. He had left previously when a group of people, including Jamaal Aiken had come into the club trying to start trouble with him and his

friends. At this time, Morgan told his friend, Clifton Robinson, that he wanted to leave because he didn't want any problems. Morgan then left with all but three of his friends

Ultimately, Aiken's group did, in fact, start several altercations inside the Cab Stand.

The members of the group that started the fight were:

1. Sequeta Spencer
2. Brent Williams
3. Adrenna Morgan
4. Hazel Williams
5. Shanina Nichole Williams
6. Jamal Aiken
7. B/M nicknamed "Ant Man"
8. Travis LNU and
9. Unknown B/M

One of the members of this group, Jamaal Aiken, is the deceased. On this particular night, the Deceased had been drinking. Based on the toxicology of the vitreous fluid, his blood alcohol at the time of the altercation was .119% ng/ml (1.5 x presumption of intoxication). A post mortem urine sample tested positive for marijuana. Aiken was 6 feet 2.5 inches tall and weighed 165 lbs. Aiken was carrying 28 grams of marijuana and a stolen .38 cal. Ruger pistol.

The individuals that were assaulted inside the Cab Stand included Morgan's friends Shay Simon, Clifton Robinson, Demond Brown, and Courtney Lockhart. Shay Simon and Courtney Lockhart were assaulted primarily as a result of attempting to help Demond Brown and Clifton Robinson.

Two older gentlemen, and regulars at the Cab Stand, Earnest McCauley and Tony Thomas, were inside the club during the fight. They observed Demond Brown on the floor being attacked by Brent Williams. While this was happening, someone in the group grabbed Clifton Brown by the shirt and pulled him to the floor. At one point, Clifton Robinson was on the floor being kicked and beaten. McCauley and Thomas eventually began moving Aiken's group

towards the front door to get them outside. This gave Brown the chance to escape out of the back door and Robinson the chance to get up.

Shay Simon and Clifton Robinson each made separate calls Morgan on his cell phone from inside the club. They each told him about being jumped by Aiken's group and Clifton Robinson asked Morgan to please come get him. It was this phone call that brought Morgan back to the Cab Stand in the back of Ramsey's vehicle.

Once Aiken's group was through the threshold of the door, McCauley and Tony Thomas attempted to pull the front door shut so that they could lock the group outside. As McCauley's hands were engaged in getting the door completely shut, Aiken took his pistol and, with the pistol in his fist, hit McCauley on the side of the head.<sup>1</sup> McCauley was able to get the door shut and locked, but later went to the hospital for the blow to his head.

Once the door was pulled shut, McCauley and Tony could hear the group yelling and banging on the other side of the door. McCauley heard the group suddenly go silent. A very short time later, he heard a gunshot.

With one exception, all the witnesses in the parking lot agree on the sequence of events that unfolded after Aiken hit McCauley in the head at the door to the club. While attempting to force their way back into the club, Aiken's group turned their attention to Ramsey's car, and, specifically, to Al Morgan in the back seat. Someone in the group said: "There he goes!" Almost immediately, Aiken left the front door of the club and, with his crew behind him, ran 30-40 feet across the parking lot to Ramsey's car. All witnesses describe Aiken as agitated, "acting a fool", "jumping around" as he approached Ramsey's car. Aiken went straight to the back door and snatched it open. As he bent over and began leaning into the backseat, Morgan moved away

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<sup>1</sup> McCauley can only say that he was hit in the head with "something harder than a fist", however, the pistol was the only hard object found on the Deceased.

from Aiken and flattened himself on the seat putting his head as far from Aiken as possible.

Aiken had his body turned slightly and was holding his right hand behind him. He reached into the car with his left hand to hit or grab Morgan. While entering the vehicle, Aiken was heard to say: "What you gonna do now pussy motherfucker?" or words to that affect. As Aiken continued moving into the backseat in a threatening manner, Morgan pulled out a pistol he had been carrying. Knowing what had already happened inside the club, Morgan shot once to protect himself.

The bullet hit Aiken in the front just below his waist-line. And, consistent with his position of being turned slightly to the side and bending over into the backseat of the car, the bullet traveled slightly from left to right and at an angle into Aiken's lower left buttock.

Aiken fell back onto the ground and Ramsey drove Morgan from the scene. Morgan was later picked up by police at Ramsey's home. Aiken passed away some time later.

## APPLICABLE LAW

### I. SELF-DEFENSE

Morgan is entitled to immunity from prosecution pursuant to the application of the common-law self-defense.

#### A. Elements

The four elements to self-defense under the common law are as follows:

First, the defendant must be without fault in bringing on the difficulty.

Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.

Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life.

Fourth, the defendant 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. Davis*, 284 S.C. 45, 317 S.E.2d 452 (1984).

#### 1. Defendant was not at fault in bringing on the difficulty.

The first element of self-defense is that Morgan was not at fault in bringing on the difficulty. To be denied self-defense, Morgan must have engaged in conduct with the Deceased that constituted a violation of law reasonably calculated to provoke a confrontation. *State v. Bryant*, 336 S.C. 340, 520 S.E.2d 319 (1999).

Morgan's conduct is undisputed. He was sitting in the backseat of his friend's car minding his own business. Morgan was in the back seat of Ramsey's car from the moment he arrived at the Cab Stand until after the Deceased was shot.

The facts in *State v. Dickey*, 394 S.C. 491, 716 S.E.2d 97 (2011), are illustrative:

It is uncontroverted that Boot was highly intoxicated, acted aggressively over the course of the conflict, that he began advancing toward Petitioner quickly with the purpose of assaulting him, that he continued advancing toward Petitioner after Petitioner pulled the gun, and there was great disparity in the physical stature and capabilities of Boot and Petitioner.

*Id.* at 501, 102.

In contrast, and by way of explaining the type of provocation that would eliminate self-defense, consider *State v. Brown*, 113 S.C. 513, 101 S.E. 847 (1920). In that case, the defendant sought out the decedent at his home because of past difficulties and started a fight. *Id.* at 518, at 848. In *Brown*, the defendant was not entitled to self-defense.

Morgan had virtually no interaction with the Deceased and, therefore, was not at-fault in bringing on the difficulty.

**2. Belief in imminent danger or actual danger: Either is sufficient.**

The second element of self-defense can be satisfied in one of two ways.

The first alternative is that Morgan believed he was in imminent danger and his belief was reasonable under the circumstances. *State v. Hendrix*, 270 S.C. 653, 657 n.1, 244 S.E.2d 503, 505 n.2 (1978). “As an alternative to showing his belief, the accused may rely upon the circumstances of the case to demonstrate that he actually was in imminent danger of losing his life or suffering serious bodily injury.” *Id.*; *State v. Davis*, 282 S.C. 45, 317 S.E.2d 452 (1984) (Self-defense applies where, inter alia, defendant “actually was in such imminent danger.”)

**a. Morgan believed he was in imminent danger of violent physical assault from the Deceased.**

Morgan believed he was in imminent danger of violent physical assault from the Deceased. Morgan had left the Cab Stand to avoid being jumped by Aiken’s group. He became aware of the fight that had occurred inside the Cab Stand after he left. Morgan saw the Deceased

walk across the parking lot in a threatening manner and, he could still see the crowd backing up the Deceased at the entrance to the Cab Stand. The implication was clear. Aiken meant to attack Morgan in the car or pull him out so the group could help in the assault.

**b. Defendant actually was in imminent danger of violent physical assault from the Deceased and his brother.**

Morgan actually was in mortal danger.

In summary, the Deceased was intoxicated. The Deceased's prior acts of violence, both the fight inside and hitting McCauley, involved substantial physical force and resulted in serious bodily injury to his victims. The Deceased was armed with a pistol. The Deceased was acting and speaking in a manner entirely consistent with the fact that he was hell bent on beating Morgan up.

**3. Defendant's Belief in imminent danger was reasonable because the Defendant actually was in imminent danger.**

The third element of self-defense is that the reasonableness of Morgan's belief in imminent danger or the reasonableness of the assertion of actual danger. Morgan is legally entitled to his perception of the events as they unfolded. *State v. Nichols*, 325 S.C. 111, 481 S.E.2d 118 (1996); *Battle v. State*, 305 S.C. 460, 490 S.E.2d 400 (1991); *State v. Fuller*, 297 S.C. 440, 377 S.E.2d 328, 331 (S.C. 1989); *State v. Rash*, 182 S.C. 42, 48-49, 188 S.E. 435 (1936). Certain facts perceived by Morgan and already discussed in this memorandum have specific support in the case law.

The prior threats from the group with Deceased inside the Cab Stand support reasonableness. "[The Defendant] was entitled to a charge on the relevance of prior difficulties." *State v. Nichols*, 325 S.C. 111, 117, 481 S.E.2d 118, 121 (1997).

The number of people present at the scene would indicate hostile intentions. *State v. Pearson*, 288 N.C. 34, 215 S.E.2d 598, 603 (1975) (number of assailants); *see also, State v. Fuller*, 297 S.C. 440, 377 S.E.2d 328 (1989) (defendant entitled to act on appearances). The surprise factor that accompanied the unexpected number of people present would also cause a reasonable person apprehension about the purpose of the encounter. *Id.*

The hostile words and tone used by the individuals present constituted a reasonable apprehension of violence. *See State v. Fuller*, 297 S.C. 440, 377 S.E.2d 328 (1989) (words accompanied by hostile acts may be sufficient to constitute a threat of physical attack).

Particularly significant is the fact that the Deceased did not retreat in the face of Morgan's presentation of his firearm. By displaying the pistol, Morgan manifested a clear indication that he felt threatened. The Deceased ignored this warning. *See, State v. Hendrix*, 270 S.C. 653, 244 S.E.2d 503 (1978) (continuing nature of threat despite action by the defendant).

According to the autopsy report, the Deceased was 31 years of age, 6 feet 1 inch tall, and 165 lbs. Morgan was 35 years old, 5 feet 8 inches tall and weighed approximately 135 lbs. at the time of the incident. The relative size, weight, and age of the individuals objectively puts Morgan at a disadvantage given the close quarters of the back seat. The visible effects of alcohol on the Deceased would also have made it clear that this individual was potentially capable of anything.

The Deceased intention to "confront" Morgan manifested by his approach across the parking lot would constitute an uncommunicated threat that is relevant to the reasonableness of an assertion of actual danger. *State v. Griffin*, 277 S.C. 193, 196, 285 S.E.2d 631, 633 (1981) ("Uncommunicated threats are admissible to show the mental attitude of the deceased and are

relevant in the question of who was probably the aggressor.”); *see also*, *State v. Bellamy*, 293 S.C. 103, 359 S.E.2d 63 (1987).

The Deceased’s physical assault of Morgan, without any provocation, makes the Deceased’s intentions crystal clear. *See*, *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984) (unprovoked aggression and violence by the assailant threatening defendant is relevant to reasonableness of belief of danger).

In addition, the Court must consider the fact that Morgan is entitled to act on appearances. Morgan did not have to wait for the Deceased to strike first. *State v. Nichols*, 325 S.C. 111, 117, 481 S.E.2d 118, 121 (1997) (Defendant “did not have to wait before acting in self-defense.”); *State v. Rash*, 182 S.C. 42, 50, 188 S.E. 435 (1936) (defendant need not “wait until his assailant gets the drop on him” in order to exercise right of self-defense by use of deadly force); *State v. Sales*, 285 S.C. 113, 328 S.E.2d 619 (1985).

Furthermore, “[t]he defendant was not limited to use the same force and no more than that with which he was threatened. The defendant, if without fault, had the right to use as much force as required for his complete protection from loss of life or serious bodily harm, and could not be limited to the degree or quantity of attacking opposing force.” *State v. Campbell*, 111 S.C. 112, 113, 96 S.E. 543, 544 (1918) (cited approvingly in *Douglas v. State*, 332 S.C. 67, 72, 504 S.E.2d 307, 309 (1998)).

The reasonableness of Morgan’ belief that he was in imminent danger and the reasonableness of the assertion of actual danger are established by the above.

**4. Defendant had no duty to retreat.**

The fourth element of self-defense, i.e. the duty to retreat, is satisfied by the fact that Morgan had retreated as far as he was able across the back seat of the vehicle. No further retreat was possible.

**II. INTRODUCTION TO NEGATIVE AND AFFIRMATIVE STATUTORY REQUIREMENTS OF DEFENSE OF VEHICLE / STAND YOUR GROUND**

Both the Defense of Vehicle and the Stand Your Ground immunity have negative requirements that must be met for the application of immunity. In other words, certain facts must not be present for the grant of immunity. In addition, both “Defense of Vehicle” immunity and “Stand Your Ground” immunity have affirmative requirements that must be met for the application of immunity. In other words, certain facts must exist to complete the immunity.

The negative requirements of Defense of Vehicle and Stand Your Ground, (i.e. “not engaged in unlawful activity”), are virtually identical and will be dealt with simultaneously. The affirmative requirements of Defense of Vehicle and Stand Your Ground, however, are different and will be addressed separately.

**V. NEGATIVE REQUIREMENTS OF § 440(A) AND §440(C)**

Certain facts must not be present in order for the statutory Defense of Vehicle and Stand Your Ground immunities to apply. Section 440(A) and 440(C) are deemed inapplicable if the person using deadly force was engaged in “unlawful activity” at the time of the use of deadly force. *S.C. Code* §§ 440(B) and 440(C).

**A. Al Morgan Lawfully Presented Firearm**

There is no evidence that Morgan was engaged in any activity that could be considered “unlawful” at the time of the shooting. *S.C. Code* § 16-11-420(B) states that, “The General Assembly finds it proper for *law-abiding citizens* to protect themselves...from intruders and

attackers without fear of prosecution...for acting in defense of themselves.” *S.C. Code* § 16-11-420(B) (emphasis added). The exclusion of those “engaged in unlawful activity” from the immunity provided by *S.C. Code* § 16-11-440(C) was designed to prevent individuals from asserting this defense while they were actively involved in the furtherance of some type of criminal enterprise.

Clear examples would include shootings that occurred while individuals were involved in a drug transaction or were the participants in a burglary, armed robbery, etc. These examples are far different from the facts of this case.

About the only matter in controversy would be whether Morgan lawfully presented his firearm just before he fired. That determination flows from his right to self-defense. Morgan was authorized under State law to present his firearm once his right to self-defense was triggered.

Lest there be any doubt, the law against pointing and presenting a firearm specifically states that it should not abridge the right to self-defense. *See S.C. Code Ann.* § 16-23-410 (Supp.1996) (“It is unlawful for a person to present or point at another person a loaded or unloaded firearm” but this provision should not be “construed to abridge the right of self-defense.”).

#### **B. Al Morgan Lawfully Possessed Firearm**

Al Morgan is not prohibited from possessing a firearm. Even if he was, “[a] person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting.” *State v. Crosby*, 355 S.C. 47, 52, 584 S.E.2d 110, 112 (2003). *State v. Davis*, 309 S.C. 56, 419 S.E.2d 820 (Ct. App. 1992) (Self-defense applies to pointing and presenting when the evidence is presented as to self-defense); *See e.g.*,

Therefore, the only two remaining elements to Defense of Vehicle are: (1) the vehicle is occupied; and (2<sub>a</sub>) entry into the vehicle or an attempt to enter /or (2<sub>b</sub>) removal of an occupant or attempted removal. Since it would be hard to imagine a scenario where the attempt to remove a vehicle's occupant does not also involve an attempt to enter, this memo will focus on Aiken's attempt or actual entry into the vehicle.

**B. Two Remaining Elements: Occupied Vehicle and Entry**

The vehicle was occupied.

The only potential fact in controversy is whether the Deceased entered the vehicle or was attempting to enter the vehicle. The testimony as to this issue starts with the fact that the Deceased was the one who snatched open the back door. As stated previously, the Deceased was part of the group of seven that had initially tried to instigate a fight with Morgan before he left the first time. The Deceased had already been involved in multiple assaults inside the Cab Stand. The Deceased had already hit McCauley in the head with a pistol in his hand. The Deceased ran across the parking lot at Morgan. The Deceased opened the back door. The Deceased either was in the back seat or was attempting to get at Morgan in the backseat when he was shot.

Whether it is actual entry or an attempt to enter, the Deceased's actions indicated he was after Morgan in the back seat and did not mean to let anything stand in his way.

As a result, the witnesses confirm that the Deceased was unlawfully and forcefully attempting to enter or had actually entered the occupied vehicle at the time Morgan fired the fatal shot. It is no stretch to say that the crowd gathered behind the Deceased was there to help remove Morgan from the vehicle and to assault him like they had done to Demond Brown and Clifton Robinson inside the Cab Stand.

*State v. Goodson*, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994) (citing *State v. Brown*, 205 S.C. 514, 32 S.E.2d 825 (1945)).

As a result, Morgan's possession and presentation of his firearm are both lawful at the moment self-defense is triggered.

#### **IV. AFFIRMATIVE REQUIREMENTS FOR §440(A) IMMUNITY -DEFENSE OF VEHICLE-**

##### **A. Statutory Language**

In order for §440(A) immunity to apply, certain affirmative requirements must be met.

South Carolina Code §16-11-440(A) states in pertinent part that:

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

- (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a[n] . . . occupied vehicle, or if he removes or is attempting to remove another person against his will from the . . . occupied vehicle; and
- (2) . . . knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring.

##### **B. Statutory Presumptions**

Under Defense of Vehicle, statutory presumptions supply almost all of the traditional elements for using deadly force. Because the Deceased attempted to enter the vehicle, section 16-11-440(A) presumes that Morgan had a reasonable fear of imminent peril of death or great bodily injury. Because the Deceased attempted to enter the vehicle, the Deceased is statutorily presumed to be doing so with the intent to commit an unlawful act involving force. "[A] person who unlawfully and by force enters or attempts to enter a person's . . . occupied vehicle" is "doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60." *S.C. Code § 16-11-440(D)*.

**V. AFFIRMATIVE REQUIREMENTS FOR §440(C) IMMUNITY  
-STAND YOUR GROUND-**

**A. Statutory Language**

In order for §440(C) immunity to apply, certain affirmative requirements must be met.

South Carolina Code § 16-11-440(C) states in pertinent part:

A person who . . . is attacked in another place where he has a right to be . . . 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 the commission of a violent crime as defined in Section 16-1-60.

Therefore, Stand Your Ground immunity is available to a Defendant who: (1) is attacked; (2) while legally occupying his space; and (3) reasonably believes the commission of a violent crime is occurring or about to occur.

**B. Morgan Was Physically Attacked**

The plain meaning of the word “attack” means “to move against with more or less violent intent, implying aggressiveness in any sense and the initiative in the onset.” *Webster's Third New Int'l Dictionary* at p. 140 (1971); *see also, Lewellin on Behalf of Heirs of Lewellin v. Huber*, 465 N.W.2d 62, 64 (Minn. 1991) (approving this definition as applicable to Minnesota dog-bite statute). Another useful definition of “attack” is “to launch a physical assault (against) with or without weapons; begin hostilities (with)”. *WordReference.com Dictionaries*, [www.wordreference.com/definition/attack](http://www.wordreference.com/definition/attack) (2013). The definition of “attack” is “to launch a physical assault (against) with or without weapons; begin hostilities (with)”.

Based on the Deceased’s previous altercations recited above, there is sufficient evidence to show that the Deceased was moving against Morgan with violent intent. During the moments prior to the fatal shots, the Deceased told Morgan: “What the fuck you gonna do now nigga?” A clear threat showing he meant Morgan harm.

**C. At Morgan Lawfully Occupied Area Where He Was Attacked**

At the time prior to the fatal shot and at the moment of the fatal shot, Morgan had a right to be in the back seat of Ramsey's vehicle. All parties agree Morgan never left the interior of the back seat of Ramsey's vehicle.

**D. Morgan Held A Reasonable Belief Deadly Force Was Necessary To Prevent A Violent Crime.**

Once again, the statutory presumption that is applicable in Section 16-11-440(D) provides the necessary showing for this element. "[A] person who unlawfully and by force enters or attempts to enter a person's . . . occupied vehicle" is "doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60." S.C. Code § 16-11-440(D).

Having established that the Deceased was trying to and/or actually entering the vehicle unlawfully and by force, the Deceased's intent is presumed to be "with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60." S.C. Code § 16-11-440(D).

Even if this presumption were not applicable, the Deceased's intent to remove Morgan from the vehicle is clear from his past actions. The Deceased wanted to get to Morgan so that he and his group could beat Morgan at least as bad as they had Demond Brown and Clifton Robinson. The fact that the Deceased was armed with a pistol implicates the following violent felonies: Kidnapping (16-3-910); ABHAN (16-3-600(B)) and Assault by Mob 1<sup>st</sup> Degree (16-3-210(B)).

Based on the Deceased's intoxication, threats of violence, and prior physical altercations, Morgan had a reasonable belief that deadly force was necessary to prevent a violent

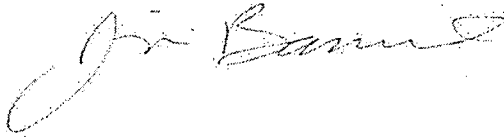
crime. As such, Morgan was well within his statutory right to stand his ground and meet force with force.

### CONCLUSION

Morgan is entitled to immunity pursuant to provisions of S.C. Code § 16-11-450(A). First, Morgan's right to self-defense was triggered when he was attacked in the backseat of a vehicle by a man armed with a pistol. Because he was not engaged in unlawful conduct, and the Deceased was attempting to enter the vehicle, Morgan satisfies the requirements of "Defense of Vehicle" and "Stand Your Ground" immunity in S.C. Code § 16-11-440(A) and (C).

WHEREFORE, Morgan seeks an Order from the Court granting the Defendant, Alfonso Morgan, immunity from prosecution and civil suit pursuant to S.C. Code § 16-11-450(A). Morgan also seeks an Order from the Court dismissing with prejudice Greenwood County Indictment Nos. 2013A2420101159; -60.

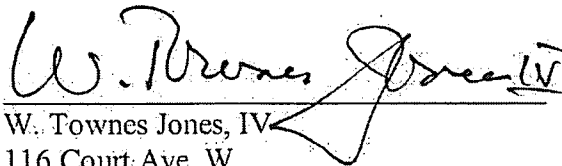
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ATTORNEYS FOR THE DEFENDANT

February 1, 2016

**RECEIVED**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

FEB 16 2016

SC Court of Appeals

APPEAL FROM GREENWOOD COUNTY  
Court of General Sessions

Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2015GS2400728

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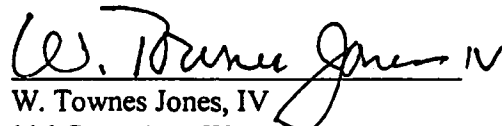
FILED GENERAL SESSIONS  
8th JUDICIAL CIRCUIT  
GREENWOOD, SC

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

NOTICE OF APPEAL

Alphonso Morgan, Jr. appeals: 1) the ruling issued on February 3, 2016 denying statutory immunity, pursuant to SC Code §16-11-450 of the South Carolina Code of Laws, 1976, as amended; and 2) the guilty plea entered on February 5, 2016. This appeal is taken from the ruling of the Honorable Eugene C. Griffith, Jr. dated February 3, 2016, which denied appellant's motion for immunity from prosecution pursuant to Section 16-11-450 of the South Carolina Code of Laws, 1976, as amended. Appellant received notice of entry of this order on February 3, 2016.

February 10, 2016

  
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FEB 16 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY  
Court of General Sessions

Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2015GS2400728

FILED GENERAL SESSIONS  
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GREENWOOD, SC  
2016 FEB 10 PM 3:44

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

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on David Stumbo by depositing a copy of it in the United States Mail, postage prepaid, on February 10, 2016, addressed to David Stumbo, 8<sup>th</sup> Circuit Solicitor's Office, P.O. Box 516, Greenwood, South Carolina, 29648.

February 10, 2016

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY  
Court of General Sessions

Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2015GS2400728

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SC OFFICE OF  
APPELLATE DEFENSE

The State, ..... Respondent.

v.

Alphonso Morgan, Jr. .... Appellant.

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

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

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

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

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

Respectfully submitted:

March 1, 2016



ROBERT M. DUDEK  
Chief Appellate Defender

Other Counsel of Record:

W. Townes Jones, IV  
116 Court Ave. W.  
Greenwood, SC 29646

And

David Stumbo  
Solicitor for the 8<sup>th</sup> Judicial Circuit  
P.O. Box 516  
Greenwood, SC 29648  
864-942-8802  
Attorney for Respondent

James W. Bannister  
Bannister, Wyatt & Stalvey, LLC  
P.O. Box 10007  
Greenville, SC 29603  
Attorneys for Appellant

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Greenwood County  
Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED

MAR 01 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

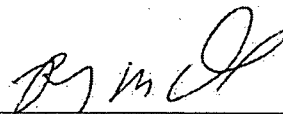
v.

ALPHONSO MORGAN, JR.,

APPELLANT

CERTIFICATE OF SERVICE

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




Robert M. Dudek

Chief Appellate Defender

ATTORNEY FOR APPELLANT.

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

 (L.S.)

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

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

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

Appeal from Greenwood County  
Honorable Eugene C. Griffith, Jr., Circuit Court Judge  
Appellate Case No. 2016-000269

MAR 03 2016

**SC Court of Appeals**

THE STATE,

Respondent,

vs.

ALPHONSO MORGAN, JR.,

Appellant.

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

Respondent ("the State"), through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

In November of 2013, Appellant Alphonso Morgan, Jr. was arrested following an investigation into a shooting that resulted in a death. In May of 2015, the Greenwood County Grand Jury indicted Appellant for one count of murder. Prior to trial, Appellant sought immunity from criminal prosecution pursuant to S.C. Code Ann. § 16-11-450, and a hearing on the immunity issue was commenced in the Greenwood County Court of General Sessions in February of 2016 with the Honorable Eugene C. Griffith, Jr., circuit court judge, presiding. At the conclusion of the hearing, Judge Griffith denied Appellant's request for immunity.

Thereafter, on February 5, 2016, Appellant entered a guilty plea to the lesser offense of voluntary manslaughter. Appellant then filed a timely notice of appeal.

## II.

On February 17, 2016, this Court sent a letter to Appellant requesting a written explanation demonstrating an issue exists that can properly be reviewed on appeal in light of the fact Appellant entered a guilty plea. Thereafter, on March 1, 2016, Appellant filed a supplemental statement of appellate defense pursuant to Rule 203(d)(1)(B)(iv), SCACR. In his supplemental statement, Appellant acknowledged he entered a guilty plea following the denial of his pre-trial request for immunity from prosecution. Nonetheless, Appellant contends his guilty plea was void ab initio based on his claim of immunity from prosecution and, for that reason, maintains his appeal should be permitted despite the fact he pled guilty subsequent to the issuance of the pre-trial ruling he is now seeking to challenge on appeal.

## III.

As our Supreme Court has stated, “[a] plea of guilty is a confession of guilt, made in a formal manner and has the same effect in law as a verdict of guilty and authorizes the imposition of the punishment prescribed by law.” Sanders v. Leake, 254 S.C. 444, 447, 175 S.E.2d 796, 797 (1970); see Boykin v. Alabama, 395 U.S. 238, 242 (1969) (“A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment.”). Significantly, a knowing and voluntary guilty plea has been recognized in our state to constitute a waiver of all non-jurisdictional defects and defenses, including claims of constitutional violations.<sup>1</sup> State v.

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<sup>1</sup> Notably, guilty pleas in South Carolina cannot be conditioned to preserve potential defenses for appellate review. See In re Johnny Lee W., 371 S.C. 217, 220, 638 S.E.2d 682, 684 (2006) (“A trial court may not accept a conditional guilty plea.”); see also State v. Truesdale, 278 S.C. 368, 370, 296 S.E.2d 528, 529 (1982) (“Pleas of guilty are unconditional, and if an accused attempts to attach any condition or qualification thereto, the trial court

Snowdon, 371 S.C. 331, 333, 638 S.E.2d 91, 92 (Ct. App. 2006); see Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (finding entry of a guilty plea generally constitutes a waiver of non-jurisdictional defects and defenses). Thus, by entering a guilty plea, a criminal defendant in South Carolina admits all the elements of the charged offense, waives any defenses that defendant may have had, and leaves only issues related to the sufficiency of the indictment open for review. State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000).

#### IV.

In the case sub judice, Appellant admittedly and without contest pled guilty following the denial of his pre-trial motion seeking immunity from prosecution. By doing so, Appellant admitted his guilt for the crime of voluntary manslaughter and waived any defenses he may have had, including his claim of immunity from prosecution. See Snowdon, 371 S.C. at 333, 638 S.E.2d at 92 (“Generally, a knowing and voluntary guilty plea waives all non-jurisdictional defects and defenses, including claims of constitutional violations. . . . Having pled guilty to breach of peace, Snowdon has waived any objection he may have had, and cannot, therefore, assert constitutionally based violations attendant to his initial arrest and the legal consequences flowing therefrom.”). As a result, there is no legal basis upon which Appellant can pursue an appeal in his case, and he has failed to identify any authority in his supplemental statement to this Court that would permit his appeal to go forward under the circumstances. See Rule 203 (d)(1)(B)(iv), SCACR (“If the appeal is from a guilty plea, an Alford plea or a plea of nolo contendere, a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on

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should direct a plea of not guilty. The basis for this rule is, of course, the settled doctrine that a guilty plea constitutes *waiver* of all prior claims of constitutional rights or deprivations thereof.” (citations omitted))

that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal. **If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed.**" (emphasis added and footnote omitted)). Accordingly, Appellant's notice of appeal should be dismissed.

**WHEREFORE**, Respondent prays that this Court will dismiss Appellant's notice of appeal seeking to appeal the denial of a pre-trial ruling after Appellant subsequently entered a guilty plea; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

MARK R. FARTHING  
Assistant Attorney General

By: 

Mark R. Farthing

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

March 3, 2016

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Greenwood County  
Honorable Eugene C. Griffith, Jr., Circuit Court Judge  
Appellate Case No. 2016-000269

**RECEIVED**

MAR 03 2016

SC Court of Appeals

THE STATE,

Respondent,

vs.

ALPHONSO MORGAN, JR.,

Appellant.

**PROOF OF SERVICE**

I, Anne A. Mueller, certify that I have served the within Response to Appellant's Supplemental Statement of Appellate Defense Pursuant to Rule 203(d)(1)(B)(iv) on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

W. Townes Jones, IV, Esquire  
116 Court Ave. W.  
Greenwood, SC 29646

Robert M. Dudek, Esquire  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211

James W. Bannister, Esquire  
Bannister, Wyatt & Stalvey, LLC  
Post Office Box 10007  
Greenwood, SC 29603

I further certify that all parties required by Rule to be served have been served.  
This 3rd day of March, 2016.

*Anne Mueller*

ANNE A. MUELLER  
Legal Assistant  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211

COUNTY OF Greenwood
STATE VS.
Alphonso Morgan Jr.
AKA:
Race: Sex: M Age: 37
DOB: 1978 SS#:
Address:
City, State, Zip:
DL#: SID#:
\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Voluntary Manslaughter; 2 - 30 years

INDICTMENT/CASE#: 15GS24-0728
A/W#: 2015D2400100008
Date of Offense: 11/14/2013
S.C. Code §: 16-03-0010
CDR Code #: 0116

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws; bearing CDR Code # 0217
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Brown, C. Yates (Attorney), Defendant, W. Ramsey Jones (Attorney for Defendant)

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ 12.5 days/months/years and/or payment of \$ 36

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 812 days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
RESTITUTION: Deferred Def. Waives Hearing Ordered
PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

Clerk of Court/ Deputy Clerk: Kayla Fryer
Court Reporter: Joy Holston
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2154
Sentence Date: 2-5-16

Vertical stamp: ATTORNEY AT LAW, ANGELA WOOD, COOF AND ASSOCIATES, GREENWOOD COUNTY

## THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

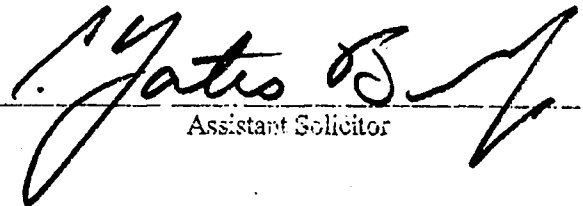
## INDICTMENT FOR

MURDER  
§ 16-3-0010

At a Court of General Sessions, convened on the 8th day of May, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Alphonso Morgan Jr., on or about November 14, 2013, in Greenwood County, willfully, feloniously, and with malice aforethought kill one Jamal Anton Aiken by means of shooting and that the said Jamal Anton Aiken did die in Greenwood County as a proximate result thereof on or about November 15, 2013, in violation of Section 16-3-10 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

  
Assistant Solicitor

**WITNESSES**

Jeremy Adams  
Greenwood Police Department

**WARRANT NUMBER**

**DIRECT INDICTMENT**  
2015D2400100008

*True Bill*

*[Signature]*

Foreman of the Grand Jury

Date: 5/8/15

**VERDICT**

Foreman

**THE STATE OF SOUTH CAROLINA**

COUNTY OF GREENWOOD

**COURT OF GENERAL SESSIONS**

May Term, 2015  
Indictment # 15GS24- *0728*

**THE STATE**

vs.

Alphonso Morgan Jr.

**INDICTMENT FOR**

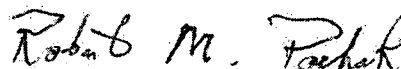
**MURDER**  
§ 16-03-0010

CDR: 0116

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



---

Robert M. Pachak  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

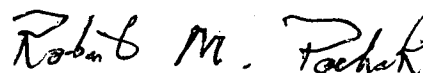
ATTORNEY FOR APPELLANT

This 18th day of May, 2017.

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



---

Robert M. Pachak  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 18th day of May, 2017.

**RECEIVED**  
MAY 18 2017  
SC Court of Appeals