

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-In Equity Judge

Appellate Case No. 2018-001386

Common Pleas Case No.: 2015-CP-10-2178

Stacy Singletary, individually and as Personal Representative of Sheldon Singletary,..... Respondent

vs.

Kelvin Shuler..... Appellant

**BRIEF OF APPELLANT**

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SC Court of Appeals

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## **QUESTIONS PRESENTED**

1. Did the Trial Court err in determining the Appellant was not entitled to a claim of self-defense immunity under §16-11-440?
2. Did the Trial Court err in ruling that the Respondent presented evidence to support wrongful death?
3. Did the Trial Court err in ruling that the Respondent presented evidence of conscious pain and suffering to support a survival action?
4. Did the Trial Court err in awarding actual damages which includes unreported and unsubstantiated income?

## **STATEMENT OF THE CASE**

### **A. Procedural History of the Case**

This matter arises from a ruling of the lower court for a judgment against Appellant in a wrongful death and survival action. The Order of the lower court was signed June 8, 2018 and entered on June 12, 2018. (ROA 1-13, Order).

On April 15, 2015, Plaintiff filed this action against Defendant for wrongful death, survival and negligence. On May 22, 2015, Defendant filed an Answer denying the allegations of Plaintiff's Complaint. In addition, Defendant filed a Counterclaim against Plaintiff for assault and battery, tort of outrage, frivolous lawsuit, slander and libel and interference with the enjoyment of property.

On March 29, 2018, a bench trial was held in the Charleston County Court of Common Pleas before the Honorable Mikell R. Scarborough. After evidence and witness testimony was presented to the Court, Appellant requested for a Motion for Directed Verdict which was denied. At the end of the trial, the matter was taken into abeyance by the Court for further consideration.

On June 8, 2018, the trial court issued an order in favor of the Respondent ruling that Respondent had met her burden of proof for wrongful death and survival action and that all of

Appellant's counterclaims fail as a matter of law. Respondent was awarded a judgment of One Million Six Hundred Thousand Dollars (\$1,600,000.00) in actual damages and denied punitive damages.

### **B. Material Facts of the Case**

The Respondent, Stacy Singletary, individually and as Personal Representative of the Estate of Sheldon Singletary, alleges that on April 19, 2012, her husband, Sheldon Singletary, was wrongfully killed by Defendant, Kelvin Shuler.

On April 19, 2012, Kelvin Shuler went outside of his home to check his mailbox. While at the mailbox, he was approached by an acquaintance, Sheldon Singletary, where they briefly spoke. After conversing, Mr. Singletary asked Mr. Shuler if he would be interested in having a gathering for a cookout at his home. Mr. Shuler agreed and invited Mr. Singletary into his home. (ROA 128, lines 9-20).

Mr. Singletary requested the phone numbers of ladies that Mr. Shuler met at a previous bachelor party. Mr. Singletary contacted the ladies and several of his friends and invited them into Mr. Shuler's home. Mr. Shuler started cooking breakfast. Mr. Singletary's friends arrived and they brought along with them food and alcohol. (ROA 128, lines 21-25, Pg. 94, lines 1-20). Mr. Shuler was not familiar with any of the individuals that were invited to his home. They were sitting around cooking and talking various topics, football, how much money they make, etc. (ROA 130, lines 11-13)

As the day progressed, Mr. Singletary and Mr. Shuler became engaged in a friendly, jokingly conversation which turned into a physical altercation. Mr. Shuler testified that although he didn't believe it to be an argument, one started. Mr. Singletary pushed him and he pushed back. Then Shuler got punched in the face by Sheldon Singletary. (ROA 130, lines 17-22). Mr. Shuler

fell to the ground and Mr. Singletary proceeded to kick him several times. Mr. Singletary had struck Mr. Shuler first which made him believe that he was in imminent danger. (ROA 138, lines 21-23; ROA 139, lines 4-17; and ROA 172, lines 2-7). Mr. Singletary struck Mr. Shuler several times causing bodily injury, including but not limited to a fractured occipital bone and 2 fractured left ribs. (ROA 136, lines 2-18; and ROA 171, lines 1-9). Mr. Shuler's eye was bleeding, and he felt he was delirious after being hit. Kicked in ribs and face. He heard someone yelling that there was a fight.

In self-defense, Mr. Shuler saw and grabbed his knife, yelled at everyone that they have got to go. To get out of his house. But they wouldn't leave. (ROA 130, lines 17 through ROA 131, Line 13; and ROA 155, lines 2-23) Mr. Shuler had no intention of using the knife except for protection. (ROA 152-156). Mr. Singletary threatened Mr. Shuler that if he didn't put the knife down, that he would whoop him with both of his feet at which time the knife was kicked out of his hands. (ROA 131, lines 15-21).

Witness testimony from Sharanika Morris admits that Mr. Shuler had been beaten and that he was visibly upset, yelling, "do you see what he did to my face?" (ROA 58, 10-13; ROA 73, line 3).

He requested for Mr. Shuler and all the guests to leave his home and property immediately. Neither Mr. Singletary or his guests left the premises. As the guests were not friends of Mr. Shuler, he became afraid that they may turn against him as well as he did not know who was friend or foe. (ROA 135, lines 15-25; and ROA 171, line 10-14). Although Mr. Singletary left the home, he had returned. Mr. Shuler feared that Mr. Singletary returned to "finish the job". (ROA 138, lines 14-20).

Mr. Shuler became fearful of further harm of his person and property. Despite needing medical attention, he believed there was a threat of further harm, that he was in imminent danger and was fearful for his life as he had already suffered serious bodily harm. (ROA 137, lines 3-12).

Mr. Shuler was overcome with fear and went to his bedroom to retrieve a gun for protection of his person and property. (ROA 131, line 25 through ROA 132, line 14). With the gun pointed down by his side, Mr. Shuler went outside with the intention of going to the front gate with the hopes of ensuring that everyone would leave. (ROA 132, lines 24-25).

Mr. Shuler began walking toward the front of the property so demand that everyone leave outside the gate. The neighbor across the street could hear Mr. Shuler shouting "get out, get out". (ROA 178, line 25 through ROA 179, line 3).

As Mr. Shuler was walking from the side of his home toward the front, Mr. Singletary jumped from the banister of the front porch directly at Mr. Shuler with the intent to harm Mr. Shuler. Mr. Shuler testified that he saw someone lunging off the banister of the porch coming at him in a menacing way. (ROA 133, lines 2-7; ROA 153, lines 8-10; ROA 167, lines 10-15; and ROA 171, lines 16-24).

Knowing he had already suffered injuries from the attack inside his home, Mr. Shuler was immediately afraid for his life and property, believed he was in imminent danger and therefore, shot Mr. Singletary in self-defense. (ROA 134 through 135; ROA 146 lines 21-23; ROA 149, lines 19-25). He believed that he had the right to have a gun for protection as he had already been assaulted and injured, his life had been threatened and he felt he had the right to protect himself. (ROA 161, lines 8-23). The bodily harm was already done. At the time of the shooting, Mr. Shuler was fearful and reacted according to his fear.

Upon being shot, Mr. Singletary fell to the ground face first where he laid unresponsive. (ROA 134, line 25). A witness at the scene testified that the moment the shooting occurred, Mr. Singletary said "help me". However, when emergency crews, police and paramedics arrived to the scene, he was found unresponsive and required to be intubated. (ROA 411-415). During the time that Mr. Shuler was at the scene, he did not hear any talking or moaning and had no reason to contradict the medical records presented in trial. (ROA 145-147).

Upon arrival to the hospital, his vitals were taken, and he was placed in the trauma care for urgent treatment. The initial triage form for his vital signs indicates that Mr. Singletary was unresponsive upon arrival. The Patient Care Reports logs his vital signs and each time his vitals were checked, the medical staff indicated that Mr. Singletary remained unresponsive with no level of pain recorded. The Trauma Resuscitation Flowsheet indicates that though he received assisted breathing, he remained unresponsive. The pain level indicators on the vital signs throughout the hospitalization indicated no pain level due to unresponsive state. (ROA 195, 203, 206, 210, 219, 225, 369, 371, 408, and 409).

John Singletary, Mr. Singletary's brother, who was not at the scene of the incident, testified that he saw Mr. Singletary after his first surgery, Mr. Singletary squeezed his hands in response to him. (ROA 87, lines 16-18) However, he did not testify that Mr. Singletary spoke, or appeared to be in pain. In fact, he admitted that there was no conversation held or other communications between the two brothers. (ROA 50-58).

Interestingly, Mr. Singletary's own wife, Stacy Singletary, and the medical records presented contradicts this fact as he testified that he was not conscious, able to speak or respond at any time. At no time did Mr. Singletary exhibit signs of pain or consciousness. (ROA 116-118).

Mr. Singletary was taken into emergency surgery two separate times and never regained consciousness. He was pronounced dead at 12:16 a.m.

There was no other testimony or evidence presented in trial to reflect Mr. Singletary's level of conscious pain.

Mr. Singletary's wife, Stacy Singletary, was questioned about damages suffered as a result of the loss of her husband. At the time of his death, Mr. and Mrs. Singletary had only been married for eight (8) months. Ms. Singletary testified that she did not rely on his income. (ROA 119, lines 6-8). The home was in her name as were the bills. In addition, Mr. Singletary did not file tax returns on his income. (ROA 106, lines 8-10; ROA 115, lines 8-16; ROA 116, lines 7-11). Although she estimated his income to be Ninety Thousand (\$90,000) Dollars per year, she had no proof of income or deposit slips. As they had been married for less than one (1) year, Ms. Singletary cannot provide evidence of past income earnings. Ms. Singletary also submitted a claim for mental anguish but never received services of mental health professionals. (ROA 120-121).

The Order of the Court awarded Ms. Singletary One Million Five Hundred Thousand (\$1,500,000.00) for her wrongful death claim which includes future economic loss of decedent's earnings of Fifty Thousand (\$50,000.00) Dollars per year at 25 years for an amount of One Million Two Hundred Fifty Thousand (\$1,250,000.00) Dollars, and medical bills totaling Two Hundred Three Thousand Two Hundred Fifty One and 25/100 (\$203,251.25) Dollars.

In addition, the Order of the Court awarded Ms. Singletary One Hundred Thousand (\$100,000.00) Dollars for her Survival Action Claim, for a total overall award of One Million Six Hundred Thousand (\$1,600,000.00) Dollars in actual damages.

Appellant's counsel requested a Motion for Directed Verdict at the start of the trial, after Plaintiff rested, and at the end of the trial, all of which were denied by the Court.

## ARGUMENT

### I. THE TRIAL JUDGE ERRED IN RULING THAT THE APPELLANT WAS NOT ENTITLED TO SELF-DEFENSE IMMUNITY UNDER §16-11-440

In this action, Defendant raised the defense of self-defense. To establish self-defense, Defendant has the burden to prove that he was 1) without fault in bringing on the difficulty; 2) that he actually believed he was in imminent danger of sustaining serious bodily harm; and 3) that a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. *State v. Hardin*, 114 S.C. 280, 103 S.E. 557 (1920); *State v. Miller*, 73 S.C. 277, 53 S.E. 426 (1906).

Mr. Shuler had a right to be inside his home and immediately outside his home. Pursuant to South Carolina Code of Laws §16-11-440, it provides immunity from not only criminal prosecution, but also a civil action for the use of deadly force. This is commonly known in South Carolina as the “Castle Doctrine”.

The Castle Doctrine is not a defense to a crime like self-defense is. A person is lawfully acting under this doctrine cannot be prosecuted and cannot be sued. The statute requires that the Defendant be attacked prior to using deadly force. The Defendant fired the fatal shot after reasonably believing that he was being attacked with deadly force in his home. There is no requirement that the Defendant wait to be attacked by those that instigated the deadly circumstances. In this statute, the Legislature intended that the Defendant should not have to wait to be fired upon. One who has acted in justifiable self-defense cannot be held responsible for damages in a civil action. *Silas v. Bowen*, 277 F.Supp. 314 (D.S.C. 1967).

In addition, a person attacked on his own premises, without fault, has the right to claim immunity from the law of retreat. S.C. Code of Laws 16-11-440. In 2006, South Carolina’s General Assembly enacted the Protection Act, SC Code §§ 16-11-410 to 450, which enacts

common law doctrines recognizing a person's right to defend his person and his home. In applicable cases, this statute will grant immunity from prosecution to individuals for actions recognized as being committed in the act of self-defense.

Here, Appellant was attacked in his home and suffered severe injuries to his face, including an occipital bone fracture and 2 fractured ribs. It was clear that although the guests were all asked to leave the property immediately, Sheldon Singletary continued to be a threat. It is undisputed that Mr. Singletary caused grave harm upon Mr. Shuler physically, and that he attempted a second time to assault and/or kill him, at which time Appellant felt forced to pull the trigger to protect his life and his property. The circumstances were such as would warrant a man of ordinary prudence, firmness and courage to pull the trigger of a gun in order to save himself and his property from serious harm, or losing his own life.

Mr. Shuler had the right to stand his ground and meet force with force, including deadly force, if he reasonably believed it necessary to prevent death or great bodily injury to himself or his property. The fact that the he was already suffering from physical injuries attained through his first physical encounter with Mr. Singletary moments before, he was immune from retreating from his property and had the right of self-defense.

Furthermore, pursuant to S.C. Code §16-11-450, a person who uses deadly force as permitted by the provisions of this article or another applicable provision of law, is found justified in using deadly force, and is immune from criminal prosecution and civil action for the use of deadly force, the court shall award reasonable attorneys' fees, court costs and compensation for loss of income and all expenses incurred by the Appellant in defense of a civil action brought by the Respondent.

In addition, the Order of the Court states that the Respondent failed to present a pre-trial evidentiary motion prior to the start of the trial. However, this only applies to the criminal trial as pre-trial motions are required. In the civil proceeding, evidentiary hearings are not standard procedure prior to trial. A party may at any time file a summary judgment motion, or during trial a directed verdict motion which can be raised at any point during the trial. Even so, Appellant raised a Motion for Directed Verdict prior to the start of the trial, after the Respondent rested their case, and again at the end of the trial, all of which were denied. (ROA 124-126; 185).

As this matter has not been ruled by courts in this state regarding whether a pre-trial immunity motion is required for a civil action, we must look outside of the state. In *Fair v. State*, the Supreme Court of Georgia held the trial court erred in refusing to rule on the defendants' immunity<sup>[3]</sup> prior to trial. *Fair v. State*, 284 Ga. 165, 166, 664 S.E.2d 227, 230 (Ga.2008). Particularly, the *Fair* court found that by the plain meaning of "immune from prosecution," the statute must be construed to bar criminal proceedings against persons who used force under the circumstances set forth in the statute, and that this determination must be made before the trial commences. *Id.*

The purpose of the pre-trial evidentiary hearing of the immunity provision was to shield a person from a full blown criminal trial. An immunity motion is a pre-trial motion to dismiss criminal charges, where it appears that the accused person (1) acted in self-defense; and (2) used only the degree force that was necessary to defend himself, herself, or another. Accordingly, the trial court found the only way this statutorily granted right could be meaningfully enforced was for the defendant to be able to raise immunity in a pre-trial motion.

Whether immunity under the Act should be determined prior to trial is an issue of first impression in this state. Further, the Act does not explicitly provide a procedure for determining

immunity. In deciding this matter, we find guidance from several other states that have addressed similar statutory immunity provisions.

Therefore, the Appellant urges this Court to overturn the ruling and declare that the Appellant was entitled to the self-defense immunity and entitled to an award of attorney fees and costs for defending himself in this action.

## **II. THE TRIAL JUDGE ERRED IN RULING THAT THE RESPONDENT PRESENTED SUFFICIENT EVIDENCE TO SUPPORT WRONGFUL DEATH**

South Carolina Code of Laws §15-51-10 defines a wrongful death as one that is caused by “wrongful act, neglect, or default” of another. The wrongful act, neglect, or default that causes the death must be the type of action for which a personal injury claim could be filed if the deceased had lived.

To establish a claim for wrongful death, the Respondent had the burden to prove that the Appellant was negligent, that Appellant owed a duty of care to the deceased person, that the Appellant breached the duty of care owed to the deceased, and that the Appellant’s negligence caused the deceased’s death. It is not sufficient that the Respondent merely show that the Appellant broke the law in some manner, or breached a duty in some other way. The Respondent must also show that Appellant’s particular action directly caused the wrongful death.

Again, in this case at hand, the Appellant, Mr. Shuler, was attacked in his home and suffered severe injuries to his face, including an occipital bone fracture and 2 fractured ribs. The decedent, Sheldon Singletary, continued to be a threat. At that time, Mr. Shuler immediately demanded all guests, including the decedent, to leave the property.

At the time that the guests were invited into his home, Mr. Shuler could not have predicted the harm that was inflicted upon him. Due to unwarranted acts of the decedent to intentionally

attack and inflict harm upon Mr. Shuler, his guests were no longer invitees. When the guests refused to leave his property, it was no longer Mr. Shuler's owed a duty of care to them. It is undisputed that Mr. Singletary caused grave harm upon Mr. Shuler physically, and that he attempted a second time to assault and/or kill him by lunging off the banister of the front porch at him, at which time Mr. Shuler felt forced to pull the trigger to protect his life and his property. The circumstances were such as would warrant a man of ordinary prudence, firmness and courage to pull the trigger of a gun in order to save himself and his property from serious harm, or losing his own life.

The Appellant reasonably felt unsafe and was unaware of whether the attacker was still present on the premises at the time. Therefore, he carried his weapon while at his home and demanded all guest to evacuate the premises. Mr. Shuler was justified in believing that his life was in imminent danger.

In addition, a person attacked on his own premises, without fault, has the right to claim immunity from the law of retreat. S.C. Code of Laws 16-11-440. In 2006, South Carolina's General Assembly enacted the Protection Act, SC Code §§ 16-11-410 to 450, which enacts common law doctrines recognizing a person's right to defend his person and his home. In applicable cases, this statute will grant immunity from prosecution to individuals for actions recognized as being committed in the act of self-defense.

Therefore, Respondent failed to establish proper standing to file a wrongful death and negligence lawsuit on behalf of the Estate of Sheldon M. Singletary.

### III. THE TRIAL JUDGE ERRED IN RULING THAT THE RESPONDENT PRESENTED SUFFICIENT EVIDENCE OF CONSCIOUS PAIN AND SUFFERING TO SUPPORT A SURVIVAL ACTION

Appellant asks this Court to reverse the decision of the Court Order which essentially declared that the Respondent presented sufficient evidence of conscious pain and suffering. The evidence presented in this case contains no proof that any such pain and suffering occurred and should be compensable.

The South Carolina survival statute provides that a cause of action for injuries to a person shall survive a person's death, with damages recoverable by the legal representative of the deceased. S.C. Code Ann. § 15-5-90. Under a survival action, the estate of the decedent is entitled to damages that occurred prior to death. Therefore, the test for a survival action in South Carolina is whether or not the decedent suffered any pain or suffering prior to death.

It must be a conscious pain and suffering. See generally *Baker v. Sanders*, 301 S.C. 170, 391 S.E.2d 229 (1990). See also, *Boan v. Blackwell*, 343 S.C. 498, 541 S.E.2d 242 (2001). The Plaintiff holds the burden to establish that Mr. Singletary consciously suffered. Speculation is not allowed. In South Carolina, a survival cause of action recognizes conscious pain and suffering as damages, but the law requires that it be proven and that it be **consciously** suffered. *Camp v. Petroleum Carrier Corp.*, 204 S.C. 133, 28 S.E.2d 683 (1944). In *Camp*, the evidence considered by the Supreme Court was that a man was heard groaning from within a car before he died of injuries sustained in the wreck. There was no evidence, however, that he was "conscious of pain and suffering", 204 S.C. at 138, 28 S.E.2d at 685. Thus, the claim was rejected. Unlike the ruling in *Vereen v. Liberty Life Ins Co*, 306 S.C. 423, 412 S.E.2d 425 (Ct. App. 1991), the Court determined that conscious pain and suffering was established after the shooting victim crawled away leaving an eight foot trail of blood and clutched leaves and pine needles to his chest wound.

Although testimony was given by Mr. Singletary's brother that the decedent squeezed his hand at one time, there was no other testimony given that Mr. Singletary had suffered any conscious pain. Stacy Singletary, the wife of the decedent, testified that Mr. Singletary appear conscious or responsive. When asked if he was able to speak, her response was "no". He was not able to respond to any commands. The medical evidence from MUSC detailed that from the moment the paramedics arrived, he remained unconscious. Upon arrival to the trauma center, the initial vital signs assessed that Mr. Singletary was unresponsive and calm. Throughout the treatment of Mr. Singletary at the hospital, including during each vital sign check and surgery, it was indicated by the hospital staff that Mr. Singletary remained unresponsive and calm. Following the second surgery, Mr. Singletary never regained consciousness.

Under South Carolina law, where there is no evidence of conscious pain and suffering in a survival action, the ruling must be in favor of the Defendant. Plaintiff has failed to prove that Mr. Singletary was subjected to conscious pain and suffering prior to his death. While it is unrefuted that Mr. Singletary had been shot, and that there was a brief moment after the shooting of less than one minute before decedent was unconscious, there is no proof that Mr. Singletary **consciously suffered** prior to his death. The single testimony that he squeezed his brother's hand, even though the decedent's wife did not experience the same response, does not establish conscious suffering.

Without proof of the damages sought, the Respondent is merely producing an academic discussion in her testimony which is hypothetical. Therefore, the conclusion of the court should decide accordingly that there is no proof of conscious pain and suffering. However, the medical evidence presented clearly show that the decedent had already lapsed into an unconscious and unresponsive state at the time the paramedics arrived and never recovered from this condition.

(ROA ROA 195, 203, 206, 210, 219, 225, 369, 371, 408, 409 and 411-415). There is no factual findings to support conscious pain and suffering.

Therefore, Appellant urges this Court to declare that the decedent did not suffer conscious pain and suffering and therefore, and that evidence fails to support a survival action.

**IV. THE TRIAL JUDGE ERRED IN AWARDING DAMAGES BASED ON DECEDENT'S UNREPORTED AND UNSUBSTANTIATED INCOME**

In South Carolina, the deceased individual's spouse, children, parents, or estate administrator can pursue wrongful death suits. Damages for wrongful death cases must be related directly to the deceased individual's injury and death. Economic damages may include the value of the financial contributions the decedent would have made if he survived. However, the calculations of the loss of income was unsupported by documentary evidence as the income that the Respondent testified to was for unreported income. There was no evidence given to support her claim, including but not limited to tax returns, profit and loss statements, deposit slips, bank statements, etc.

Decendant's spouse testified that Mr. Singletary earned approximately \$90,000 per year. However, the decedent never filed tax returns, the surviving spouse/personal representative did not file tax returns on the decedent's behalf, and no proof of income or deposits were presented as evidence during trial. Merely relying on testimony of actual loss of income without proof is insufficient and unsubstantiated.

In addition, Ms. Singletary testified that she did not rely upon the decedent's income to support her.

The testimony offered in trial must be true, but was without documentary evidence to authenticate her testimony regarding unreported income.

Speculative damages are damages claimed by a plaintiff for losses that may occur in the future, but are highly improbable. They can not be used as a basis for recovery in tort or contract cases. Recovery must be backed with evidence that justifies an inference that the damage award is a fair and reasonable form of compensation for the injury incurred. The existence or amount of damages cannot be left to conjecture, guess or speculation. Damages must be susceptible to ascertainment with reasonable degree of certainty. *Piggy Park Enterprises, Inc. v. Schofield*, 251 S.C. 385, 162 S.E.2d 705 (1968); *United Merchants & Mfrs., Inc. v. South Carolina Electric & Gas Co.*, 113 F. Supp. 257 (D.S.C. 1953). Without actual evidence of the income, past or present, Respondent should not recover for future damages that are not reasonably certain to have occurred.

The Respondent failed to corroborate her testimony of decedent's historical earnings through any type of documentary evidence including pay stubs, bank statements, sales invoices and other business records can be used to recreate the plaintiff's income level with reasonable accuracy.

Therefore, the Appellant urges this Court to overturn the lower court's ruling awarding damages based upon the decedent's unreported income.

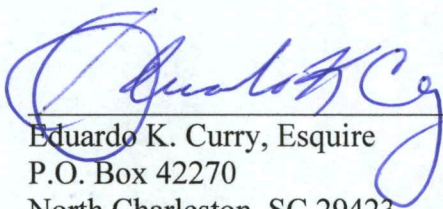
### CONCLUSION

Clearly, the record contains evidence that Appellant was protected under the self-defense immunity pursuant to S.C. Code of Laws §16-11-440. There was no evidence to support a wrongful death action. In addition, there was no evidence to support a survival action as there was no conscious pain and suffering by the decedent. Therefore, this Court is being asked to render an

opinion on the law of South Carolina on a factual basis. The decision of the lower court should be overturned.

Respectfully submitted,

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