The Supreme Court of South Carolina

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The State of South Carolina, through the Committee established under S.C. Code Ann. § 14-3-820 (2017), is soliciting proposals to publish the South Carolina Reports for a five (5) year term beginning July 1, 2017. The South Carolina Reports is the official publication of the opinions of the Supreme Court of South Carolina and the South Carolina Court of Appeals.

The South Carolina Reports is published on a periodic basis averaging four to six volumes per year with each volume containing approximately 650 pages. Additionally, Advance Sheets are published every four weeks. The State currently purchases approximately 160 copies of each volume. Proposals should specify a per book price for the copies purchased by the State. The quoted price should include the Advance Sheets and delivery to Columbia, South Carolina. The publisher may market additional volumes to attorneys and the general public.

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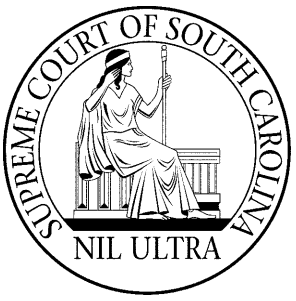
Proposals should be submitted in writing on or before May 25, 2017. Proposals and any questions should be directed to the Clerk of the Supreme Court of South Carolina at the above address. The Committee reserves the right to reject any and all proposals.



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OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 18
May 3, 2017
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Interest of Justin B., a Juvenile under the Age of Seventeen, Appellant.

Appellate Case No. 2015-000992

Appeal from Spartanburg County
Phillip K. Sinclair, Family Court Judge

Opinion No. 27716
Heard February 9, 2017 – Filed May 3, 2017

AFFIRMED

John Brandt Rucker, of The Rucker Law Firm, L.L.C., of Greenville, for Appellant.

Attorney General Alan Wilson, Assistant Attorney General William M. Blitch Jr., both of Columbia; and Solicitor Barry J. Barnette, of Spartanburg, for Respondent.

JUSTICE FEW: Justin B., a minor, was found delinquent for committing criminal sexual conduct with a minor in the first degree. The family court imposed the mandatory, statutory requirement that he register as a sex offender and wear an electronic monitor, both for life. Justin B. claims the mandatory imposition of lifetime registration and electronic monitoring on juveniles is unconstitutional. We affirm the family court.

I. Facts and Procedural History

In April 2013, Justin B. was charged with criminal sexual conduct with a minor in the first degree under subsection 16-3-655(A)(1) of the South Carolina Code (2015). Justin B. was fifteen years old, and his victim was five. The family court conducted a hearing in January 2015. The State called the detective from the Spartanburg County Sheriff's Office who investigated the sexual assault complaint. The detective testified she met with Justin B. to discuss the allegations against him, and that he admitted to sexually assaulting the victim. Specifically, Justin B. admitted to putting his penis in the victim's mouth, putting the victim's penis in his mouth, and attempting to put his penis in the victim's anus.

The victim and his mother also testified. The victim—seven years old at the time of the hearing—testified Justin B. sexually assaulted him on several occasions in the manner described by the detective. The victim's mother testified that a friend called to report that the victim was caught showing the friend's son a "game" that involved sexual acts. She asked the victim about it and he told her Justin B. showed him this "game." The victim's mother then contacted the police.

The court found Justin B. committed criminal sexual conduct with a minor in the first degree, and declared him delinquent. The court imposed the mandatory, statutory requirement that Justin B. register as a sex offender and wear an electronic monitor for the remainder of his life. Justin B. objected to mandatory lifetime registration for juveniles on the grounds it is unconstitutional. The court overruled the objection, stating this Court had already ruled on the issue. Justin B. appealed the family court's decision. The State then moved to certify the case for our review under Rule 204(b) of the South Carolina Appellate Court Rules, and we granted the motion.

II. The Sex Offender Registry

In 1994, the Legislature enacted the South Carolina Sex Offender Registry Act. S.C. Code Ann. §§ 23-3-400 to -555 (2007 & Supp. 2016). The Act created the sex offender registry, which is maintained "under the direction of the Chief of the State Law Enforcement Division (SLED)." § 23-3-410(A) (2007). The purpose of the registry is set forth in section 23-3-400 (Supp. 2016), which provides,

> The intent of this article is to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens.
>
> . . . .
>
> The sex offender registry will provide law enforcement with the tools needed in investigating criminal offenses. Statistics show that sex offenders often pose a high risk of re-offending. Additionally, law enforcement's efforts to protect communities, conduct investigations, and apprehend offenders who commit sex offenses are impaired by the lack of information about these convicted offenders who live within the law enforcement agency's jurisdiction.

Pursuant to subsection 23-3-410(A) (2007),

> SLED shall develop and operate the registry to: collect, analyze, and maintain information; make information available to every enforcement agency in this State and in other states; and establish a security system to ensure that only authorized persons may gain access to information gathered under this article.

Section 23-3-430 provides any person—regardless of age—who is convicted or declared delinquent for criminal sexual conduct with a minor in the first degree must register as a sex offender. § 23-3-430(A), (C) (2007 & Supp. 2016). Subsection 23-3-490(D)(1)(c) (Supp. 2016) further provides the public may view who is registered for criminal sexual conduct with a minor. Under section 23-3-460, Justin B. must register every ninety days for life. § 23-3-460(A), (B) (Supp. 2016).

Justin B. must also wear an electronic monitoring device. § 23-3-540(A) (Supp. 2016). The monitor utilizes a web-based computer system to actively monitor and record the sex offender's location at least once every minute twenty-four hours a day. § 23-3-540(P) (Supp. 2016). Under subsection 23-3-540(H), the sex offender

must wear the electronic monitor for as long as he is on the registry, subject to judicial review. § 23-3-540(H) (Supp. 2016).

III. Prior Decisions

As the family court indicated, we have already addressed many of the issues Justin B. raises in his challenge to the imposition of sex offender registration and electronic monitoring requirements. In *State v. Walls*, 348 S.C. 26, 558 S.E.2d 524 (2002), we considered whether the sex offender registry violated the *ex post facto* clauses of the state and federal constitutions. 348 S.C. at 29, 558 S.E.2d at 525. We stated, "For the *ex post facto* clause to be applicable, the statute or the provision in question must be criminal or penal in purpose and nature." 348 S.C. at 30, 558 S.E.2d at 526. We then held the sex offender registry did not violate the *ex post facto* clause because "it is clear the General Assembly did not intend to punish sex offenders, but instead intended to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes." 348 S.C. at 31, 558 S.E.2d at 526.

In *Hendrix v. Taylor*, 353 S.C. 542, 579 S.E.2d 320 (2003), we considered whether requiring a convicted Colorado sex offender to register in South Carolina violated the equal protection and due process clauses of the state and federal constitutions. 353 S.C. at 547, 579 S.E.2d at 322. As to the equal protection challenge, we found classifying an out-of-state sex offender as a sex offender in South Carolina "did not affect a fundamental right," and therefore we applied the "rational relationship" test. 353 S.C. at 550, 579 S.E.2d at 324. Under that test, a statutory classification will be constitutional if the "classification bears a reasonable relation to the legislative purpose," "the members of the class are treated alike under similar circumstances and conditions," and "the classification rests on some reasonable basis." *Id.* (quoting *Curtis v. State*, 345 S.C. 557, 574, 549 S.E.2d 591, 600 (2001)). We held requiring an out of state offender to register in South Carolina was "reasonably related to the legitimate state purpose of protecting the public and aiding law enforcement in limiting the risk that sex offenders pose to communities." *Id.* As to the due process challenge, we followed our holding in *Walls* that the sex offender registry is non-punitive and did not implicate a liberty interest, and therefore held there was no due process violation. 353 S.C. at 552, 579 S.E.2d at 325 (citing *Walls,* 348 S.C. at 31, 558 S.E.2d at 526).

Later that year, we decided *In re Ronnie A.*, 355 S.C. 407, 585 S.E.2d 311 (2003), in which an eleven-year-old challenged the mandatory lifetime registration requirement after he was found to have committed criminal sexual conduct with a minor. We followed *Hendrix*, and held "sex offender registration, regardless of the length of time, is non-punitive and therefore no liberty interest is implicated." 355 S.C. at 409, 585 S.E.2d at 312 (citing *Hendrix*, 353 S.C. at 552, 579 S.E.2d at 325). We reiterated our holding in *Walls* that the legislative purpose for the sex offender registry "is to protect the public from those offenders who may re-offend." *Id.* (citing *Walls,* 348 S.C. at 31, 558 S.E.2d at 526). We then concluded, "The registration of offenders, including juveniles who have proved themselves capable of certain sex offenses, is rationally related to achieving this legitimate objective. Appellant has offered no valid basis upon which to distinguish juvenile sex offenders for purposes of due process." 355 S.C. at 409-10, 585 S.E.2d at 312.

Finally, we considered an Eighth Amendment challenge to the section 23-3-540 requirement that juveniles submit to electronic monitoring for life in *In re Justin B.*,[1] 405 S.C. 391, 747 S.E.2d 774 (2013). We held "the General Assembly intended section 23-3-540 as a civil scheme for the protection of the public." 405 S.C. at 405, 747 S.E.2d at 781. We concluded, "Section 23-3-540's electronic monitoring scheme bears a clear and rational connection to a non-punitive purpose," and stated "the continuous monitoring of these offenders supports the General Assembly's valid purpose of aiding law enforcement in the protection of the community." 405 S.C. at 407, 747 S.E.2d at 782-83. We held, however, "sex offenders . . . are entitled to 'avail themselves of the section 23-3-540(H) judicial review process.'" 405 S.C. at 408, 747 S.E.2d at 783 (quoting *State v. Dykes*, 403 S.C. 499, 510, 744 S.E.2d 505, 511 (2013)).

IV. Analysis

Justin B. raises one issue on appeal: whether "the mandatory placement of juveniles convicted of certain [sex] crimes on the South Carolina sex offender registry is unconstitutional." Beginning with *Walls*, and continuing through *Hendrix*, *Ronnie A.*, *Dykes*, and *Justin B.*, we upheld the constitutionality of the mandatory lifetime sex offender registry requirement with electronic monitoring for adults and juveniles. However, Justin B. makes four arguments that his constitutional challenge should be decided differently. First, he argues our

[1] The appellants in the two cases are not related.

constitutional analysis will yield a different result under the reasoning of *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). Second, he argues the mandatory lifetime registration of juvenile sex offenders violates the doctrine of *parens patriae*. Third, he argues mandatory lifetime registration of juvenile sex offenders conflicts with the purpose of the South Carolina Children's Code. Finally, Justin B. argues his case is distinguishable from cases we have previously decided because his registration is viewable by the public. We address each argument in turn.

A. *Roper v. Simmons*

Justin B. argues we should reconsider our prior decisions in light of *Roper v. Simmons*. He argues our Legislature did not consider the differences between juveniles and adults when it created the sex offender registry, and uses the discussion of these differences in *Roper* to support his argument. He further argues these differences establish the "valid basis upon which to distinguish juvenile sex offenders for purposes of due process," which we held was not present in *Ronnie A. See* 355 S.C. at 409-10, 585 S.E.2d at 312 ("Appellant has offered no valid basis upon which to distinguish juvenile sex offenders for purposes of due process."). We disagree.

Roper was a death penalty case in which the Supreme Court of the United States considered whether it is permissible to execute a juvenile under the Eighth and Fourteenth Amendments to the United States Constitution. 543 U.S. at 555-56, 125 S. Ct. at 1187, 161 L. Ed. 2d at 13. In holding the execution of juveniles was unconstitutional, the *Roper* Court observed three general differences between juveniles and adults. First, juveniles exhibit "[a] lack of maturity and an underdeveloped sense of responsibility." 543 U.S. at 569, 125 S. Ct. at 1195, 161 L. Ed. 2d at 21. Second, "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." 543 U.S. at 569, 125 S. Ct. at 1195, 161 L. Ed. 2d at 22. Third, "the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed." 543 U.S. at 570, 125 S. Ct. at 1195, 161 L. Ed. 2d at 22. The Court examined the two social purposes served by the death penalty—retribution and deterrence—and determined these "penological justifications for the death penalty apply to [juveniles] with lesser force than to adults." 543 U.S. at 571-72, 125 S. Ct. at 1196, 161 L. Ed. 2d at 23. The *Roper* Court explained retribution is not properly served "if the law's most severe penalty is imposed on one whose

culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity." 543 U.S. at 571, 125 S. Ct. at 1196, 161 L. Ed. 2d at 23. As to deterrence, the *Roper* court found "the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence." *Id.*

We are not persuaded by the argument that *Roper* should change our analysis of the constitutionality of mandatory juvenile sex offender registration. Unlike the death penalty—the ultimate punishment—the sex offender registry is a "non-punitive act." *See supra*, discussion of *Walls*, *Hendrix*, *Ronnie A.*, *Dykes*, and *Justin B.* The purpose of the sex offender registry has nothing to do with retribution, and any deterrent effect of registration derives from the availability of information, not from punishment. Instead, the purpose of the registry and the electronic monitoring requirement is to protect the public and aid law enforcement. We defer to the Legislature's determination that these purposes are equally served by requiring registration of adults and juveniles. *Roper* does not change our view that requiring registration for life by juvenile sex offenders rationally relates to the Legislature's purpose of protecting the public and assisting law enforcement. *See Justin B.*, 405 S.C. at 407, 747 S.E.2d at 782 (decided eight years after *Roper*, and holding lifetime electronic monitoring for juveniles is not cruel and unusual punishment under the Eighth Amendment because it "bears a clear and rational connection to a non-punitive purpose").

B. *Parens Patriae* Doctrine

Justin B. also argues mandatory lifetime registration for juvenile offenders contradicts the State's duty to protect its children under the doctrine of *parens patriae*.[2] We disagree.

Originally, *parens patriae* referred to the king's power as "general trustee[] of the kingdom." *See Hays v. Harley*, 8 S.C.L. (1 Mill) 267, 268 (1817). Beginning in the early twentieth century, this Court began using the term *parens patriae* to describe the State's power and responsibility to protect and safeguard the welfare of children. *See State v. Cagle*, 111 S.C. 548, 552, 96 S.E. 291, 292 (1918) ("The

[2] *Parens patriae* means "the state in its capacity as provider of protection to those unable to care for themselves." *Parens Patriae*, BLACK'S LAW DICTIONARY (10th ed. 2014).

State is vitally interested in its youth, for in them is the hope of the future. It may therefore exercise large powers in providing for their protection and welfare," and, "We have no doubt of the general power of the state, as *parens patriae*, to make and enforce reasonable laws looking to the education, welfare, and protection of its youth."). That idea is now reflected in the legislative policy of the South Carolina Children's Code. *See In re Stephen W.*, 409 S.C. 73, 78-79, 761 S.E.2d 231, 233-34 (2014) (discussing the doctrine of *parens patriae* and the Children's Code).

We are not persuaded by Justin B.'s argument that mandatory lifetime registration and electronic monitoring requirements are inconsistent with the State's duty to protect its children under the doctrine of *parens patriae.* First, and most importantly, this is not a constitutional argument. The doctrine has become a legislative policy, and not a basis on which we will strike down statutes as unconstitutional. *See Cagle*, 111 S.C. at 552, 96 S.E. at 292 (noting the doctrine allows the State to "to make and enforce reasonable laws looking to the education, welfare, and protection of its youth"); *Bradey v. Children's Bureau*, 275 S.C. 622, 625-26, 274 S.E.2d 418, 420 (1981) (discussing the State's role as *parens patriae* in enacting adoption statutes).[3] The manner in which the State should implement the policy behind the doctrine of *parens patriae* is a question for the Legislature, not the courts.

Second, the *parens patriae* doctrine was well-established at the time of our previous decisions concerning juveniles and the sex offender registry, *Ronnie A.* (2003) and *Justin B.* (2013). There have been no developments or changes in the doctrine that counsel us to depart from our previous decisions.

Finally, Justin B. attempts to apply the doctrine of *parens patriae* too narrowly. The State's policy of protecting its children involves more than protecting juvenile sex offenders. The legislative purpose of sex offender registration is to protect our citizens, including children, who are often the victims of sexual assault crimes. Thus, the sex offender registry is *itself* an exercise of the State's broad powers to protect its children under the *parens patriae* doctrine.

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[3] *See also* Douglas R. Rendleman, *Parens Patriae: From Chancery to the Juvenile Court*, 23 S.C. L. Rev 205, 222-23 (1971) (discussing the history of the *parens patriae* doctrine and noting early courts "defined the Latin phrase as coexistent with the general legislative power to regulate").

C. Conflicts with the Children's Code

Next, Justin B. argues the mandatory lifetime registration provisions of the sex offender registry conflict with the purpose of the South Carolina Children's Code. For the same reasons we rejected his *parens patriae* argument—including that this is not a constitutional argument—we reject this argument. The Legislature intended that registration and electronic monitoring would apply to juveniles. This is evident by the plain language of Sex Offender Registry Act, which includes the phrases "[a]ny person, regardless of age" and "adjudicated delinquent" in section 23-3-430(A), and the phrase "adjudication of delinquency" in section 23-3-540(A). The fact the Legislature chose to treat juveniles the same as adults in requiring registration for committing sex offenses, but to treat them differently in the punishment of ordinary offenses, is the Legislature's prerogative—so long as the Legislature's action is rationally related to its purpose. It is not a basis on which we will declare a statute unconstitutional.

D. Distinguishable from *Ronnie A.*

Finally, Justin B. attempts to distinguish his case from *Ronnie A.* on the ground that his registry information will be available to the public, while Ronnie A.'s information was only available to law enforcement. *See* S.C. Code Ann. § 23-3-490(D)(3) (Supp. 2016) (providing registration of individuals under twelve years of age shall not be made available to the public). In *Ronnie A.*, we stated, "since the registry information will not be made available to the public because of appellant's age at the time of his adjudication, there is no undue harm to his reputation even if we were to recognize a liberty interest in a juvenile's reputation." 355 S.C. at 410, 585 S.E.2d at 312.

Justin B.'s age and the resulting public registration does not change our constitutional analysis. The Supreme Court held that an adult does not have a constitutionally protected liberty interest in his reputation. *See Paul v. Davis*, 424 U.S. 693, 712, 96 S. Ct. 1155, 1166, 47 L. Ed. 2d 405, 420 (1976) (stating an "interest in reputation . . . is neither 'liberty' nor 'property' guaranteed against state deprivation without due process of law"). A delinquent juvenile's reputation may be in greater need of protection than the reputation of an adult convicted of a felony sex crime, but the juvenile's interest in that reputation is still neither liberty nor property. The responsibility of balancing the need to protect a juvenile's reputation against the need to "to promote the state's fundamental right to provide

for the . . . safety of its citizens," § 23-3-400, falls to the Legislature, not the courts, S.C. CONST. art. I, § 8.

V. Conclusion

The requirement that adults and juveniles who commit criminal sexual conduct must register as a sex offender and wear an electronic monitor is not a punitive measure, and the requirement bears a rational relationship to the Legislature's purpose in the Sex Offender Registry Act to protect our citizens—including children—from repeat sex offenders. The requirement, therefore, is not unconstitutional. If the requirement that juvenile sex offenders must register and must wear an electronic monitor is in need of change, that decision is to be made by the Legislature—not the courts. The decision of the family court to follow the mandatory, statutory requirement to impose lifetime sex offender registration and electronic monitoring on Justin B. is **AFFIRMED**.

KITTREDGE, J., and Acting Justice Thomas Anthony Russo, Sr., concur.
BEATTY, C.J. and HEARN, J., concur in result only.

The Supreme Court of South Carolina

Re: Amendment to Rule 25, South Carolina Rules of Family Court

Appellate Case No. 2016-000439

ORDER

On January 30, 2017, this Court submitted an order amending Rule 25 of the South Carolina Rules of Family Court to the General Assembly pursuant to Article V, § 4A of the South Carolina Constitution. Since ninety days have passed since submission without rejection by the General Assembly, the amendment is effective immediately.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
May 1, 2017

The Supreme Court of South Carolina

Re: Amendment to Rule 25, South Carolina Rules of Family Court

Appellate Case No. 2016-000439

ORDER

Pursuant to Article V, § 4, of the South Carolina Constitution, Rule 25 of the South Carolina Rules of Family Court is hereby amended as provided in the attachment to this order. This amendment shall be submitted to the General Assembly as provided by Art. V, § 4A of the South Carolina Constitution.

s/Donald W. Beatty C.J.

s/John W. Kittredge J.

s/Kaye G. Hearn J.

s/John Cannon Few J.

Columbia, South Carolina
January 30, 2017

Rule 25, South Carolina Rules of Family Court, is amended to provide:

RULE 25
DISCOVERY

Recognizing the unique nature of the court's jurisdiction and the need for a speedy determination thereof, the prompt voluntary exchange of information and documents by parties prior to trial is encouraged. However, the parties shall be allowed to engage in formal depositions and discovery according to the South Carolina Rules of Civil Procedure.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

William Henry Chapman, Appellant,

v.

South Carolina Department of Social Services,
Respondent.

Appellate Case No. 2015-001548

Appeal From The Administrative Law Court
Carolyn C. Matthews, Administrative Law Judge

Opinion No. 5482
Heard February 13, 2017 – Filed May 3, 2017

REVERSED AND REMANDED

Dwight Christopher Moore, of Moore Law Firm, LLC, of Sumter, for Appellant.

William C. Smith, of Columbia, for Respondent.

SHORT, J.: William Henry Chapman filed a grievance against his employer, South Carolina Department of Social Services (DSS), alleging his termination was improper. On appeal, he argues the Administrative Law Court (ALC) erred in (1) finding he failed to exhaust his administrative remedies and (2) failing to find DSS was estopped from raising the issue even if he failed to exhaust his administrative remedies. We reverse and remand.

FACTS/PROCEDURAL HISTORY

DSS terminated Chapman from his employment with the Clarendon County Division of DSS by hand-delivered letter dated June 3, 2014. The letter stated, "You may contact the Office of Human Resource Management at (803) . . . regarding your possible grievance rights." By separate letter dated June 3, 2014, DSS notified Chapman, "Employees must initiate a grievance within 14 calendar days of the effective day of the grievable action." This letter indicated a copy of DSS Form 1449, a copy of the Employee Grievance and Appeal Form, and a copy of the DSS Human Resources Policy and Procedure Manual, Chapter 6 (the Manual) were included with the letter.

Chapman retained counsel, who responded by letter dated June 12, 2014. The letter stated that pursuant to section 600 of the DSS grievance procedure, Chapman "desire[d] to grieve the termination." Chapman believed this letter was sufficient to grieve his termination. Between June 12 and June 20, 2014, Chapman learned he needed to file a Form 1449. On June 20, 2014, Chapman's counsel submitted Form 1449 to DSS with an accompanying letter stating, "Please find enclosed the DSS Form 1449[,] which you requested. . . ." The Form 1449 included basic information such as name, job title, and address, and other information including the effective date of the grievable action, an explanation, and the relief sought. By letter dated June 25, 2014, DSS notified Chapman his grievance had been assigned to a grievance reviewer and informed him to send relevant documents by July 9, 2014.

In a Grievance Decision Form dated July 25, 2014, the Acting State Director of DSS denied Chapman relief, finding, "I uphold the Agency's decision to terminate Mr. Chapman. I have fully reviewed all submitted information prior to rendering this decision." Chapman appealed to the State Human Resources Director (the Director).

By Final Decision dated September 4, 2014, the Director denied Chapman's appeal. Relying on the fourteen-day time limit to initiate grievances pursuant to section 8-17-330 of the South Carolina Code, the Director found Chapman failed to file his grievance within the required time frame. The Director also cited section 603 of the Manual in finding the grievance was not timely filed because the Form 1449 was not filed within fourteen days. The order found because Chapman failed

to timely file his grievance, he failed to exhaust his administrative remedies, and the merits of the case were not reviewed. Chapman requested reconsideration, which was denied.

Chapman appealed to the ALC. By order dated June 16, 2015, the ALC affirmed the Director. The ALC rejected Chapman's argument that the June 12, 2014 letter from his counsel should be viewed as a notice of appeal for the purpose of satisfying the requirements of section 8-17-330 of the South Carolina Code. The ALC noted that although section 8-17-330 requires only that a grievance be initiated within fourteen calendar days, it also contains language mandating each agency establish a grievance procedure. Because Chapman had been provided with the Manual, the ALC found he knew or should have known the appropriate form to file. Finally, although the ALC found Chapman's argument persuasive because "the same information contained in the DSS Form 1449 was included in the notice of appeal from [Chapman's] counsel[,]" the ALC concluded it was bound by the Administrative Procedures Act (APA) to defer to the determination of the agency. The ALC did not rule on Chapman's estoppel argument. This appeal followed.

ISSUES

A. Did the ALC err in finding Chapman's grievance was not timely filed and he consequently failed to exhaust his administrative remedies?

B. Did the ALC err in failing to find DSS was estopped from raising the issue of Chapman's failure to exhaust his administrative remedies?

STANDARD OF REVIEW

"In an appeal from the decision of an administrative agency, the [APA] provides the appropriate standard of review." *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008). "As to factual issues, judicial review of administrative agency orders is limited to a determination [of] whether the order is supported by substantial evidence." *MRI at Belfair, LLC v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 1, 6, 664 S.E.2d 471, 474 (2008). When the issue on review involves a question of law, our standard of review "allows this court to reverse the ALC's decision if it is affected by an error of law." *Ackerman v. S.C. Dep't of Corr.*, 415 S.C. 412, 417, 782

S.E.2d 757, 760 (Ct. App. 2016). "Statutory interpretation is a question of law." *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 390 S.C. 418, 425, 702 S.E.2d 246, 250 (2010). Unless there is a compelling reason to the contrary, appellate courts "defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations." *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014).

LAW/ANALYSIS

Chapman argues the ALC erred in finding he did not timely file his grievance. We agree.

Section 8-17-330 of the South Carolina Code states in part, "Each agency shall establish an agency employee grievance procedure . . . . The procedure must provide that all grievances . . . must be initiated internally by such employee within fourteen calendar days . . . ." S.C. Code Ann. § 8-17-330 (Supp. 2016). At the time of this action, Section 19-718.04(B) of the State Human Resources Regulations provided, "A covered employee must initiate a grievance in writing internally with the agency within 14 calendar days of the effective date of the employment action." 1 S.C. Code Ann. Regs. 19-718.04(B) (2011).[1] The Grievance Procedure Model Policy provides a "grievance must be in writing and must be received . . . within 14 calendar days of the effective date of the action or 14 calendar days from when the employee is notified of the action, whichever is later." Only the Manual requires "[t]he grievance of an adverse employment action [to] be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action." Neither the statute nor the governing regulation requires an employee to initiate a grievance on a particular form; rather, only the Manual includes this requirement.

[1] The regulation was amended effective October 28, 2016, to read as follows: "A covered employee must initiate a grievance in writing internally with the agency within 14 calendar days of the effective date of the employment action *in accordance with the agency's grievance policy*." S.C. State Register Volume 40, Issue No. 10, eff. October 28, 2016 (emphasis added).

Chapman argues the substantive information required in the Form 1449 was provided in his counsel's letter, which was timely filed. The ALC also found Chapman's counsel's letter contained the same information required by Form 1449. We find the ALC's conclusion—that despite this factual finding timely notice was not provided—elevates form over substance. *See Gordon v. Busbee*, 367 S.C. 116, 120-21, 623 S.E.2d 857, 859-60 (Ct. App. 2005) (reversing the circuit court's dismissal of an action for failure to file a specific probate court form when the appellant's filing accomplished precisely what the probate court form required, and to affirm would be to elevate form over substance where the purpose of the form, to provide notice of a claim against the estate, was satisfied).

Chapman also argues the Director erred in relying on *Law v. South Carolina Department of Corrections*, 368 S.C. 424, 629 S.E.2d 642 (2006), and *Hyde v. South Carolina Department of Mental Health*, 314 S.C. 207, 442 S.E.2d 582 (1994), in finding he failed to timely file a grievance. In *Law*, several correctional officers filed numerous tort actions against the South Carolina Department of Corrections (the Department) arising from their arrests and subsequent dismissals from the Department. 368 S.C. at 432-33, 629 S.E.2d at 646-47. The trial court directed a verdict for the Department on the officers' wrongful termination claims, ruling the officers had failed to exhaust their administrative remedies. *Id.* at 438, 629 S.E.2d at 650. Our supreme court affirmed, finding two[2] of the officers' "[f]ailure to file an appeal with the State Human Resources Director within the statutory time period constitute[d] a waiver of the right to appeal." *Id.* at 440, 629 S.E.2d at 651.

In *Hyde*, our supreme court reversed the trial court's order striking the defendant's defense of failure to exhaust administrative remedies in Hyde's action under the South Carolina Whistleblower Statute. 314 S.C. at 208, 442 S.E.2d at 582. The court found "the trial judge abused his discretion in finding as a matter of law that Hyde did not have to exhaust administrative remedies simply because the Whistleblower Statute [did] not expressly require it." *Id.* at 209, 442 S.E.2d at 583.

[2] As to the other officers, the supreme court affirmed, finding because they resigned, they did not state a cause of action for wrongful discharge. *Law*, 368 S.C. at 439-40, 629 S.E.2d at 651.

We agree with Chapman that neither *Law* nor *Hyde* is instructive in this case. In those cases, the issue was whether the plaintiffs' failure to seek administrative remedies at all precluded their actions in circuit court. Here, Chapman sought his administrative remedies, and the issue is whether his filing was sufficient for administrative consideration. We find Chapman complied with the applicable regulations at the time of his grievance by initiating his grievance in his attorney's letter within the required fourteen-calendar-day limit.

In addition, Chapman relies on and we find guidance in *Paschal v. Price*, 380 S.C. 419, 670 S.E.2d 374 (Ct. App. 2008), *aff'd*, 392 S.C. 128, 708 S.E.2d 771 (2011), *overruled on other grounds by Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 676 S.E.2d 700 (2009). In *Paschal*, although an employee's notice of appeal from an order of the workers' compensation commission was timely received by the circuit court, the clerk of court returned it because it lacked the civil cover sheet required by a March 19, 2004 order of the South Carolina Supreme Court requiring the use of Civil Cover Sheet, SCCA/234 (3/2004), as an attachment to all initial pleadings in the Court of Common Pleas. *Id.* at 439, 670 S.E.2d at 385. Although the employee's refiling with the required cover sheet was not timely, the circuit court denied the employer's motion to dismiss the appeal. *Id.* at 429, 670 S.E.2d at 380. This court affirmed, stating "[s]ection 1-23-380 . . . sets forth the filing requirements for appeals of administrative decisions under the [APA] . . . . Nowhere in that section or in section 42-17-60, which addresses procedures for appealing a workers' compensation award, is there any mention that a cover sheet is necessary when filing an appeal." *Id.* at 440, 670 S.E.2d at 385.

"Although a regulation has the force of law, it must fall when it alters or adds to a statute." *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 390 S.C. 418, 429, 702 S.E.2d 246, 252 (2010); *see Goodman v. City of Columbia*, 318 S.C. 488, 490, 458 S.E.2d 531, 532 (1995) (finding a regulation that required a particular form for review of a hearing commissioner's decision added to the statute, which only required the filing of notice of intent to appeal within fourteen days).

We recognize a party must exhaust administrative remedies before the courts will act. *Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010). We are also cognizant of the rule stating "[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration

and will not be overruled absent compelling reasons." *Dunton v. S.C. Bd. of Exam'rs in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987). However, rather than reviewing an agency's interpretation of a regulation in this case, we are reviewing whether an agency may add requirements to a statute. We find it may not. *See Trowell v. S.C. Dep't of Pub. Safety*, 384 S.C. 232, 236-37, 681 S.E.2d 893, 896 (Ct. App. 2009) (acknowledging a court must defer to an administrative agency's interpretation of its employee grievance procedure, but concluding the agency's interpretation of its service of process rule regarding service by facsimile was overly harsh).

Because the ALC affirmance elevated form over substance and added a requirement to the governing statute, we reverse and remand.[3]

CONCLUSION

Based on the foregoing, we reverse and remand to the ALC for proceedings consistent with this opinion.

REVERSED and REMANDED.

WILLIAMS and KONDUROS, JJ., concur.

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[3] Based on our disposition of this issue, we decline to address Chapman's argument the ALC erred in failing to find DSS was estopped from raising the issue of his failure to exhaust his administrative remedies. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when a decision on a prior issue is dispositive).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Appellant,

v.

Shannon Scott, Respondent.

Appellate Case No. 2013-002124

Appeal From Richland County
Maité Murphy, Circuit Court Judge

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

AFFIRMED AS MODIFIED

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

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

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

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

FACTS/PROCEDURAL BACKGROUND

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

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

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

When the group arrived at Scott's house, they pulled the Grand Marquis into the backyard and, at Fuller and Scott's instruction, entered the house through the back door and into the kitchen. Testimony as to these and subsequent events is conflicting, but the record demonstrates the SUV drove by Scott's house, turned around, and drove back by the house with its lights off. The Honda was also in close proximity to Scott's house. Scott entered his roommate's bedroom, retrieved

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

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

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

his roommate's gun, and shot from the front stoop of the house. One of these shots struck and killed Victim. Police came to the house in response to a 911 call Fuller made during the incident. Scott described the SUV and indicated it had shot at the house. He did not indicate he had fired in response. Scott later turned himself in to police and was indicted for murder. He moved for immunity under section 16-11-440(C) of the South Carolina Code (2015).

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

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

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

In addition to Teesha, Kiwiana C. and Kyasia C. were in the SUV that night. Kiwiana admitted following the Grand Marquis and firing a gun. However, she told police she heard a shot while the SUV was parked in the Allstate parking lot and fired her gun into the air in response.[4] Teesha told police that as they drove into the neighborhood and past Scott's house, she saw a black female along with a heavy set male in the yard. She further stated she heard a gunshot while parked at the Allstate building and then heard a second shot. Teesha stated Kiwiana then fired her gun into the air once. Kyasia denied to police anyone in the SUV fired first and indicated she heard two shots before Kiwiana fired her gun into the air once. The girls admitted they thought about performing a drive-by shooting. Kiwiana even swapped places with the fourth girl[5] in the SUV for this purpose, but they changed their minds. Kyasia told police that as they left the neighborhood, they passed a burgundy Honda with its passenger door open.

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

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

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

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

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

. . . .

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

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

This appeal followed.

STANDARD OF REVIEW

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

LAW/ANALYSIS

The State contends the circuit court erred in finding Scott was entitled to immunity under section 16-11-440(C) of the South Carolina Code (2015) because the statute requires the defendant to be attacked prior to using deadly force and no evidence

supports a finding Scott was attacked by Victim. Under the unique circumstances of this case, we disagree.[6]

Section 16-11-440(C) states:

> A person who is not engaged in an unlawful activity and *who is attacked* in another place where he has a right to be, including, but not limited to, his place of business, *has no duty to retreat* and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in [s]ection 16-1-60.

(emphasis added).

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

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

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

on Scott's perception of danger from the SUV and/or Honda *driving by* as an attack sufficient for granting immunity under subsection (C).[8]
However, the circuit court made numerous factual findings based on its view of the evidence and credibility determination of the witnesses—including the occupants of the SUV shot first. Although the testimony and evidence regarding the sequence of events is conflicting and muddled, this court generally defers to the credibility findings of the circuit court. *See USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 652-53, 661 S.E.2d 791, 796 (2008) ("[N]oting the circuit court judge, who saw and heard the witnesses, is in a better position to evaluate their credibility and assign comparative weight to their testimony."). We conclude the circuit court's determination someone in the SUV shot first did not rise to the level of an abuse of discretion based on the applicable preponderance of the evidence standard. Therefore, the events of that night are within the purview of subsection (C) as Scott's conduct was in response to an attack, not just the vehicles driving by the home.[9]

The State argues *Victim* did not attack Scott and therefore his shooting Victim could not fall within the confines of subsection (C). However, the State conceded at oral argument that if Scott shot an occupant of the SUV other than the shooter, that conduct would be justified. In essence, the State contends Scott intentionally

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

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

and specifically aimed at the Honda and fired. Constrained by our standard of review, we cannot agree.

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

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

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

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

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

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

CONCLUSION

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

AFFIRMED AS MODIFIED.

LOCKEMY, C.J., concurs.

MCDONALD, J., concurring in a separate opinion. I concur in the result reached by the majority. I agree that Scott responded to an attack as opposed to a perceived threat; however, I respectfully write separately because I do not agree that the circuit court's order conflates the questions of self-defense and immunity under the Protection of Persons and Property Act (the Act).[10] Instead, the circuit

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

court's self-defense analysis was a necessary predicate to the finding of immunity under section 16–11–440(C) of the South Carolina Code (2015). The circuit court's examination of Scott's reasonable belief that he and the girls were being attacked with deadly force was necessary to this self-defense analysis. Thus, I would not vacate the portion of the circuit court's ruling addressing the threat posed by the "drive-by" vehicles and Scott's perception of this threat.

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

> Under the Castle Doctrine, "[o]ne attacked, without fault on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense." *State v. Gordon,* 128 S.C. 422, 425, 122 S.E. 501, 502 (1924)) (citation omitted). The Legislature explicitly codified the Castle Doctrine when it promulgated the Act and extended its protection, when applicable, to include an occupied vehicle and a person's place of business. *See* S.C. Code Ann. § 16–11–420(A) (2015) ("It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business.").

416 S.C. 283, 291, 786 S.E.2d 132, 136 (2016) (alteration in original). The court enunciated its belief that "a decision that prohibits a person, who is attacked in his or her residence, from seeking immunity under the Act would not only be in direct contravention of the provisions of the Act but would undoubtedly infringe on the person's Second Amendment right to bear arms,[11] which was specifically

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and is immune from criminal prosecution and civil action for the use of deadly force").

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

identified in section 16–11–420(C) as a foundational basis for the Act." *Id.* at 297–98, 786 S.E.2d at 140; *see District of Columbia v. Heller,* 554 U.S. 570, 628, (2008) ("[T]he inherent right of self-defense has been central to the Second Amendment right.").

Because the supreme court found subsection (C) applicable in *Jones*, the question became whether there was "evidence to support the judge's ruling that Jones acted in self-defense." *Id.* at 300–01, 786 S.E.2d at 141. "Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. Therefore, the defendant must demonstrate the elements of self-defense, save the duty to retreat, by a preponderance of the evidence." *Id.* at 301, 786 S.E.2d at 141 (quoting *State v. Curry,* 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013));[12] *see also State v. Douglas*, 411 S.C. 307, 318, 768 S.E.2d 232, 238 (Ct. App. 2014) (recognizing that "immunity under the Act 'is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence,' save the duty to retreat." (quoting *Curry*, 406 S.C. at 371–72, 752 S.E.2d at 266–67)); *Curry*, 406 S.C. at 372, 752 S.E.2d at 267 ("While the Act may be considered 'offensive' in the sense that the immunity operates as a bar to prosecution, such immunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence.").

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

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militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed").

[12] Where section 16–11–440(A) applies, "there is no requirement that the defendant prove he believed he was in imminent danger of losing his life or sustaining serious bodily injury given the presumption of reasonable fear of imminent peril of death or great bodily injury is included in subsection (A)." *Jones*, 416 S.C. at 301, 786 S.E.2d at 141. Here, as in *Jones*, the consideration is whether subsection (C) applies.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

James Winston Davis, Jr., Respondent,

v.

South Carolina Department of Motor Vehicles, Appellant.

Appellate Case No. 2015-001622

Appeal From The Administrative Law Court
S. Phillip Lenski, Administrative Law Judge

Opinion No. 5484
Heard February 13, 2017– Filed May 3, 2017

AFFIRMED

Frank L. Valenta, Jr., Philip S. Porter, and Brandy Anne Duncan, all of the South Carolina Department of Motor Vehicles, of Blythewood, for Appellant.

H. Wayne Floyd, of Wayne Floyd Law Office, and Frank Anthony Barton, both of West Columbia, for Respondent.

WILLIAMS, J.: The South Carolina Department of Motor Vehicles (DMV) appeals the administrative law court's (ALC) final order reinstating James Davis's driver's license. The DMV argues the ALC erred in finding the suspension of

Davis's license violated the standards of fundamental fairness required by due process. We affirm.

FACTS/PROCEDURAL HISTORY

Davis was convicted for driving under suspension (DUS) on February 19, 2004. On February 14, 2005, he surrendered his driver's license to the DMV. Davis was again convicted for DUS on May 5, 2005. Thereafter, on June 28, 2005, the DMV notified Davis it would classify him as a habitual offender and suspend his license if he was convicted of another major violation under the habitual offender statute[1] within a three-year period. On October 20, 2006, Davis was convicted in Lexington County of his third DUS charge within a three-year period for a ticket he received on May 17, 2005.

On April 26, 2010, the DMV reinstated Davis's driver's license after he paid all fees and met all requirements necessary to reinstate his license. At that time, the DMV had neither received notice of Davis's third DUS conviction nor classified Davis as a habitual offender. However, on September 22, 2011, the DMV received a copy of Davis's third DUS ticket from the Lexington County Sheriff's Department. Because the DMV only received a copy of one side of the ticket and was unable to determine the type of conviction Davis received, the DMV requested additional information from the sheriff's department on April 20, 2012. On October 25, 2012, the DMV received the requested information from the sheriff's department and subsequently posted it to his driving record on December 5, 2012. After posting the third DUS conviction to his driving record, the DMV notified Davis he was declared a habitual offender for accumulating three DUS convictions within a three-year period. Consequently, the DMV indicated it would suspend Davis's license for five years.

On March 19, 2013, Davis appeared before an Office of Motor Vehicle Hearings (OMVH) hearing officer for review of the DMV's decision to suspend his license. At the hearing, Davis testified he did not have a driver's license from 2005 to 2010. Davis explained he paid all reinstatement fees and complied with DMV requirements for reinstatement prior to receiving his driver's license in 2010.

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[1] S.C. Code Ann. § 56-1-1020 (Supp. 2016) (stating a person convicted of DUS three or more times within a three-year period is a habitual offender). Upon classifying a person as a habitual offender, the DMV must suspend his driver's license for five years. S.C. Code Ann. § 56-1-1090 (Supp. 2016).

Davis noted he did not receive any tickets for driving offenses between his third DUS ticket in 2005 and when the DMV issued him a driver's license in 2010. Davis contended if the DMV had notified him of his habitual offender status in 2006, he could have served at least two years of the required suspension during the time in which he did not have a driver's license. Davis indicated he sought a rescission of his habitual offender status and reinstatement of his driving privileges.

On February 13, 2015, the hearing officer filed a final order and decision sustaining the suspension of Davis's license. The hearing officer asserted the circumstances of the delay in suspending Davis's license were similar to *State v. Chavis*,[2] in which our supreme court held a one-year delay in suspending a driver's license did not violate due process when the DMV was not at fault for the delay and no evidence of potential prejudice existed. *See* 261 S.C. at 411, 200 S.E.2d at 391. Further, the hearing officer found Davis did not attempt to take any action to serve his license suspension earlier.

Davis appealed the hearing officer's final order and decision to the ALC. On July 16, 2015, the ALC issued a final order and reversed the hearing officer's order sustaining the suspension of Davis's license. The ALC found Davis would suffer prejudice if the DMV suspended his license because he paid all reinstatement fees and completed all requirements to regain his license in 2010, prior to receiving notice his license would be suspended. The ALC noted the delay between Davis's third DUS conviction and the day his license would be suspended exceeded the total time his license would have been suspended if it were timely imposed. The ALC explained upholding the suspension of Davis's license "would place a non-existent affirmative burden upon [Davis] and any other licensee to shepherd through the suspension of his driver's license." Accordingly, the ALC found the hearing officer's conclusions of law were affected by an error of law, were clearly erroneous, and violated Davis's constitutional rights. This appeal followed.

STANDARD OF REVIEW

The OMVH has exclusive jurisdiction over contested cases involving habitual offenders. S.C. Code Ann. § 56-1-1030(B) (Supp. 2016). Decisions by the

[2] 261 S.C. 408, 200 S.E.2d 390 (1973).

OMVH hearing officer must be appealed to the ALC. S.C. Code Ann. § 1-23-660 (Supp. 2016). The Administrative Procedures Act (APA)[3] governs appellate review of ALC decisions. S.C. Code Ann. § 1-23-610(A) (Supp. 2016). The APA provides:

> The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of the statutory authority of the agency;
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> (c) made upon unlawful procedure;
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> (d) affected by other error of law;
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> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B) (Supp. 2016). Accordingly, the ALC's decision "should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008). "Substantial evidence, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the [ALC] and is more than a mere scintilla of evidence." *Id.* at 605, 670 S.E.2d at 676.

ISSUES ON APPEAL

I. Did Davis's three convictions for DUS support the DMV's declaration that Davis was a habitual offender?

[3] S.C. Code Ann. §§ 1-23-310 through -400 (2005 & Supp. 2016).

II. Did the DMV's delay in declaring Davis a habitual offender violate his due process rights?

LAW/ANALYSIS

I. Habitual Offender

The DMV first argues the hearing officer properly found Davis was a habitual offender.

"Only a party aggrieved by an order, judgment, sentence[,] or decision may appeal." Rule 201(b), SCACR. If a party prevails on an issue below, the party is not an aggrieved party with respect to those rulings, and thus, the party may not appeal those issues. *See Ritter & Assocs., Inc. v. Buchanan Volkswagen, Inc.*, 405 S.C. 643, 655, 748 S.E.2d 801, 807 (Ct. App. 2013).

We decline to address this issue because the ALC ruled in the DMV's favor on this issue. The ALC explained "the record contain[ed] unrefuted evidence that within a three year period, [Davis] was convicted of three distinct offenses . . . pursuant to [the habitual offender statute]" and found the DMV met its burden of proving Davis was a habitual offender. Therefore, we decline to address this issue because the DMV is not an aggrieved party entitled to appeal it.

II. Denial of Fundamental Fairness

The DMV next argues Davis failed to show he was deprived of his due process rights or suffered prejudice from the delay in suspending his license. We disagree.

"A person's interest in his driver's license is property that a state may not take away without satisfying the requirements of due process. Due process is violated when a party is denied fundamental fairness." *Hipp v. S.C. Dep't of Motor Vehicles*, 381 S.C. 323, 325, 673 S.E.2d 416, 417 (2009) (citation omitted).

Our courts have addressed the delay between a conviction and a suspension and whether the lapse in notification violates an individual's due process rights on three prior occasions. In *Chavis*, our supreme court held a suspension did not violate due process when the State was not at fault for a one-year delay between Chavis's conviction for driving under the influence (DUI) and the suspension of his driver's license by the highway department immediately upon learning of the conviction. 261 S.C. at 409–11, 200 S.E.2d at 390–91. Specifically, the court noted the record

contained no inference or indication that Chavis suffered any prejudice as a result of the one-year delay. *Id.* at 411, 200 S.E.2d at 391. Additionally, the court found Chavis did not seek to have his suspension "promptly ordered so that he could get [the suspensions] behind him[,]" but rather, "he simply kept quiet and continued to drive in the hope that his license suspensions would somehow . . . get overlooked and never be imposed." *Id.* Accordingly, the court held a driver is not entitled to relief from the imposition of a suspension when an unexplained delay on the part of reporting officials is unaccompanied by a showing of real prejudice to the driver. *Id.* at 412, 200 S.E.2d at 392. The supreme court, however, acknowledged "there might be circumstances under which it could be successfully argued or soundly held that the State had no right to suspend a driver's license after a long delay." *Id.* at 411, 200 S.E.2d at 391.

Subsequently, in *Hipp*, our supreme court held a twelve-year delay between a DUI conviction and the imposition of a suspension, when neither the driver nor the DMV were at fault for the delay, fell into one of the circumstances envisioned in *Chavis*. *Hipp*, 381 S.C. at 326, 673 S.E.2d at 417. Hipp was convicted of DUI in Georgia in 1993, but the South Carolina DMV did not receive notice of the Georgia conviction until 2005, and upon receipt, notified Hipp his driver's license would be suspended. *Id.* at 324, 673 S.E.2d at 416. The court noted neither the South Carolina DMV nor Hipp was at fault for the delay, but instead, recognized that the State of Georgia, alone, was responsible. *Id.* at 325 n.2, 673 S.E.2d at 417 n.2. Nevertheless, the court found the imposition of a suspension after a more than twelve-year delay, when Hipp was without fault for the delay, was "manifestly a denial of fundamental fairness." *Id.* at 325, 673 S.E.2d at 417.

This court recently addressed the DMV's suspension of a driver's license after a long delay in *Wilson v. South Carolina Deptartment of Motor Vehicles*, 419 S.C. 203, 796 S.E.2d 541 (Ct. App. 2017). In that case, Wilson pleaded guilty to driving under the influence on June 11, 2009, and contacted the DMV to obtain a restricted driver's license in August 2009. *Id.* at 205, 796 S.E.2d at 541–42. However, the DMV informed her no DUI conviction appeared on her driving record. *Id.* at 205, 796 S.E.2d at 542. The DMV received her DUI ticket on May 20, 2014, and notified Wilson on May 27, 2014, that her license would be suspended. *Id.* at 205–06, 796 S.E.2d at 542. In its analysis, this court explained the case fell under the circumstances "envisioned by our supreme court in *Chavis*" when the State did not have the right to suspend a driver's license after a lengthy delay. *Id.* at 208, 796 S.E.2d at 543 (citing *Chavis*, 261 S.C. at 411, 200 S.E.2d at

391). As in *Chavis*, Wilson argued she would have served her license suspension earlier had she known about the impending suspension. *Id.* at 58. However, the court explained the case differed from *Chavis* because Wilson demonstrated a "high likelihood of injury or potential prejudice" if the DMV suspended her license, including potential loss of employment and the inability to pay two mortgages. *Id.* Accordingly, the court held suspending a driver's license after a five-year delay "denie[d] . . . fundamental fairness in violation of due process when sufficient evidence of prejudice exist[ed] in the record" and neither the DMV nor the driver were at fault for the delay. *Id.* at 209, 796 S.E.2d at 544.

In the instant case, the DMV contends no unreasonable delay occurred because it notified Davis of the suspension within twenty-seven working days of receiving notice of his third DUS conviction. Further, the DMV asserts Davis was not prejudiced by the delay because Davis's license was suspended for one and a half years for his DUS conviction and he voluntarily chose not to reinstate his license until 2010.

Upon our review, substantial evidence exists in the record to support the ALC's finding the six-year delay between Davis's third DUS conviction and the suspension of his license was fundamentally unfair. Although it is undisputed Davis was properly classified as a habitual offender for receiving three DUS convictions within a three-year period, the circumstances of this case fall under those envisioned in *Chavis* in which the DMV's right to suspend a driver's license is precluded because of a lengthy delay. *See* 261 S.C. at 411, 200 S.E.2d at 391 ("[T]here might be circumstances under which it could be successfully argued or soundly held that the State had no right to suspend a driver's license after a long delay[. . . .]"). As in *Wilson*, evidence exists to support a finding Davis would suffer prejudice if his license were suspended, and neither he nor the DMV were at fault for the delay. *See Wilson*, 419 S.C. at 207–08, 796 S.E.2d at 543.

First, Davis would suffer prejudice and injury if his license was now suspended because when he received notice of the suspension, he had already paid reinstatement fees, met the DMV's requirements for reinstatement, and his license had been reinstated for twenty months. Furthermore, the six-year delay exceeds the total time that Davis's suspension would have run if it had been timely imposed. *See* S.C. Code Ann. § 56-1-1090 (Supp. 2016) (providing the DMV must suspend a habitual offender's driver's license for five years).

Second, neither the DMV nor Davis was at fault for the delay. Although the DMV contends fundamental fairness would not be denied by suspending Davis's license because it was not at fault for the delay, South Carolina appellate courts have enjoined the DMV from suspending a driver's license after a lengthy delay even though the DMV was not responsible for the delay. *See Wilson*, 419 S.C. at 207–08, 796 S.E.2d at 543 (holding a five-year delay in suspending a driver's license violated due process when sufficient evidence of potential prejudice existed and neither party was at fault for the delay); *Hipp*, 381 S.C. at 325, 673 S.E.2d at 417 (holding the suspension of a license after a twelve-year delay when neither the driver nor the DMV was responsible for the delay was "manifestly a denial of fundamental fairness").

Last, to the extent the DMV argues Davis acted with unclean hands, we find the argument is not preserved for appellate review because the DMV failed to raise it to the ALC. *See Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) ("It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [lower] court to be preserved."); *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002) ("[I]ssues not raised to and ruled on by the AL[C] are not preserved for appellate consideration.").

CONCLUSION

In conclusion, substantial evidence supports the ALC's finding the six-year delay between Davis's third DUS conviction and his license suspension violated his due process rights. Accordingly, the ALC's order reinstating Davis's driver's license is

AFFIRMED.

SHORT and KONDUROS, JJ., concur.