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**Apr 05 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY

General Sessions Court

Letitia Verdin, Circuit Court Judge

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Appellate Case No. 2020-001122

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State of South Carolina.....Respondent,

vs.

Marquez D. Glenn.....Appellant.

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**MOTION FOR REHEARING  
PURSUANT TO RULES 221, SCACR**

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Appellant hereby moves the Court for rehearing pursuant to Rules 221, SCACR. This Motion is being made in good faith and for good cause as the Court has overlooked several of Appellant’s main arguments, the resolution of which in the favor of Appellant would result in a decision in favor of Appellant. Specifically, and despite briefing and extensive argumentation, the Court’s opinion denying Appellant immunity because Elfonso “did not did not physically attack Glenn and instead was merely a bystander to the altercation between Glenn and the victim's uncle” is directly and irreconcilably in opposition to the South Carolina Supreme Court’s Opinion in State v. Scott, 424 S.C. 463, 469, 819 S.E.2d 116, 118 (2018) in which the Supreme

Court affirmed a grant of immunity under the PPPA to a defendant, who in the exercise of self-defense shot an unassociated third party in a separate car from the individuals threatening the defendant. In Scott the Supreme Court expressly rejected the State's argument that "even if [the defendant] was entitled to use deadly force against [an aggressor] under the law of self-defense, he was not entitled to use deadly force against [an 'innocent bystander']." Where, as in the Scott case, an "innocent bystander" appears to be acting with another party who is an aggressor, a party engaging in self-defense "would be entitled to use deadly force against both [parties]." Scott, 424 S.C. at 471, 819 S.E.2d 120; id. at 472, 819 S.E.2d at 120 ("At oral argument, Justice James asked the State, 'Does [Scott] have to interview, I'm not being facetious, does he have to interview the perpetrators and ask 'which one of you fired that shot so I can fire my shot accordingly?'" The answer is, 'No,' because, 'A person has the right to act on appearances, even if the person's belief is ultimately mistaken.'"). Moreover, as the Supreme Court noted in Scott with regard to the dissenting opinion, this Court's opinion "confuses what we know from reading the record of the immunity hearing with what [the defendant] knew in the heat of the moment." Id. at 472, 819 S.E.2d at 120.

Beyond the Court's opinion being completely contrary to and inconsistent with the Supreme Court's holdings in Scott, this Court's opinion abuses its discretion as a matter of law by denying Appellant immunity based on a post hoc rationalization supported by events occurring well outside the moments immediately following Appellant's act of self-defense. State v. Oates, 421 S.C. 1, 28 n.12, 803 S.E.2d 911, 926 n.12 (Ct. App. 2017) ("The language and behavior of the defendant at the time of the shooting, or immediately afterwards, showing his attitude of aggression or of regret, clearly tended to enlighten the jury on the issue as to whether

the shooting was done with malice, or in heat and passion, or in self-defense.”) (quoting State v. Martin, 94 S.C. 92, 94, 77 S.E. 721, 721 (1913)) (emphasis added). Based on the evidence examined by the Court in Oates, it is clear that “immediately after” is a brief and narrow window that does not extend beyond the heat of the moment. Id. at 28-29, 803 S.E.2d at 926 ; see also State v. McDaniel, 68 S.C. 304, 310, 47 S.E. 384, 386 (1904) (holding that declarations in a self-defense case that “were made probably within two or three minutes after the shooting, and within two or three hundred feet of the place of the shooting” were not admissible where the “circumstances tended to indicate a mind which was not then being actively influenced by the transaction to make explanation thereof, but rather a mind adverting to means of future safety”). Accordingly, and regardless of the fact that the Court’s statement that law enforcement was on the scene within moments is not supported by the Record given that Appellant met law enforcement at the entrance to Spring Grove after retreating from the zone of danger, both Appellant’s interaction with law enforcement and Appellant later disposing of the gun fall outside the moments “immediately after” the act of self-defense such that they are too remote to be probative of whether Appellant was not in imminent danger or did not reasonably believe he was in imminent danger. To deny Appellant immunity based on Appellant’s interactions and actions occurring outside the moments immediately after his act of self-defense is an error of law.

Finally, this Court’s opinion and focus on Appellant’s interaction with law enforcement completely ignores both Appellant’s right to remain silent as well as well founded concerns raised by Justice Beatty in his dissent in State v. Spears, 429 S.C. 422, 839 S.E.2d 450 (2020) in which he noted that:

Scholars have examined ad nauseam the dynamics between marginalized groups — particularly African-Americans—and law enforcement.<sup>1</sup> African-Americans generally experience police misconduct and brutality at higher levels than other demographics.<sup>2</sup> Consequently, it is no surprise that scholars have also found African-Americans often perceive their interactions with law enforcement differently than other demographics. "For many members of minority communities, however, the sight of an officer in uniform evokes a sense of fear and trepidation, rather than security." Robert V. Ward, *Consenting to a Search and Seizure in Poor and Minority Neighborhoods: No Place for a "Reasonable Person"*, 36 *How. L.J.* 239, 247 (1993). Moreover, "[g]iven the mistrust by certain racial, ethnic, and socioeconomic groups, an individual who has observed or experienced police brutality and disrespect will react differently to inquiries from law enforcement officers ...."). *Id.* at 253.

Unfortunately, as in Appellant's case, "fail[ure] to meaningfully consider the ways in which a person's race can influence their experience with law enforcement" can mean that "minority groups are not always afforded the full protections" of their fundamental constitutional right to self-defense under the Second Amendment. *Id.* 429 S.C. at 449, 839 S.E.2d at 464. To deny Appellant immunity simply because he may not have acted and reacted to law enforcement in the

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<sup>1</sup> See, e.g., Charles R. Epp et al., *Beyond Profiling: The Institutional Sources of Racial Disparities in Policing*, 77 *Pub. Admin. Rev.* 168 (2017); Emily Ekins, The Cato Inst., *Policing in America: Understanding Public Attitudes Toward the Police. Results from a National Survey* (2016)

<sup>2</sup> See, e.g., Epp, *supra* , at 174 ("Simply put, investigatory stops of vehicles especially target minority communities and people of color."); Ekins, *supra* , at 30 ("African Americans are about twice as likely as whites to report profanity or knowing someone physically mistreated by the police."); Scottie Andrew, *Police Are Three Times More Likely to Kill Black Men, Study Finds: 'Not a Problem Confined to a Single Region'*, *Newsweek* (July 23, 2018, 1:41 PM), <https://www.newsweek.com/black-men-three-times-likely-be-killed-police-1037922> ("Across the country, black men are over three times more likely to be killed by police than white men, according to a study ...."); Maggie Fox, *Police Killings Hit People of Color Hardest, Study Finds*, *NBC News* (May 8, 2018, 8:00 AM), <https://www.nbcnews.com/health/health-news/police-killings-hit-people-color-hardest-study-finds-n872086> ("While just over half of people killed by police are white, Hispanics and African-Americans are on average younger, the researchers found. And people of black, Hispanic and Native American background are disproportionately killed by police, they reported.").

same manner as a white person is a clear violation of the principles of blind justice and the equal protection of law.

Respectfully submitted,

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**Proof of Service**

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I certify that I have served Appellant’s Request for Extension of Time to File on Respondent State of South Carolina by emailing a copy of it on Wednesday, April 5, 2023 to attorney of record William M. Blich, Jr. at [wblitch@scag.gov](mailto:wblitch@scag.gov).

Respectfully submitted,

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