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Feb 05 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Richland County

Honorable Brian M. Gibbons, Circuit Court Judge

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Opinion No. 2025-UP-017

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HOLLY JO THOMPSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000846

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PETITION FOR REHEARING

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On January 23, 2025, this Court affirmed the PCR court’s denial of Petitioner’s application holding that trial counsel’s failure to move for immunity under the Protection of Persons and Property Act (the Act) was not deficient performance “because at the time of the trial, and even now, an open question remains as to whether a person can invoke immunity under the Act when the person was a social guest and used force against an attacker in the attacker’s home.” Thompson v. State, Op. No. 2025-UP-17, pg. 4 (S.C. Ct. App. filed January 23, 2025). This Court continued “[t]rial counsel cannot be deficient for failing to pursue a course of action that would require expanding precedent and testing unproven theories of law.” Id. Pursuant to Rule 221(a), SCACR,

Petitioner requests that this Court rehear the matter because the plain language of the statute contemplates the possibility of immunity for an invited guest. Further, an examination of the case law interpreting the common law Castle Doctrine and the Act supports a finding that at the time of Petitioner's trial the Act was applicable to an invited guest fending off an attacker.

The primary rule of statutory construction is to ascertain and give effect to the intent of the Legislature. Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988); State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

Additionally, statutes are not intended to be read in a piecemeal fashion, taking only those parts which best serve a particular position. Citizens for Quality Rural Living, Inc. v. Greenville County Planning Commission, 426 S.C. 97, 825 S.E.2d 721 (2019) (The intention of the legislature when enacting a statute must be gleaned from the entire section and not simply clauses taken out of context). Courts, when interpreting a statute, should not concentrate on isolated phrases within the statute; a statute must be read as a whole and sections that are part of the same general statutory law must be construed together and each one given effect. Id. "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

“Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.” State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (internal citation omitted). “Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.” Bennett v. Sullivan's Island Bd. of Adjustment, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct.App.1993).

The South Carolina General Assembly adopted the Act, S.C. Code Ann. § 16-11-410, et seq, in 2006. In the preamble to the Act the General Assembly stated its intent was 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.” S.C. Code Ann. § 16-11-420(A) (emphasis added). The General Assembly found it “proper for *law-abiding citizens to protect themselves*, their families, and others *from intruders and attackers* without fear of prosecution or civil action for acting in defense of themselves and others.” S.C. Code Ann. § 16-11-420(B) (emphasis added). The General Assembly recognized “*that persons residing in or visiting this State* have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.” S.C. Code Ann. § 16-11-420(D) (emphasis added). Finally, the General Assembly explained “*that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.*” S.C. Code Ann. § 16-11-420(E) (emphasis added).

The legislative intent was set forth with plain language in the preamble of the Act. S.C. Code Ann. § 16-11-420. The intent of the General Assembly in codifying the common law Castle Doctrine was to create “substantive rights for citizens...to protect themselves, their families, and others from intruders and attackers without fear or prosecution or civil action.” State v. Dickey,

380 S.C. 384, 404-405, 669 S.E.2d 917, 928 (Ct. App. 2008), rev'd on other grounds, 394 S.C. 491, 716 S.E.2d 97 (2011). Taken as a whole, the preamble states that law abiding citizens whether they be residing in or visiting South Carolina have a right to protect themselves and others from intruders and attackers without fear of prosecution, without surrendering their personal safety to a criminal, and without being required to needlessly retreat. The statute plainly states that "*no person or victim* should be required to surrender their personal safety to a criminal" and does not mention restricting the Act based on the geographical location of the incident. S.C. Code Ann. § 16-11-420(E).

The General Assembly included a definition section in the Act to assist courts with interpretation. The Act states that "'dwelling' means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary, permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night." S.C. Code Ann. § 16-11-430(1). It further states that "'*residence*' means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest." S.C. Code Ann. § 16-11-430(3) (emphasis added).

Applying the plain meaning rule to the definition section a residence, for the purposes of the Act, encompasses a dwelling in which a person is visiting as an invited guest. Critically, under the common law Castle Doctrine an invited guest had standing to assert immunity, even against the homeowner. See State v. Brown, 321 S.C. 184, 467 S.E.2d 922 (1996) (applying the common law and holding that "a lawful guest attacked in the owner's home has no duty to retreat where the attacker is an intruder" but "where the attacker is the homeowner, a lawful guest has a duty to retreat") and State v. Curry, 406 S.C. 364, 374, 752 S.E.2d 263, 267-268 (2013) ("Under the Castle Doctrine, the absence of a duty to retreat does not extend to a visitor or social guest in the home of

another unless the attacker is an intruder.”) It logically follows that in codifying and extending the Castle Doctrine by promulgating the Act, that an invited guest would be entitled to assert immunity under the Act the same way a person could have asserted immunity under the common law. Regardless, the definitional section clearly sets forth that the General Assembly intended that the Act would apply to an invited guest.

S.C. Code Ann. § 16-11-440(A) provides for the presumption of reasonable fear of imminent peril of death or great bodily injury when using deadly force against another under the Act. Subsection (B) removes the legal presumption of reasonable fear if “the person against whom the deadly force is used has the right to be in or *is a lawful resident of the dwelling, residence, or occupied vehicle* including, but not limited to, an owner, lessee, or title holder.” S.C. Code Ann. § 16-11-440(B)(1) (emphasis added). Again, the language used by the legislature was plain and straight forward. A person claiming immunity under the act is presumed to have a reasonable fear of the person against whom force is used *unless* the person against whom the force is used is the lawful resident, which can also be read to mean the homeowner. In those cases, when the presumption of reasonable fear is removed, the immunity claim falls under S.C. Code Ann. § 16-11-440 (C) which 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 Section 16-1-60 (emphasis added).

In State v. Douglas, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014), this Court analyzed the meaning of “another place” in subsection (C), writing

The primary definition of “another” is “different or distinct from the one first considered.” Merriam Webster's Collegiate Dictionary 51 (11th ed. 2003). This definition would arguably modify “place,” as used in section 16–11–440(C), in

such a way as to make “dwelling, residence, or occupied vehicle” and “another place” mutually exclusive. This is the interpretation the State proposes. On the other hand, the second and third definitions of “another” are “some other” and “being one more in addition to one or more of the same kind,” respectively. *Id.* The third definition is more inclusive and arguably would *not* eliminate “dwelling, residence, or occupied vehicle” as a possible “place” where the person using deadly force has a right to be pursuant to section 16–11–440(C).

*Id.* at 330, 768 S.E.2d at 245 (emphasis in original). Ultimately this Court concluded that “the more inclusive definition of “another” is the proper definition to employ in interpreting section 16–11–440(C).” *Id.*, at 331, 768 S.E.2d at 245. Later, in *State v. Jones*, 416 S.C. 283, 786 S.E.2d 132 (2016) our Supreme Court affirmed the more inclusive definition of “another place” writing “[w]e agree with the Court of Appeals that the phrase “another place” in subsection (C) *encompasses a residence.*” *Id.* at 295, 786 S.E.2d at 138 (emphasis added). Our Supreme Court continued, “by using the language ‘but not limited to, his place of business,’ we find the Legislature intended the protection of subsection (C) to apply to incidents, provided the other requirements are met, without a geographical restriction.” *Id.*, at 297, 786 S.E.2d at 139. Furthermore, the Court stated that “to interpret 16–11–440(C) as the State proposes would *improperly limit the protection of the Act based on the geography of the incident and the identity of the assailant.*” *Id.* at 297, 786 S.E.2d at 140.

The immunity provision of the Act, provides that

A person who uses deadly force as permitted by the provisions of this article *or another applicable provision of law* is justified in using deadly force and *is immune from criminal prosecution* and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

S.C. Code Ann. § 16-11-450 (emphasis added). Our Supreme court has acknowledged that “another applicable provision of law” includes the common law of self-defense. *See State v. Scott*,

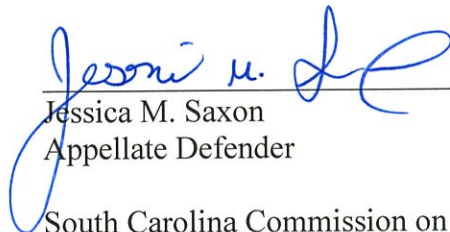
424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018); State v. Glenn, 429 S.C. 108, 17, 838 S.E.2d 491, 496 (2019). The Court has also explained that the immunity provided by the Act is a true immunity to prosecution, not merely an affirmative defense. See State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). Accordingly, a person who is permitted to use deadly force under the Act, or under another applicable provision of law such as self-defense, is justified in using deadly force and is immune from prosecution.

Applying the law to the facts of the case *sub judice*, Petitioner was an invited guest in the home of the decedent when she was attacked. Because the attacker was the homeowner, Petitioner was not entitled to the reasonable fear presumption in 16-11-440(A). Petitioner would have been defaulted into subsection (C). Under the Act she was in a residence (a place she was visiting as an invited guest pursuant to S.C. Code Ann. § 16-11-430(3)) in which she had a right to be when she was attacked. Had she asserted immunity under the old common law, she would have had to show a duty to retreat from her attacker. However, subsection (C) removed the duty to retreat provision. See Curry at 266, 752 S.E.2d at 371 (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. This includes all elements of self-defense, save the duty to retreat.) Petitioner was not required to surrender her personal safety or life to the decedent merely because he attacked her inside of his home. To find otherwise would improperly limit the protections of the Act based on the geography of the incident and the identity of the assailant and would also lead to plainly absurd results that the legislature could not have intended.

An examination of the plain language of the Act along with a review of the case law surrounding the common law Castle Doctrine and the Act reveal that there was not an open

question at the time of Petitioner's trial regarding the applicability of the Act. At its core the Act was designed to protect lawful citizens from criminal assaults, regardless of geographical location or the identity of the assailant, so long as the person asserting immunity was in a place they had a right to be and had a valid claim of self-defense. Petitioner had a lawful, statutory claim under the Act. Trial counsel was ineffective in failing to move for pre-trial immunity under the Act and this failure prejudiced Petitioner in that she could have been found immune from prosecution as a matter of law under the lesser standard of preponderance of the evidence. Further, if she had been denied immunity, the appellate courts of our State could have reviewed that decision for errors or abuses of discretion.

Based on the arguments set forth above, as well as those in the Brief of Petitioner, Petitioner respectfully requests that this Court rehear the case and determine that the Act was applicable to the factual situation in this case, that trial counsel was deficient in failing to pursue immunity, and that Petitioner was prejudiced by trial counsel's failure.

  
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Jessica M. Saxon  
Appellate Defender  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11433  
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ATTORNEY FOR PETITIONER

This 5th day of February, 2025.

**RECEIVED**

**Feb 05 2025**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Richland County

Honorable Brian M. Gibbons, Circuit Court Judge

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HOLLY JO THOMPSON,

PETITIONER

V.

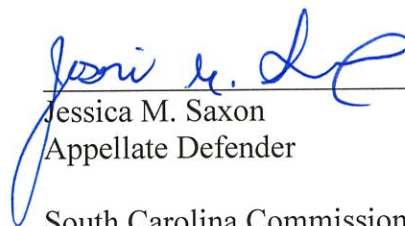
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000846

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CERTIFICATE OF SERVICE  
\_\_\_\_\_

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Brian H. Gibbs, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Holly Jo Thompson, #299956, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 5th day of February, 2025.

  
\_\_\_\_\_  
Jessica M. Saxon  
Appellate Defender

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Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

## Leverett, Scott

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**From:** Leverett, Scott  
**Sent:** Wednesday, February 5, 2025 1:45 PM  
**To:** Brian Gibbs  
**Cc:** Grace Sommer; Saxon, Jessica  
**Subject:** 2021-000846 - Holly Jo Thompson v. State - Petition for Rehearing  
**Attachments:** 2021-000846 - Holly Jo Thompson v. State - Petition for Rehearing.pdf

Dear Mr. Gibbs,

Attached please find a copy of the Petition for Rehearing in the above referenced case that is being filed today with the Court of Appeals.

-Scott Leverett  
Admin. Asst. for Jessica Saxon  
Appellate Defense