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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
Honorable Brian M. Gibbons, Circuit Court Judge

HOLLY JO THOMPSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000654

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

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ARGUMENT IN REPLY

Prejudice

Respondent argues that the forensic evidence in the case precludes a finding of immunity such that Petitioner cannot show prejudice. Respectfully, Respondent places too much stock in the questionable forensics performed in the case. During cross-examination the blood spatter expert testified "[b]lood drops can fool you. You have to get down and look at them really, really closely to see if there is some evidence of some type of angle at all." App. 301, ll. 11-13. Yet, he admitted that he based his opinions *solely on photographs from the scene*. App. 301, l. 23-App. 302, l. 6. Critically, the alleged "blood spatter" that the State asserted showed decedent was struck below waist level was never marked by on-scene forensic teams and *was not tested* to confirm it was blood. The blood spatter expert even admitted during cross-examination that he could not say the alleged "spatter" was blood. App. 302, ll.7-24. He had merely noted the "spatter" in a photograph, *assumed it was blood*, and based his opinion that the evidence "shows Petitioner continued to beat Victim while he was on the ground" on that entirely unvetted assumption.

Respondent also suggests "the brutality of the beating" would preclude a finding of immunity. This argument ignores that a party asserting immunity under the Act is entitled to meet force with force and to continue to exert force until the danger to their life has passed. *See* State v. Marin, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (quoting State v. Hendrix, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978)). It should be noted that at the time of his death, the decedent was five feet, ten inches tall and weighed 191 pounds. App 308, ll.17-25. He made his living building large grills, described as "the ones you pull behind your vehicles," out of 55-gallon and 300-gallon metal barrels. App. 98, ll. 8-19. He was a big, strong, physical man who

was under the influence of "a measurable amount of cocaine" that was having an effect on him at the time of his death. App. 614, l. 18-App. 615, l. 8. Comparatively, Petitioner weighed a mere 136 pounds. App, 521, ll. 9-12. Additionally, the State's pathologist testified that the numerous sharp force injuries were all entirely superficial and could have come from glass, perhaps from when a glass vase breaks into sharp glass shards. App. 336, ll. 5-25. She also testified that Petitioner too had defensive wounds[1] on her person after the incident. App. 340, ll. 4-10. Far from precluding immunity, the evidence supports Petitioner's story that she was fighting for her life against a much larger, stronger individual, who was high on cocaine, and acting crazy.[2] The evidence shows that she fought until the danger had passed – until the parties fell to the ground after the vase broke – and then she was able to retrieve her clothing before fleeing the decedent's residence.

Respondent also seems to argue that the jury's verdict somehow renders consideration of defense counsel's failure to pursue an immunity hearing moot because the State "disproved self-defense beyond a reasonable doubt." This argument rings hollow for several reasons. First, a jury determination is purely a matter of fact, while a judicial determination of immunity from prosecution is a matter of law. Second, this Court has made clear that the immunity hearing and the trial are separate proceedings with separate burdens. *See* State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016) (A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard.); State v. Cervantes-Pavon, 426 S.C. at 452-53, 827 S.E.2d at 569 (The trial court's immunity ruling must be based solely on the evidence

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1 Candidly, the pathologist also testified that the cut on Petitioner's hand could have occurred when the glass vase broke in her hand during the incident. App. 341, ll. 16-23.

2 As Petitioner testified "James started talking about 'Bitch, give me my money back or give me my crack back. I'm going to shoot you,' all kinds of craziness. And he just kept repeating it" while swinging the knife he used to cut the crack at Petitioner. App. 530, ll. 1-13.

presented at a pretrial hearing, while the jury's verdict must be based solely on the evidence presented at trial, which may be considerably different.) Third, if a jury verdict precluded a finding of prejudice, the appellate courts of this state would never have cause to review a denial of immunity under the Act and there would be no case law interpreting its reach. The jury's determination of facts would not supplant a legal judicial determination of immunity.

Proximate Cause

Respondent contends that Petitioner's unlawful activity of engaging in prostitution and drug use with the decedent proximately caused the decedent's death such that immunity would not be granted. "Proximate cause is the efficient or direct cause; the thing that brings about the complained of injuries." McKnight v. S.C. Dep't of Corr., 385 S.C. 380, 386, 684 S.E.2d 566, 569 (Ct. App. 2009). "Proximate cause is defined as the direct cause, the immediate cause, the efficient cause, or the cause without which the death would not have resulted." State v. Dantonio, 376 S.C. 594 (2008). Here, the attempted prostitution and joint drug use did not bring about the complained of injuries. It was Petitioner's attempt to leave the residence after decedent could not perform sexually that caused decedent to physically attack Petitioner with a knife causing cuts to her hands in various places. App. 534. Respondent argued Petitioner stayed to get her crack pipe instead of fleeing, thus proximately causing the death. However, the testimony reveals that Petitioner was naked from the waist up when the decedent began attacking her, that she grabbed the vase to protect herself so that she could pick up the rest of her clothes, along with her crack pipe, and that while she attempted to collect her personal belongings she was further assaulted by the Decedent. Her "unlawful activity" in no way proximately caused the death of decedent.

The Deficiency of Counsel

Respondent asserts the probative evidence in the record shows counsel conducted a pro/con analysis when deciding not to pursue pretrial immunity. Respectfully, the probative evidence in the record repeatedly shows that Counsel Bank never considered an immunity hearing. The testimony revealed that Counsel Bank 1) did not recall anything specifically as to why he did not pursue immunity in the case, 2) did not have any notes regarding an immunity hearing, such as a pro/con list, in his file, and 3) had no recollection of discussions with Petitioner or co-counsel regarding an immunity hearing. In fact, Counsel Bank testified "I think it's definitely something *that could have been explored*" clearly indicating that immunity was *not* something that had actually been explored in Petitioner's case. App. 816, ll. 4-22.

Requiring trial counsel to articulate a valid reason for not pursuing immunity under the Act is not burden-shifting. The law requires counsel's strategic decisions to be sound and counsel is required to articulate the reasons for their decisions. *See* Stone v. State, 419 S.C. 370, 384, 798 S.E.2d 561, 569 (2017). Here, despite the findings in the order of dismissal, there was not testimony that Counsel Bank considered immunity but chose to forgo a hearing and focus on self-defense. The testimony was that immunity was not considered and Counsel Bank could not offer a valid, sound reason, as required by law, for that supposed strategic decision.

Applicability of the Act

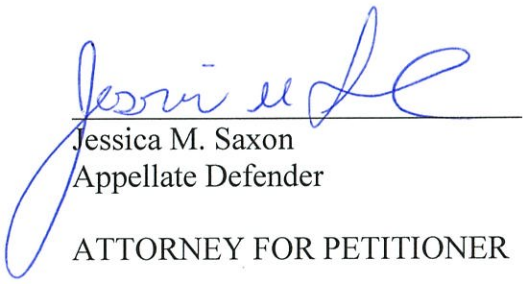
During oral argument at the Court of Appeals, the parties conceded that neither was aware of any cases applying the Act to the factual situation of an invited guest defending themselves against a homeowner. However, Petitioner did not concede that there was an open question about the applicability of the Act to her case and argued that the Act did, and does, apply to factual situations such as the one at issue in this matter. While it is tempting to think of

the Act as merely codification of the Castle Doctrine, it must be remembered that the Act expanded immunity to places other than the home of the defendant, if it was a place the defendant had a right to be. As this Court ultimately determined in State v. Jones, 416 S.C. 283, 297, 786 S.E.2d 132, 140 (2016), the protections afforded by the Act are not limited based on the geographic location of an incident and/or the identity of the assailant. Further, as detailed in the Petition for Writ of Certiorari to the Court of Appeals, the plain language of the Act specifically contemplates its application to an invited guest. *See* S.C. Code Ann. § 16-11-430(3).

While this Court has not explicitly determined that the Act applies to an invited guest defending themselves from attack against a homeowner, a review of the relevant case law and the plain language of the Act show that the Act did apply at the time of Petitioner's case. The fact that this question has not been answered by the appellate courts of this State should not be grounds for affirmance of the Court of Appeals opinion.

CONCLUSION

Based on the foregoing arguments, as well as the arguments presented in the petition for writ of certiorari, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to the Court of Appeals to allow further briefing on the issue presented.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 19th day of May, 2025.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Honorable Brian M. Gibbons, Circuit Court Judge

HOLLY JO THOMPSON,

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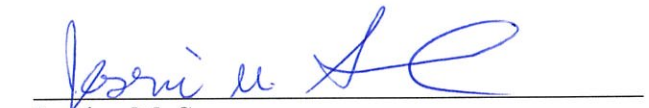
CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the petition for writ of certiorari to the Court of Appeals and appendix in the above-referenced case has been served upon Danielle E. Dixon, Esquire, and Bryan H. Gibbs, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and the South Carolina Court of Appeals; and on Holly Jo Thompson, #299956, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 19th day of May, 2025.



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Appellate Defender

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

ATTORNEY FOR PETITIONER

Leverett, Scott

From: Leverett, Scott
Sent: Monday, May 19, 2025 10:30 AM
To: Danielle Dixon
Cc: Brian Gibbs; Grace Sommer; Vickie Hall; Saxon, Jessica
Subject: 2025-000654 - Holly Jo Thompson v. State - Reply to Return to Petition for Writ of Certiorari to the Court of Appeals
Attachments: 2025-000654 - Holly Jo Thompson v. State - Reply to Return to Petition for Writ of Certiorari to the Court of Appeals.pdf

Dear Ms. Dixon,

Attached please find a copy of the Reply to Return to Petition for Writ of Certiorari to the Court of Appeals in the above referenced case that is being filed today with the Supreme Court.

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