

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM RICHLAND COUNTY
Court of General Sessions**

Maite' Murphy, Circuit Court Judge

Case No. 2010-GS-40-1457

RECEIVED

OCT - 7 2013

S.C. Supreme Court

The State of South Carolina,

Appellant.

v.

Shannon Scott,

Respondent,


NOTICE OF APPEAL

The State of South Carolina appeals the granting of immunity pursuant to S.C. Code § 16-11-450. The granting of immunity was on written order dated September 27, 2013. This appeal is filed under S.C. Code § 14-3-330 and this Court's ruling in State v. Greg K. Isaac (Supreme Court Order Number 27302 filed 8/2/13).

October 7, 2013

Dolly Justice Garfield

**Dolly Justice Garfield (Bar #13433)
Assistant Solicitor
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1701 Main Street
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803-576-1800
Attorney for Appellant**



**Other Counsel of Record:
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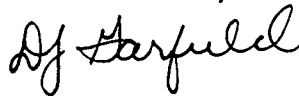
Shannon Scott,

Respondent,

PROOF OF SERVICE

I hereby certify that a true copy of the Notice of Intent to Appeal in the above-referenced case has been served upon opposing counsel by delivering same this date to his office at 2113 Park St, Columbia, SC 29201.

October 7, 2013



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Attorney for Respondent

Hopkins, Debbie

From: DOLLY GARFIELD <GARFIELDD@rcgov.us>
Sent: Monday, October 07, 2013 4:44 PM
To: Hopkins, Debbie
Subject: RE: The State v. Shannon Scott
Attachments: State v. Shannon Scott Order.docx

Ms. Hopkins – attached is Judge Murphy’s order. I have yet to receive a clocked copy. I received this via e-mail this past Friday from her clerk. Please let me know if I need to do anything else! Thanks again, Dolly



Dolly Garfield

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From: Hopkins, Debbie [mailto:DJHopkins@sccourts.org]

Sent: Monday, October 07, 2013 4:40 PM
To: DOLLY GARFIELD
Subject: RE: The State v. Shannon Scott

Thank you, Ms. Garfield.

From: DOLLY GARFIELD [mailto:GARFIELDD@rcgov.us]
Sent: Monday, October 07, 2013 4:39 PM
To: Hopkins, Debbie
Subject: Re: The State v. Shannon Scott

I am so sorry. This is my first appeal. My paralegal is out for a funeral and I am in court. I will forward in a moment! Thank you for the help. Dolly

Sent from my iPhone

On Oct 7, 2013, at 4:35 PM, "Hopkins, Debbie" <DJHopkins@sccourts.org> wrote:

Ms. Garfield,

I have attempted to reach you and your paralegal by phone. Please forward by return e-mail a copy of the signed written order issued in this case on September 27, 2013. Please be reminded that a Notice of Appeal must be accompanied by the order(s) under appeal.

Thank you,

Debbie M. Hopkins
South Carolina Supreme Court
P. O. Box 11330

Columbia, South Carolina 29211

(803) 734-1080

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
The State of South Carolina)
-vs-)
Shannon Scott,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS

Indictment Number:
2010-GS-40-1457

GRANT OF IMMUNITY

Hearing Date: August 12-14, 2013
Presiding Judge: The Honorable Maité Murphy
On Behalf of State: Dolly Garfield, April Sampson, and Brent Arant
Defendant's Attorney: Todd Rutherford

THIS MATTER is before the Court pursuant to the Defendant's Motion asserting Statutory Immunity from Prosecution. The Defendant has been indicted on one count of Murder in which it is alleged that on April 18, 2010, the Defendant killed Darrell Niles by shooting him while he was in his vehicle and the Defendant was on his front stoop. The Defendant's motion is based on the Protection of Persons and Property Act (hereinafter "the Act"), Section 16-11-410, et. seq., of the South Carolina Laws. The Defendant admits that he shot the Victim, but asserts his act was justified and that as a result he is absolved from prosecution pursuant to the immunity granted in section 16-11-450 of the Act. On July 30, 2013, the Defendant, by and through his attorney, J. Todd Rutherford, filed a Motion to Enforce the Protections of 16-11-450(a) seeking an order of immunity from prosecution under the Act and requesting a hearing to determine whether the Act applies to this case. A hearing was scheduled on the matter for August 12, 2013.

The Act codifies the long standing common law Castle Doctrine, which stands for the principle that a person, in his or her own home or vehicle and acting without fault, has no duty to retreat from an aggressor. Section 16-11-440(A) provides that:

[A] person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force ... if the person against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle.

Section 16-11-440(C) provides that

[A] person who is not engaged in an unlawful activity and who is attacked in another place where he has the 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.

Section 16-11-450(A) provides that a person who uses deadly force, as permitted by the provisions of Section 16-11-440, "is justified in using deadly force and is immune from criminal prosecution ... for the use of deadly force."

A hearing on the Defendant's Motion was held on August 12-14, 2013. The Defendant and his attorney were present and Assistant Solicitors Dolly Garfield, April Sampson, and Brent Arant represented the State. The Court was asked whether the Defendant was entitled to immunity under Section 16-11-450 of the Act. The Defendant acknowledged, and this Court agrees, that he has the burden to prove by a preponderance of the evidence that he is entitled to immunity from prosecution under the Act. *State v. Duncan*, 392 S.C. 404, 411 709 S.E.2d 662, 665 (S.C. 2011).

FINDINGS OF FACT

Multiple witnesses testified at the hearing. Stipulations agreed to by both parties were submitted, and multiple items of evidence were introduced into the record, including witness statements and photographs. Considering all of the testimony and evidence in its entirety, I find the following to be the pertinent facts of this case:

On April 17th, 2010, a dispute at the Kia House on Two Notch Road occurred between Teesha Davis (hereinafter "Ms. Davis"), age fourteen (14) and Shadé Scott (hereinafter "Ms. Scott"), age fifteen (15). The Kia House was a teen club where Ms. Scott and her friends were attending a birthday party. Ms. Scott was accompanied by other teenagers: Denzel Davis aka "Crackle" (hereinafter "Mr. Davis"), Spartacus Bennett aka "Antonio" (hereinafter "Mr. Bennett"), Avé Fuller (hereinafter "Avé"), Asia Mills (hereinafter "Asia"), and Ashley Mills (hereinafter "Ashley"). Once the dispute arose and in an effort to avoid any further difficulties, Ms. Scott and her friends left the Kia House in a Crown Victoria (hereinafter car #1) driven by Mr. Davis. Ms. Scott and her friends were immediately pursued by Ms. Teesha Davis, who was accompanied by Kiawane Carter, age twenty-two (22) (hereinafter "Ms. Carter"), K'yasia Corbett, age sixteen (16) (hereinafter "Ms. Corbett"), and Shatare (hereinafter "Shatare"), who was never identified by law enforcement, who all left the Kia House in a Ford Excursion (hereinafter car #2).

Although the altercation at the Kia House was begun by Ms. Davis, it is undisputed that Ms. Carter was attempting to fight with Ms. Scott and had attempted to fight with her at the Kia House. In fact, five days prior to this incident, Rosalyn Scott (hereinafter Rosalyn), young Ms. Scott's mother, contacted law enforcement for

assistance because Ms. Carter had threatened to come to Ms. Scott's home and harm her. Ms. Scott's mother relayed to law enforcement her belief that Ms. Carter intended to harm her stepdaughter using weapons. This contact is evidenced by a report memorialized by law enforcement.

Soon after leaving the Kia House, Ms. Scott and her friends realized they were being pursued by car #2, driven by Ms. Carter. For reasons unclear to the Court, Darrel Niles, age seventeen (17) (hereinafter "Victim") and Eric Washington, age sixteen (16) (hereinafter "Mr. Washington") left the Kia House in a burgundy Honda (hereinafter car #3) driven by the victim and followed car #2. There was no evidence presented that the Victim and Mr. Washington were parties to the prior dispute at the Kia House. The testimony presented failed to prove exactly why the Victim and Mr. Washington took part in the chase that followed. Mr. Washington testified he did not know Ms. Scott, but that the Victim did know her. His testimony that he thought the Victim was maybe trying to help Ms. Scott was less than credible.

The occupants of car #1 stopped at a red light close to the Kia House and at that point realized that they were being pursued because Ms. Carter exited car #2 and began to approach car #1. At that point, Mr. Davis ran the red light, and a high speed chase ensued. With car #2 in pursuit, Mr. Davis drove to a police station, which unfortunately was closed, made a U-turn, and proceeded back to Two Notch Road. Ashley made a frantic phone call to her mother telling her what had happened at the Kia House and that she and her friends were being pursued by Ms. Carter and her passengers. Ms. Scott instructed Ashley to have Mr. Davis drive the girls to the Defendant's residence at 1309 Bonner Avenue, where she was along with the Defendant. While in route to Bonner

Avenue, Mr. Davis made a wrong turn down a dead end road. Car #2 pulled across this road to block Mr. Davis's exit, and Mr. Davis was forced to drive through someone's yard to avoid car #2 and continue to Bonner Avenue. Despite this maneuver, car #2 continued to pursue Mr. Davis, and all credible testimony and inference indicate that car #3 continued its pursuit behind car #2. Mr. Davis drove onto Bonner Avenue and made a very quick turn at the home of the Defendant hoping that his speed would avert car #2's ability to follow him.

Mr. Davis drove to the back of the residence on Bonner Avenue, and the teenagers, following the direction of Ashley mother Rosalyn, ran into the house and hid under the kitchen table. At the hearing, each of these young people testified that they heard shots as they ran into the house. They all testified that they were unfamiliar with guns and terribly frightened as they hid on the floor under the kitchen table at 1309 Bonner Avenue, the home of the Defendant. Apparently, several of these young people were hysterical, and all were in fear for their lives.

After hearing the gunshots, the Defendant went into the bedroom of his roommate Lenny Williams (hereinafter Mr. Williams), and retrieved Mr. Williams's gun. Thereafter, Rosalyn immediately called law enforcement after the children were inside and she heard the gun shots. This is evidenced by a recording of the 911 phone call.

It is abundantly clear to the Court as testified to by Rosalyn, the Defendant, by the young people, and corroborated by the 911 phone call, that the environment inside the Defendant's home was one of not only terrified, panicked young people, but also terribly frightened adults.

Although Ms. Carter was not present at the hearing to testify, her statement was introduced into evidence. In her statement to law enforcement Ms. Carter admitted to having a gun and to the chase. She also admitted to driving past the Defendant's home and turning around firing a shot, that she claimed was just so they would know she was armed, and then driving past the Defendant's home. The testimony was clear that the SUV came to a stop at the brown pole almost directly in front of the defendant's house. According to Ms. Carter's statement, she had switched seats with Shatara, rolled down the windows and prepared to do "bust at" or shoot at the defendant's house. Shots were fired by Ms. Carter and then by the defendant as the defendant stood on the curtilage of his home.

The statement of Ms. Davis was also introduced into evidence and in it she also admits to the altercation and the chase. She told law enforcement that Ms. Carter wanted to do a "drive by." Although she claimed that she talked her out of it, the evidence clearly shows that to be a pure fabrication. The credible testimony established that they turned the SUV (car #2) around, turned off the lights, rolled down the windows and drove by the Defendants home and began to fire.

It is also clear that in response to these events, the Defendant exited the front of his home onto a very small stoop and that he fired two or three shots. During this melee, one of the shots hit and instantly killed the Victim (driver of car #3). Mr. Washington, the passenger in car #3, testified that the Victim took a left turn onto Blondell Circle off of Bonner Avenue to turn around. He stated that in doing so, the headlights from the Victim's car pointed at the defendant and Mr. Washington testified that he could see the defendant engaged in a gun battle with the occupants of the SUV. The picture of the

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

The Defendant testified that he knew of previous problems reported to law enforcement and that he knew this girl and others were chasing his children. As they arrived at his residence, he further testified that they were all hysterical in fright. The Defendant testified that he was not a gun owner, but in order to defend and protect his family, he grabbed Mr. Williams's gun. His testimony was that the SUV stopped in front of his house, and he could see arms out of the windows. This testimony is corroborated by the statements of both Ms. Carter and Ms. Davis. The Court finds credible his testimony that both the Honda and SUV drove past his home and turned around and stopped in front of his residence. This is consistent with the gunshot entering the driver's side window of the victim's car. His testimony was very credible that he heard a gunshot. Hearing a gunshot, along with the threats, the chase, and being confronted at his home as the target of a drive by shooting, with his children inside, created reasonable fear of imminent peril of death for him and his family. Rosalyn and the Defendant waited on the police to respond, and after informing the police that they were the victims of an attempted drive by shooting, they left the Defendant's home for fear that those involved

in shooting at his home would return. The police also left the incident location at that time to look for the SUV (car #2). The police did not see or discover the Honda that had come to a stop in the brush with the passenger door open and the victim's body inside.

Later, police did return to the incident location and then found the Honda, which was still in drive and stuck in a bush close to the Defendant's house facing toward Two Notch Road. Police observed a single shot through the driver's side window of the car and observed a single wound in the Victim's head. The Victim was later pronounced dead. SLED reports revealed that the projectile found in the Victim's head was fired from the gun that the Defendant had turned over to his lawyer. As a result of the investigation, police charged the Defendant with Murder. The occupants of the SUV were not charged with felony murder, which, as argued by Defendant's counsel, was the more appropriate charge.

APPLICATION OF THE LAW

After considering the testimony and evidence presented and applying the law of South Carolina, I conclude that Defendant is entitled to statutory immunity under the Act for the reasons outlined below.

I. The Defendant is entitled to statutory immunity under the Act because the incident occurred at the Defendant's residence.

Defendant should be granted immunity from prosecution because Section (A) of § 16-11-440 applies. Section (A) provides:

- (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

- (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle...and
- (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

The primary and cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). “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.” *Pittman*, 373 S.C. at 561, 647 S.E.2d at 161 (citing *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

The purpose of the Act is to allow people to defend their homes, places of business, and motor vehicles. “The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.” Section 16-11-420(D) (emphasis added). The Act clearly states that section (A) applies if force is used against someone who is entering or attempting to enter a dwelling, residence or occupied vehicle. The Act codifies “the common law Castle Doctrine which recognizes that a person’s home is his castle” Section 16-11-420(A). The purpose of this Doctrine is to protect an individual from being ejected from his home, business, or automobile. The Victim had followed the defendant’s daughters home while they were being chased by another vehicle. The

Victim never identified himself to the defendant and in doing so left the Defendant to reasonably believe that he too was an imminent threat. If in fact the Victim was present merely to observe these events or even assist those being chased in some way, the credible evidence presented simply fails to support such a finding. The Legislature went to great lengths to outline circumstances in which the Act is applicable, and in the instant case the Defendant may use deadly force if he has reason to believe that an “unlawful and forcible act is occurring”. At no point is it required that the Defendant retreat into his home to be fired upon without him being able to defend his family and himself.

The Defendant is clearly entitled to the immunity provided by the Act because the curtilage of his home has long been considered his “castle” by the common law of this state. *See State v. Quick*, 138 S.C. 147, 135 S.E. 800 (1926). And his right to use deadly force against the victim whom he reasonably believed was engaged in an unlawful and forcible act against his home was codified in Section 16-11-420(A).

II. The Defendant is entitled to statutory immunity under the “Stand Your Ground” provision of the Act because the Defendant was reasonable to be in fear of the Victim.

§ 16-11-440(C), also known as the “Stand Your Ground” provision, provides immunity to an individual who uses deadly force against an attacker in places other than a business, automobile, or home. In order for an individual to be granted immunity from the Stand Your Ground provision of the Act the defendant must demonstrate three things. First, in order to be immune, the person using deadly force must be in a “place where he has a right to be.” Second, that he not be “engaged in unlawful activity.” And third, deadly force may be used only if the person “reasonably believes it is necessary to

prevent great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.”

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. In fact, the Legislature codified this belief in § 16-11-420

- (A) 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.
- (B) The General Assembly finds that it is 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.
- (C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.
- (D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.
- (E) The General Assembly finds 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.

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 Ms. Carter 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 defendant meets all of the statutory requirements to be granted immunity for his actions on April 18, 2010.

CONCLUSION

Based upon the foregoing, I conclude the Defendant's use of deadly force was justified and that he is entitled to immunity as enunciated in section 16-11-450 of the Protection of Persons and Property Act. Therefore, the Defendant's Motion for Immunity is granted.

IT IS SO ORDERED.

The Honorable Maité Murphy

St. George, South Carolina

Date: 9/27/13