

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

MAY 22 2014

**SC Court of Appeals**

Appeal from Richland County  
Honorable G. Thomas Cooper, Jr., Circuit Court Judge  
Appellate Case Tracking No. 2010-176707

The State,

Respondent,

vs.

Theodore Manning,

Appellant.

PETITION FOR REHEARING

On May 7, 2014, this Court affirmed Appellant's convictions but found the trial court erred in failing to give Appellant a full evidentiary hearing. This Court misapprehended or overlooked relevant facts of this case and the applicable law. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find an evidentiary hearing is not required, affirm the trial court's ruling, and affirm Appellant's conviction and sentence.

This Court found the trial court erred in failing to provide Appellant with a full evidentiary hearing pre-trial in order to determine whether he is entitled to immunity under the Protection of Persons and Property Act, Sections 16-11-410 through -450 of the South Carolina Code (the Act). The trial court allowed argument by both counsel including allowing Appellant's counsel to argue what evidence indicated Appellant was entitled to immunity under the Act. As a result, Appellant received all the consideration pre-trial that is required under State v. Duncan, 392 S.C. 404, 709 S.E.2d 402 (2011).

Finally, Appellant received a ruling from the trial court that he was not entitled to immunity, which he was able to appeal.

In Duncan, the Supreme Court concluded: “We agree with the circuit court that the legislature intended defendants be shielded from trial if they use deadly force as outlined under the Act. Immunity under the Act is therefore a bar to prosecution and, upon motion of either party, must be decided prior to trial.” Id. at 410, 709 S.E.2d at 665 (emphasis added). Nothing in the Act, or in Duncan, requires a specific type of hearing or a specific procedure for the hearing. It only requires the trial court make the determination upon motion of either party prior to trial.

The trial court in this case heard all that was necessary to know the facts as presented by Appellant’s counsel did not and would never rise to the standard necessary to provide for immunity under the Act. The court did not need to hold an evidentiary hearing with testimony from witnesses in order to reach the conclusion it reached and requiring such a hearing places an unnecessary burden on the trial court when the issue is straightforward as this Court even found in its opinion.

In this case, the issue was decided pre-trial as is required by Duncan. While witnesses were not called, Appellant never asked to call any witnesses in support of his position, and never objected to the trial court’s hearing the motion without witnesses being called. (T.462-471; R. 462-471). He never asked to proffer additional testimony or indicate to the trial court the additional testimony he would have presented had he been entitled to a full testimonial evidentiary hearing. The trial court in this case heard the evidence provided and argument provided by counsel and made a ruling prior to trial as

required by Duncan. As a result, Appellant received a determination prior to trial as he was entitled to under Duncan.

Finally, the fact an evidentiary hearing may be necessary in some cases in which evidence is contradicted or to be provided by a variety of witnesses does not justify a requirement that an evidentiary hearing be held in every case. The trial judge should be entitled to use his or her discretion in determining whether a hearing is necessary to make a decision based on the facts and circumstances of the particular case. In this case, it was clear the trial court did not need additional testimony or evidence to be admitted to make the determination immunity did not apply, and as a result, should not have been required to hold a full evidentiary hearing to satisfy an artificial requirement not within the Act.

#### **CONCLUSION**

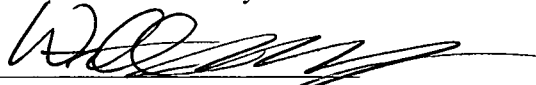
For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find the trial court properly considered Appellant's request for immunity, and affirm Appellant's conviction and sentence.

Respectfully submitted,

ALAN WILSON  
Attorney General

WILLIAM M. BLITCH, JR.  
Assistant Attorney General

BY:

  
William M. Blitch, Jr.  
S.C. Bar No. 15608  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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PROOF OF SERVICE

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I, Sally Ellison, certify that I have served the within Petition for Rehearing by depositing one copy of the same in the United States mail, postage prepaid, addressed to:

E. Fielding Pringle, Chief Public Defender  
Richland County Public Defender's Office  
1701 Main Street  
Columbia, South Carolina 29201

Luke A. Shealey, Esquire  
The Shealey Law Firm, LLC  
2008 Lincoln Street  
Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served.  
This 22<sup>nd</sup> day of May, 2014.



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SALLY ELLISON  
Legal Assistant  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

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