

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to the Court of Appeals  
Appeal From Richland County  
Hon. G. Thomas Cooper, Jr., Circuit Court Judge  
Appellate Case Tracking No. 2015-000204  
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**S.C. Supreme Court**

The State,

Respondent/Petitioner,

v.

Theodore Manning,

Petitioner/Respondent.

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Opinion No. 2014-UP-411 (S.C. Ct. App. refiled November 19, 2014)  
\_\_\_\_\_

**PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEALS**

\_\_\_\_\_  
ALAN WILSON  
Attorney General

WILLIAM M. BLITCH, JR.  
Assistant Attorney General

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3727

ATTORNEYS FOR  
RESPONDENT/PETITIONER

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## **CERTIFICATION OF COUNSEL**

Counsel for Petitioner hereby certifies that a Petition for Rehearing was filed in the South Carolina Court of Appeals on December 4, 2014. The Petition for Rehearing was denied by Order filed December 31, 2014.

## **STATEMENT OF QUESTIONS PRESENTED**

I. Did the Court of Appeals err in finding the trial court was required to grant a full testimonial evidentiary hearing to Manning prior to determining the immunity provision of the Protection of Persons and Property Act, section 16-11-450 of the South Carolina Code, does not apply in the instant case and in remanding for a determination by the trial court after all evidence was presented at trial and any possible error was clearly harmless.

## STATEMENT OF THE CASE

### Procedural History

The Richland County Grand Jury indicted Theodore Manning on charges of murder in the death of Nikki McPhatter. Manning proceeded to trial from October 4-14, 2010, and the jury convicted him of voluntary manslaughter. The court sentenced Manning to thirty years imprisonment. Manning filed a Notice of Appeal and the case was heard by the Court of Appeals.

The Court of Appeals heard oral arguments and issued an opinion on May 7, 2014. See State v. Manning, Op. No. 5228 (S.C. Ct. App. Filed May 7, 2014). Both parties filed a Petition for Rehearing. The Court of Appeals granted both Petitions, withdrew the May opinion, and ordered new oral argument after the retirement of Judge Pieper from the bench and the addition of Judge McDonald to the panel considering the appeal.

The Court of Appeals heard new oral arguments and issued an unpublished opinion in November 2014. See State v. Manning, Op. No. 2014-UP-411 (Refiled November 19, 2014). Both parties again filed a Petition for Rehearing. Both Petitions were denied. Manning served and filed a Petition for Writ of Certiorari and the State now serves and files its Petition for Writ of Certiorari from the Court of Appeals Opinion.

## ARGUMENT

**I. Did the Court of Appeals err in finding the trial court was required to grant a full testimonial evidentiary hearing to Manning prior to determining the immunity provision of the Protection of Persons and Property Act, section 16-11-450 of the South Carolina Code, does not apply in the instant case and in remanding for a determination by the trial court after all evidence was presented at trial and any possible error was clearly harmless.**

The Court of Appeals erred in finding the trial court is required to conduct a complete testimonial evidentiary hearing prior to ruling on whether the immunity provision of the Protection of Persons and Property Act found at section 16-11-450 of the South Carolina Code apply. Further, the Court erred in remanding to the trial court instead of reviewing the trial court's determination Manning was not entitled to immunity under the Act when all evidence has been presented through trial and any possible error can be reviewed based on the full, complete testimony hearing of the trial.

The Act provides, "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...." S.C. Code Ann. § 16-11-420(A) (Supp. 2010). The Act also states, "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." S.C. Code Ann. § 16-11-420(B) (Supp. 2010).

The Act further 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.

....

S.C. Code Ann. § 16–11–440 (Supp. 2010).

The immunity provision at issue provides:

(A) 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....

S.C. Code Ann. § 16–11–450 (Supp. 2010).

This Court considered the immunity provision in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). The 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 allowed argument by both counsel including allowing Manning’s counsel to argue what evidence indicated Manning was entitled to immunity under the Act. As a result, Manning received all the consideration pre-trial that is required under State v. Duncan, 392 S.C. 404, 709 S.E.2d 402 (2011). Finally, Manning received a

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

Similar to the ruling in Duncan and the Protection of Persons and Property Act, the Sexually Violent Predator Act allows a judge to make a determination under the Act. Under section 44-48-30(2) of the South Carolina Code, the trial judge is entitled to make a determination of whether the crime for which a person is charged qualifies as sexually violent even when it is not specifically listed under the Act. In State v. Wessinger, 408 S.C. 416, 759 S.E.2d 405 (2014), this Court considered whether an individual is entitled to a full evidentiary hearing prior to the judge making a determination under the SVP Act. The Court specifically held: “We hold that the scope and necessity of a separate evidentiary hearing is to be determined on a case-by-case basis.” Id. at 420. This holding demonstrates the desire to allow a trial judge to determine the extent of a hearing necessary to make a discretionary ruling, such as the ruling under the SVP Act or a ruling regarding immunity under the Protection of Persons and Property Act.

As in Wessinger, the trial court in this case was presented with evidence by Manning which was uncontradicted by the State. Manning acknowledged his statement contained the facts surrounding his shooting of the victim. The trial court considered those facts, the arguments of Manning’s counsel regarding any theories under which he believed his client would be entitled to immunity under the Act, and all statements by the State prior to making a clear ruling that Manning was not entitled to immunity. The trial court in this case heard all that was necessary to know the facts as presented by Manning’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 a full testimonial 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.

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

Additionally, this case is similar to the case of Peterson v. State, 983 So.2d 27 (Fla. App. 1 Dist. 2008). In that case, the Florida Court approved a trial court's procedure in which the "trial court conducted a hearing at which the parties did not present live evidence but, instead, presented the deposition of an eyewitness-petitioner's and the victim's sister-as well as the deposition of the alleged victim." Id. at 28.

Further, the Court of Appeals erred in requiring a remand for a determination to be made by the trial court.<sup>1</sup> First, no more extensive evidentiary hearing can be held than the trial in which Manning testified and presented all evidence he desired to present. As a result, there can be no different evidence presented at the hearing from that presented under oath at the trial. At a minimum, the Court of Appeals or now, this Court, can review the conclusion by the trial court that the Protection of Persons and Property Act does not apply based on the fullest evidentiary hearing possible—the trial. This is

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<sup>1</sup> Again, the State does not believe any further hearing beyond that conducted by the trial court is necessary, but in the event the Court disagrees and finds further evidentiary hearing is warranted, the State submits any error is harmless because Manning presented all evidence including his own testimony at trial and none of the evidence supports a claim for immunity.

exactly what the Court of Appeals did in its opinion issued in May that was subsequently withdrawn. The Court was able to fully consider the arguments of counsel, analyze the statute in light of the evidence presented by Manning, and reach a conclusion the trial court did not err in its finding the immunity provision of the Act did not apply in the instant case. See State v. Manning, Op. No. 5228 (S.C. Ct. App. Filed May 7, 2014) (Supp. App. p. 6-8).

The analysis the State submits could be conducted is exactly what took place in Dennis v. State, 51 So.3d 456 (Fla. 2010), when the trial court held no hearing at all. The Court considered the evidence presented at trial because it found that all evidence to be presented related to the claim of immunity was presented at trial. The Court then found based on the evidence presented at trial that the defendant was not entitled to immunity. The same determination should be made in this case if this Court concludes a hearing beyond that conducted by the trial court is required.

Additionally, remand for a determination by the trial court is unnecessary and wastes judicial resources when his ruling can be reviewed based on the same evidence considered by the jury. The jury specifically rejected any defense raised by Manning and found beyond a reasonable doubt the State disproved any defense and proved Manning guilty of the charges. Further, the trial court already made the legal determination no provisions under section 16-11-440 applied to Manning's case<sup>2</sup> so the only possible remaining considerations would be the common law provisions considered and rejected by the jury.

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<sup>2</sup> It is important to note Manning has never appealed the trial court's ultimate determination the Act did not apply in this case. He has only challenged the lack of a hearing.

As a result, there is no need to remand, and instead, should the Court find an evidentiary hearing was necessary, it can consider the facts presented at trial and whether there is any evidence to support a conclusion that Manning is not entitled to immunity. If this analysis is undertaken, it is clear there is evidence to support the trial court's finding Manning is not entitled to immunity and, therefore, Manning's conviction and sentence should be affirmed without resort to remand for an unnecessary second determination by the trial court.

**CONCLUSION**

For all of the foregoing reasons, it is respectfully submitted that this Court should grant the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

ALAN WILSON  
Attorney General

WILLIAM M. BLITCH, JR.  
Assistant Attorney General  
S.C. Bar No. 15608

BY: 

William M. Blich, Jr.

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3727

ATTORNEYS FOR  
RESPONDENT/PETITIONER

February 5, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals  
Appeal From Richland County  
Hon. G. Thomas Cooper, Jr., Circuit Court Judge  
Appellate Case Tracking No. 2015-000204

The State,

Respondent/Petitioner,

v.

Theodore Manning,

Petitioner/Respondent.

**PROOF OF SERVICE**

I, Sally Ellison, certify that I have served the within Petition For Writ of Certiorari to the Court of Appeals and Appendix by depositing a 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 5<sup>th</sup> day of February, 2015.



SALLY ELLISON

Legal Assistant  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3727



ALAN WILSON  
ATTORNEY GENERAL

February 5, 2015

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

Re: State v. Theodore Manning  
Appellate Case Tracking No. 2015-000204

Dear Ms. Pringle and Mr. Shealey:

I am enclosing a copy of the Petition for Writ of Certiorari to the Court of Appeals in the above-referenced case. A Supplemental Appendix is also being prepared and will be forwarded separately.

If you have any questions concerning this matter, please contact me.

Sincerely,

William M. Blich, Jr.  
Assistant Attorney General  
S.C. Bar No. 15608

cc: ✓ Honorable Daniel E. Shearouse (original and six enclosed)  
Honorable Jenny A. Kitchings  
Victim Services (enclosure)

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**S.C. Supreme Court**