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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Diane S. Goodstein, Circuit Court Judge

Opinion No. 2015-UP-212 (S.C. Ct. App. filed April 22, 2015)

Appellate Case No. 2012-213026

THE STATE, ... RESPONDENT,

v.

JABARI LINNEN, ... APPELLANT.

RETURN TO PETITION FOR REHEARING

On April 22, 2015, this Court issued an unpublished opinion which affirmed Appellant's convictions for assault and battery of a high and aggravated nature and possession of a firearm during the commission of a violent crime. State v. Linnen, Op. No. 2015-UP-212 (S.C. Ct. App. filed April 22, 2014). On May 7, 2015, Appellant submitted a Petition for Rehearing and by letter dated May 8, 2015, this Court requested that Respondent (the State) submit a return within ten days of the date of the letter. This return in opposition to the petition for rehearing now follows. The procedural history, the

statement of facts, and the substantive arguments recited in the Final Brief of Respondent are hereby incorporated by reference.

The State respectfully asks this Court to deny the petition for rehearing pursuant to Rule 221(a), SCACR, because it did not overlook or misapprehend any points that would warrant further consideration of this matter. Indeed, the Court employed a straightforward application of the provisions of the "Protection of Persons and Property Act" (the Act), S.C. Code Ann. §§ 16-11-410 to -450 (2007), as interpreted by our courts, in concluding the trial court did not err in denying Appellant's request for a jury charge on the provisions of the Act. The Court properly relied upon our Supreme Court's opinion in State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), and its own opinion in State v. Marin, 404 S.C. 615, 745 S.E.2d 148 (Ct. App. 2013), in concluding the Act creates a true immunity that must be decided prior to trial by the judge and therefore does not establish a right to a jury charge on the language of the Act. Instead, any right to a jury charge on a common law defense or a modified common law defense must be determined under common law principles, and application of those principles did not support the requested charge in Appellant's case.

Appellant argues the cases cited by this Court do not support the Court's conclusion that his failure to seek a pretrial finding of immunity operated as a waiver of his right to a jury charge on the Act. His argument centers on a distinction between procedural immunity provisions of the Act and substantive provisions of law. Appellant submits this Court misapprehends the reach of Curry and Marin as covering both the procedural and substantive provisions of the Act, and he argues there is "no indication that the legislature intended those substantive provisions to apply only in the context of a

request for immunity from prosecution." However, the Act itself is not so limited. It provides: "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 . . . ." S.C. Code Ann. § 26-11-450(A) (2007) (emphasis added). The broad reach of this language was specifically recognized by our Supreme Court. Curry, 406 S.C. at 371, 752 S.E.2d at 266 ("Section 16-11-450 provides immunity from prosecution *if* a person is found to be justified in using deadly force under the Act."). Thus, the conclusions reached in Curry and Marin in regard to immunity seem to apply equally to any and all provisions of the Act, procedural or substantive, by virtue of section 16-11-450. This Court properly concluded the trial judge committed no error in refusing to charge the jury on provisions of the Act where Appellant did not claim immunity under the Act and did not seek a pretrial determination from the trial court regarding immunity. Curry, 406 S.C. at 373, 752 S.E.2d at 267.

Additionally, the trial court properly denied Appellant's request to charge because, as a matter of law, the evidence presented at trial simply could not have established immunity under the Act. State v. Gibson, 390 S.C. 347, 355-56, 701 S.E.2d 766, 770 (Ct. App. 2010) ("The evidence presented at trial determines the law to be charged, and a trial court commits reversible error in failing to give a requested charge on an issue raised by the evidence."). Appellant's argument that he was entitled to a jury charge under the Act is based entirely on the General Assembly's stated intent to extend the Castle Doctrine to "include an occupied vehicle." S.C. Code Ann. § 16-11-420(A) (2007). Although Appellant argued there was evidence he was attacked inside his vehicle and used force in self-defense in a "protectable area" immediately outside

the vehicle after he exited, there was simply no evidence he shot the victim from an occupied vehicle. Therefore, the trial court properly declined Appellant's request to instruct the jury on the particular provisions of the Act, and properly declined to give a modified charge on any common law defenses arguably expanded by the Act.

WHEREFORE, based on the foregoing arguments and the arguments raised in the Final Brief of Respondent, the State respectfully requests that this Court deny Appellant's petition for rehearing.

Respectfully submitted,

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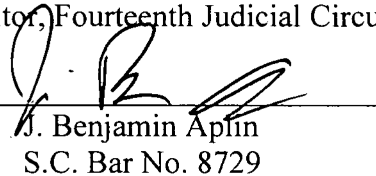
BY: 
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Columbia, South Carolina
May 18, 2015

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PROOF OF SERVICE

I, Angela Bennett, Legal Assistant, hereby certify that I have served the within *Return to Petition for Rehearing*, dated May 18, 2015, on Respondent by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorneys of record:

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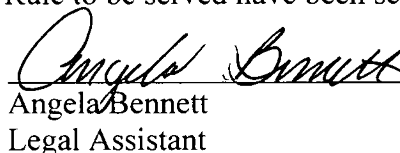
I further certified that all parties required by Rule to be served have been served. This 18th day of May, 2015.



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