

ORIGINAL

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

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S.C. Supreme Court

The State,

Petitioner,

v.

Theodore Manning,

Respondent.

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

BRIEF OF PETITIONER

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STATEMENT OF ISSUES ON CERTIORARI

- 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The Court of Appeals heard new oral arguments and issued an unpublished opinion in November 2014.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 served its Petition for Writ of Certiorari from the Court of Appeals Opinion. This Court grants the State's Petition for Writ of Certiorari and denied the Petition filed by Manning. This Brief of Petitioner follows.

Factual Background

On the first day of trial, counsel for Manning raised a "scheduling matter" with the court indicating he had an expert present that day to testify in relation to the motion

on immunity. (R.188). He explained to the court Manning sought immunity based on the shooting of the victim being a lawful killing or in self-defense. (R.189). Counsel then explained the expert would testify to rebut the State's argument Manning was not entitled to immunity because he shot the victim in the back of the head. The expert would explain the shooting could still be consistent with Manning's statement and self-defense. (R.189-190). The trial court indicated he would deal with the motion the next day and could not take an expert's rebuttal testimony until the motion was heard. (R.192).

The following day, the court heard argument on the motion for immunity. Counsel for Manning explained he believed the statement given by Manning set forth a *prima facie* case for immunity and the State would have to rebut the presumption that he acted lawfully in shooting the victim. (R.462-463; Statement of Manning, State's Exhibit 3). Counsel then indicated an evidentiary hearing was necessary to determine if the Castle Doctrine was applicable. The trial court asked him to explain the factual background and how Manning is entitled to immunity consideration under the Protection of Persons and Property Act and the Castle Doctrine. (R.464-466).

Counsel maintained the victim, even though invited into his home, became a trespasser when she pulled the gun on Manning. He then argued entitlement to immunity because both section 16-11-440(a) and (c) of the South Carolina Code apply to this case. (R.466).

The State then, relying solely on the statement provided by Manning and advanced as the evidence to be presented by Manning's counsel, indicated he would not be entitled to the Castle Doctrine of immunity. The State indicated he did not pull the trigger out of fear of death or injury, but instead to "show her to stop playing." (R.468).

The trial court found this was essentially a domestic dispute, or an “argument between lovers,” and not a home invasion. (R.470). The court found the provisions of the Act do not apply in this situation. Counsel for Manning specifically clarified: “So, I’m sorry Your Honor. Are you ruling that this is not - - that the act - - the defense of Property and Person’s Act is not applicable to this case?” The court responded: “Yes” and Manning’s counsel’s response was “Okay.” (R.471). Manning never asked to proffer the testimony of his expert, or to have the expert or Manning testify during a hearing.

At trial, Manning testified and presented his expert. Manning was having sexual relations with about six women, including the victim in this case. (R.1461). Manning testified he and the victim had a relationship of “friends with benefits” in which they would get together for the purpose of having sex. (R.1471). On the date in question, the victim texted Manning about coming down from North Carolina to meet up with him at his house. (R.1483-1485). After having sex, Manning went with the victim to get gas in the victim’s car. (R.1486-1487). When they returned to Manning’s house from getting gas, they again went upstairs to the bedroom, had sex, watched T.V. and went to sleep. (R.1488).

Manning and the victim woke up and when he came out of the bathroom the victim was looking at the bedrooms of Manning’s house, including the one for his daughter. After talking about how she could help decorate, the victim began talking about their relationship and how she wanted more out of the relationship. (R.1491-1492). Manning left the conversation briefly and when he returned the victim had her hands behind her back. According to Manning, after he told the victim they were just friends with benefits she pulled his gun from behind her back and pointed it at him. (R.1493).

Manning testified he got the gun away from her. He testified she kept swinging at the gun and coming at him. During his testimony, he indicated at one point that “she was like, I’m just like everybody else. I hurt her just like everybody else hurt her, and it was like she just charged at me and flinched or pivoted, and I pulled the trigger.” (R.1454). Later during his testimony he indicated he asked her if she was “f***ing crazy.” His counsel then asked: “Do you tell her anything else at this point? Do you want her there?” Manning responded: “I screamed at her to get out. I told her to leave.” He then testified she is yelling at him, swinging at the gun, and charging at him and he pulled the trigger. (R.1495-1496).

Manning’s statement, which he relied on during the pre-trial evidentiary hearing, provided a different story. In his statement, he explains she pulled the gun and he got it away from her. He pointed it back at her and asks her “Are you f***ing crazy.” She keeps hitting the gun and he asked her the same thing again. Manning stated: “She went and takes a step, like motioned towards me but she pivoted. When she did, I pulled the trigger to show her to stop playing.” (R.468; Statement of Manning, State’s Exhibit 3).

After shooting the victim, Manning called Kendra, another of his “girlfriends,” to help him clean up. She indicated she mopped up some areas where Manning told her to clean. Manning, on the other hand indicated, indicated Kendra was already coming over and happened to have bleach in her car which she used to mop up the area where the victim was shot without Manning asking her to do it. (R.1519). They then put the victim’s body in the trunk of the victim’s car, drive it out to a remote location. The two of them then got gas, returned to where they left the victim’s car, poured gasoline on the

vehicle, and burned the vehicle and the victim's body. (R.1528-1530). Manning then got money out of an ATM using the victim's card. (R.1533).¹

The medical evidence indicated the victim was shot in the back of the head. (R.1012). The pathologist determined the entry wound was behind and above the right ear. The bullet was still within the skull. (R.1013). According to the pathologist, the gun had to be behind the victim's head for the bullet to enter where it did and result in the trajectory he determined the bullet travelled. (R.1017).

¹ The story told by Kendra during her testimony is very different. She indicates Manning called her over, told her to mop the upstairs, would not let her in the garage where the victim's car was located, set fire to the victim's car after getting gas while she remained in the other vehicle, and drove to an ATM and retrieved the money. (R.857-876).

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(A) (Supp. 2010) (emphasis added).

Additionally:

(B) The presumption provided in subsection (A) does not apply if the person:

(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder;

S.C. Code Ann. § 16-11-440(B) (Supp. 2010). Finally, the statute also

states:

(C) A person who is not engaged in an unlawful activity and who is attacked **in another place** where he has a 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.

S.C. Code Ann. § 16-11-440(C) (Supp. 2010) (emphasis added).

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).

Testimonial Evidentiary Hearing

The trial court did not abuse its discretion in ruling on whether Manning was entitled to immunity in this case without having a full testimonial evidentiary hearing, and the Court of Appeals erred in finding a full testimonial evidentiary hearing is always required to determine immunity under the Act. 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. This Court’s ruling 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 Duncan. Finally, Manning received a ruling from the trial court that he was not entitled to immunity, which he was able to appeal.²

Similar to the ruling in Duncan under 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

² It is important to note Manning never appealed the ruling by the trial court that he was not entitled to immunity. Instead, he only appealed the failure of the court to grant him a full testimonial evidentiary hearing.

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 evidence 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 each side calling 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.

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, and the trial court did not abuse its discretion in making that ruling without first conducting a full testimonial evidentiary hearing.

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.

The trial court should be able to determine whether a full testimonial evidentiary hearing is necessary, or whether based on the facts presented by counsel and arguments made by counsel a decision can be made without taking testimony of witnesses. This discretion should especially exist when both parties are operating based on the same set of facts and not contested facts. In the instant case, Manning argued his statement provided the facts of the case and the State relied solely on Manning's statement as well. The only issue for the trial court was whether the facts as contained in the statement entitled Manning to immunity, a decision he could, and did, make without taking any further testimony.

Remand

Even if the trial court abused his discretion by not conducting a full pre-trial testimonial evidentiary hearing, the Court of Appeals erred in requiring a remand for a determination to be made by the trial court. Significantly, no more extensive evidentiary

hearing could be held pre-trial then was ultimately held during the trial in which Manning testified and presented all evidence he desired to present, including his expert. As a result, there can be no different evidence presented at a hearing on remand from that presented under oath at the trial. The Court of Appeals should have reviewed 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 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 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 can be conducted exactly like what took place in Dennis v. State, 51 So.3d 456 (Fla. 2010), when the trial court held no hearing at all. The Florida Supreme 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 Florida 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.³ Manning only argued he was entitled to immunity based on the

³ Again, it is noted Manning never appealed the actual ruling by the trial court that he was not entitled to immunity under the Act.

provisions of the Act. He argued he was entitled to reliance on section 16-11-440(A) and the castle doctrine.⁴

The trial court specifically found he was not entitled to the application of section 16-11-440(A) because the victim was not forcibly entering, nor had she forcibly entered, the home. Instead, the trial court found this case to be similar to a domestic dispute or an argument between lovers. See e.g., State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (“Because Collins was a social guest and rightfully in the apartment, subsection (A) is inapplicable to Appellant.”). Nothing in the trial testimony presented by Manning changes the posture of the case or the application of section 16-11-440(A) and the full record continues to support the trial court’s conclusion the provision does not apply.

Further, subsection (C) does not apply in the instant case, because it only relates to “another place,” meaning not Manning’s residence. In any event, all subsection (C) provides is the elimination of the duty to retreat from the elements of self-defense. Manning received a jury charge fully detailing his entitlement not to retreat under the common law castle doctrine because he was in his home. (R.1780-1781).

Importantly, the jury specifically rejected any defense raised by Manning, found beyond a reasonable doubt the State disproved any defense, and found beyond a reasonable doubt the State proved Manning guilty of the charges. Sending the case back for an evidentiary hearing to determine whether by a preponderance of the evidence Manning would be entitled to immunity seems futile when twelve reasonable jurors have

⁴ Manning never argued defense of habitation and never distinguished between the Act and the common law castle doctrine, which was specifically rejected by the jury.

already concluded beyond a reasonable doubt he was guilty of the crime of voluntary manslaughter and the State disproved self-defense.

Additionally, the trial court already made the legal determination no provisions under section 16-11-440 applied to Manning's case and this was the only consideration asked for by Manning. Even if the common law provisions are considered, they were rejected by the jury based on a finding the State disproved the defenses beyond a reasonable doubt.

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 to determine whether there is any evidence to support a conclusion Manning is not entitled to immunity. See Curry, 406 S.C. at 372, 752 S.E.2d at 267 ("Appellant's claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution."). 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 the Court of Appeals opinion should be reversed to the extent it found the trial court erred in not holding a testimonial evidentiary hearing and in remanding to the trial court to conduct the hearing.

Respectfully submitted,

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PROOF OF SERVICE

I, SALLY ELLISON, certify that I have served the within Brief of Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 19th day of June, 2015.



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