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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge
Appellate Case No. 2015-000204

THE STATE,

RESPONDENT/PETITIONER,

V.

THEODORE MANNING,

PETITIONER/RESPONDENT

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Did the Court of Appeals correctly remand the case for an evidentiary hearing to determine if Manning is entitled to immunity under the Protection of Persons and Property Act, as it applies in this case, holding the evidentiary hearing is necessary to determine if Manning has met his burden under the Act by a preponderance of the evidence?

STATEMENT OF THE CASE

Appellant Theodore Manning (Manning) was indicted by the Richland County Grand Jury on September 15, 2010, for murder. The charge arose from the death of Nikki McPhatter (McPhatter) on May 6, 2009. Manning's case proceeded to trial from October 4 through 14, 2010, before the Honorable G. Thomas Cooper, Jr., and a jury. Luke Shealey, James May, and Fielding Pringle represented Manning, while the State was represented by W. Barney Giese, Luck Campbell, and Joanne McDuffie. The jury found Manning guilty of the lesser included offense of voluntary manslaughter. R. 1813, ll. 6-9. Manning was sentenced to thirty years imprisonment, with credit for time served. R. 1829, ll. 4-17. The direct appeal followed. On December 10, 2013 the Court heard oral arguments. On May 7, 2014 the Court of Appeals published an opinion affirming Mr. Manning's conviction. State v. Manning, Op. No. 5228 (S.C. Ct. App. May 7, 2014). Manning filed a Petition for Rehearing on May 20, 2014. The State filed a Petition for Rehearing on May 22, 2014. On June 26, 2014, the Court of Appeals granted both petitions for rehearing and withdrew the opinion filed May 7, 2014 pending further order by the court as to oral arguments or a new opinion. On October 15, 2014 the Court heard a second round of oral arguments. On November 19, 2014, the Court of Appeals issued an unpublished opinion, State v. Manning, Op. No. 2014 UP-411, and Affirmed in Part and Reversed in Part. In this final opinion, the Court reversed the trial court's refusal to grant an immunity hearing under the Protections of Persons and Property Act and remanded the case for an immunity hearing and evidentiary ruling on the issue of immunity. As to Manning's remaining issues on appeal, the Court affirmed. Both Manning and the State filed Petitions for Certiorari, with the State's Petition being granted. This brief of Respondent follows.

ARGUMENT

1. The Court of Appeals correctly remanded the case for an evidentiary hearing to determine if Manning is entitled to immunity under the Protection of Persons and Property Act, as it applies in this case, holding the evidentiary hearing is necessary to determine if Manning has met his burden under the Act by a preponderance of the evidence.

At the onset of the case, before the jury was sworn, defense counsel moved for an immunity hearing to determine if Manning was entitled to immunity under the Protection of Persons and Property Act (hereinafter Act), South Carolina Code Sections 16-11-410 through 450. R. 192, ll 5-24. The defense had retained an expert forensic witness prepared to testify during the hearing to corroborate Manning's account of the incident; however, the motion was continued by the Court until a later day in pretrial. R. 189-191. Defense counsel made a formal motion requesting the Trial Court to hold a hearing to determine if Manning was entitled to immunity under the Act under scenarios set forth in either 16-11-440(A) or 16-11-440(C). R. 466 ll 17-23. The Trial Court did not allow for an evidentiary hearing and declared that due to the fact that McPhatter was not an intruder the Act did not apply and no evidentiary hearing would be allowed. R. 462-471, ln 10. The Defense argued that when McPhatter pulled the gun on Manning she transformed legally from guest to intruder and trespasser, thus affording Manning the protections of the Act. R. 466, ln 2 – R. 467, ln 9.

Testimonial Evidentiary Hearings

Approximately one year after the conclusion of Manning's trial the South Carolina Supreme Court issued the opinion of State v. Duncan, 392 S.C. 404, 709 S.E.2d 402 (S.C. 2011). In Duncan, the South Carolina Supreme Court examined the Act and its

implications on trials such as Mr. Manning's. The Court found a pre-trial determination is required as immunity granted by the statute is designed to prevent prosecution. The Court found that the Duncan Trial Court properly conducted a pre-trial determination, and it set forth that the standard used by the trial court to make the determination on the issue of immunity would be by the preponderance of the evidence, Id. at 411. This is an appropriate and logical standard for trial courts to employ as the facts and versions of events presented by the State and the Defense during these immunity hearings are usually in dispute and contested vigorously. The State argues in its Petition for Certiorari that Duncan only requires a "pretrial determination" and not a full evidentiary hearing, but to do so would ignore the preponderance of the evidence standard that has been set forth and require trial courts to make an immunity determination based on the weight of lawyer's arguments, and not by competent evidence coming from the witness stand. Additionally, of the handful of cases addressing the Act by our Appellate Courts since Duncan, not one has ruled that a full evidentiary hearing is not what was intended to determine immunity claims under the Act.

The State cites State v. Wessinger, 408 S.C. 416, 159 S.E.2d 405 (2014) in an attempt to assert by analogy that trial courts are allowed to make "determinations" under Acts without holding a full evidentiary hearing. In Wessinger, the appellant pled guilty to two counts of indecent exposure, agreeing under oath to the solicitor's recitation of the facts, and as a matter of public record acknowledged that he was already on the sex offender registry from a 1994 conviction, Wessinger at 406. At the solicitor's request, and over appellant's objection, the trial judge classified the appellant as a sexually violent predator under the Sexually Violent Predator Act, S.C. Code 44-48-10. The issue on

appeal was whether a trial court could classify a defendant under that act without first holding a full evidentiary hearing. The Supreme Court held that whether an evidentiary hearing was necessary in these cases was to be determined on a "case by case basis," but that it was not necessary in Wessinger given that the facts were uncontested and the appellant was a registered sex offender since 1994, Id. at 407. Additionally, the Court goes on to note in footnote three that there is no burden of proof or persuasion by either party under the Sexually Violent Predator Act. The State's attempt at analogy is misapprehended and easily distinguished, as unlike the facts of Wessinger, the facts surrounding Manning's claim of immunity under the Act are disputed and not a matter of public record that both sides agree upon. No immunity hearing was allowed to be held, but if it had occurred, the defense was prepared to present the testimony of forensic expert Kelly Fite to corroborate Manning's account of the fatal encounter, whose testimony was strongly contested by the State later during the defense's case in chief at trial. R. 189-191. Manning was also prepared to testify during the immunity hearing, and his detailed trial testimony also disputed that all important details of the incident were contained in his brief statement to law enforcement, particularly in light of the fact that his lengthy interrogation was not audio or video recorded. This point, as well as his claim of self-defense, was strongly contested by the State. Further distinguishing Manning's facts from Wessinger, unlike the Sexually Violent Predator Act and applicable case law, the burden of proof for determining immunity under the Act is that of a preponderance of the evidence as set forth in Duncan.

The State's Petition for Certiorari also cites Peterson v. State, 983 So.2d 27 (Fla. App. 1 Dist. 2008) in an attempt to support its contention that full evidentiary hearings

are not required under the Act. South Carolina's Act is almost identical to Florida's statutory provision for immunity, and there the trial court conducted the pre-trial hearing by allowing the parties to present deposition evidence of an eyewitness to the incident and the victim. There is no indication in Peterson whether the parties consented to holding the immunity hearing in this fashion, or if it was ordered by the trial court, but this appears to be a case of first impression in Florida where the trial court "observed that no rule or procedure had yet been enacted to guide trial courts in deciding a claim of immunity," Id. at 28. Unlike South Carolina, Florida allows for videotaped depositions in criminal cases where the person being deposed is subject to cross examination. Given the fact that South Carolina does not allow for videotaped depositions in criminal matters, the State's suggestion of using the Peterson trial court's method is a model that could not be replicated in South Carolina. Additionally, the State fails to note how the Peterson court ultimately adopts a preponderance of the evidence standard for determining immunity after looking for guidance from other states with similar immunity statutes. Adoption of such a standard for weighing evidence, as discussed supra, dictates that trial courts are instructed to decide claims for immunity after hearing competent evidence from the witness stand, and not simply arguments from lawyers regarding their opinions of the evidence.

Remand

The State also asserts that Dennis v. State, 51 So.3d 456 (Fla. 2010), a case out of Florida's Supreme Court, supports its contention that a remand is not necessary. The Dennis case is the seminal case from Florida's highest court that settles the question of whether full pretrial evidentiary hearings are required for immunity claims under

Florida's "Stand Your Ground" law. Dennis affirmed the rationale set forth in Peterson, discussed supra, by confirming that full pretrial evidentiary hearings are required to decide immunity claims; however, it decided under the facts of that particular case the error was harmless. It does not imply a blanket rule that failure to provide full evidentiary hearings for immunity claims is somehow always harmless error. The State goes on to claim in its Petition that a remand for an evidentiary hearing in Manning's case would be a waste of judicial resources, and that the reviewing appellate court can simply review the cold transcript of the trial and be able to decide the issue of immunity. This is misguided because in immunity claims under the Act the trial court is the designated fact finder and is tasked with using its own in person observations to decide the matter. In immunity cases, as in Manning's case, the state and defense have polar opposite versions of what transpired during the fatal altercation. It is absolutely crucial that a judge be allowed to use her life experiences to gage a witness's credibility and truthfulness during these evidentiary hearings. A cold reading of a transcript concerning a disputed factual issue does not afford the opportunity to observe the witness's inflection, tone of voice, or hesitancy to answer questions, which are all things that help determine credibility and believability.

Application of the Act

Set forth in Section 16-11-420(A) of the Act, South Carolina's legislature made it clear that it was their intent 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." Section 16-11-420(D) finds that persons have the right to "remain unmolested and safe within their homes, business, and vehicles" and Section (E)

provides 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*** (emphasis added). The legislature clearly enacted this statue to codify long standing common law giving citizens the right to protect themselves in their homes, but also to extend those same protections to other places. Section 16-11-450 contains the immunity provision of the Act where Section (A) states "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..."(emphasis added). The plain meaning of this language of the Act shows the legislature's intent for the Act to work in conjunction with established self-defense and defense of habitation law, not for the Act to replace or supersede the common law.

The State argues in support of the trial court's denial of an immunity hearing that 16-11-440(A) only allows for immunity when using force against someone who is unlawfully and forcefully "entering" or who has "entered," thus overlooking the clear legislative intent of the Act. Such narrow construction bars the door to immunity for long standing justifiable use of force in defending one's home, which is specifically meant to be protected by the "another applicable provision of law" language referenced above. If a would be attacker is invited into a citizen's home because he is a particularly clever brand of criminal, and he uses some ploy or trick to mask his true purpose and only begins to attack once inside, it stands to reason that our legislature intended for the Act to provide immunity for a citizen's use of deadly force against that type of attacker. It is clear from the language contained within 16-11-420 of the Act that our legislature did not intend to leave citizens only immune from action against an intruder who breaks down his door but not against one who attacks

only once he's already inside. The purpose of the Act was to expand and codify the common law, providing immunity under the Act and other applicable provisions of law; the trial court's interpretation diminishes long established self-defense and defense of habitation law. Nikki McPhatter was a social guest of Mr. Manning's at his home until there was a heated argument where she picked up his loaded gun and brandished it at him. He was able to disarm her after a brief struggle and screamed for her to leave his home. She refused and charged him, ultimately being shot in the head during the struggle. The actions Manning took in defending himself against an attacker in his own home have long been deemed justified through the common law, which was explicitly intended to be included within the immunity provision of the Act. Cases such as State v. Bradley, 126 S.C. 528 (1923), State v. Sparks, 179 S.C. 135 (1936), State v. Rye, 375 S.C. 119 (2007) and State v. Bryant, 391 S.C. 225 (2010) articulate the law of defense of habitation which makes Manning's actions against McPhatter justified. For over ninety years our common law has protected the actions taken by Manning, as the Supreme Court in Bradley stated:

> A man who attempts to force himself into another's dwelling, or who, ***being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion.***

Id. at 533 (emphasis added). Respectfully, the trial court's misapprehension and narrow construction of 16-11-440(A) is not in harmony with long established common law which was meant to be expanded upon by the Act, not diminished.

The State relies on State v. Curry, 406 S.C. 364 (2013) to argue that in addition to the previously discussed narrow construction of 16-11-440(A), Manning is not entitled to immunity per Curry because the immunity provided for in subsection (C) of the Act only

relates to "another place" than Manning's residence. This reasoning hinges on the interpretation of the word "another" under Section (C), with the State proposing this section to describe immunity only in places not provided for in Section (A), i.e., "dwelling, residence, or occupied vehicle." Although the statute is silent on what it means by "another place," when read in conjunction with the clear legislative intent it seems most likely that Section (C) is a "catch-all" section meant to provide immunity to a number of places and scenarios as long as the citizen was acting lawfully and in a place where he had a right to be prior to the attack. It names "his place of business" specifically as an example of a place where one has a right to be, "but not limited to" just that one place. It stands to reason that if the language of Section (C) purposefully refuses to make a finite list of where it applies that it would also include one's home, particularly if a citizen was "attacked" there while acting lawfully. The State's narrow construction of "another place" as it applies to subsection (C) was recently heard and dismissed by the South Carolina Court of Appeals in State v. Douglas, 411 S.C. 307 (2014). In Douglas, under facts similar to Manning's, the Defendant claimed immunity under subsection (C) in the killing of a social guest who then turned attacker. The State in Douglas, as it argues here, promoted an interpretation of the Act to suggest that "another place" means some place other than the Defendant's home and therefore subsection (C) would not apply in a defendant's home. After a careful analysis of the General Assembly's legislative intent combined with a basic application of the rules of statutory construction, the Court of Appeals ruled that:

> The General Assembly's use of this language in section 16-11-420 clearly indicates its intent to provide the protections of the Act to persons within their own home facing not only unwelcome intruders but also "***attackers***," ***including those who are initially invited into the home and later place the homeowner in reasonable fear of death or great bodily injury***. Further, the

> language of section 16-11-440(C) itself indicated that its application is not limited to businesses. ***Therefore, the more inclusive definition of "another" is the proper definition to employ in interpreting section 16-11-440(C).***

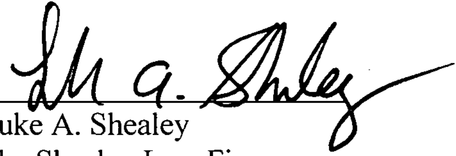
Id. at 331. Accordingly, Manning should have been entitled to the protections of both subsections (A) and (C) of the Act, as they are not mutually exclusive, and Douglas makes it clear that a citizen can claim both protection in his own home under the right circumstances.

In Manning's case, the Defense specifically requested that an evidentiary hearing be conducted. R. 463, ln 25 – R. 464, ln 3. The fact that Mr. Manning did not receive this hearing constitutes reversible error, as the trial court refused to apply the protections afforded by the Act as to Manning's case. The refusal to grant the hearing is not harmless error as Manning was deprived of the added protections of the Act, which fundamentally changed the self-defense and defense of habitation law in South Carolina by adding further protections such as immunity. The Court of Appeals was correct in determining that it was error for the trial court to refuse Manning an evidentiary hearing, as he should not have been exposed to the full gauntlet of trial without first being afforded a full evidentiary hearing under the Act.

CONCLUSION

Based on the above arguments, the opinion by the Court of Appeals should be affirmed in regards to the Act, and Manning's case should be remanded to the trial court to conduct a full evidentiary hearing regarding immunity.

Respectfully submitted,



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This 17th day of July, 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

G. Thomas Cooper, Jr., Circuit Court Judge
Appellate Case No. 2015-000204

THE STATE,

RESPONDENT/PETITIONER,

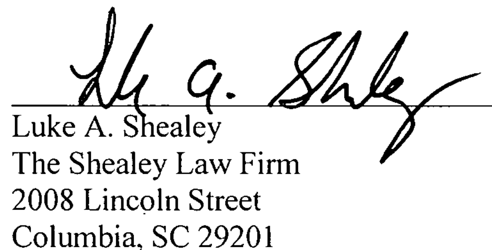
V.

THEODORE MANNING,

PETITIONER/RESPONDENT.

CERTIFICATE OF SERVICE

I certify that a true copy of the return to petition for writ of certiorari in this case have been served on William Blitch, Esquire, this 17th day of July, 2015.



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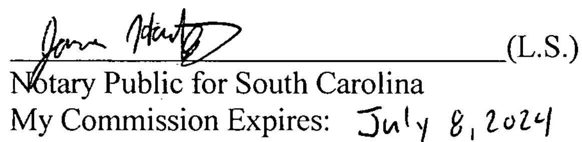
of July, 2015.



_______________________________(L.S.)
Notary Public for South Carolina
My Commission Expires: July 8, 2024