

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
The Honorable J.C. Nicholson, Circuit Court Judge

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AUG 20 2015

Appellate Case No. 2014-002123

S.C. Supreme Court

THE STATE

APPELLANT,

V.

WHITLEE JONES,

RESPONDENT.

INITIAL REPLY BRIEF OF APPELLANT

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ATTORNEYS FOR RESPONDENT

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ARGUMENT

Respondent asserts “the legislature could not have intended S.C. Code § 16-11-440 (C) to take away a right citizens already had not to retreat before the immunity act was ever passed.” (IBOR at pp. 12). Her position is problematic for two reasons. First, the proper interpretation of S.C. Code Ann. § 16-11-440(C), which would find the presumption afforded does not apply when a homicide occurs in one’s residence, is not inconsistent with longstanding South Carolina law regarding the duty to retreat. The principle that one does not have a common law duty to retreat in her residence still holds true. Respondent would not have to show that she had a duty to retreat at trial.

Second, contrary to the implication of Respondent’s assertions, the limitations presented by S.C. Code Ann. § 16-11-440(C) do not create a nonsensical result in this case. Respondent’s interpretation of the statute essentially requires that immunity be granted any time a defendant can establish he or she acted in self-defense. Appellant submits that such an interpretation would be inconsistent with the legislature’s intent. Clearly, the legislature did not intend for all cases involving self-defense to be subject to a determination of whether immunity should apply. Appellant submits that the limitations outlined in the application of § 440(C) reflect the legislature’s intent to leave cases like Respondent’s for a jury determination.

CONCLUSION

For the foregoing reasons and the reasons stated in the Brief of Appellant, Appellant respectfully requests this Court vacate the trial court's Order Granting Immunity from Prosecution to Defendant and remand the case for a jury trial.

Respectfully submitted,

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August 20, 2015.

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Appeal from Charleston County
The Honorable J. C. Nicholson, Circuit Court Judge

Trial Court Case No. 2013-GS-10-00799
Appellate Case No. 2014-002123

THE STATE,

Appellant,

vs.

WHITLEE JONES,

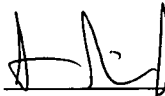
Respondent.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Appellant, certify that I have served the within Initial Reply Brief of Appellant on Respondent by depositing two (2) copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Robert M. Dudek, Esquire, SCCID/Division of Appellate Defense, 1330 Lady Street, Suite #401, Columbia, South Carolina 29201-3332.

I further certify that all parties required by Rule to be served have been served.

This 20th day of August, 2015.



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