

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM MARION COUNTY
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. : 2015-001992

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S.C. Supreme Court

THE STATE

PETITIONER,

V.

CALVIN JERMAINE POMPEY,

RESPONDENT.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2013-001769

THE STATE

APPELLANT,

v.

CALVIN JERMAINE POMPEY,

RESPONDENT.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in granting the Respondent Calvin Jermaine Pompey immunity from prosecution under the Protection of Persons and Property Act, specifically under S.C. Code Ann. § 16-11-440(A), when there was no evidence to support a finding the victim was unlawfully and forcefully entering, or had unlawfully and forcibly entered the Respondent's vehicle when Respondent shot him?

STATEMENT OF THE CASE

Respondent Calvin Jermaine Pompey ("Respondent") was arrested and indicted for Murder (2012-GS-33-301) in the shooting death of Rondell McEachin. On October 12, 2012, Respondent filed a Motion to Dismiss Indictment, asserting he was entitled to immunity from criminal prosecution under S.C. Code §§ 16-11-440(A) and 16-11-450(A). (R. pp. 98-99).

An evidentiary hearing on the Motion was held before the Honorable D. Craig Brown, Circuit Court Judge, on August 13, 2013. (R. pp. 1-85). Respondent was present and was represented by Vick Meetz, Esquire, Assistant Public Defender with the Twelfth Circuit Public Defender's Office. Id. The State was represented by Solicitor E.L. Clements, III, Esquire of the Twelfth Judicial Circuit. Id.

On August 15, 2013, the trial court dictated its Order on the Motion on the record. (R. pp. 85-91). Appellant subsequently filed its Notice of Appeal.

The State now respectfully requests this Court reverse the trial court's Order granting the Motion to dismiss the indictment, and remand this case for trial.

STATEMENT OF FACTS

On March 18, 2013, Respondent Calvin Jermaine Pompey ("Respondent") shot and killed the victim, Rondell McEachin, in the parking area outside of Club Fusion in Marion County.

Respondent and his friends go to Club Fusion.

Respondent, Kadeem Kelley, and Joshua Ward all travelled together to Club Fusion on the early morning of March 18, 2013.¹ (R. pp. 5, 50-1). It was unclear how long the three were in the club that night. (See R. pp. 11, 51). Kelley was only able to say they were at the club for longer than five minutes. (R. p. 11). While the three were inside the club, an altercation broke out between other club goers. (R. pp. 5, 51-2; see R. pp. 33, 71). Kelley indicated that it did not appear Respondent was not involved in the altercation. (R. pp. 5, 11, 13). However, Respondent was removed from the club with those involved in the altercation.² (R. pp. 5, 11, 13, 52, 59). Respondent denied being involved in the altercation, but he did state that he attempted to break up the fight. (R. pp. 52, 59).

After the altercation was over, Kelley and Ward went outside and met up with Respondent. (R. pp. 6, 53). Kelley and Respondent both indicated that they met up outside the club no more than a couple minutes after the altercation inside was over. (R. pp. 14, 53). The three then headed towards their car, a

¹ Kelley is Respondent's brother-in-law. (R. pp. 10, 51).

² Kelley later conceded Respondent may have been involved in the fight, but noted that it did not appear that Respondent's clothes were messed up, Respondent was not scratched up, and it did not appear Respondent had been in a fight. (R. pp. 13, 15).

2001 Mitsubishi Gallant. (R. pp. 14, 53; see R. p. 45). Ward was driving, Respondent was sitting in the front passenger seat, and Kelley was sitting in the rear passenger seat. (R. pp. 7-9, 17).

The victim was also at Club Fusion with a friend.

Milton Wheeler was with the victim on the day of the shooting. (R. pp. 68-9). He testified that both he and the victim went to Club Fusion together that night. (R. p. 71). Wheeler also recalled that they were both removed from the club after there was an altercation between others inside the club. (R. pp. 71-2). Wheeler did not see what happened because he was at the bar getting drinks. (R. p. 72). After he and the victim were put out of the club, he recalled Mr. McRae trying to calm down the victim and him. (R. p. 72)

Roderick McRae, the owner of Club Fusion, testified that he was outside in the parking lot on the evening of March 18, 2012. (R. p. 31). He never saw Respondent or Kelley, but he did see the victim with another guy. (R. p. 31). McRae testified that it appeared the two had been involved in an altercation inside the club because they were acting erratic and appeared to be riled up a little bit. (R. pp. 31-2, 33). McRae further testified that he was able to calm down the victim, but the victim's friend would not calm down. (R. pp. 33, 34, 39, 41-2).

The victim approached Respondent's car.

McRae testified that shortly after he turned away from the victim, the victim hopped a pillar and fell face first. (R. pp. 34, 43). McRae noted that he believed the victim was intoxicated based upon the jump attempted by the victim. (R. p. 34). When the victim got up, he started heading towards Respondent's

car. (R. p. 35). McRae stated that he attempted to stop the victim, but he was too far away when McRae saw that he was heading towards the car. (R. p. 37). McRae indicated the victim was not running, but was moving in a hurried motion straight towards the car. (R. pp. 35, 37, 45). McRae testified that the victim was heading towards the rear of the car. (R. pp. 37-8).

Kelley testified that as he, Respondent, and Ward were getting into the car, the victim and some others were following them to the car. He noted that one guy had his hand under his shirt as if he had something. (R. p. 6). Kelley indicated that Respondent was in the car and was leaning back in the front passenger seat when the victim approached. (R. pp. 7, 18). According to Kelley, Respondent's foot was hanging out of the doorway when the victim approached. (R. p. 18). He noted that the victim was inside the car or reaching in the car. (R. p. 8). The victim did not say or do anything when he got to the car. (R. p. 8). Kelley knew Respondent had a gun that night. (R. p. 19). Kelley indicated that Respondent had left the gun in the car when they went into the club. (R. p. 19).

Respondent testified that he, Kelley and Ward went to the car. (R. p. 53). When Respondent got to the car, he started to get in. (R. p. 53). He saw the victim running towards the car with his hand under his shirt. (R. p. 53). Respondent noted that he had brought his gun with him that night, and it was in the glove compartment of the car. (R. p. 54). Respondent also testified that he saw two other people coming after the victim. (R. p. 55).

Respondent shot the victim.

Once the victim leaned into the car, Kelley heard one shot. (R. p. 8). Kelley testified Respondent was the one who let off the shot, and the shot was fired inside the car. (R. p. 18). McRae also heard one shot. (R. p. 36). When the shot was fired, he noted the car door was open, and the victim was leaning into the car. (R. pp. 36-7). McRae also observed that the person in the car had the car door open and his feet were flat on the ground. (R. p. 43). McRae described the person's position as almost a defensive position, and McRae further noted that the person leaned further back the closer the victim got to the car. (R. pp. 43, 47).

Wheeler stated,

Well, when they [Respondent and his friends] was heading over to the car I don't know why he [the victim] was running to the car, but when he got there he check over everything. And then when we made it to car everybody was saying, Pompey, don't do it, don't do it, and next I heard a gunshot and I took off running.

(R. p. 72, ll 17-22). Wheeler never saw the victim with a weapon or anything in his pocket. (R. p. 73). He also never saw him get into an altercation with Respondent, and he did not recall seeing the victim do anything threatening. (R. p. 73). Wheeler only heard one gunshot. (R. pp. 73, 74). Wheeler testified that Respondent was in the car when the shot was fired. (R. p. 74). He could not see Respondent's feet, but Respondent was in the car. (R. p. 74). He saw the victim run towards the car door. (R. p. 74). While Wheeler initially testified that he did not see the victim do anything with his hands, he later admitted that he saw the victim raise his hand at Respondent. (R. pp. 74, 76).

Respondent testified that when the victim got to the car, Respondent shot. (R. p. 54). He indicated that the victim was on top of him, and was close enough for there to be blood inside the car and on Respondent's clothes after the shot was fired. (R. p. 55). Respondent stated that he was sitting down in the front passenger seat, and he was leaning back in the seat when he fired the shot. (R. p. 55).

Respondent testified that when he fired the shot, his feet were inside the car. (R. pp. 60-1). Respondent also stated that he did not hear the victim or anyone else make a threat. (R. p. 62). He also admitted that he never saw anything other than the victim's hand under the victim's shirt. (R. p. 62). Respondent never saw a weapon. (R. p. 63). Respondent acknowledged that he could have told the victim to back off, but he questioned whether that would have been effective. (R. p. 63). He also noted that he was not sure if he could have shut the door before the victim got to him. (R. p. 63). However, Respondent later agreed that he could have closed the door. (R. p. 65). He further testified that he shot the victim because he felt threatened. (R. pp. 65-66).

After the shot was fired.

McRae testified that after Respondent shot the victim, he pointed the gun at the other guy. (R. p. 46). McRae stated that the other guy pleaded for his life. (R. p. 46). Then Respondent pointed the gun at McRae. (R. p. 46). McRae testified that Kelley then intervened and told Respondent that McRae had nothing to do with this, and identified McRae as the owner of the club. (R. p. 46). McRae

noted that Respondent was out of the car when he pointed the gun at the victim's friend, but he was in the car when he shot the victim. (R. pp. 46-7). He also noted that the victim was really close to the Respondent when he shot him. (R. p. 47).

Kelley testified that he, Respondent, and Ward left the scene immediately after the shooting. (R. pp. 9, 27-8). He denied anything was said after the shot was fired, other than him telling the others to go. (R. p. 27). Respondent indicated that he protected himself after he fired the shot. (R. pp. 55-6). He noted that two more people were heading towards the car at that time. (R. p. 55). He also noted that they left as soon as they felt it was safe to leave. (R. p. 56).

Wheeler testified that he took off running after he heard the gunshot. (R. p. 72). When he returned to where the victim was shot, he told others to call 911. (R. p. 72).

The Trial Court found Respondent was entitled to immunity.

On August 15, 2013, the trial court granted immunity. In granting immunity, the court stated as follows:

Mr. Pompey was charged by indictment, indictment number 2012-GS-33-301 was the offense of murder. This indictment alleges that Calvin Jemaine Pompey did in Marion County on or about March 18, 2012 willfully, feloniously, and intentionally kill the victim Rondell, Rondell McEachin, with malice aforethought either expressed or implied by means of shooting and the victim did die as a proximate result thereof on or about March 18, 2012 in Marion County in violation of Section 16-3-10 of the South Carolina Code of laws.

Pursuant to such indictment Mr. Pompey by and through counsel filed a motion to seeking immunity pursuant to the

protection of persons and property act under 16-11-410, et. al., of the South Carolina Code of laws. Section 16-11-420, South Carolina Code Subsection A, states that: It is the intent of the general assembly to codify the common law of 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. Subsection E of 16-11-420 states that: The general assembly finds 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. Section 16-11-440 Subsection (a) (1) and (2) states that: A person is presumed to have a reasonable fear of imminent peril, 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, one, against whom the deadly force is used is in the process of unlawfully and forcefully entering or unlawfully and forcibly enter a dwelling, residence, or occupied vehicle; or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and two, 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. Subsection D of Section 16-11-440 states that: A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.

First, the Court responsibility is to determine the implication of the act. The Court certainly finds that the act is applicable and that all the facts and circumstances surrounded the defendant occupying a vehicle when the incident subject to this indictment took place. A vehicle as defined in 16-11-430 is defined as: A conveyance of any kind whether or not motorized which is designed to transport people or property. Under Subsection – excuse me, under Section 16-11-440 (a) (1): If someone against whom deadly force is used is in the process of unlawfully and forcefully entering or has unlawfully and forcibly entered a dwelling, a residence, or occupied vehicle, the Court finds that it – the topic here or the issue here occupied vehicle, not residence or dwelling, and that's what we have here, an occupied vehicle – and the one who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring the uncontradicted testimony that was heard in this courtroom as the defendant did know such, he did know such, then there is a presumption that the person here, that person being Mr. Pompey, had a reasonable fear

of imminent peril of death or great bodily injury. There's a presumption that Mr. Pompey had reasonable fear of imminent peril of death or great bodily injury to himself when using deadly force that is intended or likely to cause death or greet bodily injury to another person.

Furthermore, under Subsection B, as I've already stated, a person who unlawfully and by force enters or attempts to enter an occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60. The uncontradicted testimony is that the decedent Mr. McEachin was attempting by force to enter the vehicle occupied by Mr. Pompey; therefore, there has been no testimony that would rebut the presumption of his intentions. It is presumed that the decedent intended to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.

The standard of proof that this Court must use in making this determination is by a preponderance of the evidence, has the defendant established by a preponderance of the evidence that he was entitled to use the force which he used in this particular situation. The uncontradicted testimony that was elicited from this witness stand was that there was an altercation in this club, Club Fusion; that the defendant was not involved in the altercation, but the defendant was removed from the club; that the defendant was told to leave the club and that he was in the process of doing so; that the defendant waited on Mr. Kelly and Mr. Moore, whom he arrived at the club with, and that as soon as all three of them were outside of the club that they went to the car, to their car; that Mr. Moore was the driver of this automobile; that Mr. Kelly was getting into the back seat of the automobile behind the driver; that Mr. Pompey was in the front passenger seat and that he was seated in the car. There was some contradictory testimony as to whether or not his feet were in the car or out of the car, but it is uncontradicted that he was seated in the car.

This Court determines that whether his feet were in or out of the car is irrelevant. The decedent and Mr. Wheeler were also removed from Club Fusion. Mr. McEachin, the decedent without provocation, there was no testimony that there was any provocation by this defendant Mr. Pompey, that Mr. McEachin without provocation went hurriedly to the automobile that Mr. Pompey was in after having fallen to the ground; that as he approached the car he did so with his hand under his shirt; that after getting to the car, decedent leaned, decedent being Mr. McEachin, leaned into the car; that as the decedent leaned into the car defendant leaned

back. As defendant leaned back, that is when he shot the decedent one time resulting in his death. Per the decedent – excuse me, per the defendant the decedent never made any verbal threats, nor did the defendant ever see a weapon and that was something that Mr. Clements on cross-examination questioned him about. And there was testimony elicited from other witnesses whether or not there were any verbal threats or whether or not anybody saw a weapon. And while I certainly understand those arguments from counsel and State v. Duncan, there was never any verbal threats from the victim, nor was there ever a weapon retained by the victim in that case.

In State v. Duncan, which is cited at 392 S.C. 404, there was a verbal disagreement between the defendant and the decedent in that case. The decedent in that case attempted to enter the porch, simply enter the porch of the defendant, and as he attempted to enter the porch that is when that decedent was killed. In that particular case in State v. Duncan our supreme court affirmed the circuit court's finding that the defendant was entitled to immunity under the protection of property – excuse me, protection of persons and property act. The Supreme Court affirmed the circuit court's finding in that case.

My conclusions, based upon all of the uncontradicted testimony that I have set forth on the record based upon my review of the statutes that apply to this particular situation, this Court after much deliberation and review of the law in this case, I find that the defendant has established by a preponderance of the evidence that he is entitled, he is entitled to immunity under the protection of persons and property act. And that is this Court's ruling.

(R. p. 85, | 12 – R. p. 91, | 25).

ARGUMENT

THE TRIAL COURT ERRED IN FINDING RESPONDENT WAS ENTITLED TO IMMUNITY UNDER THE PROTECTION OF PERSONS AND PROPERTY ACT: THERE WAS NO EVIDENCE TO SUPPORT THE COURT'S FINDING THAT THE VICTIM WAS EITHER IN THE PROCESS OF FORCIBLY ENTERING OR HAD FORCIBLY ENTERED RESPONDENT'S VEHICLE WHEN RESPONDENT FIRED THE FATAL SHOT.

The trial court erred in finding Respondent was entitled to immunity from prosecution under S.C. Code Ann. § 16-11-440(A). Contrary to the trial court's findings, there was no evidence presented at the evidentiary hearing that the victim forcibly entered Respondent's vehicle. Since the victim was not forcefully entering or had not forcibly entered Respondent's vehicle when he was shot, Respondent was not entitled to the presumption afforded under S.C. Code Ann. § 16-11-440(A). As a result, the trial court abused its discretion in finding Respondent was entitled to immunity under the Act.

Standard of Review

Whether a defendant is entitled to immunity under the Protection of Persons and Property Act must be decided prior to trial if either party moves for a determination regarding the Act's application to a defendant's case. State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). "[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." Id. at 411, 709 S.E.2d at 665. S.C. Code § 16-11-440(A) states,

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, or if he removes or is attempting to remove another person against his will from the 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)(emphasis added).

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001) (citing State v. Cutter, 261 S.C. 140, 199 S.E.2d 61 (1973)). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Wilson, 345 S.C. at 6, 545 S.E.2d at 829. Review is limited to determining whether the trial judge abused his discretion. Id. The appellate court may not re-evaluate the facts based on its own view of the preponderance of the evidence, but must determine whether the trial judge's ruling is supported by any evidence. Wilson, 345 S.C. at 6, 545 S.E.2d at 829; see generally Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991) ("In law actions, the lower court must be affirmed where there is "any evidence" to support its findings."). "A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review." State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013). "Section 16-11-450 provides immunity from prosecution if a person is found to be justified in using deadly force under the Act." Id.

At issue in this case is whether the trial court erred in finding the victim forcibly entered or was in the process of forcibly entering Respondent's vehicle when Respondent shot him. The testimony presented at trial did not support the finding. At the hearing, each witness indicated that when the shooting occurred, Respondent was sitting down in the front passenger seat of the car. (R. pp. 18, 36, 47). Kelley indicated the car door was open and Respondent's feet were outside the vehicle. (R. p. 18). Mr. McRae similarly testified the car door was open before the shooting. (R. p. 36). McRae also indicated that Respondent's feet were outside the car, and were flat on the ground around the time the shot was fired. (R. p. 43). While Respondent denied that his feet were outside the car door when he shot the victim, he did admit that the vehicle's door was open. (R. pp. 54, 61; see R. pp. 64-5). Similarly, the victim's friend Wheeler testified that the Respondent was in the car when he shot the victim. (R. p. 74). Altogether, all indicated that the car door was open when the victim leaned in before the shooting.

There was no testimony at the motion hearing that indicated the victim had any physical contact with Respondent before the shooting. None of the witnesses, including Respondent, heard the victim make any threats towards Respondent. (R. pp. 22, 27, 47, 62, see R. p. 73). Furthermore, no one saw the victim with a weapon. (R. pp. 63, 73; see R. p. 26). In light of this testimony at the motion hearing, Appellant submits Respondent failed to show any force was used by the victim in leaning into the vehicle.

Contrary to the hearing judge's findings, this case is not analogous to the factual scenario presented in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). In Duncan, the Supreme Court noted that according to the defendant's girlfriend,

The victim was opening the screened porch door when respondent exited the front door of the house onto the porch with the gun. At one point, the victim began advancing across the porch and Templeton was "between [the victim] and [respondent]" and was "trying to get [the victim] off the steps and leave." The victim continued to force his way onto the porch.

Duncan, 392 S.C. at 407, 709 S.E.2d at 663. That was far more than the actions taken by the victim in this case. As already noted, by all accounts the victim leaned into an open car door. The victim here neither attempted to open the car door nor took any action to force Respondent to open the door.

In all, Appellant submits that a forcible entry under the Act requires more than a person leaning into an open car door. While the Act does not specifically define what constitutes a forcible entry for the purposes of the presumption afforded in S.C. Code Ann. § 16-11-440(A), the ordinary meaning of the words used in the statute would clearly indicate that something more than leaning into an open door is necessary to support a finding of forcible entry. The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Duncan, 392 S.C. at 408, 709 S.E.2d at 664 (citing Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996)). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. Id. When a statute's terms are clear and unambiguous on their face, there is no

room for statutory construction and a court must apply the statute according to its literal meaning. Duncan, 392 S.C. at 408-09, 709 S.E.2d at 664 (citing Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). Forcible entry is clear and unambiguous. It requires entry by some use of force. In this case, there was no evidence the victim entered Respondent's vehicle using force. To the contrary, the testimony clearly showed the door was open, and the victim only leaned inside. Thus, Appellant submits the trial court abused its discretion in finding Respondent was entitled to immunity under S.C. Code § 16-11-440(A).

CONCLUSION

For the foregoing reasons, the State respectfully requests this Court reverse the trial court's Order granting Respondent immunity from prosecution under the Protection of Persons and Property Act and remand for a trial on the murder indictment.

Respectfully submitted,

ALAN WILSON
Attorney General

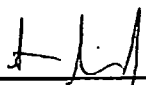
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October 30, 2014.

STATE OF SOUTH CAROLINA
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APPEAL FROM MARION COUNTY
The Honorable D. Craig Brown, Circuit Court Judge

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THE STATE

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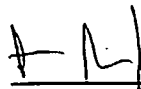
CALVIN JERMAINE POMPEY,

RESPONDENT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 30th day of October, 2014.



ALPHONSO SIMON, JR.
Assistant Attorney General

ATTORNEY FOR APPELLANT

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V.

CALVIN JERMAINE POMPEY,

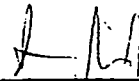
RESPONDENT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Appellant, certify that I have served the within Final Brief of Appellant and Certificate of Compliance on Respondent by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert M. Dudek, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, SC 29201.

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

This 30th day of October, 2014.



ALPHONSO SIMON, JR.
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

APPELLANT,

V.

CALVIN JERMAINE POMPEY,

RESPONDENT

APPELLATE CASE NO. 2013-001769

FINAL BRIEF OF RESPONDENT

ROBERT M. DUDEK
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ATTORNEY FOR RESPONDENT.

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STATEMENT OF ISSUES ON APPEAL

Whether the court erred in granting the Respondent Calvin Jermaine Pompey immunity from prosecution under the Protection of Persons and Property Act, specially under S.C. Code Ann. §16-11-440(A), when there was no evidence to support a finding the victim was unlawfully and forcefully entering, or had unlawfully and forcible entered the Respondent's vehicle when Respondent shot him?

COUNTER STATEMENT OF ISSUE ON APPEAL

Whether there was evidence to support the trial court granting respondent Pompey immunity from prosecution pursuant to S.C. Code Ann. §16-11-440 and §16-11-450 where the evidence showed the irate decedent quickly approached the automobile respondent was inside, with a hand under his shirt seemingly hiding a weapon, and he was reaching inside the automobile for respondent when he was shot a single time?

STATEMENT OF THE CASE

Respondent Calvin Jermaine Pompey was indicted by the Marion County Grand Jury for the offense of murder. R. p. 96. On October 12, 2012 respondent filed a Motion to Dismiss the Indictment asserting he was in the category of persons covered by S.C. Code Ann. §16-11-440(A) and that he was entitled to immunity from criminal prosecution pursuant to S.C. Code Ann. §16-11-450(A). R. p. 98.

An evidentiary hearing was held before the Honorable D. Craig Brown, on August 13, 2013. Respondent was represented by Vick Meetz. Solicitor E.L. Clements, III represented the state. R. p. 1.

On August 15, 2013 the trial court dictated its order granting immunity into the record. R. p. 85, l. 9 – 91, l. 25. The state subsequently filed a Notice of Intent to Appeal.

ARGUMENT

There was evidence to support the trial court granting respondent Pompey immunity from prosecution pursuant to S.C. Code Ann. §16-11-440 and §16-11-450 where the evidence showed the irate decedent quickly approached the automobile respondent was inside, with a hand under his shirt seemingly hiding a weapon, and he was reaching inside the automobile for respondent when he was shot a single time

Relevant Facts

Kadeem Kelley testified that on March 18, 2012 he went to the Club Fusion in Marion County with his respondent brother-in-law, and Josh. R. p. 4, l. 23 – 6, l. 3. It was after midnight, and an altercation occurred inside the club. Kelley did not see what happened during the altercation but he learned that respondent had been “thrown out of the club.” R. p. 5, ll. 5–23. As will be seen infra, respondent later testified that he tried to break up the fight inside the club but left as requested without incident when security intervened.

Kelley headed to the car with respondent and their friend Josh fully intending to leave. R. p. 6, ll. 7-10. Josh unlocked the door and “everybody proceeded to get in the car.” R. p. 7, ll. 4-10. Respondent was in the passenger seat, and Kelley was in the backseat behind the driver’s seat. Kelley testified: “I saw people coming to the car that wasn’t with us, didn’t know them, never seen them before. One guy was running up with his hand under his shirt as if he had something.” R. p. 7, ll. 15-22.

Respondent testified that the decedent came running towards him with his hand under his shirt, and he told the trial court the decedent was “on top of me” when he shot him inside the automobile. R. p. 53, l. 16 – 55, l. 3.

Kelley also remembered that respondent was sitting in the passenger seat when the decedent came running up with his hand under his shirt, and he reached inside the

automobile. R. p. 7, l. 15 – 9, l. 4. Kelley said he did not see the respondent involved in a fight inside the club, and it was not clear why the decedent was directing his anger at them. R. p. 11, ll. 16-17.

Kelley further testified that respondent left his gun inside the car when they went into the club. Kelley stated that respondent kept a gun in the car because of “prior things that happened to him.” R. p. 20, ll. 9-10. Respondent would later explain that about five years prior to this incident: “I had got jumped by nine people, had surgery. I had plates in my face all in the right side. They knocked two teeth out, jaw broke.” Respondent said this was something that was impossible to forget. R. p. 57, ll. 6-11.

Kelley confirmed that respondent was inside the car when he shot the decedent, who, as seen, respondent said was “on top of him.” R. p. 18, ll. 17-24.

Roderick McCrae was the owner of the Fusion Sports Bar. R. p. 30, l. 11 – 31, l. 4. McCrae thought the altercation inside the club occurred about 3:00 to 3:30 in the morning. McCrae described the decedent as “kind of erratic, kind of riled up a little bit.” McCrae said he talked to the decedent and the man with him, and told them “it’s not worth it... just go home, it’s not worth it. McCrae thought the situation had calmed down with them. R. p. 32, ll. 8-21.

McCrae said he was told the decedent had been involved in the altercation inside his bar. McCrae maintained he thought the decedent and the other man were going to go home. However, McCrae recalled: [I] took my eyes off Mr. Rondell [the decedent]; and before I knew it he hopped a pillar about as high as the middle of my leg, and he fell face first so I knew he was intoxicated. He popped up. And when he popped up off the ground, the car was in my sight and I saw him. I said, man, I still – I put my hand on the pillar. I was like,

don't go over there, don't go over there. He went straight to the car... not so much running but in a hurried motion...straight towards the car." R. p. 34, l. 13 – 35, l. 7.

Mr. McCrae said that the car door was open, and he respondent was "sitting with his feet on the ground and he saw the decedent leaning into the car when a single gunshot went off." R. p. 36, ll. 14-22; 37, ll. 1-3. On cross-examination McCrae confirmed that the decedent approached respondent's car at a fast pace. McCrae lamented: "[B]efore I could hop across that pillar and grab him it was too late." R. p. 45, ll. 16-20.

Respondent testified that the club was crowded that night, and the altercation occurred near him. Respondent tried to break up the fight but the security men grabbed him and took him outside the club. Respondent said he went peacefully and he waited outside for Kelley and Josh. R. p. 50, l. 14 – 52, l. 24.

Respondent testified that when they were getting in the car he saw the decedent running to the car "with his hand under his shirt." Respondent recalled: "[A]s I started to get in the car, it took him [Josh] a while to unlock the door. So when I got in the car I was sitting down, I seen him coming. And when he started coming he started to reach in. It really looked like he was running -- everything was happening so fast -- with his hand under his shirt." R. p. 54, ll. 6-15. Respondent testified he grabbed the gun, and that the decedent was "on top of me close enough for blood in the car and on my clothes" when he shot him. R. p. 54, l. 6 – 55, l. 3.

On cross-examination respondent stated that he left the club when requested to do so. "If they tell you to leave the best thing for you to do is leave so I left." R. p. 59, l. 25 – 60, l. 2. Respondent confirmed that he was inside the automobile when he saw the decedent running towards the car. R. p. 60, l. 5 – 61, l. 10. Respondent said he shot the decedent because he felt threatened and "I felt my life was in danger." R. p. 65, ll. 18-25.

The state called Milton Wheeler as a witness. Wheeler said he was with the decedent the entire day of the incident. R. p. 68, l. 14 – 69, l. 12. Wheeler confirmed that respondent was inside the car when the shot was fired. R. p. 74, l. 2-11. Wheeler said the entire incident “happened so fast,” but he maintained he did not see the decedent do anything with his hands. R. p. 74, ll. 9-20.

However, on cross-examination Wheeler acknowledged in his statement to the police he told them that the decedent had “reached out” with his hands at the time of the shooting. R. p. 76, ll. 4-11. Wheeler further admitted that in his statement he told the police that the decedent raised his hand at respondent. R. p. 77, l. 14 – 78, l. 6.

Defense counsel argued that “none of the evidence here is in dispute as to what happened. We feel like the facts fit this statute.” R. p. 82, ll. 9-11. The judge took the matter under advisement.

Order

After the break of a day to consider his ruling, the trial judge reconvened court, and he issued his order. He ruled that S.C. Code Ann. §16-11-420 stated the intent of the General Assembly was that no person or victim of a crime was required to surrender his personal safety. A person was presumed to have a reasonable fear of imminent peril death or great bodily injury and could use deadly force if another person was unlawfully and forcefully entering a dwelling, residence or occupied vehicle. S.C. Code Ann. §16-11-440(A)(1)-(2); R. p. 85, l. 9 – 87, l. 9.

The judge ruled that the evidence showed that the decedent was attempting by force to enter the vehicle occupied by respondent, and that he intended to commit an unlawful act. The law presumed respondent had a reasonable fear of great bodily injury or death given the decedent’s actions. R. p. 86, l. 9 – 89, l. 2.

The judge found that the respondent had proven by a preponderance of the evidence that he was entitled to immunity. The judge observed: "There was some contradictory testimony as to whether his feet were in the car or out of the car. But it is uncontradicted that he was seated in the car. This court determines that whether his feet were in or out of the car is irrelevant." R. p. 89, l. 23 – 90, l. 1.

The judge further found that the decedent went hurriedly to the automobile where respondent was after the decedent had fallen to the ground. The decedent approached the car with his hand under his shirt and he leaned into the car. The respondent leaned back and shot the decedent one time resulting in his death. R. p. 90, l. 2 – 91, l. 25. The judge ruled respondent was entitled to immunity.

Discussion

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001) (citing State v. Cutter, 261 S.C. 140, 199 S.E.2d 61 (1973)). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Wilson, 345 S.C. at 6, 545 S.E.2d at 829. Review is limited to determining whether the trial judge abused his discretion. Id. The appellate court may not re-evaluate the facts based on its own view of the preponderance of the evidence, but must determine whether the trial judge's ruling is supported by any evidence. Wilson, 345 S.C. at 6, 545 S.E.2d at 829; see generally Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991) ("In law actions, the lower court must be affirmed where there is "any evidence" to support its findings.")

The essence of the state's argument is that there was no evidence the "victim forcefully entered respondent's automobile." Brief of Appellant at 12. However, the

evidence in this case shows that respondent was in the front passenger seat of the car. The decedent, who was apparently intoxicated and irate, fell on his face in the parking lot. He then got up and very quickly went to the automobile where respondent was sitting in the front passenger seat, and he reached into the automobile. He also had a hand under his shirt which indicated he may have been armed. Respondent testified he felt threatened and in fear for his life, and he shot the decedent while the decedent was "on top" of him.

Further, it appears evident this was a violent night club since the people entering were checked for weapons. Further, respondent testified he knew it was a good idea to peacefully leave the club when asked to do so. Respondent had been very badly injured in the past, and that is why he had a gun in the car. As stated, the decedent was reaching into the car and was "on top of him" when respondent shot him.

S.C. Code Ann. §16-11-440(A)(1) & (2) provide that: 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 forcefully entered ... an occupied vehicle or if he removes or in attempting to remove another person against his will from ... an occupied vehicle; and, (2) who uses deadly force, knows or has reason to believe that an unlawful and forceful entry or unlawful and forceful act is occurring or has occurred.

Reaching into an automobile, or, more accurately reaching for respondent inside of the automobile, and being on top of respondent was an unlawful and forceful act. The evidence in this case was also sufficient for the alternative application of the statute that the decedent was attempting to remove respondent against his will from the occupied vehicle.

A reasonable person would have been afraid if a “riled up” intoxicated person reached into his car to assault him, or worse. Further, the decedent in this case had a hand under his shirt which would lead a reasonable person to believe he was hiding a weapon.

The state attempts to make much of the fact that the decedent did not attempt to open the car door nor force respondent to open the door. Brief of Appellant at 15. However, the undisputed evidence was that the car door was open when the decedent reached in and was “on top” of respondent. Whatever the state’s definition of “force” might be – it is too narrow – particularly given the intent of the legislature when passing these statutes.

S.C. Code Ann. §16-11-420(A) provides that it was the intent of the General Assembly to codify the common law doctrine which recognized 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.

S.C. Code Ann. §16-11-420(D) further provides that the General Assembly finds that persons residing or visiting this State shall have the right to expect to remain unmolested and safe within their homes, businesses and vehicles.

Finally, and very importantly, S.C. Code Ann. §16-11-420(E) provides that “the General Assembly finds 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.”

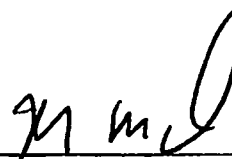
Simply put, respondent was not obligated to try and push the irate decedent away from the car, hope that he could close the door and lock it before the attacker overpowered him, and then pray that that drunk and angry attacker would simply go away. The trial court correctly found that respondent proved by a preponderance of the evidence that he was entitled to immunity pursuant to S.C. Code Ann. §16-11-440 and §16-11-450. See State v.

Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). Because there was evidence supporting the trial court's ruling, it should be affirmed.

CONCLUSION

By reason of the foregoing arguments, the ruling of the lower court should be affirmed.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

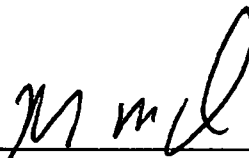
ATTORNEY FOR RESPONDENT.

This 13th day of October, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 13, 2014



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
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Attorney for Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

D. Craig Brown, Judge

THE STATE,

APPELLANT,

V.

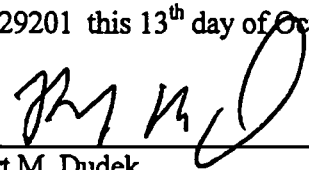
CALVIN JERMAINE POMPEY,

RESPONDENT

APPELLATE CASE NO. 2013-001769

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Respondent in the above referenced case has been served upon Alphonso Simon, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 13th day of October, 2014.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR RESPONDENT.

SUBSCRIBED AND SWORN TO before me
this 13th day of October, 2014.

Rhonda Dimaria Coxworth (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Calvin Jermaine Pompey, Respondent.

Appellate Case No. 2013-001769

Appeal From Marion County
D. Craig Brown, Circuit Court Judge

Unpublished Opinion No. 2015-UP-280
Submitted March 1, 2015 – Filed June 10, 2015

AFFIRMED

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, and
Assistant Attorney General Alphonso Simon, Jr., all of
Columbia; and Solicitor Edgar Lewis Clements, III, of
Florence, for Appellant.

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Respondent.

PER CURIAM: The State appeals a circuit court decision granting Calvin Jermaine Pompey immunity from prosecution for murder pursuant to the Protection of Persons and Property Act¹ (the Act). The State argues no evidence supports the circuit court's finding that the victim was in the process of forcefully entering, or had forcibly entered, Pompey's vehicle when Pompey shot him. We affirm.

The State indicted Pompey for murder alleging he shot and killed the victim outside a nightclub in Marion. Pompey filed a motion to dismiss the indictment on the ground that he was immune from criminal prosecution under the Act. The circuit court conducted an evidentiary hearing and received testimony from four witnesses, including Pompey, his brother-in-law, the nightclub owner, and a companion of the victim. *See State v. Duncan*, 392 S.C. 404, 410-11, 709 S.E.2d 662, 665 (2011) (requiring the circuit court to conduct, upon motion of either the defendant or the State, a pretrial evidentiary hearing and decide by a preponderance of the evidence presented during the hearing whether the defendant is immune from criminal prosecution under the Act).

The circuit court granted the motion to dismiss, finding Pompey showed by a preponderance of the evidence that the victim was attempting to forcefully enter the vehicle occupied by Pompey when Pompey shot him. *See* S.C. Code Ann. § 16-11-440(A)(1) (Supp. 2014) (providing a defendant is entitled to a presumption of reasonable fear of imminent peril of death or great bodily injury if the defendant uses deadly force against a person who "is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a[n] . . . occupied vehicle"); § 16-11-440(D) (stating an aggressor "who unlawfully and by force enters or attempts to enter a person's . . . occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60"). Accordingly, the circuit court ruled Pompey was entitled to the legal presumptions in section 16-11-440, and thus was immune from criminal prosecution under the Act. *See* § 16-11-450(A) (stating "[a] person who uses deadly force as permitted by the provisions of this article . . . is justified in using deadly force and is immune from criminal prosecution").

¹ S.C. Code Ann. §§ 16-11-410 to -450 (Supp. 2014).

We find the circuit court did not abuse its discretion in determining by a preponderance of the evidence that the victim was in the process of forcefully entering Pompey's vehicle in accordance with section 16-11-440. *See State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) ("A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review."). The un rebutted eyewitness testimony showed Pompey and two friends were sitting in a parked car outside the nightclub when the uninvited victim rapidly approached the vehicle. Pompey was in the front passenger seat and his door was open. The nightclub owner, who was standing nearby, begged the victim not to go to the car, but the victim continued advancing. While approaching the vehicle, the victim had his hand under his shirt in his waistband, a typical place to keep a weapon. The victim reached and leaned inside the vehicle towards Pompey, actions causing Pompey to lean back and shoot the victim. The uncontroverted testimony showed the victim was inside the vehicle and "on top of" Pompey when Pompey shot him.

The evidence supports the circuit court's finding that the victim was forcing his way into the vehicle when Pompey shot him. *See generally State v. Douglas*, Op. No. 5286 (S.C. Ct. App. filed Dec. 23, 2014) (Shearouse Adv. Sh. No. 51 at 60) (affirming the circuit court's grant of immunity and recognizing "the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the [circuit] court's ruling is supported by any evidence" (internal quotation marks and citation omitted)). We therefore affirm the circuit court's ruling granting Pompey immunity from prosecution.

AFFIRMED.²

FEW, C.J., and HUFF and WILLIAMS, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED

JUN 25 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARION COUNTY
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2013-001769

THE STATE

APPELLANT,

V.

CALVIN JERMAINE POMPEY,

RESPONDENT.

PETITION FOR REHEARING

Comes now Appellant, above named, by and through the Attorney General of South Carolina, and pursuant to Rule 221(a), SCACR, hereby respectfully petitions this Court to rehear this matter.

Appellant respectfully submits this Court has misapprehended what constitutes evidence of a forceful entry under the Protection of Persons and Property Act. Whether a defendant is entitled to immunity under the Protection of Persons and Property Act must be decided prior to trial if either party moves for a determination regarding the Act's application to a defendant's case. State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). "[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit

court to use in determining immunity under the Act is a preponderance of the evidence.” Id. at 411, 709 S.E.2d at 665. S.C. Code § 16-11-440(A) states,

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, or if he removes or is attempting to remove another person against his will from the 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)(emphasis added).

While the Act does not specifically define what constitutes a forcible entry for the purposes of the presumption afforded in S.C. Code Ann. § 16-11-440(A), the ordinary meaning of the words used in the statute would clearly indicate that something more than leaning into an open door is necessary to support a finding of forcible entry. The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Duncan, 392 S.C. at 408, 709 S.E.2d at 664 (citing Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996)). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. Id.

Appellant respectfully submits that in its finding there was evidence of a forceful entry, this Court implicitly and improperly conflates the concept of one’s right to act on appearances when acting in self-defense with the nature of the

evidence that must be presented to establish a forcible entry occurred or was occurring. Respondent's belief the victim may have had a weapon and the reasonableness of that belief may be relevant in the court's determination of the existence of evidence to support S.C. Code Ann. § 16-11-440(A)(2). That belief is not relevant to the factual analysis required by S.C. Code Ann. § 16-11-440(A)(1).

As noted by this Court, the testimony presented at the hearing reflected that Respondent was sitting in the front passenger seat of a parked car with the door open. There was no testimony at the motion hearing that indicated the victim had any physical contact with Respondent before the shooting. None of the witnesses, including Respondent, heard the victim make any threats towards Respondent. (R. pp. 22, 27, 47, 62, see R. p. 73). Furthermore, no one saw the victim with a weapon. (R. pp. 63, 73; see R. p. 26). Altogether, there was no evidence the victim used unlawful force when he leaned into the open car door. There is no evidence in the record to support a finding that the victim was forcefully entering the vehicle as required under S.C. Code Ann. § 16-11-440(A)(1).

Altogether, for the reasons stated above, Appellant requests this Court reconsider its opinion and reverse the circuit court's Order Granting Immunity.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ALPHONSO SIMON JR.
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By:  _____
Alphonso Simon Jr.

June 25, 2015

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUN 25 2015

APPEAL FROM MARION COUNTY
The Honorable D. Craig Brown, Circuit Court Judge **SC Court of Appeals**

Appellate Case No. 2013-001769

THE STATE

APPELLANT,

V.

CALVIN JERMAINE POMPEY,

RESPONDENT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Appellant, certify that I have served the within Petition for Rehearing on Respondent by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert M. Dudek, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, SC 29201.

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

This 25th day of June, 2015.



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The South Carolina Court of Appeals

The State, Appellant,

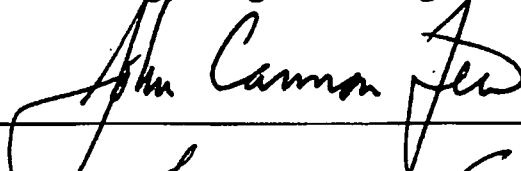
v.


Calvin Jermaine Pompey, Respondent.


Appellate Case No. 2013-001769

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


 _____ C.J.


 _____ J.


 _____ J.

Columbia, South Carolina

cc:

Robert Michael Dudek, Esquire
 Alan McCrory Wilson, Esquire
 Donald J. Zelenka, Esquire
 Alphonso Simon, Jr., Esquire

FILED

August 20, 2015

John W. McIntosh, Esquire

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM MARION COUNTY
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. : 2015-001992

THE STATE

PETITIONER,

v.

CALVIN JERMAINE POMPEY,

RESPONDENT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., hereby certify that a true copy of the redacted Record on Appeal and Appendix to the Petition for Writ of Certiorari has been served upon opposing counsel by depositing two (2) copies in the United States mail, postage prepaid, to the following:

Robert M. Dudek, Esq.
SCCID\Division of Appellate Defense
1330 Lady St., Ste. #401
Columbia, South Carolina 29201

This 12th day of October, 2015.



ALPHONSO SIMON, JR.
Assistant Attorney General
Bar No. 74713