

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

SC Court of Appeals

Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2016-000269

The State, Respondent.

v.

Alphonso Morgan, Jr. Appellant.

STATEMENT PURSUANT TO RULE 203(d)(1)(B)(iv)

Appellant was granted an immunity hearing pursuant to the Protection of Persons and Property Act. The hearing was held between February 1, 2016 and February 3, 2016. Immunity was denied on February 3, 2016. Appellant pled guilty to a reduced charge on February 5, 2016. Undersigned counsel files this appeal at the request of Appellant and pursuant to *In re Anonymous Member of the Bar*, 303 S.C. 306, 400 S.E.2d 483 (1991). Counsel believes the client has an issue arising from his immunity hearing. In addition, Appellate Defense is aware of this appeal and, ultimately, will be handling the matter.

The issue to be raised on appeal relates to whether the trial court erred in determining that immunity did not apply pursuant to the Protection of Persons and Property Act. Specifically, the South Carolina Court of Appeals has held that a defendant asserting immunity must first demonstrate the elements of self-defense. After a showing of self-defense, an additional showing based on the statutory subsections contained in the Protection of Persons and Property Act is necessary. *State v. Douglas*, 411 S.C. 307, 318, 768 S.E. 2d 232, 238-239 (Ct. App. 2014).

The Defendant argued to the contrary at the immunity hearing. To wit, South Carolina Code § 16-11-450(A) states in pertinent part that:

“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.”

(Emphasis added). The term “or” indicates that there are two different sources of immunity for a person who uses deadly force

First, the language “as permitted by the provisions of this article,” includes the factual scenarios described in S.C. Code § 16-11-440.

South Carolina Code § 16-11-440 has two separate provisions, found in sub-section (A) and sub-section (C), describing scenarios where deadly force is permitted. These sub-sections overlap to some extent, but ultimately describe two different types of confrontations. Sub-section (A) can best be described as the “Defense of Vehicle” immunity whereas sub-section (C) can best be described as the “Stand Your Ground” immunity.

Second, “as permitted by . . . another applicable provision of law” includes the common-law concept of self-defense. The common-law provision of self-defense permits the use of deadly force, and is, therefore, included in the statutory grant of immunity.

Important to this appeal, these two separate sources for potential immunity should, according to statutory interpretation, be applicable independently.

The Defendant in this cases was entitled to immunity under S.C. Code § 16-11-440(A) and (C). The requirements of these subsections is not co-terminus with the requirements of self-defense. The testimony was virtually undisputed that the Defendant was attacked inside of the backseat of the vehicle. The Defendant’s assertion of immunity under 440(A) had significant evidentiary support for each element. Proof of self-defense by a preponderance of the evidence, on the other hand, was made difficult by deficiencies in the investigation. In other words, the Defendant had the necessary proof under S.C. Code § 16-11-440(A) and (C), but the elements of self-defense were more difficult.

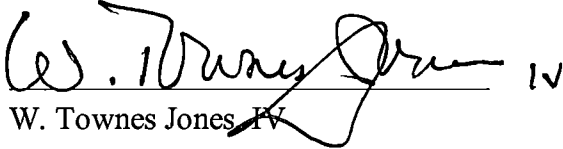
The Defendant raised this issue at the immunity hearing, but the trial court was bound by the precedent established in *Douglas*. That precedent required proof of self-defense first, then the additional proof to satisfy § 16-11-440(A) and/or (C).

In *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 ((2011), the Supreme Court held that “by using the words ‘immune from criminal prosecution,’ the legislature intended to create a true immunity, and not simply an affirmative defense.” Appellant’s position is that he was immune from further prosecution after the immunity hearing. Therefore, any proceeding after the Appellant was erroneously denied immunity, including the guilty plea, was *void ab initio*.

WHEREFORE, an appeal should be permitted.

Respectfully submitted:

February 24, 2016


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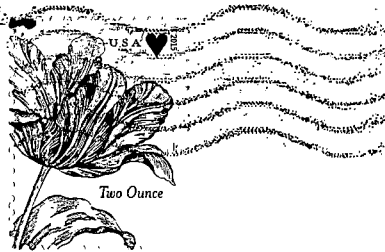
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