

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Aiken County

Honorable Doyet A. Early, Circuit Court Judge

RECEIVED

SEP 21 2016

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

FRANK MUNS,

PETITIONER

APPELLATE CASE NO. 2014-000344

APPENDIX

KEVIN R. EBERLE
Charleston School of Law
385 Meeting Street
Charleston, South Carolina 29403
(843) 377-2412

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEYS FOR PETITIONER

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

J. STROM THURMOND, JR.
Solicitor, Second Judicial Circuit
P.O. Drawer 3368
Aiken, South Carolina 29802
(803) 642-1557

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

STATE V. FRANK MUNS, OPINION NO. 2016-UP-314
(S.C. Ct. App. Filed June 22, 2016).....1

PETITION FOR REHEARING.....7

ORDER DENYING PETITION FOR REHEARING.....20

**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, Respondent,

v.

Frank Muns, Appellant.

Appellate Case No. 2014-000344

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2016-UP-314
Heard February 2, 2016 – Filed June 22, 2016

AFFIRMED

Kevin Roger Eberle, of Charleston; Nicholas Anthony Shalosky, of Philadelphia, PA; and Chief Appellate Defender Robert Michael Dudek, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General John Benjamin Aplin, both of Columbia; and Solicitor James Strom Thurmond, Jr., of Aiken, for Respondent.

PER CURIAM: Frank Muns appeals his attempted murder and possession of a firearm during the commission of or attempt to commit a violent crime convictions arguing the trial court erred in refusing to charge the jury on the law of self-defense and on the law of accident. He further contends, because he must receive a new trial on the attempted murder charge based upon the trial court's failure to give the self-defense and/or accident charges, he is likewise entitled to a new trial on the possession of a firearm charge. We affirm.

1. Muns argues the trial court erred in refusing to issue a self-defense charge despite evidence he was attempting to prevent Victim from crushing him with her car. We affirm the trial court's refusal to charge self-defense based upon the absence of evidence that Muns had no other probable means of avoiding the danger.

First, we note Muns's argument that he had no obligation to remove himself from the confrontation because—under the Castle Doctrine—he was defending his property and, therefore, was under no duty to retreat, is not preserved for appellate review. Not only did he never specifically raise the Castle Doctrine to the trial court, he never asserted to the trial court he had no duty to retreat because he was defending his own property or because the attack occurred on his own property. In fact, he made no argument whatsoever to the trial court concerning "duty to retreat." As to his assertion regarding trial counsel's discussion with the court concerning the real property belonging to his mother, at best, Muns only referenced ownership of the property in regard to his argument concerning whether he *brought about the difficulty*, not in regard to whether he had *other probable means to avoid the danger*. Accordingly, this argument is not preserved. See *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (finding the argument advanced on appeal was not raised and ruled on below and therefore was not preserved for review); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground."); *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (stating imposing preservation requirements on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments, and noting that the purpose of an appeal is to determine whether the trial court erroneously acted or failed to act, and when appellant's contentions are not presented or passed upon by the trial court, such contentions will not be considered on appeal).

Further, we find no evidence that Muns had no other probable means of avoiding the danger.

A self-defense charge is not required unless it is supported by the evidence. To establish self-defense in South Carolina, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger.

State v. Slater, 373 S.C. 66, 69-70, 644 S.E.2d 50, 52 (2007) (citations omitted). To raise self-defense, the defendant must produce some evidence from which the jury could have a reasonable doubt as to guilt. *See State v. Wiggins*, 330 S.C. 538, 544-45, 500 S.E.2d 489, 493 (1998) ("It is clear that the defendant need not establish self-defense by a preponderance of the evidence but must merely produce evidence which causes the jury to have a reasonable doubt regarding his guilt.") (quoting *State v. Bellamy*, 293 S.C. 103, 105, 359 S.E.2d 63, 64-65 (1987), *overruled on other grounds*, *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991)).

In order to satisfy the fourth element of self-defense, there must be evidence the defendant:

had no other probable means of escape except to take the life of his assailant or stated another way, that he had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily harm than to act as

he did in the particular instance; that it is one's duty to avoid taking human life where it is possible to prevent it even to the extent of retreating from his adversary unless by doing so the danger of being killed or suffering serious bodily harm is increased or it is reasonably apparent that such danger would be increased.

State v. Jackson, 227 S.C. 271, 279, 87 S.E.2d 681, 685 (1955). "A defendant is not required to retreat if he has 'no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in [the] particular instance.'" *State v. Dickey*, 394 S.C. 491, 502, 716 S.E.2d 97, 102 (2011) (alteration in original) (quoting *Wiggins*, 330 S.C. at 545, 500 S.E.2d at 493). "The law says if one can give back or step aside, or retreat without increasing his danger, and thus avoid taking human life, it is his duty to do so, and unless he has done so, it will not permit his plea of self-defense." *State v. Burriss*, 334 S.C. 256, 268, 513 S.E.2d 104, 111 (1999) (Burnett, J., dissenting) (quoting *State v. George*, 119 S.C. 120, 121, 111 S.E. 880 (1921)).

The trial court did not err in ruling Muns could not meet the fourth element of self-defense—that the defendant had no other probable means of avoiding the danger—as Muns presented no evidence that he had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did. Muns argues on appeal that he was trapped between Victim's car and his open truck door; however, Muns never testified that he was "trapped" or that his only exit was blocked by his open truck door, with no ability to retreat from the area of the vehicles. The only evidence is Victim was attempting to maneuver her car around Muns and his truck without hitting either. There is nothing to suggest Victim was using her car as a weapon to attack Muns or that Muns was in immediate danger from Victim's car from which he could not remove himself. Rather, the undisputed evidence reveals Victim made several maneuvers with her car in an attempt to get around Muns and his truck. Though Muns may have been afraid he could ultimately be harmed if he were to maintain his position between the vehicles in order to stop Victim as she continued to attempt to get around him and his truck, there is nothing to show he could not have removed himself from the area and the possible harm that he perceived could occur. Even assuming *arguendo*, as Muns contends on appeal, that he was stationed in an area between Victim's car, his truck, and his truck door as Victim attempted to maneuver around him, there is nothing to suggest he could not have simply shut his truck door and walked away, or shut his truck door and reopened it once on the other side and then

entered his truck, or merely climbed over his truck. In short, there is nothing in the evidence presented to show he attempted to leave or that he was unable to safely remove himself from the situation. Rather, under his own testimony, he chose to use a loaded gun to beat on the driver's side car window as Victim sat in the driver's seat in an attempt to make Victim stop her car. Viewing the evidence in the light most favorable to Muns, he chose to maintain a position he perceived as potentially dangerous in an attempt to stop Victim, rather than remove himself from the situation. *See State v. Santiago*, 370 S.C. 153, 160-61, 634 S.E.2d 23, 27-28 (Ct. App. 2006) (holding, in face of testimony, that after the victim looked at a shotgun in the trunk of the appellant's car, looked at the appellant, and looked at the shotgun again, and the appellant thought the victim was about to grab the shotgun so the appellant grabbed the gun first and, believing the victim was reaching for the gun, shot the victim, the evidence taken in the light most favorable to the appellant indicated, given the distance between the two men, the appellant could have retreated with his shotgun rather than shooting the victim, and "[m]oreover, [the appellant] simply could have avoided the danger by closing his trunk").

2. Muns next argues the trial court erred in refusing to issue an accident charge despite evidence Muns's gun discharged unintentionally while being used to pound on Victim's window in order to get her to stop her car. We affirm the trial court's determination that Muns was not entitled to a charge on accident because he failed to exercise due care by using a loaded pistol to beat the window of Victim's car.

"[T]o be excusable on the ground of accident, it must be shown the [attempted murder] was unintentional, the defendant was acting lawfully, *and due care was exercised in the handling of the weapon.*" *State v. Smith*, 391 S.C. 408, 415, 706 S.E.2d 12, 16 (2011) (emphasis added). Viewing the evidence in the light most favorable to Muns, he used a loaded gun to beat on the driver's side window of Victim's car as she sat in the driver's seat, hitting the loaded gun against the window at least three times before it discharged and struck Victim. We therefore find, as a matter of law, Muns was not entitled to an accident charge because he failed to use due care in the handling of the weapon. *See id.* at 412, 415 n.3, 706 S.E.2d at 14, 16 n.3 (holding the appellant was not entitled to an accident charge and finding, as a matter of law, there was no evidence the appellant exercised due care in the handling of a gun from evidence that, during a drug transaction, after the victim threatened to take the appellant's drugs and approached the appellant with a "real serious demeanor," the appellant pulled a gun on the victim, the victim grabbed the appellant and tried to knock the gun from the appellant's hand, the

appellant struck the victim in the face with the gun, the appellant and the victim struggled and "the gun went off," striking the victim).

3. Muns lastly contends, should this court set aside his attempted murder conviction, he is entitled to a new trial on his possession of a weapon during the commission or attempt to commit a violent crime charge. *See* S.C. Code Ann. § 16-23-490(A) (2015) ("If a person is in possession of a firearm or visibly displays what appears to be a firearm . . . during the commission of a violent crime *and is convicted of committing or attempting to commit a violent crime* as defined in section 16-1-60, he must be imprisoned five years, in addition to the punishment provided for the principal crime."(emphasis added)). Because we find the trial court properly refused to charge self-defense and accident and Muns, therefore, is not entitled to a new trial on his attempted murder charge, there is no basis for granting him a new trial on the weapons possession charge.

For the foregoing reasons, Muns's convictions are

AFFIRMED.

HUFF, KONDUROS, and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of General Sessions
Doyet A. Early, III, Circuit Court Judge

Case No. 2013-GS-020-1664

State of South CarolinaRespondent,

versus

Frank MunsAppellant.

**MOTION AND MEMORANDUM
FOR REHEARING**

Kevin R. Eberle
414 King Street
Charleston, South Carolina 29403
(843) 377-2412

Robert Dudek, Chief Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorneys for Appellant

INTRODUCTION

Mr. Frank Muns was attacked by his ex-wife on April 6, 2013. She swerved around a barricade to Mr. Muns' property and pulled her car toward Mr. Muns, who had exited his own truck and found himself pinned between the vehicles. Only after Mr. Muns shouted at her and hit her car with his hands, Mr. Muns withdrew a gun. There was no testimony that Mr. Muns had any idea that the gun was loaded, but he was not using it as a weapon in any event. Instead, he used it as a hammer to beat on his assailant's car. Only upon the third strike did the gun accidentally discharge, and a bullet struck his ex-wife. She finally sped away, but Mr. Muns was charged with attempted murder.

Mr. Muns asked the trial court to have the jury consider whether the discharge had been an accident that happened in the course of self-defense. The trial judge refused both defenses based on several legal errors which were argued before the trial court. On appeal, Mr. Muns highlighted the many errors, but on June 22, 2016, this Court affirmed.

As to the accident charge, this Court ruled that, *as a matter of law*, Mr. Muns had acted unreasonably in defending himself despite the uncontested life-or-death attack by his ex-wife. This Court ruled that the trial judge had properly taken the quintessential jury issue of reasonableness from the jury without even recognizing the considerable and uncontested testimony about Mrs. Turner's attack on Mr.

Muns. Because this Court resolved the jury issue of reasonableness against Mr. Muns itself, none of the other issues were addressed.

Next, the Court ruled that Mr. Muns could not use self-defense because he had had other means to avoid the confrontation with his ex-wife. This Court ruled that Mr. Muns could not avoid the “other reasonable means of escape” prong of the defense since he had failed to invoke the Castle Doctrine below, despite his having had a specific argument on its use at trial. (Sub. R. 169-70.) The Court was simply wrong when it wrote that the invocation of the Castle Doctrine had been made only with reference to an argument about who had initiated the dispute. To the contrary, Mr. Muns raised the Castle Doctrine as part of an argument about whether he even had an obligation to retreat at all.

Moreover, the Court misunderstood the shifting burdens in a self-defense charge; it faulted Mr. Muns for not introducing any evidence about his *lack* of options even though the burden of *affirmatively proving the existence of such options* fell squarely on the State (which offered not even a single line of testimony on the point). Nevertheless, Mr. Muns did, in fact, testify that he was trapped, but the Court incorrectly relied on its own skepticism about Mr. Muns’ testimony and decided--based on *no evidence at all*--that Mr. Muns might have extracted himself by doing such things as crawling over the hood of the car.

For these reasons, Mr. Muns moves this Court to rehear this case and enter a new opinion for Mr. Muns.

ARGUMENT

I. The Court should rehear this case to correct the Court's misunderstandings of law and facts.

To prevail on a request for rehearing, the petitioning party must demonstrate that the Court overlooked or misapprehended some part of the argument. S.C. App. Ct. R. 221(a); *see Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001).

A. The Court misunderstood its role in resolving the classic jury issue of reasonableness and improperly took the issue from the jury based on a "least favorable" view of the evidence.

"[T]o be excusable on the ground of accident, it must be shown the [attempted murder] was unintentional, the defendant was acting lawfully, and due care was exercised in the handling of the weapon." *State v. Smith*, 391 S.C. 408, 415, 706 S.E.2d 12, 16 (2011).

Reasonableness is the textbook example of a jury issue. Neither the trial court nor this Court gets to decide whether a defendant's conduct was reasonable if there is *any* evidence even *suggesting* that a reasonable person would have acted in the same way. *State v. Shuler*, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001); *State v. Lee*, 298 S.C. 362, 364, 380 S.E.2d 834, 835 (1989). A court commits

reversible error when it fails to give a requested charge on an issue raised by the evidence presented. *Lee*, 298 S.C. at 364, 380 S.E.2d at 835.

The Court of Appeals has misstated the lesson from the one case it cited for the notion that courts, not juries, get to decide reasonableness. In *State v. Smith*, 391 S.C. 408, 706 S.E.2d 12 (2011), a drug dealer took a gun to meet with an unarmed buyer. The two men got into a fight, and the gun went off. At trial the court refused to charge accident, *not because the defendant had been acting unreasonably*, but “because [the trial court] found there was no evidence [the defendant] was acting lawfully,” a completely different element of the defense. *Id.* at 412, 706 S.E.2d at 14. Likewise, on appeal, the Supreme Court decided that case, not based on the unreasonableness of the conduct, but “[b]ecause [the defendant] was acting unlawfully.” *Id.* at 415, 706 S.E.2d at 16.

In a footnote, the Supreme Court also noted, in dicta, that “there is no evidence Smith exercised due care in the handling of the gun.” *Id.* at 415 n.3; 706 S.E.2d at 16 n.3. Quite obviously, when the party bearing a burden fails to present *any* evidence on it, the court can enter a decision without submitting the case to a jury just to go through the motions. For instance, a trial court may enter summary judgment even in negligence cases but only if there is *no evidence* for the jury to even weigh; even if the court might reach a different outcome than the jury, the

jury gets to make the decision. The trial court (and this Court) commits reversible error by taking the matter from the jury and making a decision on its own.

Unlike *Smith*, this was not a case in which there was “no evidence” about the reasonableness of Mr. Muns’ behavior. To the contrary, certainly at least *some* evidence showed that Mr. Muns was acting in a reasonable way when he withdrew a handgun (which he did not know was loaded) and began using it as a hammer to beat on Mrs. Turner’s car. According to the Court’s view of the evidence, Mr. Muns simply decided to mindlessly attack his ex-wife’s car with a loaded gun. The Court did not even nod to the overwhelming evidence that Mr. Muns was acting only to protect himself in a life-and-death situation and that he escalated his response only after a series of other responses had failed to stop his ex-wife’s attack on him.

Mr. Muns found himself stuck between his truck and his ex-wife’s car, which she was lurching forward and back, nearly striking Mr. Muns. Even Mrs. Turner admitted that he was in danger by her car’s forward movement: “I [Mrs. Turner] could have moved forward, but I would have run him over and hit his car door because he had his truck door open.” (Sub. R. 115.) Mrs. Turner would have run over Mr. Muns if she moved forward. (Sub. R. 115 (“Q. But there was an issue about you [Mrs. Turner] might be running him over? A. Exactly.”)). Mr. Muns tried repeatedly to get her to stop, but Mrs. Turner continued cursing at him and driving

to navigate her car forward. (Sub. R. 144.) Mr. Muns was in a space only about three feet wide between the two vehicles. (Sub. R. 144-45.)

Mr. Muns was afraid that he was going to be struck by Mrs. Turner. (Sub. R. 145 (“Q. What were you afraid was going to happen, if anything? A. That she [Mrs. Turner] was going to smush me between the two vehicles.”). Mrs. Turner would not stop rolling forward and back. (Sub. R. 145 (“She won’t stop. She keeps putting it in forward and reverse maybe three or four times.”).) Mr. Muns hit on her window a couple of times, but she still would not stop. (Sub. R. 145.) Mrs. Turner was “pinning [him] between [his] truck and her car.” (Sub. R. 145-46.)

Despite Mr. Muns’ repeated requests that Mrs. Turner stop, she would not. When asked what Mr. Muns did next, he explained his reaction and the resulting accident:

I had a gun – I had my revolver with me and I pulled it out and hit her window. I was trying to break her window to make her stop. I hit the window – I hit the window one time and she backed up some more, I hit it again and she stopped, put the car in forward, and I hit it again and the gun discharged.

(Sub. R. 145-46.) He had beaten on the window with his fist before starting to use his gun. (Sub. R. 154.)

Those are the facts presented to the jury. The test for charging the jury was a simple one: Would *any* reasonable person, when attacked by his ex-wife, use the only tool available to strike his ex-wife’s car to get her to stop lurching the car at

him? The obvious answer to that is “Yes!” and the trial court (and this Court) erred in deciding that no reasonable person would ever react in such a way *as a matter of law*.

Since there was at least some evidence supporting that choice, it was wrong for the trial court and this Court to exclude the jury from the process and decide for itself that Mr. Muns’ behavior had been unreasonable. This Court should rehear this case to address the undeniable fact that a reasonable person might have behaved exactly as Mr. Muns did.

- B. Because the Court misread the portion of the trial transcript invoking the Castle Doctrine, misunderstood the shifting burden analysis, and overlooked undisputed testimony that Mr. Muns was trapped during the altercation, the Court should rehear this case.**

One may assert self-defense when (1) the defendant was without fault in bringing on the difficulty, (2) he actually believed he was in imminent danger of sustaining serious bodily injury, (3) a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and the circumstances would have warranted such a person to act to save himself from serious bodily harm, and (4) the defendant had no other probable means of avoiding the danger. *See State v. Light*, 378 S.C. 641, 650, 664 S.E.2d 465, 469 (2008).

This Court ruled that Mr. Muns could not assert self-defense because he had failed to contest the fourth element of the defense at trial and that there had been no evidence even suggesting that he had been trapped. Both rulings are wrong.

As an initial matter, the Court is wrong concerning the Castle Doctrine. According to this Court, Mr. Muns failed to preserve the use of the Castle Doctrine because he did not specifically mention it by name for a particular purpose. However, at the charge conference, Mr. Muns asked for the jury to be instructed on self-defense. (Sub. R. 164.) Judge Early refused, citing the requirement that the defendant had no other way to avoid the danger. (Sub. R. 167.) Mr. Muns' lawyer responded that Mr. Muns *was on his own property and was not required by law to retreat*. (Sub. R. 169-70.) That is undeniably an invocation of the Castle Doctrine.

But, even if Mr. Muns should have used some more specific language to preserve the issue, the Court's opinion is nevertheless flawed. Although the correct use of the Castle Doctrine would have completely removed the duty to retreat from the equation, the Court misunderstood the shifting burdens used in a self-defense charge. Once the defendant has asserted self-defense, the burden falls on the State to *disprove* self-defense beyond a reasonable doubt. *State v. Wiggins*, 330 S.C. 538, 544, 500 S.E.2d 489, 492-93 (1998). Self-defense is not an affirmative defense; instead, once raised by a defendant, the burden falls squarely on the State to affirmatively *disprove* its application. *Id.* at 544-45, 500 S.E.2d at 492-93.

The Court has not cited even a single word of testimony that Mr. Muns could have escaped the assault otherwise. *No one* testified that such avenues were open to Mr. Muns. In fact, at no point did the State even *ask* whether other options were open. Rather, the Court has offered its own unvarnished speculation about other means of escape that have not even a line of testimony in support.

Regardless, even though he had no obligation to retreat and certainly no obligation to prove he could *not* retreat, Mr. Muns did, in fact, go above and beyond his obligations and actually showed with uncontradicted testimony that he could not have retreated. Mr. Muns testified that he was trapped by Mrs. Turner's car. Mr. Muns said that Mrs. Turner began lurching her car forward and back and that Mr. Muns felt trapped and in danger of being crushed. (Sub. R. 115, 144-46.)

The Court apparently overlooked the testimony quoted by Mr. Muns in his Reply Brief showing that he did not have another means of escape. Mr. Muns testified, "Once she – she comes back around and the front of her car was coming around and *pinning me between my truck and her car*. I'm telling her to stop, stop." (Sub. R. 145 (emphasis added).)

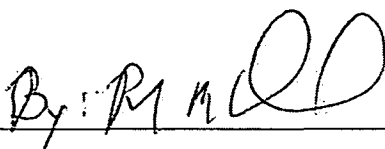
That testimony alone raised a jury issue as to whether other avenues existed. *State v. Williams*, 400 S.C. 308, 733 S.E.2d 605 (2012). Although the Court has clearly decided not to believe Mr. Muns, neither this Court nor the trial judge was in a position to decide whether Mr. Muns had another avenue of escape. Having

introduced at least some testimony on the point, it was up to the jury to decide whether to believe Mr. Muns.

CONCLUSION

For all these reasons, this Court should rehear this case and reverse the decision of the trial court.

Respectfully submitted,



Kevin Eberle

Robert Dudek

July 7, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of General Sessions
Doyet A. Early, III, Circuit Court Judge

Case No. 2013-GS-020-1664

State of South CarolinaRespondent,
versus
Frank MunsAppellant.

CERTIFICATE OF SERVICE
(Motion and Memorandum for Rehearing)

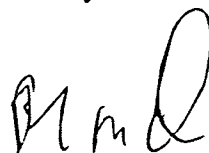
Kevin R. Eberle
414 King Street
Charleston, South Carolina 29403
(843) 377-2412

Robert Dudek, Chief Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorneys for Appellant

The undersigned hereby states that one copy of Appellant's Motion and Memorandum for Rehearing were served on opposing counsel by U.S. mail on July 7, 2016.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "K Eberle", written over a horizontal line.

Kevin Eberle

Robert Dudek

July 7, 2016

CRB

The South Carolina Court of Appeals

The State, Respondent,

v.

Frank Muns, Appellant.

Appellate Case No. 2014-000344

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.

Thomas C. Huff

J.

U. K.

J.

John D. Beatty

J.

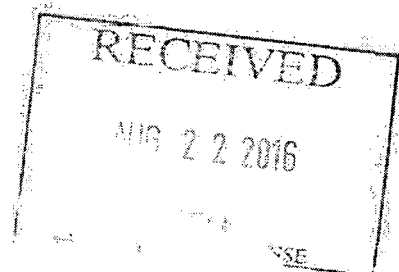
Columbia, South Carolina

cc:

- Alan McCrory Wilson, Esquire
- Robert Michael Dudek, Esquire (AP)
- Kevin Roger Eberle, Esquire
- John Benjamin Aplin, Esquire
- Nicholas Anthony Shalosky, Esquire

FILED

August 22, 2016



James Strom Thurmond, Jr., Esquire