

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LAURENS COUNTY  
Court of General Sessions  
The Honorable Eugene C. Griffin, Circuit Court Judge

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Case No. 2014-000161

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DEC 08 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA,

RESPONDENT.

v.

KATHY LEONARD REVAN,

APPELLANT.

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PETITION FOR REHEARING

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**ATTORNEY FOR APPELLANT**

NOW COMES the Appellant in the above-captioned action, acting by and through undersigned counsel, seeking rehearing on this Court's unpublished opinion in this matter. *The State v. Kathy Leonard Revan*, 2016-UP-486 (S.C. Ct. App. Dated November 23, 2016). Pursuant to Rule 221(a), SCACR, the Appellant petitions for rehearing on the ground that certain issues of material fact or law have either been overlooked or misapprehended by this Honorable Court in the opinion in question. In support of this position, the Appellant would show unto this Court the following.

While it is somewhat difficult to ascertain with certainty the Court's reasoning in affirming the conviction and sentence of Appellant from the Unpublished Opinion issued in this matter, it is clear that the decision was not rooted in a finding that any portion of the issue presented by Appellant was not properly preserved for appellate review as asserted by Respondent. Appellant notes that none of the authorities cited by this Honorable Court in this opinion deal with procedural default for failure to adequately preserve an issue for appellate review. Appellant recognizes that a claim of immunity under the Protections of Persons and Property Act requires a pretrial determination using a preponderance of the evidence standard. Further, it is clear that on appeal the reviewing Court reviews the findings of the circuit court under an abuse of discretion standard of review. *State v. Curry*, 406 S.C. 364, 752 S.E.2d (2013).

Appellant now most respectfully submits that in affirming Appellant's judgment and sentence this Honorable Court appears to have either overlooked or misapprehended certain issues of material fact or law in reaching its decision. She asserts that it is clear from the ruling of the lower court that it misapprehended the facts in Appellant's case. In denying her immunity, the lower court stated,

I've read the statute very, very carefully this morning three times and I've read several cases that we've been referencing also this morning. I mean, where I have a problem with the testimony as far as what started what is once the fight breaks up, everybody goes back to each end of the house and then they come back, depending on who you hear, they come back in different orders, but understanding how the statute's written, I'm - - I'm gonna respectfully deny your motion for immunity. I - - ***I just don't believe that there was an imminent danger when they departed.*** Once they departed, they departed, and had it been an on-going thing, but I - - but there is conflicting testimony both ways as to what happened next, who came back in the room first. No question where the gun came from, but I do not believe that it's met the parameters outlined in the statute of, what, 16-11-440 and 430, 420. So, respectfully, your motion is denied on the immunity request.

Tr. p. 184, l. 11- p. 185, l. 6, (Emphasis added).

The decision of this Court contains no ruling that Appellant was not entitled to the "presumption of a reasonable fear of imminent peril" found in §16-11-440. The ruling of the circuit court is predicated entirely on the faulty factual conclusion that the altercation between Appellant and her attackers was over and therefore, that Appellant was no longer in peril at the time shots were fired. For all the reasons set forth in the Brief of Appellant, and her Reply Brief, Appellant respectfully asserts that the record before the Court did not support that conclusion. Interestingly, in denying immunity, the lower court stated "***I just don't believe that there was an eminent danger when they depart it. Once they departed, they departed, and had it been an on-going thing,...***" ROA p. 184, l. 20-23. This factual finding is not supported by the record. Appellant's argument, as presented in great detail in her Brief of Appellant and her Reply Brief, was that the victim and Tammy had not departed. Despite having been expressly told to get out of Appellant's home, despite the fact that the majority of their property had already been loaded into their vehicle and the fact that Tammy's father had joined in Appellant's

position that they should leave, they remained in her home after Appellant had gone into her bedroom to clean up her bloody face. While in her bedroom, she heard yelling and screaming between Tammy and Straley and was afraid not only for her own safety, but also for Straley, who was literally a dying man. She did not shoot anyone at that point, but rather took reasonable steps to arm herself for her protection, and in potential defense of Straley, who had already had his feeding tube ripped out once during this incident. As noted in Appellant's Reply Brief, while she could have protected herself by staying in her room and using her weapon for protection if the two women made an effort to come into her bedroom to attack her further, such action would not have protected Straley. The record supports Appellant's claim that she fired a warning shot when Tammy advanced on her. Thus, the lower court's conclusion that these two women had "departed" and that Appellant was no longer in eminent danger was not supported by the record before the court. Likewise, the ruling of the circuit court denying immunity totally overlooked the fact Appellant had a right, both at common law and under the Act, to act in defense of others, in this case Straley, in addition to protecting herself.

Appellant most respectfully submits that this Honorable Court's decision overlooks the fact that Appellant was entitled to the presumption of "reasonable fear of eminent peril or death or great bodily injury to himself or another person" found in §16-11-440(A). Clearly the ruling of the circuit court failed to take into account §16-11-440(A)(2), which provides for the presumption of imminent peril if the person who uses deadly force, "*knows or has reason to believe that an unlawful and forcible entry or unlawful enforceable act is occurring or has occurred.*" Appellant respectfully submits that in affirming the ruling of the circuit court this Honorable Court may have overlooked facts, as summarized above and provided in more detail in the briefs before the Court, which supported Appellant's entitlement to this presumption

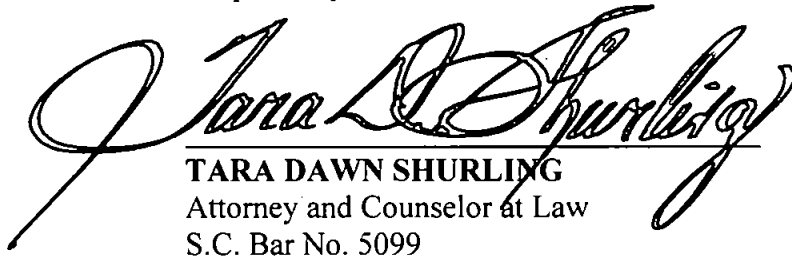
based on her knowledge that these women had already badly beaten her just minutes earlier. In the recent case of *State v. Jones*, 416 S.C. 283, 786 S. E.2d 132 (2016), our Supreme Court found that Jones' belief that she was an eminent danger of losing her life or sustaining great bodily injury was reasonable given the deceased's actions toward her earlier in the evening, "which included [the deceased] punching Jones, dragging her by the hair, and forcing her back into the apartment." Appellant maintains that she was entitled to the presumption afforded her by §16-11-440 (A)(1) and (A)(2) inasmuch as any right to be in her home previously extended to the victim and Tammy have been unequivocally rescinded at the time of the shooting. In addition, as noted above, she had knowledge of violent acts committed against her earlier which entitled her to the presumption pursuant to §16-11-440(A)(2). Nevertheless, even with out the presumption, Appellant having just been violently beaten at the hands of these women moments earlier, and being aware of their ongoing refusal to leave her house, had ample justification for believing that she remained in imminent danger once she realized they had not left her home and that a violent verbal altercation was ongoing between Tammy and Straley.

In support of her prayer for rehearing, Appellant respectfully submits that the decision of this Honorable Court overlooks or misapprehends material facts which support her position that the ruling of the circuit court constituted an abuse of discretion based on an error of law or factual conclusions which were without evidentiary support. *State v. Pittman*, 373 S.C. 527, 647 SE2d 144(2007). Tammy and the Victim had not "departed" as found by the circuit court judge. They were still there and just outside Appellant's bedroom door where they posed an ongoing threat to both Appellant and Straley. The articulated ruling of the lower court indicates that the Court failed to take into account the presumption afforded by §16-11-440 and Appellant's right to act in defense of Straley as well as herself.

**CONCLUSION**

WHEREFORE, having set forth his grounds, the Appellant, Kathy Leonard Revan, asks that this Court rehear her appeal and grant her a new trial.

Respectfully submitted,

  
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ATTORNEY FOR APPELLANT

This 8<sup>th</sup> day of December, 2016.

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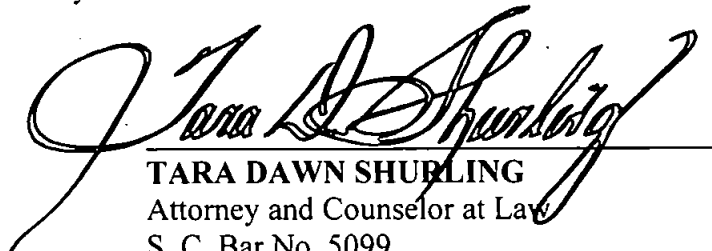
KATHY LEONARD REVAN,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon opposing counsel by depositing in the U.S. Mail, postage prepaid, this 8th day of December, 2016, addressed as follows:

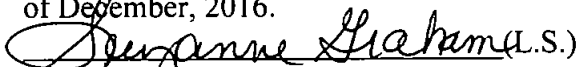
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SWORN TO BEFORE me this 8<sup>th</sup> day  
of December, 2016.

 (S.)  
Notary Public for South Carolina

My Commission Expires: 2/28/24