

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
The Honorable Maité Murphy, Circuit Court Judge

Appellate Case No. 2013-002124
Opinion No. 5483 (filed May 3, 2017)

RECEIVED

MAY 18 2017

SC Court of Appeals

THE STATE

PETITIONER,

V.

SHANNON SCOTT,

RESPONDENT.

PETITION FOR REHEARING

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

Petitioner respectfully submits this Court overlooks the ramifications of its finding that Respondent's fatal shot may not have been the result of an intentional act. To the extent this Court finds the shooting victim was not the intended target of the fatal shot or the shooting of the victim was not intentional, the State respectfully submits this Court erred in affirming the grant of immunity under the Protection of Persons and Property Act. In finding the fatal shot was not intentional, this Court implicitly applies the doctrine of transferred intent to Respondent's claim he acted in self-defense. The doctrine of

transferred intent has not been found to apply to self-defense in South Carolina. In State v. Porter, the South Carolina Supreme Court noted that the doctrine of transferred self-defense “is recognized in some jurisdictions to absolve a defendant who injures an innocent third party while attempting to defend himself from bodily harm.” State v. Porter, 269 S.C. 618, 622, 239 S.E.2d 641, 643 (1977). The Supreme Court did not determine whether the doctrine applied in South Carolina. Id. Citing Porter, the Supreme Court recently reiterated, “the transferability of intent in a self-defense claim has not been recognized in South Carolina.” Jamison v. State, 410 S.C. 456, 471, 765 S.E.2d 123, 131 (2014).

Here, there was no evidence or testimony presented at the immunity hearing that would support a finding Respondent had a reason to defend himself from the victim. There was no evidence to support a finding the victim engaged in an attack on Respondent. No weapon was found on the victim, and Eric testified he did not see the victim with a weapon on the day of the shooting. (R. p. 233). Further, Eric indicated there was no weapon in the victim’s car. (R. p. 233). Respondent did not even mention seeing a weapon in the victim’s car. He did not indicate he saw shots fired from the car. In fact, Respondent’s testimony reflects that the basis for his belief that the victim’s vehicle was a threat was because he saw both the SUV and the victim’s car pass in front of his house when the Grand Marquis arrived. (See R. pp. 107-09). Respondent did not see either vehicle turn around. (R. p. 109). Respondent also noted that he did not see the victim’s car do anything in front of the house. (R. 110). In all, there was no testimony or evidence indicating the victim attacked Respondent or posed a threat to Respondent. Furthermore, as noted by this Court, there was evidence in the record that

could support the circuit court's finding that someone in the SUV shot first. The SUV was the threat, not the victim in his Honda.

Clearly, Respondent was firing in response to the attack from and threat posed by the SUV. If, as this Court has found, the victim here was not the intended target, Respondent was not acting in self-defense as it related to actions from the victim. The finding that Respondent was acting in self-defense when he killed the victim would necessarily be based upon a transfer of Respondent's intent in firing in response to the SUV in self-defense to the victim, an innocent bystander. Since the doctrine of transferred intent has not been recognized to apply to self-defense in South Carolina, this finding that Respondent was acting in self-defense would be improper. Thus, this Court's affirmance of the grant of immunity is in error.

Furthermore, self-defense involves an intentional act. See State v. Belcher, 385 S.C. 597, 608, 685 S.E.2d 802, 808 (2009). To the extent this Court found Respondent was not acting intentionally in firing the fatal shot, its finding is inconsistent with the determination that Respondent was acting in self-defense. See generally State v. Light, 378 S.C. 641, 650, 664 S.E.2d 465, 470 (2008)(noting there is a distinction between shooting intentionally in self-defense and not shooting intentionally, and if a factual issue arises regarding whether shooting was intentional, involuntary manslaughter charge may be warranted).

WHEREFORE, premises considered, for the reasons stated above, the State would respectfully request this Court rehear argument in this appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ
Chief Deputy Attorney General

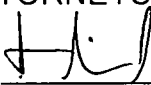
DONALD J. ZELENKA
Deputy Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General
Bar No. 74713

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, South Carolina 29202

ATTORNEYS FOR PETITIONER

By: 

Alphonso Simon Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

May 18, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM RICHLAND COUNTY
The Honorable Maité Murphy, Circuit Court Judge

MAY 18 2017

Appellate Case No. 2013-002124
Opinion No. 5483 (filed May 3, 2017)

SC Court of Appeals

THE STATE

PETITIONER,

V.

SHANNON SCOTT,

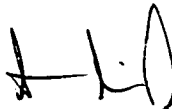
RESPONDENT.

CERTIFICATE OF SERVICE

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

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

This 18th day of May, 2017.



ALPHONSO SIMON, JR.
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR PETITIONER



ALAN WILSON
ATTORNEY GENERAL

May 18, 2017

RECEIVED

MAY 18 2017

SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *The State v. Shannon Scott*
Appeal from Richland County
Appellate Case No. 2013-002124
Opinion No. 5483 (Filed May 3, 2017)

Dear Ms. Kitchings:

Enclosed for filing in your office are the originals and six (6) copies of the Petition for Rehearing in the above-referenced case, together with Certificate of Service.

Thank you for your assistance in this matter.

Sincerely,

Alphonso Simon, Jr.
Assistant Attorney General

AS:dmd

Enclosures

cc: Robert M. Dudek, Esq. (w/two copies of encls.)
The Honorable Daniel E. Johnson, Solicitor, Fifth Judicial Circuit (w/copy of encl.)
April Sampson, Esq., Assistant Solicitor, Fifth Judicial Circuit (w/copy of encl.)
Trisha Allen, Victim Services