STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Maite Murphy, Circuit Court Judge

Opinion No. 5483 (S.C. Ct. App. Filed May 3, 2017)

10-GS-40-1457

THE STATE,

PETITIONER/RESPONDENT,

V.

SHANNON SCOTT,

RESPONDENT/PETITONER

APPELLATE CASE NO. 2017-001607

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for Respondent certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on June 29, 2017.

QUESTION PRESENTED

The Court of Appeals correctly affirmed the Circuit Court Judge in holding respondent was entitled to immunity under the Protection of Persons and Property Act pursuant to S.C. Code Ann. § 16-11-440(C) (stand your ground) where shots were being fired at respondent and his home as the children took cover inside, and respondent only stepped outside the home briefly to attempt to quell the violent attack. The Court of Appeals erred in not also affirming under the additional ground that respondent was entitled to immunity pursuant to S.C. Code Ann. § 16-11-440(A) (attack occurred at his residence) given that respondent, his home and his family were under a violent attack when he returned fire.

STATEMENT OF FACTS

Procedural history

Respondent Shannon Scott was indicted by the Richland County Grand Jury for the offense of murder. App. 303 – 304. Respondent filed a Notice of Motion for Hearing under the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-440(C), and Motions to Enforce the Protections of the Act. App. 305-307.

An evidentiary hearing was held before the Honorable Maite Murphy on October 12-14, 2013. Todd Rutherford represented respondent. The assistant solicitors were April Sampson, Dolly Garfield and Brent Arant. App. 1.

On October 9, 2013 Judge Murphy issued her order granting respondent immunity under the Protection of Persons and Property Act. App. 384 – 395. The state filed a notice of intent to appeal.

Oral argument was held in the Court of Appeals on September 8, 2016. The Court of Appeals affirmed Judge Murphy's order granting respondent immunity pursuant to S.C. Code Ann. § 16-11-440(C) in State v. Scott, 420 S.C. 108, 800 S.E.2d 708 (2017), (Konduros, J., Lockemy, CJ., and McDonald, J., concurring). Judge McDonald in her concurring opinion wrote that she would uphold Judge Murphy's immunity order in its entirety. See App. 391 – 393.

Respondent now seeks a writ of certiorari from this Court on the additional sustaining ground of S.C. Code §16-11-420 (A), (incident occurred at respondent's residence).

Introduction

As argued in the Court of Appeals, the state on appeal to that Court broke down its two arguments into several subparts. However, the state's legal argument to the trial judge at the evidentiary hearing about why respondent should not be granted immunity was almost entirely

about the state's version of the credibility of the witnesses that testified during the evidentiary hearing. S.C. Code §16-11-420 (A), (incident occurred at respondent's residence). [1] See App. 287, l. 8 – 301, l. 23. Judge Murphy, as will be seen infra, found respondent Shannon Scott very credible, and termed the testimony of the state's chief drive-by shooting witness "pure fabrication."

Relevant facts

As stated in the order granting immunity the judge concluded that respondent's testimony was "very credible". She noted that respondent testified that he knew of previous problems reported to law enforcement and that he knew "this girl [Teesha] and others were chasing his children." The judge also wrote: "The defendant testified that he was not a gun owner, but in order to defend and protect his family, he grabbed Mr. Williams' [his roommate's] gun. His testimony was that the SUV [the truck with Teesha and others inside] stopped in front of his house, and he could see arms out of the windows. This testimony is corroborated by both the statements of Ms. Carter and Ms. Davis." App. 390.

The judge also found that respondent's testimony was credible wherein he said that **both** the Honda [in which the decedent was driving], and the SUV [Teesha's vehicle] drove past his home and turned around and stopped in front of the residence. "This is consistent with the gunshot entering the driver's side window of the victim's car. His testimony was very credible that he heard a gunshot. Hearing a gunshot, along with the threats, the chase, and being confronted at his home as a target of a drive-by shooting, with his children inside, created reasonable fear of imminent peril of death for him and his family." App. 390. The judge's credibility determinations are entitled to great deference since she observed the demeanor of the witnesses involved, including the young

[1] For example, the solicitor claimed respondent fired first and consequently he should not be entitled to immunity, and she argued that the decedent did not do anything wrong, and therefore respondent was not entitled to immunity. App. 296, ll. 3- 297, l. 5.

people who did the drive by shooting that placed respondent and his family in imminent danger of death. State v. Johnson, 413 S.C. 458, 468 776 S.E.2d 367, 372 (2015). Respectfully, if ever there was a case that the legislature meant for immunity from prosecution to exist under S.C. Code §16-11-420 (A), (incident occurred at respondent's residence), and S.C. Code §16-11-420 (C) (stand your ground where a person is acting lawfully in a place he or she has a right to be), it was this case.

Again, although the state's argument at trial focused almost solely on the credibility of the witnesses, it is important to note that the judge, who observed the demeanor of the witnesses at the hearing, most importantly, found respondent's testimony *very credible*. She found any assertion that Teesha did not intend to exact violence that night where she had threatened a drive-by shooting was **"pure fabrication."** "The credible testimony established that they turned the SUV (car #2) around, turned off the lights, rolled down the windows and drove by the Defendant's home and began to fire." App. 389. That, as explained in more detail infra, constituted an *attack*, not a *perceived threat*. Even though respondent won in the Court of Appeals when the Court upheld the grant of immunity, he seeks certiorari since an additional sustaining ground exists pursuant to S.C. Code §16-11-420 (A), (incident occurred at respondent's residence).

Trial witness

Shade Scott was respondent's seventeen-year-old daughter. App. 7, l. 23 – 8, l. 3. Shade remembered that on April 18, 2010 they went to a teen party at the Kia House which is located off of Two Notch Road in Columbia. She was with her friends Asia, Crackle [Denzel Davis], Tone [Antonio Scott], Ashley and Avia. App. 8, ll. 4-9.

While at the party Shade recalled that some "girls started with me." Teesha was hitting Shade on the back of her head – "flipping my hair, like back flipping my hair trying to hit me, but she was just flipping my hair." App. 8, ll. 16 – 24.

Shade testified that Teesha came out into the parking lot wanting to fight with her. App. 9, ll. 10-21. Shade and her group all got in the car, and Crackle was driving. Teesha and Keewee were in an SUV [the truck] and they began following their car. When they came to a stoplight: "I guess they thought we was going to stop. The light was red, we, actually ran the stoplight. They pulled into the median and *they was getting out of the car* and we ran the stoplight." App. 10, ll. 5-19. (emphasis added).

When Teesha's truck continued to follow them Shade said she called her father and told him that the people following them had a gun. Respondent told them to come to his house. As they drove down Two Notch towards Beltline Blvd. near the McDonald's Teesha's vehicle continued to follow them. Crackle turned the car into the police station, but when they noticed no police officers were there they made a U-turn. "They then came back towards Beltline." App. 11, ll. 15-23. Shade said they continued "trying to get away from them." App. 11, ll. 24-25.

Shade testified as they continued to try and evade the truck "we had to drive through someone's yard to get away from them. So after we drove through the yard, they start following us again. Finally, we made it to my father's house. When we got there, we pulled in the backyard. I seen the truck go down the road and come back up *with their headlights off.* And when I got in the backyard, my daddy told all of us to go in the kitchen, that's where we went. And I didn't see anything after that." App. 12, ll. 1-20.

Shade said all of the teenagers **got on the floor in the kitchen**. She was very scared that they were going to get shot. App. 13, ll. 14-25.

Asia Mills was also at the teen club that night. She remembered that some of the girls were picking on Shade. Teesha told Asia that she was going to slap Shade. Asia testified that Teesha "was getting crazy." Asia told Shade to go to the car, and Teesha was trying to hit Shade in the back of the head as she went towards the car. App. 19, l. 7- 20, l. 13.

Asia recalled that they pulled out of the parking lot, and the truck started following them. She saw Teesha *with a gun in her hand* "and she [Teesha] was running behind us, which made us flee and whatever." App. 19, l. 7- 20, l. 13.

Asia described the journey of the truck following them in much the same fashion as Shade. When they got to the house where respondent lived the truck "**turned their lights off while we were in the car and they started shooting**. Then momma told us to come inside the house. We ran *inside the house and I still heard gunshots.*" (emphasis added). Asia did not see respondent: "I didn't see, I really didn't see anything. The only thing I was just – I was just in fear of my life because I know these girls and I know that when they say they are going to do something or if they are behind you like this, I know it's going to be trouble." App. 20, l. 8 – 21, l. 24.

Ave Fuller also remembered the teen party at Kia's that evening. She recalled Teesha slapping Shade in the head. Teesha told Ave: "I ain't got no problem with y'all, but your step-sister, [Shade] that little red girl, I'm going to slap the S out of her." Teesha ran and hit Shade in the back of the head. "So we all got in the car and they started chasing us." App. 36, l. 18 – 37, l. 11.

Ave also testified about the chase, and she said when they pulled in respondent's backyard "the other car *cut their headlights off. I saw the gun hanging out the window and they shot and we ducked down in the seat... I started crying... then my mom told us to run in the back, like through the back door so they wouldn't see us and that's when I heard more gunshots.*" App. 37, l. 1 – 39, l. 10. (emphasis added).

Denzel Davis [Crackle] remembered that *Teesha had a gun in her hand, and her truck followed them as they sought to escape* the situation at the Kia club with her. At one point Denzel testified: "I made a wrong turn and I had to make another turn because I hit a dead end." When he hit the dead end Teesha's truck tried to block them from leaving. App. 49, l. 8 – 51, l. 25.

Denzel said he was able to escape the attempt to block them in, and he was able to make it to respondent's house. "I received directions to go inside the back of the house because of gunshots. And this was for safety, of course. *And once I was inside the house I was told to get down.*" App. 49, l. 8 – 51, l. 25. (emphasis added).

Antonio Bennett [Tone] was not related to respondent. He testified that another girl he did not know got in an altercation with Shade. Antonio's brother was trying to "comfort Shade at the time." He recalled a security guard telling them to get in the car, and to go home. As they drove he remembered someone in their car with Shade called "their parent," and they were given directions to Respondent's house. App. 63, l. 6 – 64, l. 25.

"When we got to the house, everybody was getting out of the car and given directions to go in the house and get down. When I was getting out, I heard the first gunshot." App. 64, l. 22 – 65, l. 4.

Antonio testified when they got *inside the house, and on the kitchen floor, he thought he heard about three gunshots.* App. 66, ll. 9-16. Antonio said he was afraid of the gun and gunshots, *and he said everyone trying to get down on the kitchen floor.* App. 67, ll. 2-8. (emphasis added).

Rosalyn Scott was engaged to respondent, who she called "Pocko," at the time of this April 18, 2010 incident. App. 80, ll. 3-21. Rosalyn intended to spend the night at respondent's house. The original plan was for them to return to their home after the teen party. Rosalyn texted her daughter, Ashley, because she had told them to be home at her house by a certain time, and she was

now worried about them. She received a text back: "Mom, they're following us." After she texted Ashley back she learned that Teesha and her associates were the ones following them in the truck. App. 80, l. 20 – 81, l. 11.

Rosalyn remembered respondent was asleep when these text messages began. Rosalyn received another text telling her that Teesha's truck was continuing to chase them. Rosalyn was afraid because of prior incidents with Teesha "and a whole bunch of girls." Rosalyn said in the past Teesha and her sister and a lot of other girls had come to their house to "fight Shade." App. 83, l. 21 – 84, l. 17.

Rosalyn next received a call from Shade's cell phone. Rosalyn was extremely concerned because she thought if they got to her house alone "it's going to be bad because I'm not there." App. 81, l. 1 – 83, l. 11.

Rosalyn said she nudged respondent, and told him to wake up. "Those girls are following them." She testified that respondent told her to tell the girls to *come to his house, and that they would take them home together*. App. 85, ll. 3-14. (emphasis added).

Rosalyn remembered that it seemed like it "took them forever to come." She said she stood on the porch with respondent waiting for the children when "all of a sudden, you could hear tires like screeching." App. 86, l. 10 – 87, l. 7.

She saw Danzel's car coming down the street, and she saw respondent motioning for him to turn into the yard. She recalled that he turned into the yard "so fast," and with another car coming behind them "on his tail." She was afraid Danzel was going to lose control of the car, and hit either a tree or the house. App. 86, l. 10 – 87, l. 7.

Rosalyn testified that the truck that was following Danzel's car went down the street, and **made a U-turn by the Allstate building. She noticed another car behind the truck do the same**

thing. "And I'm like, Oh Shit, you know, what is this? What is this? At that point, Shannon [respondent] and I went back inside the house trying to round up the kids to get them inside the car. I'm going through the back door to where the kitchen is, I heard a shot." App. 85, l. 3 – 87, l. 14.

Rosalyn said she ran to the backdoor to get the teenagers inside. She heard a shot. She yelled for them to come inside quickly, and she heard respondent say: "Call 911." Rosalyn got on the telephone, and she told the 911 dispatcher: "*They're shooting at us. I was like they're shooting at us.*" App. 86, l. 10 – 88, l. 21. (emphasis added).

Rosalyn testified she was doing her best to get everyone down on the floor, and trying to make sure they were safe. App. 92, ll. 8-11. After the shooting, and talking to the police, Rosalyn said she remained scared because she did not know if anyone was going to come back by and do a drive-by shooting at Respondent's house. It was undisputed that Teesha had discussed a drive-by shooting with her friends that evening. App. 93, ll. 11-21.

Respondent's testimony

Respondent testified next during the evidentiary hearing. As seen above, the trial judge found critical parts of respondent's testimony very credible, and parts of it were also corroborated. Respondent worked two jobs, and he worked seven days a week. He was either at the Jiffy Lube, or a gas station that employed him. He was thirty-six years old. App. 101, ll. 2-13.

Respondent termed the night of April 18, 2010 "a nightmare." He recalled Rosalyn started texting Ashley because she had not heard from her as expected -- seemingly that they were home. They next received a telephone call from Shade after being told by text message that they were being chased. App. 101, l. 20 – 102, l. 7.

Respondent remembered that Rosalyn was on the telephone, and she was hysterical. She told him that "the girls are messing with our girls again." Respondent recalled the girls Rosalyn was

talking about -- he did not know them personally -- but they would drive by their house, scream, provoke and harass his daughters. App. 102, ll. 13-21.

After the teenagers were instructed to come into his house respondent remembered hearing tires screeching. "I hear engines revving up, similar to Dukes of Hazard, like a race, like cars racing, but I couldn't see anything. That's when I opened the door." He remembered seeing two cars "bumper to bumper almost." He was now in the front yard, and he told Danzel's car to go around the back while they were being chased. He remembered the teenagers were hysterical. App. 102, l. 13 – 103, l. 25.

Respondent remembered while the car went into the backyard he saw a truck coming with "some more headlights [the Honda] behind it." Respondent went into the kitchen, in the back of the house, to open the backdoor. He heard a gunshot. He recalled the teenagers being frantic and yelling. Respondent said at this point he went in to his roommate's room, and grabbed a handgun out of his dresser. Respondent did not own his own gun. App. 104, l. 15 – 106, l. 17.

Respondent remembered his wife called 911 at this time. Respondent testified that he did not go all the way outside of the house: "I'm just right there at the step." App. 105, l. 22 – 106, l. 10.

Respondent recalled the truck came back, and turned its headlights off. The truck was moving very slowly past his house at about three miles per hour. He said he fired a warning shot "straight in the air. Kind of like a farmer would do if trespassers came on their property." App. 106, ll. 11-18.

Respondent was worried they were coming into his yard, or going towards the back of his house where his children were located. He remembered the two vehicles being "a grey truck, grey or silver truck, and a Honda Accord." App. 107, ll. 1-4.

Respondent heard another shot and he ducked down behind the front hood of his car. "And as I was ducking down and going into the house at the same time I shot back again I shot and went into the house." Respondent said he probably shot two or three times during this encounter. App. 107, l. 1 – 108, l. 6.

Respondent testified he was shooting to defend himself. He believed if he had not been able to get his roommate's gun that the attackers would have "shot up the house that night." App. 110, l. 9 – 111, l. 21. Respondent said the police quickly arrived. He went outside with his wife, and talked with them about what had occurred. App. 112, ll. 5-14.

The state called respondent's roommate, Lenny Williams, as a witness. Williams was twenty-three years old.

Williams remembered he was asleep that night when respondent ran into his room and grabbed his gun. App. 124, l. 12 – 127, l. 20. Williams said he heard gunshots, he guessed about three gunshots, "that's when I got – *me and my girl, we got on the floor.*" App. 130, ll. 4-20. (emphasis added).

The state next called Sergeant Kevin Reese of the Columbia Police Department. App. 138, ll. 1-7. Reese remembered when he arrived at the scene "the Honda would've been in front of this [respondent's] house. App. 140, ll. 2-5. Reese testified the police were told that a silver Ford Expedition had been shooting, and left the scene. App. 151, l. 20 – 152, l. 1.

Reese said when he interviewed Ms. Davis, that Davis told him she had gotten into an altercation with Shade, and while they were leaving the club another altercation occurred with "the same group of girls." They got into an "SUV that was driven by Ms. Carter. Said Ms. Carter produced a handgun, and all the girls told her it put it away. "They followed the car Shade was riding in. App. 159, l. 18 – 160, l. 8.

Reese said Davis told him that they followed the car to respondent's house. Davis claimed that she saw respondent and a black woman standing in the yard. Davis claimed she heard a shot and Carter backed the car up, and fired a shot from her gun. Reese noted that Carter had threatened to a drive-by shooting of respondent's house just before this happened, and she then switched seats with Shataray. App. 159, l. 18 – 161, l. 7.

On cross-examination Reese was questioned about the admission the girls in the truck planned to do a drive-by shooting that night, and that they switched seats to accomplish the drive-by shooting. App. 173, l. 25 – 175, l. 11. Reese was asked why he did not arrest Teesha, and at least one of the other girls for criminal conspiracy. Reese was also questioned about why he did not charge them with "felony murder" since someone was killed as a result of their plan to do a drive-by shooting, and a shooting actually occurred. Reese only responded: "*I just didn't counsel.*" App. 173, l. 25 – 176, l. 25. (emphasis added). At oral argument before the Court of Appeals, one Judge on the panel also asked local prosecutor arguing the argument for the state why these people doing the drive by shooting that night at respondent's home were not criminally charged for their actions that night. That attorney apparently deferred the decision whether to prosecute to the investigators.

Reese told defense counsel during the evidentiary hearing: This is one of the saddest homicide cases I've ever had to deal with in respect to both the victim and the accused .... I wished it hadn't happened this way." App. 192, ll. 18-25.

Eric Washington was the decedent's friend, and he was with him on the night of this incident. Washington was twenty years old at the time of the trial. He relayed that he had played on the same basketball team as the decedent in high school. App. 215, l. 13 – 217, l. 8.

Washington testified that the decedent knew some of the people at the Kia party. Washington was just out for an evening with the decedent. He remembered there was an altercation

at the party, and that a truck began following "the girl he said he knew." App. 218, l. 15 – 221, l. 19. Washington said the decedent told him: "We've got to make sure they're straight or make sure they're ok." App. 222, ll. 1-4.

Washington recalled that the decedent followed the truck and the car that Shade was traveling in. At one point they lost sight of the truck and the car. However, the decedent apparently caught sight of them again rather quickly. App. 222, l. 1 – 224, l. 16.

Washington testified they were driving through a neighborhood that he was not familiar with, and he then saw the silver truck park in a direction coming towards him. Washington claimed he saw a man coming out of the house, and this man started shooting at the silver truck. Washington said he saw or felt the glass in their car shatter, and the Honda that the decedent was driving swerved off the road a little bit. The decedent had been shot. App. 225, l. 4 – 227, l. 14.

Parts of the interview with Teesha was read into the record by Officer Arthur Thomas. Teesha admitted she moved her gun that night from the center console to the glove compartment. App. 250, l. 25 – 251, l. 3.

On cross-examination of Officer Arthur Thomas defense counsel questioned him about what Thomas thought respondent could have done differently to defend his family. Thomas said respondent should have gone into his house, called law enforcement, and not fired a gun. App. 267, l. 3 – 268, l. 7.

Thomas said he was aware a drive-by shooting was in the works that evening. However, he did not answer defense counsel's questions about whether he thought the law required respondent to get shot at first before he defended himself. App. 271, l. 13 – 275, l. 7. Thomas continued to dodge cross-examination about respondent's rights under the Castle Doctrine and the Stand Your Ground Law. App. 275, l. 2 – 276, l. 5.

Closing arguments

Defense counsel Rutherford argued: "The statute was passed so that Mr. Scott would never be sitting here, that someone who is standing in their yard, in their Castle does not have to make the decision to go back in the house and hope that the cavalry is going to come ... there was no doubt as to whether they sought to do them harm. They had already fired a gunshot." App. 280, l. 20 – 281, l. 9.

Counsel also told the judge that the decedent's death was the fault of Teesha and her associates that night. They knew what they were intending to do "and they should've been charged with felony murder. They switched seats to do a drive-by. Thinking of doing a drive-by is not a felony. Getting your gun out and switching seats makes it a felony." App. 282, l. 18 – 284, l. 17; 284, ll. 2-14.

Defense counsel reminded the judge that respondent did not have a gun, and he went into his roommate's room to get a gun for the protection of himself and his family. The 911 tape revealed that they told the 911 operator: "They are shooting at us." App. 284, l. 15 – 285, l. 21. Counsel argued that respondent is exactly the person and family the legislature intended to protect, and that Teesha and her cohorts should have been charged with felony murder. App. 286, l. 4 – 287, l. 6.

The assistant solicitor argued respondent had the burden of proof by preponderance of the evidence. App. 287, ll. 16-22. As stated above, the assistant solicitor argued the credibility of the witnesses throughout her legal argument to the judge. The assistant solicitor argued that the law provided that a person could meet force with force, but she claimed the evidence showed respondent shot first, and that he should not be immune from prosecution. App. 296, ll. 12-18. She argued that the decedent had not done anything wrong, and that respondent should not be immune from

prosecution "and if you want to make it the wild wild west, do what Mr. Rutherford said." App. 298, l. 8 – 299, l. 2.

The judge questioned the solicitor, noting that while respondent had the burden of proof, she was concerned why there was not any ballistics evidence as to the angle of the shots of the shell casings, or GSR tests conducted on anyone by the police. The assistant solicitor responded that the state had done its best in gathering evidence. App. 299, l. 11 – 300, l. 17. The judge also noted the lack of the state doing any accident reconstruction regarding what occurred that night. App. 300, l. 18 – 301, l. 14.

Order

In the order granting immunity the judge wrote that Teesha Davis wanted to do a "drive-by that evening." Although she claimed that she was talked out of it, "the evidence clearly shows that to be a pure fabrication. The credible evidence established that they turned the SUV [car number 2] around, turned off the lights, rolled down the windows, and drove by the defendant's home and began to fire. It is also clear that in response to these events, the defendant exited the front of his home onto a very small stoop and that he fired two or three shots. During this melee, one of the shots hit and instantly killed the victim (driver of car number 3)". App. 389. The judge also wrote that respondent knew of previous run-ins with "this girl and others chasing his children."

The judge ruled that she found respondent's testimony credible that the SUV and Honda both drove past his house and turned around and stopped in front of his residence." She wrote that this consistent with the gunshot entering the driver's window of the victim's car. "His testimony was very credible that he heard a gunshot. Hearing a gunshot, along with the threats,

the chase, and being confronted at his home as a target of a drive-by shooting, with his children inside, created reasonable fear of imminent peril of death for him and his family." App. 390.

As stated, the judge did comment on the unfortunate fact that the police did not do an accident reconstruction, or ballistics tests on the trajectory of the bullets. The judge ruled that respondent was entitled to immunity under the Act because the incident occurred at his residence. App. 391-393. The judge noted that respondent was at his own home and he felt an imminent peril when he shot at the attackers. "At no point is it required that the defendant retreat into his home to be fired upon without him being able to defend his family and himself." App. 393.

As seen, the judge earlier referred to respondent coming out of his house onto his "stoop". She also found that respondent was also within the curtilage of his home as defined by the common law. App. 393. The judge found respondent was entitled to immunity pursuant to S.C. Code Ann. §16-11-440(A).

The judge also found that respondent was entitled to immunity under the "Stand Your Ground" provision of S.C. Code Ann. § 16-11-440(C). The judge noted that to be immune the person must be in a place where he has the right to be, he must not be engaged in unlawful activity, and he must "reasonably believe it is necessary to prevent great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in S.C. Code Ann. §16-1-60. App. 393-394.

The order stated that respondent believed he was being attacked with deadly force directed at his home when he shot. The judge further found that there was absolutely no requirement that the defendant wait to be attacked by those that instigated the deadly circumstances.

The judge ruled that respondent was entitled to immunity under the Act because "he and his family were clearly under attack and that they had every reason to believe the attack would have continued from both Ms. Carter and potentially the victim but for the actions of the defendant. *The legislature clearly did not intend for the father to stand idly by as his family lay on the kitchen floor in fear of being shot and killed. The defendant meets all the statutory requirements to be granted immunity for his actions on April 18, 2010.*" App. 394. (emphasis added).

Court of Appeals

The Court of Appeals, 3-0 affirmed Judge Murphy's well-reasoned order granting immunity. The Court reasoned that parties agreed that respondent was not engaged in unlawful activity at the time of the shooting. "Additionally, he was in a place he had a right to be – inside his home and immediately outside his home." App. 476. The Court found that Judge Murphy did not abuse her discretion in finding Scott immune from prosecution by a preponderance of the evidence "pursuant to subsection (C)." App. 478-479. "We decline to address the circuit court's ruling under subsection (A). To the extent the circuit court's order equates Scott's belief the SUV or Honda posed a threat with an attack, the order is vacated." App. 479.

Judge McDonald, in her concurring opinion, agreed respondent was correctly found immune from prosecution by the Circuit Court Judge, and "I agree Scott responded to an attack as opposed to a perceived threat; however, I respectfully write separately because I do not agree that the circuit court's order conflates the questions of self-defense and immunity under the Protection of Persons and Property Act." App. 479.

Judge McDonald further wrote that:

> "Recently our supreme court clarified that the immunity of section 16-11-440(C) extends to a person attacked in his own residence

and examined the Legislative purposes of the Act. In State v. Jones, the Court explained:

> Under the Castle Doctrine. "[o]ne attacked, without fault on his part, on his own premises has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense." State v. Gordon, 128 S.C. 422, 425, 122 S. E. 501, 502 (1924)) (citation omitted). The Legislature explicitly codified the Castle Doctrine when it promulgated the Act and extended its protection, when applicable, to include an occupied vehicle and a person's place of business. See S.C. Code Ann. § 16-11-420(A) (2015) (It is the intent of the General Assembly to codify the common law 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").

416 S.C. 283, 291, 786 S.E. 2d 132, 136 (2016) (altercation in original)...As the circuit court's examination of Scott's reasonable belief that he and the girls were being attacked with deadly force was necessary to its self-defense analysis, a predicate to the court's finding of immunity, I would affirm both the subsection (C) grant immunity and the circuit court's analysis."

App. 479 – 480.

Rehearing

On rehearing, respondent noted that:

> "The actions of the shooter(s) from the car were blatantly illegal, and outrageous since Respondent's children, the others in the house, or Respondent could have easily been killed. At least one member of this Court openly questioned the solicitor during oral argument as to why the shooter(s) were never criminally charged in this case. They willfully set this whole series of events into motion, and they were responsible for the aftermath.
>
> Respectfully, if ever there was a case where the Legislature meant immunity for a homeowner protecting himself and his family against an invasion of bullets it was this case. Irresponsible people shooting onto Respondent's property, and into his home, after

> chasing his children in an automobile with guns. The Legislature meant for Respondent to have no duty to retreat, for him to act in self-defense, and for him to be immune from prosecution. Respondent was *both* in his own home, **and** he acted lawfully in a place he had a right to be at the time. See, State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007).

App. 488. (emphasis added).

Respondent requested that the Court grant rehearing and affirm the Circuit Court Judge's order without modification. App. 489.

ARGUMENT

The Court of Appeals correctly affirmed the Circuit Court Judge in holding respondent was entitled to immunity under the Protection of Persons and Property Act pursuant to S.C. Code Ann. § 16-11-440(C) (stand your ground) where shots were being fired at respondent and his home as the children took cover inside, and respondent only stepped outside the home briefly to attempt to quell the violent attack. The Court of Appeals erred in not also affirming under the additional ground that respondent was entitled to immunity pursuant to S.C. Code Ann. § 16-11-440(A)(attack occurred at his residence) given that respondent, his home and his family were under a violent attack at the time respondent returned fire.

As seen, respondent Shannon Scott was inside his home, and just outside his home in the curtilage when he returned fire to protect his family from death or great bodily injury. Under the Protection of Persons and Property Act pursuant to S.C. Code Ann. § 16-11-440(A) – defending an invasion of his home, and S.C. Code Ann. § 16-11-440(C) -- standing your ground while he was acting lawfully in a place he had a right to be -- the legislature surely meant this respondent to be immune from prosecution given the facts of this case.

In State v. Duncan, 392 S.C. 404, 406, 709 S.E.2d 662, 663 (2011) this Court agreed that the defendant was immune from prosecution where "according to the statement and testimony of respondent's girlfriend, Jean Templeton, she, the victim, and the victim's girlfriend, Amanda Grubbs, were guests in respondent's house on the night of the shooting. At some point, Grubbs handed the victim a picture of respondent's daughter in a cheerleading outfit and the victim began making inappropriate comments about the picture. Respondent asked the victim and Grubbs to leave. According to Templeton, the victim left but returned a few minutes later. 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. Templeton claimed respondent pointed the gun at the victim and fired. The victim died as a result of the gunshot wound to the face."

The immunity facts of Duncan are tame when compared to the evidence here showing respondent and his family were placed in imminent danger of death or great bodily harm by an attacking group of drive-by shooters at respondent's home where they lived or were guests. These drive-by shooters were more likely to cause death by shooting into respondent's home, and at him and his family, than was a burglar who was coming through the window or kicking in the door. The Legislature in passing the Protection of Persons and Property Act meant to grant additional protection to a citizen when he and his family, as here, were being attacked in their home, and also in a place they had a right to be, and where they were acting lawfully.

In State v. Jones, 416 S.C. 283, 76 S.E.2d 132 (2016), this Court held that "another place" in the statute encompassed a residence, within the meaning of provision relating to immunity for use of deadly force for a person who is not engaged in illegal activity. This Court further held that a person who killed a cohabitant in response to an attack can seek immunity where he or she can show reasonable fear of the attacker. This Court found the evidence supported the defendant's self-defense claim.

In rejecting the state's argument that Jones should not be entitled to immunity where her attacker was a cohabitant, and where Jones was attacked inside, and outside of her home – where she still had a right to be while acting lawfully, this Court wrote:

> We need not delve too deeply into the statutory language to discern the intended purpose of the Act as the Legislature explicitly stated in the Preamble that it was enacted to *"authorize the lawful use of deadly force against an intruder or attacker in a person's dwelling,*

residence, or occupied vehicle under certain circumstances." Act No. 379, 2006 S.C. Acts 2908, 2908 (emphasis added). Although the Preamble generally identifies the fundamental purpose of the Act, the Legislature clearly enunciated its intent and reasons for promulgating the Act in section 16–11–420, which states:

> (A) It is the intent of the General Assembly to codify the common law 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.
>
> (B) *The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.*
>
> (C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees *the right of the people to bear arms,* and this right shall not be infringed.
>
> (D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.
>
> (E) 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.*

S.C.Code Ann. § 16–11–420 (2015) (emphasis added). In order to accomplish these objectives, the Legislature enacted section 16–11–440. This section identifies the circumstances for which a person may invoke the protection of the Act.

Section 16–11–440(C) is broadly worded and, as recognized in Douglas, does not eliminate the inclusion of a residence as "another place." Specifically, subsection (C) states:

> A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16–1–60.
>
> Id. § 16–11–440(C) (emphasis added). By using the language "but not limited to, his place of business," we find the Legislature intended the protection of subsection (C) to apply to incidents, provided the other requirements are met, without a geographical restriction.

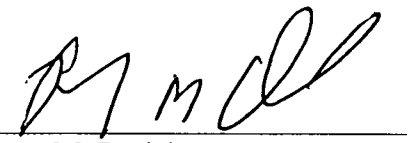
State v. Jones, 416 S.C. 283, 296-297, 786 S.E.2d 132, 139-140 (2016). (emphasis added).

In sum, the Court of Appeals correctly affirmed the Circuit Judge's order that respondent Scott was entitled to immunity pursuant to S.C. Code §16-11-440 (C). App. 393-395. However, respondent respectfully submits the Circuit Court Judge also correctly found he was entitled to immunity pursuant to S.C. Code §16-11-440 (A). App. 391-393. Because the Court of Appeals declined to "address the circuit court's ruling under subsection (A)," State v. Scott, 420 S.C. 108, 117, 800 S.E.2d 793,798 (2017); App. 479, respondent submits it constitutes an additional sustaining ground for the affirming the Circuit Court's order granting immunity.

CONCLUSION

By reason of the foregoing arguments, a writ of certiorari should be granted to allow full briefing on this additional sustaining ground issue.

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 18th day of August, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
Honorable Maite Murphy, Circuit Court Judge

Opinion No. 5483 (S.C. Ct. App. filed 5/3/2017)
10-GS-40-1457

THE STATE,

PETITIONER/REPSONDENT,

V.

SHANNON SCOTT,

RESPONDENT/PETITIONER.

CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari in this case has been served on Alphonso Simon, Esquire, at Post Office Box 11549, Columbia, SC 29211; and Shannon Scott, at 130 Old Clarkson Road, Hopkins, SC 29061, this 18th day of August, 2017, by placing a copy, postage prepaid, in the United States mail.

Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 18th day of August, 2017.

(L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.