

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Richland County  
Court of General Sessions

The Honorable Maité Murphy, Circuit Court Judge, S.C. SUPREME COURT

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

Supreme Court Case No. 2017-001607; Court of Appeals Case No. 2013-002124

THE STATE

PETITIONER-RESPONDENT,

V.

SHANNON SCOTT,

RESPONDENT-PETITIONER.

PETITION FOR WRIT OF CERTIORARI

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## CERTIFICATE OF COUNSEL

Counsel for Petitioner hereby certifies that the petition for rehearing was made, and that the Court of Appeals ruled upon the petition for rehearing on June 29, 2017. (App. 482-86, 491).

### QUESTIONS PRESENTED

1. Whether the Court of Appeals erred as a matter of law in affirming Scott was entitled to immunity under the Protection of Persons and Property Act as codified in S.C. Code Ann. § 16-11-440(C) when there was no evidence the victim was the force being met with force by Scott when Scott fired the fatal shot, and the finding that Scott was acting in self-defense implicitly relied upon the doctrine of transferred intent, which has not been recognized in the context of self-defense in this State?
2. Whether the Court of Appeals erred as a matter of law in finding Scott was entitled to immunity under the Protection of Persons and Property Act as codified in S.C. Code Ann. § 16-11-440(C) when the Court of Appeals determined Scott did not intentionally fire the fatal shot at the victim?

### STATEMENT OF THE CASE

Respondent-Petitioner Shannon Scott (“Scott”) was indicted for Murder (2010-GS-40-1457) in the shooting death of Darrell Niles on May 14, 2010. (App. 303-304). On July 30, 2013, Scott filed a Notice of Motion for Hearing Pursuant to S.C. Code § 16-11-440(C) and Motions to Enforce the Protections of S.C. Code § 16-11-450(A). (App. 305-309).

An evidentiary hearing on the Motion was held before the Honorable Maité Murphy, Circuit Court Judge, on August 12-14, 2013. (App. 1-302). Scott was present and was represented by Todd Rutherford, Esquire. Id. The State was represented by Assistant Solicitors

Dolly Garfield, Esquire, April Sampson, Esquire, and Brent Arant, Esquire, all of the Office for the Solicitor of the Fifth Judicial Circuit. Id.

On October 9, 2013, the circuit court filed its Order granting Scott immunity under the Protection of Persons and Property Act. (App. 383-395). The State subsequently filed a Notice of Appeal.

The State perfected the appeal with the filing of a Final Brief of Appellant. In that brief, the State presented two issues on appeal:

1. Whether the trial court erred in finding Respondent Shannon Scott was entitled to immunity under the Protection of Persons and Property Act under S.C. Code Ann. § 16-11-440(A) when there was no evidence the victim was in the process of unlawfully and forcefully entering Respondent's dwelling, residence, or occupied vehicle, and
2. Whether the trial court erred in finding Respondent Shannon Scott was entitled to immunity under the Protection of Persons and Property Act under S.C. Code Ann. § 16-11-440(C)?

(App. 397-422). Scott filed a Final Brief of Respondent. (App. 433-63). The State also filed a Final Reply Brief of Appellant. (App. 464-70).

This Court transferred this case to the South Carolina Court of Appeals on December 18, 2014. The South Carolina Court of Appeals heard oral argument on September 8, 2016. On May 3, 2017, the South Carolina Court of Appeals issued a published opinion affirming the circuit court's order granting immunity as modified. State v. Scott, 420 S.C. 108, 800 S.E.2d 793 (Ct. App. 2017); (App. 471-81). Both the State and Scott filed Petitions for Rehearing. (App. 482-90). The South Carolina Court of Appeals subsequently denied the Petitions for Rehearing on June 29, 2017. (App. 491-92). This Petition follows.

## **Relevant facts**

On April 18, 2010, Shannon Scott (“Scott”) shot and killed the victim, Darrell Niles. Niles was shot once in the head. At the time, Niles was sitting in the car he was driving, a red Honda. The windows of the car were up. Niles was unarmed, and there were no weapons in his car. Niles had not said anything to Scott. He was merely turning his car around on a street near Scott’s house.

## **Background Information**

On April 17, 2010, Scott was engaged to Rosalyn Fuller. (App. 80, 102). At the time of the hearing, Scott had eleven children. (App. 101). On April 17, one of his daughters, Shade, went to a party at a teen club in Columbia with Rosalyn’s daughters Ashley, Asia, and Ave; along with two young men, Denzel Davis and Antonio Bennett.<sup>1</sup> On that evening, Rosalyn was at Scott’s home. (See App. 81, 101). The children were supposed to return to Rosalyn’s home after they left the teen club. (App. 102).

## **Confrontation Outside the Club**

During the party and shortly after the party, Shade was involved in a confrontation with another girl named Teesha. (App. 8-9, 19-20, 36-7, 64, 157, 159-60, 218). After the confrontation was over, Shade’s group left the club in a 1993 Grand Marquis driven by Denzel. (App. 10, 20, 49, 64-5, see App. 37-8). They were followed by a group of females that included Teesha. (App. 10, 20, 37-8, 157, 160, 256; see App. 64-5). The group of females was driving in a silver Ford Expedition. (App. 157, see App. 10, 20, 49, 69, 97, 107, 131, 152, 156, 248). Asia, Denzel, and Antonio testified at the hearing that when they initially pulled out in the median in

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<sup>1</sup> Denzel Davis went by the nickname “Crackle.” (App. 48, 49). Antonio Bennett went by the nickname “Tone.” (App. 63).

front of the club, they saw a girl run up to their car with a gun in her hand.<sup>2</sup> (App. 20, 49-50, 64). Shade also testified she recalled Denzel stating he saw one of the individuals in the truck having a gun. (App. 10-11). Shade did not see anyone from the truck with a gun that night. (App. 15).

Kiwiana Carter, the primary driver of the Expedition on the day of the shooting, admitted to law enforcement there was a gun in the SUV. (App. 157). Carter also admitted she followed the Grand Marquis. (App. 157, 323-25, 349-51). Teesha also admitted her group followed the Grand Marquis. (App. 160, 329-30). Sergeant Reese noted that no one in the Expedition indicated there was another car following them. (App. 164).

Eric, the passenger in the victim's car, testified that he and the victim ended up following the two cars. (App. 220-21).

#### **The children drive to Scott's house.**

A car chase ensued. (App. 11-2, 20-1, 37-8, 50-1, 69). None of the witnesses in the Grand Marquis testified they saw a red Honda chasing them. (App. 14, 42, 54; see App. 17, 254, 168, 312-19, 343-44). Asia saw a second car after they got to Scott's house. (App. 22). Asia thought she saw the car turning around at the parking lot down the street. (App. 22). Rosalyn also recalled seeing a car turn around with the truck at the All State building down the street from Scott's house.<sup>3</sup> (App. 87).

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<sup>2</sup> Asia identified the girl as Teesha. (App. 20). Antonio recalled this happening at a red light, not in the median. (App. 64). None of the three witnesses mentioned seeing a girl with a gun in their statements to police. (App. 40, 54, 69, 70, 79; see State's Exhibits 3, 4, 5, App. 312-19). Investigator Reese noted the first he heard of Teesha walking to the Grand Marquis with a gun was at the immunity hearing. (App. 170).

<sup>3</sup> Rosalyn did not mention seeing the car during her conversation with the 911 operator or in her statement to law enforcement. (App. 97, State's Exhibits 7, 8).

During the car chase, Shade called Scott. (App. 11, 101-02). Shade told her father that they were being followed by a group of girls and the group of girls had a gun. (App. 11). Shade never told Scott about a second car. (App. 17). Asia, Ave, and Denzel were either not sure or did not recall if anyone mentioned a second car during the phone calls to Scott and Rosalynn. (App. 30-1, 42, 57).

Rosalyn initially received text messages from Ashley that stated their group was being followed by Teesha D. (App. 81). Rosalyn later received a phone call from Ashley, who was then using Shade's phone. During that conversation, Ashley indicated the other group was following them. (App. 81, 83; see App. 343-44). By all accounts, the individuals in the Grand Marquis were instructed to drive to Scott's home instead of Rosalyn's home. (App. 11, 85, 102, 344).

Eric indicated the victim wanted to make sure the girls in the Grand Marquis got home alright. (App. 221-22). The victim did not follow the chase closely, and at one point they lost sight of the other two vehicles. (App. 224). After following the two vehicles for a short while, the victim and Eric got lost once the chase went down neighborhood streets. (App. 222-23). Eric testified they turned onto a cul de sac, and then they started to turn around. (App. 225-26). Eric saw the SUV parked on the road they were originally on. (App. 225-26).

#### **The group arrives at Scott's home.**

When the group got to Scott's house, they pulled their car into the backyard. (App. 12, 21, 38, 51, 86, 104). There was some discrepancy as to whether Scott and Rosalyn were outside when the car arrived. (See App. 38, 86, 104). Scott did not mention Rosalynn being outside. (App. 104). In her statement to law enforcement, Ave indicated Scott and Rosalyn were inside the home. (App. 41).

Shade and Asia testified that they saw the truck following them pass Scott's house and later return with its headlights off. (App. 12, 21, 23). Ave saw the truck's headlights turned off as soon as the Grand Marquis pulled into Scott's backyard. (App. 39). Denzel did not see the truck after he pulled the Grand Marquis into the yard. (App. 52). Rosalyn saw the SUV pass Scott's house, and she saw it turn around by the All State agency that was at the end of the street. (App. 87). When the SUV turned around, the headlights were turned off. (App. 99). Rosalyn also testified she saw a second car make the same turn. (App. 87, 94). Scott saw the truck pass his house, and he saw another set of headlights following the SUV. (App. 104). Scott said he saw the SUV turn around, and there was another car behind it. (App. 106). The SUV had turned its headlights off, but the car's headlights were still on. (App. 106).

After pulling into the backyard, the individuals in the Grand Marquis were directed to enter Scott's house through the back door into the kitchen. (App. 12, 21, 39, 51, 87, 104; see App. 66). At the hearing, several of the witnesses in the Grand Marquis testified they heard gunshots while they were in the process of getting out of the car. (App. 21, 22, 26, 39, 52, 65, 66, 87-8, 104). Specifically, Asia heard gunshots after the truck started driving back with the lights off. (App. 21, 23). Ave asserted she saw a gun hanging out of a window in the truck, and she saw shots fired. (App. 39). Denzel also heard shots while they were still in the car in the backyard. (App. 52). Similarly, Antonio recalled hearing a gunshot as he was getting out of the car. (App. 65, 66). Rosalynn she heard a gunshot as the individuals from the Grand Marquis were entering the house. (App. 87-8). Scott stated he heard a "pow" while Rosalynn was getting the kids into the house. (App. 104). However, Ave, Denzel, and Antonio admitted they did not mention hearing gunshots while they were exiting the Grand Marquis in their statements to law

enforcement after the shooting. (App. 42, 54, 61, 72, 79; see App. 154, 169). Shade also did not recall hearing a gunshot until she was in the house on the floor. (App. 14).

**Shots are fired in the vicinity of Scott's house.**

Carter told Reese that while they were parked in the All State parking lot, they heard a shot. (App. 158). After hearing the shot, Carter fired the gun that was in the SUV into the air. (App. 158, 325, 358). Sergeant Arthur Thomas of the City of Columbia Police Department testified Carter told him she fired her gun, but she said she did so because someone had fired at their SUV twice. (App. 247, 257-59). Teesha told Reese that as they drove past Scott's house, she saw a black female along with a heavy set male and Scott in the yard. (App. 160). She also stated they heard a gunshot while parked at the All State parking lot. (App. 160-61). Teesha indicated that Carter backed up the SUV and fired a shot into the air after hearing a second shot. (App. 160-61, 330). Reese also interviewed Kyasia Corbit, another female in the SUV. She denied that anyone in the truck fired first. (App. 162-3, 338). Corbit also indicated in her interview that she heard two shots before Carter fired her gun once. (App. 336).

**Scott's recollection of what occurred after hearing the gunshot.**

Scott testified that after he heard the gunshot, he went into his roommate's room and took his roommate's handgun from beside his bed. (App. 105). Rosalyn called 911. (App. 105-06). Lenny Williams, Scott's roommate recalled hearing some gunshots. (App. 127). He saw Scott come into his room and grab Williams' gun. (App. 127). Williams noted Scott did not say anything or warn him to get down. (App. 128). Shawnta Brown, Williams' girlfriend, recalled Scott running into the bedroom and getting the gun off the table. (App. 133-5). He did not tell Williams or her to get down, take cover, or that someone was shooting at them. (App. 134).

Brown thought she heard one or two shots. (App. 134). Brown also thought the shots sounded like they were close to the house. (App. 135).

Scott ran outside the front door out to the front step of the house. (App. 105-06). He saw the SUV turn around and there was another car behind it. (App. 106). Scott testified he saw two vehicles in front of his house, a Honda Accord and a gray or Silver Ford Expedition. (App. 107). He saw the headlights of the Honda. (App. 106). The SUV turned its headlights off. (App. 106). As it drove back towards Scott's house, Scott fired a warning shot and told them not to come any farther. (App. 106). After he fired the warning shot, the cars continued to move slowly. Scott recalled seeing the two stop in front of his house. (App. 108-09). Scott heard another shot. (App. 107).

Scott saw arms out of the truck hanging out of the window. (App. 109). Scott noted the red Honda was behind the truck. (App. 109). He also testified the truck was facing the opposite direction that it had originally driven, and the Honda Accord was facing a different direction than it had originally gone. (App. 109-10). He saw the car come close to his house. (App. 107). Scott ducked behind the front hood of his vehicle that was in the front yard, and he fired two or three times. (App. 107, 108). He then went back into the house. (App. 107).

#### **Others' testimony regarding the shooting.**

Eric testified he saw a man come out of the house, and he saw the man shooting at the silver truck. (App. 226). He did not see the man do anything else. (App. 226). Eric noted that as he and the victim pulled up to the intersection on the original road, the man who was shooting shot at the victim's car. (App. 227). Eric thought he felt the car swerve a little bit. (App. 227). After he called the victim twice, he saw the victim's eyes were closed. (App. 227). After hearing more gunshots, Washington got out of the car and ran away. (App. 230).

The three girls from the SUV that law enforcement could identify all indicated that after they heard the shots, and after Carter fired a shot out of the window of the SUV, Carter switched seats with the fourth girl in the SUV. (App. 161, 174, 351-52). The three also told law enforcement they thought about doing a drive-by shooting, and they drove back in front of Scott's house. (App. 174). However, they decided not to go through with the drive-by shooting, and no shots were fired from the SUV. (App. 161). Eric did not see any shots fired from the truck, and he did not see anyone with a gun other than the man in the yard. (App. 232). Neither Eric nor the victim had a gun that night. (App. 233).

Shade noted that Scott went outside. (App. 14). Shade heard a gunshot while she was in the house on the floor. (App. 14). Asia heard more gunshots after her group got into Scott's house. (App. 22). She did not see Scott that night. (App. 27). Both Denzel and Antonio testified the group got down in the kitchen after they went in Scott's house. (App. 51, 66). Antonio heard roughly three gunshots. (App. 66).

Rosalyn noted that while she was calling 911, Scott went outside. (App. 88). Rosalyn heard Scott say "don't do it, don't do it." (App. 88, l 17). She heard another shot. (App. 88). Rosalyn also indicated that Scott's roommate and his girlfriend came into the kitchen after shots were fired. (App. 92-3). Williams testified that shortly after Scott ran out of his room with the gun, he started hearing gunshots. (App. 128). Williams thought he heard three shots; one sounded close, but another sounded as if it was further away. (App. 128-29).

**After the shooting ended.**

After the shooting was over, Williams peeked out his bedroom window and saw an Expedition with its lights out. (App. 131). Rosalyn testified that when Scott came back into the

house, he was asking if everyone was ok. (App. 93). Shade noted that when he came back inside, he told the group to go to their stepmother's house. (App. 14).

An officer came to the scene in response to the 911 call. (App. 93-5, 112). Scott told the officer that a vehicle was shooting at the house and he gave a description of what he saw. (App. 118). He did not tell the officer about firing shots in the air or at a vehicle. (App. 118). After Scott and Rosalyn spoke with the officer, the officer left to pursue the SUV, and everyone inside the house left the scene. (App. 93-5, 112, 131, 135). Meanwhile, Eric ran to a nearby McDonald's, and then called his mother and requested a ride home. (App. 230-31).

Law enforcement did stop the SUV shortly after the shooting. (App. 150). Reese stated that the gun from the truck was seized, along with the gun used by Scott. (App. 164-65). The SLED ballistics report indicated the projectile retrieved from the victim's body was consistent with being fired by a .380, which was the caliber weapon Scott fired. (App. 165-66). The victim died as the result of a gunshot wound to the head. (App. 166).

## ARGUMENT

This Court should grant certiorari because the Court of Appeals' opinion in this case presents two novel questions of law that directly impact upon the application of S.C. Code § 16-11-440(C) and the doctrine of self-defense. First, the Court of Appeals' opinion raises the question of whether an individual is entitled to immunity under the Protection of Persons and Property Act under S.C. Code Ann. § 16-11-440(C) when the victim was not involved in the attack to which the defendant was responding. As part of this question, the Court of Appeals also presents the issue of whether the doctrine of transferred intent applies to self-defense when assessing a request for immunity under the Protection of Persons and Property Act. In affirming the circuit court's order granting immunity, the Court of Appeals found Scott was entitled to immunity when he killed Darrell Niles, an innocent bystander who was only attempting to ensure Scott's children and friends arrived home safely. In making this determination, the Court of Appeals implicitly applied the doctrine of transferred intent when it relied upon the fact the fatal shot was not intentionally fired at the victim as evidence supporting the circuit court's grant of immunity.

Second, the Court of Appeals' reasoning for affirming the grant of immunity raises the related question of whether a defendant may be entitled to immunity under the Protection of Persons and Property Act when the killing in question was not the result of an intentional act. The Court of Appeals' determination that the fatal shot may not have been intentionally fired at the victim contradicts the precedent of this Court that an act of self-defense is an intentional act. The State submits the Court of Appeals erred in its resolution of these questions.

## What Occurred Below

In its Order Granting Immunity, the circuit court found that when Scott fired the shot, “he reasonably believed he was being attacked with deadly force directed at his home. There is absolutely no requirement that the defendant wait to be attacked by those that instigated the deadly circumstances.” (App. 394). Further, the circuit court concluded Scott was

entitled to the grant of immunity under the Act because he and his family were clearly under attack and that they had every reason to believe that 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 any father to stand idly by as his family lay on the kitchen floor in fear of being shot and killed. The defendant meets all of the statutory requirements to be granted immunity for his actions on April 18, 2010.

(App. 394). Thus, Scott was entitled to immunity under S.C. Code Ann. § 16-11-440(C).<sup>4</sup> (App. 393-95).

In its published opinion, the Court of Appeals modified the circuit court’s Order, finding the circuit court improperly relied upon Scott’s perception of danger from the SUV and the victim’s Honda driving by as an attack sufficient for granting relief. State v. Scott, 420 S.C. 108, 114-15, 800 S.E.2d 793, 796-97 (Ct.App.2017). However, the Court of Appeals found there was evidence to support the circuit court’s determination that someone in the SUV fired the first shot. Id. at 115, 800 S.E.2d at 797. Thus, the events of that night were within the purview of S.C. Code Ann. § 16-11-440(C). Id. The Court of Appeals further found the grant of immunity was not an abuse of discretion. The Court described the State’s argument as asserting Scott intentionally and specifically aimed at the victim’s Honda and fired. Id. at 116, 800 S.E.2d at 797. The Court ultimately disagreed with this contention. The Court of Appeals found the

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<sup>4</sup> The circuit court also found Scott was entitled to immunity under S.C. Code Ann. § 16-11-440(A). The Court of Appeals did not address that determination in light of its findings regarding the application of subsection 440(C).

circuit court did not abuse its discretion in finding the victim's car was in front of Scott's residence when the fatal shot was fired.

Again, the evidence regarding the location of the SUV and Honda when Scott fired his weapon is conflicting and somewhat unclear. However, the circuit court found the Honda was directly in front of the house moving along the same path as the SUV. See USAA Prop. & Cas. Ins. Co., 377 S.C. at 652-53, 661 S.E.2d at 796 (“[N]oting the circuit court judge, who saw and heard the witnesses, is in a better position to evaluate their credibility and assign comparative weight to their testimony.”). This finding negates the State's contention the vehicles were so far apart Scott's fatal shot could have only been the result of an intentional act. We conclude the circuit court did not abuse its discretion in finding by a preponderance of the evidence Scott was entitled to immunity pursuant to subsection (C).

Scott, 420 S.C. at 117, 800 S.E.2d at 798.

Judge McDonald concurred in a separate opinion. Judge McDonald disagreed with the majority opinion's determination that the circuit court erred in conflating the questions of self-defense and immunity under the Protection of Persons and Property Act. Scott, 420 S.C. at 118, 800 S.E.2d at 798. Judge McDonald found the circuit court's examination of Scott's reasonable belief that he and his family were being attacked with deadly force was necessary to the self-defense analysis. Id.

#### Standard of Review

Whether a defendant is entitled to immunity under the Protection of Persons and Property Act must be decided prior to trial if either party moves for a determination regarding the Act's application to a defendant's case. State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). “[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence.” Id. at 411, 709 S.E.2d at 665. S.C. Code § 16-11-440(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.

S.C. Code Ann. § 16-11-440(C).

“A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which this court reviews under an abuse of discretion standard of review.” State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016)(citing State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)). “Section 16–11–450 provides immunity from prosecution if a person is found to be justified in using deadly force under the Act.” Id. “Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant’s entitlement to the Act’s immunity. This includes all elements of self-defense, save the duty to retreat.”<sup>5</sup> Id. at 371, 752 S.E.2d at 266.

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<sup>5</sup> Self-defense is a complete defense. If established, you must find the defendant not guilty. There are four elements required by law to establish self-defense in this case. First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant 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 in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense. These are the elements of self-defense.

I. **The Court of Appeals erred in granting immunity under S.C. Code § 16-11-440(C); there was no evidence Scott was meeting force with force when he shot the victim, and the finding that Scott was acting in self-defense implicitly relies upon the application of the doctrine of transferred intent to self-defense, which has not been recognized in this State.**

Scott was not entitled to immunity under § 440(C) because there was no evidence or testimony presented at the immunity hearing that when he shot the victim, he was meeting force with force. Section 440(C) states that “[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. . . .”

“The legislature's intent should be ascertained primarily from the plain language of the statute. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation.” Dupree, 354 S.C. at 693, 583 S.E.2d at 446 (internal citation omitted).

When a statute's language is plain and unambiguous, and conveys clear and definite meaning, there is no occasion for employing rules of statutory interpretation and a court has no right to look for or impose another meaning. City of Camden v. Brassell, 326 S.C. 556, 486 S.E.2d 492 (Ct.App.1997). The statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Id. Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law. Id.; City of Sumter Police Dep't v. One 1992 Blue Mazda Truck, 330 S.C. 371, 498 S.E.2d 894 (Ct.App.1998).

State v. Landis, 362 S.C. 97, 102-03, 606 S.E.2d 503, 506 (Ct.App.2004).

Section 440(C) is clear and unambiguous in that it allows a defendant to respond with force if he is attacked. Contrary to the circuit court's findings, the language of this section does not support a grant of immunity if the defendant is not attacked by the victim before using force

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State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)

against that individual. There was no evidence or testimony presented at the immunity hearing that would support a finding the victim attacked Scott. 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. (App. 233). Further, Eric indicated there was no weapon in the victim's car. (App. 233). Scott 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, Scott's testimony reflects the basis for his belief 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 App. 107-09). Scott did not see either vehicle turn around. (App. 109). In all, there was no testimony or evidence indicating the victim attacked Scott. The hearing court did not find as much. The Court of Appeals also acknowledges there was no evidence the victim was involved in the attack. Thus, contrary to the circuit court and Court of Appeals' determination, Scott was not entitled to "meet force with force" against the victim because the victim had not utilized any force against Scott.

The only logical reading of the statute is that the force being met must have originated from the person killed by the defendant. "Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention." State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (citing Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000)). "A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." In re Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citation omitted). As this Court has pointed out, the Legislature has clearly enunciated the intent of the Protection of Persons and Property Act, noting that in the Preamble to the Act "[t]he 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.” Jones, 416 S.C. at 296, 786 S.E.2d at 139 (quoting S.C. Code Ann. § 16-11-420(B) (emphasis added)). The Court of Appeals’ opinion leads to an absurd result that is inconsistent with the intent of the Legislature. The victim here was not an attacker. Neither the Court of Appeals nor the circuit court found he was an attacker. The Act was not intended to provide immunity in the killing of individuals who are not involved in an attack. To allow the Court of Appeals’ opinion to stand would thus lead to a result that could not have been intended by the Legislature. Certiorari should be granted to address this question.

**The Court of Appeals erred as a matter of law in finding Scott was entitled to immunity because the grant implicitly recognizes the doctrine of transferred intent applies to self-defense.**

In finding the fatal shot was not intentionally directed at the victim, an innocent bystander, the Court of Appeals implicitly and incorrectly applied the doctrine of transferred intent to Scott’s claim he acted in self-defense. The Court of Appeals blurred its analysis regarding the application of subsection 440(C) and the doctrine of self-defense in focusing on whether Scott intentionally and specifically aimed at the victim’s car before firing the fatal shot. Ultimately, the Court of Appeals erred in finding Scott was entitled to immunity because 440(C) did not apply when the victim was not involved in the attack, and the Court of Appeals’ determination he was acting in self-defense was improperly based upon an implicit application of the doctrine of transferred intent to self-defense.

First, as already discussed, there was no evidence or testimony presented at the immunity hearing that Scott had a reason to defend himself from the victim. The victim was not engaged in an attack on Scott. The Court of Appeals never found he was. No weapon was found on the

victim, and his friend did not see the victim with a weapon. (App. 233). There was no weapon in the victim's car. (App. 233). Scott did not mention seeing a weapon in the victim's car. He did not see shots fired from the car. Scott's belief that the victim's vehicle was a threat was solely because he saw both the SUV and the victim's car pass in front of his house when the Grand Marquis arrived. (See App. 107-09). Scott did not see the victim's car do anything in front of his house. (App. 110). In all, there was no testimony or evidence indicating the victim attacked Scott. The Court of Appeals clearly accepted that point in its opinion. Its focus in finding subsection 440(C) applied was solely from evidence in the record that supported the circuit court's finding that someone in the SUV shot first. The SUV was the threat, not the victim in his Honda.

The Court of Appeals improperly relied upon the State's recognition that Scott's shooting could have been considered justified if Scott had shot one of the non-shooting occupants instead of the victim. As was noted during oral argument and as is readily apparent from the record, the other occupants of the SUV were acting in concert with the shooter in the SUV. The statements from the three identified occupants of the SUV reflect they were all acting towards the same purpose. All three indicated that after they heard the shots, and after Carter fired a shot out of the window of the SUV, Carter switched seats with the fourth girl in the SUV. (App. 161, 174, 351-52). The three told law enforcement they thought about doing a drive-by shooting, and they drove back in front of Scott's house. (App. 174). They also stated they decided not to go through with the drive-by shooting, and no shots were fired from the SUV. (App. 161). The evidence indicated they were acting together in the venture, and thus, they were equally culpable in bringing on the difficulty that led Scott to fire his gun.

The same cannot be said of the victim. By all accounts, he was not involved in the initial confrontation that preceded the car chase. As noted in the Court of Appeals' opinion, neither of the two groups involved in that confrontation knew the victim was following the car chase. Outside of driving near the same place at the same time as the SUV, there was no evidence in the record the victim was in any way acting in concert with the occupants of the SUV. There was no evidence that the victim and his friend in the Honda knew what the occupants of the SUV had planned that night. There was no indication they were willing participants in a possible shooting. There was no evidence there was any communication between the occupants of the SUV and the Honda. In fact, after the Court of Appeals found the circuit court had erred when it relied upon Scott's perception of danger from the SUV and/or Honda as evidence of an attack that was sufficient for granting immunity under subsection 440(C), the Court of Appeals relied solely on the actions of the occupants of the SUV and the evidence that someone in the SUV fired first as evidence establishing subsection 440(C) applied. Further, the Court of Appeals did not identify any action by the victim that would constitute an attack on Scott. This distinction between the occupants of the SUV and the victim is important. The reason Scott would have a strong argument for immunity if he had shot an occupant of the SUV stems from the occupant's culpability in creating the circumstances that led to the shooting. Here, the victim was in no way culpable in being involved in an attack on Scott or his family. He did not attack Scott, and he was not a party of the group involved in the attack. The record does not support a finding the victim was acting in concert with the occupants of the SUV in attacking Scott. Thus, the actions of the occupants of the SUV cannot serve as justification for Scott's contention that subsection 440(C) applied to the shooting. The victim was not involved in the attack.

Second, the Court of Appeals' determination that Scott was acting in self-defense in shooting the victim was improper because it relies upon the doctrine of transferred intent. Clearly, Scott was firing in response to the attack from and threat posed by the SUV. If, as the Court of Appeals found, the victim was not the intended target, Scott was not acting in self-defense as it related to actions from the victim. The finding that Scott was acting in self-defense when he killed the victim would necessarily be based upon a transfer of Scott's intent in firing in response to the SUV in self-defense to the victim, an innocent bystander.

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). This Court did not hold 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). Since the doctrine of transferred intent has not been recognized to apply to self-defense in South Carolina, this finding that Scott was acting in self-defense would be improper. Since a valid claim of self-defense is necessary for immunity to apply under the Protection of Persons and Property Act, the Court of Appeals erred as a matter of law in affirming the grant of immunity. See Jones, 416 S.C. at 301, 786 S.E.2d at 141; Curry, 406 S.C. at 371, 752 S.E.2d at 266. Certiorari should be granted to resolve these errors.

**II. The Court of Appeals erred as a matter of law when it found Scott was entitled to immunity under S.C. Code Ann. § 16-11-440(C) because it improperly found Scott was acting in self-defense even though the Court of Appeals also found the shooting of the victim was not intentional.**

Certiorari should also be granted because the South Carolina Court of Appeals' explanation for why the circuit did not abuse its discretion in granting immunity misapplies the law of self-defense. Specifically, the Court of Appeals incorrectly reasons that an act of self-defense can be the result of an unintentional act. In affirming the circuit court's order granting immunity, the Court of Appeals twice indicated Scott shooting the victim may not have been the result of an intentional act. The Court of Appeals initially identified the State's argument to be "Scott intentionally and specifically aimed at the Honda and fired. Constrained by our standard of review, we cannot agree." Scott, 420 S.C. at 116, 800 S.E.2d at 797. Later, after finding there was evidence in the record to support the circuit court's conclusion that the victim's Honda was driving past Scott's residence when Scott fired the gun, the Court of Appeals stated "[t]his finding negates the State's contention the vehicles were so far apart Scott's fatal shot could have only been the result of an intentional act." Id. at 117, 800 S.E.2d at 798.

These findings by the Court of Appeals and the circuit court underline an inherent inconsistency that undermines the order granting immunity. Self-defense involves an intentional act. See State v. Belcher, 385 S.C. 597, 608, 685 S.E.2d 802, 808 (2009); 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). The Court of Appeals' finding that Scott was not acting intentionally in firing the fatal shot at the victim is inconsistent with its determination that Scott was acting in self-defense. This inconsistency highlights the legal conundrum created by the Court of Appeals' opinion affirming

the grant of immunity in this case. If Scott did not intentionally shoot the victim, an innocent bystander, Scott cannot show he was acting in self-defense because his act was not intentional. Thus, he was not entitled to immunity. If, on the other hand, Scott did intentionally shoot the victim, Scott cannot show he was acting in self-defense without application of the doctrine of transferred intent. Again, he would not be entitled to immunity. Altogether, the Court of Appeals' opinion creates novel questions of law and conflict with precedent of this Court. Thus, the State respectfully requests this Court grant a writ of certiorari to resolve these issues.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court grant this petition for writ of certiorari.

Respectfully submitted,

ALAN WILSON  
Attorney General

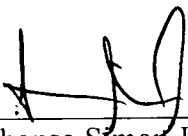
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August 22, 2017.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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

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Appellate Case No. 2017-001607

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THE STATE

PETITIONER/RESPONDENT,

V.

SHANNON SCOTT,

RESPONDENT/PETITIONER.

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**PROOF OF SERVICE**

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I, Alphonso Simon, Jr., of counsel for the Petitioner/Respondent, certify that I served two (2) copies of the Return to Petition for Writ of Certiorari via U.S. mail to Respondent/Petitioner's attorney of record, Robert M. Dudek, SCCID/Division of Appellate Defense, 1330 Lady St., Ste. #401, Columbia, South Carolina 29201.

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

This 22<sup>nd</sup> day of August, 2017.



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