

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.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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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.

RESTATEMENT OF QUESTION PRESENTED

Whether the Court of Appeals erred in not affirming the circuit court's grant of immunity under the Protection of Persons and Property Act when the circuit court improperly found S.C. Code § 16-11-440(A) applied when there was no evidence the victim was attempting to forcibly enter Scott's dwelling, residence, or occupied vehicle, there was no evidence the victim was removing or attempting to remove Scott or anyone else from Scott's dwelling, residence, or occupied vehicle, and there was no evidence to support a finding Scott had reason to believe that either an unlawful entry or unlawful action was about to occur?

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). The State has filed a Petition for Writ of Certiorari. Scott has also filed a Petition for Writ of Certiorari. This Return to Scott's Petition for Writ of Certiorari 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.¹ 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

¹ Denzel Davis went by the nickname "Crackle." (App. 48, 49). Antonio Bennett went by the nickname "Tone." (App. 63).

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 front of the club, they saw a girl run up to their car with a gun in her hand.² (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

² 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).

also recalled seeing a car turn around with the truck at the All State building down the street from Scott's house.³ (App. 87).

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

³ 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).

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 deny certiorari upon Scott's Petition for Writ of Certiorari. In its Order Granting Immunity, the circuit court incorrectly found Scott was entitled to immunity based upon the application of the presumption afforded by S.C. Code § 16-11-440(A). Since the circuit court improperly applied § 440(A), its finding that immunity under the Protection of Persons and Property Act utilizing § 440(A) does not constitute an additional sustaining ground for the circuit court's improper grant of immunity under S.C. Code § 16-11-440(C). The State would also note that the circuit court and Court of Appeals erred in granting immunity under S.C. Code § 16-11-440(C) for the reasons presented in the State's Petition for Writ of Certiorari.

What Occurred Below

In its Order Granting Immunity, the circuit court stated as follows:

The Act clearly states that section (A) applies if force is used against someone who is entering or attempting to enter a dwelling, residence or occupied vehicle. The Act codifies "the common law Castle Doctrine which recognizes that a person's home is his castle" Section 16-11-420(A). The purpose of this Doctrine is to protect an individual from being ejected from his home, business, or automobile. The Victim had followed the defendant's daughters home while they were being chased by another vehicle. The Victim never identified himself to the defendant and in doing so left the Defendant to reasonably believe that he too was an imminent threat. If in fact the Victim was present merely to observe these events or even assist those being chased in some way, the credible evidence presented simply fails to support such a finding. The Legislature went to great lengths to outline circumstances in which the Act is applicable, and in the instant case the Defendant may use deadly force if he has reason to believe that an "unlawful and forcible act is occurring". 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.

The Defendant is clearly entitled to the immunity provided by the Act because the curtilage of his home has long been considered his "castle" by the common law of this state. See State v. Quick, 138 S.C. 147, 135 S.E. 800 (1926). And his right to use deadly force against the victim whom he reasonably believed was engaged in an unlawful and forcible act against his home was codified in Section 16-11-420(A).

(App. 392-93).

In its published opinion, the Court of Appeals did not address the application of S.C. Code § 16-11-440(A) because it affirmed the circuit court's grant of immunity under S.C. Code § 16-11-440(C). State v. Scott, 420 S.C. 108, 114, n. 6, 800 S.E.2d 793, 796 n. 6 (Ct. App. 2017), reh'g denied (June 29, 2017).

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(A) states,

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of **unlawfully and forcefully entering**, or has **unlawfully and forcibly entered** a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; **and**

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Ann. § 16-11-440(A)(emphasis added).

“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.”⁴ Id. at 371, 752 S.E.2d at 266.

The circuit court incorrectly found the presumption afforded by S.C. Code § 16-11-440(A) was applicable to Scott's case. Section 440(A) was not applicable to Scott's case. Thus, the circuit court's conclusion that Scott was entitled to immunity based upon § 440(A) cannot serve as an additional sustaining ground. At issue in this Petition is whether Scott is entitled to immunity under the Protection of Persons and Property Act when he shot and killed an innocent bystander not related to the individuals and vehicle that Scott perceived to be a threat to the

⁴ 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.

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

safety of his family. The circuit court erred in finding Scott was entitled to immunity from prosecution under S.C. Code Ann. § 16-11-440(A).

First, contrary to the circuit court's findings, there was no evidence presented at the evidentiary hearing that the victim forcibly entered or was in the process of forcefully entering the victim's dwelling, residence, or occupied vehicle or was attempting to remove someone from Scott's residence. Second, when the shooting occurred, Scott was in his yard and not in his dwelling, residence, or occupied vehicle when he fired shots at the victim. Since the victim was not forcefully entering or had not forcibly entered Scott's residence when he was shot, Scott was not entitled to the presumption afforded under S.C. Code Ann. § 16-11-440(A). Third, the court's finding that Scott's belief that a forcible entry was occurring is not supported by the record. As a result, the circuit court abused its discretion in finding Scott was entitled to immunity under the Act.

- A. Scott was not entitled to immunity under S.C. Code Ann. § 16-11-440(A) because there was no evidence or testimony establishing the victim forcibly entered or was in the process of forcibly entering Scott's residence when Scott shot him, or removing or attempting to remove another person against his will from Scott's dwelling, residence, or occupied vehicle.**

To establish the presumption afforded by S.C. Code § 16-11-440(A) applies, a defendant seeking immunity must establish two separate factual predicates are present. First, a defendant must show the decedent was "in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle." Second, the defendant seeking immunity must show that he knew or had reason to believe "an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred." Here, the circuit court erred in finding the presumption afforded under § 440(A)

applies because there was no evidence in the record to support a finding the defendant established both of these predicates were present in Scott's case.

First, there was no evidence presented at the hearing that the victim forcibly entered or was in the process of forcibly entering Scott's residence, dwelling, or occupied vehicle. The State would first note that Scott never attempted to establish this was the case. Second, there was no evidence presented at the hearing that the victim was forcibly removing or attempting to forcibly remove Scott or anyone else from Scott's residence, dwelling, or occupied vehicle. At the evidentiary hearing, there was no evidence presented that supported a finding the victim was in any way involved in the alleged attack upon Scott's residence. First, as noted by the circuit court, there was no evidence or testimony indicating the victim was involved in the confrontation at the Kia House. Further, none of those witnesses indicated they saw a second car chasing them to Scott's house. (App. 14, 42, 54, 154, 168; see App. 17, 312-19, 343-44). Scott admitted as much during his closing argument. (App. 284). Rosalyn did not mention a second car in her call to 911, nor did she mention the victim's car in her statement to law enforcement. (State's Exhibit 7, 8). Also, none of the individuals in the SUV indicated in their statements that they knew the victim or that he was involved in their following the Grand Marquis. There was also no testimony or evidence indicating the victim was armed. Eric testified he did not see the victim with a gun, and to his knowledge, there was no weapon in the car. (App. 233). Further, the windows in the vehicle were rolled up when the shooting occurred. (App. 238, State's Exhibit 10, 11).

In all, the testimony and evidence presented at the hearing showed that the only action taken by the victim before he was shot was he turned his car around. The victim did not get out of his car. The victim did not attempt to enter Scott's residence. The victim did not attempt to

attack Scott. The circuit court made no finding that the victim made such an attempt in the Grant of Immunity. Since there was no evidence to support a finding the victim was “is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle,” Scott failed to meet his burden of establishing the presumption afforded by S.C. Code Ann. § 16-11-440(A) applied.

The State would note the circuit court relied upon its determination that Scott had reason to believe he was under attack by the victim as support for its finding that he was entitled to immunity under § 440(A). While the Scott’s belief may be relevant in assessing whether there is evidence to apply S.C. Code Ann. § 440(A)(2), it has no relevance or bearing upon the determination of the application of S.C. Code Ann. § 440(A)(1). The existence of evidence of both subsections is required for § 440(A) to apply. Thus, the Grant of Immunity was improper, and it cannot serve as an additional sustaining ground for the circuit court’s and Court of Appeals’ incorrect determination that Scott was entitled to immunity under S.C. Code § 16-11-440(C).

B. The circuit court erred in granting immunity under S.C. Code Ann. § 16-11-440(A); this subsection was not applicable to Scott’s case because the shooting occurred outside the residence as residence is defined in S.C. Code Ann. § 16-11-430.

The circuit court erred in finding that § 16-11-440(A) applied because none of the action in this case involved Scott’s residence. The shooting occurred in Scott’s yard, and there was no evidence that any action was taken by the victim upon Scott’s residence.

“The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature.” State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing Charleston County Sch. Dist. v. State Budget and Control Bd, 313 S.C. 1, 437 S.E.2d 6 (1993)).

All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. A statute's language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (internal citations omitted). “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.” State v. Dupree, 354 S.C. 676, 693, 583 S.E.2d 437, 446 (Ct.App.2003) (internal citation omitted).

As already noted, for § 440(A) to apply, the person against whom deadly force was used must have either entered or attempted to enter a dwelling, residence, or occupied vehicle, or attempted to remove someone from a dwelling, residence, or occupied vehicle. The Protection of Persons and Property Act defines residence as “a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.” S.C. Code Ann. § 16-11-430(3). Further, dwelling is defined as “a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.” S.C. Code Ann. § 16-11-430(1).

Contrary to the circuit court’s findings, § 440(A) does not apply when all of the actions occur in the curtilage. A plain reading of the statute’s definition of residence and dwelling clearly reflects that curtilage is not included. Thus, § 440(A) would not apply in Scott’s case as the shooting occurred in Scott’s yard, not as the result of some entry or attempted entry into the residence. If the Act applied to Scott’s case, it would only be through § 440(C). As a result, the

grant of immunity under § 440(A) should be reversed, and Scott's case should be remanded for trial.

C. There was no evidence to support finding that Scott knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act from the victim was occurring or had occurred.

The circuit court erred in finding Scott was entitled to immunity under S.C. Code Ann. § 16-11-440(A) because there was no support for a finding Scott knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act from the victim was occurring or had occurred, as is required by § 440(A)(2).

There was no evidence or testimony indicating the victim was involved in the confrontation at the Kia House. Further, none of those witnesses indicated they saw a second car chasing them to Scott's house. (App. 14, 42, 54, 154, 168; see App. 17, 312-19, 343). Scott admitted as much during his closing argument. (App. 284). In fact, the description of the individuals involved in both the confrontation and the car chase would have put Scott on notice that the victim was not part of the group that threatened the folks in the Grand Marquis. By all accounts, those involved in the confrontation were female, and those involved in the chase were female.

Further, Rosalyn did not mention a second car in her call to 911, nor did she mention the victim's car in her statement to law enforcement. (State's Exhibit 7, 8). Also, none of the individuals in the SUV indicated in their statements that they knew the victim or that he was involved in their following the Grand Marquis. There was also no testimony or evidence indicating the victim was armed. Eric testified he did not see the victim with a gun, and to his knowledge, there was no weapon in the car. (App. 233). Further, the windows in the vehicle were rolled up when the shooting occurred. (App. 238, State's Exhibit 10, 11).

The basis for Scott's contention that he believed he was entitled to immunity stemmed from the fact the victim's car was in the general vicinity of Scott's front yard when the SUV passed by the front of his house the second time with its headlights off. This reasoning was both flawed and insufficient to warrant the grant of immunity. While he indicated he saw both pass after the Grand Marquis pulled into his yard, Scott admitted during his testimony that he did not see either of the two vehicles turn around. (App. 109). Instead, he went back into the house, and he noticed that both had somehow turned around when he returned to the front of the house. (App. 109-10). Scott's testimony reflects that he did not see any action taken by victim that would indicate he was acting in concert with the individuals in the SUV.

In all, the testimony and evidence presented at the hearing showed that the only action taken by the victim before he was shot was he turned his car around. The victim did not get out of his car. The victim did not attempt to enter Scott's residence. The victim did not attempt to attack Scott. Unlike the individuals in the SUV, the victim did not roll his window down and slowly drive in front of Scott's house with his headlights off. To the contrary, his windows were rolled up, and his headlights were on. The State submits the evidence presented was not enough to support the circuit court's finding.

The State would also note that the reasoning applied by the circuit court, which essentially found the victim was a threat because he did not inform Scott he was not a threat, is problematic. First, the victim was in a place where he had a right to be, driving on a public road. There was no evidence he took any threatening actions towards Scott. Second, there was no evidence presented that the victim had any reason to believe he was being perceived as a threat by Scott before the shots were fired. Eric's testimony reflected that he did not hear Scott say anything prior to Scott shooting at the car. (See App. 225-27, 236). In all, there was not

sufficient evidence to support a finding that Scott reasonably believed there was going to be a forcible entry or forcible act by the victim upon Scott's residence in this case. Thus, the application of § 440(A) was improper, and it cannot serve as an additional sustaining ground for the grant of immunity.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court deny Scott's petition for writ of certiorari.

Respectfully submitted,

ALAN WILSON
Attorney General

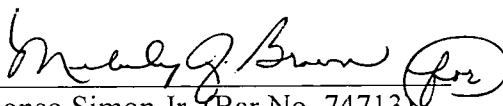
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September 25, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

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

SEP 25 2017

S.C. SUPREME COURT

Appellate Case No. 2017-001607

THE STATE

PETITIONER/RESPONDENT,

v.

SHANNON SCOTT,

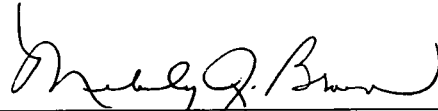
RESPONDENT/PETITIONER.

PROOF OF SERVICE

I, Melody J. Brown, 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 25th day of September, 2017.



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