

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Sumter County

Honorable William Jeffrey Young, Circuit Court Judge

RECEIVED

AUG 17 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JEFFREY DANA ANDREWS

PETITIONER.

APPELLATE CASE NO. 2015-001679

Opinion No. 5574

RETURN TO PETITION FOR REHEARING

This is a case wherein petitioner was denied immunity pursuant to the Protection of Persons and Property Act, South Carolina Code § 16-11-440 (a) & (c), even though petitioner shot the decedent after demanding that he leave petitioner's home several times. This Court affirmed the denial of immunity to petitioner but granted him a new trial because an EMS paramedic, Kimberly Graham, was allowed to opine that the decedent was standing on the porch when he was shot. This opinion testimony was very prejudicial in this self-defense case, and it went beyond any expertise in the field of "emergency medical services" that a paramedic should have been allowed to offer. Graham was improperly testifying as a crime scene reconstruction expert.

This Court cited State v. Ellis, 345 S.C. 175, 547 S.E.2d. 490 (2001), in reversing on this issue. State v. Jeffrey Dana Andrews, Op. No. 5574, Shearouse's Adv. Sh. #29, at 36-38. In Ellis, our Supreme Court held that a police officer who was qualified as an expert in *crime scene processing* was not qualified to testify as an expert with respect to *crime scene reconstruction*. In Ellis, the trial judge allowed the Sergeant to give his opinion on the position of the victim wherein he imparted his conclusion to the jury that the decedent was on the bicycle at the time he was shot. Our Supreme Court held that this, in effect, allowed the Sergeant to give his opinion on the ultimate issue: Was Defendant Ellis acting in self-defense when he shot and killed the victim. The Supreme Court also found the error could not be deemed harmless where the defendant's defense was self-defense, and, in essence, the witness opined that the victim was not a threat to Ellis at the time of the shooting.

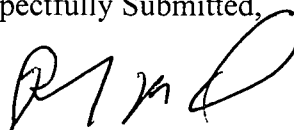
Here, similarly, Graham's opinion far exceeded her expertise on emergency responding. She was much less qualified than even the expert in State v. Ellis to testify on crime scene reconstruction. Her opinion that the decedent was outside on the porch when he was shot was at minimum was going to be confusing to the jury. Where the decedent fell, where his head was, were all ripe to be taken out of context for the jury. Indeed, it was used by the state in closing to urge that the decedent was shot outside, he was not a threat to petitioner because he was outside, and that he was not breaking in or entering when he was shot. The solicitor argued that the decedent "was gone," and petitioner shot him anyway. R. 567, l. 7- 572, l. 25. The improper crime scene reconstruction testimony in this case, as in Ellis, was also not harmless.

The state argues that this testimony did not exceed "Graham's expertise," and goes so far as to assert that any lay witness could have given this opinion that the decedent was shot on the porch because it "did not fall outside the realm of ordinary lay knowledge." Petition for rehearing

at 2-3. That is respectfully, simply incorrect. Further, the state's harmless error argument in this self-defense case should again be rejected for the same reason the Supreme Court rejected a harmless error finding in Ellis. Having an expert exceed the scope of his or her expertise in giving an opinion on the ultimate issue to be decided by the jury is extremely prejudicial given the respect given to most experts, and a harmless error analysis urging a kind of logical mathematical precision loses all context of the impermissible allure of improper expert testimony. Further, here, petitioner pre-trial had strongly asserted he was entitled to immunity in this shooting because it happened in his home after the decedent had been ordered to leave.

The expert testimony error in this self-defense case respectfully cannot be distinguished from the one in State v. Ellis in an intellectually honest way. Rehearing should be denied.

Respectfully Submitted,



ROBERT M. DUDEK
Chief Appellate Defender

This 17th day of August, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

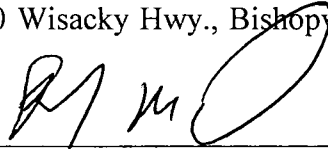
V.

JEFFREY DANA ANDREWS

PETITIONER

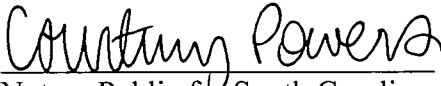
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Return to Petition for Rehearing in the above-entitled case has been served upon Scott Matthews, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Jeffrey Dana Andrews, #364829, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 17th day of August, 2018.



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 17th day of August, 2018.


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