STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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

Supreme Court Case No. 2017-001607
Opinion No. 27834 (filed August 29, 2018)

THE STATE

PETITIONER,

V.

SHANNON SCOTT,

RESPONDENT.

PETITION FOR REHEARING

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

1. Petitioner respectfully submits this Court's opinion relies upon an argument that was never made by Scott. At no point in time did Scott assert his right to act in self-defense constituted a "provision of law" that, standing alone, was sufficient to warrant immunity under S.C. Code § 16-11-450(A). In his initial motion for immunity, Scott argued he was entitled to immunity under § 450(A) because his actions were "in conformity with 16-11-440(a) and (c)." (App. 308). In the immunity hearing, Scott's argument did not stray from these initial contentions. Further, on appeal, Scott has never contended that he was entitled to immunity

under § 450(A) based upon common law self-defense. To the contrary, Scott has maintained the circuit court properly found S.C. Code § 16-11-440(A) and 440(C) applied to Scott's actions.

Had this argument been presented by Scott, this Court would have been made aware that common law self-defense does not constitute a "provision of law" under S.C. Code § 16-11-450(A). "[P]rovision of law" necessarily refers to a statute. The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. State v. Duncan, 392 S.C. 404, 408, 709 S.E.2d 662, (2011); Mid–State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). Unless there is language in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. Id. When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Duncan, 392 S.C. at 408-09, 709 S.E.2d at 664; Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007).

> "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). In doing so, we must give the words found in the statute their "plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Id. at 499, 640 S.E.2d at 459. Thus if the words are unambiguous, we must apply their literal meaning. Id. at 498, 640 S.E.2d at 459.
>
> However, "the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." S.C. State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). We therefore should not concentrate on isolated phrases within the statute. Id. Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose. State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct.App.2008), aff'd, 386 S.C. 339, 688 S.E.2d 569 (2010). In that vein, we must read the statute so "that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous," id. at 377, 665 S.E.2d at 651, for "[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law" id. at 382, 665 S.E.2d at 654.

CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

This Court's holding that self-defense is the classic "provision of law" is inconsistent with the Legislature's use of the term "provision of law." In at least three provisions of the South Carolina Code, the Legislature has identified that "provision of law" is distinct from the common law. See S.C. Code Ann. § 44-7-3470 ("This article does not create a civil cause of action; however, this article must not be construed to preclude a claim that may have otherwise been asserted under common law or any other provision of law."); S.C. Code Ann. § 44-56-60(c)(2) ("The Department [of Health and Environmental Control]'s responsibility for monitoring and response action is neither a limitation nor a termination of the liability of generators, transporters, or the operators of the facility under any provision of law or at common law."); S.C. Code Ann. § 62-7-816A(h) ("The provisions of this section shall not be construed to abridge the right of any trustee who has a power to appoint property in further trust that arises under the terms of the original trust or under any other section of this article or under another provision of law or under common law.").

In defining "provision of law" to include common law, this Court fails to assess the term in its plain in ordinary meaning, and does not consider the phrase within the context in which it is used. To define the term to include the common law essentially renders the term "provision of law" meaningless. Section 450(A) reads:

> A person who uses deadly force as permitted by **the provisions of this article or another applicable provision of law** is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

The Act, which serves as the codification of the Castle Doctrine and extend the doctrine to other limited situations, was not intended to provide immunity in all cases of self-defense. With this holding, this Court has improperly expanded when immunity can be granted under the Protection of Persons and Property Act beyond the scope of the Act itself. In S.C. Code § 16-11-420, the Legislature noted the intent of the Act was as follows:

> **(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 (emphasis added). The majority's opinion expands the prospect of immunity under the Protection of Persons and Property Act to all cases in which self-defense is raised by a defendant. The analysis reflects it does not matter if a defendant is unable to establish by a preponderance of the evidence that one of the presumptions afforded under § 440 applies for immunity to be granted. This Court specifically found the presumption under § 440(A) did not apply. This Court also found it was not essential that § 440(C) apply because Scott did not need the presumption to show he was acting in self-defense; Scott did not have to retreat as he was in the curtilage of his own home. Based upon this reasoning, requests for immunity under the Act, once clearly limited to situations when a defendant could make a

colorable argument that either § 440(A) or § 440(C) applied, will now likely be raised in all cases in which self-defense is alleged by a defendant. This was clearly not the intent of the Legislature. "To turn a criminal appeal into a quest for error no more promotes the ends of justice than to acquiesce in low standards of criminal prosecution." Johnson v. United States, 318 U.S. 189, 202 (1943) (Frankfurter, J., concurring).

2. In finding a defendant does not need to establish S.C. Code Ann. § 16-11-440 or another statute applies for immunity to be granted, this Court ignores both the arguments presented by the parties throughout the appeal and this Court's prior decisions regarding the application of the Protection of Persons and Property Act. Prior to this case, this Court has consistently held S.C. Code § 16-11-440 had to apply for immunity to be granted. See State v. Manning, 418 S.C. 38, 45, 791 S.E.2d 148, 151 (2016), reh'g denied (Oct. 25, 2016), cert. denied, 137 S. Ct. 1440, 197 L. Ed. 2d 649 (2017) (finding no abuse of discretion in denial of immunity when neither § 440(A) nor § 440(C) applied); State v. Jones, 416 S.C. 283, 297, 786 S.E.2d 132, 140 (2016) (finding § 440(C) applied, and grant of immunity was supported by the record); State v. Curry, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013) (holding that in addition to application of § 440, a claimant must also show a valid case of self-defense exists for immunity to apply); State v. Duncan, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011) (finding no abuse of discretion in grant of immunity when evidence indicated § 440(A) applied).

This Court's departure from prior case law, which has consistently recognized that a statutory provision must apply in conjunction with the presence of all of the elements of self-defense, warrants rehearing in this case. This potentially creates a slippery slope upon which defendants are granted immunity after creating the situations that prompt their use of deadly force. See generally State v. Bryant, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999)

(recognizing that one who creates a difficulty can restore his right to self-defense through withdrawal).

3. The reasoning applied by the circuit court and adopted by this 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 to support a finding the victim engaged in an attack on Respondent. No weapon was found on the victim, and Eric testified he did not see the victim with a weapon on the day of the shooting. (App. 233). Further, Eric indicated there was no weapon in the victim's car. (App. 233). Respondent did not even mention seeing a weapon in the victim's car. He did not indicate he saw shots fired from the car. In fact, Respondent's testimony reflects that the basis for his belief that the victim's vehicle was a threat was because he saw both the SUV and the victim's car pass in front of his house when the Grand Marquis arrived. (See App. 107-09). Respondent did not see either vehicle turn around. (App. 109). Respondent also noted that he did not see the victim's car do anything in front of the house. (App. 110). There was no evidence he took any threatening actions towards Scott. Unlike the SUV that was the threat reported to Scott and his fiancée by their children, the victim's car's headlights were on, and the windows in the car were up. (See App. 106, 140). As correctly noted by Justice Hearn in the dissenting opinion, "[t]here is absolutely no evidence in the record to support the circuit court's conclusory finding that Scott reasonably believed Niles 'was engaged in an unlawful and forcible act against his home.'" 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 light of Scott's testimony at the immunity hearing, it is hard to fathom what the victim could have done

to establish he was not a threat. Scott testified he fired his gun, not because the victim's vehicle was approaching, but instead because he heard another gunshot. (App. 107). Petitioner submits this was not enough to establish Scott's fear was reasonable.

Third, the grant of immunity based upon Scott's right to act on appearances is problematic because it contravenes the plain language of § 440(A), which requires the person against whom deadly force is used to be "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." S.C. Code Ann. § 16-11-440(A)(1). Further, this finding contradicts the requirement in § 440(C) that the defendant actually be attacked by the person against whom he uses deadly force. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning."). 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. . . ." (emphasis added).

Fourth, in granting immunity in light of these conflicting facts, this Court also undermines its holding in Curry, which explains that a claim of self-defense which presents a quintessential jury question is not a situation warranting immunity from prosecution. Curry, 406 S.C. at 372, 752 S.E.2d at 267.

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

Respectfully submitted,

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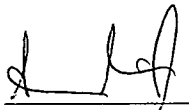
CERTIFICATE OF SERVICE

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

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

This 17th day of September, 2018.



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