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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Maite Murphy, Circuit Court Judge

THE STATE,

APPELLANT,

V.

SHANNON SCOTT,

RESPONDENT

APPELLATE CASE NO. 2013-002124

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUES ON APPEAL 3

COUNTER STATEMENT OF ISSUES ON APPEAL 3

STATEMENT OF THE CASE 5

STATEMENT OF FACTS

Introduction 6
Relevant Facts 6
Trial Witness 7
Respondent's Testimony 13
Closing Arguments 17
Order 18

ARGUMENT

1.

There was evidence to support the trial court's ruling that respondent was entitled to immunity under the Protection of Persons and Property Act pursuant to S.C. Code Ann. § 16-11-440(A) since respondent was in his home when he learned a car was chasing his daughter in the car she was riding in, the children were instructed to come home, shots were fired towards respondent and his home the children hid in, and respondent only stepped outside to quell the violent attack. 21

2.

There was evidence to support the trial judge's ruling that respondent was entitled to immunity under the Protection of Persons and Property Act pursuant to S.C. Code Ann. § 16-11-440(C), since when respondent was outside his house on the porch, or in the curtilage he was in "another place" he had a right to be, and he was acting to defend himself and his family as envisioned by the statute. 25

CONCLUSION 28

CERTIFICATE OF COUNSEL 29

TABLE OF AUTHORITIES

Cases

State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011) 27

State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) 21

State v. Quick, 138 S.C. 147, 135 S.E. 800 (1926) 23

Statutes

S.C. Code Ann. §16-1-60 .... 20, 23

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

S.C. Code Ann. § 16-11-440(C) .... passim

S.C. Code Ann. §16-11-420(A) 27

S.C. Code Ann. §16-11-420(D) 21

S.C. Code Ann. §16-11-420(E) 27

S.C. Code Ann. §16-11-430 22

STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial court erred in finding respondent was entitled to immunity under the Protection of Persons and Property Act under S.C. Code Ann. § 16-11-440(A); There was no evidence to support the court's finding that respondent was inside his residence when the shooting occurred, and there was no evidence to support the court's finding that a reasonable person would have believed the victim was in the process of unlawfully and forcefully entering respondent's residence?

2.

Whether the trial court erred in finding respondent was entitled to immunity under the Protection of Persons and Property Act under S.C. Code Ann. § 16-11-440(C); The statute requires the defendant to actually be attacked prior to using deadly force against the victim, and there was no evidence presented at respondent's hearing to support a finding he was attacked by the victim in this case?

COUNTER STATEMENT OF ISSUES ON APPEAL

1.

Whether there was evidence to support the trial court's ruling that respondent was entitled to immunity under the Protection of Persons and Property Act pursuant to S.C. Code Ann. § 16-11-440(A) since respondent was in his home when he learned a car was chasing his daughter in the car she was riding in, the children were instructed to come home, shots were fired towards 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?

2.

Whether there was evidence to support the trial judge's ruling that respondent was entitled to immunity under the Protection of Persons and Property Act pursuant to S.C. Code Ann. § 16-11-440(C), since when respondent was outside his house on the stoop or porch, or in the curtilage he was in "another place" he had a right to be, and he was acting to defend himself and his family as envisioned by the statute, and he had the right to stand his ground.

STATEMENT OF THE CASE

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

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

On October 9, 2013 Judge Murphy issued her order granting respondent immunity under the Protection of Persons and Property Act. R. 384.

The state filed a notice of intent to appeal.

STATEMENT OF FACTS

Introduction

The state on appeal breaks down its two arguments into several subparts. However, the state's legal argument to the trial judge at the evidentiary hearing about why respondent should not be granted immunity were almost entirely about the state's version of the credibility of the witnesses that testified during the evidentiary hearing. See R. 287, l. 8 – 301, l. 23. A close examination of the argument put forth by the solicitor to the trial judge shows that none of the arguments on appeal, in fairness to the trial judge, were presented to her for consideration at the evidentiary hearing, or presented in the fashion they are now presented to this Court. While respondent does not find the arguments for denying immunity presented to his Court particularly persuasive, it was nonetheless not fair to the trial judge to not argue them to her, and the state's arguments on appeal are therefore procedurally barred.[1]

Relevant Facts

In the order granting immunity the judge concluded that respondent's testimony was "very credible". She noted that respondent testified that he knew of previous problems reported to law enforcement and that he knew "this girl [Teesha] and others were chasing his children." The judge also wrote: "The defendant testified that he was not a gun owner, but in order to defend and protect his family, he grabbed Mr. Williams' [his roommate's] gun. His testimony was that the SUV [the truck with Teesha and others inside] stopped in

[1] For example, the solicitor claimed respondent fired first and consequently he should not be entitled to immunity, and she argued that the decedent did not do anything wrong, and therefore respondent was not entitled to immunity. R. 296, ll. 3- 297, l. 5. Suffice it to say that the statutory arguments contained in thirty-one page brief were not fairly put to Judge Murphy for consideration during the hearing.

front of his house, and he could see arms out of the windows. This testimony is corroborated by both the statements of Ms. Carter and Ms. Davis." R. 390.

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

Thus, although the state's argument at trial focused almost solely on the credibility of the witnesses, it is important to note that the judge, who observed the demeanor of the witnesses at the hearing, most importantly, found respondent's testimony very credible. She found any assertion that Teesha did not intend to exact violence that night where she had threatened a drive-by shooting was "pure fabrication." "The credible testimony established that they turned the SUV (car #2) around, turned off the lights, rolled down the windows and drove by the Defendant's home and began to fire." R. 389.

Trial witness

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rosalyn Scott was engaged to respondent, who she called "Pocko," at the time of this April 18, 2010 incident. R. 80, ll. 3-21. Rosalyn intended to spent the night at respondent's house. The original plan was for them to return to their home after the teen party. Rosalyn texted her daughter, Ashley, because she had told them to be home at her house by a certain time, and she was now worried about them. She received a text back: "Mom, they're following us." After she texted Ashley back she learned that Teesha and her associates were the ones following them in the truck. R. 80, l. 20 – 81, l. 11.

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

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

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

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

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

Rosalyn testified that the truck that was following Danzel's car went down the street, and made a U-turn by the Allstate building. She noticed another car behind the truck do the same thing. "And I'm like, Oh Shit, you know, what is this? What is this? At that point, Shannon [respondent] and I went back inside the house trying to round up the kids to get them inside the car. I'm going through the back door to where the kitchen is, I heard a shot." R. 85, l. 3 – 87, l. 14.

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

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

Respondent's testimony

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

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

Respondent remembered that Rosalyn was on the telephone, and she was hysterical. She told him that "the girls are messing with our girls again." Respondent recalled the girls Rosalyn was talking about -- he did not know them personally -- but they would drive by their house, scream, provoke and harass his daughters. R. 102, ll. 13-21.

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

Respondent remembered while the car went into the backyard he saw a truck coming with "some more headlights [the Honda] behind it." Respondent went into the kitchen, in the back of the house, to open the backdoor. He heard a gunshot. He recalled

the teenagers being frantic and yelling. Respondent said at this point he went in to his roommate's room, and grabbed a handgun out of his dresser. Respondent did not own his own gun. R. 104, l. 15 – 106, l. 17.

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

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

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

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

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

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

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

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

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

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

On cross-examination Reese was questioned about the admission the girls in the truck planned to do a drive-by shooting that night, and that they switched seats to accomplish the drive-by shooting. R. 173, l. 25 – 175, l. 11. Reese was asked he did not arrest Teesha, and at least one of the other girls for criminal conspiracy. Reese was also questioned about why he did not charge them with "felony murder" since someone was

killed as a result of their plan to do a drive-by shooting, and a shooting actually occurred. Reese only responded: "I just didn't counsel." R. 173, l. 25 – 176, l. 25.

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

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

Washington testified that the decedent knew some of the people at the Kia party. Washington was just out for an evening with the decedent. He remembered there was an altercation at the party, and that a truck began following "the girl he said he knew." R. 218, l. 15 – 221, l. 19. Washington said the decedent told him: "We've got to make sure they're straight or make sure they're ok." R. 222, ll. 1-4.

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

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

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

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

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

Closing Arguments

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

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

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

Assistant solicitor Sampson argued respondent had the burden of proof by preponderance of the evidence. R. 287, ll. 16-22. As stated above, the assistant solicitor argued the credibility of the witnesses throughout her legal argument to the judge. The assistant solicitor argued that the law provided that you could meet force with force, but she claimed the evidence showed respondent shot first, and that he should not be immune from prosecution. R. 296, ll. 12-18. She argued that the decedent had not done anything wrong, and that respondent should not be immune from prosecution "and if you want to make it the wild wild west, do what Mr. Rutherford said." R. 298, l. 8 – 299, l. 2.

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

Order

In the order granting immunity the judge wrote that Teesha Davis wanted to do a "drive-by that evening." Although she claimed that she was talked out of it, "the

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

The judge ruled that she found respondent's testimony credible that the SUV and Honda both drove past his house and turned around and stopped in front of his residence." She wrote that this consistent with the gunshot entering the driver's window of the victim's car. "His testimony was very credible that he heard a gunshot. Hearing a gunshot, along with the threats, the chase, and being confronted at his home as a target of a drive-by shooting, with his children inside, created reasonable fear of imminent peril of death for him and his family." R. 390.

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

As seen, the judge earlier referred to appellant coming out of his house onto his "stoop". She also found that respondent was also within the curtilage of his home as

defined by the common law. R. 393. The judge found respondent was entitled to immunity pursuant to S.C. Code Ann. §16-11-440(A).

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

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

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

ARGUMENT

1.

There was evidence to support the trial court's ruling that respondent was entitled to immunity under the Protection of Persons and Property Act pursuant to S.C. Code Ann. § 16-11-440(A) since respondent was in his home when he learned a car was chasing his daughter in the car she was riding in, the children were instructed to come home, shots were fired towards respondent and his home as the children took cover, and respondent only stepped outside to quell the violent attack upon his home.

The state argues that the judge should not have granted respondent immunity because there was no evidence the victim forcibly entered or was in the process of forcibly entering respondent's house when the respondent shot him. Respondent on appeal urges an incredibly narrow application of South Carolina Code Ann. §16-11-440(A) that the legislature could not have intended.

The primary and cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). The trial judge correctly found the purpose of the Act is to allow people to defend their homes, places of businesses and motor vehicles. "The General Assembly finds that persons residing in or visiting the state have the right to expect to remain unmolested and safe within their homes, businesses and vehicles." S.C. Code Ann. §16-11-420(D). R. 392. (emphasis in Order.)

Accepting respondent's argument on appeal would mean a homeowner could only defend himself if the burglar or robber was actually coming through the window or breaking down the door at the instance the shot was fired. Surely, as defense counsel

argued to the trial judge, the legislature intended that an attacker shooting into a house allowed the homeowner to return fire even though the intruder was not yet physically attempting to enter. Bullets from a gun entering one's home are actually going to be more dangerous to a person's life than the human being actually breaking the threshold of the home himself.

Regardless, the argument now made on appeal was not fairly put to the trial judge, and should be procedurally barred on appeal by this Court in fairness to the trial judge.

The judge's order found that respondent had been in his house, then on the stoop or porch, and at one point in the front yard. The evidence also showed that at one point when shots were fired respondent went back into the house to be sure that the children were able to get in through the back door.

The trial court correctly found that the legislature must have anticipated a circumstance such as the one in this case, where a person's children were in imminent peril, and shots were being fired at him, his house, or towards his house, and where that person would be entitled to defend himself and his family.

The state next argues that South Carolina Code Ann. §16-11-440(A) does not apply to respondent because the shooting occurred outside of his residence as defined in South Carolina Code Ann. §16-11-430. Again, the evidence shows that respondent was within his house at times, on the stoop or porch at another point, and also in the front yard at another brief point. The evidence showed he hid behind the vehicle when being fired upon, and that went back inside the house.

The state argues that §16-11-110(A) does not apply to any actions respondent may have taken while within the curtilage of the house. This argument again was not

presented to the trial judge. However, even if it was presented to the trial judge during the evidentiary hearing, it would be an odd result for the legislature to have intended less protection for the homeowner by passing the Protection of Persons and Property Act than the homeowner already had under the common law. See State v. Quick, 138 S.C. 147, 135 S.E. 800 (1926).

Respondent also argues, as seen further in issue two, that respondent's home or his curtilage should not be considered "another place" for purposes of S.C. Code §16-11-440(C) because "another place" refers to a place other than a dwelling, residence or occupied vehicle.

Respondent again asserts that this is a strained interpretation of the statute. It does not appear a common sense reading of the statute that one would be entitled to less protection within the curtilage of his home than he would be at his place of business or on a public street.

South Carolina Code Ann. §16-11-440(C), provides that if a person is in "another place," as respondent argues on appeal that he was in at the time of the shooting, he had no duty to retreat. He had 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 bodily injury to himself or another person or to prevent the commission of a violent crime as defined in §16-1-60.

Included in South Carolina Code Ann. §16-1-60 are the crimes of murder, attempted murder, assault and battery by a mob, assault and battery with intent to kill, assault and battery of a high and aggravated nature, accessory before the fact of any these offenses, and attempt to commit any of these offenses. Each and every one of these

offenses could have been charged against the attackers that evening. The legislature could not have intended that respondent defending his family, in part, briefly, in his own front yard did not provide him protection pursuant to S.C. Code Ann. §16-11-440(C).

2.

<u>There was evidence to support the trial judge's ruling that respondent was entitled to immunity under the Protection of Persons and Property Act pursuant to S.C. Code Ann. § 16-11-440(C), since when respondent was outside his house on the porch, the stoop or in the curtilage he was in "another place" he had a right to be, and he was acting to defend himself and his family as envisioned by the statute.</u>

The essence of the state's argument is that there was no evidence that the decedent was acting in conjunction with respondent's attackers, or the attacks on his family on the evening in question. There was evidence a Honda was following car number two – the SUV -- which contained Teesha and her cohorts. They eventually stopped just down the street, and switched seats to do the drive by shooting. The overwhelming evidence the judge found credible was this mob in the truck effectively chased respondent's children into the house where they hid on the kitchen floor.

The judge correctly noted there was evidence that the Honda was following the other two vehicles. Further, respondent did not have the benefit of hindsight as to the testimony of Eric Washington that the decedent's intentions may have been malevolent on the night of the incident. The judge found respondent's testimony that both the Honda and the SUV drove past respondent's home and turned around and stopped in front of his residence credible. Respondent had also testified the SUV stopped in front of his house, and that he could see arms coming out of the windows. R. 390.

Further, defense counsel correctly argued if the decedent was not a participant in the attack on car number 1, then the participants in car number 2 who intended to do the

drive-by shooting, and who fired upon respondent's home were responsible for the decedent's death.

For example, suppose two armed robbers enter a convenience with another person behind them. It is not totally clear that the third person is also an armed robber acting with the other two men. The two armed robbers fire shots at the store owner. The store owner returns fire hitting the other person entering the store, where it was later claimed that he was not a participating robber. It is the two armed robbers, and not the store owner reasonably and lawfully protecting himself who should be held criminally responsible for the death of the third person.

The case is much stronger here because respondent was in his own home, and while briefly outside it he was in "another place" he had a right to be.

Defense counsel correctly argued to the trial judge that the attackers in car number 2 created this situation, and they should be held criminally responsible because it was foreseeable death or great bodily injury would occur as a result of their violent actions, their planned drive by shooting, and their shooting.

Further, the state essentially concedes respondent's actions were reasonable where it writes: "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." Brief of Appellant p. 28. The trial court here, having observed the demeanor of the witnesses, found respondent's testimony to be credible, and his actions to be reasonable.

The state's argument on appeal that reasonableness of respondent's actions given what he reasonably perceived should not apply when considering respondent's actions

pursuant to S.C. Code Ann. §16-11-440(C) would also mean that the legislature intended to provide less protection under the Castle Doctrine than it did under common law self-defense. That was clearly not the intention of the legislature.

In South Carolina Code Ann. §16-11-420(A) it is stated that: "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." Again, a person's home is his castle, and the law extended that doctrine to include "an occupied vehicle and the person's place of business."

The legislature also wrote that: "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." See South Carolina Code Ann. §16-11-420(E).

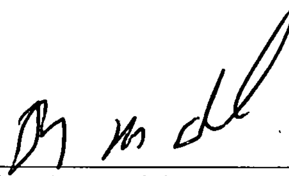
The trial judge in this case found respondent's testimony credible, and found that respondent had proven by a preponderance of the evidence that he was entitled to immunity pursuant to S.C. Code Ann. §16-11-440(A) and S.C. Code Ann. §16-11-440(C). See State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011).

Whatever any conflicting evidence may have revealed, the judge found that it is clear from the admissions of Carter in this case that the aggressors in car number 2 were set on acting violently against respondent's children on the night in question, that they pursued them to respondent's home, and the judge found any assertion that they did not act on their violent intentions that evening was not credible. The lower court's grant of immunity should be affirmed.

CONCLUSION

By reason of the foregoing arguments, the order of the lower court should be affirmed.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR RESPONDENT.

This 10th day of November, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 10, 2014

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