

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal From Greenville County  
Hon. John C. Hayes, III, Circuit Court Judge  
Appellate Case No. 2018-001478  
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**RECEIVED**  
JAN 02 2020  
S.C. SUPREME COURT

The State,

Respondent,

v.

Marquez Devon Glenn,

Petitioner.

\_\_\_\_\_  
PETITION FOR REHEARING  
\_\_\_\_\_

On December 18, 2019, this Court reversed Petitioner's conviction and remanded for a new immunity hearing based on an incorrect statutory construction of the Protection of Persons and Property Act (the Act) and in particular section 16-11-440(C). This Court correctly found the expressed legislative intent was that the Act only apply for law abiding citizens. However, the Court misapprehended or overlooked the statutory language of the Act, the clear legislative intent, and its own statutory construction rules when determining a nexus to the attack must exist in order for a person's illegal actions to preclude application of section 16-11-440(C).

In its opinion, this Court overlooks long-standing, though very recently applied, rules. Most importantly, this Court overlooked its own statements that it will not resort to statutory construction when the statute's language is plain and unambiguous, and conveys a clear and definite meaning. See e.g., Odom v. Town of McBee Election Comm'n, 427 S.C. 305, 310, 831 S.E.2d 429, 432 (2019); Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Under the plain meaning rule, it is not the Court's place to change the meaning of a clear and

unambiguous statute. See Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995) (if a 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); Gilstrap v. South Carolina Budget and Control Bd., 310 S.C. 210, 423 S.E.2d 101 (1992) (in construing a statute, the Court must give clear and unambiguous terms their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation). As this Court long ago explained: "Statutes should be interpreted according to the most natural and obvious import of their language, without resorting to subtle or forced construction for the purpose either of limiting or extending their operation." City of Florence v. Brown, 49 S.C. 332, 26 S.E. 880, 882 (1897). More pointedly, this Court has explained: "The legislative intention must be gathered from a **literal interpretation** of the language of the statute where it is plain and unambiguous." Columbia Ry., Gas & Elec. Co. v. Carter, 127 S.C. 473, 121 S.E. 377, 379 (1924) (emphasis added).

In this case, the Court wrote into the statute words and effects not conveyed by the clear, unambiguous language of the statute and failed to properly consider the plain, literal language used by the legislature in determining when someone is eligible for the benefits of section 16-11-440(C). The Act provides:

(C) A person who is **not engaged in an unlawful activity** and who is attacked in another place **where he has a right to be**, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C) (Supp. 2012). The statute does not contain a proximate cause requirement, and the words "unlawful activity" and "right to be" do not connote a proximate

cause requirement, as this Court has written into the statute. Instead, it places two very clear, unambiguous requirements on the person prior to their being entitled to the benefits of section 16-11-440(C): 1) the person is “not engaged in unlawful activity;” and 2) the person is “where he has a right to be.” These terms should be considered solely by their ordinary and plain meaning, not by a forced construction adding a requirement of proximate cause. See e.g., State v. Gordon, 414 S.C: 94, 98, 777 S.E.2d 376, 378 (2015). Further, this Court has made it clear: “The wisdom or folly of the Act is not for us to judge; we must enforce the Act **as written.**” City of Myrtle Beach v. Tourism Expenditure Review Comm., 407 S.C. 298, 304, 755 S.E.2d 425, 428 (2014) (emphasis added).

The plain requirements written by the legislature in subsection (C) are entirely consistent with the expressed legislative purpose of section 16-11-420 and especially in light of the **additional** protections being offered under the statute. Section 16-11-420 specifically indicates the Act is to apply to “law-abiding citizens.” S.C. Code Ann. § 16-11-420(B). The legislature clearly sought to provide additional protections from trial to its law-abiding citizens and not to those who have already crossed the lines into acting illegally. Enforcing the plain and ordinary language, as this Court has repeatedly limited itself to doing, in no way infringes on the clear legislative intention behind the Act and section 16-11-440(C) in particular. Instead, it would simply reiterate that the additional benefits statutorily provided by the legislature are intended only for those acting lawfully in a location they have a right to be, and should not be provided to those already acting in a criminal manner in disrespect of the rule of law. It should also be noted that the additional protections offered under the Act do not eliminate any of the historical means by which a person may defend themselves, including common law self-defense, or alter the State’s burden should it even seek to proceed to trial.

Additionally, this Court's resort to case law interpreting common law self-defense belies its own extension of the plain and ordinary meaning of the statute with respect to the provision that the statute only applies for a person in a place he "has a right to be." The legislature did not codify self-defense. Instead, the legislature created additional protections for "law-abiding citizens" who are forced into using deadly force. Reliance on case law regarding self-defense to add an additional element into the statute is certainly resorting to a forced construction in violation of this Court's own stated rules of statutory construction and defies the clear legislative intent in direct violation of this Court's cardinal rule. See Senate by & through Leatherman v. McMaster, 425 S.C. 315, 322, 821 S.E.2d 908, 911 (2018) ("The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature."); State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) ("The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature.").

"What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." Id. quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992). Instead of resorting to 1920's self-defense case law, this Court should have solely considered the language of the statute in determining the legislative intent. Allowing the additional protections of section 16-11-440(C) to only apply when someone has a legal right to be where they are (i.e., not trespassing) is entirely consistent with the expressed legislative intent in the statute and the explicit language of section 16-11-440(C).

Further, this Court's conclusion that limiting application of section 16-11-440(C) to law-abiding citizens would result in an absurd result is incorrect and the Court's own hypothetical situation can be used to demonstrate the lack of absurdity. The legislature granted **additional** protections and benefits of immunity through the Act. It did not eliminate historical protections

which could be asserted at trial such as self-defense, or eliminate the prosecutorial discretion to even bring a case to trial in the first place given a factual scenario similar to that in the Court's hypothetical. The jogger in the Court's hypothetical would still be entitled to assert common law self-defense, and the State would still be required to disprove her entitlement to act in self-defense. The Act did not place the jogger in a worse position than she would have been in prior to the existence of the Act. Instead, had she obeyed the municipal code and only been in the park when she was legally entitled, she would have obtained an **added**, statutorily granted benefit of protection through sections 16-11-440(C) and 16-11-450. It is not absurd to enact a law which provides **additional** benefits to law-abiding citizens, while still maintaining the status quo and all historical defenses for those who have decided not to act lawfully or who have entered a place they do not have the right to be.

If this Court believes it absurd to categorically bar someone acting unlawfully or who is in a place they do not have a right to be from obtaining immunity, then the Court should only read a nexus requirement into the application of section 16-11-450 to allow for immunity based upon a claim of common law self-defense. This Court has correctly found that section 16-11-450's immunity provision is only applicable to law-abiding citizens under the legislative intent expressed in section 16-11-420. This Court should maintain that legislative intent, and enforce the plain, unambiguous language in section 16-11-440(C) when the legislature expressly reiterated the need for someone to be acting lawfully and in a place they have a right to be in order to obtain the protections of the provision. However, this Court can apply the historical nexus requirements discussed in its citation of State v. Gunter, 126 S.C. 375, 119 S.E. 844 (1923), State v. Burris, 334 S.C. 256, 513 S.E.2d 104 (1999), and other cases when a person seeks immunity under section 16-11-450 based on application of common law self-defense. This

would remain consistent with the clearly expressed legislative intent, while also recognizing the historical context in which self-defense has applied.

One would still need to be a law-abiding citizen to obtain the full benefits of the Act, in particular section 16-11-440(C) which reiterates those specific requirements. However, in order to seek pre-trial immunity based on a claim of common law self-defense, one would have the benefit of the nexus requirements historically found in the case law of self-defense and would not be precluded from immunity solely on the basis of acting unlawfully or being in a place they do not have a right to be. This reading would eliminate any absurd result feared by this Court in its hypothetical, while still maintaining the clearly expressed legislative intent of the Act.

Utilizing the proper framework of the Act as discussed above and the arguments actually raised by Petitioner at trial, the trial court's ruling denying immunity should be affirmed and remand for reconsideration of immunity is not necessary. Petitioner never maintained entitlement to immunity based on common law self-defense. Instead, he argued solely about the Act and the application of section 16-11-440(C). While the trial court did seem to differentiate between self-defense and immunity, this was mostly directed at the State's arguments and did not foreclose or render futile any attempt by Petitioner to argue he could obtain immunity under "another provision of law" using common law self-defense.

As a result, the only question is whether the trial court properly concluded Petitioner was not entitled to the additional protections provided to law abiding citizens through section 16-11-440(C), and when considered in light of the proper construction discussed above, the trial court's conclusion that the section did not apply to Petitioner is correct. As a result, the State asks this Court to grant rehearing, affirm the trial court's decision regarding application of section 16-11-440(C), and affirm Petitioner's convictions and sentences.

## CONCLUSION

For all of the foregoing reasons<sup>1</sup>, the State requests the Court grant the petition for rehearing; find there is no probable cause or nexus requirement present in the Act and in particular in section 16-11-440(C); find the trial court did not err in finding section 16-11-440(C) and its additional protections inapplicable to Petitioner because he was not a law abiding citizen; and affirm Petitioner's convictions and sentences.

Respectfully submitted,

ALAN WILSON  
Attorney General

WILLIAM M. BLITCH, JR.  
Senior Assistant Deputy Attorney General

W. WALTER WILKINS, III  
Solicitor, Thirteenth Judicial Circuit

BY: 

William M. Blich, Jr.  
S.C. Bar No. 15608  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

January 2, 2020

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<sup>1</sup> The State craves reference to its Brief of Respondent for a full factual recitation and additional analysis of the underlying issues properly before the Court.

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PROOF OF SERVICE

I, William M. Blitch, Jr., certify that I have served the within Petition for Rehearing by depositing copies of the same in the United States mail, postage prepaid, addressed to:

Christopher T. Brumback, Esquire  
Spencer D. Langley, Esquire  
John H. Scully, Esquire  
531 South Main Street, Suite 307  
Greenville, SC 29601

Roy F. Harmon, III, Esquire  
Harmon & Major, PA  
PO Box 8954  
Greenville, SC 29604

I further certify all parties required by Rule to be served have been served. This 2<sup>nd</sup> day of January, 2020.



WILLIAM M. BLITCH, JR.  
Senior Assistant Deputy Attorney General  
Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727