THE STATE OF SOUTH CAROLINA

In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2018-001478

The State, Respondent,

v.

Marquez Devon Glenn, Petitioner.

RETURN TO PETITION FOR REHEARING

The State's accusation that this Court "misapprehended or overlooked the statutory language of the [Protection of Persons and Property Act (hereinafter the "Act")], the clear legislative intent [of the Act], and its own statutory construction rules" is particularly confounding given that the State's argument in favor of rehearing is based on misconstruing, misstating, and selectively paraphrasing this Court's December 18, 2019 opinion (hereinafter "the Opinion"), the language of the Act, and the canons of statutory construction. The State resting its argument for rehearing on such obvious red herrings is presumably the result of the fact that the clarity, propriety, and logical and judicial consistency of the Opinion left the State without any legitimate basis for this Petition for Rehearing (hereinafter "Petition") other than a contrived, myopic, and overly selective interpretation of South Carolina law.

The fundamental and faulty cornerstone upon which the State's entire argument is built is plainly stated in the first paragraph of the Petition: "the expressed legislative intent was that the Act only apply for law abiding citizens." Not only is this a misstatement of the "clearly enunciated" legislative intent of the Act, State v. Jones, 416 S.C. 283, 296, 786 S.E.2d 132, 139 (2016), but it is also a misstatement of this Court's unequivocally stated holding that "[t]he Legislature adopted the Act based on its finding 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.'" State v. Glenn, Op. No. 27935 (S.C. Sup. Ct. filed Dec. 18, 2019) (Shearouse Adv. Sh. No. 49 at 30) (quoting S.C. Code Ann. § 16-11-420(E) and holding "the South Carolina General Assembly promulgated the Protection of Persons and Property Act to provide immunity from prosecution to persons acting in defense of themselves or others if they are found to be justified in using deadly force.") (emphasis added). This attempted slight of hand by the State, which coincidentally enough is exactly the transgression of which the State accuses this Court, is an effort to improperly write into the Act limitations that were not included therein by the Legislature and that are intended to defeat the broadly promulgated intent of the Legislature "to protect persons in South Carolina from violence being perpetrated upon them" indiscriminate of arbitrary restrictions based on geography or the identity of an assailant. Jones, 416 S.C. at 297-98, 786 S.E.2d at 140 ("To interpret 16-11-440(C) as the State proposes would improperly limit the protection of the Act based on the geography of the incident and the identity of the assailant.") (emphasis added). While the term "law-abiding" does appear once in the language of the Act in one (1) of the five (5) statements in which the Legislature announced the broad scope and intent of the Act, the

Legislature intentionally did not limit the protection of the act solely to a strictly technical definition of a "law-abiding" citizen, a standard that even Dr. Martin Luther King would not have met in the eyes of the State, but expressly extended the protections of the Act to ensure that "no person or victim of crime should be required to surrender his personal safety to a criminal." S.C. Code Ann. § 16-11-420(E); see Sierra Club v. S.C. Dep't of Health & Envtl. Control & Chem-Nuclear Sys., LLC, 426 S.C. 236, 826 S.E.2d 595 (2019) ("The Court must presume the Legislature intended its statutes to accomplish something and did not intend a futile act.") (quoting Duvall v. S.C. Budget & Control Bd., 377 S.C. 36, 42, 659 S.E.2d 125, 128 (2008).

Interestingly, the State's apparent misstatement of or confusion over the scope of "persons" to whom the Legislature intended to extend the protections of the Act lays bare the frivolity of the State's argument that the Act is clear and unambiguous as to its reach and applicability. Further belying any claim that the Act and specifically sections 16-11-440(C) and 16-11-450(A) are a model of clarity, this Court has repeatedly, and in no uncertain terms acknowledged the ambiguity of the Act and sections 440(C) and 450(A). Jones, 416 S.C at 300 n.8, 786 S.E.2d at 141 n.8 (noting that "[i]n view of the ongoing conflict over the language of section 16-11-440(C), the Legislature may wish to clarify this provision...[and] invit[ing] the Legislature to evaluate the language of section 16-11-450" in light of the ambiguity over the meaning of "another applicable provision of law") (emphasis added); State v. Scott, 424 S.C. 463, 475-76, 819 S.E.2d 116, 122 (2018) (Kittredge J., concurring) (noting that the Act "is far from a model of clarity. As a result, this Court has wrestled in a number of cases to discern legislative intent in particular situations...[and that] [i]deally, the General Assembly will respond at some point and provide clarity in terms of the reach and applicability of the Act.")

Even assuming arguendo that the Act and each of the sections in question were clear and unambiguous, the State's selective and contrived reading of the Act runs afoul of several other well-settled rules utilized in ascertaining the meaning of language used in a statute. First and foremost, the State's singleminded desire to abrogate the protection afforded by the Act to all persons and victims of crime, even those with unpaid parking tickets, by strictly limiting the scope of the Act through focus on a hyper-technical definition of "law-abiding" citizens, flies in the face of this Court's direction that proper reading of a statute "should not concentrate on isolated phrases within [a] statute." Senate of State v. His Excellency Henry D. Mcmaster, 425 S.C. 315, 821 S.E.2d 908, 912 (2018) (quoting CFRE, L.L.C. v. Greenville Cty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)). Instead of focusing on isolated words and phrases, a 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...in a manner consonant and in harmony with its purpose." Id. Properly reading the Act as a whole further dictates that the Court "must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,' for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.'" Id. (quoting State v. Sweat, 379 S.C. 367, 382, 665 S.E.2d 645, 654 (Ct. App. 2008), aff'd , 386 S.C. 339, 688 S.E.2d 569 (2010)). Accordingly, reading the Act as a whole it is readily apparent that the Legislature, consonant with the inherent nature of the right of self-defense, which is "central to the Second Amendment right" and "specifically identified in section 16-11-420(C) as a foundational basis for the Act," intended for the Act to paradigmatically shift the law in South Carolina away from protecting criminals and towards ensuring 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." (quoting S.C. Code Ann. § 16-11-420(E)) (emphasis added). To read the Act as the State desires would give undue emphasis to two words found only in section 16-11-420(B), foregoing a wholistic reading of that statute that is clearly harmonious with the purpose, design, and policy of lawmakers, and in doing so rendering the language of section 16-11-420(E), which extends the scope of the Act to ensure that "no person or victim of crime should be required to surrender his personal safety to a criminal", futile and unnecessary surplusage. See Sierra Club, 426 S.C. at 256, 826 S.E.2d at 606 ("The Court must presume the Legislature intended its statutes to accomplish something and did not intend a futile act....A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.") (citations omitted).

Undoubtedly, when utilizing the broader and more inclusive language expanding the protections of the Act to ensure that "no person or victim of crime should be required to surrender his personal safety to a criminal", the Legislature was aware that not all "persons or victims of crime" satisfy such a strict and technical definition of a "law-abiding" citizen as is desired by the State. Accordingly, when the Legislature utilized the broader language of section 16-11-420(E), it must have intentionally done so with the desire for that language to not merely be futile surplusage, but rather to expand the scope of the protection afforded by the Act. This conclusion is further supported by a number of other rules for the proper reading of statutory language that the State conveniently chooses to ignore on its crusade to diminish and erode the protections afforded by the Act. Specifically, the General Assembly is presumed to be aware of the common law such that "[w]hen [the Legislature] uses language with a settled meaning at

common law, [the Legislature] 'presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them.' " Grier v. Amisub of S.C., Inc., 397 S.C. 532, 536, 725 S.E.2d 693, 696 (2012) (quoting Beck v. Prupis, 529 U.S. 494, 500-01 (2000)) (emphasis added); see also Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 320 (2012) ("[W]ords undefined in a statute are to be interpreted and applied according to their common-law meanings."). Moreover, given that the Legislature is presumed to "enact legislation with reference to existing law, [] there is a strong presumption that it does not intend by statute to change common-law rules." Wimberly v. Barr, 359 S.C. 414, 422, 597 S.E.2d 853, 857 (Ct. App. 2004); Cunningham v. Anderson Cnty., 402 S.C. 434, 448, 741 S.E.2d 545, 553 (Ct. App. 2013) ("[I]t is presumed that no change in common law is intended unless the Legislature explicitly indicates such an intention by language in the statute.") (quoting State v. Prince, 316 S.C. 57, 66, 447 S.E.2d 177, 182 (1993)) (emphasis added); Cunningham, 402 S.C. at 448, 597 S.E.2d at 553 (citing Nuckolls v. Great Atl. & Pac. Tea Co., 192 S.C. 156, 161, 5 S.E.2d 862, 864 (1939) for its "holding that it is presumed that no change in the common-law was intended by the legislature's enactment of a statute on the same subject unless the language employed clearly indicates such an intention...and that the "rules of the common-law are not to be changed by doubtful implication, or overturned except by clear and unambiguous language.") (emphasis added). Accordingly, contrary to the State's argument that it is a "forced construction" to look to the thoughtfully developed and well-settled common law of self-defense to determine the meaning

of undefined words in the Act, the rules of statutory interpretation, in the absence of expressly stated Legislative intent to the contrary, unequivocally dictate that the meaning of the terms "law-abiding" and "unlawful activity" must derive their meaning from the "cluster of ideas that were attached to each borrowed word in the body of learning from which [they] w[ere] taken. Beck v. Prupis, 529 U.S. 494, 500-01 (2000)) (emphasis added).

In the case of "unlawful activity" and "law-abiding", it is incontrovertible that the long-established common law of self-defense in South Carolina evokes not a technical dictionary definition of these terms, but rather the common law meaning of this cluster of ideas, which stands for the proposition that a person can be acting lawfully for purposes of self-defense even if he is engaged in an unlawful activity that is not reasonably calculated to bring on the difficulty. State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104 (1999) ("[A] person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting.") (emphasis added); State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1993) (holding that the "burden rests upon the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide.") (emphasis added); State v. Leaks, 114 S.C. 257, 103 S.E. 549, 551 (1920) (holding that a defendant's presence at and participation in an unlawful gambling game "did not destroy the right to self-defense" because "[t]he causal connection between the unlawful act of gambling and the encounter arising during the progress of the game between participants is too remote"); State v. Gunter, 119 S.C. 844 (1923) (rebuking the dissenting opinion, which concluded that "[i]f a man is [unlawfully] laying up with a woman in a bawdy house" he would have no right to self-defense because he would be "in a place in which a man has no right to be",

and refusing to hold "that a man, under the circumstances stated, is deprived of the right of self-defense, unless...his presence there was reasonably calculated to provoke a difficulty with the deceased..."); see also State v. Bryant, 336 S.C. 340, 345, 520 S.E.2d 319 (1999)("Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide.) (emphasis added); Ferdinand S. Tinio, Comment Note: Withdrawal, After Provocation of Conflict, As Reviving Right Of Self—Defense, 55 A.L.R.3d 1000, 1003 (1974) ("Any act of the accused in violation of the law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense...") .[1] To adopt the State's argument that in the context of self-defense "law-abiding" is strictly limited to those who are not in violation of any state, federal, or regulatory laws, regardless of how unrelated a violation might be, would undoubtedly be inconsistent with this Court's recent decisions in Scott and Jones and a derogation of the common law meanings of lawful and unlawful within the context of South Carolina self-defense jurisprudence. Scott, 424 S.C. at 473, 819 S.E.2d at 120 (holding that "[i]t was clearly the Legislature's intent" that the common law of self-defense incorporated into the Act such that a defendant proving the elements of self-defense at an immunity hearing entitles the defendant to immunity under the Act); Jones, 416 S.C at 300 n.8, 786 S.E.2d at 141 n.8 (opining that "the use of the language "or another applicable provision of law," [] presumably includes the common law of self-defense, and

[1] For further discussion of the meaning ascribed to the concepts of individuals acting lawfully versus unlawfully, or said differently, in a law-abiding versus non law-abiding manner, as developed and applied in the context of South Carolina's well-established self-defense jurisprudence, Petitioner prays reference to his Brief of Petitioner and specifically pages 14 through 18.

noting that "[t]he common law remains in full force and effect in South Carolina unless changed by clear and unambiguous legislative enactment.") (citation omitted); 16 Jade St., LLC v. R. Design Constr. Co., 398 S.C. 338, 343, 728 S.E.2d 448, 450 (2012) ("If the statute is in derogation of a common law right, it "must be strictly construed and not extended in application beyond clear legislative intent.") (citation omitted).

Moreover, although the Legislature chose to include four (4) definitions in section 16-11-430, the Legislature chose not to provide definitions for unlawful activity, person, victim of crime, or law-abiding citizen. State v. Bolin, 378 S.C. 96, 662 S.E.2d 38, 40 (2008)("[T]the canon of construction 'expressio unius est exclusio alterius' or 'inclusio unius est exclusio alterius' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'") (citation omitted). Therefore, having chosen not to provide definitions for unlawful activity, person, victim of crime, or law-abiding citizen, the "the absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them.' " Grier v. Amisub of S.C., Inc., 397 S.C. 532, 536, 725 S.E.2d 693, 696 (2012) (quoting Beck v. Prupis, 529 U.S. 494, 500-01 (2000)). In the plain absence of the express statutory language required to overcome the strong presumption that the common law remains in full force and effect, the State's interpretation of the Act, even if reasonable, which is not conceded, must be rejected in favor of the reasonable and unifying interpretation of the Act that the Court has announced in Jones, Scott, and most recently Glenn, which harmonizes the broadly stated intent of the Legislature, the purpose and meaning of the Act, and the well-settled South Carolina common law of self-defense. 16 Jade St., LLC, 398 S.C. at 343, 728 S.E.2d at 450 (holding that "[w]hile the language of the statute may be subject to other interpretations," in the absence of

"clear intent by the General Assembly to restrict the common law" "a statute is not to be construed in derogation of common law rights if another interpretation is reasonable").

As a final point, with regard to the State's claim that the example of the jogger attacked in the park after the park "closes" is not an absurd result, certainly the State could not disagree that its interpretation of the Act is absurd if we include in our hypothetical that the jogger was exiting the park before closing and would have been able to do so but for being delayed by the criminal who subsequently attacks the jogger. Interestingly the State tries to call into question but a single example of the absurd results to which its interpretation of the Act invariably leads. The State's silence on the myriad other examples of absurdity to which its interoperation of the Act leads is deafening. By way of example, the State has no answer as to why it would not be absurd under its interpretation of the Act to deny the protection and benefit of the Act to a victim of an attempted robbery who, in fleeing, trespasses onto a third person's property before resorting to physical force against the would-be robber on the grounds that the victim, in committing the unrelated trespass, is not a "law-abiding citizen."

CONCLUSION

The State's Petition for Rehearing is the latest effort in a continuing campaign not only to overturn the Court's decision in this case, but to upend both the Court's consistent interpretation of the Act, as enunciated in Scott and Jones, as well as the South Carolina common law of self-defense. Moreover, the narrow interpretation of the Act desired by the State would centralize the power and control over people's fundamental right to self-defense in the hands of State in contravention of the purpose of the Act. The State's position is diametrically opposed to both the "clearly enunciated" Legislative intent of the Act and the sound underlying public policy thereof

which endeavors to shift the law away from protecting criminals and towards ensuring that "no person or victim of crime should be required to surrender his personal safety to a criminal...." S.C. Code Ann. § 16-11-420(E) (emphasis added). For the foregoing reasons, as well as those previously presented to this Court in Petitioner's Brief and during oral arguments, Petitioner respectfully requests that the Court deny Respondent's Petition for Rehearing.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have filed with the Supreme Court and served Petitioner's Reply to Petition for Rehearing on Respondent's attorney by First Class United States Mail addressed to Post Office Box 11549, Columbia, SC 29211-1549 on January 13, 2020.

Respectfully submitted,

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