THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

H. Bruce Williams, Court of Appeals Judge

Appellate Case No. 2018-001386

Common Pleas Case No: 2015-CP-10-2178

Stacy Singletary, individually and as Personal Representative of Sheldon Singletary........... Respondent

vs.

Kelvin Shuler..Appellant

RETURN TO PETITION FOR REHEARING

The appellant, Kelvin Shuler, has moved before this Court to reconsider its June 2, 2021 opinion pursuant to Rule 221 SCACR. The Respondent, Stacy Singletary, by her undersigned counsel, now responds to the Petition and asserts the following:

I. The Appellant first claims the Court overlooked the Actual Language of State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011) by misinterpreting the language governing when an Immunity Question may be brought.

The Court did not overlook or misinterpret the language in **State v, Duncan,**

Furthermore, the Court decision is also bolstered by the Statutory provisions in §16-11-420 (B) And §16-11-450(A). As stated by the Court in its decision, § 16 -11-420 (B) also includes Civil actions. § 16-11-450 is titled Immunity from Criminal Prosecution and Civil Actions. § 16-11-450 (A) includes Civil actions under this section of the immunity statute. The Legislative Intent of these statutes is clear as stated by this court, "The Act's language is clear and unambiguous. that it was the legislature's intent to extend immunity under the Act from both criminal prosecution and civil actions."

The Supreme Court and the Legislature set a precedent and a process for making this Stand Your Ground Claim.

First, in order to assert this claim, there must be a pre-trial determination that the Defendant is entitled to assert this claim. The Defendant must bring a pre-trial motion and the court must find at the pre-trial motion that the Defendant is entitled to assert this claim by a preponderance of the evidence and the court must issue an Order denying or granting the Motion to Dismiss on that basis. State v. Duncan, 392 S.C. 404, 411 709 S.E.2d 662,665 (2011). Immunity under the act is a bar to prosecution criminal or civil, upon motion of either party and must be decided prior to trial. A claim of immunity under this ACT requires a pretrial determination using a preponderance of the evidence standard. State v. Manning, Appellate Case No: 2010-176707, Opinion Number. 5228, p.5 (2014). State v. Curry, 406 S.C.364,370 752 S.E. 263, 266 (2013). State v. Duncan, 392 S.C. 404, 411, 709 S.E. 2d 662,665 (2011). The Court in Duncan stated by using the words "immune from criminal prosecution"' the legislature intended to create a true immunity, and not simply an affirmative defense. "Therefore, since the Defendant did not file for a pre-trial determination of Immunity, he cannot assert the same as an affirmative defense.

Furthermore, Section 16-11-440 (A) states that "A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is 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 and

(2) Who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

In State v. Manning, Appellate Case No: 2010-176707, Opinion Number: 5228, p.7 (2014) The Court states "16-11-440 (A) narrowly limits using force against a person who either (1) unlawfully and forcibly entered a residence, (2) is unlawfully and forcibly entering a residence, or (3) is attempting to remove a person against his will from the residence. If the individual victim in question is a social guest, subsection 16-11-440 (A) is inapplicable." The court in Manning compared the victim in its case to the victim in State v. Curry, 406 S.C. 369, 370, 752 S.E. 2d 265,266 (2013) stating: "finding the victim, whom Curry invited to his mother's apartment, was a social guest, thus, despite Curry's allegation the victim lunged towards him while Curry was in possession of a gun, he was not entitled to the presumption of subsection 16-11-440(A). For the foregoing reasons even if Manning had the benefit of an evidentiary hearing, he would not have been able to establish immunity under subsection 16-11-440(A)." State v. Manning, p.7 (2014).

Like Manning, it is clear that even if the Respondent had the benefit of a Pre-trial hearing the Master in Equity found that he would still not be entitled to an Immunity, because the Master in Equity found that he was not entitled to a self-defense claim.

In this case it is clear and undisputed that Sheldon Singletary was an invitee/social guest of Kelvin Shuler. In addition, it is also clear that no unlawful or forcible act was committed by Sheldon Singletary, hereafter referred to as the decedent.

Rule 221(c) of the SCACR states "the appellate court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's Appeal. The court's decision was not just based on Duncan, it is also based on the legislative intent, the reading and meaning of §16-11-440 and §16-11-450. It is also important to note that the lower court did not make its decision just on the Duncan, the statute also requires an analysis of the elements of self-defense and the lower court also conducted this analysis in determining whether the Appellant was entitled to immunity.

It is well established that in Order to bring a claim under 16-11-440, there must be a valid case of self- defense. State v. Dickey, 394 S.C. 491,499, 716 S.E. 2d 97, 101 (2011). The trial court necessarily considers the elements of self- defense in determining a defendant's entitlement to immunity. State v. Curry, S.C. at p. 371-372, 752 S.E.2d p. 266-267.

There are four elements required by law to establish a case of self -defense:

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would

have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his life or sustaining serious bodily injury than to act as he did in the particular instance. State v. Curry, Id. At S.C 371, 752 S.E. 2d at 266.

The Appellant would not have a valid case for self-defense for several reasons:

I. The Defendant must be without fault in bringing about the difficulty. The court heard testimony from Sharnika Morris that Appellant started the confrontation with Sheldon Singletary and that Mr. Singletary defended himself after the Appellant had struck him a few times. (ROA p.56, lines 13-18). Furthermore, at the time the Appellant shot the decedent it was well after their altercation and it was when the decedent was attempting to leave the residence. The decedent was attempting to leave when the Appellant went into his residence and retrieved a weapon went back outside and shot the decedent. In State v. Wigington, Court of Appeals of South Carolina, No. 4281, 649 S.E. 2d 186, 188, (2007), the court stated "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 as a justification or excuse for a homicide. In that case, the found that the Defendant had injected himself into an altercation, removed himself from the controversy and returned with a loaded gun. "Therefore, the Defendant's conduct could be reasonably calculated to bring about the difficulty that arose." Wigington, p.188.

II. The Defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury or he actually was in imminent danger. The Appellant stated

that after the altercation, he went and retrieved a knife at all of his guests not just the decedent in the back part of his residence. (ROA p. 131, lines 6-7, 20-22, p.135 lines 20-23). When this did not work, he went back into the residence and retrieved a handgun. He walked back outside from the back of his house to the front of his house armed with the handgun. (ROA p.132, lines 6-16). Phillip Jones was walking beside him trying to get him to put the handgun down, but he refused. (ROA p.132, lines 15-26). The Appellant admitted under oath on the stand, that he was not threatened by anyone at this point, and he went to get the gun to make everyone leave. (ROA p. 159, lines 2-17). He stated he did not know where the decedent was at the time. (ROA p. 138, lines 10-18). Ms. Morris stated that the decedent was on the front porch waiting for her to retrieve his clothing and keys so that he could leave the residence. (ROA p.57, lines 10-11). This is further collaborated by the Appellant because he approached the decedent on the front porch. The Appellant stated he pulled the trigger and shot the decedent who was unarmed. The Appellant stated that he did not know who he was shooting at he just saw someone and shot. (ROA p. 134, lines 19-25, p.135, lines 1-7). Therefore, he cannot claim that he shot the decedent because he was in fear of the decedent from their prior altercation because according to him, he was unaware that the decedent was the individual he was shooting. The Appellant was not in danger of imminent of death or serious bodily injury and could not reasonably belief that he was in imminent danger of death or serious bodily injury because he approached the decedent who was attempting to leave the defendant's residence and the decedent was unarmed at the time. Furthermore, there previous altercation was over, and it was started by the Appellant.

III. Whether a reasonable prudent person would believe they were in imminent danger of death or serious bodily injury. If a reasonably prudent person was in imminent danger whether they would have to kill to save himself from death or serious bodily injury. Whether the

Defendant had no other probable means of avoiding the danger of losing his life or serious bodily injury.

A reasonable prudent person would not have been in imminent danger of a loss of life or substantial bodily injury under these circumstances and would not have to kill to save themselves from death or serious bodily injury. The Appellant decided to get a knife to scare his guests off and when they were not frightened, he made the decision to go back into the house; go upstairs to his bedroom, walk back outside with the gun, walk from the back of his house to the front and shot and kill an unarmed decedent. These actions are not the actions of a reasonable prudent person. There is no evidence whatsoever that he was in imminent danger when he walked outside with the knife, went back inside to get the weapon, walked back outside with the weapon, walked from the back of the house to the front of the house and shot the unarmed decedent. **The Appellant admitted that he was not in danger during these times during cross exam. (ROA p.159, lines 2-17).** Because the Appellant was not in imminent danger there was no reason for him to take a life to protect himself from death or serious bodily injury.

IV. Whether the Defendant had any other probable means of avoiding the danger of losing his life or substantial/serious bodily injury. First, as previously stated the Defendant was never in danger of losing his life or of substantial or serious bodily injury. The Defendant was the only person armed and he pursued the decedent as he was trying to leave the residence. The altercation that occurred earlier was over and was started by the Defendant. Furthermore, the earlier altercation was started by the Defendant. The Defendant has no valid claim to self-defense; therefore, he has no valid claim under the Stand Your Ground Act under §16-11-440. The Defendant's fleeing the scene after the shooting and throwing the weapon into the marsh is further evidence of his culpability in this case. (ROA p.163, lines 1-25). The lower court

conducted an analysis of all the elements of self defense and found that the Appellant was not entitled to a self-defense claim.

The Appellant did not file a pretrial motion for immunity under §16-11-440 therefore he is not entitled to consideration for immunity under §16-11-440. In addition, he has no valid self-defense claim; therefore, he cannot claim immunity under §16-11-440. The Court's analysis was proper in this case. Furthermore, the Court's decision was not solely based on Duncan, but also the applicable statute and the legislative intent behind §16-11-420, §16-11-440 and §16-11-450. It is important to note that the Master in Equity did not stop at the issue of whether the Appellant filed a Pre-Trial motion. Although the Appellant did not file the required Pre-trial motion the Master in Equity still took the next required step and conducted an analysis into whether the Appellant was entitled to Immunity through a valid self defense claim so there was no prejudice to the Appellant either way. Therefore, under Rule 221 (c) the Court should not entertain a motion or petition for rehearing because the action of the Court on the motion or petition will not have the effect of dismissing or finally deciding the Appeal.

II. The Petitioner next argues that the Holding in Duncan is Ambiguous.

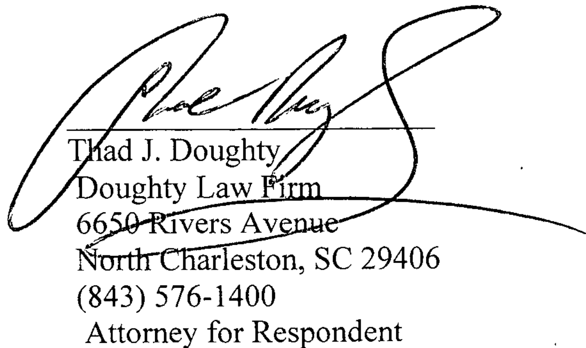
The Appellant argues that Duncan, is not consist with §16-11-420 and §16-11-450. The Court in Duncan used these statutes in its analysis to determine that a pre-trial hearing was necessary. It is clear from the language of the Statutes that the legislature intended for the Act to apply to both Criminal and Civil cases. The Appellant also argues that the law does not require a pre-trial in order to grant immunity under §16-11-440 but there must be valid claim of self-defense pursuant to the state's self-defense and that if the two are treated the same then there is no need for a Pre-trial determination. Again, it is clear from Duncan, §16-11-420, §16-11-440 and §16-11-450 that a pre-trial motion and determination are necessary for an immunity claim. In addition, the

process also requires an analysis of whether the Appellant was entitled to self-defense. This analysis was done by the Master in Equity and he found that the Appellant was not entitled to a self defense claim. Therefore, the Appellant's arguments have no merit because the Master in Equity and this Court performed a thorough analysis under Duncan and the afore-mentioned statutes and the Master in Equity found that the Appellant did not meet the elements for a self defense claim, It is important to note once again that under Rule 221 SCACR , " The Appellate Court will not entertain petitions for rehearing on a motion or petition unless the action of the Court on the motion or petition has the effect of dismissing or finally deciding the party's appeal. As stated by the Appellant, even if the Appellant did not have to file a Pre-trial motion on the issue of immunity; there would still have to be a determination that the Appellant had a valid self defense claim to be entitled to immunity. Since there was a decision by the Master in Equity that he is not entitled to a self defense claim he still would not have been entitled to immunity. Therefore, the arguments of the Appellant are moot points. However, we want to make it clear that **Duncan,** and the afore-mentioned statutes do require a Pre-trial motion and Pre-trial determination of immunity.

The cases cited from other states are irrelevant. The Statutes previous cited throughout this return express the legislative intent of the South Carolina Legislature. The Court in Duncan interpreted the South Carolina Statutes and the legislative intent of the South Carolina Legislature.

There are various states with various versions of their Stand Your Ground or Castle Doctrines but the law that is relevant to this case is the laws of South Carolina, specifically the afore-mentioned statutes. There is no need for this court to consider cases from other States in this matter when South Carolina has its own cases on the subject and its own statutes.

For the reason stated. The Respondent, Stacy Singletary respectfully requests that this court uphold and confirm its decision in this case regarding its ruling that a pre-trial ruling was required to bring a claim for immunity. Furthermore, we respectfully ask that the Court to follow Rule 221 (c) and not entertain a petition for rehearing on an action of the court on the motion or petition that does not have the effect of dismissing or finally deciding an Appeal. Whether or not the there was a requirement for a Pre-trial determination, and again we assert there was this requirement, the lower court would still have to perform a self-defense analysis when considering an immunity claim and the Master in Equity performed this analysis and found that the Respondent was not entitled to a Self-Defense claim. In addition, the issue of the Pre-trail determination of immunity does not affect the other rulings of the Master in Equity and the award of damages.



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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

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Appellate Case No. 2018-001386

Common Pleas Case No: 2015-CP-10-2178

Stacy Singletary, individually and as Personal Representative of Sheldon Singletary........... Respondent

vs.

Kelvin Shuler..Appellant

PROOF OF SERVICE

I certify that I served the **Respondent's Return to Appellant's Motion for Rehearing** on Appellant, Kelvin Shuler, by depositing a copy in the United States mail, postage prepaid, on June 25, 2021 addressed to his Attorney of record, Eduardo K. Curry, PO Box 42270, North Charleston, SC 29423, and by emailing the same on that day.

June 25, 2021

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June 25, 2021

VIA US Mail

South Carolina Court of Appeals
Clerk's Office
PO Box 11629
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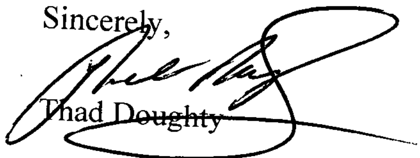
JUN 28 2021
SC Court of Appeals

RE: Singletary v. Shuler
Case Number: 2018-001386

Dear Sir/ Madam:

Enclosed please find our Return to Motion for Rehearing in the above-referenced case. Please send the copies back in the envelope provided herein.

Sincerely,



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