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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE 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

REPLY TO RETURN

The appellant, Kelvin Shuler, pursuant to Rule 221, SCACR, has moved to reconsider its June 2, 2021 opinion and the respondent, Stacy Singletary, has responded. The appellant, by her undersigned counsel, now replies to the Return and asserts the following:

I. This is a Case of First Impression.

Respondent repeatedly argues throughout its Return that the law is clear and unambiguous and that it was the legislature's intent to have a pre-trial motion submitted to raise a claim of immunity under the codified Castle Doctrine. However, this is not true. This court even said in its opinion, "Whether a trial court is required to determine if a party is immune under the Act before a civil trial begins is a novel issue for this court." S.C. Ct. App. Affirm at 5. Therefore, it is not possible to claim the issues raised in the appeal are and have been clearly established; nor is it possible to argue the legislature's intent when the statute does not mention any pre-trial requirement(s) and there are no clear Appellate Court rulings on this matter.

II. A Motion for a Pre-trial Determination is Not Required for a Defendant to Claim Immunity under the Protection of Persons and Property Act.

Respondent asserts that State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), requires a defendant to bring a pre-trial motion and have a pre-trial hearing to determine whether a defendant is entitled to immunity under the Protection of Persons and Property Act (ACT). Duncan does not state this. The Court in Duncan stated, "[W]e hold that *when* a party raises the question of statutory immunity *prior to trial*, the proper

standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." Duncan, 392 S.C. at 411, 709 S.E.2d at 665 (emphasis added). Further, the Court held, "a pre-trial determination of immunity under the Act *is proper*." *Id.* at 411, 709 S.E.2d at 665 (emphasis added). As stated in Appellant's Motion for Rehearing, the Court held a pre-trial determination of immunity *was proper* in resolving an issue that occurred at a pre-trial hearing, not that it *was mandatory* for the Defendant to request a pre-trial hearing to determine all claims of immunity under the Protection of Persons and Property Act. *See Id.* Therefore, *when* a claim of immunity is brought prior to trial, it is proper and mandatory for the court to determine whether immunity attaches.

III. Respondent Misunderstands Appellant's Ambiguous Argument.

Respondent argues the holding in Duncan was clear and unambiguous, however, this is not true. The issues in Duncan were (1) whether the circuit court erred in making a pre-trial determination of immunity and (2) whether the circuit court erred in finding respondent was entitled to immunity under the ACT. *Id.* at 407, 709 S.E.2d at 663. The Court in Duncan was not presented with the question of whether a pre-trial motion was *required* to have a pre-trial determination of immunity, but rather was presented with whether it was *proper*, upon a motion to dismiss, to decide immunity under the ACT *pre-trial*. *See generally* Duncan, 392 S.C. 404, 709 S.E.2d 662.

The Court ultimately held it was proper, when being presented with a motion to dismiss under the ACT's immunity, to make a pre-trial determination, because the dismissal was contingent on meeting the elements under the ACT, at that time, in order to be granted. *Id.* at 410-11, 709 S.E.2d at 665. This assertion is consistent with every out of state case the Duncan Court cited to help make their decision and is the reason why Appellant cited to each of those cases in its Motion for Rehearing. *See Id.* at 409-11, 709 S.E.2d at 664-665; Fair v. State, 284 Ga. 165, 166, 664 S.E.2d 227, 230 (Ga. 2008) (holding "the trial court erred in refusing to rule *pre-trial* on the defendants' motions") (emphasis added); Peterson v. Florida, 983 So.2d 27, 29 (Fla.1st D.C.A. 2008) (holding "[A] defendant *may* raise the question of statutory immunity *pretrial* and, *when such a claim is raised*, the trial court *must* determine whether the defendant has shown by a preponderance of the evidence that the immunity attaches.") (emphasis added); Dennis v. State, 51 So.3d 456, 464 (Fla. 2010) ("We conclude that *where* a criminal defendant *files a motion to dismiss* pursuant to [a statute similar to the one in the ACT], the trial court *should* decide the factual question of the applicability of the statutory immunity.") (emphasis added).

In every out of state case the Duncan Court cites, as well as in the Duncan Court itself, the issue is whether the trial court erred in ruling (or not ruling) on an immunity claim, raised in a motion to dismiss, *pre-trial*, not whether an immunity claim must be raised through a pre-trial motion to dismiss to be heard. The Florida Supreme Court even stated, "[T]reating motions to dismiss pursuant to [a statute similar to the one in the ACT] in the same manner as [state] rule 3.190(c)(4) motions [to dismiss] would not provide criminal defendants the opportunity to establish immunity and avoid trial that was contemplated by the Legislature." Dennis, 51 So.3d at 462. Therefore, the Duncan Court did not make a determination requiring a pre-trial motion to brought to have a claim of immunity under the ACT be heard, but rather made the determination that *when* a defendant raises the question of statutory immunity *pre-trial*, the *trial court* must make a determination on whether the immunity attaches. Further, the Duncan holding shows, when a motion to dismiss is brought upon the grounds of the ACT's immunity, the trial court must obviously hear it at pre-trial hearing because, logically and procedurally, a motion to dismiss is heard at a pre-trial hearing.

While it is clear from the thorough analysis above the Duncan Court did not hold a determination of immunity under the ACT may only be heard after a pre-trial motion, the ambiguity shows from this court and Respondent's understandable misinterpretation of the holding in Duncan. What makes this ambiguity even more apparent is Respondent's procedural misinterpretation. Self-Defense and Immunity under the ACT are the same yet different. All claims of immunity under the ACT are a Self-Defense claims but not all Self-Defense claims are claims of immunity under the ACT. While this statement is true, Respondent's procedural misinterpretation of Duncan makes it false. This assertion is best seen when the cases involving Self-Defense are heard through a bench trial. Generally, a majority of pre-trial hearings are heard by the same judge that hears the trial. If one applies Respondent's procedural misinterpretation and the judge rules immunity does not attach pre-trial, then all claims of self-defense at trial will ultimately fail because the judge already found there was not enough evidence to allow a claim of immunity. While this issue is only an issue at a bench trial, it is still an issue that will affect the outcome of many bench trials claiming Self-Defense.

Finally, this case has clearly been impacted by the potential ambiguity of Duncan. At trial, the court never conducted a pre-trial hearing, despite stating "Gentlemen, we have pretried it a couple of times," ROA 38, nor did it require one to do an analysis of the claim of immunity under the ACT. *See* ROA 187-189. The record does not show what, if anything, was pre-tried, nor does it show whether the Master even addressed the claim of immunity pre-trial. *See* ROA. The Master in Equity did not hold a pre-trial hearing to determine the immunity either because he believed immunity was not required to be determined at pre-trial, it was not clear that a pre-trial motion was required to have a determination, it was not clear that the determination need to be decided before trial, or some mixture of the three. Further, it is clear this court also is not sure which interpretation is correct. This court agreed this was a case of first impression, yet agreed with Respondent that the issue was resolved in Duncan. Regardless of the holding this court chooses to take, this case should be remanded because it is a case of first impression, there is a clear need for clarification, and the record at trial will be subsequently tarnished, thus rendering the trial court's decision as a reversable error.

Please let it be clear, Appellant reasserts all the claims stated in its Motion for rehearing as well as those stated or supported in this Reply. For the reasons stated in this Reply and the Motion for Rehearing, it is respectfully requested that this court reverse its holding that a pretrial hearing was required to establish a claim of immunity, hold Appellant is granted immunity from prosecution, and reverse the master-in-equity's civil judgement and awards or, in the alternative, have the case remanded.

Dated: June 29, 2021

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PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Stacy Singletary, by depositing a copy of it in the United States Mail via certified mail, postage prepaid, on June 29, 2021, addressed to: Stacy Singletary's attorney of record, Thad D. Doughty, 6650 Rivers Avenue, North Charleston, South Carolina 29406 and the South Carolina Court of Appeals, by depositing a copy of it in the United States Mail via certified mail, postage prepaid, on June 29, 2021, addressed to: Clerk of Court, P.O. Box 11629, Columbia, SC 29211; [by United States Postal Service and Electronic Email to her attorney of record, Thad D. Doughty, at doughtythad8@gmail.com, and by United States Postal Service and Electronic Email to the South Carolina Court of Appeals, at ctappfilings@sccourts.org].

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