

RECEIVED

OCT - 1 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

APPELLANT,

V.

WHITLEE JONES,

RESPONDENT

APPELLATE CASE NO. 2014-002123

FINAL BRIEF OF RESPONDENT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR RESPONDENT.

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUES ON APPEAL 3

COUNTERSTATEMENT OF ISSUES ON APPEAL 3

STATEMENT OF THE CASE 4

STATEMENT OF FACTS 5

Arguments of counsel 8

ARGUMENTS

1.

The court correctly granted respondent immunity where she was attacked inside her own home, and the solicitor’s position that she was entitled to “stand her ground” protection under the immunity statute **outside** of her home, but not **inside** of her home would lead to an absurd result the legislature could not have intended..... 12

2.

The court correctly ruled respondent was entitled to immunity under the Protection of Persons and Property Act where she established she was acting in self-defense when attacked inside her own house, and the state’s argument that only a jury could determine self-defense ignored the legislative intent of the immunity statute..... 14

CONCLUSION 16

TABLE OF AUTHORITIES

Cases

Doe v. SCDSS, 407 S.C. 623, 757 S.E.2d 712 (2014) 13

State v. Curry, 406 S.C. 346, 752 S.E.2d 263 (2013)..... passim

State v. Douglas, 411 S.C. 307, 768 S.E.2d 323 (Ct.App. 2014) 12, 15

State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011)..... 15

State v. Manning, Op.No. 2014-UP-411, 2014 Westlaw 6488708 (filed November 19, 2014) 11

Statutes

S.C. Code § 16-11-440 (A)..... 12, 13

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

S.C. Code Ann. § 16-1-60..... 11

STATEMENT OF ISSUES ON APPEAL

1.

Whether the lower court erred in granting immunity based upon its finding the presumption afforded under S.C. Code Ann. § 16-11-440(C) applied when the stabbing occurred within the respondent's residence, which was not "another place" under by the statute?

2.

Whether the lower court erred in granting immunity under the Protection of Persons and Property Act when the defendant did not establish that she was acting in self-defense when she stabbed the victim?

COUNTERSTATEMENT OF ISSUES ON APPEAL

1.

Whether the court correctly granted respondent immunity where she was attacked inside her own home, and the solicitor's position that she was entitled to "stand her ground" protection under the immunity statute outside of her home, but not inside of her home would lead to an absurd result the Legislature could not have intended?

2.

Whether the court correctly ruled respondent was entitled to immunity under the Protection of Persons and Property Act where she established she was acting in self-defense when attacked inside her own house, and the state's argument that only a jury could determine self-defense ignores the legislative intent of the immunity statute?

STATEMENT OF THE CASE

Respondent agrees with the state's procedural history of this case. However, respondent respectfully submits this Court should affirm the circuit court's ruling as there is ample evidence to support it.

STATEMENT OF FACTS

Erica Grant testified that respondent, Whitley Jones, telephoned her on the evening of November 2, 2012. Grant did not immediately receive the call but respondent left her a message to come immediately to her home “to get her out of there.” Grant was very worried for respondent’s safety when she got this call. R. 29, l. 14-30, l. 14.

Grant’s concern was based in the actions of respondent’s live-in boyfriend, Eric’s, prior abuse of respondent. Grant testified that Eric was very insecure and jealous. He would show up unexpectedly at nightclubs, and other places where respondent went. Grant remembered one evening where the decedent was “banging up on the window trying to get her out of the car.” R. 30, l. 15-31, l. 7. Eric, the decedent, had also followed or “stalked” respondent on other occasions. R. 31, ll. 2-20. The decedent has often displayed his bad temper towards respondent during their long relationship. R. 31, l. 21-32, l. 12.

Grant was aware of at least one prior incident where respondent was injured by the decedent. The respondent had “a burn mark on her.” R. 32, ll. 18-21; R. 37, ll. 9-14.

The decedent’s treatment of her had caused respondent to leave him in the past. Grant acknowledged that respondent would ultimately return, and seemingly forgive the decedent. R. 33, l. 20-34, l. 22.

In respondent’s statement to the law enforcement on the night of the incident, November 2, 2012, at 3:00 a.m., she told them that an argument started when the decedent grabbed her cell phone. Respondent grabbed the decedent’s telephone to use it but gave it back to him and the decedent returned her cell phone. “I began to leave, but as I went to the front door, he wouldn’t let me go out. He began *pushing me and punching me*. So I ran out the backdoor . . . I was running away, *he began to pull my hair and tried to force me back*

into the house. I began screaming so a neighbor could hear or somebody could come help me. A neighbor came out and saw Eric fighting me and I asked him for help. He didn't. [I] was using the phone to call the police. Eric continued to try and force me into the house so I threw the phone so he would stop fighting me. He went to get the phone and I ran off." R. 91. (Respondent's statement at page one).

Respondent did not have a phone to call anyone:

So I cooled down and walked back home. I used the key to open the door and he was standing there. I noticed he was throwing my things around so I asked him for my phone to call a ride. I called my ride and as I started collecting my things he was yelling 'it's over, bye,' you made such a scene you know it is over now. He was rushing me to leave when I looked outside I noticed my ride was there. I was putting my things in the car and he was following me around the house making sure I didn't take any of his things. My cousin helped me put the rest of the things in the car. I went upstairs and made sure I didn't leave anything [and] as I getting my shoes I noticed the knife [and] I grabbed it for protection. I went downstairs and he was getting the key off the keychain. He started yelling and pushing me again telling me to get out. I was leaving when he grabbed me and asked me if I was mad and [he] shook me saying it was over, it's your fault, your fault, as he was getting ready to hit me again, I grabbed the knife out of my shirt and stabbed him and ran in the car to get away. I was scared he was really hurt and I told my friend to turn around. When we got back to the house he was lying on the floor at the door. I picked him up and carried him to the car and rushed him to the hospital. I didn't want to kill him, but too my defense, I stabbed him to get away. If I didn't he would have killed me.

R. 92. (Statement at two, R. 92).

Respondent told the police she was scared of the decedent, and that he had hit her in the past. Respondent also offered that the decedent "was not a bad person, but he was very

controlling and angry.” The knife belonged to the decedent, and that everything happened “very fast.” R. 93. (Statement at page three).

Grant helped respondent put her belongings into her car that evening. Grant was very concerned for respondent’s safety that night. R. 35, l. 1-39, l. 4. The state called Jasmine Taylor, respondent’s cousin as a witness. Taylor confirmed that respondent and the decedent had lived together for “a long time.” R. 40, l. 19-41, l. 25.

State’s witness Taylor described the decedent “as a snake in disguise.” When the judge asked Taylor to explain, Taylor said she personally had not seen the decedent act aggressively towards respondent, but she was struck “by the way he talked to her and stuff like that.” R. 42, l. 9-43, l. 20.

Taylor testified she went over the respondent’s house after receiving a phone call. Taylor had difficulty remembering where the decedent and respondent were when she arrived at their house. Taylor told the police that she saw the decedent standing outside when she arrived at their house. Taylor also told the police she went driving around looking for respondent, found her and picked her up on the street. At another point state’s witness Taylor said that she and Grant picked respondent up from her house. They helped respondent load her items into the car, and quickly left with respondent. Respondent then told them the decedent had been stabbed, and she had them turn the car around and go back to her house. R. 45, l. 21-49, l. 15.

Taylor acknowledged she was worried about the situation escalating even further that evening so she followed respondent around the house as she collected her belongings. R. 49, l. 16-50, l. 8. The decedent was yelling at the time and acting aggressively towards

respondent. R. 50, ll. 14-18. Respondent ran out of the house as the decedent was cursing at her. R. 53, l. 4-55, l. 24.

Taylor ran from the scene also, and they jumped in Grant's car and left. However, respondent then said she had stabbed the decedent. Respondent told them to go back to her house where they found the decedent on the ground. Respondent was screaming: "Eric, wake up, Eric, Eric, Eric." The decedent was moaning at the time, and they took him to the hospital. R. 56, l. 12-57, l. 14.

Taylor testified that the decedent was following respondent around as she tried to gather her belongings, and Taylor admitted the decedent was "up on her." R. 62, l. 25-63, l. 20. The decedent was so aggressive that she admitted she told Grant at one point: "We are going to have to beat his ass." Taylor acknowledged she did not see in what manner the decedent was stabbed. R. 66, l. 5-67, l. 24.

Arguments of counsel

Following the reception of evidence, defense counsel Ford argued respondent was entitled to immunity under the Act. Respondent had no duty to retreat since she was in her own home, and she had called Erica Grant for help. She had also tried to call 9-1-1. R. 68, l. 17-70, l. 1.

Ford reminded the judge that the decedent had "violently pulled out her [Respondent's] hair." The decedent was committing at least two violent crimes: Criminal domestic violence of a high and aggravated nature, and kidnapping. Respondent was trying to get out of her own house, "and the decedent would not let her leave. Respondent had to run out the backdoor to escape. Even when the respondent was able to flee, the decedent continued to follow her. He tried to get her back into the house by dragging her by her hair.

R. 70, l. 2-71, l. 13. "The whole time he's up on her, following her, intimidating her, cursing her, calling her names. He is being very intimidating this whole entire time." R. 71, ll. 4-22.

Defense counsel said respondent was not angry that evening even though the police had tried to get her to say that she was angry. R. 72, l. 8-73, l. 1. Respondent "had every reason to believe he was going to do something to her again. And that's why she grabbed that knife in self-defense, just in case. She wasn't brandishing it at him. So he had no reason to do anything to her." R. 72, l. 16-73, l. 13.

Counsel reminded the judge that respondent was begging a neighbor to help her out as she was suffering this abuse, but the "neighbor doesn't do a thing to help her." Counsel noted that people often do not want to get involved in violence involving a neighbor, thinking "it's domestic." R. 73, l. 14-74, l. 8. Counsel argued that respondent had a right to protect her life, and that the government had recognized the serious nature of domestic violence by mandating an arrest be made when a call is placed, and by not dropping charges merely because the victim later changed her mind. R. 74, l. 1-75, l. 16.

Defense counsel argued that respondent had met the elements of self-defense. Respondent was not at fault for bringing on the difficulty in her own house, and she honestly believed she was in danger of losing her life or sustaining serious bodily injury. Counsel argued the level of violence was apparent here when considering respondent's batterer dragged by her hair. Counsel argued the tapes showed how fearful respondent was that evening. R. 76, l. 13-77, l. 16. These immunity hearing exhibits are on file with this Court for viewing.

The assistant solicitor argued that respondent was not entitled to the presumption of fearfulness under the Act entitling her to use deadly force. R. 79, ll. 8-15. He argued that this was an issue of self-defense that the jury should decide. The solicitor acknowledged in response to the judge's questions that respondent did not have a duty to retreat but he claimed respondent was not being held against her will that night. R. 81, l. 4-84, l. 4.

Defense counsel responded that the recordings in this case "speak for themselves of how intimidating and controlling and possessive and dominating he was, that evening, in particular, your Honor." "We all saw the video of the patrol car where Ms. Jones is so upset that she passes out, your Honor. To suggest that she's just being some hysterical female, is just completely, I think, out of line." R. 84, ll. 10-18.

The trial judge cited this court's opinion in State v. Curry, 406 S.C. 346, 752 S.E.2d 263 (2013) while noting that both respondent and the decedent shared the house. The trial judge noted as did this court in State v. Curry that the presumption of reasonable fear of imminent peril or death did **not** apply because the decedent had an equal right to be in the dwelling or residence.

Regardless, respondent, like the defendant in State v. Curry was still entitled to the protection of S.C. Code § 16-11-440 (C) which states that a person who is not engaged in unlawful activity in a place where they have a right to be has no duty to retreat, and she has a right to stand her ground and meet force with force, including deadly force.

The judge issued his written order which was filed on October 3, 2014, granting immunity. R.111-122. The judge ruled that respondent was entitled to immunity under

S.C. Code § 16-11-440 (C) since she was attacked in her own home. The again cited this Court's opinion in State v. Curry in support of his ruling. R. 114-115. (Order at p. 4-5). The judge stated in his order that although he was relying on State v. Curry, he chose not to rely on State v. Manning, Op.No. 2014-UP-411, 2014 Westlaw 6488708 (filed November 19, 2014) since it was still pending on rehearing at the time. R. 115. (Order at p. 5). The judge wrote:

To hold that a person cannot utilize Section 16-11-440 (C) if the person were inside of their own home would create a **nonsensical result**—that a person can defend themselves from attack by their spouses, lovers, or any other co-resident **while outside of their home, but not inside of their home**. When using force or deadly force against someone else that has a right to be there, but is acting unlawfully, the person defending themselves **simply loses the presumption of reasonable fear under (A) and they must establish the fear element through the other principles of self defense**. The Court must examine each individual factual situation to determine whether the Defendant had the reasonable belief that their actions were necessary to prevent death, or great bodily injury, or the commission of a violent crime as defined in section S.C. Code Ann. § 16-1-60.

R.116 (emphasis added). The judge found that respondent did not bring on the difficulties, and that “throughout the evening, her actions demonstrated that she wanted to get away from Mr. Lee and to retain her phone.” The judge also found that the decedent committed at least two violent crimes, criminal domestic violence of a high and aggravated nature and kidnapping, against respondent that evening. Order at 7. R. 117. The judge further found respondent had reason to believe that violent crimes were about to be committed against her again when she acted with the knife. The judge found respondent did not have a duty to retreat, and that the state's argument that the reasonableness of someone's fear could **only be resolved by a jury**, and a not a judge, was inconsistent with the purpose of the castle doctrine. Order at 8. R. 118.

ARGUMENT

1.

The court correctly granted respondent immunity where she was attacked inside her own home, and the solicitor's position that she was entitled to "stand her ground" protection under the immunity statute **outside** of her home, but not **inside** of her home would lead to an absurd result the legislature could not have intended.

The state argues that respondent was not entitled to immunity because the Act was inapplicable. The state acknowledges that its present argument had been rejected in State v. Douglas, 411 S.C. 307, 768 S.E.2d 323 (Ct.App. 2014). However, the state argues it is seeking further review in Douglas that a defendant attacked in his residence was not entitled to immunity for being in "another place he had a right to be where he was acting lawfully." R. 13, l. 4 – 20, l. 17.

Respondent most respectfully submits that to accept the state's argument that respondent would have been entitled to stand your ground outside of her residence, but not within it where she was being attacked, would result in a nonsensical absurd ruling which the legislature could not have intended. Judge Nicholson, as will be seen below, deemed it "nonsensical." Defense counsel correctly argued that the legislature could not have intended S.C. Code § 16-11-440 (C) to take away a right citizens already had not to retreat before the immunity act was ever passed.

Further, this Court's opinion in State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), also supports the lower court's ruling that the fact the decedent was a guest or co-tenant gave him the right to be in the house still does not remove the protection of S.C. Code § 16-11-440 (C), even though S.C. Code § 16-11-440 (A) was inapplicable to

respondent given the decedent's status. Unlike the defendant in Curry, respondent in this case did demonstrate that she satisfied the elements of self-defense to the satisfaction of the trial court by a preponderance of the evidence.

The judge's ruling is supported by ample evidence that respondent was lawfully in her own home when she was attacked by the decedent. While the decedent undoubtedly had a right to also be in the residence, respondent had no duty to retreat. In essence, to find respondent had a duty to retreat would have put her in a worse position on her right to defend herself than she would have been in prior to the Protection of Persons and Property Act.

Respondent was not engaged in unlawful activity when she was attacked in a place **she had a right to be**, pursuant to S.C. Code § 16-11.440 (C). To hold that respondent would have been protected if the decedent had chose to attack her at her workplace or on the street, but that she was not entitled to the protection of the Act because she was attacked while inside her own home would lead to an absurd result the Legislature did not intend. E.g. Doe v. SCDSS, 407 S.C. 623, 757 S.E.2d 712 (2014).

Consequently, the state's argument that apparently respondent could only seek protection under S.C. Code § 16-11-440 (A) but is disqualified because the decedent also had a right to be in the home would result in a nonsensical result. See Brief of Appellant at 11-14.

The circuit court judge did not err in finding respondent met the elements of self-defense, and that she had no duty to retreat while with inside her own home. The judge also correctly refused to reach the absurd result urged by the solicitor in this case.

2.

The court correctly ruled respondent was entitled to immunity under the Protection of Persons and Property Act where she established she was acting in self-defense when attacked inside her own house, and the state's argument that only a jury could determine self-defense ignored the legislative intent of the immunity statute.

On the night of the fatal incident, respondent was in their home where she had every right to be. The decedent attacked her and pulled her hair to “try to force me back in the house.” Respondent screamed for help but a neighbor refused to intervene. When respondent returned to move her belongings the decedent grabbed her and shook her. Respondent stabbed the decedent before he hit her again. R. 91-93. (Respondent's statement at 1-3).

The judge said he observed respondent's raw emotions on the tape, and he correctly questioned how the solicitor could argue that “in a domestic situation” the party under attack was protected by the immunity statute everywhere but in their own home. R. 5, 1. 8 – 15, 1. 23. The judge correctly ruled in the final analysis that the solicitor's position that respondent was not entitled to any protection in this instance under S.C. Code § 16-11-440 (C) because “A and B of [S.C. Code § 16-11-440] specifically excludes it” was “nonsensical.” R. 111-122. (order granting immunity). Respondent had every right to return to her home, and she did not have to cower outside until the decedent allowed her to return home on all of his terms, or he left.

The state on appeal acknowledges that the trial judge has to make a determination by the preponderance of the evidence whether or not the defendant is entitled to

immunity. See, State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). Brief of Appellant at 9. This Court in State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), has made it clear that a defendant in respondent's situation is entitled to stand her ground, meet force with force, and respond with deadly force as long as she is in a place where she has a right to be—her home—and she is not acting unlawfully towards her guest or her roommate. See, also, State v. Douglas, 411 S.C. 307, 768 S.E.2d 232 (Ct.App. 2014).¹ Further, despite evidence that the decedent had committed criminal domestic violence of a high and aggravated nature and kidnapping in his actions against respondent that evening, the state apparently argues that immunity should not have been granted because the witnesses did not indicate they **saw** the decedent actually hit respondent while they were at her apartment. Brief of Appellant at 22.

The state also seems to fault respondent for going back to her own house that evening even though she had every right to be there. Brief of Appellant at 22-23. In essence, and most respectfully, the state attempts to analyze all of respondent's actions in her own home in an unreal world where the state submits respondent apparently had every duty to **avoid** standing her ground in her own home.

There was ample evidence to support the circuit judge's decision that respondent met the elements of self-defense, and that she was entitled to immunity under (C) of S.C. Code § 16-11-440 (C). The ruling of the lower court should therefore be affirmed.

¹ Pending on certiorari as of the date of filing of this initial brief of respondent.

CONCLUSION

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M D', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender


ATTORNEY FOR RESPONDENT.

This 1st day of October, 2015.

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 Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 1, 2015

A handwritten signature in black ink, appearing to read 'R M D', is written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

Attorney for Respondent

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

J. C. Buddy Nicholson, Jr., Judge

THE STATE,

APPELLANT,

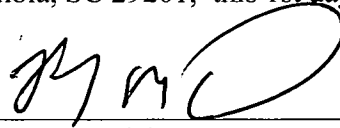
V.

WHITLEE JONES,

RESPONDENT

CERTIFICATE OF SERVICE

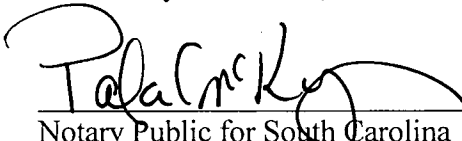
The undersigned attorney hereby certifies that a true copy of the Final Brief of Respondent in the above referenced case has been served upon Alphonso Simon, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of October, 2015.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR RESPONDENT.

SUBSCRIBED AND SWORN TO before me
this 1st day of October, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.