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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY
The Honorable J.C. Nicholson, Circuit Court Judge

Appellate Case No. 2014-002123

THE STATE

APPELLANT,

V.

WHITLEE JONES;

RESPONDENT.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

Respondent asserts “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.” (IBOR at pp. 12). Her position is problematic for two reasons. First, the proper interpretation of S.C. Code Ann. § 16-11-440(C), which would find the presumption afforded does not apply when a homicide occurs in one’s residence, is not inconsistent with longstanding South Carolina law regarding the duty to retreat. The principle that one does not have a common law duty to retreat in her residence still holds true. Respondent would not have to show that she had a duty to retreat at trial.

Second, contrary to the implication of Respondent’s assertions, the limitations presented by S.C. Code Ann. § 16-11-440(C) do not create a nonsensical result in this case. Respondent’s interpretation of the statute essentially requires that immunity be granted any time a defendant can establish he or she acted in self-defense. Appellant submits that such an interpretation would be inconsistent with the legislature’s intent. Clearly, the legislature did not intend for all cases involving self-defense to be subject to a determination of whether immunity should apply. Appellant submits that the limitations outlined in the application of § 440(C) reflect the legislature’s intent to leave cases like Respondent’s for a jury determination.

CONCLUSION

For the foregoing reasons and the reasons stated in the Brief of Appellant, Appellant respectfully requests this Court vacate the trial court's Order Granting Immunity from Prosecution to Defendant and remand the case for a jury trial.

Respectfully submitted,

ALAN WILSON
Attorney General

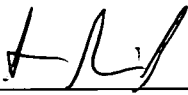
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October 12, 2015.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 12th day of October, 2015.



ALPHONSO SIMON, JR.
Assistant Attorney General

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
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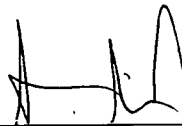
RESPONDENT.

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., counsel for the Appellant, certify that I have served the within Final Reply Brief of Appellant and Certificate of Compliance on Respondent by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert M. Dudek, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.

This 12th day of October, 2015.



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