THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
Jul 05 2022
S.C. SUPREME COURT

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
Edward W. Miller, Circuit Court Judge

Appellate Case No. 2021-000643

The State, ...Respondent-Petitioner,

v.

Ontavious Derenta Plumer,.....Petitioner-Respondent.

REPLY BRIEF OF PETITIONER

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Petitioner Ontavious Plumer

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

ARGUMENT IN REPLY

Did the Court of Appeals err when it affirmed the trial court's failure to instruct the jurors on self-defense when the jurors acquitted Mr. Plumer of armed robbery and direct and circumstantial evidence supported instructing self-defense?

The State attempts to reframe the question presented in this appeal as whether the Court of Appeals erred in affirming Ontavious Plumer's conviction for attempted murder, arguing "the evidence and testimony presented during the trial did not establish any of the required elements of self-defense and, instead, established Plumer unlawfully shot his victim after pulling out a gun and attempting to rob him during the course of a drug transaction." State's Brief of Respondent, at 1, 12-16. The State's argument is flawed because it substitutes its view of the evidence for the proper standard of review. "If there is ***any evidence*** in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error." *State v. Light*, 378 S.C. 641, 650, 664 S.E.2d 465, 469 (2008) (emphasis added) (citing *State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007)). As set forth in Mr. Plumer's Brief of Petitioner, once this Court applies an any evidence standard, the need to reverse the Court of Appeals becomes apparent.

The State misconstrues Mr. Plumer's position regarding his acquittal of the armed robbery charge when it argues, "[T]he jury's verdict on the armed robbery charge neither was evidence of anything for the jury to consider nor converted the actual evidence presented during trial into evidence of self-defense." State's Brief of Respondent, at 16. Mr. Plumer does not argue that the acquittal of armed robbery is evidence; rather, the acquittal for armed robbery demonstrates the evidence is capable of more than one interpretation, contrary to the State's arguments on appeal. As discussed in Mr. Plumer's

Brief of Petitioner, at 13, the State still seeks to benefit from the permissive inference that may arise from the commission of a separate felony. *See, e.g., State v. Norris*, 285 S.C. 86, 92, 328 S.E.2d 339, 342 (1985), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991), and *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009). Despite the State's contention to the contrary, the jurors' acquittal of Mr. Plumer of armed robbery is an indication they did not believe this testimony and, therefore, the State is not entitled to that permissive inference.[1]

Next, the State's reliance on this Court's three-to-two decision in *State v. Williams*, 427 S.C. 246, 830 S.E.2d 904 (2019) does not mandate affirming the Court of Appeals. State's Brief of Respondent, at 12-13. The majority opinion acknowledged the holding in *Williams* was limited to the facts of "th[at] case." *Id.* 427 S.C. at 255, 830 S.E.2d at 909. The dissent in Williams warned against making overly broad conclusions and sending the "trial bench mixed signals on this issue." *Id*., 427 S.C. at 257, 830 S.E.2d at 910 (James, j., dissenting). Here, reasonable jurors could conclude Mr. Plumer's "possession of the gun was a moot point, legally and factually, until [Mr. Wells] brought about the difficulty by" producing his gun. *Id*.

Finally, the State incorrectly argues, "[D]ue to the absence of any testimony from Plumer regarding his account of the shooting, there was no evidence or testimony presented establishing Plumer shot Wells in order to defend himself from imminent danger of losing his life or sustaining serious bodily injury." State's Brief of Respondent, at 13. As seen

[1] This permissive inference of malice only gets the prosecution so far. Of course, the State still has the burden of proving a specific intent to commit murder and express malice. *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017). Although the trial judge instructed a specific intent to kill is an element of attempted murder, trial counsel did not object to the trial court's instruction of inferred malice. R. 515-16, 420.

above, the standard for instructing self-defense is not whether the accused testified but rather whether "there is ***any evidence*** in the record from which it could reasonably be inferred that the defendant acted in self-defense." *Light*, 378 S.C. at 650, 664 S.E.2d at 469.

CONCLUSION

For the reasons set forth in Ontavious Plumer's Brief of Petitioner and this Reply Brief, this Court should reverse the Court of Appeals and order a new trial.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646

Attorney for Petitioner **Ontavious Plumer**

July 5, 2022.