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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Court of General Sessions

Clifton Newman, Circuit Court Judge

Appellate Case No.: 2022-001603

THE STATE

RESPONDENT,

v.

TIMOTHY M. VOEGELI ,

APPELLANT

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Is the statute criminalizing domestic violence in the second degree unconstitutionally overbroad in violation of Appellant's right to privacy of the Fourteenth Amendment to the United States Constitution because it is does not provide a time period nor definition for cohabitation specifically "male and female who are cohabiting or formerly have cohabited," therefore improper labeling former relationships as falling within the definitions of this act?

II. In violation of Appellant's right to due process of law, did the trial judge err in failing to instruct the jury regarding self-defense where evidence was presented of self-defense, the jury required instructions regarding how to analyze such evidence, and instructions were necessary to ensure the burden of proof remained on the state in light of the presentation of self-defense evidence?

STATEMENT OF THE CASE

On December 2, 2020, a Richland County grand jury indicted Appellant for one count of domestic violence in the second degree (2020-GS-40-04871). The state, represented by Anna Browder and John Gardner, called the case to trial before the Honorable Clifton Newman and a jury on October 31, 2022, through November 1, 2022. Laura Hiller and Lacey Thompson represented Appellant. The jury found Appellant guilty of the lesser included offense of domestic violence in the third degree[1]. On November 1, 2022, Judge Newman sentenced Appellant to thirty days imprisonment.

On November 14, 2022, Appellant served his notice of intent to appeal. This brief follows.

[1] A properly submitted lesser included offense to the one charged within the Indictment.

STATEMENT OF FACTS

On August 24, 2020, Erika Hall ("Erika") called 911 stating that "my boyfriend just punched me in the face." That night, the Defendant ("Tim") broke up with Erika. Erika was upset that she lost or could not find her cell phone and could not find it when Tim told her to leave after assaulting him. The uncontroverted testimony was Tim had decided to move back to Kansas. He was moving back to Kansas to be with his family, to be with his grandchildren, and his girlfriend, Erika, at the time was upset that their relationship was coming to an end. He had only lived in Columbia for a few years to take care of his dad. At this time, his dad had passed away and he was moving back to Kansas. That night Erika came over to his house and brought Tim dinner. Erika was upset with Tim for leaving. Upset that he was going back to Kansas and upset that he wasn't going to come back here to see her. So, she slapped him and kept trying to hit him. Tim defended himself and told her to get her "shit and leave" and pushed her away from him. She couldn't find her cell phone when she was trying to leave. Tim said he didn't have her phone, so she kicked him in the groin.

In trial, Erika tells a different version what happened two years ago. Two years ago, she tells the police she wanted her phone to call her son and that "her life is in it" (the phone). Two years ago, she did not advise police why this argument even started. She told the officer it wasn't a heated argument. Tim just punched her in the nose. She says in her written statement that she doesn't know why he punched her. In trial, her testimony changed to say the argument was about Tim moving to Kansas. That night she tells the police she went to the neighbors to call for help. Then when she writes her statement, only then, does she mention she had left for half an hour and came back. Erika could have had several places to call 911 but chose to come back to Tim's house to knock on doors because she wants her phone. She wants the police to get her phone. She even tells the police there's a window they can get into to get inside for her

phone. Erika admits to physically assaulting Tim. She testified that she kicked him in the groin. Tim testified at trial, consistent with his statements on police body worn cameras, that the physical contact only occurred because he was acting in self-defense.

ARGUMENT

I. The statute criminalizing domestic violence in the second degree is unconstitutionally overbroad in violation of Tim's right to privacy and the First and Fourteenth Amendments to the United States Constitution because it does not define a time period for a relationship to be classified as cohabitation (specifically "male and female who are cohabiting **or formerly have cohabited**.")

Relevant facts

The issue is whether the parties ever cohabitated. Prior to trial, Appellant, by and through his trial counsel, moved to dismiss the charges against him because the criminal statute pursuant to which he was charged was unconstitutionally overbroad in violation of the United States Constitution[2].

Discussion

The Fourteenth Amendment to the United States Constitution, section 1 states:

> [a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Id.

The General Assembly originally passed the domestic violence Acts ("the Acts") in 1984. At that time, while § 20-4-20 did not provide protection for any unmarried, cohabiting couples, § 16-25-10 stated: "As used in this article, 'family or household member' means spouses, former spouses, parents and children, persons related by consanguinity or affinity within the second degree, and persons cohabitating or formerly cohabitating." (Emphasis supplied). Thus, as initially

[2] This was renewed at the directed verdict stages of the trial.

enacted, and then modified by statute, there were no cohabitation directive classifications as to persons protected under the Acts.

In 1994, the original definitions of "Household member[s]" were amended and replaced with more narrow definitions providing domestic violence protection for, inter alia, "a male and female who are cohabiting or formerly have cohabited." See Act No. 484, 1984 S.C. Acts 2029; Act No. 519, 1994 S.C. Acts 5926, 5926–27; 5929 (emphasis supplied). Subsequent amendments to the Acts in 2003 and 2005 retained the gender-based distinctions made in 1994. See Act No. 92, 2003 S.C. Acts 1538, 1541, 1550; Act No. 166, 2005 S.C. Acts 1834, 1836, 1842.

In June 2015, the General Assembly substantially amended the Domestic Violence Reform Act, which provided harsher penalties for offenders, including a partial gun ban, and authorized judges to issue permanent Orders of Protection. See Act No. 58, 2015 S.C. Acts 225 (effective June 4, 2015). These most recent amendments left intact the gender-based designations of "Household member[s]" first adopted in 1994. The distinction-affording protection under the Acts to unmarried, cohabiting or formerly cohabiting, same-sex couples only was successfully challenged. Doe v. State, 421 S.C. 490, 808 S.E.2d 807 (2017). Here, the lack of a time frame reference as to what qualifies and "previously cohabitated" as a violation of a causal relationships and therefore Tim's right to privacy. See Roe v. Wade, 410 U.S. 113, 164-65 (1973).

The right of privacy was denominated a liberty which found its source and its protection in the due process clause of the Fourteenth Amendment. Roe v. Wade, 410 U.S. 113, 153 (1973) (Justice Stewart concurring). Justice Douglas continued to deny that substantive due process is the basis of the decisions. Doe v. Bolton, 410 U.S. 179, 209, 212 n.4 (1973) (concurring). "The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, . . . the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. . . . These decisions make it clear that only personal

rights that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty,' Palko v. Connecticut, 302 U.S. 319, 325 (1937), are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, Loving v. Virginia, 388 U.S. 1, 12 (1967); family relationships, Prince v. Massachusetts, 321 U.S. 158, 166 (1944). Repeating the above descriptive language from Roe and saying further: "the constitutionally protected privacy of family, marriage, motherhood, procreation, and child rearing is not just concerned with a particular place, but with a protected intimate relationship. Such protected privacy extends to the doctor's office, the hospital, the hotel room, or as otherwise required to safeguard the right to intimacy involved." Paris Adult Theatre v. Slaton, 413 U.S. 49, 66 n.13 (1973). In Eisenstadt v. Baird, 405 U.S. 438 (1972), the court had declined to extend the Griswold principle to the unmarried on privacy grounds, relying on an equal protection analysis instead. Roe v. Wade, 410 U.S. 113, 152 (1973). What is apparent from the Court's approach in these cases is that its concept of privacy is descriptive rather than analytical, making difficult an assessment of the potential of the doctrine. Privacy as a concept appears to encompass at least two different but related aspects. First, it relates to the right or the ability of individuals to determine how much and what information about themselves is to be revealed to others. Second, it relates to the idea of autonomy, the freedom of individuals to perform or not perform certain acts or subject themselves to certain experiences.

Governmental commands to do or not to do something may well implicate one or the other or both of these aspects, and judicial decision about the validity of such governmental commands must necessarily be informed by use of an analytical framework balancing the governmental interests against the individual interests in maintaining freedom in one or both aspects of privacy. That framework cannot now be constructed on the basis of the Court's decided cases. Griswold v. Connecticut, voiding a state statute proscribing the use of contraceptives, seems primarily to be

based upon a judicial concept of privacy flowing from the first aspect of privacy described above. 381 U.S. 479 (1965). That is, the predominant concern flowing through the several opinions is the threat of forced disclosure about the private and intimate lives of persons through the pervasive surveillance and investigative efforts that would be needed to enforce such a law; moreover, the concern was not limited to the outward pressures upon the confines of such provisions as the Fourth Amendment's search and seizure clause, but extended to techniques that would have been within the range of permissible investigation. Subsequent cases, however, have returned to Fourth and Fifth Amendment principles to regulate official invasions of privacy.

Evidently, then, the fundamental right of privacy that is protected by the due process clause is one functionally related to "family, marriage, motherhood, procreation, and child rearing."

Here, Tim, because Erika stayed some nights ago at least a year before this occurred, he is still subjected to the harsher penalties of domestic violence because of a lack of clear definition of household member. Similarly, the extent to which governmental regulation of the sexual activities of minors is subject to constitutional scrutiny is of great and continuing importance. Analysis of these questions is hampered because the Court has not told us what about the particular facets of human relationships marriage, family, procreation gives rise to a protected liberty and what does not, and how indeed these factors vary significantly enough from other human relationships to result in differing constitutional treatment. The Court's observation in the abortion cases ``that only personal rights that can be deemed `fundamental' are included in this guarantee of personal privacy,'' occasioning justification by a ``compelling'' interest. Terms the Supreme Court significantly restricted its equal protection doctrine of ``fundamental'' interests "compelling"' interest justification by holding that the "key" to discovering whether an interest or a relationship is a "fundamental'" one is whether it is ``explicitly or implicitly guaranteed by the Constitution."

Bowers v. Hardwick, 478 U.S. 186, 191, 106 S.Ct. 2841 1986).

Because this protection is now settled to be a "liberty" which the due process clause includes, the analytical validity of denominating the particular right or interest as an element of privacy rather than as an element of "liberty" seems open to question. While the "privacy'" basis of autonomy seems to be definitionally based, the Court's drawing on the line of cases since Meyer and Pierce, Meyer v. Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters, 268 U.S. 510 (1928) has "established that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition." Moore v. City of East Cleveland, 431 U.S. 494, 503 (1977) (plurality). Continuing the limitation of the right of privacy to family-related activities is Bowers v. Hardwick, 478 U.S. 186 (1986). Recognition of the protected "liberty" of the familial relationship affords the Court a principled and doctrinal basis of review of governmental regulations that adversely impact upon the ability to enter into the relationship, to maintain it, to terminate it, and to resolve conflicts within the relationship. This liberty, unlike the interest in property which has its source in statutory law, springs from the base of "intrinsic human rights, as they have been understood in 'this Nation's history and tradition.'" Smith v. Organization of Foster Families, 431 U.S. 816, 845 (1977).

The trial testimony from Erika was that she met Tim on a dating app in Facebook in August of 2018. She testified that she owns a home in Red Bank that she moved out of and into the home of her uncle in West Columbia. She claims to have lived with Tim in 2019 from January to June and moved out after the relationship ended. On cross-examination Erika admitted to never changing her address with the DMV, never received one piece of mail, could not state the actual address of Tim's residence. Tim testified that Erika stayed at his house for a period of two weeks prior to moving in with her uncle. In closing arguments, the State gives examples of living somewhere. The State says that a person can have two domiciles and uses examples of college

students and kids of divorced parents.

The arguments made by defense counsel center around the statutory definition of cohabitate. There was no such definition found, and counsel sought reliance and guidance amongst the domestic relations codes of law.[3] The State has a similar challenge defining the term and even cites to a 1963 divorce case. The court engages in a discussion of habitat of animals and humans so the word must not be vague.

Being of fundamental importance, the familial relationship is ordinarily subject only to regulation that can survive rigorous judicial scrutiny, although "reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed." Zablocki v. Redhail, 434 U.S. 374, 386 (1978). Recent decisions cast light in all areas of the family relationship. Because the right to marry is a fundamental right protected by the due process clause, Loving v. Virginia, 388 U.S. 1, 12 (1967); Griswold v. Connecticut, 381 U.S. 479, 486 (1965); Cleveland Bd. of Education v. LaFleur, 414 U.S. 632, 639-40 (1974); Zablocki v. Redhail, 434 U.S. 374, 383-87 (1978). There is a constitutional right to live together as a family, one not limited to the nuclear family. "If a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest, I should have little doubt that the State would have intruded impermissibly on 'the private realm of family life which the state cannot enter.'" Smith v. Organization of Foster Families, 431 U.S. 816, 862±63 (1977) (Justice Stewart concurring), cited with approval in Quilloin v. Walcott, 434 U.S. 246, 255 (1978). Thus, a city ordinance which zoned for single family occupancy and so defined ``family'' as to bar extended family relationships was found to violate the due process clause as applied to prevent a grandmother from having in her household two grandchildren of different children.

[3] Noting there was a reference made to 90 days continuous cohabitation.

Moore v. City of East Cleveland, 431 U.S. 494 (1977) (plurality opinion). The fifth vote, decisive to the invalidity of the ordinance, was on other grounds. Id. at 513. And the concept of "family" may extend beyond the biological, blood relationship of extended families to the situation of foster families, although the Court has acknowledged that such a claim to constitutionally protected liberty interests raises complex and novel questions. Smith v. Organization of Foster Families, 431 U.S. 816 (1977). The natural family, the Court observed, did not have its source in statutory law, whereas the ties that develop between foster parent and foster child have their origins in an arrangement which the State brought about. But some liberty interests do arise from positive law, although the expectations and entitlements are thereby limited as well by state law. And such a liberty interest may not be recognized without derogating from the substantive liberty interests of the natural parents. Thus, the interest of foster parents must be quite limited and attenuated, but Smith does not define what it is. Id. at 842-47.

The natural family, the Court observed, did not have its source in statutory law, whereas the ties that develop between foster parent and foster child have their origins in an arrangement which the State brought about. But some liberty interests do arise from positive law, although the expectations and entitlements are thereby limited as well by state law. And such a liberty interest may not be recognized without derogating from the substantive liberty interests of the natural parents. Thus, the interest of foster parents must be quite limited and attenuated, but Smith does not define what it is. Id. at 842-47. See Quilloin v. Walcott, 434 U.S. 246 (1978).

Under South Carolina law for someone to be arrested or prosecuted for Criminal Domestic Violence (CDV) it is necessary that the alleged victim be a household member. As defined by South Carolina law a household member is a: spouse, former spouse, persons who currently live together or have formerly lived together (cohabitate); and persons who have a child together. S.C. Code Ann. §16-25-10. Not all dating, sexual or boyfriend\girlfriend relationships meet the legal

definition of household member. Cohabitation has been defined as "[t]he fact or state of living together, especially as partners in life, usually with the suggestion of sexual relations." Black's Law Dictionary 7th ed. at 254.

Unless the household member status exists between the defendant and the alleged victim there is no domestic violence law violation. Instead, there may be an assault (misdemeanor or felony) or no crime at all. This couple was clearly a couple who were only casually dating.
The police arrived late at night or early in the morning and assumed that the couple was cohabiting. Here, Tim and Erika were previously only occasionally spending the night with each other and still maintained separate legal residences and as of the time of this incident, did not even spend the night together.

The overbreadth doctrine "is predicated on the sensitive nature of protected expression: persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions by a statute susceptible of application to protected expression." New York v. Ferber, 458 U.S. 747, 768 (1982). "[F]or this reason," the Court permits "persons to attack overly broad statutes even though the conduct of the person making the attack is clearly unprotected and could be proscribed by a law drawn with requisite specificity." Id. at 769. "[A] statute is facially invalid if it prohibits a substantial amount of protected speech." United States v. Williams, 553 U.S. 285, 292 (2008).

The doctrine seeks to strike a balance between competing social costs. On the one hand, the threat of enforcement of an overbroad law deters people from engaging in constitutionally of the right to date certain people. On the other hand, invalidating a law that in some of its applications is perfectly constitutional - particularly a law directed at conduct so antisocial that it has

been made criminal - has obvious harmful effects. Id. at 292-293.

In light of the unconstitutionally overbroad statute, the entire statute must be rendered a nullity. Virginia v. Hicks, 539 U.S. 113, 118-119 (2003). "The showing that a law punishes a substantial amount of protected free speech, judged in relation to the statute's plainly legitimate · sweep, suffices to invalidate *all* enforcement of that law, until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression." Id. (internal quotations and citations omitted)(emphasis in original). Appellant's convictions under the statute may not stand due to the unconstitutional, and therefore, unenforceable, nature of the statute.

II. In violation of Appellant's right to due process of law, the trial judge erred in failing to instruct the jury regarding self-defense where evidence was presented of self-defense the jury required instructions regarding how to analyze such evidence, and instructions were necessary to ensure the burden of proof remained on the state in light of the presentation of self-defense evidence.

Relevant facts

During the trial, the defense presented evidence that Tim was assaulted by Erika and reacted to that assault by defending himself while inside his own home. It was no surprise then when defense counsel requested the charge. However, Judge Newman refused to charge the jury as to how to use the evidence of self-defense that has been presented and argued to them.

Discussion

Due Process requires the prosecution prove every element of the charged offense beyond a reasonable doubt - including the element that the defendant is the actual perpetrator. In re Winship. 397 U.S. 358 (1970); Todd v. State, 355 S.C. 396,400, 585 S.E.2d 305, 307 (2003); State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000); State v. Lane, 406 S.C. 118, 749 S.E.2d 165 (Ct. App. 2013). The law to be charged is determined from the evidence presented at trial. State v. Gourdine, 322 S.C. 396,398,472 S.E.2d 241,241 (1996); see also State v. Knoten, 347 S.C. 296,

302, 555 S.E.2d 391, 394 (2001). "The office and purpose of instructions are to enlighten the jury and to aid them in arriving at a correct verdict." State v. Hewitt, 205 S.C. 207, 31 S.E.2d 257, 259 (1944). "If there is any evidence to support a jury charge, the trial judge should grant the requested charge. The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law." State v. Santiago, 370 S.C. 153,159,634 S.E.2d 23, 26 (Ct. App. 2006). When a requested instruction is supported by the evidence and correctly states the applicable law, the judge is duty-bound to give it. Brown v. Smalls, 325 S.C. 547, 554-555, 481 S.E.2d 444, 448 (Ct. App. 1997)(citing Singletary v. South Carolina Dep't of Educ., 316 S.C. 153,447 S.E.2d 231 (Ct. App. 1994)); see also State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (1996). "Where a request to charge is timely made and involves a controlling legal principle, a refusal by the trial judge to charge the request constitutes reversible error." Id. at 555,481 S.E.2d at 448; see also State v. Burris, 334 S.C. 256,262,513 S.E.2d 104, 108 (1999) (holding that a "trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence").

The trial court must charge self-defense if there is any evidence in the record "from which it can be reasonably inferred" that the accused acted in self-defense. State v. Burkhart, 350 S.C. 252, 260, 565 S.E.2d 298, 302 (2002); State v. Wigington, 375 S.C. 25, 649 S.E.2d 185, 188 (Ct. App. 2007). To establish self-defense, four elements must be present: (1) the defendant must be without fault 1n bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) 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, or if the defendant was actually 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; and (4) the defendant had no other probable means of avoiding the danger of loosing his own life or sustaining bodily injury than to act as he did in the particular instance." State v. Hendrix, 270 S.C. 653, 657-658, 244 S.E.2d 503, 505-506 (1978). South Carolina Supreme Court has long held that a trial judge has the responsibility to craft a self-defense charge tailored to the facts of a case. State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011); State v. Fuller, 297 S.C. 440, 444-45, 377 S.E.2d 328, 331 (1989). As recognized in Fuller, there is a "body of common law self-defense" and trial judges must "consider the facts and circumstances of the case at bar in order to fashion an appropriate charge." Fuller, 297 S.C. at 443, 377 S.E.2d at 330.

In Fuller, the defendant solicited a prostitute. Id. at 441,377 S.E.2d at 329. However, when the pair arrived at the prostitute's trailer, they discovered it was occupied. The defendant then left. Id. When the defendant later returned to the prostitute's trailer, he found a car driven by a white woman was blocking the road. Id. The defendant asked her to move her car. Id. Two men approached the defendant's car and asked him "what he was 'trying to do to that white lady.'" Id. One of the men used a racial slur and grabbed the defendant by the throat. Id. at 441,377 S.E.2d at 329-30.

The defendant fired a warning shot allowing him to drive away. Unbeknownst to the defendant, the street was a dead end. Id. at 442, 377 S.E.2d at 330. Due to the men blocking his escape, the defendant ultimately crashed his car against a rail. Id. The two men yelled, "'we're going to take care of you.'" Id. The defendant thought he saw something shiny in one of the men's hands and fired four shots at them, killing both. Id. No gun was found on the men. Id.

The trial judge only instructed the jury on the basic elements of self-defense. Id. The Court held it was error to only give the general charge when the defendant "repeatedly requested additional charges." Id. at 443, 377 S.E.2d at 330. The Court found the trial judge erred by not

giving three specific charges on self-defense that further·explained the principles in the general charge. First, the trial judge failed to charge the jury that the defendant had the right to act on appearances. Id. at 443-44, 377 S.E.2d at 330-31(citing State v. Jackson, 277 S.C. 271, 87 S.E.2d 681 (1955)). Second, the trial judge failed to charge the jury that "words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense." Id. (citing State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951)). Third, the trial judge failed to charge that an individual has no duty to retreat "if by doing so he would increase his danger of being killed or suffering serious bodily injury." Id. (citing State v. Hardin, 114 S.C. 280, 103 S.E. 557 (1920)).

The South Carolina Supreme Court held a trial judge erred in failing to charge on the specific elements of self-defense that were applicable to the defendant's theory in State v. Day, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000). As stated by the Court, "[a] self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues raised by the defendant." Id. The Court found the instruction given in Day incomplete because the trial judge failed to instruct the jury that the defendant had the right to judge the conduct of the deceased more harshly than otherwise because of the deceased's drug consumption. Id.; see also State v. Hendrix, 270 S.C. 653, 660-661, 244 S.E.2d 503,507 (1978) (including the intoxication of the deceased under its analysis of the imminent peril element of self-defense and stating intoxication would provide a basis for the defendant to judge the conduct of his adversary more harshly than otherwise).

The trial judge erred in refusing to instruct the jury regarding third party guilt where Appellant presented evidence of the guilt of self-defense and the instruction was necessary to ensure the jury knew how to evaluate the evidence, particularly regarding placing the burden of proof on the prosecution. The requested instruction served to explain the type of evidence presented. Additionally, the requested instruction would ensure the jury did not shift the burden of proof to the defendant considering the

evidence presented. Due to the presentation of self-defense evidence, it was necessary to ensure the jury understood their job during deliberations.

CONCLUSION

Appellant respectfully requests this Court reverse the rulings by the trial court and remand his case for a new trial.

Respectfully submitted,

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Court of General Sessions

Clifton Newman, Circuit Court Judge
Appellate Case No.: 2022-001603

THE STATE,

RESPONDENT,

v.

TIMOTHY MATTHEW VOEGELI ,

APPELLANT.

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."

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