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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL D. ROLDAN,

APPELLANT

APPELLATE CASE NO. 2023-001366

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW 3

ARGUMENT

The trial judge erred when re-instructing the jury on the elements of self-defense by requiring imminent danger of death or serious bodily injury and a duty to retreat when Petitioner responded with non-deadly force. 4

CONCLUSION 8

PETITION TO BE RELIEVED AS COUNSEL 9

TABLE OF AUTHORITIES

Cases

State v. Abbott, 174 A.2d 881 (N.J. 1961) 5

State v. Barksdale, 311 S.C. 210, 428 S.E.2d 498, (Ct. App. 1993) 7

State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000) 3

State v. Mattison, 388 S.C. 469, 697 S.E.2d 578 (2010) 3

State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (Ct. App. 2012) 3

State v. Wood, 1 S.C. L. (1 Bay) 351 (1794) 6

Statutes

Model Penal Code § 3.04 (1962) 6

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err when re-instructing the jury on the elements of self-defense by requiring imminent danger of death or serious bodily injury and a duty to retreat when Petitioner responded with non-deadly force?

STATEMENT OF THE CASE

In August of 2022, the Beaufort County Grand Jury indicted Appellant, Michael Damian Roldan, for assault and battery second degree, indictment #2022-GS-07-00847. (R. p. 269). On August 14, 2023, Appellant proceeded to jury trial before the Honorable Robert J. Bonds. Nicholas C. Kanaly represented Appellant at trial. Hannah P. Kidd prosecuted the case. The jury found Appellant guilty. Judge Bonds sentenced Appellant to thirty-six (36) months provided that upon the service of twenty-four (24) months the balance was suspended with probation for twelve (12) months. (Sentencing Sheet, R. p. 271). A timely notice of intent to appeal was served on August 21, 2023. This appeal follows.

STANDARD OF REVIEW

" 'A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (internal citations omitted). "The law to be charged must be determined from the evidence presented at trial.' State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000) (internal citations omitted); see also Mattison, 388 S.C. at 478, 697 S.E.2d at 583 (stating appellate courts should 'consider the court's jury charge as a whole in light of the evidence and issues presented at trial'). When reviewing the circuit court's refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant. Cole, 338 S.C. at 101, 525 S.E.2d at 512–13."

State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608–09 (Ct. App. 2012)

ARGUMENT

The trial judge erred when re-instructing the jury on the elements of self-defense by requiring imminent danger of death or serious bodily injury and a duty to retreat when Petitioner responded with non-deadly force.

On the evening of May 22, 2022, Appellant went to get some items from his car that was parked near Ramona Coleman's house. (R. p. 183, lines 1-6). Appellant and Ms. Coleman were previously in a relationship[1]. (R. p. 183, lines 1-6). Appellant heard someone inside of a camper on the property talking about him and his family. (R. p. 183, lines 6-15). Appellant went to the camper, opened the door, walked in and saw Ms. Coleman and Terry Singleton. (R. p. 183, lines 16-19). Appellant testified that when Ms. Coleman said she was going to call 911, Singleton told her not to call 911 and said, "I'm going to give Michael [Appellant] what he want." R. p. 184, lines 6-9). Appellant took Singleton's statement as a threat. (R. p. 184, lines 14-23). Appellant testified that when he asked Singleton what he meant, "He walked towards me like he was coming to attack me, and so I defended myself." (R. p. 187, lines 10-11).

Ms. Coleman testified, "Well, they had – they exchanged words, and I told Michael he needed to leave, which he didn't leave. And then, Terry was just saying something to him, and I told them they need to stop, but at the moment everything happened so fast, Michael hit Terry." R. p. 133, lines 14-19). Singleton denied threatening Appellant. (R. p. 110, lines 9-12). Singleton's jaw was fractured in two places. (R. p. 164, line 23 – p. 165, lines 1-2).

During the jury charge the judge instructed on the law of self-defense. (R. p. 232, line 2 – p. 233, 234, lines 1-16). Initially. there was no objection to the charge. (R. p. 239, line 18- p. 240, lines 1-6). The jury then returned with a question about the elements of self-defense. (R. p.

[1] Appellant had been given a no trespass notice for the property in December of 2021. (R. p. 63, lines 3-21).

242, line 20 – p. 243, lines 1-8). The jury's question was marked as court's exhibit #2. (R. p. 243, line 9, R. p. 268). Counsel for Appellant told the judge, "Your Honor, I would take [sic] about the duty to retreat as per *State versus Williams*. That case cites that duty to retreat is not required when force used is non-deadly." (R. p. 245, lines 12-15). The judge declined to modify the original charge. (R. p. 245, line 16 – p. 246, lines 1-3). Instead, the judge re-charged the jury on the law of self-defense. (R. p. 247, line 13 – p. 248, 249, 250, lines 1-12). The judge then asked, "All right, thank you. I mean, I understand each side had objectives [sic] to what I was doing, but as to what I read, any objections to that, Solicitor?" (R. p. 250, lines 15-18). Neither the State nor the defense objected. The jury found Appellant guilty.

The trial judge erred when re-instructing the jury on the elements of self-defense by requiring imminent danger of death or serious bodily injury and a duty to retreat when Petitioner responded with non-deadly force. In McAninch, Fairey, and Coggiola, THE CRIMINAL LAW OF SOUTH CAROLINA (6th Ed. 2013) p. 620, the authors wrote:

> The defense of self-defense is much less readily available when a person asserting the defense responds with deadly force than when he responds with non-deadly force. Most reported decisions in this jurisdiction deal with deadly force but read as though they are laying down blanket rules for the defense of self-defense generally. Yet thoughtful analysis reveals that the two situations differ in two significant respects: first, one need not anticipate *serious* bodily harm before responding with non-deadly force; and, second, one need not retreat before responding with non-deadly force.

The authors acknowledge that there are no reported South Carolina cases directly on point holding that the duty to retreat does not arise or that *serious* bodily injury need not be anticipated when self-defense is attempted with non-deadly force but note substantial authority in other jurisdictions and cite to State v. Abbott, 174 A.2d 881, 885 (N.J. 1961) and the Model Penal Code § 3.04 (1962). The authors additionally cite State v. Wood, 1 S.C. L. (1 Bay) 351 (1794), writing, "As the Court observed, for every assault it was not 'reasonable that a man should be

banged with a cudgel. That a small blow will not justify an enormous beating . . . .' Id. Nonetheless the clear implication of the case is that one need not submit to every assault either. A person is entitled to defend against reasonably anticipated unlawful bodily harm even though it would not be serious, but in defending, he must respond proportionally."

The note from the jury read, "Will you provide all 4 pillars that must be met for self-defense? In writing Do all four pillars need to be met? Does doubt of one pillar or more negate the self-defense claim?" (Court's exhibit #2, R. p. 268). It appears that the jury did not understand the judge's instruction that, "The State has the burden of disproving self-defense by proof beyond a reasonable doubt." (R. p. 232, lines 12-13). In response to the questions, the judge recharged the jury on the law of self-defense.

In both the original charge and the re-charge on self-defense the judge told the jury, "Imminent danger, the second element of self-defense is that the Defendant was actually in imminent danger of death or serious bodily injury or that the Defendant was actually in imminent danger of death or serious bodily injury or that the Defendant actually believed that he was in imminent danger of death or serious bodily injury." (R. p. 233, lines 12-18; R. p. 248, line 22 – p. 249, line 1). The judge additionally instructed the jury that, "Third, if the Defendant was actually I imminent bodily danger, it must be shown that the circumstances would warrant a person of ordinary firmness and courage to strike the fatal blow to prevent death of serious bodily injury. If the Defendant believed he was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would have had the same belief." (R. p. 233, line 19 – p. 234, lines 1-3; R. p. 249, lines 2-11). The judge told the jury, "And finally, that the Defendant had no other probable means of

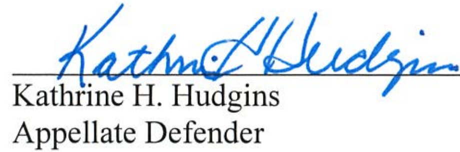
avoiding the danger of losing his own life or sustaining serious bodily injury, than to act as he in in this particular incident." (R. p. 234, lines 12-16; R. p. 249, lines 20-25).

The charge given applies with the use of deadly force when acting in self-defense. Appellant in the present case did not use deadly force when acting in self-defense. Instead, Appellant used **non-deadly** force when acting in self-defense. Belief in imminent danger of losing life or sustaining serious bodily injury and a duty to retreat should not apply when a jury is deciding if **non-deadly** force in self-defense is justified. The judge erred in refusing to re-instruct the jury on the correct law as it applies to the use of non-deadly force in self-defense.

The present case is distinguished from State v. Barksdale, 311 S.C. 210, 428 S.E.2d 498, (Ct. App. 1993), where the jury requested a recharge on the elements of self-defense, the judge recharged the jury on self-defense but McKinney then requested a charge that any doubt be resolved in favor of him. The judge refused the request because it had already charged the jury on reasonable doubt. The Court of Appeals ruled, "We hold the overall charge on self-defense was adequate. Moreover, the trial judge answered the jury's inquiry in his recharge." Barksdale, 311 S.C. at 217, 428 S.E.2d at 502. In contrast, in the present case the overall charge on self-defense, as it relates to the use of **non-deadly** force in self-defense was not adequate. Appellant was prejudiced by the inadequate jury charge on self-defense involving non-deadly force.

CONCLUSION

Based on the above argument, this Court should reverse the conviction and remand the case for a new trial.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of March, 2024.

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APPELLATE CASE NO. 2023-001366

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael D. Roldan states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Robert J. Bonds, which was held on August 14, 2023, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, she asks the Court to relieve her as counsel for Michael D. Roldan.

Respectfully Submitted,

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

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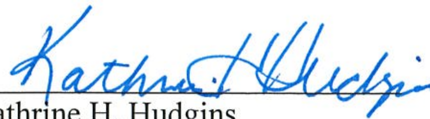
DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True-billed indictment and sentencing sheet;
(2) Trial Transcript August 14, 2023 Vol 1 pages 1-77;
(3) Trial Transcript August 15, 2023, Vol 2 pages 1-189;
(4) Court's Exhibit #2 – Jury Note.

I certify that this designation contains no matter which is irrelevant to this appeal.



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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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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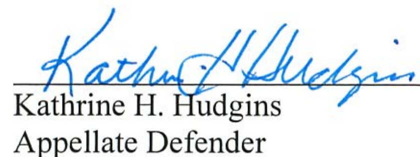
CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Michael D. Roldan, #345901, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 28th day of March, 2024.



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