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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of General Sessions

Paul M. Burch, Circuit Court Judge

Appellate Case No. 2023-001257

THE STATE,

Respondent,

v.

ANTONIO ANDERSON,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Appellant's Issue Statement

Whether the court erred by refusing to instruct the jury on self-defense, reasoning that *State v. Lockamy*, 369 S.C. 378, 631 S.E.2d 555 (Ct. App. 2006), controlled, and that Appellant could have retreated to avoid the danger where the decedent was a much larger man who had terrorized and threatened Appellant with physical harm for a long time, was doing so again at the time of the fatal encounter, and where Appellant was reasonable to think the aggressive, larger decedent may have been armed during the fatal encounter?

Respondent's Counterstatement

Whether the trial court erred in denying Appellant's request for a self-defense jury charge given that Appellant admitted that he had other means of avoiding any danger posed by Victim.

STATEMENT OF THE CASE

On December 5, 2017, a Marlboro County grand jury indicted Appellant for murder and for possession of a weapon during the commission of a violent crime. (Indictments). On July 24-26, 2023, Appellant proceeded to a jury trial before the Honorable Paul M. Burch. (Tr. 1).

At trial, Scott Ryan Bowen, formerly an officer with the McColl Police Department, testified that he responded to a call at a Stop N Shop gas station on August 21, 2017. (Tr. 40). Officer Bowen testified that the call was initially for a disturbance but became a call to respond to a shooting before he arrived. (Tr. 41). As Officer Bowen pulled into the parking lot of the gas station, he saw Appellant standing near a vehicle. (Tr. 41). When Officer Bowen parked, Appellant approached and placed a 9mm handgun on the hood of the car. (Tr. 41). Appellant also placed the gun's magazine on the hood of the car. (Tr. 41). Officer Bowen exited his vehicle, placed Appellant in handcuffs, moved Appellant inside the patrol car, and secured the weapon. (Tr. 41). Officer Bowen stated that he knew generally who Appellant was from around town. (Tr. 41).

Officer Bowen testified that he could see Alonzo Lampkin ("Victim") inside the gas station store after he put Appellant into the patrol car. (Tr. 43). He went inside to check on Victim and observed that Victim had one gunshot wound to his chest. (Tr. 44). EMS transported Victim to the hospital via helicopter. (Tr. 44). Officer Bowen never saw a weapon in Victim's possession. (Tr. 44).

Kimberly Marie Williams, a clerk at the gas station, testified that she worked at the gas station on the night of the shooting. (Tr. 47-48). She knew generally of Appellant but did not know Victim. (Tr. 48). Williams stated that Appellant stopped by the gas station store multiple times on the day of the shooting and that he stopped the last time to purchase a drink and a bag of chips. (Tr. 49). According to Williams, when Appellant came to the counter to pay for his items,

Victim came in and "it just went from there." (Tr. 49). She did not know who spoke first but recalled that Appellant and Victim began arguing. (Tr. 49). Williams called over to a coworker to try calming the situation down. (Tr. 50). According to Williams, the coworker got between the two men and got Victim to leave the store. (Tr. 50). After Victim left the store, Appellant paid for his items and left the store. (Tr. 50).

Williams continued to watch both men after they left the store and observed that they resumed arguing outside but neither punched the other. (Tr. 50). Shortly thereafter, Appellant shot Victim. (Tr. 51). Williams heard only one gunshot. (Tr. 51). Williams did not personally see Appellant with a weapon. (Tr. 55). She confirmed that the gas station had surveillance cameras and that State's Exhibit 8, which contained video footage from multiple surveillance cameras and still shots taken from some of the video footage, accurately reflected what happened that night. (Tr. 51-52; State's Exhibit 8).[1]

Sara J. Milligan, Victim's girlfriend at the time of the shooting, testified that she and Victim had been together for less than three months at the time of the shooting. (Tr. 58-59). She met Victim through a mutual friend, Courtney Freeman, while Victim was dating his ex-girlfriend, Jennifer Roller. (Tr. 58-59). Milligan stated she knew Appellant and that he worked on cars, but she did not know him well. (Tr. 59). Milligan discussed an incident that occurred prior to the day of the shooting where she, Victim, and Freeman were talking in the backyard at Victim's mother's house. (Tr. 61). While they were chatting, Appellant came over from his mother's house, which was a neighboring house, with a gun. (Tr. 62). Appellant "started fussing" and pointed his gun at Victim. (Tr. 62). Shortly thereafter, Appellant's mother came out and made Appellant leave. (Tr.

[1] State's Exhibit 8 contains 153 video clips from fourteen different surveillance cameras and four still shots from one of the video clips.

62). According to Milligan, Appellant engaged in a sexual relationship with Roller while Victim had been in prison, which Victim took issue with because Appellant and Victim were previously friends. (Tr. 63).

On the night of the shooting, Milligan and Victim were in McColl to pick up her mother. (Tr. 64). She was pregnant with Victim's child at the time. (Tr. 64). Immediately upon pulling into the gas station, she noticed Appellant was also in the parking lot. (Tr. 65). She did not expect any trouble from Appellant at that time because the gas station was a public place. (Tr. 65). Victim went into the store while Milligan stayed in the car with her children. (Tr. 66). However, when she saw Appellant and Victim "about to fight" in the store, she left her children in the car and went inside to remove Victim from the situation. (Tr. 66). Milligan successfully removed Victim from the store. (Tr. 66). When Victim was getting back into the car, Appellant came out of the store "still saying something," which caused Victim to get out of the car. (Tr. 66). Appellant and Victim started arguing and "wanting to fight," so Milligan got between them. (Tr. 67). She went inside the store to get a phone and call 911. (Tr. 67). After she came back outside, she got between Appellant and Victim while on the phone with 911. (Tr. 67-68). She recalled telling the 911 operator to send the police, then hearing a gunshot, followed by seeing her three-year-old child, who had gotten out of the car. (Tr. 68-69). After the shooting, she took her children inside the store and requested that the 911 operator send an ambulance. (Tr. 69). She confirmed that Victim did not have a weapon at any point that night. (Tr. 70).

Courtney Freeman, Appellant's friend, testified that she knew Victim through his ex-girlfriend, Jennifer Roller. (Tr. 83). When Victim got out of prison, he stayed with Roller. (Tr. 83). Victim and Roller had a falling out around the same time that Victim began talking to Milligan. (Tr. 83). Victim and Milligan met at Freeman's apartment, which was next door to

Roller's apartment. (Tr. 83). Freeman testified about the altercation between Victim and Appellant that occurred at their mothers' houses. (Tr. 85). Freeman stated that she spoke to Appellant, after which Appellant and Victim started arguing. (Tr. 86). At one point during their argument, Victim had a brick and Appellant had a pipe which he exchanged for a gun at some point. (Tr. 87). Appellant's mother and brother came outside and took Appellant into his mother's house. (Tr. 88). The only weapon she saw Victim with that day was a brick. (Tr. 90). Freeman was not present at the gas station shooting. (Tr. 90).

Robert Anthony Tryon, formerly an investigator with the McColl Police Department, testified that he responded to the shooting along with some of the Marlboro County Sheriff's Office deputies. (Tr. 96). He knew that the gas station had video surveillance, and he obtained access to the surveillance recordings. (Tr. 96-97; State's Exhibit 8). After reading Appellant his *Miranda*[2] rights, he conducted an interview with Appellant. (Tr. 97-98).

During the interview, Appellant told Investigator Tryon that he was at the gas station store when Victim arrived. (Tr. 99). Appellant claimed that Victim began using profanity and threatening him, so the two engaged in a verbal altercation, which Appellant thought might get physical. (Tr. 99). Appellant contended that the verbal altercation continued into the parking lot, where Victim "coerced him." (Tr. 99). Appellant claimed that Victim's coercion is why he shot Victim. (Tr. 99).

After Investigator Tryon viewed the gas station's surveillance videos, he told Appellant that Appellant's story did not match the video footage and that Appellant needed to be honest with him. (Tr. 99). Appellant then stated that he and Victim were initially friends for about ten years and that their mothers were good friends. (Tr. 100). Appellant claimed to have so much respect

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

for Victim's mother that he drove her to the prison to pick up Victim at the end of Victim's incarceration. (Tr. 100). On a day prior to the shooting, Appellant and Victim argued over some car parts that Appellant thought Victim and a third party stole from him. (Tr. 100). Appellant briefly discussed an incident where Victim threatened him with a rock or something similar. (Tr. 100).

Investigator Tryon stated that Appellant never saw Victim with a weapon at the gas station. (Tr. 101). According to Investigator Tryon, Appellant shot Victim because Appellant was "tired of [Victim] bullying him and running up on him." (Tr. 101). Appellant did not get law enforcement involved in prior altercations, none of which involved physical contact between the two men. (Tr. 101).

While watching the videos during trial, Investigator Tryon confirmed that Appellant spoke first when Victim entered the gas station store, which was followed by back-and-forth banter between the two. (Tr. 102-03). Investigator Tryon stated that Appellant told Victim not to leave the store as Victim walked toward the exit. (Tr. 104). The video showed Victim leaving and going to his car. (Tr. 104). Shortly thereafter, Appellant left the store, walked straight to his car, opened the driver's door, retrieved a firearm, and loaded a round into the chamber. (Tr. 104). Appellant then approached Victim by going around the front of Victim's car. (Tr. 104). The two began another verbal altercation while Appellant was holding a firearm. (Tr. 104). At one point, Appellant returned to his car for a second time to return the firearm. (Tr. 105). He subsequently returned to his car for a third time to again retrieve the firearm. (Tr. 105). Appellant then shot Victim. (Tr. 105).

Investigator Tryon confirmed that Appellant had at least three opportunities to enter his vehicle and drive away from the gas station. (Tr. 106). He also confirmed that the video evidence

showed that Victim did not have a weapon and that law enforcement did not find a weapon on Victim's person or in his car. (Tr. 106). Investigator Tryon testified that Victim was physically larger than Appellant by approximately six inches in height and at least sixty pounds in weight. (Tr. 108-09).

Timothy E. Brown, the Marlboro County Coroner, testified that Victim had a single gunshot wound to the chest. (Tr. 115, 118). Coroner Brown stated that Victim's cause of death was exsanguination, or bleeding to death, caused by the gunshot wound. (Tr. 118). He ruled that the manner of death was homicide. (Tr. 119).

Renee Cummings, Appellant's ex-girlfriend, testified that she was dating Appellant at the time of the shooting and knew Victim through Appellant. (Tr. 125). She stated that Appellant and Victim were friends before Victim was released from prison. (Tr. 126). Cummings testified that after Victim was released, he would "be hollering at [Appellant] from his mother's house" while Appellant was working on cars and that the two would go "back and forth, cussing and carrying on." (Tr. 127). She claimed Victim started the yelling matches. (Tr. 127). According to Cummings, Appellant eventually had enough and moved his work to McColl instead of his mother's house in Bennettsville. (Tr. 128-29). Cummings stated that Victim "followed" Appellant to McColl. (Tr. 129). Cummings testified that Appellant could not work in McColl because Victim

> was always out there running his mouth[,] trying to start with [Appellant,] just carrying on, cussing and showing off with a bunch of friends, showboating with a bunch of friends, he's gonna "F" him up, he's gonna do this, he's gonna do that, until one day we come home—I came home, [Appellant] was standing in the door, [Victim] had a couple of guys over there and he was gonna do this and he was gonna do that, and he had a gun.

(Tr. 129). She called Appellant's brother to take Appellant to their mother's house in Bennettsville, and she subsequently filed a police report about the situation. (Tr. 130).

Teri Anderson, Appellant's mother, testified that Appellant lived both at her house and at Renee's house at the time of the shooting. (Tr. 140-41). She stated Victim was her neighbor and the problems between Victim and Appellant began shortly after Victim was released from prison in March 2017. (Tr. 142-43). About a month prior to the shooting, Appellant was working on his brother's car in Teri's backyard. (Tr. 143-44). Teri and her other son were outside when Freeman and Appellant began talking. (Tr. 143-44). Victim grabbed a cinderblock and ran from his mother's yard into her yard, yelling "M-f'er, I'm gonna kill you." (Tr. 143-44). Appellant quickly retrieved his gun. (Tr. 143-44). Teri and her other son calmed Appellant down and prevented any further escalation. (Tr. 143-44). Teri testified that Appellant and Victim argued "quite often" and Appellant stopped coming to her house because of Victim. (Tr. 145).

Appellant testified he had known Victim for about ten years. (Tr. 150). According to Appellant, Victim was different after he was released from prison and did not want to talk to Appellant. (Tr. 150-51). Appellant knew Victim to have guns. (Tr. 152). Appellant stated that Victim regularly threatened him at least once per week after Victim got out of prison, which made Appellant feel like his life was in danger. (Tr. 153). Due to the threats from Victim, Appellant moved his place of business from his mother's house in Bennettsville to McColl. (Tr. 154). Appellant confirmed that once when he was working on a car at his mother's house, Freeman stopped by to talk with him and Victim ran across the yard with a cinderblock. (Tr. 155). Appellant stated he pulled out his gun but did not point it at Victim because he did not want to hurt him. (Tr. 155).

Appellant discussed another interaction that occurred prior to the shooting. During this interaction, Appellant, his brother, and their mother were on the way back from Dillon. (Tr. 156). Appellant, who was driving, saw a white truck "rushing up real fast" behind his vehicle, so he sped

up. (Tr. 156). He then saw "two flashes" from the white truck, so he sped up again. (Tr. 156). He later confirmed that he believed these flashes to be gunshots. (Tr. 159). The day before the shooting, he saw what he believed to be the same white truck backed up to his house in McColl. (Tr. 156). He got his gun before attempting to figure out who was in the truck. (Tr. 156-57). When he approached the truck, he saw Victim with an assault rifle "fussin' and stuff." (Tr. 157). Appellant's neighbors came out and told Appellant to leave, so Appellant went inside his house, and Victim apparently left. (Tr. 157).

Appellant mentioned that at least once when he saw Victim driving down the road, Victim attempted to run him off the road. (Tr. 168).

On the day of the shooting, Appellant visited the gas station earlier in the day and returned to get a drink and some chips. (Tr. 169). When he parked and exited his vehicle, he saw Appellant pull into the gas station. (Tr. 170). Appellant and Victim made eye contact when Victim entered the store. (Tr. 170). Appellant testified that he did not feel like dealing with Victim that day; rather, he wanted to purchase his items and be on his way. (Tr. 170). He claimed to be scared for his life. (Tr. 171). Appellant confirmed that he and Victim got into a fight in the store. (Tr. 171). When he went to leave the store, Appellant saw Victim outside the store "staring there waiting for me." (Tr. 172). Appellant immediately got his gun from his car upon exiting the store because he "did not know what [Victim] had, usually every time [Victim would] come at [Appellant, Victim would] have a gun." (Tr. 172). Appellant again claimed to be scared for his life. (Tr. 172).

When asked why he shot Victim, Appellant stated:

> I don't know, everything just happened so fast. He just kept yelling' he's gonna kill me. Like I said, I didn't see nothin' but I didn't know what he had, to be honest.

(Tr. 174). Appellant claimed to be concerned that Victim would later shoot at his house while Appellant's children were there. (Tr. 174-75). Appellant denied having an affair with Roller while Victim was in prison. (Tr. 178).

Appellant confirmed that if he was scared and wanted to leave, he could have gotten in his car and left. (Tr. 180). He believed that if he had left the gas station instead of shooting Victim, then Victim would not have "stopped." (Tr. 180). Appellant confirmed that he did not see Victim in possession of a weapon on the night of the shooting. (Tr. 181).

After the defense rested, the trial court discussed jury charges with the parties. (Tr. 197). The record indicates that Appellant submitted a memorandum in support of a self-defense charge. (Tr. 197). The trial court heard from the State first regarding a potential self-defense charge. (Tr. 197). The State argued that Appellant did not meet the second element of self-defense—imminent danger of losing life or sustaining serious bodily injury. (Tr. 197). Appellant admitted during his testimony that he did not see Victim with a weapon and that there had been no physical contact between the two that night. (Tr. 197). The State asserted that Appellant did not show that a reasonably prudent person in a similar situation would have believed they were in imminent danger, meaning that the third element of self-defense had not been met. (Tr. 197). The State contended that the fourth element of self-defense also had not been met because Appellant failed to show he had no other probable means of avoiding the danger. (Tr. 198). Appellant had three separate instances, which he admitted during his testimony, where he could have left the scene without further escalation. (Tr. 198).

Appellant argued that he had shown multiple attempts to retreat in the months between Victim being released from prison and the shooting. (Tr. 199). He asserted that due to prior driving altercations between himself and Victim, Appellant was no safer on the road than he was standing

in the gas station parking lot. (Tr. 199). Appellant asserted that Victim was known to have weapons and Appellant did not know what Victim had on his person during their interactions at the gas station. (Tr. 200).

The State asserted that this case concerned mere words and threats but did not rise to actual contact between Appellant and Victim until Appellant shot Victim. (Tr. 201). Further, Appellant did not elicit testimony that Victim was driving or even in the white truck that allegedly shot at him while he was driving back from Dillon. (Tr. 201).

The trial court ruled that the fourth element of self-defense—that the defendant had no other probable means of avoiding the danger element—was not met. (Tr. 202). The trial court determined that Appellant had been able to get in his car and drive away at least three times prior to shooting Victim. (Tr. 202). The trial court declined to give a self-defense jury charge. (Tr. 202).

The jury found Appellant not guilty of murder, but did find him guilty of the lesser included offense of voluntary manslaughter. (Tr. 249). The jury also found Appellant guilty of possession of a weapon during the commission of a violent crime. (Tr. 249). The trial court sentenced Appellant to twenty-one years' imprisonment for voluntary manslaughter and a concurrent five years' imprisonment for possession of a weapon during the commission of a violent crime. (Tr. 259).

This appeal follows.

STANDARD OF REVIEW

"An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." *State v. Williams*, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005) (quoting *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). "An abuse of discretion occurs when the conclusions of trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagen*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). A self-defense charge is not required unless it is supported by the evidence. *State v. Goodson*, 312 S.C. 278, 440 S.E.2d 370 (1994). However, if there is any evidence to support the requested charge, the trial court should grant the request. *Williams*, 367 S.C. at 195, 624 S.E.2d at 445.

ARGUMENT

I. The trial court properly denied Appellant's request for a self-defense jury charge because Appellant had means of avoiding any danger Victim posed, which Appellant acknowledged during trial and which the surveillance videos corroborated.

In South Carolina, the four elements that must exist for a defendant to be justified in using deadly force, and thus entitled to a self-defense charge, are:

> (1) The defendant was without fault in bringing on the difficulty;
>
> (2) The defendant . . . actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
>
> (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief . . . ; and
>
> (4) 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 did in this particular instance.

State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011) (quoting *State v. Wiggins*, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998)). Additionally, because all four elements of self-defense are required to establish the defense, a defendant failed to establish the defense if any one element is disproven. *See State v. Bixby*, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010) ("It is an axiomatic principle of law that [self] defense has not been established if any one element is disproven.").

Regarding the third element, Appellant failed to show that a reasonable prudent person of ordinary firmness and courage would have entertained his belief that he was in imminent danger. While evidence in the record shows that in the months between when Victim left prison and the night of the shooting, Victim (1) bullied Appellant, (2) may have threatened Appellant with a gun, (3) made social media posts with pictures of guns, and (4) showed up at Appellant's McColl residence, this evidence does not mean a reasonable prudent person would believe that they needed to shoot Victim, who was walking, albeit slowly, away from Appellant and back to his vehicle,

after three separate non-physical confrontations with Appellant that night.[3] (Tr. 86-90, 126-29, 142-45, 150-68). *See State v. Lockamy*, 369 S.C. 378, 383-84, 631 S.E.2d 555, 558 (Ct. App. 2006) (holding that a self-defense charge is not warranted where an individual is no longer in danger when deadly force is used).

Appellant testified that he had not seen Victim with a weapon that night. (Tr. 181). Evidence also showed that Victim did not have a weapon on his person or in his vehicle. (Tr. 44, 55, 70, 101, 106). The videos and witness testimony also confirm that neither Victim nor Appellant had physically touched the other at any point during their three confrontations that night. (Tr. 101-02; State's Exhibit 8). Further, Victim's girlfriend, who had broken up each of the three previous confrontations that night, can be seen in the videos corralling Victim away from Appellant's car and back toward Victim's vehicle in the seconds leading up to the shooting. (State's Exhibit 8 – shot fired; State's Exhibit 8 – shot fired 2). Victim's posture when Appellant shot him—standing with his arms down by his side in a non-defensive and non-threatening position, fully upright, with Milligan partially between him and Appellant—make it apparent that Victim posed no immediate threat to Appellant at that time. (State's Exhibit 8 – shot fired; State's Exhibit 8 – shot fired 2).

Therefore, when Appellant returned to his vehicle for the third time to re-retrieve his weapon, no reasonable necessity existed for him to inflict lethal force upon Victim because Victim had withdrawn from their last confrontation and was not doing anything that could pose a risk of death or serious bodily injury to Appellant. *Cf. State v. Hendrix*, 270 S.C. 653, 661, 244 S.E.2d

[3] The first confrontation occurred inside the gas station store. The second confrontation occurred after Appellant initially retrieved his gun from his car. The third confrontation occurred after Appellant returned his gun to his car. The shooting occurred after Appellant re-retrieved his gun from his car and proceeded to hastily shoot Victim over Milligan's shoulder.

503, 507 (1978) ("[W]hen a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased."). Thus, Appellant failed to show that a reasonable prudent person would have entertained Appellant's belief that his life was in imminent danger when Appellant shot Victim, and this element does not support Appellant receiving a self-defense charge.

Regarding the fourth element, Appellant failed to show that he had no other probable means of avoiding what he believed to be the danger of losing his own life other than to shoot an unarmed man walking away from their confrontation. While it is firmly established in South Carolina law 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, Appellant did not show that such increased danger existed in this case. *See State v. Fuller*, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989) ("[A]n individual has no duty to retreat if by doing so he would increase his danger of being killed or suffering serious bodily injury.").

After Appellant and Victim's first confrontation in the gas station store, Victim's girlfriend, Milligan, managed to get Victim out of the store and almost back into their vehicle. (Tr. 66; State's Exhibit 8). Victim only left the vehicle when Appellant came out of the store, and according to Milligan, continued saying things to Victim. (Tr. 66). Appellant could have easily stayed inside the gas station store until after Victim, Milligan, and Milligan's children had left the gas station; however, he actively chose to exit the store before Victim left, retrieve his gun from his car, and walk around Victim's car to pursue another confrontation. (State's Exhibit 8).

Additionally, Appellant admitted on the stand that he could have gotten in his car and driven away at no less than three different instances—each of the three times he returned to his car to retrieve or return his gun after leaving the gas station store. (Tr. 180). While he contends that

he would not have been any safer driving away in his car due to two undocumented occurrences with Victim—one in which a white truck with unidentified occupant(s) allegedly shot at his vehicle and one in which Victim allegedly attempted to run Appellant off of the road—these two passing references from Appellant's testimony did not show that Appellant was at an increased danger of being killed or seriously injured. (Tr. 156-58, 168). Instead, this testimony shows Appellant would be in the *same* danger or, more likely, even less danger if he had been able to put more space between himself and Victim.

Regardless of whether Appellant would have been in the same or decreased danger if he had gotten in his vehicle and driven away, doing so was another probable means of avoiding the danger of losing his own life other than to shoot and fatally wound an unarmed victim who was in the process of leaving the confrontation and no longer posed danger to Appellant. *See Lockamy*, 369 S.C. at 383-84, 631 S.E.2d at 558 (Ct. App. 2006) (holding that a self-defense charge is not warranted where an individual is no longer in danger when they used deadly force).

Therefore, as the trial court determined, the fourth element does not support giving Appellant a self-defense charge. Thus, because Appellant failed to show all of the elements of self-defense, the trial court did not abuse its discretion in denying his request for a self-defense jury charge.

[*conclusion and signature block on following page*]

CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's convictions for voluntary manslaughter and possession of a weapon during the commission of a violent crime, as well as his associated sentences.

Respectfully submitted,

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