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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

TREVOR ANTHONY IRVIN,

APPELLANT.

Appellate Case No. 2023-001075

INITIAL BRIEF OF RESPONDENT

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2.

Did the trial court err by failing to tailor the self-defense instruction to adequately reflect the facts and theories presented by Appellant, specifically that Appellant did not have to wait before acting in self-defense, when the charge was supported by the evidence and was crucial to the jury's understanding of the law on self-defense?

3.

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1.

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descriptions of other bad acts and were not relevant to whether Appellant had the right to act in self-defense, and were in any case substantially more prejudicial than probative?

2.

Did the trial court adequately tailor the self-defense instruction in this case by declining to give a charge that Appellant did not have to wait before acting in self-defense when the charge covered the law on self-defense and Appellant's instruction was not supported by the evidence at trial?

3.

Did the trial court appropriately exclude testimony from an expert offered by Appellant when that expert's evidence would have confused the jury and would have included testimony on issues that were within the knowledge of lay jurors?

STATEMENT OF THE CASE

Respondent accepts Appellant's statement of the case for the purposes of this appeal.

STATEMENT OF FACTS

The victim and Appellant worked at the House of Raeford chicken processing plant in West Columbia (Tr. p. 121, ll. 7–9; p. 122, ll. 10–15; p. 160, ll. 12–25). In the words of one of its employees, the plant "turn[ed] chickens into food." (Tr. p. 122, l. 12). Appellant and the victim sometimes butted heads; one fellow employee recalled the two of them "beefing." (Tr. p. 161, ll. 3–21).

Shortly after 5 a.m. on June 24, 2021, as the employees were returning from a break, the victim and Appellant began to argue. (Tr. p. 161, l. 21–p. 163, l. 24). According to one employee, the victim used a homophobic slur, and Appellant responded by saying that the victim "let a bitch run [his] life." (Tr. p. 163, ll. 20–24).[1] The latter comment was a reference to the victim's girlfriend, Mary Geiger. (Tr. p. 171, ll. 2–9). At one point during the conflict between the two, Appellant had to be physically restrained by another employee. (Tr. p. 165, ll. 5–21). Appellant reportedly told victim that he would "fuck [the victim] up in the parking lot" and "I'll kill you." (Tr. p. 165, l. 25–p. 166, l. 3).

For her part, Geiger said she believed Appellant was harassing the victim. (Tr. p. 178, ll. 1–6). She also remembered Appellant telling the victim "that if you do anything or you try anything, then I want to catch a free body." (Tr. p. 183, ll. 22–24). She interpreted that as a threat to harm the victim. (Tr. p. 184, ll. 3–5). Geiger denied that the victim used a knife to threaten the victim. (Tr. p. 184, ll. 20–25).

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[1] Appellant recalled the incident this way: "He got very, like, angry and started calling me names. I'm a B word, F word. He tell me, I don't know nothing." (Tr. p. 520, ll. 9 – 11). In return, Appellant said he told the victim that "you supposed to be a man, but you, you know, this lady is taking care of you[.]" (Tr. p. 520, ll. 11 – 13).

The employees of the chicken plant typically parked at a shopping center across from the plant. (Tr. p. 122, l. 19–p. 123, l. 8). Some would hang out in the parking lot after their shift. (Tr. p. 188, ll. 6–8). When Geiger left the plant, she found the victim near Appellant's car in the parking lot. (Tr. p. 187, ll. 8–12). Worried that the conflict between Appellant and the victim might flare up again, Geiger asked the victim to move away from Appellant's car; the victim did so. (Tr. p. 187, ll. 15–20). She asked the victim to go to a nearby store, thinking it might give the victim the opportunity to "get his mind off of what happened inside the plant." (Tr. p. 188, ll. 2–5).

When the victim returned from the store, Geiger noticed that there was a cut on his lip. (Tr. p. 190, ll. 5–15).[2] Later, Geiger saw Appellant apparently reenacting a confrontation with the victim at the store. (Tr. p. 191, ll. 13–17).[3] She believed Appellant "was trying to get [the victim's] attention again." (Tr. p. 192, ll. 5–20).

If that was Appellant's goal, he succeeded. The victim walked over to where Appellant was talking about the conflict, and there was an exchange of words. (Tr. p. 192, l. 21–p. 193, l. 8). The victim walked away but, according to Geiger, Appellant continued to taunt the victim. (Tr. p. 193, ll. 12–24). Eventually, the victim went back to where Appellant was. (Tr. p. 195, ll. 10–20). The victim was not carrying a gun or a knife. (Tr. p. 195, ll. 21–25). Geiger conceded that she encouraged the victim to fight Appellant. (Tr. p. 199. ll. 5–13).

During the renewed confrontation with Appellant, the victim "swooped down for [Appellant's] legs." (Tr. p. 196, ll. 6 – 10). Appellant responded by pulling his firearm and, as the victim was backing away from the confrontation, opening fire. (Tr. p. 196, ll. 10–13). Appellant

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[2] It is undisputed that there was a conflict between Appellant and the victim at a nearby convenience store. Appellant said that the victim came to the store looking for a fight. (Tr. p. 527, ll. 6–18).

[3] Another witness denied that Appellant reenacted the supposed confrontation. (Tr. p. 496, l. 24 – p. 497, l. 4)

continued to shoot as the victim ran away. (Tr. p. 197, ll. 3–5). After the shooting, Geiger ran to the victim and asked for someone to call the police. (Tr. p. 197, ll. 23–25). She unsuccessfully attempted CPR, then remained with the victim until the paramedics arrived. (Tr. p. 198, ll. 2–7). One of the bullets was "smashed down into the concrete" underneath the victim's body when law enforcement moved it. (Tr. p. 221, ll. 1–12). As many as two of the projectiles were found under the body. (Tr. p. 263, ll. 14 – 20). A SLED employee testified that the position of the bullets suggest that the victim was shot as he lie on the ground. (Tr. p. 267, ll. 9–15). In all, the victim suffered 15 gunshot wounds. (Tr. p. 417, ll. 8–11). Appellant first drove away from the scene, but returned and surrendered himself to the authorities as they were beginning their investigation. (Tr. p. 544, l. 22 – p. 545, l. 5; p. 239, l. 25 – p. 240, l. 8).

On videos introduced at trial, the victim can be seen walking toward Appellant as he gestures between two cars. (State's Exh. 65). Appellant and the victim appear to have a dispute. (State's Exh. 65; State's Exh. 66, State's Exh. 67). The victim bends over and appears to swat at Appellant's lower body. *Id.* As the victim stands back up and begins backing away, Appellant pulls out his gun and fires. *Id.* The victim then turns around and runs, then sprawls to the ground, as Appellant continues shooting. *Id.* Appellant then stands over the victim, still pointing the gun. *Id.*

At trial, Appellant attempted to introduce evidence of the victim's alleged gang affiliation. During a proffer of his testimony related to these allegations, Appellant said:

> Judge[,] Daniel would boast about being in the gang saying stuff like, you know -- you know, a member of, you know, one of the most notorious gangs in South Carolin and responsible for a lot of violent crimes. Crimes like robberies and even shootings and stuff. And he would express openly about that he was came from the background where, you know, he would get to a -- a aggressive nature, which you would need to be, or you could have people, you know, do -- do things to you as far as members of his gang. And also -- also they

> would wear we had issues at work with them wearing bandanas, red bandanas and stuff where we -- and we had to, you know, stop them from wearing stuff like that.

(Tr. p. 445, ll. 8–19). Appellant further testified that the victim "told me basically that he could have me gone, like, I don't know exactly how in references to me being gone from the job or having like, stuff done to me through his [gang] or he would do it himself." (Tr. p. 446, ll. 10–13). Appellant testified that this increased his fear of the victim. (Tr. p. 446, ll. 14–24).

On cross-examination, Appellant conceded that he did not call the police about the alleged threats or discuss them with his supervisor at work, even though he had discussed some of his issues with the victim. (Tr. p. 447, l. 6–p. 448 l. 3). Appellant gave contradictory answers about whether the victim had specifically threatened to have members of the victim's alleged gang harm Appellant on the day of the shooting. (Tr. p. 448, l. 4 – p. 449, l. 10). Appellant said those threats happened during the confrontation at the convenience store. (Tr. p. 449, ll. 11 – 20; p. 451, l. 22 – p. 452, l, 2). Appellant also testified that other workers at the plant were part of the gang. (Tr. p. 454, ll. 7 – 13). Appellant testified that gang members did not surround him or threaten him in the parking lot, though he contended it was possible some were there. (Tr. p. 455, l. 13–p. 457, l. 15). The trial court took the matter under advisement. (Tr. p. 471, ll. 7–9). The following day, the trial court ruled that the testimony regarding gang activity was not admissible. (Tr. p. 474, l. 17 – p. 475, l. 12).

Appellant also attempted to introduce the testimony of Scott Allen Ballard, a consultant and owner of a private security company, as an expert. (Tr. p. 653, ll. 9 – 10; p. 655, ll. 1 – 3). Ballard was also a behavioral analyst for the Office of Naval Intelligence. (Tr. p. 655, ll. 7 – 16). In addition to writing training manuals and lesson plans regarding the use of force for countries outside the United States, Ballard said he was familiar with national standards regarding the use

of force and how individuals react to situations in which they might need to use force. (Tr. p. 659, ll. 5–p. 661, l. 4). Ballard also was involved in investigating 147 shootings at a previous employer. (Tr. p. 661, ll. 5–9).

Appellant offered Ballard as "an expert in firearms, use of force" and asked the court to "allow him to testify regarding the physiological effects on individuals in deadly force situations as it relates to their decision making." (Tr. p. 669, ll. 20–24). While saying that Ballard was an expert, the court requested hearing more about Ballard's testimony. (Tr. p. 669, l. 25–p. 670, l. 3). At that point, Ballard was further examined, and spoke more about the physiological effects of stress on decision-making. (Tr. p. 670, l. 19–p. 673, l. 7).

The trial court declined to allow the testimony. (Tr. p. 680, l. 16–20). The court found that the testimony would confuse the jury, could implicate medical issues for which the witness was not trained, and could discuss Appellant's state of mind. (Tr. p. 680, l. 20–p. 681, l. 6).

Appellant requested, but did not receive, a charge on whether Appellant had to wait to act in self-defense. (Tr. p. 693, l. 7–p. 703, l. 5). After the testimony was given in the trial and closing statements concluded, the court charged the jury. (Tr. p. 787, l. 25–p. 801, l. 22). With regards to the self-defense charge, the court gave the following instruction:

> The defendant has raised the defense of self-defense. Self-defense is a complete defense, and if it is established, you must find the defendant not guilty. The state has a burden of disproving self-defense by proof beyond a reasonable doubt.
>
> If you have a reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, then you must find the defendant not guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt, after considering all of the evidence, including the evidence of self-defense, then you must find the defendant guilty.
>
> The elements of self-defense are as follows. First, the defendant must be without fault in bringing on the difficulty. If the defendant's conduct was a type which was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in

bringing on the difficulty and would not be entitled to an acquittal based on self-defense.

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 actually believed he was in imminent danger of death or serious bodily injury. If the defendant was actually in imminent danger, it must be shown that the circumstances would've warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury.

If the defendant believed he was in imminent -- imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would've had the same belief. In deciding whether the defendant actually was or believed he was in imminent danger of death or serious bodily injury. You should consider all of the facts and circumstances surrounding the crime, including the physical condition and characteristics of the parties involved.

The defendant does not have to show that he was actually in danger. It is enough if the defendant believed he was in imminent danger. And a reasonably prudent person of ordinary firmness and courage would have had the same belief.

The defendant has a right to act on appearances. Even though the defendant's beliefs may have been mistaken. It is for you to decide whether the defendant's fear of immediate danger of death or serious bodily injury was reasonable and would've been felt by an ordinary person in the same situation.

Words accompanied by hostile acts may, depending on the circumstances, establish self-defense. Evidence of prior difficulties between the defendant and the victim may be considered in deciding whether a threat existed, whether the defendant had a reason to believe a threat existed and how serious that threat was.

The final element of self-defense is that the defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular instance.

Self-defense is not available to a person who uses language which is so contemptuous that a reasonable person would expect it to bring on a physical encounter and which did actually contribute to the physical encounter.

(Tr. p. 796, l. 17–p. 799, l. 2). In response to a juror question, the trial court gave substantially the same charge. (Tr. p. 805, l. 16–p. 807, l. 25).

The jury found Appellant guilty of murder. (Tr. p. 809, ll. 13 – 18). The trial court sentenced him to 45 years. (Tr. p. 827, ll. 8 – 11). This appeal follows.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Sobers*, 404 S.C. 263, 266, 744 S.E.2d 588, 589 (Ct. App. 2013) (quoting *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). In regards to the Appellant's specific issues in this case, appellate review is conducted under deferential standards. For example, "[t]he appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court." *State v. Torres*, 390 S.C. 618, 625, 702 S.E.2d 226, 230 (2010). Likewise, a trial court's decision not to give a jury charge is evaluated for an abuse of discretion. *See State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583–84 (2010) ("To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. . . . An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." (citation omitted)).

ARGUMENT

I. Appellant did not establish that the victim's alleged membership in a gang was relevant to his self-defense charge, and so the trial court appropriately excluded Appellant's self-serving testimony to that effect.

Appellant argues that the trial court erred by excluding his testimony that the victim was allegedly a member of a gang. However, this evidence was irrelevant to the issues and trial and would have suggested the jury reach its verdict on an improper basis. The trial court was correct to exclude it.

The South Carolina Rules of Evidence narrowly constrain when character evidence and evidence of other crimes or bad acts may be admitted at trial. *See* Rule 404, SCRE. These protections are not just for defendants, but extend to others involved in our court system as well. *See* Rule 404(a) (restricting "[e]vidence of a person's character or a trait of character"); Rule 404(b) (holding that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show conformity therewith"). The rules also allow a trial court to exclude relevant evidence "if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury," among other considerations, *see* Rule 403.

As an initial matter, South Carolina courts have recently held that evidence of gang membership is subject to the prohibition against introducing evidence of other bad acts to prove character. *See Johnson v. State*, 433 S.C. 550, 556, 860 S.E.2d 696, 699 (Ct. App. 2021) ("Without question, the testimony about [the defendant's] gang affiliation was prior bad act evidence."); *see also State v. Robinson*, 438 S.C. 421, 437, 882 S.E.2d 883, 891 (Ct. App. 2023) (same), *reh'g denied* (Feb. 9, 2023). For that reason, Appellant must show that his testimony that the victim was in a gang was relevant for some purpose other than demonstrating the victim's bad character. *See Johnson*, 433 S.C. at 555, 860 S.E.2d at 699 ("Such evidence—commonly referred to in our state

as 'prior bad act' or *Lyle* evidence[4]—is not admissible unless its proponent can demonstrate it has a legitimate purpose, i.e. the evidence does something more than prove a person has a propensity to commit crimes.").

Here, Appellant's argument regarding self-defense is inextricably bound up with the evidence's tendency to show propensity. Appellant wanted to prove to the jury that the victim was someone to be feared because he was someone who was dangerous; Appellant knew (and the jury can know) that the victim was dangerous because he was allegedly in a gang and gang members are inherently dangerous.[5] *Cf. Johnson*, 433 S.C. at 556, 860 S.E.2d at 699–700 ("Prior bad act evidence 'is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge.'" (quoting *Michelson v. United States*, 335 U.S. 469, 475–76, 69 S.Ct. 213, 93 L.Ed. 168 (1948))). For example, in *Johnson*, the evidence showed the motive for a murder that otherwise might have appeared "senseless." *See id.* at 557, 860 S.E.2d at 700. But in the present case, jurors had no need to try to extrapolate a motive for the shooting, because the entire incident was captured on video. They could judge for themselves whether the victim was acting threateningly to Appellant.

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[4] After *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923).

[5] This case is distinguishable from *State v. Day*, in which the court held that other bad acts evidence could be admitted in a self-defense case if they "were so closely connected at point of time or occasion with the homicide as reasonably to indicate the state of mind of the deceased at the time of the homicide, or to produce reasonable apprehension of great bodily harm." 341 S.C. 410, 419–20, 535 S.E.2d 431, 436 (2000). Appellant's vague, conclusory statements about hearing conversations of unspecified gang activity by the victim and others differs from the specific act that the court was considering in *Day*. *See id.* at 421, 535 S.E.2d at 437.

Furthermore, even if the evidence of victim's alleged gang membership was for an appropriate purpose, the risk that the jury would use it for improper purposes far outweighed its probative value.

Probative value is decided in light of the full context of the trial, especially considering what issues were before the jury. "To understand the probative value of any evidence, we must consider what was practically in dispute at trial. . . . We must then consider how important the challenged evidence is to resolving the practically disputed questions." *State v. Phillips*, 430 S.C. 319, 327, 844 S.E.2d 651, 655 (2020).

The issue in dispute at Appellant's trial was whether he had a right to defend himself against the victim. If Appellant feared that the victim might overpower the Appellant and take his weapon—the primary theory offered by Appellant at the trial—then the victim's alleged gang membership is of limited probative value. After all, someone who could overpower Appellant and grab his weapon might endanger him whether that person was a member of a gang or a pillar of the community.

On the other hand, the prejudicial value of testimony regarding victim's alleged gang membership was enormous. It could have led the juror to believe that the victim had it coming; that he was a danger to the community who was better disposed of than left to walk the streets; that Appellant, in some way, did everyone a favor. *Cf. Johnson*, 433 S.C. at 559, 860 S.E.2d at 701 ("Mention of gangs summons a stigma of lawlessness, and Rule 403 requires exclusion of gang evidence if the prejudicial risk substantially outweighs the evidence's probative value.").

Not only was the evidence here not probative, its relevancy is at best dubious. *See* Rule 402, SCRE ("Evidence which is not relevant is not admissible.").

Courts in other states have also confronted the relevancy of gang membership in self-defense cases. For example, the court in *London v. State* faced a similar situation. *See London*, 325 S.W.3d 197 (Tex. Ct. App. 2008).[6] There, the court affirmed the trial court's decision to exclude evidence of the victim's " 'violent past'—gang affiliation and terrorizing the neighborhood."[7] *Id.* at 206. The defendant in *London* claimed that he shot back at a car in which the victim was riding after someone from the car shot at him. *See id.* at 203. The Texas Court of Appeals reasoned that because the defendant could claim self-defense based on the alleged shots being fired from the car, the victim's other actions were not admissible. *See id.* at 205–06. The court held:

> When a deceased's unambiguous, violent, or aggressive act needs no explaining, evidence of the deceased's extraneous conduct would have no relevance apart from its tendence to prove his character conformity, and thus would be inadmissible. Before a specific, violent act will be admissible to support a claim of self-defense, there must be some evidence of a violent or aggressive act by the deceased that tends to raise the issue of self-defense and that the specific extraneous conduct may explain.

Id. at 205 (citations omitted).

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[6] The Texas rule regarding character evidence is structured slightly differently than South Carolina's, but contains substantively the same restrictions on such evidence. *Compare* Tex. R. Evid. Rule 404(a)(3) ("(A) In a criminal case, subject to the limitations in Rule 412, a defendant may offer evidence of a victim's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it. (B) In a homicide case, the prosecutor may offer evidence of the victim's trait of peacefulness to rebut evidence that the victim was the first aggressor."), *with* Rule 404(a)(2), SCRE (allowing "[e]vidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor[.]"). The Texas Court of Appeals found that the defendant in *London* had not preserved an argument regarding the first aggressor provision of the rule. *See London*, 325 S.W.2d at 205.

[7] The *London* court reversed the conviction on other grounds. *See id.* at 207–09.

The same reasoning applies here. Appellant's self-defense argument was premised on his belief that the victim went for his gun during their altercation. Whether the victim was a member of a gang had no relevance to that, much less probative value.

Nothing in *Sobers* is to the contrary. It is true that the *Sobers* court noted that the defendant did not testify that the victim's and some witnesses' involvement in a gang increased his fear. *See State v. Sobers*, 404 S.C. 263, 268, 744 S.E.2d 588, 590–91 (Ct. App. 2013). However, the court discussed that as part of its consideration of the relevance of the evidence to the defendant's self-defense argument. *See id.* ("According to Sobers, the mob action caused him to fear for his life and fire his gun, but he never testified he was more fearful because the mob was part of a gang. Thus, Sobers never introduced evidence that would make the gang activity relevant."). Likewise, in this case, even with Appellant's testimony, there was little basis for claiming that the victim's alleged gang membership made the victim a greater danger to Appellant than anyone reaching for the gun would be.

Finally, even if admission of the evidence was error, it was without a doubt harmless. *See State v. Reeves*, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990) ("Error is harmless when it could not reasonably have affected the result of the trial."). Jurors were able to watch footage of the altercation between Appellant and his victim. As a result, the jurors had an opportunity to consider for themselves whether the victim's actions were threatening enough to justify Appellant's fear that the victim endangered him. According to its verdict, the jury obviously did not believe Appellant's self-defense. Assassinating the character of the victim would not have changed that.

For those reasons, this court should find there was no error in the trial court's decision to exclude the allegations that the victim was involved in a gang, and if there was such error, it was harmless. Appellant's conviction should be affirmed.

II. The trial court gave a full and accurate summation of South Carolina's law regarding self-defense in its instructions to the jury, and so there was no error in those instructions.

Appellant next argues that the trial court did not properly instruct the jury in regard to South Carolina's law of self-defense. Appellant's requested charge that Appellant did not need to wait to act in self-defense was unnecessary, and the trial court properly denied to give it. There was no error.

Here, the State and Appellant agree on the relevant rule. "[A] trial judge should specifically tailor the self-defense instruction to adequately reflect the facts and theories presented by the defendant. A self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues presented by the defendant." *State v. Day*, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000) (citation omitted).

Here, the trial court tailored its instructions to Appellant's case. Appellant simply asked for an instruction that was not applicable under the facts.

Appellant argues that the standard self-defense instruction in *State v. Davis* is not sufficient if there are additional relevant aspects of South Carolina law that must be charged. *See Davis*, 282 S.C. 45, 46, 317 S.E.2d 452 (per curiam). That is true. It is also true that the trial court in this case did not simply give a *Davis* charge. In fact, the trial court gave two of the three charges that the *Fuller* court found erroneously excluded in that case—those regarding the right to act on appearances and "words accompanied by hostile acts." *State v. Fuller*, 297 S.C. 440, 443, 377 S.E.2d 328, 331 (1989).

Contrary to Appellant's assertion, whether or not Appellant had to wait before opening fire was not relevant to his self-defense claim. This was not a case where Appellant had to act to "prevent his assailant from getting the drop on him." *See State v. Rash*, 182 S.C. 42, 188 S.E. 435, 438 (1936). In this case, the series of events that Appellant argued made him feel that self-defense

was warranted took place *before* the fatal shots were fired. The victim had already attempted to get the drop on Appellant and failed; the victim appeared to have been backing away from the confrontation when he was shot. The video shows that, if anything, Appellant did not act too hastily, but acted at best amid the confrontation and at worst after the danger had passed.

The court did not err in failing to charge that the Appellant did not have to wait before exercising his right of self-defense. That charge would not have been relevant to the facts in front of the jurors. Appellant's conviction should be affirmed.

III. Appellant's purported expert witness would not have assisted the jury in deciding Appellant's state of mind at the time of the shooting, and so the trial court made the appropriate decision in excluding the testimony.

Finally, Appellant argues that the trial court erred when it excluded his expert witness. But the expert witness's testimony would not have assisted the jury in assessing the facts in this case. The trial court's decision was not in error.

In order to admit the testimony of an expert witness, the trial court must find the witness's testimony could assist the jury in its role as fact-finder. *See* Rule 702, SCRE ("If scientific, technical, or other specialized knowledge *will assist the trier of fact* to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." (emphasis added)); *State v. Galloway*, 443 S.C. 229, 237, 904 S.E.2d 866, 870 (2024) ("To admit expert testimony under Rule 702, the proponent . . . must demonstrate, and the trial court must find, the existence of three elements: the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable." (quoting *State v. Wallace*, 440 S.C. 537, 544, 892 S.E.2d 310, 313 (2023)) (cleaned up)); *State v. Phillips*, 430 S.C. 319, 335, 844 S.E.2d 651, 659 (2020) ("Before any expert opinion may be admitted into evidence, the proponent of the opinion must convince the trial court that each element of the Rule 702 foundation has been established."). This is particularly true for so-called "blind experts." *See Galloway* at 240, 904 S.E.2d at 872 (finding that for blind experts, "the question of whether the testimony 'will assist the trier of fact' becomes more important").

Galloway is instructive. There, our supreme court held that the trial court properly excluded testimony from a blind expert about the potential effects of the victim's post-traumatic stress disorder and schizoaffective disorder on her memory. *See id.* at 236–242, 904 S.E.2d at

870–873. The expert had proffered testimony that PTSD "could . . . have an effect on [the person's] ability to relate what happened objectively" and that schizoaffective disorder "can cause false memories." *See id.* at 236, 904 S.E.2d at 870. The court reasoned that the defendant did not show that the evidence was relevant in that case. *See id.* at 240, 904 S.E.2d at 872 ("There was no way the jury could use the knowledge that schizoaffective disorder 'can' cause false memories other than to speculate whether the disorder might have done so in this instance."). The court found that, unlike delayed disclosure testimony in sexual abuse cases, the broad testimony given by the expert did not help the jury decide whether to believe the victim. *See id.* at 229, 240, 904 S.E.2d at 872 ("[T]he abstract fact that 'some' people with schizoaffective disorder 'can' have false memories gives the jury nothing it can use to determine this victim's credibility other than to guess. If abstract specialized knowledge is not connected to the facts of the particular case, the jury has no basis on which to use the knowledge except to speculate whether it could have played a role in the case.").

The same is true here. First, Appellant's purported expert was not testifying about a particular psychological phenomenon—such as delayed disclosure—that might be unfamiliar to most jurors. He simply explained how stress could affect an individual's judgment in high-stress situations. Appellant did not clearly connect any particularized fact about himself or the shooting to the broad pronouncements of the expert. The jury could only speculate as to whether any of the testimony the expert provided applied to Appellant or the situation he found himself in leading up to the fatal shots.

Further, the trial court zeroed in on a critical flaw in Appellant's attempt to use the expert's testimony: The expert's testimony largely concerned how people other than Appellant would react to life-threatening situations. The expert worked for Naval intelligence and private security contractors; he spoke about training those who might use weapons in their jobs. While he referred

to standards that can be applied to civilians, his expertise was largely derived from situations unlike the one at issue here. As the trial court noted: "This isn't a -- a somebody who's a police officer or a solider or a private investigator or somebody being placed in a wartime country or anything like that." (Tr. p. 674, ll. 10–12). "One has training and one doesn't." (Tr. p. 674, l. 21).

To the extent that the expert would have testified to the reactions of trained law enforcement officers, the evidence was irrelevant to the case. To the extent that he intended to testify about how civilians might react in such a situation, he added nothing to the knowledge of the jury. *See Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010) ("Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter *falls outside the realm of ordinary lay knowledge*." (emphasis added)); *cf. Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 80, 735 S.E.2d 650, 659 (2012) ("In some design defect cases, expert testimony is required to make this showing because the claims are too complex to be within the ken of the ordinary lay juror.").

The trial court did not err in excluding the expert's testimony, as it properly found that testimony would have been unhelpful to the jury and confusing. Appellant's conviction should be affirmed.

CONCLUSION

Appellant demonstrates no instance where the trial court erred in its evidentiary rulings or its jury instructions. The court properly excluded gang evidence that was irrelevant; properly instructed the jury on self-defense; and properly excluded expert testimony that would not have helped the jury render a fair verdict. Appellant's conviction should be affirmed.

Respectfully Submitted,

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