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**Dec 12 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Richland County

Honorable Robert E. Hood, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

DANA ANDREW BUTLER, JR.,

APPELLANT

APPELLATE CASE NO. 2024-000343

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ANDERS BRIEF OF APPELLANT

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DAVID ALEXANDER  
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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

In this self-defense case, did the trial court err in charging that appellant had a duty to retreat when appellant was not only in a place he had a right to be, but was in a place that he was legally required to be?

**STATEMENT OF THE CASE**

Appellant was indicted in Richland County for murder, a weapons charge, and possession of a concealed weapon by an inmate and on February 12, 2024, was tried before the Honorable Robert E. Hood and a jury. R. 1. Anna R. Browder and Samuel C. McGlothlin represented the State. R. 1. Zoe A. Bruck, Katherine Myers, and Elizabeth Fielding Pringle represented appellant. R. 1. The jury convicted appellant and Judge Hood sentenced him to life imprisonment pursuant to South Carolina's recidivist statute. R. 342-51.

## **STANDARD OF REVIEW**

The question of whether a jury charge is an improper charge on the facts is a question of law and should be reviewed *de novo*. Reversal is required if the trial court abused its discretion and the charge as a whole remains prejudicial to the defendant. State v. Brown, 438 S.C. 146, 881 S.E.2d 771 (Ct. App. 2022).

## ARGUMENT

In this self-defense case, the trial court erred in charging that appellant had a duty to retreat when appellant was not only in a place he had a right to be, but was in a place that he was legally required to be.

Appellant was an inmate locked inside the prison that houses South Carolina's Death Row. He faced an immediate threat from a knife-wielding lifer with friends in the notorious Bloods gang, but the trial court charged appellant had a duty to retreat. The trial judge's charge begs the question: retreat where?

The fight at Broad River Prison was captured on video, but there is no audio. State's Ex. 13. Appellant testified and provided context for the video. Appellant knew the decedent, Damon Doyle, as a loud and intimidating person. R. 204. He had seen Doyle sharpen his knife on the stairs in the dorm at the prison. R. 205. He knew Doyle had a life sentence because Doyle made that fact known in an attempt to intimidate the other inmates. R. 206.

Appellant had been stabbed in prison twice before this fight, both times by Bloods. R. 209-11. The first time was in his room at Broad River. R. 209. The Bloods stabbed appellant eight times and gave him a punctured lung. R. 209-11. The second time was by Bloods at McCormick Prison. R. 210. Bloods came into appellant's room, stabbed him several times, and robbed him. R. 210. Appellant was not in a gang. R. 213. While Doyle was not a Blood, he hung out with them. R. 212-14.

On the day of the fight, appellant was in the room of another inmate, Benjamin Green. R. 214. Doyle came to them and demanded MDMA, an illegal drug. R. 214-15. Appellant and Green had no drugs and Doyle became angry, telling them "pussy mother fuckers didn't deserve to have nothing" and that they "should get robbed." R. 223. Their verbal altercation extended

into the hallway. R. 223. State's Ex. 13. Doyle also told appellant that other inmates did not want him in the dorm, which appellant knew to be a serious threat from the Bloods. R. 224-27.

Green interceded and took appellant back into Green's room. State's Ex. 13. While in the room, appellant saw a Blood have a conversation with Doyle. R. 228. Appellant knew Doyle had a knife on him at that time. R. 223. Appellant was afraid to stay in Green's room because both times he had been stabbed, he was in a room. R. 229. He wanted to get to "the rock" in the center of the dorm where he knew cameras would see him. R. 229.

Appellant saw Doyle with his hands in his pants walking in circles. R. 229. Doyle was still threatening appellant and calling him a "pussy", which is an insult that carries serious weight in prison. R. 229. R. 227. Doyle told him to come into "the hole," a dark hallway in the dorm with no cameras. R. 230. Doyle continued to make gestures and threatened appellant. R. 231.

Appellant then saw Doyle go for his knife. R. 231. He saw Doyle's knife. R. 231. Appellant "just reacted," pulled his knife and swung at Doyle. R. 232. State's Ex. 13. The video shows Doyle with his knife. State's Ex. 13. Doyle tried to sweep appellant's legs out from under him. R. 233. The fight is over quickly and Doyle leaves the dorm bleeding and holding his neck. State's Ex. 13. Appellant did not chase Doyle as he left the dorm. State's Ex. 13. Doyle died from a stab wound to his neck. R. 159.

The trial judge charged self-defense. R. 332-37. During the charge conference on the specific self-defense charges, appellant objected to charging that appellant had a duty to retreat. R. 289. The trial judge asked for "some law that says that," and trial counsel replied, paraphrasing the immunity statute, "That you have no duty to retreat somewhere where you are lawfully?" R. 289. The trial judge responded, "Yes. In prison." R. 289. When defense counsel said she would look for some other law on that, the trial judge reacted angrily, saying, "We'll

look?’ It’s Wednesday, the looking should have occurred three to four weeks ago on that issue. Y’all didn’t know you were going to argue that he didn’t have a duty to retreat?” R. 289.

The State argued appellant had a duty to retreat and that if appellant was going to make that argument, they should have asked for an immunity hearing. R. 289. The State also said appellant was “in a common area, so I don’t, I think he does have a duty to retreat there.” R. 289. The court ultimately agreed with the State, ruling that appellant had a duty to retreat “in a common area in the facility.” R. 294. Judge Hood charged the jury that appellant had a duty to retreat. R. 336.

The trial court erred because appellant was in a place he had a right to be. In its findings when it passed the Protection of Persons and Property Act, the Legislature found that “a person or victim” should not “be required to needlessly retreat in the face of intrusion or attack.” S.C. Code Ann. § 16-11-420(E). “A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.” S.C. Code Ann. § 16-11-440(C).

Appellant was in a place he had a right to be—the common area. The State erroneously convinced the trial court that the Act did not apply to prisons and did not apply outside of the context of an immunity hearing. “The Act codified the common law Castle Doctrine and extended its reach.” State v. Glenn, 429 S.C. 108, 117, 838 S.E.2d 491, 495-96 (2019). The Act extended “the protections of the Castle Doctrine to other places where [a defendant] has a right to be.” Id. at 118-19, 838 S.E.2d at 496-97.

Appellant not only had a right to be in the common area of the prison dorm, he was legally required to be there under his criminal sentence. In the video, numerous inmates are in the common area milling about. State's Ex. 13. Appellant could not leave the prison for any place of safety. He had been stabbed on two other occasions in his room (where there are no cameras), which was where the trial judge mused appellant could have retreated. R. 294. He was at the mercy of the violence of the prison where everyone is armed. R. 143. The State called Green to testify and when asked how many of the 100-120 inmates in the dorm carried knives, he replied, "All of them." R. 143. In this case where it was undisputed Doyle had a knife, it was error to saddle appellant with the retreat element of self-defense. This Court should reverse and remand for a new trial.

**CONCLUSION**

For the foregoing reasons, this Court should reverse appellant's convictions and remand for a new trial.



---

David Alexander  
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 12<sup>th</sup> day of December, 2024.

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PETITION TO BE RELIEVED AS COUNSEL

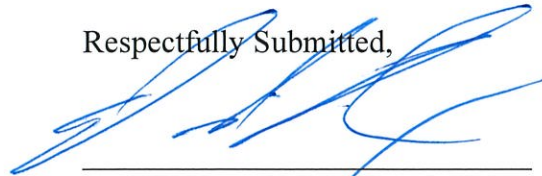
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Counsel for Dana Andrew Butler states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Robert E. Hood, which was held on Feb.12-14, 2024, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Dana Andrew Butler.

Respectfully Submitted,



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David Alexander  
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 12<sup>th</sup> day of December, 2024.

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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

- (1) Trial Transcript dated February 12, 13 & 14, 2024, and
- (2) State's Ex. 20 and 13 (to be transported)

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



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David Alexander  
Deputy Chief Attorney for Capital Appeals


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PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

This 12<sup>th</sup> day of December, 2024.

**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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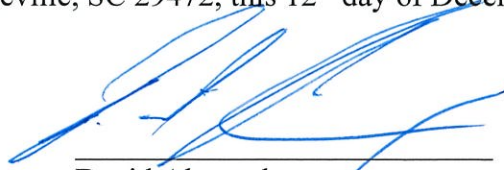
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CERTIFICATE OF SERVICE

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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 Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Dana Andrew Butler, #354755, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 12<sup>th</sup> day of December, 2024.



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