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SC Court of Appeals

STATE OF SOUTH CAROLINNA
In the Court of Appeals

Appeal from Greenville County
The Honorable Alex Kinlaw, Jr. Circuit Court Judge
Appellant Case No. 2023-000608

THE STATE, RESPONDENT

v.

BRAYLON L. MORRIS, PETITIONER

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court erred in refusing to charge the jury that if the defendant is justified in defending him or herself, or others in firing the first shot, then the defendant is also justified in continuing to shoot until it is apparent that the danger of serious bodily injury has completely ended, where Appellant testified he shot Decedent twice to ensure his children were protected, since the court was required to charge the jury on a correct and applicable principle of law?

2. Whether the trial court erred in denying Appellant's request to charge the jury on defense of others, where Appellant testified he shot Decedent to protect his children, since the court must give a defense of others charge where there is evidence adduced at trial that the defendant was acting in defense of others?

3. Whether the trial court erred in permitting Appellant to be cross-examined on the content of a confusing email sent by Appellant from the detention center that a "confidential informant" is still alive. If you want to help, you know what you can do," since the evidence should have been excluded pursuant to Rule 403 SCRE?

4. Whether the trial court erred in imposing a sentence for possession of a weapon during the commission of a violent crime, where Appellant received a life without parole sentence for the violent crime, since §16-23-409(A) prohibits the imposition of sentence for the weapon when the defendant has received life without parole for the underlying offense?

RESPONDENT'S COUNTER-STATEMENT OF ISSUE ON APPEAL

1. Did the trial court err in the refusal to charge the jury that a defendant is justified in continuing to shoot a victim when he shot the victim in the back of the head while he lay lifeless on the floor after the first shot; therefore, no longer a threat to himself or others?

2. Did the trial court err in denying Appellant's request to charge the jury on the defense of others when although Appellant testified he committed this murder in defense of his children, evidence revealed he walked away from his children to confront the unarmed victim, so they were never under any threat or harm to the children, and he left his girlfriend and the children alone while running away immediately after shooting the victim?

3. Did the trial court err in allowing the Solicitor to cross-examine Appellant on an email he sent while being incarcerated in the county detention center, since this evidence was relevant, and not confusing; therefore, not in violation of Rule 403 SCRE, also revealing malice not self-defense?

4. Did the trial court err in imposing a sentence for the crime of possession of a weapon during the commission of a crime after sentencing the Appellant to a sentence of life without parole?

STATEMENT OF THE CASE

On July 5, 2019, Braylon Morris (Appellant) was with his girlfriend Heidi Meriweather (Heidi) along with her children at Walmart in Greenville, South Carolina. (R. p. 507 l. 2-3). While Appellant was at the self-checkout, victim Michael Jason Deck (victim) entered the store. (R. p. 267 l. 12-13). Appellant saw the victim prior to the victim recognizing him. Appellant left the area where Heidi and the kids were and walked to approach the victim. (R. p. 638 l. 10-14). Once the victim recognized him he approached Appellant like as one witness testified, as if he was going to say, "I'm sorry." (R. p. 363 l. 2-6). At this time Appellant pulled out a gun and shot the victim in the stomach. (R. p. 363 l. 6-7). After that first shot Appellant attempted to shoot the victim again, however, the gun jammed. Before attempting to fire a second shot, Appellant unjammed the gun, and shot the victim in the back of the head while he lay lifeless on the floor. (R. p. 267 l. 18-20; p. 399 l. 19-20). After shooting the victim twice, Appellant ran out of the store leaving Heidi and the kids inside the store unprotected. (R. p. 318 l. 25 – p. 319 l. 16).

Sergeant Chris McCalmont heard on the radio that there was a shooting at Walmart and that the perpetrator was a black male wearing a red shirt. (R. p. 306 l. 14-18). Once Sergeant McCalmont arrived at the store, he saw that he was not needed there, so he decided to search for the Appellant. (R. p. 307 l. 4-9). He first observed the Appellant standing in the parking lot of a nearby Title Loan and Long John Silvers. (R. p. 310 l. 23-25). Once the Appellant saw Sergeant McCalmont he began to walk away. Once the Appellant began to run, Sergeant McCalmont decided to make a lawful stop. (R. p. 318 l. 25 – p. 319 l. 3). Sergeant McCalmont decided to place the Appellant in his police vehicle and return him to Walmart for an identification. Sergeant McCalmont viewed the surveillance video, then made a determination that the person he had detained was the person who committed this murder. (R. p. 323 l. 24 – p. 324 l. 1).

Once detained, Investigator Tracy King read the Appellant his *Miranda* rights, and began to question him. (R. p. 338 l. 17-19). Investigator King's only concern was the location of the weapon, since Appellant was unarmed upon arrest. (R. p. 340 l. 11-12). Investigator King told Appellant that he was concerned about a kid finding the gun and he really wanted to know its location. Appellant told Investigator King that "no kid will find it." Then Appellant became concerned about getting his girlfriend money and his cellphone. (R. p. 345 l. 12-15). The entire area was searched for the weapon but it was never recovered. (R. p. 248 l. 5-15). The Appellant was eventually arrested and charged with murder and possession of a weapon during the commission of a crime.

Appellant's case was called for trial on April 3, 2023, before the Honorable Alex Kinlaw, Jr. Appearing before the trial court was Appellant along with his trial counsel Michael Gambrell. Appearing representing the State of South Carolina were Assistant Solicitors, E. Walker Miller, and Jonathan Gregory of the Thirteenth Circuit Solicitor's office.

During trial, Walmart employee Anthony Dubose testified. Mr. Dubose worked in asset protection. (R. p. 264 l. 14-15). He knew the victim as a frequent person who came into the store to shoplift. (R. p. 266 l. 1-6). During this day Mr. Dubose observed the victim entering the store. He then heard a gunshot and saw the victim fall. (R. p. 267 l. 15-16). Mr. Dubose then testified that he saw the Appellant stand over the victim unjam his gun and shoot the victim in the head. (R. p. 267 l. 18-20). Mr. Dubose stated that after shooting the victim Appellant said something to Heidi then ran out of the store. (R. p. 267 l. 20-21). Also testifying was Hazen George, a seventy-nine (79) year old woman who was sitting on a bench in the front of the store when the incident occurred. (R. p. 288 l. 22-24). Ms. George testified that she saw two men wrestling with one another. The next thing that happened is that one of them shot the other. (R. p. 289 l. 2-4). She

testified that she saw Appellant shoot the victim again then run out of the store. (R. p. 289 l. 21-24). Amanda Alderman, another Walmart employee, who was working the self-checkout area also testified. She saw the Appellant with a woman. Then she saw another man walking toward him. (R. p. 362 l. 6-20). She testified that the victim looked like he was going to say he was sorry and "put his hand out." Appellant then shot the victim in the stomach. (R. p. 363 l. 2-7). Ms. Alderman testified that the victim's demeanor looked as though he was going to apologize. (R. p. 363 l. 20-22). Ms. Alderman testified that after shooting the victim, Appellant took a couple of steps and shot him again. (R. p. 364 l. 14-16).

Dr. John Wassum forensic pathologist testified. Dr. Wassum was found qualified as an expert in the field of forensic pathology. (R. p. 395 l. 17-23). Dr. Wassum performed the autopsy on the victim on July 6, 2019. (R. p. 396 l. 8). He testified that the first entrance wound was at the upper abdomen or the lower part of the chest. (R. p. 399 l. 17-18). The bullet exited the lower left part of the back. (R. p. 399 l. 20-21). The second entrance wound was in back part of the head. (R. p. 399 l. 19-20). This bullet exited on the right side of the head. (R. p. 399 l. 22). Dr. Wassum testified that the head shot went through basically all of the structures of the head. (R. p. 402 l. 20-21). Dr. Wassum stated that the bullet entered low so it got the low part of the brain then through the brain stem and then through the other side of the brain, (R. p. 402 l. 22-25), before exiting the other side of the skull. (R. p. 403 l. 1-2). Dr. Wassum testified that this shot was intermediate, and because there was soot on the wound it meant the barrel of the gun was only three to six inches from the head when the shot was fired. (R. p. 401 l. 13-21). Dr. Wassum further testified that the first shot entered the upper abdomen where it meets the chest. (R. p. 403 l. 12-15). The bullet hit the left kidney, causing some liver lacerations and a decent amount of hemorrhage in the abdomen.

(R. p. 404 l. 17-22). In Dr. Wassum's opinion, the cause of death was due to gunshot wounds to the head and torso. (R. p. 405 l. 7).

During trial, the Appellant decided to testify on his own behalf. He testified that he first met the victim in 2018 or late 2017. Appellant met the victim because he sold merchandise at a reasonable price. (R. p. 508 l. 3-11). Appellant stated that he met another individual Scotty Pope through the victim. He used to come by riding with the victim and that is how he met him. (R. p. 508 l. 13-15). During the trial the Appellant had pending charges for trafficking methamphetamine and Heroin. (R. 557 l. 17-20). During his testimony Appellant read a text conversation between him and the victim over a span of a few days right before the murder. During this conversation Appellant accused the victim and Mr. Pope as being police. At that time the victim responded by stating:

> "Yes, what the fuck ever. I done 5 fuckin bids and never had a fuckin seatbelt charge dropped so fuck whoever say I'm 12.[1] I got 12 big boy charges and attempted murder and gonna try to career me out; but when it goes down I'm shooting out with them bitches. Ain't shit none of y'all can do for me. I ain't that pussy boy Scotty so fuck all y'all and this fuckin life."

(R. p. 549 l. 15-21).

During his testimony the Appellant stated he believed that this statement was a threat that the victim was going to kill him and his family. (R. p. 550 l. 17-18). He testified that in Walmart the victim came up to him with an "arrogant attitude," " like you can kiss your kids goodbye." So, the Appellant stated that he pulled out his gun and shot the victim, then shot him again, and left. (R. p. 553 l. 21-25). Appellant testified that he shot twice to make sure the children were protected when he left, and it happened so fast he just ran out the store. (R. p. 554 l. 2-3; 5-6).

[1] 12 is street slang for law enforcement. www.urbandictionary.com.

During cross-examination the trial court allowed the solicitor to ask about an e-mail that was sent by the Appellant to a person named Jared John Phillips on July 20, 2019. (R. p. 596 l. 5-14). This e-mail stated:

> "That puts the mother fucker text messages me threats, don't create chaos, and confidential informant is still alive. If you want to help, you know what can be done."

(R. p. 592 l. 3-7).

Prior to this e-mail being read to the jury the Appellant requested the court exclude this e-mail from evidence. He argued that the e-mail would confuse the jury, so allowing it into evidence violates Rule 403 of the South Carolina Rules of evidence. The trial court ruled that the jury would have the opportunity to give whatever weight it wished to give to it. So, the e-mail was allowed into evidence. (R. p. 594 l. 1-4).

Prior to closing arguments, the Appellant presented to the trial court the jury charge of defense of others stating that the Appellant testified that he shot the victim because he feared that he was going to harm his children. The court ruled that since he ran out of the store after the shooting, he was not going to give that charge to the jury. Appellant also asked for a jury charge stating that if the Appellant was justified in firing the first shot he is also justified in continuing to shoot until it is apparent that the danger of serious bodily injury had ended. The trial court decided to remove that portion from the self-defense jury instruction. (R. p. 616 l. 7-12).

On April 6, 2023, after hearing four days of testimony, the Appellant was found guilty by a jury of his peers for the offense of murder and possession of a weapon during the commission of a crime. (R. p. 692 l. 8-14). After the reciting of the verdict Appellant appeared before the trial court for sentencing. The trial court proceeded to sentence the Appellant to a term of incarceration for the remainder of his natural life without the possibility for parole for the offense of murder,

and five years for possession of a weapon during the commission of a violent crime. The trial court ordered these sentences to be served consecutively. (R. p. 696 l. 18-24).

ARGUMENTS

1. **The trial court did not err in not charging to the jury that a defendant had the right to continue to shoot until it was apparent that the danger of serious bodily injury had completely ended due to the fact the Appellant shot the victim while he was incapacitated and no longer a threat, the facts presented did not warrant that jury charge.**

Relevant Facts

Evidence revealed that the Appellant approached the victim while the victim was unarmed shooting him once in the stomach, the victim fell immediately. (R. p. 575 l. 17-19). The Appellant then approached the victim while he lay motionless on the floor and attempted to shoot him again. The gun jammed so he re-cocked the gun and shot the victim in the head killing him immediately. After killing the victim, Appellant ran out of the store leaving his girlfriend and her children alone. (R. p. 576 l. 19-24; p. 577 l. 4-6). During trial the Appellant testified that he shot him again to make sure the children were protected after he left. (R. p. 554 l. 2-3).

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). In reviewing jury charges for error, the court must consider the trial court's jury charge as a whole in light of the evidence and the issues presented at trial. *State v. Adkins,* 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003) 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. Jackson,* 297 S.C. 523, 377 S.E.2d 570 (1989). The law charged must be determined from the evidence presented at trial. *State v. Knoten,* 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). To warrant reversal, a trial judge's refusal to give a requested jury charge must be both

erroneous and prejudicial to the defendant. *State v. Burkhart,* 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002). An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion. *State v. Pittman,* 373 S.E. 527, 647 S.E.2d 144 (2007). An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. King,* 422 S.C. 47, 54, 810 S.E.2d 18, 22 (2017).

Discussion

The Appellant argues that the trial court erred in not giving the jury a charge that the Appellant had the right to continue to shoot until it was apparent that the danger of serious bodily injury had completely ended. The trial court followed the law and applied the jury instruction relating to the evidence that was presented. Although, Appellant stated he had to shoot the victim again to make sure he was not able to hurt his children, the evidence does not reveal the victim was a danger to anyone else after the first shot. The evidence revealed that the Appellant shot the victim not because he continued to be threatened, but to complete his intention to kill the victim.

The Respondent argues that Appellant was not justified in killing the victim, due to the fact the victim did not pose a threat to the extent that the Appellant had to use deadly force. To establish self-defense, the defendant must establish (1) he was without fault in bringing on the difficulty; (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) a reasonably prudent person of ordinary firmness and courage would have entertained the same belief; and (4) he had no other probable means of avoiding the danger. *State v. Bruno,* 322 S.C. 534, 536, 473 S.E.2d 450, 452 (1996). The evidence presented reveals that the victim did not threaten the Appellant in a previous text. The victim was expressing how he felt about the police coming after him. The victim stated, "When it goes down I'm shooting it out with them bitches." (R. p. 549 l. 18-19). He was referring to the police not the Appellant. A reasonable person

would be able to recognize this. The evidence revealed that the Appellant was aware this was not a threat because after this text the Appellant responded, “Since you talking ssh and can’t pick up the phone you fake.” “You know where I’m at.” “Pull up.” (R. p. 563 l. 23 – p. 564 l. 1). If the Appellant thought this was a threat, he would not have challenged the victim to come to him. The killing had to be justified in order to allow a person to continue to shoot after the first shot. This shooting was not justified so Appellant was not entitled to this jury charge.

Witnesses testified that the victim walked up to the Appellant in an apologizing manner when he was shot. (R. p. 363 l. 20-22). Other witnesses stated that the victim immediately fell once he was shot. (R. p. 267 l. 15-16). Victim’s body was not moving nor was he standing, he was not even armed. This was revealed to Appellant because both of the victim’s hands were out of his pockets when he was shot.(R. p. 638 l. 18-20; R. p. 573 l. 24 – p. 574 l. 1). The evidence also revealed that the victim was shot in the back of the head at close range. (R. p. 399 l. 19; p. 401 l. 13-21), After the initial shot, Appellant walked up to the victim re-cleared his jammed gun and shot the victim in the back of the head. This reveals malice and not self-defense. A person does not have the right to finish off a person in self-defense. A person does not have the right to continue to shoot once the threat has ended. A person who fatally wounds another, even in self-defense is not entitled to hasten the victim’s death by continuing to pump bullets into the victims body. *State v. Marin,* 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016), *quoting,* C.J.S. *Homicide* §189 (2014).

The evidence presented revealed that after the first shot instead of attempting to get Heidi and the kids out of the store as the victim lay lifeless, Appellant re-cocked the gun and shot the victim in the back of the head at close range. The facts that were presented do not warrant a jury charge allowing a person to continue to shoot until it is apparent he is no longer a threat. That is because there was no danger, the final shot was unnecessary, and the way it was done, reveals

malice not self-defense. The trial court was justified in not giving a jury charge regarding the continuation of shots in order to protect yourself, because that is not what occurred.

2. **The trial court did not err in refusing to charge defense of others when the evidence revealed that the Appellant left the children in order to confront and shoot the victim, after the incident Appellant left the store with no concerns regarding his girlfriend or the children revealing that he did not commit this act in defense of others.**

Relevant Facts

While on the witness stand the Appellant testified that he committed this murder due to the fact he was afraid the victim was going to kill him and his family. The Appellant testified that through texts from the victim a few days earlier he felt threatened. The Appellant testified that he was defending his children as well as himself when he committed this act of murder.

During trial Appellant requested a jury charge of defense of others. The trial court denied giving this jury charge. It was the trial court's opinion that since he left the store after the murder there was never any defense of others; therefore, Appellant was not entitled to that jury charge.

Standard of Review

Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults friend, relative, or bystander if that friend, relative or bystander would likewise have the right to take the life of assailant in self-defense. *State v. Long,* 325 S.C. 59, 63, 480 S.E.2d 62, 64 (1997).

Discussion

The Appellant argues that the trial court erred in not allowing a jury charge for the defense of others. The trial court rightfully denied this jury charge due to the fact the evidence presented did not reveal that Appellant was defending children from any harm when he killed the victim. That lack of evidence was further shown when he ran out of the store leaving them alone. This does not reveal that he was protecting them, his intent was always to kill the victim. You are not

entitled to a jury charge of a defense of others unless you can reveal the people you are protecting are in imminent danger of losing life or serious bodily harm. *State v. Long,* 325 S.C. 59, 480 S.E.2d 62 (1997)(Appellant was not entitled to a jury charge on defense of others because there was no evidence he was defending others when he shot the victim.) *Bozeman v. State,* 307 S.C. 172, 414 S.E.2d 144 (1992)(defendant is not entitled to a jury charge on defense of others where the evidence indicates the victim swung a knife at the defendant, not at the defendant's brother).

The Appellant argues that the court should not look into the law regarding the right of the Appellant's children to defend themselves, because children would not have the ability to defend themselves. In the defense of others, the person being protected does not literally need to have the physical ability to defend themselves, but would have the **right** to defend themselves if they had such ability. *State v. Norris,* 253 S.C. 31, 168 S.E.2d 564 (1969)(emphasis added)(The right of the father to defend his daughter is coextensive with the right of the daughter to defend herself.) The fact that the children do not have the physical ability to defend themselves is irrelevant. What is relevant is that they would have the right to defend themselves if they could. The victim was not going to attack them nor was there evidence presented that they were ever in any danger, the court did the correct thing in not allowing this charge to be read to the jury.

The evidence revealed Appellant left the children alone to confront the victim, then after killing the victim he left the store instead of staying there to protect the children, or taking them with him. If the Appellant committed this act on behalf of the children, he would have stayed to confront any danger that might be coming from another person, or taken them away to remove them from any danger. This was murder and not self-defense, nor defense of others, the evidence is clear. The failure not to read a defense of others jury charge was the correct decision of the trial court.

3. The trial court did not err in allowing an email sent by the Appellant from the county detention center into evidence since it was relevant and not confusing; therefore, not a violation of rule 403.

Relevant Facts

The state argued that the Appellant's motive was that the Appellant had pending charges for trafficking in methamphetamine and heroin, and that the victim, and or Scotty Pope were informants that caused him to be arrested. This murder was due to these pending charges. It had nothing to do with Appellant defending himself. While detained in the county detention center Appellant wrote an e-mail to a "Jared John Phillips." In the e-mail the Appellant wrote "the confidential informant is still alive, if you want to help you know what can be done." (R. p. 596 l. 11-13). The Appellant requested that this e-mail not be placed into evidence because it was confusing to the jury in violation of rule 403 of the South Carolina Rules of Evidence.

Standard of Review

The materiality, relevance, and admissibility of evidence are within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *State v. Rosemond,* 335 S.C. 593, 596, 518 S.E.2d 588, 589 (1999). An abuse of discretion occurs when the conclusions of the trial court lack evidentiary support or are controlled by an error of law. *State v. Anderson,* 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009). A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. *State v. Collins,* 409 S.C. 524, 763 S.E.2d 22, 28 (2014).

Discussion

The Appellant argues that the trial court erred in allowing the State to share an email sent by the Appellant while he was in the county detention center. The argument of the Appellant is that

revealing this email was confusing to the jury, thereby, in violation of Rule 403 of the South Carolina Rules of Evidence.

The State presented this evidence to prove the motive, that Appellant's killing of the victim was not in self-defense, but because of his belief the victim and Scottie Pope were informants. During trial the Appellant argued that there was never any evidence that Mr. Pope was an informant however, this all occurred when his case was still pending, and what was relevant was not what was factual but was that Appellant believed, the victim and Mr. Pope were informants. Appellant believed this to the point he wished them both killed.

In the rules of evidence the definition of relevance is, "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401 SCRE. This was an email written admittedly by the Appellant to another individual seeking his assistance in dealing with Mr. Pope. This is obvious by the statement, "confidential informant is still alive. **If you want to help, you know what can be done.**"

Appellant argues that this statement was confusing to the jury in violation of Rule 403 of the South Carolina Rules of Evidence which specifically states:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 403 SCRE.

It is clear that the State presented this evidence to reveal motive. The fact is the Appellant believed that the victim and Scottie Pope were informants. Appellant admitted during this testimony that when this incident occurred he had pending charges for trafficking in methamphetamine and

heroin.[2] (R. p. 557 l. 14-20). Appellant had a previous conviction for possession with intent to distribute. (R. p. 557 l. 21-24). So, if convicted this would have been a second offense, which would have possibly had him facing a substantial amount of prison time. It is obvious in the text between the Appellant and the victim, prior to the victim's murder, Appellant thought they were informants. He states to the victim, "So basically all y'all muthafuckas police." (T. p. 437 l. 24-25). "you police too" (R. p. 549 l. 2). To corroborate their claim the State decided to place into evidence an email written by the Appellant himself talking about a confidential informant that is still alive, and that "if he wants to help he knows what to needs to be done." (R. p. 596 l. 11-12). If self-defense is raised by the defense, then the State is obligated to prove beyond a reasonable doubt that no self-defense existed. When self-defense is properly submitted to the jury, the defendant is entitled to a charge, if requested, that the state has the burden of disproving self-defense by proof beyond a reasonable doubt. *State v. Butler,* 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). There was absolutely no confusion about what was being done on behalf of the State. They were using corroborating evidence to prove that this was not self-defense, but malice, so this was murder. This was relevant evidence that was not confusing nor over prejudicial; therefore, not in violation of Rule 403. This evidence was rightfully allowed, the trial court made no error in making this decision. This decision should be affirmed.

[2] Appellant was convicted of these offenses in June of 2022. (R. p. 506 l. 7-15).

4. **Respondent will concede that the trial court erred in sentencing Appellant to a consecutive term of incarceration for the offense of possession of a weapon during the commission of a violent crime when S.C. Code Ann. §16-23-490(A) does not allow for a sentence upon a defendant being sentenced to life without parole.**

Relevant Facts

Upon the conclusion of the trial and upon the announcement of the verdict the Appellant appeared before the trial court for sentencing. The trial court proceeded to sentence the Appellant to a period of incarceration for the remainder of his natural life without the ability to obtain parole for the offense of murder and a consecutive five years for the offense of possession of a weapon in the commission of a violent crime.

Standard of Review

If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined by Section 16-1-60, he must be imprisoned five years, in addition to the punishment provided for the principal crime. This five-year sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime. S.C. Code Ann. §16-23-490(A).

Discussion

The above referenced statute reveals the legislature did not intend for a person to be sentenced to the five-year period of incarceration if sentenced to death or life imprisonment without the possibility of parole. The Respondent concedes that the Appellant was given a sentence that was not lawful pursuant to the South Carolina Code of Laws. So, this court should remove this sentence from the Appellant. Respondent, however, does not concede the other decisions made by the trial court.

CONCLUSION

The Respondent argues that decisions made by the trial court were lawful and should be affirmed by this court.

Respectfully submitted,

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December 13, 2024

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STATE OF SOUTH CAROLINNA
In the Court of Appeals

Appeal from Greenville County
The Honorable Alex Kinlaw, Jr. Circuit Court Judge
Appellant Case No. 2023-000608

THE STATE, RESPONDENT

v.

BRAYLON L. MORRIS, PETITIONER

PROOF OF SERVICE

I, Tommy Evans, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent and Proof of Service have been forwarded to Appellant's counsel, Joanna K. Delany, Esquire, via email today, December 13, 2024 to JDelany@sccid.sc.gov, and Ms. Delany's assistant, Sara McInnis, to SMcInnis@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served. This is the 13th day of December 2024.

s/Tommy Evans, Jr.
Tommy Evans, Jr.
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Brandy Rankin

From: Brandy Rankin
Sent: Friday, December 13, 2024 9:44 AM
To: Delany, Joanna
Cc: smcinnis@sccid.sc.gov; Tommy Evans, Jr.
Subject: Final Brief of Respondent - The State v. Braylon L. Morris
Attachments: Braylon Morris.Final Brief of Respondent FOR FILING - approve by TE.pdf

Dear Ms. Delany,

Please find attached the Respondent's Final Brief and Proof of Service. We will file these documents with the South Carolina Court of Appeals today, December 13, 2024 along with a copy of this email.

Sincerely,

Brandy Rankin

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