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Feb 26 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County
The Honorable Benjamin H. Culbertson, Circuit Court Judge
Appellate Case No. 2023-000633

THE STATE,

Respondent,

vs.

PHILIP DAVID GUDERYON,

Petitioner.

MOTION TO PUBLISH

On February 12, 2025, this Court issued an unpublished opinion reversing Petitioner Philip Guderyon's conviction for assault and battery of a high and aggravated nature. State v. Guderyon, Op. No. 2025-MO-028 (S.C. S.Ct. filed Feb. 15, 2025). The Court held the trial court erred by failing to tailor its jury charge to account for the defense theory that Guderyon acted in self-defense in response to the threat of non-deadly force. Instead, the trial court gave the standard self-defense charge applicable in cases where a defendant uses deadly force in response to the threat of deadly force. On appeal, the State did not dispute that Guderyon's requested charge was a correct statement of law but argued any error was harmless. In its opinion, the Court noted it had recently explained in State v. Stoots, Op. No. 28253 (S.C. Sup. Ct. filed Jan. 23, 2025) (Howard Adv. Sh. No. 4 at 11), that a valid claim of self-defense may be premised on the use of force in response to the threat of non-deadly force.

The State believes the Court's holdings in this case and in Stoots are well-reasoned and correct. However, the State respectfully submits the opinion in this case warrants publication for the benefit of the bench and bar, and now so moves. While the Stoots opinion explains the applicable law in cases of non-deadly self-defense, the facts of the two cases are significantly different. While Stoots involved the use of non-deadly force in response to the threat of non-deadly force, Guderyon's case involves an unusual fact pattern. Guderyon, by his account, was threatened with non-deadly force. He argued he responded with lawful non-deadly force. However, the force he used was indisputably deadly in result, as it proximately caused the victim's death from a skull fracture after his head struck the floor. The State argued Guderyon used deadly force from the outset because Guderyon, a trained kickboxer, struck the defenseless victim behind his ear, a violent blow sufficient in its own right to cause death or great bodily injury. The State further disputed Guderyon's version of events, arguing no force was justified because Guderyon was not faced with the threat of imminent bodily harm, serious or otherwise.

Importantly, in its opinion, this Court noted the competing theories and explained the responsibility of trial court in giving jury instructions as follows:

Self-defense jury charges must be tailored to fit the facts of each case, including whether the facts warrant charging the jury with a "traditional" deadly self-defense jury instruction, a non-deadly self-defense jury instruction as recognized by Stoots, **or—if supported by the evidence—both instructions.**

Guderyon (emphasis added).

Although the facts of this case are unusual, they will occur again. The State respectfully submits that the foregoing language could assist future trial courts in their decisions regarding which jury charge (or charges) are appropriate in cases involving facts which could support an instruction on self-defense as it relates to both deadly and non-deadly force. Further, because


this Court reversed a published opinion by the court of appeals, a published opinion would provide clarity to the bench and bar regarding the error in the lower court's opinion.

Accordingly, the State respectfully asks this Court to vacate its prior opinion and issue a published opinion in its place. By doing so, this Court will provide guidance to the bench and bar on an important legal issue that—before this year—had not previously been explained in detail. Especially considering the unusual facts of this case, which are distinguishable from Stoots, the State respectfully submits publication is warranted.

Respectfully submitted,

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