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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Honorable H. Steven DeBerry IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIE JAMES SMITH,

APPELLANT.

APPELLATE CASE NO. 2024-000879

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

In this murder trial where the evidence supported that Appellant acted in self-defense, did the trial judge err in refusing to charge self-defense to the jury?

STATEMENT OF THE CASE

In March of 2023,[1] the Florence County Grand Jury indicted Appellant, Willie Smith, for murder, indictment #2023-GS-21-00480. On May 13, 2024. Appellant proceeded to jury trial before the Honorable H. Steven DeBerry, IV. William Foster "Josh" Edgeworth, III, represented Appellant at trial. J. Ryan White prosecuted the case. The jury found Appellant guilty of murder. Judge DeBerry sentenced Appellant to life without parole. A timely notice of intent to appeal was served on May 22, 2024. This appeal follows.

[1] There appears to be an error with the year of the term of the grand jury listed on the indictment as March 9, **2022**, but the incident is alleged in the indictment to have taken place on June 9, 2022. The indictment number and true bill date reflect March 9, **2023**.

STANDARD OF REVIEW

"An appellate court will not reverse the trial judge's decision regarding jury charges absent an abuse of discretion. Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000); State v. Williams, 367 S.C. 192, 624 S.E.2d 443 (Ct.App.2005)." State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006).

ARGUMENT

In this murder trial where the evidence supported that Appellant acted in self-defense, the trial judge erred in refusing to charge self-defense to the jury.

The jury found Appellant guilty of the fatal stabbing of his roommate, James McNamara on June 9, 2022. Appellant and McNamara both worked for an asphalt paving company and the two men were sharing a motel room while they worked on a job in Florence. (Tr. pp. 197-200). The incident took place inside the motel room. A short time after the incident Appellant called 911 and was still at the motel when first responders arrived. (Tr. p. 71, lines 1-17; p. 87, lines 1-25).

Appellant provided a statement to investigators and a video of the interview was admitted in evidence, without objection, as State's exhibit #50. (Tr. p. 263, lines 4-8). Appellant told the investigators that McNamara came into the room at 4:00 AM making noise and woke him up. McNamara told Appellant that he was his "pet nigger." (State's exhibit #50 at 14:21). When the investigator asked if McNamara came at Appellant physically Appellant said McNamara came off the bed and Appellant came off the bed. (State's exhibit #50 at 17:54). Appellant said McNamara jumped up toward him and Appellant jumped up toward McNamara and he guessed McNamara did not see that Appellant had a knife. (State's exhibit #50 at 18:05). When asked if Appellant saw if McNamara had any weapons Appellant said he did not have time to look because when McNamara jumped up, Appellant jumped up. (State's exhibit #50 at 18:15). Appellant told the investigators that while he had never seen McNamara with a gun, he knew he carried a box cutter or blade or some sort of a weapon. (State's exhibit #50 at 22:24). Appellant told the investigators that he knew it was all bad for him and indicated it was his fault. (State's exhibit #50 at 24:21).

During the charge conference the judge asked the parties about charging voluntary manslaughter. (Tr. p. 293, lines 7-8). The assistant solicitor said, "I think there's enough in the records for a charge on manslaughter, Judge." (Tr. p. 293, lines 9-10). Appellant objected to the charge on voluntary manslaughter. (Tr. p. 293, line 12 – pp. 294 – 297, lines 1-6). The judge ruled, "I'll tell you what. Everybody be prepared to argue both charges, murder and voluntary manslaughter. And if I decide any differently, then I'll certainly let you know before we reconvene at 2 o'clock." (Tr. p. 297, lines 7-10).

Counsel for Appellant asked about a self-defense charge. (Tr. p. 300, lines 8-9). The judge said:

> Well, this is the first time it's been brought up, but, no, I don't think - - you know, at this point in time, there's been no evidence of the elements of self-defense except for the one of, you know, that he may have been coming at him.
>
> There's been absolutely no evidence that your client was afraid for his life. There's been no evidence in the record that he thought he was armed, you know, that would – I mean, now certainly he was in his hotel room where he had a right to defend himself. He didn't have the duty to retreat. So I'm not, you know, considering that element of self-defense, but I don't think as we stand right now with what's in the record that - -that there's the evidence - - the existence of evidence that would justify a self-defense charge.

(Tr. p. 300, lines 10-23).

In closing argument the assistant solicitor stated, without objection, "They admit it's not a self-defense case. You won't hear any law about self-defense." (Tr. p. 313, lines 1-3). The judge charged the jury with the law of voluntary manslaughter but not self-defense. (Tr. p. The jury convicted Appellant of murder. The trial judge erred in refusing to instruct the jury on the law of self-defense.

In <u>State v. Williams</u>, 400 S.C. 308, 314–15, 733 S.E.2d 605, 608–09 (Ct. App. 2012), the South Carolina Court of Appeals wrote:

> "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. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (internal citations omitted). "The law to be charged must be determined from the evidence presented at trial." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000) (internal citations omitted); see also Mattison, 388 S.C. at 478, 697 S.E.2d at 583 (stating appellate courts should "consider the court's jury charge 'as a whole in light of the evidence and issues presented at trial"). When reviewing the circuit court's refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant. Cole, 338 S.C. at 101, 525 S.E.2d at 512–13.
>
> "If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the [circuit court's] refusal to do so is reversible error." State v. Day, 341 S.C. 410, 416–17, 535 S.E.2d 431, 434 (2000).

In State v. Jackson, 384 S.C. 29, 35–36, 681 S.E.2d 17, 20 (Ct. App. 2009), the South Carolina Court of Appeals wrote:

> "If there is any evidence of record from which it can be reasonably inferred that an accused justifiably inflicted a wound in self-defense, then the accused is entitled to a charge on the law of self-defense." State v. Wigington, 375 S.C. 25, 31, 649 S.E.2d 185, 188 (Ct.App.2007). When any evidence in the record entitles the accused to a jury charge on self-defense, a trial judge's refusal to give the charge is reversible error. State v. Muller, 282 S.C. 10, 10, 316 S.E.2d 409, 409 (1984).

Viewing the evidence in the light most favorable to Appellant, there is some evidence from which it could reasonably be inferred that Appellant acted in self-defense. The trial judge's refusal to charge self-defense is reversible error. In State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011), the South Carolina Supreme Court wrote:

> A person is justified in using deadly force in self-defense when:
>
> (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.

In the present case there is some evidence of the first three elements of self-defense discussed above. As to the fourth element, the trial judge correctly found that Appellant had no duty to retreat from the motel room he shared with the deceased. There is no evidence that Appellant was at fault in bringing on the difficulty. The highly offensive words used accompanied by the deceased coming at Appellant support a belief that Appellant was in imminent danger of losing his life or sustaining serious bodily injury. Those words accompanied by the hostile act show that a reasonably prudent person would have had the same belief. Appellant was entitled to a self-defense instruction that included language that words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense. In State v. Fuller, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989), the South Carolina Supreme Court wrote:

> Moreover, the trial judge erred in not charging the jury that "words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense" as this court stated in State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951), and previously in State v. Mason, 115 S.C. 214, 105 S.E. 286 (1920). Like the appearances charge, Fuller was entitled to the above set forth charge. Testimony presented at trial revealed that Dixon stated "he was going to take care" of Fuller; that Dixon grabbed Fuller by the throat; and, that Dixon and Phillips called Fuller a "nigger." Testimony also revealed that Dixon and Phillips rammed Fuller's car with their truck. Because of the evidence presented at trial, we find that the trial judge should have charged the jury that words accompanied by hostile acts may establish self-defense.

Appellant was entitled to a full self-defense charge to include words accompanied by hostile acts may establish self-defense as discussed in Fuller. There is evidence in the record from which it can be reasonably inferred that Appellant acted in self-defense. The trial judge

erred in refusing to charge self-defense.

The error in failing to charge self-defense requires reversal. The error was compounded by the assistant solicitor's closing argument falsely claiming that Appellant admitted it was not a self-defense case. (Tr. p. 313, lines 1-3). While this Court has consistently held that an erroneous jury instruction is subject to a harmless error analysis,[2] it is difficult to imagine how the failure to charge self-defense when supported by the evidence could be harmless. The error was not harmless in the present case. There was not "one clear-cut conclusion" as the Court of Appeals noted in State v. Battle, 408 S.C. 109, 122, 757 S.E.2d 737, 743 (Ct. App. 2014), distinguishing State v. Middleton, 407 S.C. 312, 755 S.E.2d 432 (2014). The jury should have been given the option of determining if Appellant acted in self-defense or not. The trial judge abused his discretion in refusing to charge self-defense. The error requires reversal.

[2] See State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019)

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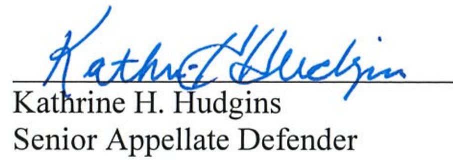
CONCLUSION

Based on the above argument, this Court should reverse the conviction and remand for a new trial.



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This 20th day of March, 2025.