STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AKIM JAMMAR JEAN-CHARLES,

APPELLANT

APPELLATE CASE NO. 2023-000251

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the circuit court erred in refusing to charge the jury with Appellant's requested definition of a "threat" where the definition was supported by case law and was the crux of Appellant's defense in a prosecution for threatening the life, person, or family of a public official under S.C. Code Ann. §16-3-1040(A)?

STATEMENT OF THE CASE

Appellant was indicted during the August 2018 term of the Charleston County grand jury for one count of threatening the life, person, or family of a public official. R. 736-737. The State, represented by Lemuel Zeigler and Kelly Barber, called the case to trial on February 6, 2023, before the Honorable Deadra L. Jefferson and a jury. Appellant was initially represented by Nicholas D'Angelo and Douglas A. Henley. R. 1. Prior to the start of trial Appellant moved to proceed *pro se*. R. 6, ll. 3-9. He was ultimately granted that right after a hearing pursuant to Faretta.[1] R. 6, ll. 3-9; R. 413, l. 1-R. 415, l. 6. Appellant was found guilty as indicted. R. 648, ll. 7-12. Appellant was sentenced to four years imprisonment, suspended upon 109 days of time served and four years of probation.[2] R. 722, l. 11-R. 723, l. 11; R. 738-739.

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[1] Faretta v. California, 422 U.S. 806 (1975).

[2] Special conditions of probation included: successful completion of substance abuse counseling, random drug and alcohol screening, a mental health assessment within five days of sentencing, 40 hours of public service, six months of strict house arrest with GPS monitoring, and to complete an anger management class. R. 722, l. 11-R. 723, l. 11.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Dent, 440 S.C. 449, 453, 892 S.E.2d 294, 296 (2023) citing State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "In reviewing jury charges for error, this Court considers the trial court's jury charge as a whole and in light of the evidence and issues presented at trial." State v. Logan, 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013). An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Id. "To warrant reversal, a trial [court's] refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." State v. Brandt, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011) (quoting State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010)).

ARGUMENT

The circuit court erred in refusing to charge the jury with Appellant's requested definition of a "threat" where the definition was supported by case law and was the crux of Appellant's defense in a prosecution for threatening the life, person, or family of a public official under S.C. Code Ann. §16-3-1040(A).

Relevant Facts

On September 5, 2017, Sergeant Danielle Rainey initiated a traffic stop on a vehicle being driven by Appellant. Appellant was ultimately arrested and charged with driving under the influence. Sergeant Rainey transported Appellant to the local detention center where he was offered a breathalyzer test. During the thirty-minute period that it takes for the breathalyzer test machine to acclimate, Appellant was on video talking at Sergeant Rainey. R. 433, l. 17-R. 437, l. 13. In the video Appellant is heard stating,

> Man, that shit is so fucking sad. I swear to God, if I could, I would slap the shit out of you. I would beat the fuck out you. I would – I would punch women like you. I would beat the fuck out of women like you because y'all deserve it.
>
> ...
>
> I wish I could spit on y'all. I wish I could fucking spit on y'all motherfuckers. Take a shit and put it in my hand and throw it in your fucking face and smash that shit. Rub it all in your face and be like, yeah you stupid bitch, that's what you deserve. That is what you deserve.

State's Exhibit 1 – DVD with video clips.[3]

Appellant was charged with threatening the life of a public official based on the statements made in the video. R. 433, l. 17-R. 437, l. 25. At trial, Sergeant Rainey testified that she interpreted Appellant's statements as threats. R. 443, ll. 19-20. She testified that while

[3] At trial, the State entered a redacted version of the video that only showed the two alleged threats being made. A copy of this exhibit is on file with this Court.

driving Appellant to the jail "there was a lot of statements made, a lot of kicking to the back of the cage and his face was literally buried in the cage towards, like, right here saying he was going to kick my ass, I'm a dumb black bitch, I can't believe you did this, you're black, you're just sad." R. 444, ll. 16-20.

During cross-examination, Sergeant Rainey testified that Appellant was polite during the initial roadside encounter and only became rude after she determined he failed the field sobriety test. R. 447, l. 23-R. 448, l. 9. She stated that although Appellant was in handcuffs, she felt extremely threatened by his language, despite her calm demeanor. R. 451, l. 20-R. 452, l. 13. She further testified that as she was escorting Appellant out of the DataMaster room he stated, "I won't be in here long and I'm going to kick your ass and spit on you." R. 466, l. 12-R. 467, l. 8.

Appellant testified in his defense that he did not mean the statements as threats to Sergeant Rainey, but was "literally just venting." He maintained that he did not say he was coming to get her after he was released. R. 497, ll. 5-15. Appellant stated he regretted saying "all of those bad things" but averred, repeatedly, that he did not threaten Sergeant Rainey. R. 497, ll. 5-24; R. 501, ll. 4-6; R. 502, ll. 20-25; R. 503, ll. 15-18. Appellant also testified that he believed his statements were protected free speech. R. 503, ll. 8-11. He testified that everything he said included "I wish" or "if I could" which indicated he was aware that he could not actually do the things that he was saying. R. 497, ll. 23-25; R. 503, l. 24-R. 504, l. 2; R. 508, ll. 17-24.

Both the State and Appellant's prior counsel submitted proposed definitions of the word "threat" to be charged to the jury. The State requested the court charge:

> "Threat" is defined in criminal law as the declaration of a purpose or intention to do an unlawful act that will work injury to the person, property, or rights of another. Threat is the expression of an intention to inflict evil or injury on another. A threat only promises a future injury and usually gives ample opportunity to provide against it, while an assault must be resisted on the instant.

Court's Exhibit 7 – State's Request to Charge. The Defense requested the court charge:

> A threat is defined as, a communicated intent to inflict physical or other harm on any person or on property. A declaration of an intention to injure another or his property by some unlawful act. The term "threat" means an avowed present determination or intent to injury presently or in the future. The prosecution must establish a "true threat," which means a serious threat as distinguished from words uttered as mere political argument, idle talk, or jest.

Court's Exhibit 2 – Defendant's Proposed Jury Instructions.

The State took issue with "the idle threat stuff and interpretation" which the trial court stated was "not an element. They [the State] don't have to establish a true threat. That's outside – that would be adding to the language of the statute." R. 521, ll. 2-7. The trial court then determined it would use its own definition of threat "once I figure out what that's going to be." R. 522, ll. 3-5. The trial court then stated it would not charge the defense's requested definition because "I think [that] part is an improper comment on the facts." R. 524, ll. 18-25. Appellant consistently argued for a definition that addressed that a threat cannot be idle. R. 525, ll. 15-18. He attempted to argue the factors that determine a threat as set forth in Watts v. U.S., 394 U.S. 705 (1969), but was derailed by the trial court. R. 528, ll. 1-R. 531, l. 18.

After instructing the language of the statute, the trial court defined various terms within the statute as follows,

> Knowingly means with knowledge, conscientiously, not accidentally. Willfully means that it was not done by accident but was done knowingly or intentionally. The State must prove beyond a reasonable doubt that the threat was knowing and willful. Threat is defined as a communicated intent to inflict harm or loss on another or on another's property. Webster defines a threat as the expression of an intention to inflict evil or injury on another. Threats can be communicated by actions, words [,] or deeds.

R. 615, ll. 17-25. The trial court then charged the jury the standard criminal intent language in South Carolina.

Discussion

"[T]he purpose of jury instructions is to enlighten the jury as to what law is applicable to a certain state of facts in order that a just, fair[,] and proper verdict can be reached." State v. Peer, 320 S.C. 546, 554, 466 S.E.2d 375, 380 (Ct. App. 1996). "The trial court is required to charge only the current and correct law of South Carolina." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). "The evidence presented at trial determines the law to be charged to the jury." State v. Gilliland, 402 S.C. 389, 400, 741 S.E.2d 521, 527 (Ct. App. 2012). "The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law." State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 167 (2007).

Section 16-3-1040(A) criminalizes threatening speech and therefore "must be interpreted with the commands of the First Amendment clearly in mind" to differentiate between what is a true threat and what is constitutionally protected speech. Watts v. United States, 394 U.S. 705, 707 (1969) (per curiam). "True threats" of violence are a historically unprotected category of communications under the First Amendment. Counterman v. Colorado, 600 U.S. 66, 74 (2023) *citing* Virginia v. Black, 538 U.S. 343, 359 (2003). "The 'true' in that term distinguishes what is at issue from jests, 'hyperbole,' or other statements that when taken in context do not convey a real possibility that violence will follow." Counterman at 74. In Brooker v. Silverthorne, 111 S.C. 553, 99 S.E. 350, 352 (1919), our Supreme Court discussed threats under South Carolina law and wrote,

> But the threat which causes fear must be such as the law will recognize as adequate to produce the result. There must be just and reasonable grounds for the fear; hence a vain or idle threat is not sufficient. It must be of such nature and made under such circumstances as to affect the mind of a person of ordinary reason and firmness, so as to influence his conduct; or it must appear that the person against whom it is made was peculiarly susceptible to fear, and that the person making the threat knew and took advantage of the fact that he could not stand as much as an ordinary person.

Unquestionably, Appellant knowingly and willfully delivered a verbal communication to Sergeant Rainey. He admitted as much during his trial testimony. The question that the jury had to determine was whether that communication constituted a true threat. The definition provided by the trial court did not shed any light on the matter and only defined "threat" in the common parlance. Both the United States Supreme Court and the South Carolina Supreme Court have interpreted a threat to mean that there must be a real possibility that violence will follow the spoken words, meaning that the threat cannot be vain or idle. The definition requested by Appellant conveyed to the jury a sound principal of law that was necessary for the jury to properly decide the case.

The purpose of S.C. Code Ann. §16-3-1040(A) was to penalize true threats made against the person, property, or life of public officials and their families – it was not enacted to punish rude and offensive language that does not promise some real possibility of violence. While Appellant's words were offensive, crude, and unpleasant, they did not promise some future injury or real possibility of violence. What he said to Sergeant Rainey was highly distasteful, but it was not illegal. The jury could not make this determination without a full, legal definition of "threat." Because 16-3-1040(A) criminalizes speech, it is axiomatic that it must be viewed through the lens of the First Amendment. For a jury to properly consider the case, it must be instructed in the differences between an idle threat and a true threat. It was error for the trial court to not include Appellant's requested definition of a threat in the jury charge.

CONCLUSION

Based on the forgoing argument, Appellant respectfully requests that this Court reverse his conviction and remand his case back to the Court of General Sessions of Charleston County for a new trial.

Sara M Caudy for:
Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of May, 2025.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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."

May 8, 2025.

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon J. Benjamin Aplin, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 8th day of May, 2025.

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