THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

H. Steven DeBerry IV, Circuit Court Judge

Appellate Case No. 2024-000274

THE STATE,

Respondent,

v.

MEASHA JAQUETTA SHAWNIC JOYNER,

Appellant.

INITIAL BRIEF OF RESPONDENT

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2. Did the trial court err by denying appellant credit for time served in home confinement on the basis that she was arrested for a charge which was dismissed?

Respondent's Counterstatements

1. Whether the trial court abused its discretion by denying Appellant's request to charge self-defense given that the evidence presented at trial does not support a self-defense charge and that South Carolina does not recognize transferred intent for self-defense.

2. Whether the trial court abused its discretion by denying Appellant's request for credit for time served on monitored home detention given that credit for such time is discretionary under section 24-13-40 of the South Carolina Code.

STATEMENT OF THE CASE

In August 2019, a Florence County grand jury indicted Appellant for murder, three counts of attempted murder, and possession of a weapon during the commission of a violent crime. (Indictment No. 2019-GS-21-01040). On December 4-8, 2023, Appellant proceeded to a jury trial before the Honorable H. Steven DeBerry, IV. (Tr. 1).

Lizzie Robinson, a quality assurance employee at Florence County 911, testified that Florence County 911 received a call on March 24, 2019, regarding a shooting at the Coit Street Quick Stop in Florence. (Tr. 91).

Thomas Herman, an investigator with the City of Florence Police Department, testified that he was dispatched in response to the 911 call. (Tr. 96). Herman stated that the scene was "chaotic" when he arrived. (Tr. 98). People were screaming, and a person was on the ground with a gunshot wound to the head. (Tr. 98). He testified that the scene was a parking lot, in which people were known to gather. (Tr. 99). As one of the first law responders to the scene, Herman's role was to secure the scene and relay information to other incoming responders. (Tr. 99). After he determined that the person on the ground had a gunshot wound to the head, another officer began providing medical attention to that person while Herman started obtaining witness statements. (Tr. 103).

Herman had been nearby when the incident occurred and had heard gunshots but had not counted the number of shots fired. (Tr. 97, 106). Herman confirmed he received information at the scene that Jolicia Joyner, who is Appellant's sister, had been the shooter and also that a man in a white BMW or Mercedes drove off shooting. (Tr. 111). Herman testified that Jamie Zimmerman, an individual at the scene, told an officer that Victim had been caught in crossfire and had been shot by someone in the parking lot rather than the person shooting from a car. (Tr. 113).

Carlos Jackson testified he was at the Coit Street Quick Stop for his birthday party. (Tr. 162). Jackson testified that both Appellant and Jolicia attended the party. (Tr. 163). During the party, he went outside and observed a fight involving Appellant, Jolicia, and others. (Tr. 164). He shot his firearm into the air to break up the fight and went back inside. (Tr. 164-65). Shortly after he returned inside, he heard more gunshots. (Tr. 164-65). He stated that he attempted to go back outside but was unable to because of the number of people trying to get inside. (Tr. 165). Jackson did not see who fired shots after he returned inside, but he believed the shots were fired within a minute of his return inside. (Tr. 165). He admitted that the time between his gunshot and the following shots could have been more than a minute. (Tr. 165). Jackson confirmed he became aware that someone had been injured in the parking lot after he returned inside. (Tr. 165). He stated that he did not shoot Victim. (Tr. 186).

Angela Robinson testified she attended Jackson's birthday party, which was also a birthday party for Gloria Whitehead. (Tr. 188). At the party, Angela saw both Jackson and Whitehead, as well as Whitehead's daughter, Deandra. (Tr. 189). Angela's children, Brianna and Jamares, were also present. (Tr. 189). During the party, she saw Appellant and Jolicia fight Deandra and Kanisha Allen. (Tr. 190). Angela was not aware of any problems at the party before Appellant and Jolicia arrived. (Tr. 191). She did not witness the fight breaking up. (Tr. 191). Angela testified that after the fight broke up, she believed the fighting was dying down. (Tr. 191). She said the fight broke up as she walked to her car with her daughter, Brianna. (Tr. 191-92). Once in her car, Angela and Brianna watched the "shenanigans" and talked. (Tr. 192-93). While they were talking, Angela heard yelling before seeing Appellant, Jolicia, and another woman get into a white vehicle. (Tr. 193). As this white vehicle sped off, Angela saw Appellant in the backseat of the white car "with her body half way hanging out with her arm out stretched with a gun firing into the crowd

of people." (Tr. 193). Angela stated she heard more than one shot coming from the backseat of the white vehicle and estimated that she heard "[a]bout three" but was not sure. (Tr. 200-01).

After the white car left, Angela and Brianna got out of their car and went toward the crowd of people. (Tr. 195). Angela observed Victim on the ground with a bullet wound in her head. (Tr. 195). Angela's son, Jamares, who had been standing next to Victim when Victim sustained the gunshot wound, fired his gun down the street toward the fleeing white car. (Tr. 195). According to Angela, Appellant fired first and Jamares fired after in retaliation. (Tr. 196). When Angela saw that Victim was beyond anything she could do to help her, Angela and Brianna left. (Tr. 197). Jamares told her that he would talk to law enforcement and handle everything. (Tr. 197).

Stephen Starling, a captain with the City of Florence Police Department, testified regarding shell casings found at the scene as they related to State's Exhibit 2, which is a map of the scene and corresponding evidence markers. (Tr. 215, 232). He testified that items 8-15 as labeled on State's Exhibit 2 were all aluminum .9 millimeter shell casings. (Tr. 234). State's Exhibit 2 shows these shell casings in an arc from the parking lot out onto a street. (State's Ex. 2).

Regarding the shell casings found at the scene, four different types of casings were recovered by law enforcement. The casings were identified as: (1) one brass forty-caliber casing, which matched the forty-caliber Smith and Wesson pistol turned in by Carlos Jackson (Tr. 166, 425, 501; State's Ex. 118 at 2); (2) three brass nine-millimeter casings, which matched the FMK nine-millimeter pistol turned in by Jamares Robinson (Tr. 378, 423-24; State's Ex. 118 at 1); (3) one aluminum .380 casing and three live aluminum-cased .380 bullets, which matched the .380 Hi-Point turned in by Demarcus Bluett (Tr. 424-25, 501; State's Ex. 118 at 1); and (4) eight aluminum nine-millimeter casings, which matched no gun in evidence. (Tr. 493, 508-509). However, the eight aluminum nine-millimeter casings matched the Federal brand nine-millimeter

Luger bullets found at Appellant's home. (Tr. 243-244). The bullet recovered from Victim's brain was not fired by the guns turned in by Jackson, Jamares, or Bluett. (State's Ex. 118 at 2).

Gloria Whitehead testified that she attended the party at the Coit Street Quick Stop. (Tr. 262). When she arrived, Victim, Kanisha Allen, and Gloria's daughter, Deandra, were already there. (Tr. 263). Appellant and Jolicia had yet to arrive. (Tr. 264). She became aware of a fight between Deandra and Jolicia after another adult at the party told her of the fight. (Tr. 265). When she went outside, she saw two fights—one between Deandra and Appellant and another between Kanisha and Jolicia. (Tr. 266). Gloria separated Appellant and Deandra before walking Appellant back to Appellant's car. (Tr. 266). Gloria was aware of Jackson's single gunshot, which was an effort to break up the fight between Kanisha and Jolicia and occurred after Gloria returned from escorting Appellant to her car. (Tr. 267). Gloria testified that Kanisha and Jolicia stopped fighting after Jackson's shot but Jolicia continued talking despite being told to leave by both Gloria and Jackson. (Tr. 269). Jolicia eventually proceeded to get into the front passenger seat of the same car Appellant was already in. (Tr. 269-70). Gloria stated that Victim was not engaged in either fight. (Tr. 270). Further, the woman who drove Appellant and Jolicia's car was also not engaged in either fight. (Tr. 270).

Gloria estimated that 15 to 20 minutes passed between when Deandra left after breaking off her fight with Appellant and when Jolicia got into her car. (Tr. 271). However, Gloria did not look at her watch during the incident and stated her time estimates were estimates and not certainties. (Tr. 298). Gloria testified that Victim did not come outside until Jolicia got into her car. (Tr. 272). As Victim was asking Gloria why the fights occurred, Victim was hit in the head by a bullet. (Tr. 272). Gloria watched Appellant shoot into the crowd as the car she was in pulled out of the parking lot. (Tr. 272-75). Gloria confirmed she told others at the scene that Jolicia shot

Victim but clarified that her statements shortly after the shooting were misstatements because she meant to say Jolicia's sister. (Tr. 278, 297). Gloria testified that she did not know how much of Appellant or Appellant's gun were outside of the car window because it was dark outside. (Tr. 291). She stated she did not see anyone else with a gun. (Tr. 289).

Deandra testified that she attended Jackson's party. (Tr. 303). She knew of Appellant but did not know her. (Tr. 304-05). Deandra and Kanisha stayed outside when Appellant and Jolicia arrived. (Tr. 306). When Appellant and Jolicia came back outside, the fighting started. (Tr. 306-07). Gloria broke up Appellant and Deandra, and Gloria walked both Appellant and Deandra to their respective cars. (Tr. 307-08). When Jolicia and Kanisha's fight ended after Jackson shot once into the air, Deandra and Kanisha left. (Tr. 308-09). Deandra estimated they left approximately five minutes after Jackson's sole shot. (Tr. 312). Deandra testified that she received phone calls approximately 20 to 30 minutes after she left the party and learned that Victim had been shot. (Tr. 311). Deandra stated that Appellant and Victim did not know each other and that she did not understand why Appellant would shoot Victim, especially because Victim had not been involved in the fights. (Tr. 310). She testified that Gloria initially told her that Jolicia shot Victim; however, she believed her mother meant to say that Jolicia's sister, Appellant, shot Victim because her mother did not know Appellant's name. (Tr. 325).

Kanisha Allen testified in a substantially similar manner to Deandra. (Tr. 328-41).

Tanisha Timmons went to Jackson's party and drove Appellant and Jolicia to the party in her white Ford Fusion. (Tr. 344-46). As she, Appellant, and Jolicia exited the party, Appellant and Jolicia became involved in a fight. (Tr. 347). Timmons testified that she pulled Appellant away and put her in the back seat of her car before she heard gunshots. (Tr. 347). After hearing gunshots, she went back, got Jolicia, put Jolicia in the front seat, and began driving. (Tr. 348). As she pulled

away from the parking lot, she heard shots from her backseat. (Tr. 348). She did not see Appellant shooting but confirmed that Jolicia was not the shooter. (Tr. 349).

Jamares Robinson testified that he attended Jackson's party. (Tr. 368). He stated that during the party, Appellant fought Deandra and Jolicia fought Kanisha. (Tr. 371). During the fighting, Jackson shot once into the air. (Tr. 372-73). Approximately 10 to 15 minutes after Jackson's shot, he saw shots coming from a white vehicle that he saw Appellant and Jolicia entering after the fighting. (Tr. 375-79). Jamares returned fire while running after the white car. (Tr. 377).

Brianna Robinson testified that she was also at Jackson's party. (Tr. 391). She saw the fight but could not identify the participants. (Tr. 394). She heard but did not see Jackson fire a shot into the air, but she heard it. (Tr. 394). Brianna stated she felt the heat from a second shot, after which everyone dispersed. (Tr. 396). She estimated two minutes passed between the second shot and when she saw Appellant shooting out of the back of a car. (Tr. 412).

Thomas Beaver, an expert in forensic pathology, testified that a bullet entered Victim's forehead and embedded in the back of her skull. (Tr. 528-29).

During her case in chief, Appellant offered body worn camera footage into evidence. (Tr. 564-65; Defense Ex. 8). One of the videos contained Jamie Zimmerman's account of the incident directly after the incident. (Defense Ex. 8). Jamie Zimmerman did not testify at trial. In the video, Zimmerman stated Victim was not involved in the shooting but was hit with a "stray bullet." (Defendant's Ex. 8 at 0:30-1:00). Zimmerman stated that Victim's friends were in a white Mercedes and that she believed Victim's friends were the ones who shot Victim. (Defendant's Ex. 8 at 4:00-4:30). Zimmerman also stated that Victim's friends shot first. (Defendant's Ex. 8 at 3:30-4:00). Zimmerman identified Jackson as one of Victim's friends and one of the shooters. (Defendant's Ex. 8 at 8:00-8:30).

During the charge conference, Appellant asked for a justification charge, which would charge the jury that if a person is being fired at, then the person would not be acting unlawfully if the person fired back. (Tr. 582). The State construed this request as a request for a self-defense charge and argued that no evidence of self-defense had been presented other than "an offhand comment made on a body-worn camera." (Tr. 582). The State objected to any justification or self-defense charge. (Tr. 582). Appellant argued Zimmerman's statement was not an offhand comment; rather, it was an eyewitness statement made before EMS arrived in which Zimmerman stated the incident was a shootout started not by Appellant but by Victim's friends. (Tr. 583). The State responded that no mention of self-defense was made during trial and the evidence presented by the State rebutted any self-defense theory. (Tr. 584). The trial court determined that a necessity charge was proper over the State's objection but declined to charge self-defense because self-defense had not been alleged. (Tr. 585).

The jury found Appellant not guilty of murder but guilty of the lesser included offense of voluntary manslaughter. (Tr. 680). The jury also found Appellant guilty of possession of a weapon during the commission of a violent crime. (Tr. 680).

After the jury verdict, Appellant requested credit for time served for three years of home confinement with electronic monitoring. (Tr. 688). The State acknowledged that Appellant was entitled to 20 months of time served for pretrial detention but objected to credit for her home detention because Appellant had been indicted for trafficking narcotics while on home detention. (Tr. 691). The State noted that the indictment for trafficking narcotics had been dismissed prior to this trial. (Tr. 691). Appellant asserted that the trafficking narcotics charge was "quickly" and completely dismissed for being unfounded. (Tr. 691). The trial court took the issue of credit for time served on monitored house arrest under advisement and requested the monitoring company's

report of violations. (Tr. 692). The trial court then sentenced Appellant to 25 years' imprisonment for voluntary manslaughter and a concurrent 5 years' imprisonment for possession of a weapon during the commission of a violent crime. (Tr. 692-93). The trial court gave credit for Appellant's 20 months of pretrial detention. (Tr. 693).

In its April 4, 2024 order denying credit for time served on monitored home detention, the trial court noted that section 24-13-40 of the South Carolina Code grants a sentencing judge discretion in granting time served for monitored home detention. (Or. 1). The trial court acknowledged that it reviewed a report from the monitoring company, which stated Appellant had no violations. (Or. 1). The trial court also stated that Appellant had been arrested while on home detention for a drug trafficking charge, which the trial court acknowledged had been dismissed prior to trial. (Or. 1).

This appeal followed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "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 trial [court's] refusal to do so is reversible error." *State v. Light*, 378 S.C. 641, 650, 664 S.E.2d 465, 469 (2008). Whether "any evidence" exists to warrant the charge is a question of law this Court reviews de novo on appeal. *State v. Jalann Lee Williams*, 427 S.C. 246, 830 S.E.2d 904, 906 (2019). 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 moving party. *State v. Wendell Williams*, 400 S.C. 308, 314, 733 S.E.2d 605, 608-09 (Ct. App. 2012).

A sentence will not be overturned absent an abuse of discretion. *Id*. An abuse of discretion occurs "when the ruling is based on an error of law or a factual conclusion without evidentiary support." *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010). "A trial judge has broad discretion in sentencing within statutory limits." *Id*. "A judge must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant." *Id*.

ARGUMENT

I. The trial court did not abuse its discretion by denying Appellant's request to charge self-defense because the evidence presented at trial does not support a self-defense charge and because South Carolina does not recognize transferred self-defense.

"The law to be charged to the jury is determined by the evidence presented at trial." *State v. Gaines*, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008). "To warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *Id*. To establish self-defense in South Carolina, four elements must be present:

> First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, 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.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

In this case, evidence presented by the State tends to disprove any self-defense theory beyond a reasonable doubt. S*ee State v. Jalann Lee Williams*, 427 S.C. 246, 249-50, 830 S.E.2d 904, 906 (2019) (noting that if evidence is presented by the defense to support self-defense, the State must disprove beyond a reasonable doubt at least one element of the defense).

A. The evidence presented at trial does not support a self-defense charge.

First, the evidence does not suggest that Appellant was without fault in bringing on the difficulty that resulted in the death of Victim, an innocent bystander. The only evidence that could be construed to suggest Appellant shot her gun because she was being shot at comes from the body camera footage of Jamie Zimmerman; however, even this evidence, when viewed in the light most

favorable to Appellant, does not support such an inference. In that video, Zimmerman states that Victim's friends—presumably meaning someone other than Appellant—shot first. (Defendant's Ex. 8 at 3:30-4:00). Zimmerman specifically stated that Victim had nothing to do with any physical fighting or shooting. (Defendant's Ex. 8 at 0:30-1:00). Trial testimony from other witnesses indicated that Jackson was the first person to shoot his gun on the night of the incident. (Tr. 164-65, 267, 308, 333, 347, 372, 394). This is consistent with Zimmerman's statement.

However, by all accounts of those who observed Jackson's shot, Jackson shot his gun into the air rather than at Appellant or anyone else. (Tr. 164, 308, 333, 372). Further, his shot occurred anywhere between 1 and 30 minutes before Appellant sprayed a crowd of people with a volley of bullets from the backseat of a retreating vehicle. (Tr. 165, 267, 271, 311, 341, 357, 376, 412). At no time in the body camera footage does Zimmerman state how much time, if any, passed between the first shot she alleged was from one of Victim's friends and the shots from Appellant. Furthermore, several witnesses including Jamares Robinson, Gloria Whitehead, and Tanisha Timmons, all explicitly stated that no one was firing at Appellant at the time Appellant fired at the crowd. (Tr. 290, 349, 378-79). Therefore, while Appellant was objectively not the first shooter of the night, the evidence presented at trial indicates that no one shot at her, much less that anyone shot at her immediately preceding her shooting multiple times into the crowd assembled.

As to Victim, the evidence presented at trial showed that Victim and Appellant did not know each other. (Tr. 310; Defendant's Ex. 8 at 0:30-1:00). Victim was not armed. (Defendant's Ex. 8 at 0:30-1:00). Victim did not shoot a gun that night and, therefore, did not shoot a gun at Appellant. (Defendant's Ex. 8 at 0:30-1:00). Appellant was solely at fault for shooting and killing Victim, who was an unarmed, innocent bystander that just came outside to see why a physical fight occurred. (Tr 272). Therefore, because the evidence presented at trial does not support a finding

that Appellant was without fault in bringing on the difficulty between herself and Victim (or anyone else), the trial court did not abuse its discretion in declining to charge self-defense.

Second, the evidence presented at trial does not support a finding that Appellant believed she was in imminent danger of any kind. In the body camera footage, Zimmerman states that Victim was hit with a stray bullet and that "people were shooting back and forth." (Defendant's Ex. 8 at 0:30-1:00). This is consistent with witness testimony at trial that Jamares retrieved his gun and shot back at Appellant as the car she was in drove away. (Tr. 377). As discussed above, Zimmerman did not give a timeline for the incident. (Defendant's Ex. 8). However, the evidence presented at trial does provide a timeline—at least one minute passed between Jackson's shot into the air and Appellant opening fire into the crowd. (Tr. 165, 267, 271, 311, 341, 357, 376, 412). Therefore, because Jackson's shot into the air and time had elapsed between that shot and Appellant opening fire, the evidence presented at trial does not support a finding that Appellant believed she was in imminent danger of any kind or that Appellant was actually in imminent danger of any kind. *See State v. Lockamy*, 369 S.C. 378, 383–84, 631 S.E.2d 555, 558 (Ct. App. 2006) (holding that when an accused "was no longer in danger when he fired the [fatal] shot" then a charge of self-defense is not warranted).

Specifically as to Victim, the evidence presented at trial, including the body camera footage of Zimmerman, indicate that Victim posed no threat to Appellant and that Victim was unarmed. (Tr. 270-72; Defendant's Ex. 8 at 0:30-1:00). Therefore, the evidence presented does not support a finding that Appellant believed she was, or that she actually was, in any immediate danger from Victim. Thus, the trial court did not abuse its discretion in denying Appellant's request for a self-defense charge.

Third, "[i]f the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life." *State v. Bryant*, 336 SC 340, 344-45, 520 S.E.2d 319, 321-22 (1999). Appellant did not allege a belief that she was in danger; therefore, only the 'actual danger' part of the third element of self-defense is relevant here, which is not met by the evidence in the record. Victim was unarmed and virtually unknown to Appellant. (Tr. 310). The evidence presented at trial suggests only that Victim was an innocent bystander. (Tr. 270-72, 310; Defendant's Ex. 8). Further, even if Appellant believed she was in imminent danger from Victim, that belief was not reasonable because Victim posed no danger to Appellant. Therefore, the trial court did not abuse its discretion in denying Appellant's request for a self-defense charge.

Fourth, the evidence presented at trial suggests Appellant had numerous other probable means of avoiding any danger she believed existed other than acting as she did. *See State v. Washington*, 424 S.C. 374, 412, 818 S.E.2d 459, 479 (Ct. App. 2018), *aff'd in part, vacated in part, rev'd in part*, 431 S.C. 394, 848 S.E.2d 779 (2020) (reversed on other grounds) ("In order to satisfy the fourth element of self-defense, there must be evidence the defendant: 'had no other probable means of escape except to take the life of his assailant or stated another way, that he had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily harm than to act as he did in the particular instance; that it is one's duty to avoid taking human life where it is possible to prevent it even to the extent of retreating from his adversary unless by doing so the danger of being killed or suffering serious bodily harm is increased or it is reasonably apparent that such danger would be increased.'" (quoting *State v. Jackson (H. Jackson)*, 227 S.C. 271, 279, 87 S.E.2d 681, 685 (1955))).

Appellant contends that she had no obligation to sit idly by while being fired upon. (App. Br. 13). That misses the point. Appellant shot out of the back of a moving vehicle that was headed *away* from Jackson's party. (Tr. 193, 272-73, 348, 375, 397). Appellant was not sitting idly by but was actively leaving any perceived danger behind. *See State v. Goodson*, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994) (holding that a trial judge did not err in refusing to instruct the jury on self-defense when the defendant had removed himself from the potential threat before shooting a third party). Further, had Appellant not fired a volley of shots into a crowd of people, she likely would not have been under return fire. Moreover, Victim posed no danger to Appellant. Therefore, had Appellant simply sat in Timmons' car as Timmons drove away instead of hanging out of the car from the waist up while shooting into a crowd, she likely would have avoided all perceived danger to herself as she was already in active retreat. (Tr. 348). Therefore, because the evidence at trial does not support a finding that Appellant had no other probable means to avoid the danger of losing her life or sustaining serious bodily injury other than to act as she did, the trial court did not abuse its discretion in denying Appellant's request for a self-defense charge. *See State v. Weaver*, 265 S.C. 130, 217 S.E.2d 31 (1975) (noting that a trial judge should not give a requested instruction that submits an issue which is not presented or supported by the evidence).

B. South Carolina does not recognize transferred self-defense.

Appellant asserts that because she believes she was acting in self-defense against unidentified third-parties rather than Victim, she is entitled to a self-defense charge for killing Victim, an unarmed, innocent bystander. However, South Carolina does not recognize transferred self-defense, and South Carolina courts have repeatedly and consistently declined to recognize it. *See Jamison v. State*, 410 S.C. 456, 471-72, 765 S.E.2d 123, 131 (2014) (holding South Carolina has not recognized the transferability of intent in self-defense claims, and that new evidence

towards a self-defense claim was immaterial when the victim was a third-party); *State v. Porter*, 269 S.C. 618, 622, 239 S.E.2d 641, 643 (1977) (noting the theory of transferred self-defense has not been accepted in South Carolina); *cf. State v. Scott*, 424 S.C. 463, 472, 819 S.E.2d 116, 120 (2018) (affirming a pretrial grant of immunity where the defendant established self-defense by a preponderance of the evidence where the defendant shot and killed a third-party bystander who had not shot at the defendant because the defendant mistakenly thought the third-party bystander had shot at him and the defendant had the right to act on appearances, even if mistaken).

Because trial courts are required to charge only the current and correct law at the time of the trial, the trial court *could not* have charged the jury on self-defense for Appellant's killing of Victim because such a charge would necessarily be a transferred self-defense charge. *See State v. Adkins*, 353 S.C. 312, 317, 577 S.E.2d 460, 463 (Ct. App. 2003) ("Generally, the trial judge is required to charge only the current and correct law of South Carolina."). Therefore, the trial court did not abuse its discretion in declining to charge the jury on self-defense because Appellant was not defending herself from Victim and a self-defense charge in this case would necessarily be a transferred self-defense charge, which would be an incorrect statement of South Carolina law.

C. The evidence in the record did not warrant a necessity charge.

To prove necessity (which is an affirmative defense), a defendant must show by a preponderance of the evidence that:

> (1) there is a present and imminent emergency arising without fault on the part of the actor concerned;
> (2) the emergency is of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done; and
> (3) there is no other reasonable alternative, other than committing the crime, to avoid the threat of harm.

State v. Cole, 304 S.C. 47, 49-50, 403 S.E.2d 117, 119 (1991). These elements are admittedly similar to the four elements of self-defense. *See generally State v. Davis*, 282 S.C. 45, 46, 317

S.E.2d 452, 453 (1984). Much like Appellant's requested self-defense charge, Appellant was not entitled to a necessity charge for many of the same reasons she was not entitled to a self-defense charge. The State objected to the necessity charge. (Tr. 585). However, the trial court gave this necessity charge anyway. (Tr. 662-63). The jury convicted Appellant of voluntary manslaughter despite the necessity charge. (Tr. 680). Appellant cannot show that she was prejudiced because the unwarranted necessity charge was given. *See State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) ("To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous *and prejudicial* to the defendant." (emphasis added)).

II. The trial court did not abuse its discretion by denying credit for monitored home detention because the awarding of such credit is within the discretion of the trial court.

Section 24-13-40 of the South Carolina Code provides that "[i]n every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and *may* be given for any time spent under monitored house arrest." (emphasis added). "A sentence will not be overturned absent an abuse of discretion . . . ." *State v. King*, 367 S.C. 131, 136, 623 S.E.2d 865, 868 (Ct. App. 2005) (quotation omitted). "An abuse of discretion occurs when the decision by the [plea court] is based on an error of law." *In re M.B.H.*, 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010).

As noted in its order denying credit for time served on monitored home detention, the trial court reviewed the monitoring company's report that Appellant had no violations of her home detention. (Or. 1). Further, the trial court stated that Appellant's arrest and charge for a drug trafficking offense while on monitored home detention was brought to the court's attention, and the trial court specifically stated that the charge was dismissed prior to the trial in this case. (Or. 1). Contrary to Appellant's assertion, neither the transcript of the sentencing hearing nor the order denying credit for time spent on monitored home detention specify the exact reason the trial court

denied Appellant credit for time spent on monitored home detention. The order simply states the information the trial court had at its disposal, which the trial court considered in making its decision. (Or. 1). *See In re M.B.H.*, 387 S.C. at 326, 692 S.E.2d at 542 ("A judge must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant."). The order then concludes by stating that the trial court took the information presented to it, along with the information gained from presiding over Appellant's trial, and denied Appellant's request in light of the sentence already imposed. (Or. 2). *See See In re M.B.H.*, 387 S.C. at 326, 692 S.E.2d at 542 ("A trial judge has broad discretion in sentencing within statutory limits.").

Credit for time spent on monitored home detention is within the discretion of the sentencing judge. *See* § 23-14-40. As the trial court noted in its order, it considered the information presented to it—including the report of no home detention violations and the dismissal of the drug trafficking charge—before exercising its discretion in denying Appellant credit for time spent on monitored home detention. Merely because the trial court was aware Appellant had been arrested and charged for a later dismissed drug trafficking offense does not indicate that the court abused its discretion in denying appellant credit for time spent on home detention. This same trial court presided over Appellant's trial. (Tr. 1). This same trial court sentenced Appellant to 25 years' imprisonment, which is within the statutory sentencing range and 5 years *below* the 30-year statutory maximum sentence for voluntary manslaughter. (Tr. 692-93). *See* S.C. Code Ann. § 16-3-50 (setting forth a sentencing range of 2 to 30 years' imprisonment for a person convicted on voluntary manslaughter).

The order denying credit for time spent on home detention states the trial court considered a variety of information before denying Appellant's request. (Or. 1-2). It considered the evidence

and testimony from trial. (Or. 2). It noted the sentence below the statutory maximum it had already imposed. (Or. 2). It considered that Appellant had no violations on her home detention monitoring report. (Or. 1-2). And, most important to this argument, it considered that Appellant's drug trafficking charge had been dismissed before the trial in this case began. (Or. 1-2). In light of all this information, the trial court properly exercised its discretion by deciding not to grant Appellant credit for time spent on monitored home detention because, while Appellant was eligible for such credit, she was not entitled to it. As the decision to grant credit for time served on monitored home detention was solely within the trial court's discretion and was not based on an error of law, the trial court did not abuse its discretion in denying Appellant credit for time spent on home detention.

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CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's convictions for voluntary manslaughter and possession of a weapon during the commission of a violent crime, as well as her associated sentences.

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