THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Honorable H. Steven DeBerry IV, Circuit Court Judge

Appellate Case No. 2024-000879

THE STATE,

Respondent,

v.

WILLIE JAMES SMITH,

Appellant.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF ISSUE ON APPEAL

Appellant's Issue Statement

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?

Respondent's Counterstatement of Issue on Appeal

Whether the trial court properly charged the jury on murder and voluntary manslaughter alone because no evidence of self-defense was placed into the record during the trial?

STATEMENT OF THE CASE

During its March 2023 term,[1] the Florence County Grand Jury indicted Appellant Willie James Smith for one count of murder (2023-GS-21-00480). Appellant was represented by William Foster "Josh" Edgeworth, III. J. Ryan White prosecuted the case. The case was called to trial on May 13, 2024, with the Honorable H. Steven DeBerry, IV, presiding. The jury found Appellant guilty of murder, and he was sentenced to life. Tr. 337-349. This appeal follows.

[1] Respondent notes the date on the indictment appears to be incorrect in listing the year as 2022 instead of 2023.

STANDARD OF REVIEW

"An appellate court will not reverse the trial [court's] decision regarding a jury charge absent an abuse of discretion." State v. Wright, 416 S.C. 353, 374, 785 S.E.2d 479, 490 (Ct. App. 2016) (quoting State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010)). "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." State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007) (citing Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). Further, to support relief on appeal, the lower court's "refusal to give a requested charge must be both erroneous and prejudicial to the defendant." Mattison, 388 S.C. at 479, 697 S.E.2d at 584 (citing State v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002)). "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." State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608–09 (Ct. App. 2012).

STATEMENT OF FACTS

The morning of June 9, 2022, Appellant Willie James Smith stabbed his coworker, James McNamara ("McNamara"), to death. The testimony at trial established Appellant and McNamara worked for an asphalt paving business owned by Charles Preece ("Preece"). Tr. 197-200. Appellant was hired a month or so prior to the murder, although Preece considered firing him after Appellant walked off a job in Walterboro. Tr. 200-201. McNamara was a supervisor at the company for five or six years. Tr. 198-199. McNamara was a "calming influence" for Preece and was described by witnesses as easy going, very laid back, and somewhat shy and quiet. Tr. 191, 199-200.

In June of 2022, McNamara and Appellant were placed in a motel room together at the Florence Express Inn for a job in Florence. Tr. 109, 205. McNamara and Appellant were roommates at another job before, and Appellant had gone drinking with McNamara once or twice. Tr. 205; State's Ex. # 50 (Interview Recording at 8:26). The room had two beds, and McNamara's bed was closest to the door. Tr. 128.

The night of June 8, Appellant walked up to the front desk and asked the manager for extra towels and washcloths because McNamara "always used them all." Tr. 193. The manager could tell he was irritated. Tr. 193. Appellant alleged he and McNamara were both in their own beds around eight o'clock in the evening, but then around four o'clock in the morning, he was sleeping when McNamara seemingly re-entered the room. State's Ex. # 50 (Interview Recording at 8:19:52, 8:25:30). Appellant claimed McNamara was making noise and swearing, so Appellant got up, at which point McNamara supposedly said, "Nah, nah, you a'ight, pet n***er. You my pet n***er." State's Ex. # 50 (Interview Recording at 8:20:00). According to Appellant, he told McNamara he couldn't keep saying that, and McNamara responded, "You gon' always be my pet n***er." State's

Ex. # 50 (Interview Recording at 8:20:23).[2] Appellant said at that point he "jumped up and hit [McNamara] in the throat" with a knife. State's Ex. # 50 (Interview Recording at 8:20:30). Appellant stabbed at McNamara four times, three times in the throat and once into the mattress McNamara was laying on, before pulling out the knife and washing the blood off his hands. Tr. 234, 266; State's Ex. # 50 (Interview Recording at 8:20:40). Appellant then sat on the corner of the bed, smoked a blunt, and drank two Mike's Hard Lemonades as McNamara died. Tr. 272; State's Ex. # 50 (Interview Recording at 8:21 – 8:25). Appellant waited until McNamara had stopped moving forty-five minutes later before finally calling 911. Tr. 266.

Appellant admitted on the 911 call that he stabbed McNamara in the neck. Tr. 284. The 911 operator attempted to provide instructions for Appellant to render aid to McNamara, but Appellant seemed unwilling to participate. Tr. 72, 82.

When officers and EMS arrived on the scene, McNamara was deceased on his bed, with wounds on each side of his neck and a third wound near the front of his throat. Tr. 92, 118. There was also a knife puncture in the mattress underneath McNamara's head area with some of his hair inside. Tr. 219-220. McNamara was lying across the bed, with his head diagonally toward the headboard, his shoes off, and no part of his body touching the floor. Tr. 110, 121, 267-268. Blood covered the mattress, ceiling, and walls, and had sprayed across the lampshade. Tr. 118. The "majority of the blood" was on the victim's bed, over his head, and to the side. Tr. 267. Officers

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[2] Appellant claimed McNamara had used the slur before and that he had reported McNamara for that. State's Ex. # 50 (Interview Recording at 8:22:52). Appellant added that McNamara had said, "Yeah don't take it the wrong way," and Appellant explained that he believed McNamara was saying it because Appellant "work[s] real good" so the "boss man" was proud of the way he works. State's Ex. # 50 (Interview Recording at 8:22:59). Appellant chuckled at the recollection. State's Ex. # 50 (Interview Recording at 8:22 -8:23).

found empty containers of Mike's Hard Lemonade, a bag of blunts and cigars, and the murder weapon in the motel room. Tr. 117. No other weapons were in the room, and Appellant had no injuries. Tr. 123, 266, 279. Appellant was taken into custody and subsequently interviewed by Investigator Ben Price ("Investigator Price") at the Sheriff's Office several hours later. Tr. 256-257.

During Appellant's interview, Appellant stated that he stabbed McNamara when McNamara used the slur the second time. State's Ex. # 50 (Interview Recording at 8:20:30. Although he indicated he stabbed McNamara in an upward direction, the pathologist's testimony confirmed the stabbing occurred in a downward direction. Tr. 265. When Investigator Price asked Appellant if McNamara ever came at him physically, Appellant answered, "Yeah, he came off the bed, I came off the bed, know what I'm saying?" State's Ex. # 50 (Interview Recording at 8:23:43). Investigator Price then asked if it was "kind of like a jump," to which Appellant responded, "Yeah it was something like that, he jumped up toward me I jumped toward him, guess he didn't see me with the knife," while laughing. State's Ex. # 50 (Interview Recording at 08:23:40). Appellant claimed his knife had been inside the table next to him when he originally grabbed it. State's Ex. # 50 (Interview Recording at 8:32:21). Investigator Price asked Appellant if he saw whether McNamara had any weapons or anything, and Appellant said, "I didn't have time to check, all I know... what he said, then he jumped up I jumped up. So... If he did have one, I can't say he did or didn't. All I know... be held accountable for what I did." State's Ex. # 50 (Interview Recording at 8:23:57).

When questioned about why it took so long to call 911, Appellant stated, "I was pissed off. That's the honest answer. That's all I can give you. I was pissed off, I was upset, I sat on the corner of the bed, I gotta tell you, before I called 911, I smoked a blunt, and I drunk two of them Mike's

Lemonades . . . then I dialed 911." State's Ex. # 50 (Interview Recording at 8:24:36). Investigator Price asked if Appellant knew McNamara to ever carry a gun, and Appellant said, "I ain't never seen nobody with a gun on the job... All I've seen, you know, we have a bunch of knives, and stuff like that, but never any gun... He might keep a boxcutter, I know he keep a boxcutter, he keep some weapons . . . know what I'm saying, everybody always keeps something, like I said, blade or something like that." State's Ex. # 50 (Interview Recording at 8:28:08).

Appellant also said in the interview that he thought he stabbed McNamara twice, stating, "When I hit him, he fell back, I fell back on him, that's why I said I was on him, and when I fell back on him, that was the second time." State's Ex. # 50 (Interview Recording at 8:28:52). Appellant added at the end of his interview, "I mean I know it's all bad for me, but, you know, it's what happened. So I know it's all bad, but it's what happened. This time, this is my fault. So I can't, you know, I can't justify it." State's Ex. # 50 (Interview Recording at 8:29:51). Investigator Price asked if there was anything else he could think of to go over, and Appellant said, "That's what happened . . . I can't add or subtract anything, you know, cause it's not there." State's Ex. # 50 (Interview Recording at 8:31:56). Appellant reiterated multiple times throughout his interview that all he knew was McNamara came in making noise and swearing, then called him a slur, and "that's what happened." State's Ex. # 50 (Interview Recording at 8:22:30, 8:23:25).

McNamara's blood tested negative for drugs or alcohol. Tr. 169. Appellant's knife was recovered from the scene and tested for DNA, and it was determined that the DNA profile from the knife was likely a combination of DNA from McNamara and Appellant. Tr. 112-116, 160. The forensic pathologist testified that the first stab wound on the left side of the neck and the third stab wound on the right side of the neck would have both been fatal on their own, but the second wound would not have independently posed an immediate threat to McNamara's life. Tr. 236-237. He

testified it likely took at least several minutes for McNamara to die, but he could not be precise about how long it took McNamara to bleed out. Tr. 238. Investigator Price testified he saw Appellant laughing multiple times during the recorded interview, which was shown to the jury at trial. Tr. 268-269.

As stated above, the jury convicted Appellant of murder.

ARGUMENT

I. The trial judge properly declined to charge the jury on self-defense as Appellant brought on the difficulty and no other evidence was introduced to support a self-defense charge.

Appellant argues Judge DeBerry erred by refusing to charge the jury on self-defense because the record contains "some evidence from which it could reasonably be inferred that Appellant acted in self-defense." (BOA at 6). Specifically, relying on State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989), Appellant argues that "[t]he 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." (BOA at 7). Appellant's argument lacks merit. The trial judge did not abuse his discretion because there was no evidence submitted to support the necessary first three prongs of self-defense. Wright, supra. Relatedly, Appellant cannot show prejudice as there was no evidence presented to support self-defense had the charge been given. Mattison, supra. Appellant is not entitled to any relief.

Relevant law:

"The trial court must charge the jury on the law applicable to the jury's deliberations." State v. Marin, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016). "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). If there is no factual support for the charge, the charge is not warranted. Id. (citing State v. Bryant, 336 S.C. at 344, 520 S.E.2d at 321). Further, this applies to each element of self-defense; if evidence of one element is missing, the charge is not warranted: "Because all of the elements are required to establish self-defense ... [i]t is an axiomatic principle of law that [self-defense] has not been established if any one element is

disproven." In re Tracy B., 391 S.C. 51, 704 S.E.2d 71 (Ct. App. 2010) (quoting State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010)). The elements of self-defense are the following:

> (1) the defendant must be without fault in bringing on the difficulty;
>
> (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury;
>
> (3) if his defense is based upon his belief of imminent danger, a reasonably prudent person of ordinary fitness and courage would have entertained the same belief that he actually was in imminent danger and the circumstances were such that he was actually in imminent danger and the circumstances were such as would warrant a person of ordinary prudence, fitness and courage to strike the fatal blow in order to save himself from serious bodily harm or loss of his own life; and
>
> (4) the defendant had no other probable means of avoiding the danger.

State v. Bryant, 336 S.C. 340, 344-345, 520 S.E.2d 319, 321-322 (1999).

Relevant Facts:

The trial judge heard arguments on what charges would be appropriate based on the evidence. The solicitor argued for a charge on voluntary manslaughter, which was strenuously objected to by defense counsel, but was ultimately charged by the court. Tr. 293-300. When defense counsel inquired about the evidence of sufficient provocation for the voluntary manslaughter charge, Judge DeBerry stated, "[I]n this matter, we also have evidence that the victim may have - or came at the defendant. So I think, certainly, that, coupled with what he says he said, you know, certainly, a jury could find that he's guilty of voluntary manslaughter." Tr. 299. At that point, defense counsel brought up self-defense for the first time, asking, "And remind me, Your Honor, then is there then a self-defense charge?" Tr. 300. Judge DeBerry provided the following response:

> 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. 300.

Defense counsel could point to no evidence and made no argument for the charge; rather, counsel concluded, "Well, Your Honor, I mean, I just take it, as you know, motion denied, I mean, and I just ... want to make sure for the purposes of the record that ... is made clear because I know I didn't raise it earlier, but of course, I was waiting to see what Your Honor's final decision would be" on voluntary manslaughter, given "words aren't enough" for sufficient provocation. Tr. 300-301. He continued, however, to argue against the manslaughter charge, citing "there's no evidence of a weapon," so "coming at him" would not support sufficient provocation. Tr. 301.

Discussion:

Judge DeBerry's ruling reflects no error of law or fact. Consequently, Appellant fails to show any abuse of discretion in the court's ruling.

Defense counsel's argument appears to have been that if evidence existed for a charge on voluntary manslaughter, then he was entitled to self-defense. That is incorrect as a matter of law. While both could exist, both have individual requirements that must be supported. As the judge correctly noted, an "overt threatening act" was his "threshold" consideration; he said nothing about fault or "imminent danger" of losing his life or sustaining serious bodily injury. The considerations differ. Compare State v. Pittman, 373 S.C. 527, 573, 647 S.E.2d 144, 168 (2007) (recognizing

precedent that a "threatening act or a physical encounter may constitute sufficient legal provocation") with State v. Dickey, 394 S.C. 491, 502, 716 S.E.2d 97, 102 (2011) (finding self-defense as a matter of law where the defendant "testified that, under the circumstances and appearances, he believed he was in actual danger of death or serious bodily harm ... find[ing] it reasonable that [he] made such an assumption and that a person of [his] stature and limited agility would entertain the same fear when faced with an attack by a belligerent, intoxicated, more agile, and younger male, who appeared to be reaching for a weapon"). Further, the mental state differs. State v. Starnes, 388 S.C. 590, 599, 698 S.E.2d 604, 609 (2010) ("Evidence that fear caused a person to kill another person in a sudden heat of passion will mitigate a homicide from murder to manslaughter—it will not justify it. This is the distinction between voluntary manslaughter and self-defense"). Evidence of both contrasting requirements may be present and require a jury determination to resolve competing stories, but the presence of evidence of each requirement, credibility aside, is essential for the charge. Id.

Even McNamara allegedly "jumping up" toward Appellant, if considered potentially a "physical encounter," when coupled with harsh words such as the racial slur used here, could not support the necessary elements of self-defense. Further, a review of the evidence in context of the self-defense test confirms the trial court's conclusion that there was no evidence to support the instruction.

As to the first prong, Appellant was not without fault in bringing on the difficulty. Taking Appellant's version of events as true, he admitted he armed himself with a deadly weapon, but there is no evidence that he armed himself to defend against aggression. Further, Appellant claimed that he and McNamara jumped at each other, not that McNamara jumped and he reacted. Appellant even asserted in his statement to investigators "guess he didn't see me with the knife"

which again supports he grabbed the knife (out of the nightstand) before McNamara jumped at him State's Ex. # 50 (Interview Recording at 08:23:40).

As to the second third prongs, there is no evidence that McNamara jumped *and* engaged in any hostile act to bring about either *actual danger* or that a reasonable person would believe there was *imminent danger of serious bodily harm or loss of life.* No evidence of a threat of harm was presented. And no evidence was presented that Appellant was protecting himself or acting in fear. While evidence was offered that offensive words were spoken, other evidence from Appellant's own statement indicated that McNamara had previously used the slur to Appellant before and that did not cause fear, or even uneasiness, and most certainly did not cause the violent, ultimately deadly confrontation that resulted here. State's Ex. # 50 (Interview Recording at 8:22:59). This rebuts any argument that the words, paired with standing up, could be enough to support actual or reasonable belief of imminent death or serious bodily injury. There was no evidence that the words included any physical threat, or even that McNamara said the words at the same time he "jumped up." Thus, contrary to his argument, but consistent with the trial court's ruling, Appellant was not entitled to the self-defense charge. Given the facts of record, Appellant's reliance on State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989), is misplaced. See BOA at 7-8.

In Fuller, the Supreme Court considered the sufficiency of the self-defense charge given at trial. 297 S.C. at 442, 377 S.E.2d at 330. Here, Appellant is not arguing that additional language was required, but the charge should be given. Even so, the Supreme Court in Fuller reasoned that an additional explanation should have been given with the charge on the elements that "words accompanied by hostile acts, may, depending on the circumstances" support self-defense. Id. The "depending on the circumstances" phrase is critical. The evidence in that case did show use of a racial slur but also verbal threats, grabbing Fuller's throat, the victim being momentarily scared

off by a warning shot, going to the trunk with his companion, then entering the car and chasing Fuller who was attempting to leave in his car, ramming Fuller's car with their truck, and one of the two men yelling toward Fuller, "we're going to take care of you" while approaching him. Id. at 442, 377 S.E.2d at 330. After seeing "something shiny" in victim's hand and thinking "it was a gun[] Fuller fired four shots at the men's car and killed both men." Id. It was in that context that our Court agreed Fuller was entitled to the charge that "words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense." Id. Appellant's circumstances as recited above are vastly different and did not warrant such a charge as the record shows no verbal threat, or any chase or hostile act, or any suggestion of a weapon.

Further, and in great contrast, the evidence included Appellant's candid admission that the situation was his fault, and he could not "justify it." State's Ex. # 50 (Interview Recording at 8:29:51). When Investigator Price asked if there was anything else he could think of to go over, Appellant said, "That's what happened . . . I can't add or subtract anything, you know, cause it's not there." State's Ex. # 50 (Interview Recording at 8:31:56). Appellant reiterated multiple times throughout his interview that all he knew was McNamara came in making noise and swearing, then called him a slur, and "that's what happened." State's Ex. # 50 (Interview Recording at 8:22:30, 8:23:25). Moreover, Appellant waited until McNamara had stopped moving – forty-five minutes later – before finally calling 911. Tr. 266. Appellant stated plainly that he never saw McNamara or anyone at their work with a gun, though he stated McNamara had a boxcutter like "everyone" who has something. State's Ex. # 50 (Interview Recording at 8:28:08). The omission is important: Appellant never testified that McNamara threatened him with a boxcutter on that night or at any time.

Additionally, the forensic evidence supports Applicant's repeated confession of fault and provides even more. Particularly, the stab mark in the mattress which shows that Appellant at some point attempted to stab McNamara while he was laying down, unarmed, on his mattress, Tr. 219-220; McNamara was lying across the bed, with his head diagonally toward the headboard, his shoes off, and no part of his body touching the floor, Tr. 110, 121, 267-268; blood covered the mattress, ceiling, and walls, and had sprayed across the lampshade. Tr. 118; the "majority of the blood" was on the victim's bed, over his head, and to the side, Tr. 267; and officers found empty containers of Mike's Hard Lemonade, a bag of blunts and cigars, and the murder weapon in the motel room where Appellant had waited for McNamara to die, Tr. 117. No other weapons were in the room, and Appellant had no injuries. Tr. 123, 266, 279. Appellant, merely relying on a portion of Fuller with its different circumstances in fact and law, considering whether a further explanation of a self-defense charge already given was necessary, has shown no basis in law or fact for finding an abuse of discretion in the trial court's decision not to charge self-defense in this case.

Notably, this case does not turn on a question of credibility created by differing stories,[3] but simply the total lack of evidence to support the necessary prongs of self-defense.[4]

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[3] See generally State v. Williams, 400 S.C. 308, 316, 733 S.E.2d 605, 609 (Ct. App. 2012) (acknowledging the defendant's testimony that the victim had "cursed at him" and displayed a "' demented' look" toward him, pulled a pistol and had a history of shooting people, would support a self-defense instruction even where "both eyewitnesses' testimonies support a very different theory of fault").

[4] The trial judge did not consider the duty to retreat given the shared premises, Tr. 300, and that is likewise not discussed here. "Under the law of self-defense, one who is attacked on his own premises is immune from the duty to retreat." State v. Brown, 321 S.C. 184, 187, 467 S.E.2d 922, 924 (1996).

Because there was no evidence of any of the first three factors of self-defense presented to the jury at trial, Judge DeBerry was well-within his discretion to refuse to give a charge of self-defense. This Court should affirm.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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