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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
The Honorable William C. McMaster, III, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

COURTNEY CHARLES CORDAE RICHARDS,

APPELLANT.

Appellate Case No. 2024-001274

INITIAL BRIEF OF RESPONDENT

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II.

After the decedent's girlfriend, a critical State's witness who testified on the disputed point of whether the decedent had his gun in his hand before appellant fired, told the jury that while she knew the decedent had a gun, she never really saw him with it, did the trial court err when it would not even let appellant refresh her recollection with the decedent's Facebook profile picture that shows him pointing a pistol with an extended magazine directly at the camera?

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III.

Did the trial court properly determine that it was not required to charge a portion of the statutory immunity provisions as part of a jury instruction on self-defense?

STATEMENT OF THE CASE

Respondent accepts Appellant's statement of the case for the purposes of this appeal.

STATEMENT OF FACTS

This case arises out of a shooting that took place in the Union Heights neighborhood in February 2022.

Pretrial Motions

Before trial, Appellant asked the trial court to exclude from evidence an extended magazine that was found with the firearm used in the shooting. (Tr. p. 16, l. 9–p. 17, l. 17). The firearm was found some time later with a third party, and Appellant contended there was no evidence that the extended magazine belonged to him rather than to the person who had the gun when law enforcement seized it. (Tr. p. 16, ll. 9–25). Appellant argued that, to the contrary, he would offer testimony to show that the extended magazine was not used on the day of the killing. (Tr. p. 17, ll. 1–2). Appellant argued that the evidence was not probative or relevant, but was prejudicial. (Tr. p. 17, ll. 2–5).

The State argued in response that the gun should be admitted as it was found. (Tr. p. 17, l. 19–p. 19, l. 22). The timing of the recovery of the fun and whether that impacted the likelihood that it was being presented to the jury in the same condition it was in when Appellant used it was an issue for the jury. (Tr. p. 18, ll. 2–7). The State argued the evidence was not unduly prejudicial. (Tr. p. 18, ll. 7–9). The State emphasized that it had no interest in offering gang-related evidence. (Tr. p. 18, ll. 16–19).

The trial court ruled that it would allow the gun and the magazine to be admitted into evidence. (Tr. p. 19, ll. 22–25). In explaining its decision trial court specifically considered Rule 403, SCRE.[1]

> Certainly, I -- I -- we are not going to have any mention of gangs. I think everybody's been pretty clear about that. We're not going to talk about gangs, or I think you used the term gangster persona, or anything of that gangster-like persona. We're not going to have any mention of that. I believe this does survive a 403 analysis. It is certainly relevant, it is the gun that, according to Counsel was tested and fired, and matches the -- the bullet that I believe is -- was recovered from the deceased[2] in this case.

(Tr. p. 20, ll. 1–9). Appellant then argued that if he stipulated that the gun was his and was connected to the shooting, the prejudice would outweigh the probative value of the evidence.[3] (Tr. p. 21, l. 17–p. 22, l. 15). The State disputed Appellant's claim of prejudice, and the trial court reiterated that it did not "think the probative value is substantially outweighed" and would allow the evidence. (Tr. p. 23, ll. 2–8).

Appellant also mentioned that he would be asking for parts of the "Protection of Persons and Property Act"[4] (the Act) to be included in the jury charges. (Tr. p. 23, l. 14–p. 24, l. 5). The

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[1] "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE.

[2] Prompted by counsel, the trial court later clarified that it had misspoken and was referring to the gun Appellant allegedly used in the shooting, not the victim's gun. (Tr. p. 21, ll. 6–7).

[3] Appellant conceded that the prejudice was "maybe not the greatest in the whole world," but argued that it would be amplified by the specter of mass shootings. (Tr. p. 22, ll. 9–15).

[4] S.C. Code Ann. § 16-11-410 to -450 (West).

State objected. (Tr. p. 24, ll. 7–13). The trial court said it would rule on the issue at the charging conference. (Tr. p. 24, ll. 14–17).

Immunity Hearing

Appellant testified in support of his request for immunity under the Act. According to Appellant, he was driving to work and intended to drop his girlfriend off at her mother's house on February 19, 2022, the day of the shooting. (Tr. p. 70, ll. 4–15). As he pulled to an intersection in the neighborhood, he saw Javon (the victim)[5] and his girlfriend, Antoniya. (Tr. p. 73, ll. 10–24). Appellant said that Singleton began "bickering through the window" with Appellant's girlfriend. (Tr. p. 74, ll. 3–12). Appellant claimed that the victim began to "clutch" at a firearm in his pants waistband. (Tr. p. 74, ll. 17–21). Appellant drove a short distance away. (Tr. p. 75, ll. 15–17; p. 76, ll. 12–14). However, Appellant testified that he was forced to stop when his girlfriend tried to exit the car. (Tr. p. 76, ll. 17–24). The victim allegedly was approaching them with gun in hand. (Tr. p. 77, ll. 9–11). Appellant grabbed his own gun. (Tr. p. 77, ll. 23–25).

Outside the car, Appellant said, he showed his gun to the victim to deter the victim. (Tr. p. 78, ll. 4–8). Appellant testified that the victim yelled "Do something, n*****." (Tr. p. 78, ll. 13–14). Appellant then fired what was described as a warning shot into the ground. (Tr. p. 78, ll. 24–25). The victim continued to approach, Appellant said, so he fired another warning shot closer to the victim. (Tr. p. 79, ll. 3–12; p. 96, ll. 1–3; p. 101, ll. 15–21). According to Appellant, the victim then shot at Appellant and his girlfriend. (Tr. p. 79, ll. 15–17). Appellant returned fire. (Tr. p. 79,

[5] The trial court generally attempted to keep counsel or witnesses from describing Thomas as the victim during testimony in front of the jury, worried that it would prejudicially imply a crime had occurred.

ll. 18–p. 80, l. 4). He later said that he did so when the victim stopped shooting. (Tr. p. 82, ll. 14–16). Appellant then drove to an apartment he and his girlfriend had in Summerville. (Tr. p. 82, l. 23–p. 83, l. 3). Appellant denied that he had an extended magazine, asserting instead that it was a "standard clip." (Tr. p. 84, ll. 1–10).

On cross-examination, Appellant conceded that he shot the victim in the back of the head as the victim was running away from him. (Tr. p. 99, l. 13–p. 100, l. 1).

During the immunity hearing, the trial court also heard from Investigator Jodi Hunt, two women who saw the shooting while on their way to a meeting at church, and Detective Jennifer Butler. These witnesses also testified before the jury at trial.

After arguments from counsel, the trial court decided to move forward with jury selection, then make a decision on immunity after jury selection. (Tr. p. 244, l. 23–p. 245, l. 4). After jury selection, the trial court denied the immunity motion in an oral order, then asked the State to prepare a written order. (Tr. p. 302, l. 19–p. 305, l. 6). The court found that Appellant was not without fault in bringing on the difficulty and that it was "unclear" whether Appellant reasonably believed himself or his girlfriend to be in imminent danger. (*Id.*)

Trial Testimony and Verdict

Among those who testified at trial was Monique Perry, who was driven to a church meeting by her daughter on the day of the shooting. (Tr. p. 337, l. 20–p. 338, l. 1; p. 338, ll. 13–15). Perry testified that she saw a man walking down the street gesturing as if he was asking someone else out of view what was wrong. (Tr. p. 341, l. 24–p. 342, l. 8). Perry testified that she did not see a gun in the man's hands. (Tr. p. 342, ll. 11–21). She then heard what she thought was a gunshot fired from the opposite direction. (Tr. p. 343, ll. 10–11). Perry testified that "the young man who

lost his life was not the first shooter." (Tr. p. 345, ll. 4–5). She said the victim was running back in the direction that he came from when he fell. (Tr. p. 345, ll. 8 –15).

Abigail Perry testified after her mother. The younger woman said the victim was obviously "arguing with someone down the street" based on his body language. (Tr. p. 350, l. 22–p. 351, l. 3). She recalled him walking down the road, without a gun at first. (Tr. p. 353, ll. 14 – 16; p. 353, l. 20–354, l. 24). Abigail Perry said she heard a gunshot coming from further up down the road the victim was walking on. (Tr. p. 356, ll. 3–5). When she looked at the victim again, he now had his gun in his hand and returned fire while backing up. (Tr. p. 356, l. 15–p. 357, l. 9). She then saw the victim turn and quickly move back in the direction he had come from. (Tr. p. 357, ll. 10–22). At that point, the victim was shot. (Tr. p. 357, l. 25–p. 358, l. 5).

Appellant was eventually apprehended on February 24, 2022, at a burger restaurant in Summerville. (Tr. p. 381, l. 18–p. 383, l. 2).

Dr. Erin Presnell performed the victim's autopsy on February 22. (Tr. p. 398, ll. 21–22). She found that his death was caused by a single gunshot wound that entered the back of his head and hit his brain stem before going deeper into the brain. (Tr. p. 399, ll. 9–25).

The victim's girlfriend, Antoniya Singleton, also testified. She and the victim, who met in high school, had been dating for three years in 2022. (Tr. p. 450, ll. 10–20). On the afternoon of the shooting, the couple decided to walk from her home to a nearby store to get snacks. (Tr. p. 451, ll. 13–20). Singleton testified that as they were walking down Comstock Avenue, a gray car sped past them. (Tr. p. 453, ll. 11 – 18). "They did the same thing yesterday," the victim told her. (Tr. p. 455, ll. 3–5). The victim told Singleton to return to her house. (Tr. p. 455, ll. 12–19). She hid instead. (Tr. p. 455, ll. 23–24). She recalled the victim yelling something along the lines of "What -- what -- what?" (Tr. p. 457, ll. 11–17).

On cross-examination, Singleton testified that while the victim had a gun, she did not like guns, and he rarely displayed it around her. (Tr. p. 461, ll. 19–p. 462, l. 13). Asked whether the victim liked guns, she responded: "I don't know. I mean -- ". (Tr. p. 462, ll. 16–17). Appellant then confronted Singleton with a Facebook photograph that showed the victim pointing a gun at the camera. (Tr. p. 465, l. 11–p. 466, l. 3; Def. Ex. 2). When Appellant tried to admit the photograph into evidence and publish it to the jury, the State objected based on authentication and relevance; the trial court sustained the objection. (Tr. p. 467, ll. 1–14). Appellant continued to question Singleton about the victim's Facebook profile. (Tr. p. 467, ll. 16 – 22). The trial court then sent the jury out of the courtroom. (Tr. p. 467, l. 25–p. 468, l. 3). The trial court told Appellant that he would need to move on from the exhibit, in part because "this isn't a prior statement [Singleton] made or anything." (Tr. p. 469, ll. 4–10). Appellant also asked if he could use the Facebook post to refresh Singleton's recollection; the court ruled he could not. (Tr. p. 469, l. 12–p. 470, l. 17).

Sergeant Austin Rissanen with the Charleston County Sheriff's Office testified. During a traffic stop on September 16, 2022, he recovered a .45 caliber Glock. (Tr. p. 579, ll. 8 – 22). Sgt. Rissanen said the extended magazine was in the gun when he recovered it, but that Appellant was not involved in the traffic stop. (Tr. p. 581, ll. 3–16).

Portions of Appellant's testimony at the pre-trial immunity hearing were then played for the jury. (Tr. p. 773, l. 13–p. 817, l. 17). The State then rested. (Tr. p. 817, l. 19).

Appellant called his girlfriend's mother to testify. (Tr. p. 839, ll. 12–23). She testified to seeing the victim outside of her house the day of the shooting. (Tr. p. 840, ll. 9–12). She said the victim was pulling his gun and saying "I'm going to wet this s*** up" as he walked past her house. (Tr. p. 841, ll. 17–25). She also testified to hearing Singleton tell the victim, "Oh, you never -- you don't know how to let s*** die and stuff like that." (Tr. p. 846, ll. 2–6).

The defense rested. (Tr. p. 857, l. 19).

During discussion of charging the jury, Appellant argued that the trial court should instruct the jury on Section 16-11-440(C) of the South Carolina Code. (Tr. p. 867, ll. 9–25). Appellant argued that *State v. McCray*, 413 S.C. 76, 773 S.E.2d 914 (Ct. App. 2015), supported the charge by implication. (*Id.*) The State argued that the charge would be improper, because the judge determines whether a defendant is immune, and the jury's job is to assess guilt. (Tr. p. 868, ll. 2–16). The State also contested Appellant's reading of McCray. (*Id.*) The trial court declined to include that language in its charge on self-defense. (Tr. p. 868, ll. 17–21).

The jury found Appellant guilty of murder and possession of a weapon during a violent crime. (Tr. p. 975, l. 24–p. 976, l. 7). The court sentenced Appellant to 45 years imprisonment for murder and five years for the weapons charge, to run concurrently. (Tr. p. 987, l. 19–p. 988, l. 3). This appeal follows

STANDARD OF REVIEW

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Fuller*, 425 S.C. 468, 476, 822 S.E.2d 910, 914 (Ct. App. 2019) (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)).

"In reviewing jury charges for error, this [c]ourt considers the [circuit] court's jury charge as a whole and in light of the evidence and issues presented at trial." *State v. McCray*, 413 S.C. 76, 88, 773 S.E.2d 914, 920 (Ct. App. 2015) (quoting *State v. Logan,* 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013)). "To warrant reversal, a [circuit court]'s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *Id.* (quoting *State v. Brown*, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004)).

ARGUMENT

I. The trial court correctly allowed the extended magazine into evidence, because it was not unduly prejudicial.

Appellant first contends that he was prejudiced because the trial court admitted the extended magazine into evidence despite a lack of evidence tying it specifically to Appellant. This argument is unpersuasive.[6]

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE.

It is worth nothing that at trial, Appellant argued that the potential prejudice from the admission of the extended magazine was "maybe not the greatest in the whole world." (Tr. p. 22, ll. 9–15). For good reason; Appellant's arguments as to why the admission of the extended clip would have driven the jury to convict Appellant on an otherwise unpersuasive case are strained at best. And this was not an unpersuasive case.

Appellant's attempt to invoke *State v. Spears*, 393 S.C. 466, 713 S.E.2d 324 (Ct. App. 2011), is inapt. As Appellant notes, the issue in Spears was whether the weapon in question was connected at all to the defendant. Here, the question is whether the State should have been allowed to admit the weapon that was used in the crime—there is no serious dispute about that—as it was found by law enforcement at the time.

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[6] Appellant's suggestion in his brief that the State's argument about gang evidence was a tacit admission of the possible prejudicial impact of the magazine omits a key point: Appellant had already raised concerns about the fact that the extended magazine could make him look "more gangster." (Tr. p. 16, ll. 16–25). What's more, Appellant had already brought the gangster connotation up on a previous evidentiary challenge, to which the State also responded. (Tr. p. 13, ll. 12–23). The State did not commit a Freudian slip; it answered the objections Appellant raised.

The only issue of prejudice that Appellant seems to have raised in this matter is whether the extended magazine made the gun look more frightening or would conjure up images of gangsters or school shooters. But first, extended magazines are not only used by gangsters or school shooters, and Appellant has made no effort to prove that the stereotypes invoked in front of this Court are held by the broader culture, much less jurors in South Carolina.

Further, the State made no effort to hide that the magazine could have been acquired after the Appellant lost possession of the gun. There was also testimony at trial that magazines could be changed out with relative ease.

Finally, this error was harmless beyond a reasonable doubt. Appellant fired two "warning shots" at the victim, then after the victim responded by firing his gun and running away, Appellant shot the victim in the back of the head. Appellant is correct that nothing in the record would have required the jury to believe that two dozen shots were fired. As a result, there is no reason to believe that the jurors were swayed against Appellate by the magazine. *See State v. Westmoreland*, 421 S.C. 410, 422, 807 S.E.2d 701, 707 (Ct. App. 2017) ("A harmless error analysis is contextual and specific to the circumstances of the case: "No definite rule of law governs [a finding of harmless error]; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial." (alteration in original) (quoting *State v. Reeves*, 301 S.C. 191, 193–94, 391 S.E.2d 241, 243 (1990))).

II. The trial court properly excluded the Facebook photo of the victim from evidence, as it did not contradict the witness' testimony and did not show any motivation for her to be untruthful.

Appellant next argues that the trial court erred in refusing to admit the Facebook picture of the victim under the name of "LayLow Von" during the testimony of Singleton, or allowed counsel

to use it to refresh her recollection. Appellant's legal authorities are off-base and insufficient to prove any abuse of discretion.

To support his argument, Appellant relies on evidentiary rules. The catch is that none of the rules actually support the admission of the Facebook profile picture.

First, Rule 607 of the South Carolina Rules of Evidence. That rule simply states: "The credibility of a witness may be attacked by any party, including the party calling the witness." No one is contesting whether Appellant could attempt to attack the credibility of Singleton during his cross examination. South Carolina courts have for decades recognized that impeachment is a key reason for cross-examination. *See McMillan v. Ridges*, 229 S.C. 76, 80, 91 S.E.2d 883, 885 (1956) ("Considerable latitude is allowed in the cross-examination of a witness (always within the control and direction of the presiding judge) to test the accuracy of his memory, his bias, prejudice, interest, or credibility." (quoting *State v. Thompson*, 118 S.C. 191, 110 S.E. 133, 134 (1921))); *see also* Rule 611(b), SCRE ("A witness may be cross-examined on any matter relevant to any issue in the case, including credibility."). But there are rules even to cross-examination. *See generally State v. Williams*, 430 S.C. 136, 844 S.E.2d 57 (2020) (finding that circuit court erred in allowing the State, as part of an effort to impeach a witness, to question that witness about the details of her previous confrontations with the defendant—including that he was armed in both instances—beyond the fact that the incidents occurred).

Rule 608(c), SCRE, also proves to be of little help to the Appellant. True enough, the rule says that "[b]ias, prejudice, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced." But the photograph did not show bias, prejudice, or any motive to misrepresent on the part of Singleton, because it showed nothing about Singleton at all. *See State v. Fuller*, 425 S.C. 468, 477, 822 S.E.2d 910, 914 (Ct.

App. 2019) ("[A]nything having a *legitimate* tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony, and on cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness." (quoting *State v. Brewington*, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976))). Nothing about the photograph demonstrated why Singleton might be untruthful (or even that she was).

Appellant asks this court to release the Rule 613, SCRE, from its purpose, its rationale, and any reasonable boundary. The rule is not about the inconsistency of testimony with any extrinsic evidence in existence—it is about the inconsistency of the statement with a prior statement made by the witness. *See* Rule 613(b), SCRE ("Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement."). That is what makes it probative of a witness' truthfulness. Appellant's reading would render portions of the rule incoherent. Rule 613(b) allows extrinsic evidence of a prior statement only if a witness denies the prior inconsistent statement. *See id.* ("If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible."). But there was no evidence at trial that the photograph was taken by Singleton or was in any other way a statement by her. As for Appellant's argument that the inconsistent statement was the witness' testimony, she can hardly be said to be denying her testimony at trial as she was giving it.

All of which is compounded by the fact that the photograph did not contradict what Singleton said. She did not deny that the victim had a gun; she confirmed it. Rather, Singleton

testified that she did not know whether the victim liked guns, and that the victim did not frequently display his gun *around her* because she did not like guns. The fact that the victim had a profile picture on Facebook that featured him holding a gun demonstrates very little about the depth of his affinity for guns and nothing at all about Singleton's knowledge of how deep his love for guns ran. At most, it confirms that the victim had a gun—a fact that no one, not even Singleton, disputed—or had at one time handled a gun.[7]

For the same reason, Appellant cannot make out an argument for prejudice. The notion that the jurors would have acquitted Appellant because they saw a photograph of the victim holding a gun—when all sides and the witness Appellant sought to impeach agreed he had a gun—strains credulity. The witness was exposed to a lengthy and rigorous cross-examination; legitimate issues about her credibility were highlighted. *See State v. Reyes*, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020) ("Put simply, the harmless error rule embodies a commonsense principle our appellate courts have long recognized—'whatever doesn't make any difference, doesn't matter.'" (quoting *State v. Jolly*, 304 S.C. 34, 39, 402 S.E.2d 895, 898 (Ct. App. 1991))).

The trial court did not commit error in barring the use of the photograph at trial, and even there were an error, it would be without a doubt harmless. This Court should affirm Appellant's conviction.

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[7] The Appellant's argument that the trial court's refusal to admit the photograph "shows the trial court feeding the State and the defense out of different spoons" is telling. Init. Br. App. 12. It suggests Appellant tried to admit the photography Singleton's testimony because he wanted the jury to see a photograph of the victim looking—to use his words—like a gangster. As explained above, the trial court did not err in admitting the gun used to shoot the victim into evidence because there were probative reasons for admitting the firearm as it was found. But there was no probative reason for admitting the Facebook profile photo. If the trial court fed the State and Appellant from different spoons, it was because they were eating different soups.

III. The trial court properly declined to charge the jury on a statutory immunity provision in the Act, because our state's case law does not support it, and the trial court's charge adequately covered the law.

Appellant's final argument is that the trial court should have instructed the jury on provisions of the Protection of Persons and Property Act. But Appellant has shown no authority for this theory, despite his attempts to find it between the lines of our state's case law.

The first step in Appellant's argument appears to be an attempt to narrow the holding he relied on in the trial court. Recall that Appellant's argument below was that because the *McCray* court did not take that opportunity to rule out charging statutory elements of self-defense, it was implicitly finding that there might be some circumstances under which a charge would be appropriate.[8] Here, Appellant argues something slightly different—that *McCray* is a narrower holding that does not support the State's position because it is distinguishable.

Appellant also ascribes significance to the trial court's decision that his claim for immunity was required to be considered under Section 16-11-440(C). This is less revelatory than it appears at first. Courts have held that most defendants claiming immunity will have their claims considered under that subsection. *See State v. Glenn*, 429 S.C. 108, 119, 838 S.E.2d 491, 497 (2019) ("Generally, a defendant will be defaulted into satisfying subsection (C) when the Castle Doctrine does not apply or he cannot otherwise show he was excused from the duty to retreat."). The import of the trial court's ruling was that, for the purposes of the immunity hearing, Appellant would have to satisfy subsection (C).

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[8] *See* Tr. p. 867, ll. 21–25 ("We believe the court had ample opportunity to say it's not appropriate at all to charge any case in McCray. And because they did not say that, we believe that the courts are saying that, 'There is potentially a set of circumstances where will be warranted,' we think this case is warranted.")

In any event, Appellant is unable to provide any authority for the notion that the trial court must specifically charge the statutory immunity provisions to the jury.

Finally, when read in its entirety, the charge would not have misled the jury. Right after the language requiring that "the Defendant had not other probable way to avoid the danger of death or serious bodily injury than to act as the Defendant did," the court continued: "*In this particular instance*, a person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily harm." (Tr. p. 953, l. 22–p. 954, l. 2) (emphasis added). And it then instructed the jury on "the right to use the force needed to avoid death or serious bodily harm." (Tr. p. 954, ll. 3–5). Here, in full context, the jury would have understood the trial court to be discussing the issues of the proportionality of the defendant's response rather than whether he was required to retreat. Any isolated mistake would have been harmless under the facts of the case. *See State v. Burdette*, 427 S.C. 490, 498, 832 S.E.2d 575, 580 (2019) ("When considering whether an incorrect jury instruction constitutes harmless error, we are required to review the trial court's charge to the jury in its entirety.").

This Court should affirm the Appellant's conviction.

CONCLUSION

For all these reasons, the Court should affirm the Appellant's conviction.

Respectfully Submitted,

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