STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAJON MALIK LAVERN GRATE,

APPELLANT

APPELLATE CASE NO. 2024-001477

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in failing to charge the jury on self-defense where there was evidence from which the jury could conclude the decedent started shooting first?

2. Did the trial court err by admitting appellant's booking report and mugshot?

STATEMENT OF THE CASE

Dajon Grate and his brother Nasirea Grate were indicted in Horry County for two counts of murder and one count of armed robbery in January of 2023. R. 1260. They were tried together before Judge Benjamin Culbertson and a jury from August 19 to 28, 2024. R. 1. Appellant was represented by James Galmore, his brother by Ralph Wilson, Sr., and the state by Nancy Livesay and Liz Martin. R. 2. The jury acquitted both brothers of all charges as indicted and found them both guilty of one count of the lesser-included offense of voluntary manslaughter. R. 1223:3-1224:2. The trial court then sentenced them both to thirty years in prison. R. 1249:3-9.

This appeal follows.

STATEMENT OF FACTS

On May 31, 2022, at about 1:30 in the afternoon, appellant and his brother Nasirea went to a Sunhouse gas station in the Red Bluff area of Horry County. R. 48:1-284, 58:10-59:5; State's Ex. 40 (00:03-00:30).[1] Their friend Todd Fry drove them in his silver Cadillac, and their cousin Jeremiah Dicker was also with them. R. 724:2-22; State's Ex. 199A. Appellant went inside, purchased a can of Pringles, and left the store. State's Ex. 40 (6:55-7:55). Before the group left, Dicker spoke with a young man outside the convenience store in a white Acura SUV, although the surveillance footage does not have audio. R. 725:5-11; State's Ex. 40 (10:45-12:00). That young man was identified as Kalik Conn. R. 721:12-722:19; State's Ex. 199A. It is not possible to see what they did other than talk, except that it is apparent Dicker can see in the car. State's Ex. 40 (10:45-12:00). According to cell site location and GPS data, as interpreted by Detective Ken Marcus, the group of four left the Sunhouse and travelled up Red Bluff Road. R. 725:12-23, 732:2-734:18, State's Ex. 199A. Then Dicker called Conn, and at 1:49 p.m. he texted Conn an address on state highway 554. R. 726:20-727:15; State's Ex. 199A. Conn responded "Cmin down street now," to which Dicker replied, "Ite." R. 727:16-24; State's Ex. 199.

Shortly after 2 p.m. Bernice Mellado called 911 because she heard shooting outside her apartment on highway 554. R. 115:2-20, 119:5-19. When she looked out the window she saw "a guy" in a black shirt with dreads. R. 116:8-18. After the shooting stopped, she stepped outside and found one young man dead on the steps and another dead in the driver seat of the SUV outside, both with gunshot wounds. R. 119:18-121:17. The young man in the car was identified as Conn,

[1] State's Exhibit 40 is a compilation of several different Sunhouse surveillance videos, some of which occurred at the same time. Referring to the timestamp directly on the video would not sufficiently direct a viewer to the relevant portion, so the time marks used here refer to the relative point in the exhibit.

and Dicker was at the steps. R. 338:23-339:8. Dicker's blood trailed behind him to the passenger seat of the SUV. R. 121:20-24; State's Ex. 6.

Dr. Angelina Phillips, an expert in forensic pathology, testified Dicker suffered three gunshot wounds: one that grazed his head, one in the back which was fatal, and a final shot to his forearm and elbow. R. 914:5-11, 915:10-918:11. Specifically, she testified the graze on his head travel from front to back. R. 915:12-25. The one to his back went through his body back to front. R. 916:19-917:7. The third wound was to his right forearm, and "a projectile . . . was recovered from the region of the elbow."[2] R. 917:21-918:3. She agreed the injury to Dicker's elbow could be considered a "defensive wound." R. 931:10-24.

Phillips testified Conn was shot five times: once in the head, once in the chest, once in the back, and once more in both the armpit and arm. R. 920:4-924:16, 930:3-25; State's Ex. 226. The injuries to the head and chest were fatal. R. 922:17-22. The head wound was traveling from right to left, and a bullet fragment was recovered from the wound. R. 920:12-21. Another fragment was recovered from the wound to his back. R. 925:23-25. That wound was potentially fatal and would have left him immediately paralyzed below the injury. R. 923:1-17. Phillips recognized she could not testify who shot the other first because she had no way of knowing that, nor could she determine the order of the bullets striking each body. R. 920:7-11, 933:23-934:10.

Appellant's blood and phone were found in the backseat of the SUV. R. 393:4-21, 397:7-12, 712:14-713:1, 1017:23-1019:18. Appellant had been shot twice, once each in his left arm and leg, and that afternoon he was taken to the hospital by emergency services. R. 190:4-191:25, 257:6-19; State's Ex. 63.

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[2] This bullet, as well as fragments of two from Conn's body, were marked for ID purposes only as State's Exhibit 216. R. 623:24-25. They were never moved into evidence.

Detective Robert Bauman was the crime scene investigator. R. 321:7-24, 323:2-9. Bauman found two firearms in and near the SUV. One, a Glock 9mm with an extended magazine, was found in Conn's lap. R. 498:11-14, 537:7-538:17. Conn also had a second loaded magazine on his person. R. 506:7-507:11. The other gun, a Canik 9mm, was found just outside the passenger side of the SUV and had Dicker's fingerprints on it. R. 495:7-24, 548:22-549:11, 648:7-649:24, 652:5-13; State's Ex. 223. It was jammed. R. 300:9-21. The passenger door was open when officers arrived. R. 121:20-24, 300:1-7. Bauman collected twenty shell casings from inside of and around the car. R. 379:21-25. Nine were lime green, four were blue, three were red, and the final four were gray. R. 369:20-370:25, 591:2-24; State's Ex. 5. Bauman agreed State's Exhibit 5 represents the approximate layout of various items in the SUV—although it is not to scale nor perfectly accurate. R. 367:6-368:3. Bauman also found three bags of "a leafy green substance"[3] around the car and a digital scale in the center console. R. 497:12-498:22. One of the bags was in the backseat. R. 353:19-22. Bauman recovered no money from the car.[4]

Bauman also documented where he found bullet holes in the vehicle. The windshield and both driver's side doors had bullet holes in them. R. 332:24-333:14; State's Ex. 98, 99. At least three bullets went through the backseat. R. 513:12-514:12. Bauman used trajectory rods to identify where some of the bullets went inside the car. R. 403:20-404:13, 406:14-407:2; State's Ex. 190-191. He was able to determine that some bullets went through the driver's seat, one was stopped inside the seat, and another was pointed toward the passenger. R. 407:3-409:6. He did

[3] Although the solicitor assumed this "substance" was marijuana, it was apparently never tested.

[4] Some money was found in a backpack with a wallet with Nasirea Grate's ID. R. 783:1-11, 785:13-22. That backpack, however, was recovered from a house on McNeil Chapel Road, not the crime scene. R. 675:2-676:10.

not, however, use trajectory rods on every bullet hole. R. 486:23-10, 1169:12-19. He either did not use trajectory rods for the bullets that went into the backseat, or at least he has no such pictures or "might have missed one." R. 486:8-487:14.

SLED agent Paul Greer testified as an expert in firearms identification. R. 578:12-19. He examined the two firearms, twenty shell casings, and several bullet fragments. R. 579:8-580:2, 595:8-18. He testified four separate firearms produced the twenty casings. R. 582:6-20. Conn's Glock left nine lime green casings. R. 592:22-25, 593:21-25, 601:5-10. Dicker's Canik left four blue casings. R. 591:15-24, 601:11-14. A third firearm, a 9mm Luger, fired the four gray casings Bauman recovered from the backseat. R. 590:23-591:11, 601:15-24. A fourth firearm, a .45 caliber, was responsible for the final three red casings. R. 590:6-22, 601:16-18. Greer testified he examined the bullet fragments from Conn's autopsy and determined they were fired by the .45 caliber gun. R. 595:8-596:23. He gave no opinion on the bullet retrieved from Dicker's autopsy.

Over appellant's and Nasirea's objections, the trial court allowed the state to introduce a "booking report" on appellant, Nasirea, and Dicker. R. 90:13-94:12, 100:4-101:6; State's Ex. 47, 49, 51. Both Nasirea and appellant objected because they are booking documents, cumulative, and unfairly prejudicial. R. 90:15-91:8. The reports were partially redacted because some information on them was hearsay. R. 93:13-94:8. The reports stayed hanging on the solicitor's presentation board throughout the trial. R. 1171:2-12.

At the close of the case, appellant argued, among other things, that Conn started shooting first, which "puts [the state's] theory on its head." R. 1178:3-10. He argued that because the head wound was fatal, "[Conn's] not shooting after he's shot in the head. He, therefore; must have fired those ten shots before he was shot." R. 1169:8-11. At the end of his closing appellant argued, "All I can tell you is that, for some reason, Mr. Conn started shooting, there [were] shots returned."

R. 1184:1-2. He continued: "I don't know what happened in the car. I don't know why a shooting started. All I know is that Conn had to fire first because he couldn't fire second." R. 1184:23-25.

In Nasirea's closing argument he argued, among other things, "Murder is the killing -- the unlawful, the wrongful killing of one person by another with what we call malice aforethought. They didn't even come close to proving that. Because it's not unlawful if you defend yourself. . . . You have a right to defend yourself to the point of taking another person's life they're trying to take yours." R. 1156:10-17.

Neither appellant nor Nasirea requested the court give a self-defense charge during the initial charge conference. R. 1103:6-1111:5. However, during deliberations the jury sent the court two questions: (1) "What is the law of self-defense if they leave?"; and (2) "What is the definition of voluntary manslaughter?" R. 1210:11-14. The trial court's initial inclination was to instruct the jury it had "ruled as a matter of law that self-defense is not an available [de]fense in this case." R. 1210:15-19. Both defendants objected to that language. R. 1212:9, 1215:9-11. Nasirea also argued, "I think a better charge would be to charge the jury that the state has to prove -- disprove all the elements of self-defense . . . ." R. 1212:17-22. After that, the court heard from appellant:

> But to say that self-defense is not available as a matter of law, it was not an issue that was discussed. And I think that does intrude into the jury's purview of the evidence. They saw something that none of us saw. I guess they're entitled to that if that's obviously the evidence, sir.

R. 1215:15-20. The trial court stated, "Well, the fact of the matter is, is I'm not going to charge them. I don't know that I'm violating -- I'm not going to charge them on self-defense." R. 1216:22-24. The solicitor also stated:

> [I]t's a weird place because the jury instructions have to talk to whatever the evidence is, and the defense kind of got up there and said we weren't there, but . . . it was also kind of Kalik Conn was firing and kind of trying to put out self-defense, even though there

> was no evidence of self-defense. So, I think that's where the question comes into play.

R. 1217:4-11. The jury ultimately convicted appellant of the voluntary manslaughter of Conn, and he was sentenced to thirty years in prison. R. 1223:3-1224:2, 1249:3-9. He was acquitted of on the armed robbery and murder of Dicker charges. R. 1223:3-1224:2.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) (quoting *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 judge's refusal to do so is reversible error." *State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007) (quoting *State v. Muller*, 282 S.C. 10, 10, 316 S.E.2d 409, 409 (1984)). Whether "any evidence" exists to warrant the charge is a question of law this Court reviews de novo on appeal. *State v. Williams*, 427 S.C. 246, 249, 830 S.E.2d 904, 906 (2019).

ARGUMENT

I. The inference Conn fired first was sufficient to reach the jury on self-defense.

a. *Evidence of Self-Defense*

"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 judge's refusal to do so is reversible error." *State v. Light*, 378 S.C. 641, 650, 664 S.E.2d 465, 469 (2008) (citing *State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007)). "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) (quoting *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 512-13 (2000).

Here, the trial court refused to charge the jury on self-defense because it believed there was "no evidence . . . the defendants were defending themselves."[5] R. 1213:16-18. This was incorrect. In particular, three points suggest Conn began shooting first and was therefore the aggressor. First, of the twenty bullet casings recovered from the scene, Conn fired nine of them even though three other weapons were fired. It is reasonable to infer from that evidence Conn started shooting first or else he would not have been able to shoot so many times before he was paralyzed and killed.

[5] The court also seemed to believe that because the defense's primary theory was "We didn't do it," they could not "assert[] an alternative defense." R. 1213:13-24. That is absolutely incorrect. *See State v. Knoten*, 347 S.C. 296, 308-09, 555 S.E.2d 391, 397-98 (2001) (holding trial court erred by refusing to charge voluntary manslaughter where one of defendant's statements to police supported the charge even though the defense's theory—and the defendant's testimony—was that he was elsewhere at the time of the crime); *cf. Light*, 378 S.C. at 651, 664 S.E.2d at 470 ("When there is a factual issue as to whether the shooting was committed intentionally in self-defense or was committed unintentionally, then the defendant is entitled to both charges as there is 'any evidence' to support each charge. When there is evidence of both, as in this case, we find the jury is entitled to resolve the question of how the shooting actually occurred.").

Further, the pathologist testified he would have died instantly and been unable to continue shooting his weapon after the wound to the head. It is rational for a jury to conclude that the apparent speed with which he fired his weapons indicates he started the shootout.

Second, the forensic pathologist testified Dicker had what could be considered "defensive wounds" where he was shot in the elbow, reasonably indicating he was attempting to defend himself from Conn. He was also shot in the back and left a trail of blood out the car, indicating he tried to run away after Conn pulled his gun and started shooting. The firearms expert did not determine what type of bullet—and therefore who—killed Dicker. Therefore, the jury could easily infer Conn killed him—as it appeared to do given the acquittal as to Dicker. These facts could indicate Conn started the conflict.

Third, and finally, appellant himself was shot and there were multiple bullet holes in the back seat of the car. It is indisputable he was being fired at, and that typically and appropriately raises the possibility of self-defense.

Altogether, this was evidence from which the jury could reasonably conclude the defendants acted in self-defense. That is why the jury asked the trial court to explain the law of self-defense. If Conn began shooting first in the closed environment of the car, there should be no doubt this was a question for the jury to determine. Only the jury could decide whether Conn was the aggressor and initiated the violence, and the trial court therefore erred by refusing to charge self-defense on the basis there was no evidence to support it.

b. *Elements of Self-Defense*

Self-defense in South Carolina consists of four elements:

> 1) the defendant must be without fault in bringing on the difficulty; 2) 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; 3) 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 to save himself from serious bodily harm or losing his own life, and; 4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994) (citing *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)).

It is undisputed appellant was shot in the backseat of Conn's SUV—his phone and blood were found there—and that Conn fired his Glock nine times. Evidence of targeted gunfire in a small, enclosed environment is plainly sufficient to reach the jury on the second and third elements. As to the fourth element, it is also at least a jury question whether appellant had other means of escape and could safely retreat. Given Dicker's failed attempt to flee and which left him with a fatal shot to the back, there was no safe avenue of escape. Finally, there must be any evidence that appellant was without fault. There was a reasonable inference Conn fired first, as both defendants argued. Absent very substantial evidence tending to show appellant was nonetheless the aggressor—of which there is none—that is sufficient to reach the jury. *See State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011) (citing *State v. Wiggins*, 330 S.C. 538, 544, 500 S.E.2d 489, 492 (1998)) ("[T]he State is required to disprove the elements of self-defense beyond a reasonable doubt.").

II. *State v. Williams*, 427 S.C. 246, 830 S.E.2d 904 (2019), does not apply to this case and should be overruled because whether drug dealing was the proximate cause of the difficulty resulting in death was a question for the jury.

Before the court denied the defendants' request, the solicitor argued they were not entitled to claim self-defense "because there is such a nexus between guns and drugs." R. 1216:2-21. The

solicitor referenced *State v. Williams*, 427 S.C. 246, 830 S.E.2d 904 (2019), and argued self-defense was barred because the defendant "brought guns to a drug deal." R. 1216:14-21.

In *State v. Williams* the Court held, "[Defendant's] actions proximately caused the difficulty as a matter of established law because his act of taking a loaded, unlawfully-possessed pistol into an illegal drug transaction was not 'merely incidental' to the act of arming himself in self-defense." 427 S.C. at 254, 830 S.E.2d at 908 (footnote omitted) (citations omitted). It reasoned Williams was not "without fault" in bringing on the difficulty because he knowingly brought a loaded weapon to an illegal drug deal. 427 S.C. at 250-51, 830 S.E.2d at 906. In *State v. Plumer*, 439 S.C. 346, 350, 887 S.E.2d 134, 136 (2023), the Court indicated *Williams* represents a categorical bar on self-defense in such cases. 439 S.C. at 350, 887 S.E.2d at 136 (citing *Williams*, 427 S.C. at 251, 830 S.E.2d at 907) (summarily rejecting the issue and stating, "It matters not who drew his weapon first or who fired first.").

For clarity, the trial court does not appear to have relied on *Williams* in any way. Immediately after the solicitor's argument about the case the court responded, "Well, the fact of the matter is, is I'm not going to charge them. . . . I'm not going to charge them on self-defense." Thus, the question below was whether—absent *Williams*—the defendants were entitled to a self-defense charge. It was error to deny the charge given the evidence that allows the reasonable inference Conn began shooting first: specifically appellant's gunshot wounds, the pathologist's testimony about Dicker's defensive wounds, and the number of casings and their implication about the timing of the shots. However, the trial court's ruling can be affirmed for any reason appearing in the record, so appellant addresses *Williams* now.

a. Williams *does not extend to situations, like here, where it is disputed whether a drug deal even took place.*

Critical to the Court's decision in *Williams* was "the undisputed fact that when Williams agreed to participate in the drug deal, he made a conscious choice to take his loaded pistol with him." 427 S.C. at 248, 830 S.E.2d at 905. Similarly, in *Plumer*, "[t]he only reasonable inference to be derived from the record is that Plumer intentionally took a loaded firearm to what he knew would be an illegal drug transaction." 439 S.C. at 350, 887 S.E.2d at 136. The same cannot be said here.

Appellant argued specifically in closing that the state "didn't put any testimony on that [Conn] was selling marijuana," and "[t]here's been no testimony that Mr. Conn was actually selling marijuana." R. 1168:1-2, 1179:1-2. Appellant's express theory was that he "is a ride-along . . . with his friend, Mr. Dicker." R. 1182:15-19. He argued none of the state's evidence of Dicker and Conn communicating "implicate[d] either of these young men [the defendants] in anything." R. 1182:20-24. Unlike in *Williams*, there was significant dispute about whether appellant "agreed to participate in a drug deal," thus appellant argued:

> There's no evidence that Dajon Grate ever met with Kalik Conn. There's no evidence that Dajon Grate communicated with Kalik Conn. The evidence is that Dajon Grate sat in the backseat of the car when the shooting started.

R. 1183:9-13. Disputing the existence and his knowledge of a drug deal was virtually appellant's entire defense. Without certainty that a defendant intentionally and knowingly brought a loaded gun to a drug deal, there is no basis to conclude that he was categorically at fault as a matter of law. Such a case necessarily presents a question for the jury.

Appellant recognizes there is evidence from which *the jury* could have concluded he knowingly went to meet with Conn for a drug deal. There was marijuana and a digital scale in the car, and he climbed in the backseat with Dicker after Dicker and Conn apparently agreed to meet.

But that was a question for the jury, and *Williams* is therefore inapplicable and does not bar self-defense. It is no ground to uphold the trial court's error.

b. *If Williams is applicable to these facts, it should be overruled because it substantially deviated from the historical notion of fault and is an outlier for removing this question from the jury.*

i. Historical development and the role of fault in a self-defense claim

Historically, "fault" in the context of self-defense meant violence and actual provocation. *State v. Wood*, 1 S.C.L. (1 Bay) 351, 346 (1794) (recognizing the "general rule of law" that self-defense is justified on "the plaintiff or prosecutor's own fault; as where he gives the first blow"); 30 Corpus Juris, *Homicide* § 214, at 49 (1923) ("A person is the aggressor where he commences an assault or commits a battery upon another person."). The fault rule is a corollary to the principle that the aggressor in a fight cannot claim self-defense because, like an aggressor, one at fault is to blame for the conflict. *See State v. Jackson*, 227 S.C. 271, 278, 87 S.E.2d 681, 684 (1955). That is why the defense does not protect one "who designedly provokes another to strike him, or to offer violence, with the purpose to fight his adversary" because "that would be allowing him to take advantage of his own wrong." *State v. Sumner*, 36 S.C.L. (5 Strob.) 53, 56 (1850); *State v. Beckham*, 24 S.C. 283, 285 (1886). Such a person, though not technically the aggressor in that he did not strike the first blow, is still legally responsible for the subsequent killing because he has created the danger by "bringing on the contest" without which there was no "legal necessity for taking life." *Beckham*, 24 S.C. at 285.

South Carolina also bars self-defense when the defendant should have known his conduct "would probably result in a personal difficulty," even if his purpose was not to provoke an attack. *State v. Rowell*, 75 S.C. 494, 56 S.E. 23, 29 (1906). In *Rowell*, for example, the jury was permitted to decide if the defendant's statements to the deceased brought on the difficulty because he "had

just reason to suppose his language to the deceased would probably result in a personal difficulty." *Id.* Generally, and importantly, that is "an issue of fact" for the jury to decide. *Id.*; *State v. Ferguson*, 91 S.C. 235, 74 S.E. 502, 505 (1912); *see also State v. Lee*, 85 S.C. 101, 67 S.E. 141, 142 (1910) (holding it was a jury question whether acts preceding conflict by several hours "were reasonably calculated and intended to bring about the combat").

In general, prior cases hold a defendant can be at fault as a matter of law based on his unlawful conduct where it inherently precipitates conflict. Thus, a defendant in commission of a violent felony is at fault as a matter of law. 30 Corpus Juris, *Homicide* § 215, at 49 ("A person who, while in the actual perpetration of a felony *by violence*, kills another person attempting to prevent the felony, cannot plead self-defense." (emphasis added)). For example, "a robber, who is met with such violent resistance by his victim that he has no opportunity to convince [the] victim that he has abandoned his criminal intentions and only wants to withdraw, may not claim self defense if he injures or kills his victim." *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) (alterations original) (quoting *Comment Note: Withdrawal, After Provocation of Conflict, As Reviving Right Of Self–Defense*, 55 A.L.R.3d 1000, 1003 (1974)). A defendant committing a violent felony should have known the risk of violent conflict is high, and he is therefore at fault as a matter of law.

Still, that limitation does not and should not extend to all unlawful conduct, and nonviolent crimes are generally insufficient to render the defendant at fault as a matter of law. *See Jackson*, 227 S.C. at 278, 87 S.E.2d at 684 (holding self-defense charge was required where defendant refused to pay taxi driver the cab fare and believed intruder was knocking his door down); *cf. State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) (holding accident defense can in some circumstances be available to a defendant in unlawful possession of a weapon). This nonviolent

theory is why a trespasser not entering a residence retains his right of self-defense even though the trespass is unlawful. *State v. Bradley*, 126 S.C. 528, 120 S.E. 240, 243 (1923); *see* 30 Corpus Juris, *Homicide* § 216, at 49 ("A mere trespass on the property of another is not such an act of aggression or provocation as will preclude the trespasser from killing in self defense . . . .").

ii. The modern fault rule, other crimes, and *Williams*

In *State v. Bryant* the Court stated the general rule defining fault in this unlawful act context: "Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide." 336 S.C. at 345, 520 S.E.2d at 322 (quoting 40 Am.Jur.2d *Homicide* § 149 (1999)). Thus, where other crimes are involved, and as has been the law since at least *Rowell*, the focused question is whether the defendant's conduct was reasonably calculated to produce the occasion such that it amounts to bringing on the difficulty. In other words, a defendant is not "without fault" if his unlawful conduct is a proximate cause of the violence. *State v. Slater*, 373 S.C. 66, 71, 644 S.E.2d 50, 53 (2007).

The Court applied this general rule to the facts in *Bryant* and held the defendant was not without fault because he was attempting to burglarize a vehicle when the owner found him. 336 S.C. at 345, 520 S.E.2d at 322. It is clear as a matter of law that burglarizing a car is reasonably calculated to produce the occasion and amounts to bringing on the difficulty—breaking into a car is that obviously likely to create a violent confrontation. Similarly, in *State v. Slater*, 373 S.C. 66, 644 S.E.2d 50 (2007), the defendant unlawfully possessed a handgun and "approached an altercation that was already underway with a loaded weapon by his side." 373 S.C. at 70, 644 S.E.2d at 52. The Court explained why the trial court did not err by refusing to charge the jury on self-defense:

> Slater was not merely in unlawful possession of a weapon; he carried the cocked weapon, in open view, into an already violent attack in which he had no prior involvement. Slater's actions, including the unlawful possession of the weapon, proximately caused the exchange of gunfire, and ultimately the death of the victim. Consequently, Slater fails to meet the requirement that he be without fault in bringing on the difficulty and may not avail himself of a charge on self-defense.

373 S.C. at 71, 644 S.E.2d at 53. This makes sense because Slater approached a parking lot when he knew "a robbery was unfolding where the victim was on the ground being assaulted by five men." 373 S.C. at 68, 644 S.E.2d at 51. In that context, there was only one possible outcome. Thus, his unlawful activity put him at fault as a matter of law because it was, or should have been, reasonably calculated to produce the occasion. Outside of such clearly felonious and violent conduct, it has always been a jury question whether the defendant was at fault. *See, e.g.*, *Rowell*, 75 S.C. 494, 56 S.E. at 29; *Lee*, 85 S.C. 101, 67 S.E. at 142.

Williams significantly deviated from this standard because it extended the rule to activity that is not inherently violent. In *Williams* the Court held, "intentionally bringing a loaded, unlawfully possessed pistol to an illegal drug transaction is 'calculated to produce a violent occasion.'" 427 S.C. at 251, 830 S.E.2d at 907. The Court explained:

> Williams' pistol was not simply a convenience for him so he could protect himself just in case violence arose. Rather, it is well-documented that the mere presence of guns at illegal drug transactions *produces* the violence.

427 S.C. at 251, 830 S.E.2d at 907. According to *Williams*, it does not matter whether the defendant was attacked first or reasonably feared for his life but only whether he intentionally brought a loaded weapon to a drug deal. *State v. Plumer*, 439 S.C. 346, 350, 887 S.E.2d 134, 136 (2023) (citing *Williams*, 427 S.C. at 251, 830 S.E.2d at 907) ("It matters not who drew his weapon first or who fired first."). With all due respect to the Court, it was error to hold those circumstances

invariably mean such a defendant is not without fault as a matter of law, and it was an unwarranted extension of the rule stated in *Bryant* and as articulated in South Carolina's traditional law of self-defense.

iii. The rule should be limited to confrontational crimes—not recreational drug buys—because fault and proximate cause are inherently jury questions.

The difference between crimes like burglary and drug dealing is that recreational drug dealing is not inherently confrontational. A burglar is at fault as a matter of law because in every case it is easily foreseeable and likely that a potentially violent conflict will arise if he is caught. In such cases, the burglar cannot benefit from his wrong and claim self-defense if he kills his victim in the ensuing struggle. This focus on confrontation is also the rationale behind *Slater* even though unlawful possession of a weapon does not categorically preclude self-defense: the defendant went looking for a fight and so could not later claim he killed in self-defense. *Slater*, 373 S.C. at 71, 644 S.E.2d at 53 ("Slater was not merely in unlawful possession of a weapon; he carried the cocked weapon, in open view, into an already violent attack in which he had no prior involvement."); *see also Jackson*, 227 S.C. at 278, 87 S.E.2d at 684 (explaining self-defense is available only to those without fault, "it being obvious that one cannot through his own fault bring on a difficulty and then claim the right of self-defense"); *Beckham*, 24 S.C. at 285 ("[I]f the necessity is created by the accused himself, arises from his own fault, he cannot plead such necessity as an excuse for so grave an act as that of taking human life."). Here, however, there is evidence that appellant was "merely" in possession—lawful possession, too[6]—of his weapon when he allegedly also engaged in a drug transaction. That is not the same thing.

[6] The state presented no evidence appellant, Nasirea, or Dicker were prohibited by law from possessing a firearm. At the time, South Carolina Code section 16-23-20 provided "a person in a vehicle" was permitted to "carr[y] openly or concealed on or about his person" a handgun if he has a "valid concealed weapons permit." Open Carry With Training Act, 2021 S.C. Acts 241, 244-45. The statute has since been amended to allow anyone to carry a handgun in a vehicle regardless of

Recreational drug dealing is different because people meet to exchange drugs for their mutual benefit. There is not such an inherent likelihood it will lead to violence that it is always "reasonably calculated" to cause the violence. The point of the fault rule has always been to separate out those people who knew or should have known their conduct was going to lead to conflict. *E.g.*, *Rowell*, 75 S.C. 494, 56 S.E. at 29. Drug dealing, even with a weapon at one's side, is not so likely to lead to violence on every occasion as to defeat a self-defense claim beyond a reasonable doubt and as a matter of law.[7] It cannot be said that one is *categorically* not without fault by merely carrying a loaded weapon to a drug deal. *See* 30 Corpus Juris § 217, at 50 ("The mere fact that defendant had a dangerous weapon and used it does not take away the right of self-defense if without that fact the right would have existed."). Something more to incite the conflict must be required before a defendant loses his right to defend himself as a matter of law.

For example, imagine a husband and wife who decide to purchase a small amount of marijuana for them to consume that night. They have never used or purchased marijuana before. They also both lawfully carry handguns as a matter of course for their own protection when they leave their home. The couple finds someone, say at a gas station, whom they have never before met and who is willing to sell them the small amount of marijuana. They agree to meet in a secluded location away from the public view at the gas station, and they both enter the seller's

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how the gun is stored or if the person has a permit. South Carolina Constitutional Carry/Second Amendment Preservation Act of 2024, 2024 S.C. Acts 1258, 1262-63. There was no evidence presented that anyone involved in the case was prohibited from carrying a handgun or did not have a valid permit to do so.

[7] Perhaps the Court in *Williams* mistook the frequency with which courts see cases involving gun–drug violence for an indication that all or most drug deals with guns lead to violent confrontations. The problem with this assumption is that those times where a drug deal ends peacefully typically do not end up in court. There is no way to know how often two drug dealers armed with guns meet, have an exchange, and leave without incident.

vehicle. The seller then draws a weapon and threatens to kill them if they do not turn over all their money. The wife then draws her weapon and kills the would-be robber. It should not be that she is barred from claiming the killing was in self-defense. A jury could very reasonably find she was not at fault in bringing on that difficulty, even though she brought a loaded weapon to what she knew was a drug deal. The facts in appellant's case, although less clearly developed, support reasonable inferences that almost precisely this scenario occurred.

Appellant recognizes the Court's rationale in *Williams* may be a compelling argument to the jury in some cases. A jury could reasonably conclude that drug dealing and the carrying of a weapon proximately caused a given difficulty and therefore bars self-defense, but it depends on the facts and circumstances of the case. *See Kennedy v. Custom Ice Equip. Co.*, 271 S.C. 171, 175, 246 S.E.2d 176, 178 (1978) ("Questions of negligence, proximate cause and contributory negligence are ordinarily questions of fact for the jury, as to which the trial court's only function is to inquire whether particular conclusions are or not the only reasonable inferences to be drawn from the evidence."). Even if it is often the case that the "presence of guns at illegal drug transactions *produces* the violence," as the Court wrote in *Williams*, it is still a question for the jury whether the guns and drugs did so *in this case*. That is even more true in a criminal case where the state must disprove the elements of self-defense beyond a reasonable doubt.

The possibility a jury might find a defendant without fault despite the presence of drugs was the basis for the dissent in *Williams*. 427 S.C. at 255, 830 S.E.2d at 909 (James, J., dissenting). The dissent wrote: "our self-defense law already adequately sets forth the parameters of how judges and juries are to consider the question of whether a drug-dealing or drug-purchasing defendant was or was not 'without fault in bringing on the difficulty.'" *Id.* It was correct because in some cases there will be evidence from which the jury would reasonably determine the drug

dealing defendant—even one armed with a weapon—was not at fault in bringing on the difficulty. *Williams*, 427 S.C. at 256, 830 S.E.2d at 909. These are questions for the jury to resolve. *See State v. Huckabee*, 388 S.C. 232, 244, 694 S.E.2d 781, 787 (Ct. App. 2010) (holding trial court did not err by refusing to charge selling crack-cocaine does not establish fault); *see also Lee*, 85 S.C. 101, 67 S.E. at 142; *Rowell*, 75 S.C. 494, 56 S.E. at 29.

Whether bringing a gun to a drug transaction was "calculated to produce a violent occasion" is a question of fact to be decided by the jury on a case-by-case basis wherever any evidence exists that the defendant might be reasonably considered without fault. The Court went too far in *Plumer* when applying *Williams* because it *does* matter "who drew his weapon first or who fired first." 439 S.C. at 350, 887 S.E.2d at 136. More accurately, it could reasonably matter to a jury depending on the circumstances. The Court's decisions in *Williams* and *Plumer* were outliers and an unwarranted extension of the law that departed from the traditional rule which reserved this question for the jury.[8] They should be overruled.

Here, there is not clear evidence about what precisely occurred in the car. Neither appellant nor his brother chose to testify, as is their right. Appellant does not and could not now suggest he was entitled to a directed verdict on self-defense. *See State v. Dickey*, 394 S.C. 491, 495, 716 S.E.2d 97, 98 (2011) ("We find Petitioner was entitled to a directed verdict on the issue of self-defense."). However, the point is that the facts are not clear, so self-defense was a question for the jury. There is evidence from which the jury could conclude Conn was the aggressor and sole party at fault. It cannot be said drug dealing or lawfully carrying a weapon was a proximate cause of

[8] Further, the Court has previously reversed a conviction based on the failure to give an adequate self-defense charge even though the defendant had a gun at an "intended drug deal, which appellant had arranged [and] had gone awry." *State v. Starnes*, 340 S.C. 312, 321, 531 S.E.2d 907, 912 (2000).

the violence as a matter of law, and so the question should have gone to the jury whether appellant was at fault beyond a reasonable doubt. Appellant is entitled to have a jury decide what happened.

III. The issue is preserved, particularly when the objection is considered in context

In anticipation of the state's position, this issue is adequately preserved for review. "At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge." *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (citing *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). This rule serves two purposes: "to give the trial court a fair opportunity to rule on the issues, and thus provide [the court] with a platform for meaningful appellate review." *Id.* (quoting *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)). The preservation requirement is not to be used as "a game of 'gotcha,' where form is elevated over substance." *State v. Jones*, 435 S.C. 138, 145, 866 S.E.2d 558, 561 (2021).

Appellant admits his objection could have been more perfectly placed on the record; but it was sufficiently stated and, especially when viewed in context, the purposes of the preservation requirement have been adequately served. First, the trial court did clearly rule on the issue, and there is no question as to its reasoning. It believed no evidence supported the charge and refused to so instruct the jury. That was error.

Second, it is important to remember the context of the trial court's ruling: in a hearing after the jury requested an instruction on self-defense, and appellant argued his point immediately after Nasirea specifically requested a full self-defense charge. Appellant argued: "They [the jury] saw something that none of us saw. I guess they're entitled to that if that's obviously the evidence, sir." R. 1215:18-20. That is appellant's express, albeit imprecisely articulated, request for a self-defense charge because "obviously" the jury "saw something." This is made clearer given that Nasirea had

just finished arguing self-defense must be charged. While an appellant "may not bootstrap an issue for appeal by way of a co-defendant's objection," *State v. Brannon*, 347 S.C. 85, 89, 552 S.E.2d 773, 774 (Ct. App. 2001) (citing *State v. Carriker*, 269 S.C. 553, 555, 238 S.E.2d 678, 678 (1977)), such an objection made at the same time does provide important context. The fact he did not use the magic words "we join in that request" does not render the issue unpreserved. The only reason for appellant to point out that the court did not (and could not) deny self-defense as a matter of law was to allow the jury to decide the issue. The jury would have no way to consider the issue without a charge.

Even the solicitor recognized that part of both defendants' arguments went to self-defense. She said, "the defense kind of got up there and said we weren't there, but . . . it was also kind of Kalik Conn was firing and kind of trying to put out self-defense." The state knew precisely what the defendants wanted, and it argued forcefully and directly against it. If a key purpose of issue preservation is to ensure "both parties [are] aware of the nature of the objection such that they may present their best arguments addressing *that* objection," that purpose has been served. *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023). Everything the state wanted to say on the matter was said. The trial court was perfectly aware of the request from the defendants, and it made a ruling on the issue.

This is a platform sufficient for appellate review. The jury had just requested to be instructed on the law of self-defense, and Nasirea had just expressly sought that charge.[9] Appellant

[9] Additionally, supplemental jury charges, as requested here, are permissible and regularly given. *See State v. Todd*, 290 S.C. 212, 214, 349 S.E.2d 339, 341 (1986) (affirming use of supplemental charge); *State v. Bowers*, 436 S.C. 640, 652, 875 S.E.2d 608, 614 (2022) (reversing language of supplemental charge as confusing for the jury). The state never argued charging the jury at that juncture was improper but only that a self-defense charge was unwarranted. Importantly, upon request by the jury, it was absolutely necessary for the court to properly instruct the jury on the law, or else it is left to guess what the law is.

argued the issue was one for the jury and had not been decided as a matter of law. The state knew exactly what defendants' argument was and had been. That is enough. *See Spring Valley Ints., LLC v. Best for Last, LLC*, 444 S.C. 281, 290, 907 S.E.2d 124, 128 (Ct. App. 2024) (quoting *Johnson v. Roberts*, 422 S.C. 406, 412, 812 S.E.2d 207, 210 (Ct. App. 2018)) ("[W]here the question of issue preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation.").

IV. The booking reports should not have been admitted because they were entirely unnecessary for the state's case and unfairly prejudiced appellant by painting him in a criminal light.

State's Exhibit 51 is a mugshot of appellant along with an extensive report plainly intended to make him look like a criminal and therefore more likely to have committed this crime. *See State v. Traylor*, 360 S.C. 74, 84 & n.12, 600 S.E.2d 523, 528 & n.12 (2004); Rule 404, SCRE.

Mugshots, and similar booking reports, are admissible only "in the rarest of cases." *Traylor*, 360 S.C. at 84, 600 S.E.2d at 528.

> The introduction of a "mug-shot" of a defendant is reversible error unless: (1) the state has a demonstrable need to introduce the photograph, (2) the photograph shown to the jury does not suggest the defendant has a criminal record, and (3) the photograph is not introduced in such a way as to draw attention to its origin or implication.

State v. Traylor, 360 S.C. 74, 84, 600 S.E.2d 523, 528 (2004) (first citing *State v. Tate*, 288 S.C. 104, 341 S.E.2d 380 (1986); then citing *State v. Robinson*, 274 S.C. 198, 262 S.E.2d 729 (1980); and then citing *State v. Denson*, 269 S.C. 407, 237 S.E.2d 761 (1977)).

Here, there was no legitimate "demonstrable need" for these reports and photos. The solicitor's stated purpose for the exhibits was to "identify officially who these people are and their

home address."[10] R. 89:20-22. First, to "identify officially who these people are" is an entirely unnecessary point. Dajon Grate and Nasirea Grate were—obviously—the defendants standing trial. Introducing a picture of them with their name while they sat in court visible to the jury served absolutely no purpose. Second, there was no genuine dispute that they were the ones seen in the Sunhouse video or at the crime scene.[11] Appellant's blood was in the back of Conn's SUV, and he stipulated his phone was found there too. No further identification was necessary in any way. If this is a "demonstrated need," then the state can demonstrate that need in every case.

Additionally, the state's myopic assertion that it needed to identify appellant's home address "because there was a search at 504 Moore Road" is plainly unimportant. Their home address was of little significant importance to the state's prosecution of the case and to the alleged crime. Again, if that were a legitimate need, the state could introduce reports like these almost every time rather than the "rare case" described in *Traylor*. More importantly, if the true purpose of the report was to demonstrate their home address, the witness could have simply read it out to the jury—as she did, R. 102:19-25—and stopped there without admitting this exhibit that made appellant look like he has a criminal history.

As to the second element, this report does suggest to the jury that appellant and Nasirea have prior criminal records. First, there are redacted "FBI ID" numbers, which a jury would reasonably look at and conclude they have prior experience with law enforcement, and with the

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[10] The solicitor also sought to demonstrate that Nasirea is known as "Knock-Knock," but the witness had no personal knowledge of his alias identified on the report, so that was redacted. R. 90:5-8, 92:20-93:11.

[11] To the extent these were intended to help helped "identify" appellant as the person on the Sunhouse surveillance, that is not advanced by the report. The Sunhouse clerk, Sabrina Bryant, testified she only knew the boys by their nicknames, R. 49:17-50:15, but these exhibits could not connect the defendants with those nicknames.

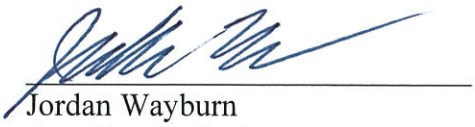
FBI no less. R. 1255. Second, there is a large line of redacted information at the bottom below a label for "holds," which the jury might reasonably and easily speculate refers to other crimes on which appellant was being held or as other evidence of prior crimes. R. 1255. Admittedly, the booking date is in line with appellant's release from the hospital a few days after the events in question.

Finally, as to the third element, the exhibits were introduced through a Sheriff's Department witness in charge of records at J. Reuben Long. R. 98:10-25. Getting these exhibits before the jury was the only purpose of her testimony. The solicitor, in a leading question, confirmed that "anybody that's charged is going to have a record" and that these were the defendant's records. R. 99:1-7, 100:15-23. That unnecessarily drew attention to its origin.

Altogether, there was simply no valid purpose at all in admitting these records. It is not like *State v. Robinson*, 274 S.C. at 201, 262 S.E.2d at 730, or *State v. Denson*, 269 S.C. at 412, 237 S.E.2d at 764, where the booking photos were introduced to explain and support an eyewitness's prior identification in a photo line-up. That is plainly a demonstrable need: to demonstrate the defendant perpetrated the crime. But to "officially identify" appellant is no need at all but rather pretext. The real goal of the solicitor was made plain by leaving the records on a board visible to the jury throughout the trial—to paint a picture that these are criminals and therefore guilty. That is prohibited. *See State v. Perry*, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (2020) (quoting Rule 404(b), SCRE).

CONCLUSION

For the reasons stated, appellant respectfully requests the Court reverse his conviction and remand for a new trial.



Jordan Wayburn
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of November, 2025.

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Nov 03 2025
SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Final Brief of Appellant contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with 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."

Respectfully Submitted,

Jordan Wayburn
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ATTORNEY FOR APPELLANT

This 3rd day of November, 2025.

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Nov 03 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAJON MALIK LAVERN GRATE,

APPELLANT

APPELLATE CASE NO. 2024-001477

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 Brian H. Gibbs, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 3rd day of November, 2025.

Jordan Wayburn
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ATTORNEY FOR APPELLANT

From: Stock, Chris
To: Brian Gibbs; Grace Sommer
Cc: Wayburn, Jordan
Subject: 2024-001477 - The State v. Dajon Malik Lavern Grate - Final Brief of Appellant
Date: Monday, November 3, 2025 2:32:00 PM
Attachments: 2024-001477 - The State v. Dajon Malik Lavern Grate - Final Brief of Appellant.pdf

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Mr. Gibbs,

Please find attached for service the Final Brie of Appellant for Dajon Malik Lavern Grate's appeal which will be filed today with the Court of Appeals.

Thank you.

Chris Stock
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