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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of General Sessions
Robert E. Hood, Circuit Court Judge

Case No. 2018-GS-28-1499
Appellate Case No. 2024-001951

The State,

Respondent,

v.

Stacey M. Catoe,

Appellant.

REPLY BRIEF OF APPELLANT

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As the State acknowledged during the trial below, the facts adduced at trial resulted in "a melded hybrid self-defense/accident" case, Tr. 655:18, and the State concedes, both at trial and now, that the law of self-defense was directly implicated by the evidence. The trial judge also recognized how central these issues were, not just to the parties but to the jury. To be sure, the court below—to Appellant's surprise and over objection—permitted the State to argue every element of self-defense in closing, although neither party requested that these elements be charged. Tr. 659–661, 688:17–691:14. The trial court believed that the jury would most likely *request* the elements of self-defense; however, no instruction was given. Tr. 749:5–11. Accepting the State's and trial court's position on the applicability of the law of self-defense in this case,[1] the trial court erred by declining to charge thematically central and equally relevant law pertaining to (1) the right to act on appearances; (2) retreat; and (3) prior difficulties. This Court should accordingly reverse and remand for a new trial.

I. The State Fails to Address the Fundamental Prejudice Created by Extensively Arguing the Elements of Self-Defense in Closing While Denying Complete Jury Instructions on the Law of Self-Defense.

The State's response fundamentally misses the core issue presented in this appeal. The question is not whether the trial court properly declined to give a general self-defense instruction. *Neither party* requested that the jury be instructed on the basic elements of self-defense. *See* Tr. 659–661. The issue is whether the court abused its discretion by allowing the State to argue about self-defense in closing while simultaneously denying Appellant's specific request for instructions on appearance, retreat, and prior difficulties to balance the State's extensive and unanticipated self-

[1] Trial defense counsel objected to the State's closing argument regarding self-defense, which objection was overruled. Accepting the propriety of that ruling and the propriety of the State's argument on every element of self-defense, the defense's subsequent proposal—a *complete* charge on self-defense—must have been given to the jury.

defense argument. Because the State was permitted to interpret every element of self-defense in closing—knowing beforehand that the trial court did not intend to instruct the jury on any of them—the judge was thereafter required to instruct the jury on all applicable self-defense law specifically requested by the defense.

This case presents the exact issue addressed in *State v. Nichols*, 325 S.C. 111, 481 S.E.2d 118 (1997), where defense counsel unsuccessfully requested specific instructions on these critical components of self-defense law: appearances, prior difficulties, and "that a person does not have to wait before acting in self-defense." *Id.* at 117, 481 S.E.2d at 121. The *Nichols* court reversed specifically because these principles were established law that should have been given when requested and they were implicated by the evidence. Specifically, the *Nichols* court held that it was reversible error for the trial court to exclusively charge the common law elements of self-defense established in *State v. Davis*, 282 S.C. 45, 317 S.E.2d 452 (1984), without also instructing the jury on other legal principles implicated by the evidence after *State v. Fuller*, 297 S.C. 440, 377 S.E.2d 328 (1989) (reversing and remanding because "it was error for the trial judge to charge *Davis* as an exclusive self-defense charge when Fuller's counsel repeatedly requested additional [self-defense] charges."). Because there was evidence in the record that made other specific self-defense issues relevant for the jury's consideration, *Nichols* was reversed under *Fuller*.

Moreover, the factual similarities between this case and *Nichols* abound: the shooting occurred moments after a married couple and one of their known affair partners converged at the same location. *Id.* at 116, 481 S.E.2d at 121 ("On the night of the killing, Mr. and Mrs. Huggins drove to appellant's trailer . . . ."); Tr. 459:24–25 ("I was trying to get pictures [of my husband with another woman] so I could finally get a divorce."). The fatal shot was fired immediately after the

defendant perceived the husband going for what he or she believed to be a firearm. *Id.* at 117, 481 S.E.2d at 121 ("Appellant testified he thought he saw a gun in the victim's hand . . . ."); Tr. 472:25–473:1 ("I thought he was about to pull a gun out and shoot—shoot me."). Here, as in *Nichols*, the testimony "also showed there had been prior difficulties between appellant and the victim" involving firearms. *Compare* 325 S.C. at 117, 481 S.E.2d at 121 (noting the victim once "pointed a rifle at appellant."), *with* Tr. 423:21 ("[Victim] shot the house up twice . . . [t]he first time he shot was we were in the kitchen, and there was another argument . . . [a]nd he pulled his gun out . . . and shot, like, four or five times into the ceiling."); Tr. 424:23–425:19 (introducing photographs of bullet holes).

The only distinguishing feature between this case and *Nichols* is that here, Appellant testified in substance that the fatal shot went off accidentally, though she acknowledged her memory was not clear:

> I never meant to shoot the gun. I pulled it up scared, thinking he was going to shoot me, and I just—I pulled up. I don't even know—I don't even know. It hit the door—hit the window. I—I have no idea what it hit. And the gun went off . . . and it scared me. And that was it. I don't know.

Tr. 475:2–9. In *Nichols*, the appellant testified that "he thought he saw a gun in the victim's hand and did not wait for [the victim] to fire or aim at him." 325 S.C. at 117, 481 S.E.2d at 121. This difference was captured within the trial court's charge on criminal intent. The fatal flaw in the State's argument on appeal, however, is the attempt to turn this difference into an argument that the law of self-defense is effectively irrelevant. The State's own closing argument forecloses the tenability of this position, and the defense was forced to address the State's points after an overruled objection. As the trial court presumed, the defense addressed self-defense in closing *because* the State was permitted to do so. *See* Tr. 749:7–11 ("[T]he State went into some of the elements of self-defense[—

]the Defense did as well, probably because the State did, but I'm not going to charge them anything additional at this point in time.").

If we are to accept the propriety of the Court's ruling on the objection to the State's extensive interpretation of the elements of self-defense, *see* Tr. 689:19–691:14 (argument by the State on the issues of (1) bringing on the difficulty; (2) imminent danger of death or great bodily harm; (3) objective reasonableness; and (4) no other means of avoiding the difficulty), then there is no dispute that self-defense was implicated by the evidence. It necessarily follows that the law of appearance, retreat, and prior difficulties were appropriate, and facts bearing on each of these issues were heavily featured over the course of the trial. Thus, as in *Nichols*, Appellant should be "entitled to a new trial based on the court's refusal to give a *complete* self-defense charge." *Id.* at 118, 481 S.E.2d at 121 (emphasis added); *see also Fuller*, 297 S.C. at 441, 377 S.E.2d at 328 (reversing due to trial court exclusively instructing on elements of self-defense but not law of appearances and retreat).

Put simply, the State ignores the prejudicial effect created when a prosecutor argues legal principles upon which the jury has not been properly instructed. It is even more concerning where the State, in closing, was permitted to launch into an interpretation of elements which it *knew* the trial court did not intend to instruct the jury. The State also ignores that trial courts have an obligation to instruct the jury on the law implicated by the evidence. In response to the defense's request to charge other areas of self-defense law, the State simply offered that it was required to educate the jury on the elements of self-defense and argue them. *See* Tr. 748:14–749:4.

The defense lost its argument at trial that the State should not be permitted to argue the elements of self-defense, *see* Tr. 688:17–689:2, but the prejudicial error lies in the trial court's failure to then instruct the jury on self-defense principles it necessarily determined to be relevant based on

its ruling. This creates the exact type of jury confusion that South Carolina courts have consistently found reversible. "When a party requests the trial court charge a correct and applicable principle of law, the court *must* charge it." *State v. Marin*, 404 S.C. 615, 620, 745 S.E.2d 148, 151 (Ct. App. 2013) (citing *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011)) (emphasis added).

After both the State and the trial court made a determination that the full-blown *Davis* elements of self-defense were an issue for proper argument, the trial court's subsequent failure to charge the jury on specifically requested issues of appearance, retreat, and prior difficulties is reversible under both *Fuller* and *Nichols*' core reasoning.

II. South Carolina Law Mandates These Instructions When Self-Defense is at Issue.

The State incorrectly suggests that these specific instructions are discretionary. However, South Carolina law is clear that when self-defense is properly implicated by the evidence, defendants are entitled to complete and accurate instructions on all relevant legal principles.

At the outset, the State attempts to make issue out of the fact that *Appellant*'s testimony did not *directly* tend to prove that the shooting itself occurred in self-defense, but only that she armed herself in self-defense. For one, this is a distinction without a difference for purposes of the issue before the Court: self-defense became a central sub-issue with regard to whether Appellant was acting lawfully for purposes of an accident defense. Moreover, the parties wholly agreed on this issue beforehand. *See* Tr. 659:3–6 (Defense: "A person who *shoots* in self-defense *or arms himself* in self-defense is acting lawfully.") (emphasis added); Tr. 659:11–12 (State: "I think that is a sound legal theory.").

But more importantly, for the State's basic argument to carry water, the State necessarily must take the position that there was *no evidence that the shooting was not accidental*. The denial of

Appellant's directed verdict motion establishes otherwise. "If there is *any* evidence to warrant a jury instruction, a trial court must, upon request, give the instruction." *State v. Smith*, 391 S.C. 408, 412, 706 S.E.2d 12, 14 (2011) (citing *State v. Shuler*, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001)). And a trial court commits reversible error when it fails to give a requested charge on an issue raised by the evidence presented. *E.g.*, *State v. Lee*, 298 S.C. 362, 364, 380 S.E.2d 834, 835 (1989); *State v. Kimbrell*, 294 S.C. 51, 362 S.E.2d 630 (1987); *State v. Robertson*, 191 S.C. 509, 5 S.E.2d 285 (1939).

The failure to provide complete instructions on self-defense principles constitutes reversible error. *See Nichols* and *Fuller*, *supra*; *see also State v. Burkhart*, 350 S.C. 252, 565 S.E.2d 298 (2002).

III. The State's Discussion of Self-Defense Law Required Corresponding Jury Instructions.

The State cannot have it both ways—arguing self-defense principles to the jury while simultaneously arguing that the jury would have been confused by a proper explanation from the trial court about inseparable legal issues. When the prosecution chooses to discuss legal concepts in closing argument, the defendant has a corresponding right to ensure the jury is properly instructed on the complete legal framework governing those concepts. It is of no consequence that the defense did not request a charge on the elements of self-defense. To be sure, the State did not request the charge either yet proceeded to argue the law anyway. Tr. 659–661. The failure to give such a charge is not the error assigned. The error is the trial court's failure to educate the jury on related law it already determined to be applicable.

The South Carolina Supreme Court has recognized that prejudice results when there is a disconnect between what is argued to the jury and what the jury is instructed regarding the law. *See Burkhart*, 350 S.C. at 263. Here, the State's closing argument created exactly this type of prejudicial

disconnect by discussing self-defense while the court refused to give complete instructions on the inseparable legal principles governing self-defense. It is simply a red herring to suggest that there is a meaningful difference between a case involving arming oneself in self-defense and an actual shooting in self-defense. There were elements of both in this case, but the complete law of self-defense was necessary in any event in light of the State's closing argument.

IV. The Evidentiary Record Supports All Three Requested Instructions.

The State fails to address whether the evidence supported Appellant's requested instructions. Reversal is required when the requested charge contains approved legal principles and when facts in the record supported the charge. *E.g.*, *State v. Marin*, 404 S.C. 615, 745 S.E.2d 148 (Ct. App. 2013).

The evidence presented at trial clearly supported instructions on: (1) the right to act on appearances, as the circumstances leading to the shooting involved Appellant's perception of the threat posed, *i.e.*, Jody Catoe reaching for the pocket, where Appellant knew he always had a gun; (2) the relevance of prior difficulties between the parties, as there was extensive evidence of the relationship and history between Appellant and the victim, including incidents involving firearms; and (3) the lack of a duty to retreat, as the incident occurred on a road where Appellant had a right to be.

There is no defensible argument that the law of appearances, prior difficulties, and retreat were not placed squarely at issue over the course of the trial below, and the State's filing fails to explain why this self-defense law should not have been given to the jury after it extensively argued the elements of self-defense in closing.

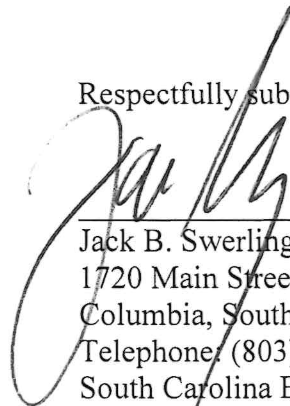
V. The Trial Court's Error Requires Reversal.

The combination of the State's closing argument discussing self-defense principles and the trial court's refusal to provide corresponding jury instructions created precisely the type of prejudicial error that South Carolina courts have found reversible.

The South Carolina Supreme Court's analysis in *Nichols* applies here. The State made self-defense a central issue through its closing argument, yet the jury was denied "complete" instructions on the legal principles governing self-defense claims. This error unfairly prejudiced Appellant, and a new trial is warranted.

The trial court abused its discretion in denying Appellant's requests for appropriate jury instructions on appearance, retreat, and prior difficulties after making the determination that self-defense was proper for the State to argue in closing. This error requires reversal. Appellant respectfully requests that this Court reverse her conviction and remand for a new trial.

Respectfully submitted,



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PROOF OF SERVICE

I hereby certify that I am serving the Reply Brief of Appellant by email to Assistant Deputy Attorney General Melody Jane Brown, at her AIS email address, mbrown@scag.gov, on November 20, 2025, as shown by the email by which these documents are being filed.

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