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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Kershaw County
The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2024-001951

THE STATE,

Respondent,

vs.

STACEY M. CATOE,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

STATEMENT OF ISSUE ON APPEAL

Did the trial court abuse its discretion in denying Appellant's request to include the laws of appearance, retreat, and prior difficulties between the parties in the jury instructions despite the State's discussion of the law of self-defense in closing argument when the trial judge did not instruct the jury on self-defense?

STATEMENT OF THE CASE

On June 17, 2018, Stacey M. Catoe ("Catoe") murdered Brenda Coates in Kershaw County by shooting her with a pistol. Catoe was arrested a few hours later in the early morning hours of June 18, 2018. On November 7, 2018, the Kershaw County Grand Jury indicted appellant Catoe for the murder of Brenda Coates (Ind. # 2018-GS-28-1499). Catoe proceeded to a jury trial before the Honorable Robert E. Hood, Circuit Court Judge, on October 8-10 and 14-15, 2024. Jack Swerling and George Speedy represented Catoe. Assistant Solicitors Dale Scott and Michael Bradbury represented the State. At the conclusion of the trial, the jury found Catoe guilty of the murder of Brenda Coates. Judge Hood sentenced Catoe to 35 years. Catoe appeals raising 1 issue. This is the Initial Brief of Respondent.

RESPONDENT'S STATEMENT OF FACTS

The State's evidence

In June of 2018, Appellant Stacy M. Catoe ("Catoe") and her husband Jody Catoe ("Jody") had been married for approximately 23 years and had 1 child together, Caitlyn, who was in high school. They lived in Westview in Kershaw County. The marriage was toxic, abusive, and tumultuous. Both Catoe and Jody drank heavily. Both had fired guns around the other when angry. Jody had shot holes in the ceilings and walls of the home in anger. And Catoe had shot at Jody while he was driving a van. In the last 2 to 4 years of the marriage, both Catoe and Jody were having affairs with other individuals; Jody with other women and Catoe with another man and also another woman.[1] Jody testified at trial that the reason he stayed in the marriage was to remain at least until his daughter graduated from high school. (R.157-185; 190-229; 481-498; 498-515; 519).

Appellant Catoe was also romantically interested in Brenda Coates ("Victim") who Catoe had become close friends with. Catoe had expressed her romantic interest in Victim in text messages and e-mails, but as of the date of Victim's death, Catoe's advances had been rebuffed by Victim. Shortly before Victim's death, Catoe learned that Victim was having an affair with Catoe's husband, Jody. After this discovery, Catoe began texting or e-mailing Victim threatening messages including 1 in which Catoe stated she was not going to allow Victim and Jody to be together. Catoe also texted Victim that she was "watching" Victim and Jody and they would get what was coming to them someday. (R. 498-515; 524-526).

[1] After the murder in this case, Catoe and Jody divorced and Catoe married or was co-habiting with Christy Huebner, who she was having an affair with around the time of the murder in this case. (R. 224).

On the date of Victim's murder, Father's Day, June 17, 2018, Jody had worked and got off around noon. He then went home and showered and ate lunch. Jody then drove to the VFW where he met up with a friend. About 2 hours later, Jody and the friend decided to go to Lake Wateree to party on a boat with friends. Victim was 1 of those friends. Jody rode from the VFW to Lake Wateree in the friend's car. Jody left his work truck parked at the VFW and left his pistol, which he normally carried, locked up in the work truck. After partying for several hours on the boat, Victim agreed to give Jody a ride back to the VFW so Jody could pick up his work truck. On the way to the VFW, Victim was driving her white Pontiac Sunfire and Jody was in the passenger seat. Jody had a cooler of beer on ice in the backseat of Victim's vehicle. Victim and Jody eventually passed appellant Catoe driving in the opposite direction but did not notice her. Catoe turned around and followed Victim and Jody to the intersection of Highway 521 and Cato Road in Kershaw County, but Victim and Jody did not notice Catoe following them. (R. 157-185: 190-229).

It was approximately 9:30 p.m. and dark when Victim and Jody approached the intersection of Highway 521 and Cato Road. At that time, Jody asked Victim to pull over so he could urinate and get another beer. Victim pulled her car off the road in the emergency lane and stopped the car near an old country store that was abandoned. Jody testified that he got out of the victim's car and walked to the corner of the old country store and urinated and then walked back to Victim's car. Jody testified as he was reentering Victim's car on the passenger side, he may have reached for a beer in the cooler in the back seat when he heard a "pop," a gunshot. Jody testified he looked forward after hearing the shot and sitting down in the passenger seat, and he saw his wife's, Catoe's, red Ford Escape driving away in the same direction Victim's vehicle was pointed while parked. Catoe had in fact pulled up beside the driver's side of Victim's vehicle, going in the same direction as Victim and Jody, and fired 1 shot with a .380 semi-automatic pistol out Catoe's

passenger window and into Victim's left neck and then drove away. After Jody saw Catoe driving away, Jody then looked at Victim and realized she had been shot. Jody exited the passenger side of Victim's car, started calling 911, went around the back of the car and to the driver's side, and then tried to stop the blood that was pouring out of the gunshot wound to Victim's left neck as Victim was still seated behind the steering wheel of her car. (R. 157-185: 190-229).

The State introduced Jody's 911 call to police and request for emergency assistance. In the phone call, Jody identified appellant Catoe as the shooter. Jody also identified to authorities the vehicle Catoe was driving when the shooting took place. (R. 120-123; 124-42; 175-77; 236-41; State's Ex. 36).

A passerby, who happened to be a nurse, stopped and attempted to assist Jody in saving Victim's life but was unable to do so. Victim died at the scene from loss of blood due to the gunshot wound to the neck. The gunshot wound struck Victim in the left side of her neck, traveled through her neck, and exited the right side of her neck. The victim's cervical spine vertebrate was also struck by the bullet which could have caused a concussion. The pathologist testified based on the positioning of the victim's body when shot, she was probably looking straight ahead when struck in her left neck by the bullet. (R. 236-41; 321-28).

The Kershaw County Sheriff's Office responded to the murder within minutes. They spoke to Jody and the good Samaritan nurse who attempted to save Victim's life. Jody identified his wife, Catoe, as the person who murdered Victim and gave them a description of the vehicle she was driving, a red Ford Escape. Jody also gave police Catoe's phone number. (R. 236-41; 120-123; 124-137; 176-81; 241-43).

Police and crime scene technicians searched Victim's vehicle and found a scuff mark on the dash consistent with having been caused by the bullet that passed through Victim's neck. They

also traced the path of the bullet to the passenger side door jamb area where they recovered a fired bullet lodged in the door. This bullet was forwarded to SLED for forensic analysis. (R. 301-310).

Police tried approximately 10 times over the next hours to reach Catoe by phone, but she would not answer her phone. She would not answer text messages either. Finally, Catoe answered and admitted she was at her father's home, which is located next to Catoe's and Jody's marital home approximately 5 miles from the crime scene. (R. 241-50).

As soon as Catoe shot and killed Victim, Catoe fled the scene in her own SUV and eventually drove to her father's home. Catoe pulled her car behind her father's house and hid her car in the wood line where it could not be seen from the road. (R. 241-50). When police arrived, they seized and searched Catoe's SUV pursuant to a search warrant. Found in the passenger side floorboard of Catoe's SUV was 1 fired .380 caliber shell casing. Found in the console was 1 pink semiautomatic .380 pistol. This pistol had been purchased for Catoe by her husband Jody. Catoe was familiar with the pistol and how it fired, including conducting target practice with the gun before the date of the murder. Jody testified the pistol was always kept unloaded, i.e. the clip was in the gun but there was no bullet in the chamber as a safety mechanism. Jody also testified the gun was kept in both the house and the console of Catoe's car but usually in the console. (R. 179-82). The fired shell casing and the pistol recovered in Catoe's SUV were forwarded to SLED for forensic firearms identification. The police also seized Catoe's cell phone. (R. 254-74). Catoe's phone was later searched, and incriminating evidence, text messages, were found in the same. (R. 287-300). While at this scene, police took gunshot residue samples from Catoe's hands. (R. 274). At the Sheriff's Department, gunshot residue samples were taken from the steering wheel, the gearshift, and the passenger side door in 2 places of Catoe's SUV. These samples were also forwarded to SLED for forensic analysis. (R. 301-307)

A SLED firearms examiner determined the .380 bullet recovered from Victim's passenger door jamb was fired by the .380 pistol found in the console of Catoe's SUV. (R. 331-42). A trace analysis expert testified that the gunshot residue samples taken from Catoe were positive for gunshot residue, and the samples taken from the passenger side door, the steering wheel, and the gearshift of Catoe's SUV were all positive for gunshot residue. (R. 311-22). The firearms expert also testified that based on his examination the .380 semi-automatic pistol would not discharge or fire accidentally. The expert testified the gun was in proper working order and would only fire in double action mode, and it required 4 and ½ pounds of pressure to pull the trigger and make the gun fire. This was equivalent to a person lifting a half gallon of milk with 1 finger in a curling fashion. The gun would not fire unless someone pulled the trigger. The expert also testified the gun had a special safety mechanism within it that prevented accidental firing. A strong spring was set inside the weapon to prevent an accidental discharge by dropping the gun or other contact with the gun without pulling the trigger. (R. 331-342).

The Defense's case

Appellant Catoe testified during her trial. Catoe testified that on the night of June 17, 2018, at night, she got in her car and drove from her home toward Jody's camper located on the lake. (R. 463). Catoe's .380 semi-automatic pistol was located in her console. Catoe admitted she drove to toward the camper after seeing a photograph posted on-line of Jody and Brenda partying on a boat earlier that day. (R. 460). Catoe admitted she drove there hoping to catch Jody and Brenda there together at the mobile home. While driving to the camper, Catoe saw Victim and Jody pass by her going in the opposite direction in Victim's white Pontiac Sunfire. Catoe turned her car around and followed Jody and Victim. (R. 460).

Catoe testified she drove toward the camper and followed Jody and Victim after meeting them in the road to get a photograph of them together to assist in getting a divorce from Jody. Catoe admitted she followed them until they reached the intersection of Highway 521 and Coates Road. It was dark. She testified she pulled up beside Victim's vehicle on its driver's side. She claimed Jody was outside Victim's vehicle on the passenger side in between the open passenger door and the car. Jody asked: "What the fuck are you doing? And Catoe responded: "What the fuck are you doing?" She testified Jody reached toward his right rear pocket where he always carried his gun, so she reached in her console and retrieved the .380 pistol Jody had bought and armed herself in self-defense because she thought, based on Jody's prior actions and how he acts when he is drinking, that he was going to shoot her. Catoe testified the weapon was already loaded. She claimed even though her teenage daughter sometimes drove the SUV, the gun was kept in the console loaded. Catoe did not explain how the gun got loaded. She testified that she did not pull back the slide and load the weapon. Catoe claimed she raised the gun and leaned forward in a crouched position and the gun discharged accidentally. Catoe claimed the gun hit the passenger side window or door causing it to discharge accidentally. She also claimed there were problems with the gun, implying it could discharge accidentally. Catoe testified she did not pull the trigger and did not intend to shoot Victim or even Jody. She testified that after the shooting she then panicked and fled the scene in her car. Even though she heard Jody say out loud: "You shot her," Catoe admitted she did not call 911 to assist Victim or call the police. (R. 413-575).

Catoe called several other witnesses, including her current wife/girlfriend, her daughter, and others to establish Jody's prior abuse of her, Jody always carried a weapon in his back pocket, his violent nature when intoxicated, and Catoe was afraid of him to prove she lawfully armed herself in self-defense at the time of the killing and therefore accident was available as a defense.

(R. 577-647). Several witnesses also testified that when Catoe arrived at her father's home after the shooting, she was stating that she thought she accidentally shot someone. (R. 547-647). However, the evidence at trial was this was not told to police the night of the crime by any of these witnesses.

The jury charge

Judge Hood charged the jury on murder, involuntary manslaughter, and accident. Judge Hood also charged the jury on criminal intent and that if the jury determined Catoe was acting in self-defense; she handled the gun with due care; and the gun discharged accidentally, she must be found not guilty. (R. 413-575). Reading the entire charge on accident, Judge Hood also charged the jury that self-defense is lawful. (R. 413-575). Judge Hood also charged the jury that the State must prove the defendant's guilt beyond a reasonable doubt, including malice for the jury to find her guilty of murder, and the State must disprove accident beyond a reasonable doubt. (R. 737-752). The jury was also charged that malice is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer as evil intent. (R. 737-752). The jury deliberated without asking any questions of the trial court or for any additional jury instructions or reinstructions on the law and found Catoe guilty of Victim's murder. (R. 752-57).

ARGUMENT

Simply because the State and Catoe mentioned elements of self-defense in their closing arguments, Judge Hood did not abuse his discretion in refusing to instruct the jury on 3 principles of the law of the defense of self-defense: (1) appearances; (2) retreat; and (3) prior difficulties between the parties; where appellant Catoe did not assert the defense of self-defense but the defense of accident, where Judge Hood instructed the jury on the defense of accident and criminal intent, and a defendant is not required to meet the elements of self-defense to arm themselves in self-defense; regardless, the failure to charge these 3 principles of the defense of self-defense was harmless on this record.

What occurred below

During the trial of the case, discussing *in camera* the admissibility of prior bad acts of appellant's husband Jody Catoe, appellant Catoe informed Judge Hood she was asserting the defense of accident, not the defense of self-defense. Catoe asserted she lawfully armed herself in self-defense when Jody reached for his back pocket because of Jody's prior abuse of her and violence while intoxicated, especially with a firearm, Jody always carried a gun, and the gun Catoe possessed discharged accidentally when she struck her own door or window with her pistol. Catoe plainly and repeatedly stated throughout her trial testimony that she did not fire her weapon or pull the trigger. She claimed the gun hit the window or door of her car and discharged. During this discussion of the admissibility of prior bad acts of Jody, Catoe informed the court she was not requesting a charge on self-defense, but may want to discuss that with the judge later. Judge Hood agreed that Jody's prior abuse of Catoe and his violence while intoxicated, including with a pistol, was admissible as long as it was kept within a reasonable time of the murder, approximately four (4) years, because it would justify her fear and explain her arming herself. (R. 365-407). This ruling is not challenged on appeal. (IBOA, pp. 1-6).

At the conclusion of the case, Judge Hood held a charge conference *in camera* but not on the record. This was agreed to by all parties. (R. 653, ln. 23-656, ln. 3). The morning after the

charge conference, Judge Hood went back on the record with counsel and discussed the charges to be given and if there were any objections. (R. 658-666). Along with other requested charges, it is clear from the entire record, Judge Hood agreed to charge the defense of accident as requested and as asserted by Catoe during the trial, and the lesser included offense of involuntary manslaughter. It is also clear from the record that Judge Hood did not charge the defense of self-defense, any of its elements, or any of its accompanying principles as it was not applicable to the case and informed counsel of this. Catoe did not assert the defense of self-defense during the trial or request *the defense of self-defense* based on the extant record. (R. 413-575; 737, ln. 18 – 752, ln. 14; & 752, ln. 15 – 757, ln. 13; 658, ln. 1 – 666, ln 13). Judge Hood also agreed to charge the language from this Court's Opinion in State v. Owens, 427 S.C. 325, 332, 821 S.E.2d 126, 129 (Ct. App. 2019) *affirmed* State v. Owens, 433 S.C. 482, 860 S.E.2d 357 (2021), authored by Judge Hill, regarding the defense of accident. (R. 658-666). After the charge conference in chambers, but off the record, and the hearing the following morning, appellant Catoe did not object to Judge Hood not charging self-defense or any of the elements of self-defense or any of its accompanying principles. (R. 658-666).

The parties then made their closing arguments. During its closing argument, among other things, the State argued that Catoe could not be entitled to an acquittal under the defense of accident because the State had disproved one (1) of the elements of the defense of accident--element (2), i.e. the defendant was acting lawfully at the time of the crime--because the State had proved that Cato was not lawfully armed in self-defense. The State argued Catoe was not lawfully armed in self-defense because she did not meet all of the elements of self-defense. Catoe objected and there was a conference at the bench. Judge Hood overruled the objection. The State explained how,

based on the facts and evidence presented by the State, Catoe did not meet any of the four (4) elements of self-defense. (R. 708, ll. 3-23; 714, ln. 18 – 715, ln. 22; 718, ll. 4-9; 728-34).

Similarly, Catoe also argued in her closing argument that she was entitled to an acquittal under the defense of accident because she did meet the second element of accident-- (2) she was acting lawfully at the time of the killing--because she was lawfully armed in self-defense because she met each of the four (4) elements of self-defense based on the evidence presented by the defense. (R. 708, ll. 3-23; 714, ln. 18 – 715, ln. 22; 718, ll. 4-9; 728-34).

At the conclusion of the closing arguments, there was no request to charge any additional law whether the four (4) elements of self-defense or the three (3) principles of self-defense Catoe is arguing on appeal. (R. 732, ln. 17-19). (See IBOR, pp. 1-6).

Judge Hood then charged the jury on the law including murder, involuntary manslaughter, and accident. Judge Hood also charged the jury that the State had to prove criminal intent on the part of Catoe or Catoe had to be found not guilty. Judge Hood also charged the jury that the State had to prove murder beyond a reasonable doubt and had the burden of proof to disprove accident beyond a reasonable doubt. Judge Hood also charged the jury that malice is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer as evil intent. He also instructed the jury that if Catoe intentionally tried to kill another but struck the victim, the intent would be transferred to that deceased victim. Judge Hood also instructed the jury that if Catoe was acting in self-defense and the gun accidentally discharged, Catoe would be entitled to an acquittal. (R. 738, ln. 1 – 752, ln. 13).

After Judge Hood charged the jury on the law, Judge Hood asked if there were any objections to the court's jury instructions. (R. 752, ln. 15-16). Catoe noted that she had objected

during the Solicitor's closing argument when he began discussing the elements of self-defense because the trial court had notified the parties that the court was not charging self-defense and Catoe believed this argument was improper. Now, after the court had charged the jury, because of the Solicitor's alleged improper closing argument on the elements of self-defense, Catoe requested Judge Hood charge three (3) principles of law related to self-defense, not the four (4) elements of self-defense: (1) the right to act on appearances, (2) the law of retreat, and (3) the law of prior difficulties being considered in whether the defendant acted reasonably. Catoe did not move to strike the Solicitor's alleged improper closing argument, for a mistrial, or for a curative instruction regarding the Solicitor's argument.[2] Catoe did not ask Judge Hood to charge the jury on the four (4) elements of self-defense, only on the three (3) principles discussed above. In response to this argument, the State responded that it had the burden of proof to disprove accident, which the defendant explicitly asserted and Judge Hood was going to charge, and the State was simply properly arguing it had disproved the defense of accident because it had proved Catoe did not meet the second (2nd) element of the defense of accident, i.e. she was not acting lawfully at the time of the shooting, because she did not meet any or all of the elements of self-defense. Judge Hood noted for the record that both the State and Catoe both argued elements of self-defense in their closing argument. (R. 754, ll. 5-11). The record shows Catoe argued how, based on the evidence in the record presented by Catoe, Catoe did meet the elements of self-defense and was therefore lawfully armed in self-defense and acting lawfully at the time of the shooting; therefore, the defense of accident did apply. (R. 708, ll. 3-23; 714, ln. 18 – 715, ln. 22; 718, ll. 4-9; 728-34).

[2] Catoe does not argue on appeal that this case should be reversed because of the Solicitor's alleged improper argument. (IBOA, pp. 1-6). Instead, she argues Judge Hood erred in not charging the three (3) principles of law related to self-defense, after the Solicitor discussed the four (4) elements of self-defense in his closing argument. (IBOA, pp. 1-6).

Judge Hood denied the motion to charge the three (3) principles of the defense of self-defense of: (1) acting on appearances; (2) retreat; and (3) prior difficulties **because of the Solicitor's closing argument mentioning the elements of self-defense.** (R. 754, ll. 5-11).

The jury deliberated without sending any questions to the Court and without requesting reinstruction on any principle of law or requesting instruction on any principle of law they had not been charged on. The jury found Catoe guilty of murder. (R. 753-57).

Standard of Review

The law to be charged is determined from the evidence presented at trial. State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); State v. Turbeville, 275 S.C. 534, 536, 273 S.E.2d 764, 765 (1981). The trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence. State v. Burriss, 334 S.C. 256, 262, 108 513 S.E.2d 104, 108 (1999); State v. Hill, 315 S.C. 260, 433 S.E.2d 848 (1993). This Court reviews jury instructions for abuse of discretion, meaning that to warrant reversal the instruction must have misstated the law and prejudiced the defendant. State v. Owens, 427 S.C. 325, 330, 831 S.E.2d 126 (2019); State v. Jenkins, 408 S.C. 560, 569, 759 S.E.2d 759, 764 (Ct. App. 2014). An abuse of discretion occurs when the trial court's ruling is based on an error of law or factually is without evidentiary support. State v. McGowan, 430 S.C. 373, 379, 845 S.E.2d 503, 505-06 (Ct. App. 2020). If the appellate court does find error in the jury instruction at issue, such errors are subject to harmless error analysis. State v. Brooks, 428 S.C. 618, 633, 837 S.E.2d 236 (Ct. App. 2019). An appellate court simply determines whether the [circuit court]'s ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

The Specific Issue Raised on Appeal

In this appeal, Catoe does not object to the trial court's accident charge or to the trial court's decision not to charge the defense of self-defense. (IBOR, pp. i, 1-6). Catoe does not argue the case should be reversed because of the Solicitor's closing argument. (IBOR, pp. i. 1-6). Catoe argues something unusual. (IBOR, pp. i., 1-6). Catoe argues on appeal that Judge Hood abused his discretion by not charging three (3) related principles of self-defense: (1) acting on appearances; (2) the duty to retreat; and (3) prior difficulties between the parties, after the Solicitor discussed the four (4) required elements of self-defense during his closing argument. [Catoe also discussed the elements of self-defense in her closing argument.] Catoe is wrong and Catoe's conviction must be affirmed. The three (3) related principles of self-defense were properly not charged to the jury because Catoe was asserting the defense of accident, not self-defense, and there is a difference between being armed in self-defense and use of a deadly weapon in self-defense, and for a defendant to lawfully arm themselves in self-defense they do not have to meet all of the elements of the defense of self-defense. Further, the failure to give the defendant's requested charge of the three (3) additional principles of self-defense was harmless beyond a reasonable doubt.

Law/Analysis

For a homicide to be excusable on the ground of accident, it must be shown the killing was: (1) unintentional, (2) **the defendant was acting lawfully**, and (3) due care was exercised in the handling of the weapon. State v. Commander, 396 S.C. 254, 271, 721 S.E.2d 413, 422 (2011); State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994); State v. Burriss, 334 S.C. 256, 259, 513 S.E.2d 104, 106 (1999); State v. Brown, 205 S.C. 514, 521, 32 S.E.2d 825, 828 (1945). "A person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to *arm*

himself in self-defense at the time of the shooting." State v. Brayboy, 387 S.C. 174, 180, 691 S.E.2d 482, 485 (Ct. App. 2010)(quoting State v. Crosby, 355 S.C. 47, 52, 584 S.E.2d 110, 112 (2003)(emphasis added).

There is a difference between *lawfully arming oneself in self-defense* and in *using a weapon in self-defense*. State v. Light, 378 S.C. 641, 648, n. 6, 664 S.E.2d 465, 468, n. 6 (2008) (*Light II*); State v. Brayboy, 387 S.C. 174, 182, 691 S.E.2d 482, 486–87 (Ct. App. 2010).

> ...[A]t the point of the analysis of determining whether one is [lawfully] armed in self-defense, the court is "concerned only with whether [the defendant] had a right to be armed for purposes of determining whether he was engaged in a lawful act, i.e. was **lawfully armed**, and not whether he actually acted in self-defense when the shooting occurred."

Light, *supra*; Brayboy, 387 S.C. at 181, 691 S.E.2d at 486 (emphasis added). In Brayboy, the State argued that Brayboy was not entitled to a charge of involuntary manslaughter because he was *not acting lawfully* at the time of the killing and **he could not meet all of the elements of self-defense.** Id. This Court held:

> There is no merit to the State's argument that Brayboy was not entitled to an involuntary manslaughter charge **because he could not meet the necessary prongs of a self-defense charge.** The supreme court's decision in *Light II* makes it clear the question is not whether one is **acting** in self–defense at the time of the shooting, but whether the defendant is **lawfully armed** at the time of the shooting. Therefore, whether a defendant is entitled to a self-defense charge is of no consequence.

Brayboy, 387 S.C. at 182, 691 S.E.2d 486-487. This Court went on to hold that there was evidence from which the jury could find Brayboy was *lawfully armed in self-defense* and negligently handled the firearm, therefore he was entitled to a charge on involuntary manslaughter. Id.

Again, in Wigington v. State, 413 S.C. 578, 586, 776 S.E.2d 407, 411 (Ct. App. 2015), this Court held:

> There is a difference between being armed in self-defense and acting in self-defense.... [In] determining whether one is armed in self-defense, the court is "concerned only with whether the defendant had a right to be armed for purposes of determining whether he was engaged in a lawful act, i.e. was lawfully armed, and not whether he actually acted in self-defense when the shooting occurred.

Wigington, 413 S.C. 578, 586, 776 S.E.2d 407, 411; (citing Brayboy, 387 S.C. at 181, 691 S.E.2d at 486)(quoting Light, 378 S.C. 641, 664 S.E.2d 465). And, '[a] person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting.'" Wigington, 413 S.C. at 586, 776 S.E.2d at 411 (citing Brayboy, 387 S.C. at 180, 691 S.E.2d at 485 (quoting State v. Crosby, 355 S.C. 47, 52, 584 S.E.2d 110, 112 (2003)). This Court then held that Wigington's counsel was ineffective for failing to request an involuntary manslaughter instruction where there was *some evidence* Wiggington *lawfully armed himself in self-defense* where Wigington testified he armed himself because he was afraid of his son, the victim, and he was afraid his son might harm him or the children. This Court did not require Wigington to meet all of the elements of self-defense to lawfully arm himself in self-defense. Wigington, 413 S.C. at 588-89, 776 S.E.2d at 412.

> Petitioner also testified his son's threat and prior act of domestic violence against him made him afraid for his and his grandchildren's safety. Accordingly, evidence from trial indicates Petitioner may have been armed in self-defense at the time of the shooting and Petitioner may have been recklessly handling the loaded gun at the time of his son's death.

Id. As a result, this Court found that counsel was ineffective in not requesting a charge on involuntary manslaughter because there was evidence from which the jury could have found Wigington armed himself in self-defense.[3] Judge Hood did not abuse his discretion in declining

[3] In State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999), the issue was whether the defendant was entitled to an accident charge. The Court noted in a footnote that the four (4) elements of self-

to charge Catoe's three (3) additional principles of self-defense, because it was not necessary for Catoe to meet the four (4) elements of self-defense to begin with to arm herself in self-defense, and she was not asserting the defense of self-defense but accident.[4] The State's and Catoe's discussion in their closing arguments of the four (4) elements of self-defense was simply irrelevant because Catoe did not need to meet those four (4) elements to arm herself and her three (3) additional principles of self-defense were irrelevant. Catoe always claimed she did not fire the gun, but it discharged accidentally when the gun struck the door or the window. She also claimed there were problems with her gun, i.e. it could discharge accidentally. (R. 413-575).

Because the defense of accident is not applicable unless the defendant was acting lawfully at the time of the killing, it is necessary to instruct the jury as to what constitutes a lawful enterprise. State v. McCaskill, 300 S.C. 256, 259, 387 S.E.2d 268, 270 (1990); State v. Owens, 427 S.C. 325, 332, 821 S.E.2d 126, 129 (Ct. App. 2019) *affirmed* State v. Owens, 433 S.C. 482, 860 S.E.2d 357 (2021). In McCaskill, a shooting that occurred inside the defendant's home where the defendant was assaulted by her husband and his girlfriend, the Court held the trial court erred in failing to

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defense *were relevant to the Court's analysis* of whether the appellant armed himself in self-defense at the time of the fatal shooting and was therefore entitled to an accident charge. Burriss, 334 S.C. at 262-64, n. 6; 513 S.E.2d at 108-09. *See also* State v. Stoots, 445 S.C. 127, 137, 912 S.E.2d 248, 254 (2025)(noting whether a defendant lawfully and non-negligently armed himself in self-defense can be determinative whether he is entitled to a jury charge on the law of accident).

[4] There is a difference between arming oneself in self-defense, i.e. picking up a gun because one is afraid, *and* using a gun in self-defense, actually using deadly force, i.e. intentionally firing a gun. One does not have to meet all of the elements of self-defense to arm oneself in self-defense. For example, element (4) of self-defense requires a duty to use reasonable force and avoid the difficulty, i.e. retreat if possible. A person does not have to meet element (4) of self-defense to lawfully arm oneself in self-defense. That is because in arming oneself in self-defense, the defendant has not used deadly force yet. One has a duty to retreat only before **using deadly force**, i.e. actually firing the weapon. The fact that counsel for both sides argued something that is legally incorrect, does not mean the trial court should charge the jury on principles of law not applicable to the case to further compound the problem and confuse the jury. However, that is Catoe's argument on appeal. (IBOA).

charge the jury that the defendant had a right to possess a weapon in her own home **and** in failing to charge the jury that if the defendant lawfully armed herself in self-defense because of a threat to her safety created by the decedent, and the gun accidentally discharged, the jury would have to find her not guilty under the defense of accident. The Court held the trial judge's traditional self-defense charge which focused only on the right *to use* the weapon in self-defense was inadequate. McCaskill, 300 S.C. at 259, 387 S.E.2d at 270.

In the present case, Judge Hood's charge focused on intentional and accidental conduct. Judge Hood instructed the jury that the State had to prove criminal intent, and the State had to prove malice. He defined malice as the intentional doing of a wrongful act. In contrast, Judge Hood instructed the jury that if Catoe was acting in self-defense, she was acting lawfully, and if the gun accidentally discharged during that act, as long as she used due care while handling the weapon, she would be entitled to an acquittal under the law of accident. (R. 746, ln. 7-747, ln. 4). Catoe did not object to this portion of the accident charge below. In fact, she approved of it beforehand and requested it in both the accident and involuntary manslaughter charge. (R. 658, ln. 1-665, ln. 5). Catoe did not object or request clarification of this portion of the accident charge after it was given. (R. 752-54).[5] Catoe does not argue on appeal that the accident charge was incorrect. (IBOA, pp. i, 1-6). Judge Hood's entire charge told the jury self-defense is a lawful activity. (R. 746-747). Catoe only argues that where Judge Hood did not charge self-defense, and the State argued in its closing argument the elements of self-defense in regard to whether Catoe was lawfully armed, the jury should have been instructed on *additional principles of the defense of self-defense* [not the elements of self-defense], i.e. appearances; prior difficulties and retreat;

[5] The only objection to the accident charge was the inclusion of mere negligence in that charge and in the involuntary manslaughter charge. (R. 665, ln. 9 – 666, ln. 11; 752-754). Any other objection to the accident charge given by Judge Hood was waived at trial and cannot now be raised on appeal.

because the jury was left to consider whether Catoe was lawfully armed without instruction on these three (3) principles and had to rely on the State's explanation of the law. (IBOA, pp. i., 1-6). His argument boils down to arguing Judge Hood erred in not charging three (3) additional principles of self-defense: appearances, prior difficulties, and retreat, when the State [and Catoe] discussed the four (4) elements of self-defense in their closing argument. (IBOA, pp. i., 1-6).

Where the defendant relies on the theory of accidental homicide, and there was no testimony of self-defense, the jury need not have been instructed on self-defense. State v. Turbeville, 275 S.C. 534, 273 S.E.2d 764 (1981). Here throughout the trial, Catoe repeatedly stated that she never pulled the trigger on her gun, but the gun accidentally discharged, after she crouched down, leaned forward, and the gun hit the passenger door or window of her car. (R. 413-575). State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (Ct. App. 2012), is inapplicable to this case. In Williams, the defendant repeatedly testified he both shot the victim *intentionally* in self-defense **and** that the gun just went off *accidentally*. This Court held under that scenario, where the defendant testified that he both intentionally fired the gun **and** the gun went off accidentally, he was entitled to instructions on both self-defense and accident.[6] That did not occur in this case. Catoe repeatedly testified that she never pulled the trigger on her .380 caliber pistol. (R. 413-575). The pistol went off when it struck her passenger door or passenger window. She testified she did not intentionally shoot at Victim or Jody. (R. 413-575). She testified there were problems with that gun, her gun. (R. 413-575). Based on the record, Catoe did not seek a charge on the elements of self-defense below to argue the actual defense of self-defense. There was no objection to Judge

[6] This Court's holding in Williams was recognized in State v. White, 425 S.C. 304, 312, 821 S.E.2d 523, 528 (2018).

Hood not charging self-defense. (R. 658-666; 752-754). There was only *mention* of the fact Judge Hood did not charge self-defense. (R. 752-754).

In fact, defense counsel informed the trial court below and argues on appeal, that Judge Hood erred only because the State argued the elements of self-defense in its closing after the trial court informed both sides it was not charging self-defense, and at that point the Court should have charged three (3) related principles of self-defense: the right to act on appearances, prior difficulties, and retreat. However, Catoe does not mention in her brief, that she also argued the elements of self-defense in her closing argument as well. Catoe also does not inform this Court why both the Solicitor and she argued the elements of self-defense below. Neither argued the elements of self-defense as if self-defense was being asserted as a defense in this case, but only to explain why Catoe either did or did not meet element two (2) of the defense of accident, i.e. she was or was not acting lawfully at the time of the killing. The Solicitor argued that Catoe did not meet element two (2) of the defense of accident, because she could not meet all of the elements of self-defense; therefore, she was not lawfully armed in self-defense at the time of the shooting. Catoe argued she did meet element two (2) of the defense of accident because based on her testimony and the testimony of her other witnesses she did meet all of the elements of self-defense; therefore, she was lawfully armed in self-defense at the time of the shooting. Both the State and Catoe were incorrect that she had to meet the four (4) elements of self-defense. Light; Wigington; Brayboy. The fact that both attorneys argue law inapplicable to the case, or argue the law incorrectly, cannot pigeonhole or require a circuit judge to charge principles of law not applicable to the case. This was a case where the defendant asserted the defense of accident, and Catoe did not have to meet the four (4) elements of self-defense to lawfully arm herself in self-defense. Light; Wigington; Brayboy. Judge Hood was not required to charge three (3) additional principles of

self-defense where self-defense was not applicable and Catoe did not have to meet the elements of self-defense to arm herself in self-defense. Id.

Further, looking at the entire charge, there was no error here. (R. 738-52). Judge Hood charged criminal intent and that to convict Catoe of murder the State must prove malice and malice was defined as the intentional doing of a wrongful act. State v. Stoots, 445 S.C. 127, 136-39, 912 S.E.2d 248, 253-55 (2025)(court's criminal intent charge covered the principle involved in accident charge and there was therefore no error in failing to charge Stoots' requested accident charge); State v. Owens, 433 S.C. 482, 860 S.E.2d 357, 357-58 (2021)(where the defendant asserts accident the State must prove a voluntary intentional act with malice, and malice is the intentional doing of a wrongful act). The jury understood if Catoe accidentally killed Victim, while exercising due care with the weapon, she must be found not guilty and if Catoe intentionally shot Victim with malice she was guilty of murder. Stoots: Owens.

Harmless error

Any failure to charge Catoe's requested three (3) additional principles of self-defense: appearances; prior difficulties; and retreat was harmless on this record for several reasons. State v. Brooks, 428 S.C. 618, 628, 837 S.E.2d 236, 241 (Ct. App. 2019). The question here is whether the failure to charge the three (3) principles of self-defense: (1) appearances; (2) prior difficulties; and (3) retreat contributed to the verdict. It did not.

"In making a harmless error analysis, [the appellate court's] inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered." State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019). (quoting State v. Middleton, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014)); State v. Brooks, 428 S.C. 618, 628, 837 S.E.2d 236, 241 (Ct. App. 2019).

"To say that an error did not 'contribute' to the ensuing verdict is not, of course, to say that the jury was totally unaware of that feature of the trial later held to have been erroneous." Yates v. Evatt, 500 U.S. 391, 403, (1991), *overruled on other grounds by* Estelle v. McGuire, 502 U.S. 62, (1991). Rather, it is "to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record." Id. "Thus, whether or not the error was harmless is a fact-intensive inquiry." Middleton, 407 S.C. at 317, 755 S.E.2d at 435. The appellate court "must review the facts the jury heard and weigh those facts against the erroneous jury charge to determine what effect, if any, it had on the verdict." State v. Kerr, 330 S.C. 132, 145, 498 S.E.2d 212, 218 (Ct. App. 1998). Further, "[w]hen considering whether an incorrect jury instruction constitutes harmless error, [the appellate court is] required to review the trial court's charge to the jury in its entirety." Burdette, 427 S.C. at 498, 832 S.E.2d at 580 (citing State v. Stanko, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013), *overruled on other grounds by* Burdette, 427 S.C. at 505 n.3, 832 S.E.2d at 583 n.3); Stanko, 402 S.C. at 264, 741 S.E.2d at 714 ("Jury instructions should be considered as a whole, and if as a whole, they are free from error, any isolated portions [that] may be misleading do not constitute reversible error.").

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741 S.E.2d at 714 ("Jury instructions should be considered as a whole, and if as a whole, they are free from error, any isolated portions [that] may be misleading do not constitute reversible error.").

First, Judge Hood's charge was one that was based on intent and focused on the difference between an intentional act and one done by accident. Judge Hood also charged reasonable doubt.

Second, Catoe could not meet the four (4) elements of self-defense even if they were required. Catoe could not show she was without fault in bringing on the difficulty. State v. White, 425 S.C. 304, 821, S.E.2d 523 (2018); State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 442, 453 (1984). Catoe was at fault in bringing on the difficulty as it is undisputed that Jody and Victim were riding in Victim's vehicle on their own to pick up Jody's truck and not bothering anyone. Catoe admitted she went out at night looking for Jody and Victim with a loaded gun in her car. (R. 413-575). She first went toward Jody's camper where she had on a previous night broken out a window in an attempt to catch Victim and Jody together. Catoe admitted that on the night of the murder when she saw Victim and Jody going in the opposite direction in Victim's car, Catoe turned around and followed Victim and Jody. Catoe admitted she followed them for some time until she finally caught up with them. (R. 413-565). Catoe had previously told Victim she was not going to let Victim and Jody be together in an e-mail used at trial. (State's Ex. 42; R. 413-575).). Catoe admitted she followed them until she could pull up beside them at a secluded location, in the dark, at 9:30 p.m., where an argument took place between Catoe and Jody. She and Jody were both cursing at each other, according to her. The shooting occurred seconds later. (R. 413-575). The shooting would not have occurred if Catoe had not followed Victim and Jody and confronted them at the rural intersection in the dark. Catoe admitted at trial or in an e-mail, that she had other pictures of Victim and Jody together. (State's Ex. 42; R. 413-575). Plus, she had multiple affairs on her husband. (R. 413-575). She did not need more photographs for a divorce. She was basically stalking Victim

and her estranged husband. Regardless, she cannot show she was without fault in bringing on the difficulty. Davis, 282 S.C. at 46, 317 S.E.2d at 453.

Further, she admitted she never saw a gun. (R. 413-575). She testified she only saw Jody reach for his back pocket, and she claimed she saw this through the front windshield, which is impossible based on the angle of the bullet that struck the victim and also where the bullet struck the dash and then lodged in the door. Catoe cannot show she was actually in fear of death or serious bodily injury at the time of the incident, *or* that a reasonable person would have thought the same. Davis, 282 S.C. at 46, 317 S.E.2d at 453.

She could have taken a picture of Jody and Victim together, if that is what she actually was after, and simply driven away from the intersection rather than engage in an argument with Jody and then fire a weapon into Victim's vehicle. Davis, *supra*. She could have easily retreated without using deadly force. Id.

Furthermore, both the State and the Defense accurately stated the elements of self-defense to the extent they had any applicability, and both the State and the Defense accurately stated the evidence presented by their side that either did not support all of the elements of self-defense or did support all of the elements of self-defense. (R. 671-737).

Finally, the jury knew from the court's jury instructions, that if the jury believed Catoe's version of events, they were required to find her not guilty. (R. 738-763). The Court charged the jury that Catoe could not be found guilty unless the State proved criminal intent. The Court also charged the jury on criminal intent. The Court defined malice. It explained to the jury that malice is hatred or hostility to another. The Court informed the jury that malice is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances in which the law will infer as an evil intent The Court also explained transferred

intent, and for that to apply Catoe would have had to attempt to murder Jody, and the bullet struck Victim. The jury knew if they found Catoe intentionally fired the gun at Jody or Victim, she would be guilty of murder. The jury knew if the gun discharged accidentally, she could not be found guilty of murder only involuntary manslaughter, and if she did not act with recklessness, she would have to be found not guilty pursuant to the defense of accident. The jury knew if the shooting was truly an accident as Catoe described, she must be found not guilty. If she intentionally shot Victim with malice, Catoe was guilty of murder. (R. 671-763). State v. Stoots, 445 S.C. 127, 136-39, 912 S.E.2d 248, 253-55 (2025)(court's criminal intent charge covered the principle involved in accident charge and there was therefore no error in failing to charge Stoots requested accident charge); State v. Owens, 433 S.C. 482, 860 S.E.2d 357, 357-58 (2021)(where the defendant asserts accident the State must prove a voluntary intentional act with malice). Catoe's problem was she was caught in multiple lies during her testimony and her e-mails showed she was jealous of the victim, was basically stalking the victim and Catoe's estranged husband, had threatened Victim, and she confronted Victim and Catoe's estranged husband Jody in the dark and shot Victim in the neck with a gun that required 4 ½ pounds of trigger pull to fire and would not fire accidentally. (R. 413-575). Any error in not charging additional principles of self-defense was harmless beyond a reasonable doubt. State v. Brooks, 428 S.C. 618, 633, 837 S.E.2d 236 (Ct. App. 2019).

CONCLUSION

For the above stated reasons, Catoe's conviction and sentence for the murder of Brenda Coates must be affirmed. Judge Hood appropriately denied Catoe's request to charge three (3) principles of the defense of self-defense, and any error in failing to charge them was harmless beyond a reasonable doubt on this record.

Respectfully Submitted,

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