

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Edgar W. Dickson, Circuit Court Judge

RECEIVED

DEC 18 2013

SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MELVIN HAYNES,

APPELLANT.

APPELLATE CASE NO. 2013-000438

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. The Trial Court erred in refusing to quash the jury panel pursuant to Appellant's Batson motion where (1) the State's strikes resulted in a jury consisting of eleven white jurors and only one black juror in a case where the Appellant is a black male; and (2) the State struck a black female juror because she worked at a home for seniors, took care of elderly patients, and had medical knowledge but yet seated a white female cardiac nurse who also took care of elderly patients and had medical knowledge.
- II. Appellant is entitled to immunity from prosecution for assault and battery with intent to kill under the Protection of Persons and Property Act where the Act provides immunity to a person who uses deadly force under the belief that an unlawful and forcible act is occurring. Here, Appellant believed that the unlawful and forcible act of some person stealing his truck was occurring when he fired his shotgun.
- III. The Trial Court erred in refusing to charge the jury on the law of accident where there was evidence presented at trial that Appellant only meant to shoot at the truck being hooked up to Appellant's vehicle to tow it away and that Appellant did not see anyone inside the truck when he shot at it.
- IV. The Trial Court erred in refusing to charge the jury on the law of mistake of fact where there was evidence presented at trial that Appellant did not realize anyone was inside the truck when he shot at it.

STATEMENT OF THE CASE

On September 7, 2009, Appellant Melvin Haynes was indicted by the Dorchester County Grand Jury for one count of assault and battery with intent to kill (“ABWIK”) upon James Johnny Platt Davis under the former South Carolina code section 16-3-620. R.*.

Appellant was tried before the Honorable Edgar W. Dickson and a jury on December 6-9, 2011. Tr. 1. Appellant was represented by James H. Messervy, Sr., and the State was represented by Assistant Solicitors Glenn P. Justis and Matt Austin. Id.

On December 9, 2011, the jury found Appellant guilty of ABWIK. Tr. 399, ll. 1-5. Judge Dickson sentenced Appellant to twenty years. Tr. 406, ll. 20-22.

Appellant moved the Trial Court to reconsider the twenty-year sentence, and a hearing was held on April 5, 2012. Tr. 407 - 431. On February 13, 2013, Judge Dickson reduced Appellant’s sentence to fifteen years. R.* [Order from Motion for Reconsideration].

Appellant timely filed and served his Notice of Appeal on February 19, 2013.

STATEMENT OF FACTS

On the afternoon of June 28, 2009, Appellant had taken a shower and laid down on his bed in his home to take a nap. Tr. 281, ll. 2-8. He awoke after he heard a noise outside of his house, so he got up from his bed and looked out his back door. Tr. 282, ll. 15-20. Appellant saw a truck that he did not recognize. Tr. 282, ll. 20-21. When he opened the door, Appellant saw that the truck he did not recognize was being hooked up to his own truck. Tr. 283, ll. 10-15. Appellant thought someone was stealing his truck. Tr. 287, ll. 5-6.

Appellant kept a twelve gauge shotgun that he used mainly for shooting squirrels by his back door. Tr. 283, l. 25 – 284, l. 19. Appellant picked up the shotgun and shot once at the truck being hooked up to his own truck. Tr. 287, ll. 10-12. The windows were rolled up and blacked out in the truck he did not recognize. Tr. 286, ll. 10-13; 287, ll. 7-8. Therefore, Appellant did not see anyone inside the truck when he shot at it. Appellant was also not wearing his prescription glasses at the time. Tr. 288, ll. 4-10. In addition, the sun was in his eyes. Appellant repeatedly testified that he did not see anyone when he shot at the truck. Tr. 288, ll. 6-25.

After the truck drove off with Appellant's truck in tow, Appellant went back inside his home and called his brother. He informed his brother that someone had stolen his truck and that he had shot at the unidentified truck hooked up to his vehicle. Appellant told his brother that he needed to tell the police about the incident. Tr. 290, ll. 2-8.

Appellant's brother drove him to the police station. Tr. 290, l. 9 – 291, l. 5. Appellant spoke with Detective Steve Morelli of the Dorchester County Sheriff's Office. Tr. 212, l. 6 – 213, l. 7. He was familiar with Detective Morelli because his home had been

broken into twice before and he had spoken with Detective Morelli about those prior break-ins where Appellant's property was stolen. Tr. 292, l. 4 – 293, l. 4.

Detective Morelli testified that Appellant told him he was lying in bed and heard a noise in his backyard. According to Detective Morelli, Appellant told him there were "some people in his backyard" and Appellant went to the back door with a shotgun and "shot at the truck to scare them." Tr. 215, ll. 1 – 6.

Appellant told Detective Morelli that he only shot at the truck. Detective Morelli testified that Appellant was surprised to learn that he had actually shot the driver. Tr. 215, ll. 7-12. It turned out that Appellant had shot Johnny Davis who was working as a repo man. Tr. 142, l. 7 – 143, l. 6. In June 2009, Davis received an order from Carolina Car Credit to repossess Appellant's truck. Tr. 144, ll. 8-16. When Davis backed down Appellant's driveway to hook up Appellant's truck, he observed Appellant coming out of Appellant's home. Tr. 145, ll. 21-25. Davis' brother, Robert Davis, was with him at the time. Tr. 146, ll. 10-13.

Davis believed that while he was maneuvering his truck to get it hooked up to Appellant's truck, Robert had actually gotten out of the truck to verify that Appellant's truck was the correct vehicle to be repossessed. Davis himself never got out of his vehicle. Tr. 147, ll. 2 – 22; 163, ll. 20-21.

As he was backing up to Appellant's truck, Davis heard a noise. He thought he might have backed into Appellant's truck and then he heard his brother hollering, "he's shooting." At trial, the brother testified that they yelled to Appellant that they would drop Appellant's truck, but Appellant fired his shotgun again. Davis' brother Robert jumped into the front seat, and Davis looked over his shoulder in the mirror and saw Appellant standing

in his doorway holding a gun. Tr. 147, l. 23 – 149, l. 6; 186, ll. 18-24. Robert testified that the windows of Davis' truck were rolled up. Tr. 194, ll. 8-23.

After his truck was shot at by Appellant, Davis drove out of the driveway, and after he drove off, he noticed that he had been shot with birdshot. Tr. 150, ll. 3-10; 152, ll. 21-23; 156, ll. 6-11; 186, ll. 20-24; 216, ll. 9-12. Davis was treated for his injury and released the same day from the hospital. Tr. 156, l. 12 – 157, l. 3.

Paul David Lee, the branch manager of Carolina Car Credit, testified at trial. Tr. 98, l. 10- 99, l. 1. Lee worked on an account belonging to Appellant. Tr. 102, ll. 15-18.

On April 22, 2009, his company sent a default letter to Appellant, noting that the account was past due for \$1,587.08. Tr. 109, l. 24 – 110, l. 16. The default letter was sent via certified mail to Appellant at his Ridgeville, South Carolina address, but it was returned as undeliverable. Tr. 129, ll. 5 – 20; 134, ll. 14-16; R.* [Defendant's Ex. 1]. Lee testified that the letter was also sent via regular mail to a Texas address for Appellant and that letter was not returned. Tr. 129, ll. 16-20; 134, ll. 17-19; 135, ll. 8-9.

After Carolina Car Credit sent the default letter to Appellant, Lee testified that Appellant did send in two payments in June 2009 but that a past due amount still remained on the loan. Tr. 114, l. 16 – 115, l. 1.

Lee said that sometime between April and June 2009, he left a voice message for Appellant, informing Appellant that he received the package Appellant mailed to him and that he had a "deal of a lifetime" for Appellant. Tr. 115, l. 5 – 116, l. 12.

Lee testified that Appellant never became current on his account and at some point the company decided to repossess the vehicle. Tr. 117, ll. 5 – 21. The company decided to use Johnny Davis to repossess Appellant's vehicle. Tr. 117, l. 22 – 118, l. 5.

Appellant testified that he never received any repossession notice from Carolina Car Credit and had no idea that his truck was going to be repossessed. Tr. 294, l. 1 – 297, l. 2. Appellant had spoken with Lee of Carolina Car Credit shortly before the shooting, and Lee told Appellant to send in two payments. Appellant sent Lee two payments in June 2009. Appellant said he received Lee's voice message to him informing Appellant that Lee had received Appellant's package and that Lee had a "deal of a lifetime" for Appellant, consistent with Lee's testimony. Appellant thought at that point everything was in the clear. Tr. 294, l. 14 – 295, l. 22. Therefore, on June 28, 2009, when Davis came to Appellant's home to repossess Appellant's truck, Appellant had no idea that a repossession of his vehicle was imminent.

ARGUMENT

I. The Trial Court erred in refusing to quash the jury panel pursuant to Appellant's Batson motion where (1) the State's strikes resulted in a jury consisting of eleven white jurors and only one black juror in a case where the Appellant is a black male; and (2) the State struck a black female juror because she worked at a home for seniors, took care of elderly patients, and had medical knowledge but yet seated a white female cardiac nurse who also took care of elderly patients and had medical knowledge.

During jury selection, the State struck three black jurors and three white jurors from a forty-six member jury pool, only eight of whom were black. Tr. 38, l. 1 – 41, l. 24; R* [Jury Strike Sheet]. The jury selected consisted of eleven white jurors and one black juror, with three white alternate jurors. R.* [Jury Strike Sheet.] Appellant is a black male.

Defense counsel for Appellant asked the judge to require the solicitor to explain the nature of his reasons for striking the black jurors. Tr. 41, ll. 23-24. As to Juror 81, a black female, the solicitor stated it struck this juror because she said "she worked for . . . a home for seniors and that she takes care of the elderly and everything." The State believed juror number 81 would be sympathetic to an older defendant who was disabled. Tr. 42, l. 24 – 43, l. 4. The State also struck this juror because "she would know about medicines" and there would be medical testimony during the trial. Tr. 43, ll. 5-7.

In response, Appellant pointed out to the Trial Court that the State had seated a white female who was a cardiac nurse. Appellant argued that this white cardiac nurse would, like Juror 81, would have knowledge about medical issues and the elderly. Therefore, Appellant argued that the State's reason for striking Juror 81 was pretextual. Tr. 43, l. 18 – 45, l. 2.

The Trial Court ruled that the State provided a race-neutral explanation for striking Juror 81 and denied Appellant's motion pursuant to Batson v. Kentucky, 476 U.S. 79

(1986). Tr. 46, ll. 4-8. The Trial Court's ruling was in error where Appellant established that the State's proffered racially neutral reason for striking Juror 81 was pretextual when the State did not strike a white female with the same characteristics and the selected jury consisted of only one black member.

A criminal defendant has the right to a fair trial by an impartial jury under the federal and state constitutions. *See* U.S. Const. Amend. VI; *see also* S.C. Const. art. I, § 14; State v. Salters, 273 S.C. 501, 257 S.E.2d 502 (1979). This guarantee includes the right to a selection process that is unbiased and fair to the defendant and the jurors. *See* Powers v. Ohio, 499 U.S. 400, 410-16 (1991). The United States Supreme Court has held that the Equal Protection Clause of the Fourteenth Amendment prohibits the prosecution from striking potential jurors on the basis of race. Batson v. Kentucky, 476 U.S. 79 (1986) Consequently, a trial court must hold a Batson hearing when members of a cognizable racial group are struck and the opposing party requests a Batson hearing. *See* State v. Haigler, 334 S.C. 623, 629, 515 S.E.2d 88, 90 (1999).

"Batson and its progeny "protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venire person's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of our system of justice by seeking to eradicate discrimination in the jury selection process." State v. Rayfield, 369 S.C. 106, 112, 631 S.E.2d 244, 247 (2006). Therefore, "[t]he Constitution forbids striking even a single prospective juror for a discriminatory purpose." Snyder v. Louisiana, 552 U.S. 472 (2008).

Furthermore, "[w]hether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record." State v. Edwards,

384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009). The trial court's finding of purposeful discrimination rests on its evaluation of demeanor and credibility. Id. at 509, 682 S.E.2d at 823. "Often the demeanor of the challenged attorney will be the best and only evidence of discrimination, and an 'evaluation of the [attorney's] mind lies peculiarly within a trial [court's] province.'" Id. (quoting Hernandez v. New York, 500 U.S. 352, 365 (1991)). This court will give the trial court's finding great deference on appeal and review the trial court's ruling under the "clearly erroneous" standard. Id., 384 S.C. at 509, 682 S.E.2d at 822.

In Purkett v. Elem, 514 U.S. 765, 767 (1995), the United States Supreme Court set forth the procedures for a trial court to follow when a party challenges a peremptory strike. The South Carolina Supreme Court adopted that procedure in State v. Adams, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996). Specifically, Batson challenges follow a three step process: (1) the opponent of the strike requests a hearing and asserts a *prima facie* case of racial or gender discrimination; (2) the proponent of the strike must offer a race or gender neutral explanation; and then (3) the opponent must show the race or gender neutral explanation was mere pretext. See State v. Cochran, 369 S.C. 308, 314, 631 S.E.2d 294, 298 (Ct. App. 2006).

The "second step of this process does not demand an explanation that is persuasive, or even plausible." Purkett, 514 U.S. at 767-68. The South Carolina Supreme Court recognized that the proponent of the strike does not carry "any burden of presenting reasonably specific, legitimate explanations for the strikes. Adams, 322 S.C. at 123, 470 S.E.2d at 371; see Purkett, 514 U.S. at 768 (finding unless discriminatory intent is inherent in the explanation, it is deemed race neutral at step two).

During the third step, the moving party “must show the reason offered, though facially race-neutral, was actually mere pretext to engage in purposeful racial discrimination.” Cochran, 369 S.C. at 315, 631 S.E.2d at 298 (citing Adams, 322 S.C. at 124, 470 S.E.2d at 372). “This burden is generally established by showing similarly situated members of another race were seated on the jury.” Id. “Unless the discriminatory intent is inherent in a fundamentally implausible explanation, the opponent of the strike must make a bona fide showing that the proponent of the strike seated a juror who shared nearly every quality with the struck juror other than race to establish pretext.” Id.

For the purpose of demonstrating potential jurors are similarly situated under Batson, potential jurors are not required to be “identical in all respects.” Miller–El v. Dretke, 545 U.S. 231, 247 n. 6 (2005) (“A per se rule that a defendant cannot win a Batson claim unless there is an exactly identical white juror would leave Batson inoperable; potential jurors are not products of a set of cookie cutters.”). Rather, the potential jurors need only be alike “in all relevant aspects.” Startzell v. City of Philadelphia, 533 F.3d 183, 203 (3d Cir. 2008) (quoting Nordlinger v. Hahn, 505 U.S. 1, 10 (1992)). Therefore, in determining whether potential jurors are similarly situated, this State’s appellate courts have focused their inquiry on whether there are meaningful distinctions between the individuals compared. See State v. McCray, 332 S.C. 536, 540–41, 506 S.E.2d 301, 302–03 (1998).

Accordingly, if the trial judge determines the race and gender neutral explanations were mere pretext, then the trial court must quash the jury panel and select a new jury. Cochran, 369 S.C. at 315, 631 S.E.2d at 298; see Riddle v. State, 314 S.C. 1, 14, 443 S.E.2d 557, 565 (1994) (finding courts will examine the totality of the facts and circumstances in the record to determine if a Batson violation has occurred); see also State v. Johnson, 302

S.C. 243, 395 S.E.2d 167 (1990) (finding the composition of the jury panel is also a factor that may be considered when determining whether a party engaged in purposeful discrimination).

In this case, the totality of the facts and circumstances surrounding the selection of the jury demonstrates that a Batson violation occurred and that the jury panel should have been quashed. See generally State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009) (finding "[w]hether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record").

First, the State's jury strikes resulted in a jury which consisted of only one black juror. "The composition of the jury panel is a factor that may be considered when determining whether a party engaged in purposeful discrimination pursuant to a Batson challenge." State v. Cochran, 369 S.C. 308, 315, 631 S.E.2d 294, 298 (Ct. App. 2006) (quoting State v. Shuler, 344 S.C. 604, 621, 545 S.E.2d 805, 813 (2001)). The resulting composition of the jury therefore indicates that the State may have engaged in purposeful racial discrimination.

Second, the State's racially neutral reason for striking Juror 81, a black female, was pretext because it was not applied in a neutral manner. The State professed that it was striking this black female because she worked at a home for seniors, took care of the elderly and would be sympathetic to an elderly defendant, and had medical knowledge in a case that would involve some medical testimony. Tr. 42, l. 24 – 43, l. 7. However, the solicitor negated his racially neutral reason for striking Juror 81 when he seated a white female juror who was a cardiac nurse who also worked with elderly patients and had medical knowledge. Tr. 43, l. 18 – 45, l. 1; 45, l. 25 – 46, l. 3. No meaningful

distinction was shown given the solicitor's stated reasons.

The solicitor's originally neutral reasons were therefore proven by Appellant to be a pretext because those reasons were not applied to jurors of a different race than Juror 81. See State v. Adams, 307 S.C. 368, 415 S.E.2d 402 (1992) (holding that State's reason for striking a black male from the jury – that the docket clerk had placed several question marks by the juror's name – was pretextual where a white juror with question marks by his name was not struck by the State); State v. Grate, 310 S.C. 240, 242-43, 423 S.E.2d 119, 120 (1992) (holding State did not provide racially neutral reason for striking two black venirepersons, twenty-two and twenty-eight years of age, because they appeared to be too young in age where the State seated a twenty-one year old white juror); State v. Oglesby, 298 S.C. 279, 379 S.E.2d 891 (1989) (holding State's racially neutral reason for striking black jurors from trial of black defendant was proven to be pretext where State struck three black females because they were patients of a doctor who was a defense witness, yet did not strike a white female with the same characteristic).

The Trial Court therefore erred in denying Appellant's Batson motion. Appellant's conviction should be reversed and the case remanded for a new trial.

II. Appellant is entitled to immunity from prosecution for assault and battery with intent to kill under the Protection of Persons and Property Act where the Act provides immunity to a person who uses deadly force under the belief that an unlawful and forcible act is occurring. Here, Appellant believed that the unlawful and forcible act of some person stealing his truck was occurring when he fired his shotgun.

Prior to trial, Appellant moved for immunity from prosecution under the Protection of Persons and Property Act (the "Act"), S.C. CODE ANN. § 16-11-410 et al. Tr. 60, l. 14 – 63, l. 2. The Act provides that "[a] person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person: . . . (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or *unlawful and forcible act* is occurring or has occurred." § 16-11-440(A)(2) (emphasis added).

Here, Appellant believed that an unlawful and forcible act was occurring - that an unidentified person or persons was stealing his truck. Tr. 287, ll. 5-6.

Appellant had no reason to believe that his truck was about to be repossessed. He never received a repossession notice. Tr. 294, ll. 1-4; 295, ll. 23-24. Paul Lee of Carolina Car Credit confirmed that the default letter sent to Appellant's South Carolina home address where Appellant resided was returned as undeliverable. Tr. 129, ll. 5 – 20; 134, ll. 14-16; R.* [Defendant's Ex. 1].

Appellant testified he had spoken with Lee of Carolina Car Credit shortly before the shooting, and Lee told Appellant to send in two payments. Appellant sent Lee the two payments in June 2009 prior to the incident which occurred on June 28, 2009. Appellant said he received Lee's voice message to him informing Appellant that Lee had received Appellant's package and that Lee had a "deal of a lifetime" for Appellant. This was

consistent with Lee's testimony. Appellant therefore believed everything was in the clear. Tr. 115, l. 5 – 116, l. 12; 294, l. 14 – 295, l. 22.

Appellant accordingly had reason to believe that his truck was being stolen from his property when he fired his shotgun at the unidentified truck. “A person who uses deadly force as permitted by the provisions of [the Act] is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force” § 16-11-450(A). Under § 16-11-440(A)(2), Appellant was justified in using deadly force where he had reason to believe that an “unlawful and forcible act” was occurring. Accordingly, the Trial Court erred in denying Appellant's motion for immunity from prosecution under the Act.

III. The Trial Court erred in refusing to charge the jury on the law of accident where there was evidence presented at trial that Appellant only meant to shoot at the truck being hooked up to Appellant's vehicle to tow it away and that Appellant did not see anyone inside the truck when he shot at it.

Appellant requested the Trial Court to charge the jury on the law of accident. The Trial Court refused, ruling that from the evidence, there was no reason to charge accident. Tr. 347, ll. 20-25.

“To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.” State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). “A trial court has a duty to give a requested instruction that is supported by the evidence and correctly states the law applicable to the issues.” State v. Lee-Grigg, 374 S.C. 388, 405, 649 S.E.2d 41, 50 (Ct. App. 2007). A trial court commits reversible error where it fails to give a requested charge on an issue raised by the evidence. Id. at 406, 649 S.E.2d at 50. When reviewing the trial 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. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512–13 (2000).

“In South Carolina, the defense of accident requires a showing that that the harm caused was unintentional, that the defendant was acting lawfully at the time of the incident, and due care was exercised in handling the weapon.” State v. Harris, 382 S.C. 107, 116, 674 S.E.2d 532, 537 (Ct. App. 2010); see also State v. Williams, 400 S.C. 308, 316, 733 S.E.2d 605, 610 (Ct. App. 2012).

Appellant testified that that he only meant to shoot at the truck that was hooked up to his own vehicle. Tr. 287, ll. 11-12; 324, ll. 2 -17. The windows of the truck he shot at were rolled up and tinted, so he could not see anyone inside the truck. Tr. 152, ll. 15-16; 194, ll.

8-23; 286, ll. 12-13; 322, ll. 13-14. Detective Morelli confirmed at trial that Appellant seemed surprised when he was informed that he had actually shot someone. Detective Morelli said that Appellant told him that he shot at the truck to only scare them. Tr. 215, ll. 4-12.

In Williams, the Court of Appeals held that the evidence was sufficient to at least present a question for the jury as to whether the defendant shot the victim accidentally where the defendant testified “that the gun was pointing down [when he shot it] and he did not intend to shoot the victim.” 400 S.C. at 317, 733 S.E.2d at 610.

Likewise, Appellant had no intent to shoot Johnny Davis. Appellant was lawfully in possession of a gun on his own property. See State v. McCaskill, 300 S.C. 256, 259, 387 S.E.2d 268, 270 (1990) (holding defendant had a right to possess a weapon in her home and trial court erred in failing to give this instruction to the jury). Accordingly, where the evidence at trial at least presented a question for the jury as to whether Appellant accidentally shot Davis, the evidence supported the charge on the law of accident. The Trial Court therefore erred in refusing to give this charge, and Appellant is entitled to a new trial.

IV. The Trial Court erred in refusing to charge the jury on the law of mistake of fact where there was evidence presented at trial that Appellant did not realize anyone was inside the truck when he shot at it.

Appellant also requested a charge on the law of mistake of fact. The Trial Court refused to give this charge. Tr. 348, ll. 5-13.

“A mistake of fact which negates the existence of the mental element of the offense, will preclude conviction.” State v. Kelsey, 331 S.C. 50, 77-78, 502 S.E.2d 63, 77 (1998) (citing 21 AM.JUR.2D *Criminal Law*, § 141 at 276 (1981)); WILLIAM SHEPARD MCANINCH, *CRIMINAL LAW OF SOUTH CAROLINA*, 542 (1996). If the particular offense is a general intent crime, the mistake of fact must be reasonable. See Kelsey, 331 S.C. at 78, 502 S.E.2d at 77. A trial court is not required to give an instruction on mistake of fact unless the defendant introduces some evidence, direct or circumstantial, of a reasonable basis for having made the mistake. Id.

The evidence at trial supported the conclusion that Appellant did not realize anyone was in the truck when he shot at it and that he therefore shot Johnny Davis by mistake. Appellant testified that someone was hooking up a truck to Appellant’s vehicle. Tr. 283, ll. 10-13. When Appellant shot at the truck that was being hooked up to his own vehicle, Appellant could have had the reasonable belief that the person was outside of the truck hooking it up to Appellant’s vehicle and not inside the truck. The windows of the truck Appellant shot at were rolled up and tinted, so Appellant could not see anyone inside the truck. Tr. 152, ll. 15-16; 194, ll. 8-23; 286, ll. 10-13; 287, ll. 11-12. Detective Morelli verified at trial that Appellant seemed surprised when he was informed that he had actually shot someone because Appellant only shot at the truck to scare whomever was trying to take his vehicle. Tr. 215, ll. 4-12.

Appellant's mistaken belief that no one was inside the truck when he shot negates any intent to kill. The evidence at trial at least presented a question for the jury as to whether Appellant mistakenly shot Davis. The Trial Court therefore erred in refusing to give the jury a charge on the law of mistake of fact. Appellant is entitled to a new trial.

CONCLUSION

For the reasons set forth herein, Appellant Melvin Haynes requests this Court to reverse his conviction and find him immune from prosecution under the Protection of Persons and Property Act. In the alternative, Appellant requests this Court to reverse his conviction and remand for a new trial.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of December, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
DEC 18 2013
SC COURT OF APPEALS

Appeal from Dorchester County
Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MELVIN HAYNES,

APPELLANT.

APPELLATE CASE NO. 2013-000438

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment;
- (2) Transcript of trial held December 6-9, 2011 (designated pages only): 1-8; 38-46; 60-63; 98-99; 102; 109-10; 114-18; 129; 134-35; 142-50; 152; 156-57; 163; 186; 194; 212-13; 215-16; 281-84; 286-88; 290-97; 322; 324; 347-48; 399; 406-431;
- (3) Defendant's Exhibit No. 1 (default letter);
- (4) Jury Strike Sheet; and
- (5) Order on Motion for Reconsideration.

December 18th, 2013.



Carmen V. Ganjehsani
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
(803) 734-1343

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CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Melvin Haynes, #348945, Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, at this 18th day of December, 2013.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of December, 2013.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.