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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAFREDIA CORLET TODD,

APPELLANT

APPELLATE CASE NO. 2025-002569

INITIAL BRIEF OF APPELLANT

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STATEMENTS OF ISSUES ON APPEAL

I.

Whether the trial court abused its discretion in excluding the expert testimony of Dr. Whitney Danso and refusing to let defense counsel proffer the testimony both during trial and at the post-trial motion hearing?

II.

Whether the trial court abused its discretion by admitting misleading evidence and testimony regarding the location of the injury to the decedent and in sustaining an objection to the state mischaracterizing the location of the injury?

III.

Whether the trial court abused its discretion in ruling that various threats and statements made by the decedent could not be admitted under the Rules of Evidence?

IV.

Whether the trial court abused its discretion when it admitted State's Exhibit No. 3 (CD-Surveillance Footage) because the video was misleading to the jury and when it admitted State's Exhibit No. 43 (Clipped Video from Booking-Fixing Hair) because the video was improper character evidence?

V.

Whether the trial court abused its discretion in refusing to charge the jury with the direct and circumstantial evidence charge and the no duty to retreat charge where there was evidence in the record to support the charges and defense counsel properly requested the charges?

STATEMENT OF THE CASE

Appellant was indicted for murder and possession of a weapon during the commission of a violent crime during the January 2023 term of the Horry County grand jury. R. (Indictments). The state called the case to trial on January 6, 2026, before the Honorable Benjamin Culbertson and a jury. The state was represented by Nancy Livesay and Seth Oskin; Appellant was represented by Stuart Axelrod and Andrew Johnson. Tr. 1. An immunity hearing pursuant to the Protections of Persons and Property Act was held prior to jury selection. Tr. 1; Tr. 19. The trial court denied immunity on January 8, 2025, and the case proceeded to a jury trial the following day. Tr. 369-373. After a week-long trial, the jury found Appellant guilty as indicted. Tr. 1680. Judge Culbertson sentenced Appellant to thirty-six (36) years on the murder and five (5) years on the weapon charge, sentences to run concurrently. Tr. 1708-09.

A post-trial motion pursuant to Rule 29, SCRCrimP, was timely filed. R. (Motion for New Trial). A hearing was convened on the motion on December 11, 2025. Mtn Tr. 1. After hearing arguments from both parties, Judge Culbertson denied the motion for a new trial. Mtn. Tr. 79; R. (Order Denying Mtn for New Trial). Appellant filed a timely appeal of her convictions and sentences.

This appeal follows.

STANDARDS OF REVIEW

As to Issues I:

The decision of whether to admit or exclude testimony from an expert witness is within the sound discretion of the circuit court. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006) (citations omitted). The circuit court's decision to admit expert testimony will not be reversed on appeal absent "a manifest abuse of discretion accompanied by probable prejudice." State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006) (citations omitted). An abuse of discretion occurs when the circuit court's conclusions "either lack evidentiary support or are controlled by an error of law." State v. Kromah, 401 S.C. 340, 349, 737 S.E.2d 490, 495 (2013) (*quoting Douglas*, 369 S.C. at 429–30, 632 S.E.2d at 848) (internal quotation marks omitted).

As to Issues II, III, & IV:

In criminal cases, the appellate court sits to review errors of law only. State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

As to Issue V:

In criminal cases, the appellate court sits to review errors of law only. State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). "The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law." State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 167 (2007). "In reviewing jury charges for error, th[e appellate court] considers the trial court's jury charge as a whole and in light of the evidence and

issues presented at trial.” State v. Jenkins, 408 S.C. 560, 569, 759 S.E.2d 759, 764 (Ct. App. 2014) (citation omitted). “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. Brown, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004).

ARGUMENT

I.

The trial court abused its discretion when it excluded the expert testimony of Dr. Whitney Danso and refused to let defense counsel proffer the testimony during trial and at the post-trial motion hearing.

Relevant facts

Prior to trial, the state moved to prevent the defense from calling Dr. Whitney Danso as an expert in trauma and battered persons.¹ The state argued that there had not been notice of a “battered woman’s syndrome” defense and that the defense was not relevant to the case because the parties were not living together in a romantic relationship. Tr. 481, l. 5 – 483, l. 4. Defense counsel clarified that Appellant did not qualify under the statute for “battered *spouse* syndrome” and that the evidence was not being used for that purpose, that it went to Appellant’s state of mind at the time of the shooting. Tr. 483, ll. 5-10. The court ruled that the testimony would not be allowed because “South Carolina recognizes a battered spouse syndrome. It does not recognize [it] as a defense.” Tr. 483, ll. 10-18. Counsel again clarified that he was not presenting Dr. Danso to establish battered woman’s syndrome as a standalone defense but for evidence of Appellant’s trauma and the impact it had on her mental state, her fear, at the time of the shooting. Counsel stated that the testimony was relevant and pertinent evidence that went to self-defense. The court disagreed and ruled the testimony would not come in. Counsel informed the court he would proffer

¹ The Appellant’s right to funds for an expert was a hotly contested issue below, despite defense counsel moving for funding *Ex Parte*. Judge Culbertson denied the defense expert funding on the basis that the requests were purely for delay. When the case was originally called to trial before the Honorable Thomas W. Cooper, Jr., defense counsel Axelrod was held in contempt of court for refusing to go forward after he renewed his motion for funding and requested a continuance. Ultimately, Judge Cooper granted the funding request and held counsel Axelrod in contempt with sanctions to be determined at a later time. PT Tr. July 29 and 31, 2024.

Dr. Danso's testimony at the proper time, and the court agreed that it would allow the proffer. Tr. 483, l. 19 – 484, l. 19.

Defense counsel noted that the state was aware that the defense was hiring an expert, so there was no notice issue, and counsel again stressed that the testimony would not be a battered spouse syndrome defense but factual issues that impacted how Appellant reacted that night of the shooting. The court refused to allow the testimony, ruling:

Well, tell me why. I have got to know the reason you're presenting, because I know of no reason why you would want to present that to a jury unless you're wanting to use it as a defense for her actions. ... I mean, I'll allow you to proffer the testimony, but right now, *I don't see the relevancy in it because the State of South Carolina does not recognize that defense.*

Now, if you show me some authority where South Carolina recognizes that as a defense and it becomes relevant, we'll see then. But, right now, the battered spouse syndrome applies to spouses.

Now, I'll let you proffer it because if the appellate court wants to --- enlarge it, it will be in the record, and we'll deal with it then.

Tr. 485, l. 19 – 487, l. 3 (emphasis added).

Towards the end of the eighth day of trial, the state saw that Dr. Danso was in the courtroom and renewed its objections to her testimony. Counsel explained that she was present to testify on matters other than battered person syndrome that went to the subjective prong of self-defense and to also proffer the testimony that the court had ruled inadmissible. Tr. 1311, l. 10 – 1312, l. 21. The court then ruled that all of Dr. Danso's testimony inadmissible, and counsel requested to proffer the testimony for the record, which was denied.

MR. AXELROD: I'm still going to proffer it, though, Your Honor.

THE COURT: No, I'm not going to allow it. We've got to move this along.

MR. AXELROD: You're not going to allow the proffer or her testimony?

THE COURT: That's correct.

MR. OSKIN: Thank you, Your Honor.

MR. AXELROD: And what is the reason for the ruling?

THE COURT: Because you're trying to get -- you're still trying to get in a battered spouse syndrome defense.

MR. AXELROD: No, just to show that the trauma she went through caused her to react the way she reacted in this situation. I don't think that's a battered --

THE COURT: But what defense -- what's the rel- -- how is that a defense?

MR. AXELROD: I'm not looking at it for a defense. I'm looking at it to show her. I'm not saying it's a defense.

THE COURT: Okay. Well, then when it's irrelevant.

MR. JOHNSON: Lack of malice, subjective elements, self-defense.

THE COURT: Okay. No --

MR. JOHNSON: And the character evidence question from earlier. They have called her character into question, her reasonableness. That's what this entire trial is about.

THE COURT: No, not yet. Okay. I sustain your objection.

Tr. 1312, l. 23 – 1314, l. 6. Defense counsel again explained, “I’m not trying to get in a battered spouse or person’s syndrome. I’m trying to get in that the trauma that she exhibited caused her to react in a way she reacted in this situation, not as a defense but just as why it happened.” Tr. 1314, ll. 18-22. When asked again if the court would not allow the proffer, the court responded:

No. I mean not -- no, we've got too much to go and too little time this week, so I'm not going to allow the proffered testimony, no. And I don't know -- unless you can come up -- based upon what you have told me, to me, it's clearly irrelevant in this case.

Tr. 1315, ll. 4-11.

The following day, defense counsel presented the court with a motion for recess based on the court's refusal to proffer the testimony of Dr. Danso. The court stated it was denying the motion as untimely because it had only been clocked and served that morning. Tr. 1318, l. 16 – 1319, l. 7. Counsel Axelrod proceeded to argue the motion, stating:

I'm requesting this Court to take a recess at noon today until Tuesday, and I'm going to tell the Court why. When this Court started this trial, I asked for a recess in the beginning of the trial two weeks ago, and I'm not arguing that. But I remember the Court specifically said -- and I listened and I heard -- that, as long as the trial started during that term of court, there would be no problem because this Court is here in Horry County for the next six weeks.

Last week, the Court wanted to state that it was unlikely that the trial would be completed prior to the bar convention, which is actually scheduled to begin today. The Court informed the solicitor he had plans to be at the bar convention. Despite that, the State insisted that the case go forward, knowing it was unlikely the trial would end prior to the convention. The State also did this knowing it would not give the jurors adequate time, possibly, to deliberate in this case.

Defendant is on trial facing 30 years to life. Defendant is entitled to present a full and a complete defense under the Sixth Amendment and the Fourteenth Amendment of the United States Constitution as well as Article I, Section 3; Article I, Section 14 of the South Carolina Constitution. She should be given ample time to present her entire case to the jury.

Additionally, Defendant also should be given the opportunity to preserve the record by proffering evidence and testimony. The Court has made several rulings suppressing evidence without allowing the defendant to proffer the evidence or even looking at the evidence, which he was suppressing.

While the Court may see this as time-saving measures, it denies the defendant the opportunity to properly preserve the record for appellate review. Yesterday, the Court said he was not going to – the Court said it would not allow in the school records. I asked to proffer the records, and the Court said no. I then had Dr. Danso here to testify, and the Court said he would not allow the testimony; for

one of the reasons, that the Court didn't have enough time to have the testimony. And then I said to the Court, I want to proffer the testimony," and the Court said we do not have enough time.

Tr. 1319, l. 8 – 1321, l. 7. Counsel Axelrod continued that the jury needed adequate time to consider the case, and it would be a violation of Appellant's rights under the Sixth Amendment and Fourteenth Amendment of the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, for the jury to be forced into quick deliberation and decision. Defense counsel requested the court recess until the following Tuesday, as Monday was a holiday, to give the defense adequate time to present a full case and the jury adequate time to deliberate. Tr. 1321, ll. 8-25. The court denied the motion for recess. Tr. 1324, ll. 23-24.

Appellant testified in her own defense at trial. She was able to get into some of her trauma during her direct testimony, before the state objected to relevance, and the court ruled the testimony was inadmissible as an emotional appeal to the jury. Tr. 1354, l. 15 – 1358, l. 9.

Defense counsel filed a motion for a new trial, and one of the grounds raised was the exclusion of the testimony and proffer of Dr. Danso. R. (Motion for a New Trial). Included with the motion was Dr. Danso's *Curriculum Vitae* which illustrated that Dr. Danso is a licensed psychologist who has been qualified as an expert in trauma and domestic violence, trauma-focused cognitive behavioral therapy, forensic psychological evaluations, and psychology and parenting in South Carolina courts. R. (Motion for New Trial, Exhibit A). Also included with the motion was an email from Dr. Danso explaining how counsel could question Appellant about her past to place her trauma history before the jury in a digestible way. In the email, Dr. Danso wrote:

We² both feel that *focusing on the fear* that Ms. Todd felt would be most helpful in capturing what I would have testified to. *I also think something that further illustrates this fear is that she has been*

² In the email, Dr. Danso explained that she consulted with Dr. Lois Veronen, a respected expert in South Carolina courts, on Appellant's case.

brutalized throughout her life, but she has never responded. This incident with Mr. Johnson is different and I suspect that what made it different was the fear of her children being harmed.

R. (Motion for a New Trial, Exhibit B) (emphasis added). At the hearing, defense counsel requested to take testimony, including from Dr. Danso, and was denied. Mtn. Tr. 4, ll. 15-17; Mtn. Tr. 28, l. 3-30, l. 11. The court denied the motion for a new trial on all grounds. Mtn. Tr. 79, ll. 9-19.

Discussion

The trial court excluded the expert testimony of Dr. Danso because the court found it irrelevant. Relevancy is a low bar, and a defendant's mental state is always relevant when the defendant asserts self-defense. Appellant had a long history of abuse and trauma; facts that informed her reactions to the decedent's violent and repeated death threats against her and her children. Dr. Danso's testimony was relevant and highly critical testimony for establishing self-defense. The trial court erred in excluding the testimony and in refusing defense counsel's repeated requests to proffer the testimony.

All relevant evidence is admissible. State v. Pagan, 369 S.C. 201, 210, 631 S.E.2d 262, 266 (2006) *citing* Rule 402, SCRE; State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. Relevant evidence may be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. Id. *citing* Rule 403, SCRE; State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991).

Rule 702, SCRE, provides "if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified

as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” “A trial court acts outside of its discretion when the ruling is not supported by the evidence or is controlled by an error of law.” State v. Wallace, 440 S.C. 537, 542, 892 S.E.2d 310, 312 (2023). To show prejudice, the appellant must prove “that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof.” Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

A defendant is justified in using deadly force when: (1) the defendant was without fault in bringing on the difficulty; (2) the defendant actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger; (3) if the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief; and (4) the defendant had no other probable means of avoiding the danger. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011).

As defense counsel repeatedly argued, the testimony of Dr. Danso was not to establish “battered women syndrome” but to explain how Appellant’s long history of trauma from various people in her life and community impacted her state of mind on the night of the shooting. The testimony of Dr. Danso went to the reasonableness of Appellant’s fear and was necessary to establish that Appellant actually believed she was in imminent danger of losing her life or sustaining great bodily harm at the time of the shooting. The jury was able to hear that Appellant had some trauma in her life but was not given the scientific rubric necessary to consider that trauma and how it impacted Appellant the night of the incident. Further, the court characterized the testimony as an emotional appeal to the jury while in the presence of the jury, thereby improperly expressing an opinion on the evidence in the case and compounding the error of excluding Dr.

Danso's testimony. See State v. Campbell, 297 S.C. 24, 26, 374 S.E.2d 668, 669 (1988) (It is elementary that in the course of the trial of a criminal case, the trial judge must refrain from all comment which tends to indicate his opinion as to the weight or sufficiency of evidence, the credibility of witnesses, the guilt of the accused, as to the controverted facts.")

The court ruled the evidence irrelevant without hearing the testimony of Dr. Danso. This was an arbitrary ruling as it was not based on any facts before the court. It was unreasonable for the court to deny the proffer based on perceived time constraints. Appellant had a duty to proffer the excluded testimony that was repeatedly and improperly ignored by the trial court. The inability to proffer the testimony has prejudiced Appellant, not only at trial, but now on appeal as well.

The testimony of Dr. Danso was relevant and necessary to establish that Appellant's actions that evening were consistent with self-defense. The trial court abused its discretion by excluding the testimony of Dr. Danso and by refusing to allow defense to proffer the testimony. "Ordinarily, this Court will not review alleged error of the exclusion of testimony unless a proffer of testimony is properly made on the record." State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 402-03 (1986) (internal citations removed). "However, where the trial court refuses to allow the proffer, but we can determine from the record, as here, what the testimony was intended to show, we will address the merits." Id. Appellant asserts that it is apparent from the record that the testimony Dr. Danso would have provided was relevant to her defense and was improperly excluded. Appellant asserts that the excluded evidence impacted the jury verdict as the jury had no way to understand the basis of Appellant's fear in relation to the repeated death threats she received from the decedent. Appellant respectfully requests that this Court find the lower court erred in excluding the testimony and proffer and remand this case for a new trial. However, at a

minimum, Appellant would request a remand to proffer the testimony of Dr. Danso in full for this Court's consideration.

II.

The trial court abused its discretion by admitting misleading evidence regarding the location of the injury to the decedent where the state mischaracterized the location of the injury throughout the trial and where the court compounded the error by commenting on the location of the injury in front of the jury.

Relevant Facts

The decedent died from a gunshot wound to the *right parietal scalp*. R. (Autopsy Report). Prior to the pathologist's testimony, defense counsel requested that the state not elicit testimony about the case history of the autopsy report which contained prejudicial hearsay statements. The state assured the court that it was not admitting the autopsy report and would only be eliciting testimony from the pathologist about her findings. Tr. 771, l. 16 – 772, l. 2. During trial, forensic pathologist Dr. Virginia Livesay Richards testified that the injury location was "above his right ear, towards the back of the right ear about right here (indicating)." Tr. 778, ll. 9-12. The state presented Dr. Richards with a two-dimensional diagram of a male human body showing front and back views. State's Exhibit No. 48 (Enlarged Autopsy Diagram).³ The state asked Dr. Richards to place a red sticker on the diagram to show the position of the injury to the jury. Dr. Richards placed a sticker on the *back* upper part of the head, and testified:

Roughly here. And I say "roughly" because this is two dimensional, and, you know, *there's sides to us* that, if you were to slice me in half, there's front and there's back and *there's things kind of on the sides. So it's almost – almost as much in the front as it is in the back* but roughly here.

Tr. 778, l. 3 – 779, l. 4 (emphasis added).

³ All Exhibits referenced to herein are on file with this Court.

Defense counsel objected to the diagram and the placement of the sticker arguing that the diagram was misleading and needed to show the side of the head to be accurate. He maintained the diagram did not reflect what the pathologist had testified to regarding the location of the injury. The trial court overruled the objection. Tr. 779, l. 6 – 780, l. 2. After the state rested, defense counsel renewed all motions and objections, including the objection to the admission of the diagram. Counsel specifically stated that if the diagram showed the side of the head and accurately reflected the injury, he would not have objected. Tr. 795, l. 22 – 796, l. 21.

The state throughout the proceedings repeatedly referred to the gunshot wound as to the “back of the head” arguing in opening statement and closing argument that Appellant shot the decedent maliciously in the back of the head. Tr. 74, ll. 5-7; Tr. 205, ll. 4-9; Tr. 207, ll. 13-14; Tr. 361, ll. 22-23; Tr. 496, ll. 15-16; Tr. 1087, ll. 4-5; Tr. 1245, ll. 16-19; Tr. 1531, l. 19 – 1532, l. 5; Tr. 1573, ll. 19-21; Tr. 1587, ll. 14-15; Tr. 1657, l. 2 – 1658, l. 2; Tr. 1658, ll. 23-25. During one of the many instances where the state mischaracterized the injury, defense counsel objected and was overruled. In overruling the objection, the trial court improperly commented on the facts of the case regarding the injury to the decedent:

Q: Is it a crime to shoot someone, unarmed, in the back of their head with their back to you?

MR. AXELROD: Objection, Your Honor. If the State is saying she shot him in the back of the head, then, clearly, the evidence from the pathologist was not in the back of the head. It was from the side, wherever it was, but it was not in the back --

THE COURT: *It was behind -- the pathologist's report said behind the ear.*

Overruled. Go ahead.

Tr. 1087, ll. 5-13 (emphasis added). Critically, the pathologist report was not entered as an exhibit at trial. The state rested after the testimony of Dr. Richards, and defense counsel renewed his

objection to the diagram. Tr. 795, l. 22 – 796, l. 21. He again renewed his objection to the diagram at the close of the defense case. Tr. 1517, l. 14 – 1518, l. 2.

Discussion

One of the primary roles of a trial judge is to act as gatekeeper and ensure that only accurate evidence and testimony is presented to the jury. Despite the state's repeated mischaracterization of the injury as a gunshot wound to the back of the head, it is unquestionable that the pathologist determined the decedent died from a single gunshot wound to the right parietal scalp – the right *side* of the head. Despite this fact, the court allowed the state to enter a diagram that shows the gunshot wound to the back of the head. The misleading diagram, combined with the state's constant mischaracterization of the gunshot wound as being to the back of the head and the trial court's improper comment on the decedent's injury, prejudiced Appellant entitling her to a new trial.

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE. The appellate courts begin the analysis of a Rule 403 objection with probative value. State v. Phillips, 430 S.C. 319, 327, 844 S.E.2d 651, 655 (2020). “To understand the probative value of any evidence, we must consider what was practically in dispute at trial.” Id. “We must then consider how important the challenged evidence is to resolving the practically disputed questions.” Id.

The evidence in question was an enlarged diagram of the human body that show the front and back views of a generic male. The blank depiction of the male human body had no probative value. The state had the pathologist place a sticker on the diagram to indicate where the injury was

on the decedent. While the pathologist's testimony was that the wound was to the right of the head, and that the placement of the sticker was roughly where the injury occurred, the sticker was very clearly on the back of the head. Thus, even modified, the diagram had little probative value as it did not correctly show the injury to the side of the decedent's head.

Measured against that low probative value is "the danger of unfair prejudice, confusion of the issues, or misleading the jury." Rule 403, SCRE. A point of contention at trial was whether the decedent's back or side was facing Appellant when she fired the fatal shot. Thus, evidence of the location that the gunshot wound was to the back of the head, when the testimony and autopsy report reflected the injury to the side of the head, was unfairly prejudicial because the tendency of the evidence was to suggest a decision based on something other than the legitimate probative force of the evidence. See Phillips, 430 S.C. at 328, 844 S.E.2d at 656. The minimal probative value of the diagram which "roughly" showed the location of the injury was substantially outweighed by the unfair prejudice Appellant suffered when the court admitted the modified diagram.

The low probative value is likewise measured against the danger of misleading the jury. The testimony of the pathologist was that humans have "sides to us" and that the wound was "almost as much in front as it is in the back," but that was not what the diagram reflected. State's Exhibit No. 48 shows the injury as being to the top back of the head. In deliberations, the jurors would refer to the enlarged diagram showing a wound to the back of the head and conclude that the state's assertions on this point were correct, despite the findings of the pathologist that the wound was to the side of the head. The diagram was highly misleading and likely impacted the jurors deliberations.

The state compounded the prejudicial effect by consistently mischaracterizing the location of the gunshot wound as to the back of the head. This was a clear misrepresentation of the findings in the autopsy report and the pathologist's testimony. The state's mischaracterization of the injury, coupled with the admission of the inaccurate diagram, unfairly prejudiced Appellant and misled the jury.

The lower court compounded the error in admitting the misleading evidence when, in overruling an objection to the state's mischaracterization of the wound, the court commented on the location of the injury as "behind the ear" based on the pathologist report. See State v. Campbell, 297 S.C. 24, 26, 374 S.E.2d 668, 669 (1988) (It is elementary that in the course of the trial of a criminal case, the trial judge must refrain from all comment which tends to indicate his opinion as to the weight or sufficiency of evidence, the credibility of witnesses, the guilt of the accused, as to the controverted facts."). The trial court's comment conveyed to the jury his opinion as to the location of the gunshot wound and gave credence to the state's argument that the decedent was shot in the back of the head. This was improper. See State v. Ates, 297 S.C. 316, 377 S.E.2d 98 (Judicial comments on the facts of the case required reversal where remarks could have conveyed to the jury the court's opinion on the credibility of the witness and that the state had met its burden on an issue in contention).

The admission of State's Exhibit No. 48 was error. The diagram did not conform to the testimony of the pathologist and was purposefully misleading to the jury. While the state could argue that Appellant shot the decedent in the back of the head, the medical testimony established that the injury was decidedly to the right side of the head. The trial court erred in admitting evidence that did not show the actual location of the injury but instead showed a location that supported the state's argument as the danger of unfair prejudice and misleading the jury was not

overcome by probative value. The court compounded the error by commenting on the location of injury in the presence of the jury. This was reversible, prejudicial error.

III.

The trial court abused its discretion during the immunity hearing and at trial in excluding threats made by the decedent and testimony about his character traits for violence and his actions leading up to the shooting.

Relevant Facts

A significant and important focus of the defense strategy, at both the immunity hearing and trial, was on explaining the state of mind of Appellant at the time of the shooting. Relevant to her state of mind were the repeated, numerous violent threats the decedent made to her in the weeks, days, hours, and minutes leading up to the shooting. Throughout the proceedings, the state continuously objected to any statements by the decedent and any statements of Appellant to another expressing concern or fear of the decedent as being barred by the rules against hearsay. The state also objected to the text message statements the decedent's girlfriend had sent him in the month prior to the shooting on grounds of relevancy. The trial court repeatedly sustained these objections, often not allowing defense counsel to place an argument on record.

During the immunity hearing, the court improperly sustained the state's objections to the following questions:

Q To be clear, did Mr. Johnson threaten Ms. Todd before that first gunshot?

A He --

MS. LIVESAY: Your Honor, again, I have got to object.

THE COURT: Sustained.

Q Did Mr. Johnson threaten Ms. Todd before this alleged phone call with her brother?

A It was just in the heat -- the heat of argument.

Q But my question is: Was Mr. Johnson making threats before you allege Ms. Todd was on the phone with her brother?

MS. LIVESAY: Your Honor, again, objection.

THE COURT: Sustained.

Tr. 186, l. 20 – Tr. 187, l. 8

Q Okay. And then, at some point in time -- well, let me ask, what were the threats she was telling you about?

A Specifically, he would say --

MR. OSKIN: Objection, Your Honor. Calls for hearsay.

Statements by Mr. Johnson.

THE COURT: Sustained.

Tr. 275, ll. 3-8

Q You heard your sister say that night that his girl was coming with a Draco?

A Yes.

MR. OSKIN: Your Honor, that was addressed on direct and not in my cross-examination.

MR. JOHNSON: I never mentioned that because I didn't -- he -- they brought it out because I couldn't ask what she talked about.

THE COURT: When did they bring it out? I don't recall them --

MR. JOHNSON: What he heard on the phone and what the sister was telling him.

MR. OSKIN: So, I would object to hearsay.

THE COURT: Sustained. I sustain the objection.

Tr. 294, l. 18 – 295, l. 6

Did you text Mr. Johnson from that (843) 457-4524 number on June 30 of 2020 and say, "You getting more and more violent every day"?

A Not that I can recall.

MR. OSKIN: Your Honor, I would object to relevance. That's from 2020.

MR. JOHNSON: Your Honor, 404(a). This is all about -- we can get into the character of the victim. It's propensity. It's a trait.

THE COURT: I sustain the objection. Go ahead.

Q Did you text Mr. Johnson on June 30th and say, "You always talking shit and threatening people. Your mouth always get you in trouble, even at work. You're too hotheaded and negative for me"?

MR. OSKIN: What's the relevance? What's the date of this? June 30th? Even June 30 of 2022 would be irrelevant for purposes of this hearing.

MR. JOHNSON: I can't think of a case right now, but there is cases where they have gone back three months if it's a relevant character trait.

THE COURT: Okay. I sustain the objection. Let's move on.

Tr. 304, l. 24 – 305, l. 21

Q. So, as you're here today, you don't recall if he ever mentioned Lafredia to you?

A Yes, I do recall.

Q What did he say?

MR. OSKIN: Calls for hearsay, Your Honor.

THE COURT: Sustained. Sustained.

Q And to be clear, you never called the police on him to your address?

A No.

Q Did Mr. Johnson tell you he was afraid of Ms. --

MR. OSKIN: Calls for hearsay again. It's pretty direct.

THE COURT: Sustained.

Q When you did speak to him later that night and you had mentioned that he was maybe a little -- I don't know what the word was -- upset, something was different about him, do you recall him saying, "Some shit about to happen"?

MR. OSKIN: Calls for hearsay again, Your Honor.

THE COURT: Sustained.

MR. JOHNSON: Going to state of mind about what she said he said to her in the moments up to it.

THE COURT: She cannot get into what he said. That's hearsay.

Tr. 309, l. 8 – 310, l.16

Q: And when you say, "he went overboard with it," what does that mean?

A: Issuing threats, saying that he would shoot her --

MR. OSKIN: Objection, Your Honor. Calls for hearsay.

THE COURT: Sustained.

Tr. 313, ll. 13-17

Q: Was Mr. Johnson known to bring firearms to Nacho Hippo?

A Yes.

Q How do you know that?

A Because he told us.

MR. OSKIN: Calls for hearsay again, Your Honor.

THE COURT: Sustained. Strike the last response.

Tr. 314, ll. 7-12

This pattern of excluding the threats and statements of the decedent continued at trial, with the state moving for a blanket ruling from the court that any statements of the decedent would be excluded. Wisely, the court declined to grant the state's request and instead instructed the parties to object at the proper time. Tr. 630, l. 10 – 638, l. 20. The state objected during the testimony of Tybraizhiz Ford when defense counsel questioned whether the decedent had announced the night of the shooting that he was going to go out to his car to get his "straps," a slang term for a firearm. The court sustained the objections, at which point defense counsel moved to proffer the testimony of witness Ford. Tr. 641, l. 8 – 643, l. 1. A brief proffer was conducted covering Ford's excluded testimony. Tr. 643, l. 5 – 645, l. 7.

On the eighth day of trial, the defense called Laquan Gore to testify to the various threats the decedent had made to Appellant. The state objected under hearsay, and the court conducted a proffer of the testimony. Tr. 1108, l. 14 – 1123, l. 1. After further argument, the court realized it had erred in its prior ruling, stating:

All right. And I misspoke earlier. What I was thinking about is 804(b)(3). It is not an excited utterance. So any -- so it doesn't come in on that. I am going to allow him to testify to the threats, because I think that does come in under 804(b)(3). Statement against interest, unavailable declarant, it exposes the declarant to criminal liability, is offered to exculpate the accused, and there are corroborating circumstances that indicate that he made threats -- that the victim made threats this night.

Tr. 1123, ll. 11-20. The court specifically found that there was a continual pattern of threats leading up to the shooting incident and that the defense was able to introduce the decedent's statements to Appellant in the time leading up to the shooting. Tr. 1123, l. 21 – 1124, l. 9.

However, the court did not adhere to its ruling. As its last witness, defense counsel called Tatyanna McClain to the stand. She had testified in the immunity hearing, and counsel sought to have her testify to the same at trial as well as to character evidence of Appellant. The court ruled

that her testimony from the immunity hearing was irrelevant, had “already been in,” and was cumulative. The trial court limited the testimony of McClain to character evidence. Tr. 1509, l. 10 – 1510, l. 11.

Discussion

As our Supreme Court wrote in State v. Mason, 215 S.C. 457, 461, 56 S.E.2d 90, 92 (1949):

It is well established under our decisions that where there is evidence in a homicide case tending to establish self-defense, *both communicated and uncommunicated threats made by the deceased against the defendant are admissible*, but for a different purpose. Uncommunicated threats are admissible to show the mental attitude of the deceased and are relevant on the question of who was probably the aggressor in the fatal difficulty, but may not be used to show the *quo animo* of the defendant. *Previous threats of deceased communicated to the defendant are admissible to show the state of mind of the defendant, his belief of impending danger from the deceased, and to illustrate and explain his conduct and motives.*

The decedent repeatedly communicated to Appellant that he would pistol whip her, shoot her in the face, and kill her children. He further made wider threats to shoot up their shared place of work and to call in backup to shoot up the workplace. Defense counsel sought to elicit these statements, during both the immunity hearing and at trial, because the statements went to Appellant’s reasonable apprehension of danger, not for the truth of the matter asserted. It was manifest error for the court to exclude the statements of the decedent.

The Immunity Hearing

“Circuit courts utilize pretrial hearings to determine whether a defendant is entitled to immunity under the Act, employing a preponderance of the evidence standard.” Cervantes-Pavon, 426 S.C. at 449, 827 S.E.2d at 567 (citation omitted). “This Court, in turn, reviews an immunity determination for an abuse of discretion.” State v. McCarty, 437 S.C. 355, 365, 878 S.E.2d 902,

908 (2022) (citation omitted). A circuit court abuses its discretion when its ruling “is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *Id.* (quoting State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016)).

The circuit court improperly sustained the state’s objections to the cited testimony during the immunity hearing. Evidence that the decedent repeatedly and violently threatened Appellant and her children was highly probative evidence that went towards Appellant’s fear and her actions. The trial court did not consider this extremely important information when deciding whether Appellant had met her low burden of proof in the immunity hearing. Critically, the threats of the decedent directly contradict the ruling that Appellant failed to prove, more likely than not, that she was without fault in bringing on the difficulty. Tr. 373, ll. 11-19. The court lacked the necessary evidence to decide the question of immunity because the court improperly ruled the statements as hearsay. This was a highly prejudicial error that deprived Appellant of a full immunity hearing. This error was not harmless beyond a reasonable doubt because it cannot be said that the results of the immunity hearing would have been the same had the court considered the excluded evidence. This Court should remand this matter to the circuit court for a new immunity hearing in which Appellant is allowed to present the full facts and circumstances surrounding the fatal encounter.

Trial

The trial court eventually reached the proper result at trial and allowed evidence of the decedent’s statements to be entered during the defense case. However, the court limited the testimony of defense witness McClain as irrelevant, already in the record, and cumulative. This was improper. McClain’s testimony at the immunity hearing was equally relevant during trial, and it comported with the trial court’s ruling, as it was about statements and actions of the decedent in the days leading up to the incident. McClain’s testimony was not before the jury, and it had

only been partially allowed during the immunity hearing, thus it was not already in the record. Nor was this testimony cumulative. However, even if it were, “the redundancy of details” provided by cumulative witness accounts can be the thing that makes a particular version of events more reliable to a jury. See State v. Doctor, 306 S.C. 527, 530, 413 S.E.2d 36, 38 (1992) (finding the exclusion of two confessions prejudicial because those confessions were identical to a third, and “[t]he redundancy of the details . . . is the very reason the testimony was so valuable to the defendant and its exclusion was not harmless”). It was error for the court to limit the testimony of McClain.

IV.

The trial court abused its discretion when it admitted State's Exhibit No. 3 (CD-Surveillance Footage) because the video was misleading to the jury and when it admitted State's Exhibit No. 43 (Clipped Video from Booking-Fixing Hair) because the video was improper character evidence.

Relevant Facts

State's Exhibit No. 3

The state relied upon an edited video of the incident during the immunity hearing and trial. State's Exhibit No. 3 is a combination of camera angles showing the final three minutes leading up to the shooting. The video starts in the courtyard of the restaurant where the shooting occurred, showing the decedent yelling at Appellant, and then moves into the manager's office to focus on Appellant. The decedent is not shown again until 43 seconds are left in the video, when the screen is split to show the manager's office and the movements of the decedent. The timestamps are not fully visible on both videos when the screen is showing a side-by-side view. State's Exhibit 3 (CD – Surveillance Footage). The video was played “probably 60 times during the presentation of this trial.” Tr. 1088, ll. 8-10.

Defense counsel first raised his concerns over the edited video during the immunity hearing. The state admitted the video in the immunity hearing during the testimony of Miguel Chajon without objection. Tr. 207, ll. 15-22. On re-direct examination, when defense counsel questioned whether there were other angles that would have provided a more complete picture, the state objected and was sustained without explanation. Tr. 25, ll. 12-21. At the end of the second day of the immunity hearing, after State's Exhibit No. 3 had been again played for the court, defense counsel requested the state provide him with a copy of the edited video for comparison because “the way they edited it, it appears it's different. I'm just asking for a copy of what they

edited. They showed it. It's an [sic] evidence. It's not work product now. It's in evidence." Tr. 326, ll. 21-24. Counsel explained that "what they've cut, they've condensed it to make it look different. I want to see how far they have cut out -- what they cut out." The court declined to have the state copy the edited video for defense counsel because the state had provided all the videos in discovery. Tr. 327, ll. 5-7.

Following jury selection, defense counsel again asked for a copy of the video out of concern it was misleading, and the court ultimately allowed him to obtain a copy of the edited exhibit. Tr. 475, l. 20 – 478, l. 18. When the state moved State's Exhibit No. 3 into evidence, defense counsel objected, arguing his belief that the video had been improperly edited. Tr. 516, ll. 6-7. He continued:

Your Honor, just one more point. The reason I make the objection that it's been edited is that part of it no longer has the timestamp on it. And when we cut it apart and looked at it, all -- all the different cameras had a timestamp. There's one of -- what she wants to show, one of those doesn't have the timestamp, and we think it was actually shortened, maybe not by much. And to the naked eye, maybe you don't realize it, but that's one of the reasons I'm objecting.

If it had the four timestamps or whatever it is -- if the timestamps are there, then it's accurate. But I'm saying that, if it doesn't have it there -- and I don't know if Ms. Buffkin noticed that or not noticed, but I'm saying that it might have been improperly edited to make what they want it to look like, even if it's edited for one second. That's my objection for the entering of it, that it's not a truthful representation if you put it together. Because I don't know why the timestamp is not on it.

Tr. 517, ll. 9-25. The court admitted the video over objection.

State's Exhibit No. 43

During its case-in-chief, the state called former police officer Jason Snyder to testify as to the documentation that Appellant filled out upon being booked into the county jail, which included her telephone number and address. The state then moved to enter State's Exhibit No. 43, the body

worn camera of Snyder from the night Appellant was booked into jail, because it showed Appellant having concern about how her hair looked for the booking picture. Defense counsel objected to the video on relevancy grounds, which was overruled. He renewed his objection at the close of the state's case and at the close of the defense case. Tr. 699, l. 10 – 700, l. 15; Tr. 793, l. 23-794, l. 21; Tr. 1517, ll. 4-5.

Discussion

The trial court should act as a gatekeeper to ensure that only relevant and accurate evidence is placed before the jury. The court failed in its gatekeeping role in admitting State's Exhibits Nos. 3 and 43. These exhibits were either misleading or irrelevant, and their admission greatly prejudiced Appellant.

State's Exhibit No. 3

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE. The appellate courts begin the analysis of a Rule 403 objection with probative value. State v. Phillips, 430 S.C. 319, 327, 844 S.E.2d 651, 655 (2020). “To understand the probative value of any evidence, we must consider what was practically in dispute at trial.” Id. “We must then consider how important the challenged evidence is to resolving the practically disputed questions.” Id.

State's Exhibit No. 3, had it shown the entirety of the movements of both Appellant and the decedent, would have been admissible as accurate and relevant evidence. However, the edited video entered at trial removed the actions of the decedent and made it appear that Appellant was hiding out in the manager's office watching the decedent move calmly about the building waiting

for a moment to attack. However, the testimony and other video evidence reflected that the decedent had been threatening to shoot Appellant and shoot up the restaurant in a loud, violent manner for the hour prior to the shooting. The state attempted to boil down weeks of confrontation and threats into three minutes – this was improper. While there is some probative value to the surveillance video, that probative value is only high when all the surveillance video is presented to the jury. Because the video did not depict the moments up to the shooting accurately, it was misleading and should have been excluded under Rule 403, SCRE. It is likely that the jury was greatly influenced by the edited video that was shown between fifty-and-sixty times, and thus, admission of the video could not be deemed harmless.

State's Exhibit No. 43

“In a criminal case, the State cannot attack the character of the defendant unless the defendant first places his character in issue.” State v. Nelson, 331 S.C. 1, 6, 501 S.E.2d 716, 718–19 (1998) (internal citations omitted). “In a similar vein, evidence of other crimes or bad acts is generally inadmissible to prove the crime charged unless the evidence tends to establish (1) motive, (2) intent, (3) absence of mistake or accident, (4) a common scheme or plan, or (5) identity.” Id. “Both rules are grounded on the policy that character evidence is not admissible ‘for purposes of proving that the accused possesses a criminal character or has a propensity to commit the crime with which he is charged.’” Id.

State's Exhibit No. 43 was wholly irrelevant and should not have been admitted. The actions of Appellant after the incident in no way supported any element of the crimes that the state was required to prove. The force of the evidence was to call the character of Appellant into doubt and cast her as cold-hearted and unfeeling. The evidence was presented during the state's case-in-chief and was therefore not in response to Appellant placing her character in issue. The only

conclusion to be drawn from State's Exhibit No. 43 was that Appellant was a cold and ruthless person more concerned with her hair than with the incident that had just occurred. This was highly improper, irrelevant and prejudicial evidence.

The admission of both videos created reversible error in this case.

V.

The trial court erred in refusing to charge the jury with the direct and circumstantial evidence charge and the withdrawal charge where there was evidence in the record to support the charges and defense counsel properly requested the charges.

Relevant Facts

During the charge conference, defense counsel requested the court charge the standard direct and circumstantial evidence charge. Tr. 1558, l. 24-1559, l. 1. The court stated that there was not any circumstantial evidence in the case. Counsel argued that the question of whether the decedent's back was toward Appellant at the time of the shooting had to be decided on circumstantial evidence, as did the state's assertion that Appellant's brother arrived on scene and brought a gun, as neither was proven through direct evidence at trial. Counsel also pointed out that the state was arguing that Appellant had premeditation based on text messages she sent at 2:00 p.m. the day of the incident, which again required circumstantial evidence to reach the conclusions the state argued regarding Appellant's state of mind. The court disagreed and refused to charge direct and circumstantial evidence. Tr. 1559, l. 2 – 1560, l. 14.

Defense counsel next requested the "withdrawal" charge that read:

Additionally, while considering whether the defendant is at fault in bringing on the incident, you may also consider whether the defendant withdrew from a prior difficulty. If one who is at fault in bringing a conflict later withdraws in good faith and that withdrawal is communicated by words or actions, his right to act in self-defense is restored, and he may use force to save himself from imminent bodily harm.

Tr. 1560, ll. 15-23. Defense counsel argued that Appellant withdrew from an argument with a separate co-worker, and then the decedent engaged her. Counsel also argued that, in the minutes before the shooting, Appellant had turned and walked away from the decedent as he yelled at her.

Tr. 1560, l. 24 – 1561, l. 4; Defense Exhibit No. 23 (Courtyard Clip 37-Seconds/Thumb Drive). The court refused to charge withdrawal. Tr. 1561, ll. 5-7. After the jury was charged, the court inquired if there were additional challenges or charges from either party, to which both replied “No.” Tr. 1676, l. 21 – 1677, l. 2.

At the motion for a new trial hearing, defense counsel again raised the court’s failure to charge the requested defense jury charges, focusing on the circumstantial evidence charge. Mtn Tr. 30, l. 19 – 41, l. 8. The court denied the motion for a new trial on all grounds. Mtn. Tr. 79, ll. 9-19.

Discussion

“[T]he purpose of jury instructions is to enlighten the jury as to what law is applicable to a certain state of facts in order that a just, fair[,] and proper verdict can be reached.” State v. Peer, 320 S.C. 546, 554, 466 S.E.2d 375, 380 (Ct. App. 1996). “The trial court is required to charge only the current and correct law of South Carolina.” State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). “The evidence presented at trial determines the law to be charged to the jury.” State v. Gilliland, 402 S.C. 389, 400, 741 S.E.2d 521, 527 (Ct. App. 2012).

The state of mind of the defendant is always at issue when malice or willfulness is an element of the crime, State v. Perry, 440 S.C. 396, 405, 892 S.E.2d 273, 277 (2023), and anytime a defendant asserts self-defense because there is an entirely subjective element. Courts have long recognized that direct evidence of a defendant’s mental state is rarely available as you cannot see into another person’s thoughts. To prove Appellant acted with malice, and without the requisite fear needed for self-defense, the state had to rely on circumstantial evidence. This is especially true considering that the fatal moment is not caught on camera, and whether the decedent was turned away or toward the Appellant at the time of the shooting was in contention.

Additionally, Appellant asserted self-defense at trial. The second prong of self-defense, that the defendant actually believed she was in imminent danger of losing her life or sustaining serious bodily injury, or she actually was in such imminent danger, requires proof by circumstantial evidence. This is an entirely subjective prong based on the defendant's belief and can never be proven by direct evidence. The circumstantial evidence charge was therefore necessary in order for the jury to consider the Appellant's claim of self-defense and her subjective belief that she was in danger.

The court charged the jury on criminal intent and explained it could "be established by inference in the same way as any other fact." Tr. 1668, l. 17 – 1669, l. 17. However, the court wholly failed to explain what circumstantial evidence was and how to properly weigh it in the case. In reviewing the entire charge, there is no definition of circumstantial evidence, despite the court instructing the jury it could rely on circumstantial evidence to determine intent, and even though there was circumstantial evidence used in the case. Therefore, the charge as given did not sufficiently cover the substance of the direct and circumstantial evidence charges, and the charge as a whole does not lessen the error by the trial court. See State v. Herndon, 430 S.C. 367, 845 S.E.2d 499 (2020). The trial court erred in refusing to charge the jury on direct and circumstantial evidence in this case. See Heatley v. State, 448 S.C. 230, 241, 933 S.E.2d 631, 637 (2026) (No more is required under South Carolina law when the trial court explains to the jury the difference between direct and circumstantial evidence along the lines of the Grippon charge *and* gives the jury a constitutionally sound reasonable doubt charge) (emphasis added).

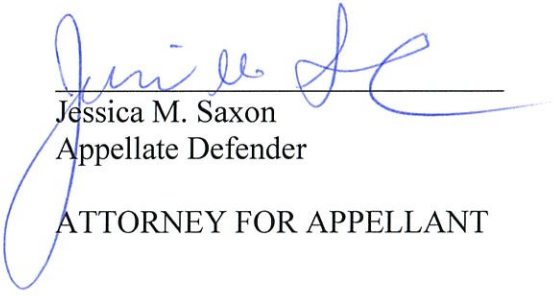
The court also erred in failing to charge the requested withdrawal instruction. "In addition to correctly stating the law, the trial court has a *distinct responsibility* to tailor a jury instruction to the facts of the case and the evidence presented at trial." State v. Perry, 440 S.C. 396, 406, 892

S.E.2d 273, 278 (2023) (emphasis added). “A trial judge should specifically tailor the self-defense instruction to adequately reflect the facts and theories presented by the defendant. State v. Day, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000) *citing* State v. Fuller, 297, S.C. 440, 377 S.E.2d 328 (1989). “A self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues raised by the defendant.” Id. “One’s right to self-defense is restored after a withdrawal from the initial difficulty with the victim if that withdrawal is communicated to the victim by word or act.” State v. Bryant, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999).

At trial, the state asserted that Appellant was at fault for bringing on the difficulty. Appellant asserted that she was not at fault, as the decedent engaged her and continued to threaten and harass her throughout the evening. Just minutes prior to the shooting, the decedent is seen gripping his right front pocket, where a firearm was recovered, and yelling at Appellant, who turns and walks away from the decedent, very clearly withdrawing from the confrontation. Defense Exhibit No. 23 (Courtyard Clip 37-Seconds/Thumb Drive). Appellant was entitled to a jury instruction on withdrawal based on the evidence and theories presented by the defense. It was reversible error to not charge withdrawal in this case. See State v. Day, 341 S.C. 410, 535 S.E.2d 431.

CONCLUSION

Based on the foregoing arguments, Appellant respectfully requests that this Court remand this matter for a new immunity hearing given the numerous erroneous evidentiary rulings made by the trial court. Appellant further respectfully requests that this Court find the admission and exclusion of certain evidence entitles Appellant to a new trial. Finally, Appellant requests that this Court hold the trial court's failure to charge the jury with the requested jury charges was reversible error.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of September, 2026.