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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Patrick Cleburne Fant, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JARQUEZ COOPER,

APPELLANT

APPELLATE CASE NO. 2024-000902

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to charge the law of self-defense when Appellant related shooting a firearm only after being shot at by an armed assailant, a claim supported by the video evidence introduced during trial and an expert in crime scene reconstruction, and when the testimony also raised doubt that Appellant fired the fatal shot the killed victim who was an innocent bystander?

STATEMENT OF THE CASE

In the early morning hours of July 5, 2020, multiple shots were fired at the Lavish Lounge in Greenville, South Carolina. Appellant was indicted by a Greenville County Grand Jury for the murders of Mykayla Bell along with possession of a weapon during the commission of a violent crime arising out of the shooting. R. * Indictment. Appellant was also indicted for the assault and battery of a high and aggravated nature for injury to Reginald Campbell and the murder of Clarence Johnson as additional victims from the shooting. R. Indictments.

Appellant was tried before the Honorable Patrick C. Fant III and a jury from May 20 – 24, 2024. R. *. William Douglas Richardson, Jr., and Britni McCall prosecuted the case on behalf of the State. R. *. Bakari Sellers and Ally Benevento appeared on behalf of Appellant. R. *. The jury acquitted Appellant of the murder of Clarence Johnson and the assault and battery of Reginald Campbell but found Appellant guilty of the murder of Ms. Bell and the weapon offense. Tr. 595, l. 9 – 596, l. 2. Judge Fant sentenced Appellant to fifty-years incarceration for murder and five-years on the weapon offense. Tr. 595, l. 9 – 596, l. 2.

This appeal follows.

STANDARD OF REVIEW

"If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error." State v. Day, 341 S.C. 410, 416–17, 535 S.E.2d 431, 434 (2000) (*quoting* State v. Muller, 282 S.C. 10, 316 S.E.2d 409 (1984)).

ARGUMENT

The trial court erred in refusing to charge the law of self-defense when Appellant related shooting a firearm only after being shot at by an armed assailant, a claim supported by the video evidence introduced during trial and an expert in crime scene reconstruction, and when the testimony raised doubt that Appellant fired the fatal shot the killed victim who was an innocent bystander.

A. The relevant facts.

Many of the underlying facts are not disputed and were in fact captured on video. Appellant attended the musical performance with the rap artist Foogiano who arrived at Lavish Lounger (hereinafter Club) around 1:00 a.m. on the morning of July 5, 2020. Indictments; Tr. 169-170. While those with Foogiano, including Appellant, were subject to a pat-down search for weapons, Foogiano was not. Tr. 175-176. While Foogiano performed on stage, Appellant was armed with a weapon to provide security for the artist during the performance. State's 19 (0:04:00 – 0:05:00).[1] During the performance, a fight broke out among the patrons on the dance floor unconnected to Foogiano or Appellant. State's Ex. 19 (0:06:20 – 0:07:59). This fight, as described by Appellant, is captured on video beginning between 02:57:00 and 02:57:09. (State's 17, 18, and Def. 35). According to Appellant, he first pulled his weapon in response to the fight and discharged the handgun only after being shot at by a patron from the dance floor towards the elevated stage. State's Ex. 19 (0:08:00 – 09:05). Shortly after the fight on the dance floor, multiple shots were fired inside the Club and several people were struck by gunfire. These

[1] State's Exhibit 19, Appellant's interview with law enforcement, will be transported and available for review by this Court.

events can be seen on security cameras from 02:57:00 a.m. through 02:57:30 a.m. (State's 16 (cameras 04-06); 17, 18, Def. 35).[2]

The State's theory was that Appellant fired indiscriminately and without justification into the crowd at the foot of the stage striking multiple persons, including Mykayla Bell, Clarence Johnson, and Reginald Campbell. R. * Indictments. Certainly, Appellant can be seen on the security cameras armed with a handgun and admitted firing the weapon. Kenny Kinsey, recognized as an expert in crime scene analysis and reconstruction as well as general police practice and investigation, dissected the video evidence of the jury. Dr. Kinsey opined that shots were fired, as related by Appellant during his police interview, from the direction of the dance floor towards the stage. Tr. 414, l. 12 – 415, l. 25; Def. Ex. 18 & 19.[3] Moreover, Dr. Kinsey opined that the path of the wounds suffered by Bell and Johnson were not consistent with having been shot by a weapon from the elevated stage. Tr. 432, l. 1 – 434, l. 13. This opinion was supported by the pathologist testimony that Mr. Johnson's fatal wound was from the back to front in his upper leg with a slight *upwards* angle. Tr. 336, l. 9 – 337, l. 3. At to Ms. Bell's fatal wound, the bullet entered her back and exited her chest with a "very little deviation." Tr. 337, ll. 9 – 23. These findings would not be consistent with being shot by someone on an elevated stage above the two victims. Tr. 432, l. 1 – 434, l. 13.

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[2] The composite shown in State's Ex. 16 provides the shooting from several camera angles. State's Exhibits 16, 17, 18, and Defense Ex. 35 are security camera recordings and will be transported and available for review by this Court.

[3] Defense Exhibits 18 and 19 are color still pictures pulled from security camera video. On Defense Ex. 18, 02:57:22 a.m., Appellant (circled in green) can be seen on stage holding his firearm pointed at a downward angle while a person on the dance floor (circled in red) can be seen pointing an object at the stage. On Defense Ex, 19, Appellant's weapon can be seen raised and pointed toward that individual and a gas cloud can be seen from the discharge of a weapon by the unidentified person on the dance floor. Defense Exhibits 18 and 19 will be transported to allow review by this Court.

The State did not dispute multiple firearms were present inside the Club during the shooting. There were different caliber shell casings inside the Club after the event including both 9 mm and .45 caliber casings. Tr. 130, l. 6 - 133, l. 8.[4] There were several people other than Appellant inside the Club armed with handguns leading up to the first shots being fired. Tr. 259, l. 16 – 260, l. 4; 265, l. 1 – 266, l. 7; 267, l. 17 – 268, l. 6. Appellant told law enforcement he was shot at from the dance floor before firing his weapon. State's Ex. 19 (0:08:00 – 09:05). Appellant's expert, by dissecting the video evidence, confirmed this account. Tr. 414, l. 12 – 415, l. 25; Def. Ex. 18 & 19. Despite this evidence, the trial court refused to charge self-defense to the jury.

B. The charge to the jury.

Counsel for Appellant specifically requested a charge on self-defense.

> THE COURT: Okay. So no charge on self-defense?
>
> MR. SELLERS: No, no, no. Except to say for self-defense, I was referring to the previous one. We will -- we will argue the self-defense charge, I believe that it's necessary based upon testimony in court.

Tr. 515, ll. 9 – 12.

The State argued against self-defense. While acknowledging the bar was "low" in deciding whether to provide the charge, the State then proceeded to argue that the facts supporting self-defense were not "credible" and not that they did not exist. Tr. 517, ll. 20 – 21; 519, ll. 1 – 3. The State also noted the possession of the weapon was not allowed in the Club and

[4] The State did not call a ballistics expert to testify as to whether the various shell casings were cycled through a single or multiple weapons.

was thus "unlawful" preventing reliance on self-defense in reliance on State v. Slater, 373 S.C. 66, 644 S.E.2d 50 (2007). Tr. 519, l. 6 – 520, l. 18.

After taking the matter under advisement, the trial court refused to charge self-defense. Tr. Appellant's counsel renewed the objection to lack of self-defense at the conclusion of the trial court's charge to the jury. Tr. 589, l. 23 – 590, l. 21. After deliberation, the jury acquitted Appellant of the murder of Clarence Johnson and the assault and battery of a high and aggravated nature charge related to Reginald Campbell. Tr. 595, ll. 17 – 23. However, absent self-defense as an option, the jury convicted Appellant of the murder of Mykayla Bell and possessing a weapon during the commission of a violent crime. Tr. 595, ll. 9 – 16.

C. The trial court's error.

The trial court failed to properly apply the "any evidence" standard in evaluating the propriety of charging self-defense. Instead, it either followed the State's reasoning that Appellant's unlawful carry of a weapon negated any claim of self-defense or weighed the credibility of the evidence as argued by the State. On either basis, the trial court committed an error of law requiring reversal.

The presence of Appellant's concealed handgun would not negate self-defense as a matter of law. The State relied upon State v. Slater, 373 S.C. 66, 644 S.E.2d 50 (2007) to argue that Appellant pulling his concealed handgun in response to danger from the dance floor negated a key element of self-defense: that the defendant must be without fault in bringing on the difficulty. Certainly, in Slater, the Supreme Court noted "the record clearly reflects that Slater approached an altercation that was already underway with a loaded weapon by his side. Such activity could be reasonably calculated to bring the difficulty that arose in this case." Id., 373

S.C. at 70, 644 S.E.2d at 52. However, as with any case dealing with self-defense, context matters. The Court in Slater went to great lengths to connect Slate's illegal carrying of a loaded weapon towards a dispute in which he was not involved and his firing of the weapon:

> Here, Slater's unlawful possession of the weapon was the proximate cause of the homicide. Slater was not merely in unlawful possession of a weapon; he carried the cocked weapon, in open view, into an already violent attack in which he had no prior involvement. Slater's actions, including the unlawful possession of the weapon, proximately caused the exchange of gunfire, and ultimately the death of the victim.

Id., 373 S.C. at 71, 644 S.E.2d at 53.

By contrast, in the present case Appellant testified that security guards allowed him to enter the Club armed due to his status as security for Foogiano. State's 19 (0:04:00 – 0:04:30). While the State contested this assertion, the trial court was charged with looking for the existence of evidence and not to weigh the credibility of the witnesses. This fact alone would remove this case from Slater since, if the Club allowed appellant to carry his concealed weapon as security, the unlawful nature of the act would be negated. More importantly, Appellant was on a small stage in a crowded club when an assailant, involved in a disturbance on the dance floor, fired rounds toward the stage. Appellant did not actively seek trouble by brazenly taking a loaded gun towards the sound of trouble and fighting by unknown people as noted in Slater. To the contrary, Appellant was faced, within seconds of a fight breaking out on the dance floor, by a physical threat to his life by the unknown shooter from the dance floor shown in Defendant's Exhibits 18 and 19. The time lapse between the fight starting and the shots being fired was very small and cramped and crowed space was involved. As discussed below, the exit for those on the stage would have been towards the danger from the dance floor that shots were initially fired.

The small stage, railings, and crowded and cramped nature of the event clearly separates Appellant's actions from those outlined in Slater.

"If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error." State v. Day, 341 S.C. 410, 416–17, 535 S.E.2d 431, 434 (2000) (*quoting* State v. Muller, 282 S.C. 10, 316 S.E.2d 409 (1984)). Here, Appellant related that providing security was part of his job. Appellant related he responded only after being shot at by an assailant from the dance floor. Appellant's possession of a concealed weapon was neither the cause of the difficulty on the dance floor nor the instigating factor in the first shots being fired. Tr. 414, l. 12 – 415, l. 25; Def. Ex. 18 & 19.

As our Supreme Court explained in looking at the reach of the Slater decision, "Slater is important to our analysis in this case because Lord Byron armed himself for the purpose of entering into a situation he knew to be rife with violence—just like Williams did here." State v. Williams, 427 S.C. 246, 253, 830 S.E.2d 904, 908 (2019). In Williams, the Court noted that bringing a loaded, unlawful weapon to a known drug transaction was not "merely incidental" to the expected violence that may flow from such a transaction and that the "unlawful possession of a weapon does foreclose a self-defense charge" in such a setting. Id., 427 S.C. at 254, 830 S.E.2d at 908.

Contrasted to the present case, Slater and Williams support the charge of self-defense rather than justify its denial. There was no "illegal" or "unlawful" event for Appellant to approach during the concert at the Club. While it was disputed as to whether Appellant was allowed to be armed as a security guard for the performer, that evidence was presented to the jury and the trial court should have focused on its existence rather than its credibility. Moreover,

the fight and subsequent shots being fired from the dance floor were in no way connected to Appellant nor his possession of a firearm. Evidence was presented that shots were fired before Appellant pointed his firearm towards his assailant. Tr. 414, l. 12 – 415, l. 25; Def. Ex. 18 & 19. These facts negate the concept that Slater and Williams would support denying the charge on self-defense. In addition, "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. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). Appellant's possession of a weapon during the concert was not the proximate cause of the difficulty which gave rise to the need to draw and use the weapon as asserted by Appellant during his police interview and supported by the video evidence and expert testimony.

Since the record before the jury contained evidence supporting all elements of self-defense, the trial court improperly denied the request to charge. The elements of self-defense are:

> (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and (4) the defendant had no other probable means of avoiding the danger.

Slater, 373 S.C. at 69–70, 644 S.E.2d at 52. As noted above, the trial court improperly agreed with the State's position that Appellant was at fault in bringing on the difficulty. Since this was

in error, and Appellant established all other elements of self-defense as noted below, the trial court's decision not to provide the charge is an error of law requiring reversal.

It may not be doubted that being shot at creates an "imminent danger of losing" one's life. Appellant's statement made clear he fired only after being shot at and that other people on the stage with him were hit with gunfire. State's Ex. 19 (0:04:00 – 05:00). This version of events was supported by Appellant's statements to the police as well as expert opinion based upon the video evidence presented at trial.

> A. 2:57:07 a.m. and in this depiction Camera Six, bottom left and it is supported by Camera Four top left, you can clearly see that the patrons have moved to the front of that stage, and they're looking at something out amongst here in this direction. You also see Mr. Campbell's head at that point in time. At :06 he was looking closer to the stage. At this point in time, Mr. Campbell turns his head also sharp right.
>
> Q. Okay. Dr. Kinsey, I would like to show you a still shot that I'm going to mark as Defense's Exhibit 10 from this time stamp. I am going to move forward Dr. Kinsey to 2:57:08. So that's just one -- one second. So it should be 12 frames later.
>
> A. This is the point in time where those patrons that I mentioned on the portable stage, they start retreating, they're backing up. That is on Camera Six verified with a little bit stronger distance on Camera Four. And what is significant about this time stamp, Camera One, you see patrons running out the door of the club. They're not walking, they're not coming in, they are running out. Something significant has happened at this point. And once again, if you look at Mr. Reggie Campbell, he's turned his whole posture around toward that corner of the dance floor at that point in time.

Tr. 403, l. 20 – 404, l. 18. This "event" could have been the first gunshot as related by Appellant during his interview with police and is well before he first presents his firearm towards the area of his assailant. *See* Defendant's 17 and 18. Appellant's expert identifies smoke from a fired weapon aimed towards Appellant and the stage. This created an "actual imminent danger of losing" life and, even if mistaken about being fired upon, "a reasonably prudent person of

ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life."

Finally, as to other probable means of avoiding the danger, it is undisputed that the Club was cramped and crowded. Appellant was on an elevated stage and the exit doors would have required advancing towards the area of the fight before swinging out towards exits. As shown on State's Ex. 16, there was a combination of a rapid sequence of events, a cramped stage, a crowded dance floor, and a location of the exits towards danger. There was no "other probable means of avoiding the danger" once a gunman opened fire from the dance floor. While the State contested such an act occurred, not only was that the version of events as described by Appellant to law enforcement but also supported by the video evidence itself through the testimony of Appellant's expert.

D. Identity of victim.

In Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014), our Supreme Court noted the "transferability of intent in a self-defense claim has not been recognized in South Carolina." Id., 410 S.C. at 471, 765 S.E.2d at 131.

> If the circumstances are such that they would excuse the killing of an assailant in self-defense, the emergency will be held to excuse the person assailed from culpability, if in attempting to defend him- or herself he or she unintentionally kills or injures a third person. Under the doctrine of transferred intent, the specific intent to kill one person in self-defense may be transferred to third parties ultimately affected by the acts of self-defense.

40 Am. Jur. 2d *Homicide* § 135. "State courts in nearly one half of the country have held that the killing of, or injury to, a bystander is justified if done in self-defense." State v. Williams, 335 A.3d 792, 803 (Conn. 2025). "The general rule is that if a person acting in necessary self-defense unintentionally injures or kills a third person, he is not guilty of homicide or assault and battery." Holloman v. State, 51 P.3d 214, 221 (Wyo. 2002).

As such, the trial court erred in refusing to charge the jury self-defense if the basis for such ruling was that an innocent bystander, Ms. Bell, was struck and killed. Appellant would note that there was no forensic evidence that Appellant fired the bullet that struck and killed Ms. Bell. Appellant's expert expressly testified that, based upon the height of the stage and angle of the wounds, Appellant did not fire the fatal shot that struck Mr. Johnson or Ms. Bell. The jury's acquittal of Appellant in the death of Mr. Johnson may be partially explained by the change in testimony by the pathologist that the fatal wound had a downward angle. When challenged on cross, the pathologist changed her testimony and acknowledged this wound to Mr. Jonson's upper leg had an *upward angle*. Since Ms. Bell's wound was higher (back of her shoulder), and the angle to the wound was not pronounced, the jury could have determined Appellant fired this *fatal shot while returning fire to the gunman on the dance floor.* As such, Appellant could have been acquitted by the jury in Ms. Bell's death had the jury believed Appellant returned fire towards an armed assailant and inadvertently struck Ms. Bell.

To the extent that the law in South Carolina regarding transferred intent's application in a case of self-defense, this Court should acknowledge the majority rule. This approach applies transferred intent so that the criminal act takes the form of whatever crime would have been committed had the action struck the intended victim.

> If, as to the intended victim, the homicide would have constituted murder, the defendant is guilty of murder as to the bystander who

> was the actual victim. Similarly, if the homicide would have constituted voluntary manslaughter as to the intended victim, the defendant is guilty of voluntary manslaughter as to the bystander who was the actual victim; and *if the homicide, as to the intended victim, would have been justifiable, as in self-defense*, the defendant is deemed the author of a justifiable homicide as to the bystander, at least in the absence of criminal negligence.

§ 21:8. Transferred intent, 2 Wharton's Criminal Law § 21:8 (16th ed.) (emphasis added).

South Carolina applies the doctrine of transferred intent to attach criminal liability when a defendant fires a weapon with malice aforethought but strikes and kills an unintended victim. "It is well-settled in South Carolina that the doctrine of transferred intent applies to general-intent crimes." State v. Williams, 427 S.C. 148, 157, 829 S.E.2d 702, 707 (2019). There is no logical basis, if the shot fired was justified in self-defense, to refuse to apply the same logic when the bullet strikes an unintended target. The flow of this logic can be seen in our Supreme Court's treatment of the application of the Protection of Persons and Property Act when a homeowner fires and strikes a driver of a vehicle who was not directly connected to the occupants of a vehicle who had chased and shot out a family member. In upholding a grant of immunity, our Supreme Court noted:

> Obviously, if Scott reasonably feared an occupant of Teesha's vehicle was going to shoot him, that fear would not justify Scott to shoot in a different direction at an innocent bystander. However, if Scott reasonably believed he was being attacked by gunfire by occupants of both vehicles, then he would be entitled to use deadly force against both vehicles.

State v. Scott, 424 S.C. 463, 471, 819 S.E.2d 116, 120 (2018).

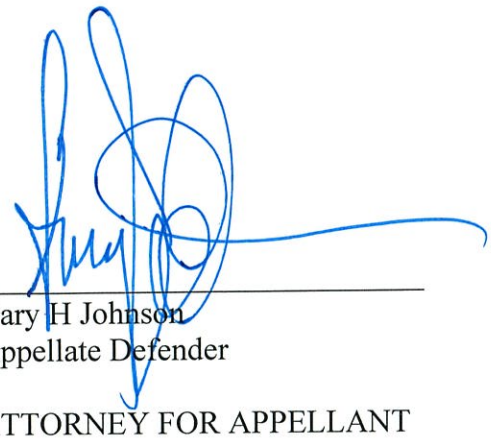
This is in essence an adoption of the logic behind transferred intent in the use of self-defense. The threatened person would not be justified in firing away from the threat, but would be justified in using deadly force even against an innocent bystander based upon a perceived

threat. While our Supreme Court in Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (2014) indicated the law was unsettled in South Carolina on this point, it applied the logic behind its application with approval in State v. Scott, 424 S.C. 463, 819 S.E.2d 116 (2018). This Court should follow suit and reverse the decision of the trial court for refusing to charge self-defense based upon the evidence presented during trial regardless of whether Ms. Bell was directly involved in the threat from the dance floor. To the extent this is still unsettled law in South Carolina, the present case provides this Court the opportunity to clarify that, when a bullet is fired in self-defense, the shooter lacks a criminal intent behind the shot thus negating criminal liability regardless of the identity of the person struck by said shot. *See* State v. Greenfield, 375 N.C. 434, 441, 847 S.E.2d 749, 755 (N.C. 2020) (noting that "[i]f the killing of the person intended to be hit would, under all the circumstances, have been excusable or justifiable on the theory of self-defense, then the unintended killing of a bystander by a random shot fired in the proper and prudent exercise of such self-defense is also excusable or justifiable.").[5]

[5] Appellant acknowledges that a reckless or negligent discharge, as outlined in State v. Scott, 424 S.C. 463, 819 S.E.2d 116 (2018) and State v. Greenfield, 375 N.C. 434, 847 S.E.2d 749 (N.C. 2020) could create criminal liability. Whether that be for murder or some other offense would depend on the nature of the allegedly reckless or negligent conduct.

CONCLUSION

The trial court erred in failing to charge self-defense. This Court should reverse and remand this matter for a new trial.



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ATTORNEY FOR APPELLANT

This 26th day of October, 2026.