ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT LEE WRIGHT,

APPELLANT

APPELLATE CASE NO. 2014-001023

ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to charge the jury on the law of accident where the trial judge's ruling was based upon an incorrect legal conclusion that accident and self-defense were mutually exclusive defenses?

STATEMENT OF THE CASE

On June 12, 2010, a Charleston County grand jury indicted Appellant for murder (2010-GS-10-6153). R. 417. The state, represented by Benjamin Simpson and Jessica Baldwin, called the case for trial before the Honorable Kristi L. Harrington and a jury on February 24, 2014. Lorelle Proctor and Alicia Penn represented Appellant. R. 1. The jury found Appellant guilty of murder. R. 405, lines 10. Judge Harrington sentenced Appellant to forty years' imprisonment. R. 413, lines 5 – 9; R. 419.

Appellant filed a notice of appeal. This brief follows.

ARGUMENT

The trial judge erred in refusing to charge the jury on the law of accident where the trial judge's ruling was based upon an incorrect legal conclusion that accident and self-defense were mutually exclusive defenses.

Relevant facts

Christopher "Chris" Jenkins and appellant's mother, Betty Scott, had been involved in a long-term romantic relationship. R. 277, lines 20-21; R. 278, line 2-9; R. 302, lines 1-3. When Betty ended the relationship, Chris was unwilling to accept her rejection of him. Instead, Chris vacillated between trying to win Betty's affections back through gifts and expressing his anger by berating her publicly or stealing from her. R. 279, line 1 – R. 280, line 9; R. 286, lines 8-12; R. 287, line 17 – R. 290, line 25; R. 293, lines 14-25; R. 302, lines 14-16; R. 274, lines 13-21; R. 276, lines 4-9. Chris's conduct escalated. In fact, several months before his death, Chris tried to hit Betty while at a birthday party. R. 280, line 10 – R. 281, line 13; R. 302, line 17 – R. 304, line 1; R. 319, line 19 – R. 320, line 22.

Approximately, one month later in April 2010, Appellant learned that Chris made his mother cry. R. 304, lines 2-9; R. 323, lines 3-14. At the insistence of his grandmother, who was worried about Betty's safety, Appellant went to talk to Chris. Appellant found Chris at a nearby basketball court. R. 304, line 19 – R. 305, line 3; R. 323, lines 17-24; R. 327, lines 3-9. When Appellant approached, Chris became belligerent and combative. Appellant and Chris threw punches. The fight lasted mere seconds, however, with both men walking away unscathed. R. 305, line 3 – 12; R. 322, lines 13-19; R. 324, lines 1-15.

On June 10, 2010, Appellant parked his car at his mother's house and attended softball practice at a nearby field. R. 305, lines 13-19; R. 306, lines 14-16; R. 325, lines 6-10. After softball practice, Appellant went to retrieve his car. R. 294, lines 17-21; R. 306, lines 16-18. While at his mother's home, he learned that Chris had been peeping around the corner and hanging out in the area of Betty's apartment building that day. R. 281, line 14 – R. 282, line 15; R. 292, line 9-25; R. 293, lines 11-18; R. 325, lines 11-20; R. 326, lines 3-6; R. 267, lines 10-19; R. 268, lines 2-8; R. 268, line 25 – R. 269, line 1; R. 269, lines 11-17. When Chris peeped around the corner while Appellant was present, Appellant walked around the building to see Chris, but all Appellant saw was Chris walking away. R. 307, lines 1-10; R. 325, lines 21-25.

When Appellant prepared to leave, someone suggested that he talk to Chris about his continued harassment of Betty. R. 308, lines 2-8. While driving home, Appellant saw Chris walking down the street. Appellant stopped his car, got out, and called out to Chris. R. 308, lines 9-15; R. 312, lines 3-5; R. 312, lines 17-22; R. 328, lines 4-10. Chris stepped into the street with his fists up. R. 313, lines 1-9; R. 328, lines 10-11; R. 328, line 25 – R. 329, line 3. Despite Appellant telling Chris he had no interest in fighting, Chris continued to approach in a threatening way. R. 313, lines 11-25; R. 328, lines 11-13. The two men then started fighting. This fight, like the previous one, lasted only seconds with both men walking away at the end. R. 314, lines 2-25; R. 315, lines 1-6; R. 329, line 21 – R. 331, line 6.

Chris walked home where he told no one of the fight. R. 85, lines 1-6; R. 101, lines 4-8; R. 133, lines 3-5; R. 157, lines 2-7. Instead, he went to bed. R. 85, lines 14-21; R. 140, lines 6-8; R. 157, lines 2-6. The following day, Chris's brother checked on him.

Chris appeared to be having a seizure. His family called for help, and Chris was transported to a hospital where he later died. R. 86, lines 8-10; R. 143, line 9 – R. 144, line 6. The pathologist concluded Chris died from blunt force trauma to the chest. R. 234, lines 4-16. There were almost no external injuries, but Chris suffered ten fractured ribs on his right side and internal bleeding. R. 226, line 9 – R. 228, line 1; R. 243, line 6 – R. 244, line 14. Had Chris received medical attention more quickly, he would have survived. R. 244, lines 15-25.

During the charge conference, the state conceded the facts supported the judge instructing the jury on the law of self-defense. R. 336, lines 4-17. However, the state objected to Appellant's request for an instruction on accident. R. 337, lines 7-21. Appellant argued he was entitled to a jury instruction on accident because the evidence showed he did not intend to cause the death of the decedent. Citing State v. Burris, 334 S.C. 256, 513 S.E.2d 104 (1999) for the proposition that in order to charge the law of accident, the evidence must demonstrate the killing was unintentional and that the defendant was acting lawfully, Appellant argued the evidence showed just that. R. 338, lines 1-8.

The judge asked Appellant to explain "the difference between accident and self-defense in this particular case" because the judge was "having a hard time distinguishing between the two." R. 338, lines 10-15. According to the judge's view, in order to claim self-defense, Appellant was admitting that he "intended to do that act of defending himself." The judge further expressed that "even if the facts did fit those two are appositive defenses, meaning you can't act in self-defense and it be an accident." R. 338, lines 19-23. Thereafter, the judge asked defense counsel to reconcile the two. R. 338, line 25 – R. 339, line 1. Defense counsel responded, "I'm probably not that good, Your Honor, but if the

Court is telling me that it's one or the other in that case we would ask for self-defense." R. 339, lines 2-4. Thereafter, the judge announced she would "not be charging accident." R. 339, line 14.

Discussion

The law to be charged is determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Reversible error is committed if the trial court fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). A trial court's refusal to grant a jury instruction based upon a sound principle of law applicable to the case before the trial court is an error law. Clark v. Cantrell, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000). If there is any evidence to support a jury charge, the trial judge should give the charge in question. State v. Burris, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); State v. Light, 378 S.C. 641, 648, 664 S.E.2d 465, 468 (2008).

Much of the case law in South Carolina involving the defense of accident includes discussions of the elements of self-defense and how those elements integrate with the defense of accident. "In South Carolina, the defense of accident requires a showing 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. Wharton, 381 S.C. 209, 672 S.E.2d 786 (2009)(citing Burriss, 334 S.C. at 259, 513 S.E.2d at 106); State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994); State v. Brown, 205 S.C. 514, 32 S.E.2d 825 (1945). In the context of a death caused by a gunshot wound, the homicide is excusable as an accident when the evidence shows the defendant was acting lawfully in

self-defense and the victim was shot by accident through the unintentional discharge of a gun. Goodson, 312 S.C. at 281, 440 S.E.2d at 372 (citing State v. McCaskill, 300 S.C. 256, 387 S.E.2d 268 (1990)).

"[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." Burris, 334 S.C. at 262, 513 S.E.2d at 108. Thus, a person armed in self-defense is entitled to a charge of accident if the killing was unintentional. Id.

In State v. Chatman, 336 S.C. 149, 519 S.E.2d 100 (1999), the South Carolina Supreme Court affirmed a trial court's refusal to instruct the jury on accident. The evidence showed Chatman was holding another person in a non-traditional chokehold. Id. at 152-153, 519 S.E.2d at 101-102. Analyzing the requirement that a defendant must act lawfully in order for accident to apply, the Court reasoned that Chatman "was not acting lawfully, since he was engaged in an assault and battery, unless he was acting in self-defense." Id. at 153, 519 S.E.2d at 102. Thereafter, the Court analyzed the evidence of Chatman's conduct to conclude he was not acting in self-defense. The Court reasoned "[i]f [the defendant] was not acting in self-defense, then he could not have been acting lawfully and he was not entitled to an accident charge." Id. at 154, 519 S.E.2d at 102.

In Tisdale v. State, 378 S.C. 122, 124, 662 S.E.2d 410, 412 (2008), the South Carolina Supreme Court held defense counsel provided ineffective assistance by failing to request an instruction as to accident. Id. At the trial, the defendant testified that when he refused to drive the alleged victim where he wanted to go, the alleged victim began yelling and punched him in the face. Id. Then, the alleged victim pulled a gun. Id. The two struggled over the gun. Id. The gun went off while it was still in the alleged victim's

hand. Id. The defendant testified that he gun was never in his hand. Id. The Court held that evidence indicated the alleged victim was the aggressor as shown by him punching the defendant in the face and presenting a gun. This evidence along with evidence that the gun discharged accidently supported the charge of accident. Id. at 126, 662 S.E.2d at 412-413.

Contrary to the trial judge's contention that self-defense and accident were mutually exclusive, the two may work in conjunction. In fact, this Court made exactly this point in State v. Williams, 400 S.C. 308, 317, 733 S.E.2d 605, 610 (2012) by explaining that when the evidence in the record supports both charges, then both must be given. Thus, the trial judge committed a legal error in concluding that accident could not be charged if self-defense were also charged. The judge's legal error forced Appellant to select a single defense.

Further, the trial judge's legal error prevented the jury from considering a defense supported by the evidence. Without question, Chris's death was unintentional. The evidence before the jury was that Appellant was defending himself when he struck Chris. Thus, Appellant was acting lawfully. There was no evidence that Appellant used a weapon so the third requirement of exercising due care in the handling of a weapon is not applicable. Even if the third element were to be read to require that a person exercise due care more generally, then Appellant satisfied that element as well. There was no evidence that Appellant was acting recklessly or negligently when he was fighting with Chris. The evidence established the two fought, the fight lasted mere seconds, and the two walked away from the fight. Chris's death was an accident, and the judge's

erroneous legal conclusion that the defenses of accident and self-defense were mutually exclusive denied Appellant a just verdict.

CONCLUSION

Appellant respectfully requests this court reverse his conviction for murder in remand for a new trial.

Respectfully submitted,

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of April, 2015.

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IN THE COURT OF APPEALS

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Robert Lee Wright states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's trial before Judge Kristi Lea Harrington, which was held on February 24-25, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Robert Lee Wright.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of April, 2015.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) Trial transcript dated February 24 & 25, 2014;
(2) Court's Exhibit #1;
(3) True–billed indictment;
(4) Sentence sheet

I certify that this designation contains no matter which is irrelevant to this appeal.

April 7th, 2015

Susan B. Hackett

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Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 7, 2015

Susan B. Hackett

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Robert Lee Wright, #358939 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 7th day of April, 2015.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of April, 2015.

(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.