ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Lawton McIntosh, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JALANN LEE WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2015-000115

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to instruct the jury on self- defense where there was evidence of self-defense, particularly where the court's two reasons for refusing to charge self-defense were erroneous as a matter or law?

STATEMENT OF THE CASE

Appellant was indicted by the Charleston County grand jury for the offenses of murder, armed robbery, and possession of a weapon during a violent crime. R. 394. His case was called to trial on January 5, 2015 before the R. Lawton McIntosh, and a jury. Christopher Murphy represented appellant. Greg Voigt and David Osborne were the assistant solicitors. R. p.1

On January 8, 2015 the jury found appellant guilty of murder, and possession of a firearm during a violent crime. The jury could not reach a verdict on the armed robbery charge, and the judge declared a mistrial on that count. R. 390, l. 2- 392, l. 4. Judge McIntosh sentenced appellant to thirty years imprisonment for murder, and five years imprisonment for possession of weapon during a violent crime. R. p. 393, ll. 8-12.

This appeal follows.

ARGUMENT

The court erred by refusing to instruct the jury on self- defense where there was evidence of self-defense, particularly where the court's two reasons for refusing to charge self-defense were erroneous as a matter or law.

Relevant Facts

North Charleston police officer Fredrick Hoose was on patrol on January 30, 2013 in the Midland Park neighborhood. He was also working with other law enforcement personnel to solve burglaries in the area. He was dispatched to a shooting call. R. p. 22, l. 13- 23, l. 24.

Hoose arrived at the mobile home park, and he saw a white Ford Expedition "kind of resting against a trailer. . ." R. p. 24, ll. 7-12. Hoose recalled that the driver's front and back side doors were both open, and the rear side "passenger side door on the other side was open as well." R. p. 24, ll. 7-14. Hoose described the strange position of the decedent inside the car: "His feet were in the passenger seat, the floorboard, the front passenger floorboard and *he was stretched out face down into the back floorboard.*" R. p. 25, ll. 16-19. (emphasis added). As will be seen infra, the strange position of the decedent -- his face and body stretching into the back seat -- corroborated appellant's testimony about the decedent assaulting and strangling him. when he shot him.

Appellant's testimony that he was defending himself from the decedent inside the Ford Expedition when he shot him was corroborated by state's witness Robert Mitchell. R. 203, ll. 8-15. Mitchell remembered: "They were fighting over the gun." R. p. 203, ll. 13-15.

Appellant testified in his own defense that Mitchell had borrowed a hundred and fifty dollars from him to purchase "exotic marijuana" from the decedent. The decedent

being found in this position by Officer Hoose inside the SUV was consistent with the testimony of Mitchell and appellant about the fight inside the vehicle when the decedent was shot.

Mitchell testified that on January 30, 2013 he intended to buy the marijuana from the decedent, Mr. Ladson: "He was going to sell me a quarter pound of loud, which is exotic weed." R. p. 197, l. 25- 198, l. 7. The price was six hundred dollars. Mitchell remembered " I had four hundred and fifty dollars. I had called Jalann and ask him to borrow the other money—well, my bad four hundred and forty dollars, I had called Jalann and asked him to borrow a hundred and fifty dollars. And he was like alright come get it. So I went to his house to get the money." R. p. 197, l. 25- 198 l. 17. Lauren Thrower was also present when Mitchell went to make the marijuana purchase. Appellant went with Mitchell. R. p. 198, l. 24- 199, l. 25.

Mitchell, testifying as a state's witness, said appellant mentioned doing "a lick" before they met with the decedent. Mitchell told the solicitor that a lick "could be a robbery," but not necessarily. It could be a "quick way" of raising money. R. p. 199, l. 23- 201, l. 5. Mitchell told appellant that *he did not think the decedent was going to have any money "because he is supposed to get six hundred dollars from me.* I said so you know what I am saying I don't think he is going to have any money on him." Mitchell also told appellant: "Let me handle my transaction . . . let me get on through you know what I am saying." R. p. 199, l. 23- 201, l. 5. (emphasis added).

Mitchell remembered while they were riding in the car to use the decedent's scale to try and weigh the marijuana. The decedent was in the front seat at the time and his girlfriend was driving. Appellant was sitting behind the decedent. Mitchell testified that

appellant always carried a gun with him "for protection." "In our line of business some people carry guns." R. p. 201, l. 11- 203, l. 5.

Mitchell said his intention was to buy the marijuana from the decedent. However, "I heard a commotion and when I looked up Akim [the decedent] and Solo [appellant] was fighting. Akim had jumped across the seat and they were fighting. Then I heard a shot and I jumped out of the car and ran. Mitchell clarified that appellant and the decedent were "fighting over the gun." Mitchell was taken by surprise when he saw the gun. R. p. 203, l. 3- 204, l. 20.

Mitchell told the jurors that his plan was to purchase four ounces of marijuana from the decedent, and he did not know how the argument, and the fight between the decedent and appellant started. Mitchell also said during the fight: "Akim [the decedent] was getting the better of him [appellant]." R. p. 205, l. 3- 206, l. 7; p. 216, ll. 20-22. The decedent and appellant were "locked together" in the struggle at the time the decedent was shot. Mitchell did not think appellant knew that the decedent had been fatally shot during the struggle because they watched the news together that evening "and when I looked on the news I called Solo and [I was] like that man is dead." R. p. 217, ll. 8- 22.

Mitchell said that appellant also ran from the scene after the shooting. He remembered that appellant "hid the gun under the trailer." Mitchell did not take the marijuana he intended to purchase with the six hundred dollars. R. p. 206, ll. 2-25.

On cross-examination , Mitchell repeated that he told appellant he did not think the decedent would have any money with him. Mitchell was going to pay the decedent six hundred dollars for the marijuana. R. p. 209, ll. 5-10.

Mitchell also confirmed that he had been in an unrelated argument earlier in the day with "Snoopy" and "Trouble". The decedent said Snoopy and Trouble had threatened to "shoot me." R. 211, ll. 1-10.

The decedent was his "business partner," and he had no reason for the decedent to get harmed. Mitchell estimated he purchased marijuana from the decedent four to five times per month. He did not expect the decedent to have any money since the decedent was the seller, and Mitchell's plan was to purchase the marijuana from the decedent. R. p. 199, l. 23-201, l. 5 Mitchell intended to pay appellant back the hundred and fifty dollars he had borrowed from him. R. p. 211, l. 14- 215, l. 1. The scales were being used because he did not want to "get ripped off." R. p. 215, ll. 2-10.

The decedent's girlfriend, Alayah Hamlin was the driver of the car on the day of the marijuana deal. The decedent told Alayah that: "I know them its okay so I went okay [and drove during the deal." Alaya admitted she was not paying attention to what the men were doing as she drove. She claimed she heard someone – allegedly appellant – say "give it to me . . . it was like a struggle and I heard a gunshot go off and then another after that." Alaya said she jumped out of the car, and ran for help, "I didn't put the car in park so when I got out it just continued to roll until it hit the trailer."[1] R. 28, l. 23 – 41, l. 17.

Appellant was twenty-two years old at the time of his trial. He took the stand and testified in his own defense. R. p. 228, ll.11-14. He admitted: "I smoke a good bit of

[1] As in most criminal cases, there was conflicting evidence in this case. That obviously does not change the fact that the standard for self-defense or for a lesser-included offense is if, in the light most favorable to the defendant, there was **any evidence supporting self-defense**, any other defense or lesser-included offense. See State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001).

marijuana." Nonetheless, he had worked at Ryan's Steakhouse and the Taco Bell in Goose Creek. R. p. 229, l. 8- 230, l. 5.

Appellant had known Robert Mitchell for about a year and a half. Appellant went with Mitchell about two to three times a week to purchase drugs, seemingly marijuana. R. p. 230, ll.6-20.

On January 30, 2013 appellant planned to take his children -- that he had with their mother, --Taylor McLean, to the park. However, Mitchell texted appellant, and appellant told Mitchell to come over to his house. R. p. 230, l. 21 – 231, l. 22.

Mitchell asked appellant to borrow one hundred and fifty dollars for a purchase of marijuana. Appellant told Mitchell he needed the hundred and fifty dollars back by the end of the week. The total purchase price of the marijuana was six hundred dollars. The six hundred dollar selling price seemed very low to him for the "very expensive type of weed" Mitchell wanted to purchase. R. p. 230, l. 21- 233, l. 4.

Mitchell had feared for his life earlier in the day. Appellant remembered that Mitchell went to the store and his girlfriend told appellant Mitchell "got into a fight at the store and they are talking about shooting him. I said shooting him? Who is he fighting with? And she named Trouble and Snoopy." R. p. 232, l. 21- 233, l. 19.

Appellant recalled that Mitchell came running back to his house, and Mitchell reminded him that Trouble and Snoopy had robbed him in the past, and that Trouble had just said he was going to get a gun. Appellant said he was worried about Trouble and Snoopy coming over to his house so he grabbed "a gun at that time. I go in the house and I came back outside and I sat down with him." R. p. 233, l. 21- 234, l. 20. Appellant

related that he got the gun "just for protection; I didn't grab it to do nothing wrong." R. p. 235, ll. 2-5.

Appellant never discussed a robbery attempt with Mitchell. He just wanted to be sure Mitchell paid him back the hundred and fifty dollars. He thought Mitchell would also "give me like probably al little couple of grams just for a smoke." R. p. 235, ll. 13-21.

Appellant remembered when he got in the car he sat behind the decedent and Mitchell sat behind the driver. As she drove, appellant he saw that the decedent had the marijuana that Mitchell was going to purchase. The decedent handed the marijuana to Mitchell, and Mitchell asked appellant for the scales. Appellant asked the driver to stop the car so they could weigh the marijuana on "a flat surface". Appellant said the exotic marijuana that Mitchell wanted to purchase had a distinct smell to it but "I could barely smell it [this marijuana]," which made appellant suspicious of what Mitchell was buying. R. p. 239, l. 3- 240, l. 14.

Appellant asked the decedent to completely open the package so that they could view the marijuana more closely. The decedent apparently became angry at the request to inspect the marijuana, and "he just starting getting loud and I was like man, it's not that serious. I'm not doing business with you . . ." Appellant told the decedent that he was doing business "with my friend at the time so I was like why are you getting loud at me and he was like man, you need to just mind your own business and he started cursing at me." Appellant acknowledged " I did say who the fuck are you talking to like that..." R. p. 241, l. 19- 245, l. 5.

Appellant recalled his feelings at the time: "I was like man, please – I was like Mitch are you going to buy this weed? And he was like man, I don't know. I want to see it

open. I grabbed the scales and I went for the door, and that it is when Mr. Ladson grabbed me." R. 241, l. 19 – 242, l. 15.

Appellant and the decedent were yelling at each other, and appellant said, "So my first reaction was *to jump back. And that is when he jumped and grabbed my shirt.*" Appellant remembered that the decedent was pulling on him, and "he ended up getting his hands around my neck. I was like man I started panicking." Appellant said he looked for Mitchell but Mitchell was not attempting to help him in his struggle. "I am struggling with him and I started panicking. I ended up pulling out the gun and shoot." " Appellant said when he pulled the trigger on his gun he was "just trying to get him off me. I just been trying to get him off me. I was trying to stop the threat." R. 242, l. 16-247, l. 11. Appellant remembered that the car crashed. Appellant ran along with Mitchell and Lauren and appellant said he hid the gun under the trailer, " and I went in the house." R. p. 245, l. 10 - 250, l. 19. .

Appellant told the jury that he tried to get away from the decedent before he shot him but the decedent kept pulling me. I pulled it out of my right pocket; I am right handed. I just shot. I just shot." R. p. 241, l. 19- 245, l. 5.

On cross-examination appellant repeated that he was scared for his life while he was being attacked by the decedent, and that it was the decedent that "grabbed me," and started the fight. R. p. 271, l. 15- 273, l. 5; 275, ll. 2-13.

Appellant explained that in the sometimes inconsistent statements to the police that he was being threatened with the arrest the mother of his children if they did not like what he was saying, and " I didn't want my kids to be in DSS." R. p. 275, ll. 15-23.

On continued cross-examination appellant told the solicitor that when his life was being threatened by the decedent that, "Like you're scared you'll start to panic..." R. p. 278, l. 24- 279, l. 9.

Request to charge

Defense counsel requested that the judge instruct the jury on self-defense, and involuntary manslaughter in addition to murder. The judge stated that he was not inclined to charge either self-defense or involuntary manslaughter, but he was thinking about charging voluntary manslaughter. The judge deferred ruling until the next day. R. 288, l. 14- 291, l. 25

The following day, and the last day of trial, the judge stated he had "consulted with my fellow brethren up here and I'm not charging self-defense." The judge reasoned that appellant armed himself "early on in the situation. He wasn't allowed to carry – **there is no evidence he had a concealed weapons permit**. He voluntarily went to a drug transaction. While he's at the drug transaction he engaged in an argument with the victim in this case. There was no basis of the drug deal argument -- **but he actually started the altercation with the victim**. That's argued." R. p. 295, ll. 3-25. (emphasis added).

The judge also reasoned that appellant failed "on the last element." The judge reasoned that "there is no evidence that once the altercation started **the defendant did anything whatsoever to extricate himself from the situation**. The judge reasoned that appellant went "straight to his weapon and killed the victim." R. p. 295, ll. 3-25. (emphasis added0. Defense counsel Murphy took exception to the judge's refusal to charge self-defense. R. p. 296, ll. 1-4.

The judge ruled that he would charge voluntary manslaughter. However, after a colloquy with defense counsel and appellant the voluntary manslaughter instruction was waived with the agreement of the solicitor. R. 296, l. 4- 301, l. 18.

Discussion

In determining whether to charge self-defense or a lesser-included offense, our Supreme Court has said that it will view the evidence in the light most favorable to the defendant when determining if there is any evidence to justify the charge. State v. Byrd, 323 S.C. 319, 474 S.E.2d 430 (1996). Self-defense must be charged if there is *any evidence* in the record to support that charge. See, State v. Hill, 315 S.C. 260, 433 S.E.2d 848 (1993); State v. Muller, 282 S.C. 10, 316 S.E.2d 409 (1984).

Self-defense involves four elements. State v. Fuller, 297 S.C. 440, 442-43, 377 S.E.2d 328, 330 (1989). First, the defendant must be without fault in bringing on the difficulty. As will be shown infra, the judge erred here as a matter of law by ruling appellant could not meet this element because he allegedly did not have a concealed weapons permit, or because he may not have been in "legal possession" of the gun.

Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his behalf of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to dace himself from serious bodily harm or losing his own life. These elements are not in dispute in this case. Mitchell testified that the decedent was getting "the better" of appellant

during the fight inside the SUV, and the location of the decedent's body corroborated the fact that the struggle occurred with the decedent attacking appellant in a moving vehicle.

Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. State v. Fuller, 297 S.C. 440, 442-43, 377 S.E.2d 328, 330 (1989). Again, appellant was being beaten in a moving vehicle, and retreat was not possible.

Thus, there was evidence of self-defense in this case. The judge erred by ruling appellant was not without fault in bringing on the difficulty. The record shows that the decedent was the first person to make physical contact once there was a disagreement. Further, the fact that appellant apparently did not have a concealed weapons permit for the gun was irrelevant. The fact appellant "voluntarily went to the drug transaction, or was engaged in illegal activity" also did not deny him his right to act in self-defense. Appellant was not obligated to suffer great bodily injury or be killed once he was physically attacked.

The right to self-defense often arises when the defendant is doing something stupid or illegal. For example, in State v. Fuller, 297 S.C. 440, 377S.E.2d 328 (1988), defendant Fuller was soliciting a prostitute when the difficulty arose. The Supreme Court found not only that Fuller was entitled to a self-defense instruction, but that he was entitled to a self-defense instruction tailored to the facts of that case. See, also, State v. Day, 341 S.C. 410, 535 S.E.2d 431 (2000).

Further, in State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999), our Supreme Court made clear that a defendant being in unlawful possession of a weapon is merely incidental to the defendant's lawful act of arming himself in self-defense. In short, the unlawful possession of the weapon will not prevent the defenses of self-defense or accident

from being viable. The gun was not produced until the decedent attacked appellant. Appellant had no legal duty to allow the decedent to strange him unabated.

Although Burriss involved the defense of accident our Supreme Court held the analysis is equally applicable in determining if a defendant is in unlawful possession of a weapon is entitled to a charge on self-defense. See, State v. Slater, 373 S.C.66, 71, 644 S.E.2d 50, 52 (2007).

Moreover, the judge erred by reasoning that appellant did not meet the last element of self-defense. Retreat was not possible in a moving automobile. The fourth element of self-defense is that "the defendant had no other probable means of avoiding the danger of loosing his own life or sustaining serious injury than to act as he did in this particular incident. See, State v. Wiggins, 330 S.C. 538, 545, 500 S.E.2d489, 493 (1998). Certainly, this was for the jury.

In the light most favorable to appellant, the evidence showed that the decedent grabbed him, and they were "locked together," as appellant attempted to get the decedent off of him. The decedent's body was found laying in the back seat from the front seat corroborating both appellant and Mitchell's testimony about the violent altercation.

Appellant testified he feared for his life during this violent attack, and that he was fortunate to be able to get the handgun from his pocket to shoot the attacking decedent. The judge made his second error of law in reasoning appellant had some other probable means of avoiding the danger as this violent attack occurred in moving automobile. Even if it was reasonable for appellant to be expected to jump out of a moving vehicle -- which it was not -- appellant testified that the door was locked during the violent struggle.

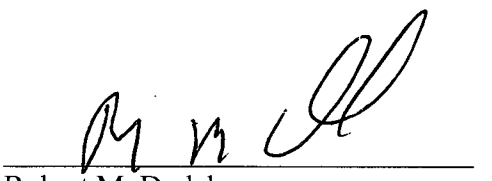
Appellant believed he was in imminent danger, and any reasonable man of ordinary fitness and firmness would have believed he had to strike the fatal blow to save himself from suffering serious bodily injury or from losing his own life. Appellant thus met the second and third elements of self-defense, and as argued above, the judge was in error in his legal reasoning as to appellant bringing on the difficulty, the first element. The judge also erred by reasoning appellant had an opportunity to retreat or extricate himself from the violent attack by the decedent, the fourth element of self-defense. See, State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984).

Appellant properly raised the issue of self-defense in this case, and the judge should have charged it. The state would then have had the burden of disproving appellant acted in self-defense beyond a reasonable if the judge had properly charged the jury. See, State v. Burkhart, 350 S.C.252, 565 S.E.2d 298 (2002); State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011). Appellant is entitled to a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed, and this case remanded to the Charleston County Court of General Sessions for a new trial.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of February, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief 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."

February 17th, 2016

Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

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THE STATE,

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant 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 Jalann Williams, #362634, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 17th day of February, 2016.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of February, 2016.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.