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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Bamberg County

James R. Barber, III, Circuit Court Judge

FRANKIE LEE BRYANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-206008

SUPPLEMENTAL APPENDIX

LARA M. CAUDY
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

DAVID SPENCER
Senior Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Frankie Lee Bryant III, Respondent,

v.

State of South Carolina, Petitioner.

Appellate Case No. 2012-206008

Appeal From Bamberg County
Doyet A. Early, Trial Judge
James R. Barber, III, Post-Conviction Relief Judge

Unpublished Opinion No. 2016-UP-023
Heard September 8, 2015 – Filed January 20, 2016

REVERSED

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Interim Senior
Assistant Deputy Attorney General John Benjamin Aplin,
and Assistant Deputy Attorney General David A.
Spencer, all of Columbia, for Petitioner.

Chief Appellate Defender Robert Michael Dudek and
Appellate Defender Lara Mary Caudy, both of Columbia,
for Respondent.

PER CURIAM: Frankie Bryant was convicted of voluntary manslaughter. Bryant filed an application for post-conviction relief (PCR), which the PCR court granted. The State appeals, arguing the PCR court erred in finding counsel was ineffective for failing to object to the jury instruction on self-defense because the instructions substantially charged the correct law and were not prejudicial. We reverse pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to our standard of review: *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013) ("On appeal in a PCR action, this [c]ourt applies an 'any evidence' standard of review."); *Shumpert v. State*, 378 S.C. 62, 66, 661 S.E.2d 369, 371 (2008) ("A PCR court's findings will be upheld on review if there is any evidence of probative value supporting them."); *id.* ("Where the PCR court's decision is controlled by an error of law, however, this [c]ourt will reverse.").
2. As to the ineffectiveness of counsel: *Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (stating in order to obtain PCR relief, "[f]irst, the burden of proof is upon petitioner to show that counsel's performance was deficient as measured by the standard of reasonableness under prevailing professional norms. Second, the petitioner must prove that he or she was prejudiced by such deficiency to the extent of there being a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (emphasis omitted)).
3. As to the jury charge, we find the instructions substantially charged the correct law and were not prejudicial: *Gibbs v. State*, 403 S.C. 484, 495, 744 S.E.2d 170, 176 (2013) ("In evaluating whether a PCR applicant has suffered prejudice as a result of a jury charge, the jury charge must be viewed in its entirety and not in isolation."); *State v. Zeigler*, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct. App. 2005) ("Generally, the trial judge is required to charge only the current and correct law of South Carolina."); *State v. Fripp*, 397 S.C. 455, 460, 725 S.E.2d 136, 139 (Ct. App. 2012) ("A jury charge consisting of irrelevant and inapplicable principles may confuse the jury and constitutes reversible error where the jury's confusion affects the outcome of the trial." (citation omitted)); *State v. Day*, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000) ("[A] trial judge should specifically tailor the self-defense instruction to adequately reflect the facts and theories presented by the defendant."); *State v. Wood*, 1 S.C.L. (1 Bay) 351 (1794) ("The general rule of law is, 'that wherever the assault or battery proceeds from the plaintiff[s] . . . own fault, as where he gives the first blow, . . . there . . . is sufficient justification to the

defendant.' But there must be, however, in all cases, some proportion between the battery given and the first assault. . . . So that the degree of resistance ought to be in proportion to the nature of the injury offered; that is, that it be sufficient to ward off such injury, and no more. For the moment a man disarms or puts it out of the power of the aggressor from doing him further injury, he ought to desist from using further violence; and if he does commit any further outrage, he, in his turn, then becomes the aggressor."); *Golden v. State*, 1 S.C. 292, 302 (1870) ("It is not every resistance that will justify an enormous battery. The force applied must have a due regard to the purpose it is to accomplish."); *State v. Campbell*, 111 S.C. 112, 113, 96 S.E. 543, 543-44 (1918) ("A person assaulted, being without fault in bringing on the difficulty, has the right to use such force as is necessary for his complete self-protection, or which in the mind of a person of ordinary reason and firmness would reasonably prevent the assailant from taking his life or inflicting serious bodily harm. . . . The defendant, if without fault, [has] the right to use such necessary force as required for his complete protection from loss of life or serious bodily harm, and [cannot] be limited to the degree or quantity of [the] attacking opposing force."); *State v. Hendrix*, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978) ("The rule is that ordinarily one is not justified in shooting or employing a deadly weapon after the adversary has been disarmed or disabled."); *id.* ("However, the rule is also that 'when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased[.]'" (quoting 40 C.J.S. *Homicide* § 131(b) at 1020 (1944)¹)); *Zeigler*, 364 S.C. at 106, 610 S.E.2d at 865 ("If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error.").

REVERSED.

SHORT, GEATHERS, and MCDONALD, JJ., concur.

¹ The current citation is 40 C.J.S. *Homicide* § 189 (2014).

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

FRANKIE LEE BRYANT,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2012-206008

Appeal from Bamberg County

James R. Barber, III, Circuit Court Judge

Opinion No. 2016-UP-023

PETITION FOR REHEARING

On January 20, 2016, this Court reversed the order of the lower court granting Respondent post-conviction relief (PCR) in Bryant v. State, 2016-UP-023 (S.C. Ct. App. Filed January 20, 2016). Pursuant to Rule 221(a), SCACR, Respondent respectfully petitions this Court for rehearing because the Court may have overlooked the standard of review and must have misapprehended several significant points when rendering its opinion. Most importantly, the trial court gave a horribly incorrect instruction informing the jury that the degree of force used when acting in self-defense must be proportional. Trial counsel admitted this instruction was incorrect, that he should

have objected, and that the erroneous instruction was obviously prejudicial to Respondent given the nature of the struggle between Respondent and the decedent as shown below.

Facts

Respondent was indicted for the offense of murder. At trial, he argued he acted in self-defense after the decedent began choking him and pulled a knife during the ensuing struggle. On the day of the incident, Respondent was riding as a passenger in the decedent's small pickup truck. The decedent was driving Respondent and another passenger, Sheila Oliver, to Bamberg. For unknown reasons, while the group was traveling, the decedent repeatedly pulled over on the side of the road, got out of the truck, walked to the passenger side, and "started hitting" and punching Respondent. App. 57, ll. 14-17; App. 129, ll. 5-17.

The group eventually stopped at a mobile home in Bamberg. Respondent testified that when they got to the trailer, he and the decedent "had some words" because the decedent "wanted my money." After Respondent told the decedent he "wasn't going to give him none," the two "got in a fight." Respondent said he "got from the bed of the truck on the ground by the driver's side, and [the decedent] busted my lip and started choking me." He explained that the decedent demanded, "'Give me your money, Frank [Respondent]. Give me your money.' I said, 'Oh, no.' I couldn't say nothing. I was trying to push him and push him, trying to get loose from him." App. 131, l. 17 – 132, l. 15. Respondent testified that he eventually "pushed him [the decedent] against the driver's side of the door. That's when I [saw] he [the decedent] reached for a knife and he stabbed me right here." App. 132, l. 16 – 133, l. 1. He showed the jury the three places where he had been stabbed. App. 133, ll. 2-9.

After he was stabbed, Respondent continued to try to "get loose" from the decedent, but he "couldn't get no air or nothing. So, I took the knife, tried to take the knife out of his hand." While

the decedent was still choking him, Respondent was able to take the knife from him and stab him. Respondent did not know where he stabbed the decedent or how many times. App. 133, l. 11-22. He maintained that the only reason he stabbed the decedent was to “try to get loose from him . . . He was choking me.” App. 133, ll. 23-25. After Respondent stabbed the decedent, the decedent let go of Respondent and fell to the ground. He later died of his injuries.

Dr. Laura Knight, the pathologist who performed the autopsy, testified that the decedent had a shallow stab wound to his upper right chest and a second stab wound to his left groin area. The wound to his groin severed the femoral artery causing tremendous blood loss. The cause of death was “cardiogenic shock and brain injury” from insufficient blood flow. App. 113, l. 25 – 114, l. 18. Knight clarified that the decedent bled to death. App. 117, ll. 19-21. The toxicology results showed the decedent had alcohol and ephedrine or pseudoephedrine in his system when he died. App. 119, l. 20 – 120, l. 6.

Jury Instruction

During its instruction to the jury, the trial court included the following language at the conclusion of its charge on self-defense:

A person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily harm. Therefore, in self-defense the defendant has the right to use the force needed to avoid death or serious bodily harm.

The force used in self-defense does not have to be limited to the degree or amount of force used by the victim. The defendant has the right to use so much force as appeared to be necessary for complete self-protection in which a person of ordinary reason and firmness would have believed to be needed to prevent death or serious bodily harm.

If the defendant is justified in defending himself, then the defendant is also justified in continuing to defend [himself] until it is

apparent that the danger of death or serious bodily injury has completely ended.

And finally, in self-defense the degree of resistance ought to be in proportion to the nature of the injury offered; that is, that it should be sufficient to ward off such injury and do no more. In other words, the moment a man disarms or puts himself out of the power of the aggressor to do him further injury, then he should cease from further violence. But if he does commit any further outrage, then he becomes the aggressor.

App. 197, l. 11 – 198, l. 12 (emphasis added).

Trial counsel made no objection to this instruction.

PCR Hearing

During the evidentiary hearing, Kent Kirkland, Respondent's trial counsel, said Respondent's defense at trial was self-defense. App. 239, ll. 12-14. Kirkland explained that during the charge conference the state requested a jury instruction based on the nineteenth century case of Golden v. State, 1 S.C. 292 (1870), and that the court agreed to instruct the jury accordingly. He admitted this charge was an incorrect statement of the law and that he should have objected. App. 235, ll. 4-13; App. 242, l. 1.

Moreover, Kirkland admitted that his failure to object to the erroneous charge was prejudicial to Respondent. App. 236, l. 19 – 237, l. 10; App. 238, ll. 9-14. He asserted, “[T]he charge that was used . . . shifts the burden onto the Defendant to sort of stop once he had control. I believe the jury could clearly take that to mean that once he [Respondent] had control of the knife he somehow should have escaped and . . . they [the jurors] could have believed that the burden was on him [Respondent] at that point to stop and go no further when the facts of the case would tend to show that that wasn't an option.” App. 247, ll. 1-10. He further stated, “I think an individual charge can be given among a dozen charges and that charge can be wrong and influence the trial, depending upon the facts of the case.” App. 249, ll. 13-16.

Order Granting Relief

In its order granting post-conviction relief, the PCR court found the degree of force instruction given by the trial court was an incorrect statement of the law and that trial counsel was ineffective for failing to object to the erroneous charge. The court stressed that “a trial judge must charge the jury with the current and correct law of the State” and that “[m]erely superimposing a correct statement of law over an erroneous charge only fosters prejudice and confusion.” App. 260 (citing State v. Patrick, 289 S.C. 301, 308, 345 S.E.2d 481, 485 (1986)).

In addition to finding trial counsel ineffective, the PCR court also found that Respondent was prejudiced by counsel’s failure to object to the erroneous charge. App. 261. Consequently, the court reversed Respondent’s conviction and sentence and remanded for a new trial. App. 261.

Why Rehearing Should be Granted

In rendering its opinion, this Court likely overlooked the standard of review on appeal in a post-conviction relief action. On appeal, this Court must “uphold the findings of the PCR judge when there is **any evidence** of probative value to support them” and may only “reverse the decision of the PCR judge when it is controlled by an error of law.” Bailey v. State, 392 S.C. 422, 432, 709 S.E.2d 671, 676 (2011) (citing Suber v. State, 371 S.C. 554, 558-559, 640 S.E.2d 884, 886 (2007)) (emphasis added).

Here, there was evidence to support the PCR court’s finding that trial counsel was ineffective for failing to object to the erroneous jury instruction limiting the degree of force permitted when one is acting in self-defense. There was also evidence to support the PCR court’s finding that trial counsel’s failure to object to this erroneous charge prejudiced Respondent. Thus, this Court should have affirmed the ruling of the lower court.

“The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel.” Bailey, 392 S.C. at 432, 709 S.E.2d at 676 (citing U.S. Const. amend. VI and Strickland v. Washington, 466 U.S. 668 (1984)). The United States Supreme Court has established a two-pronged test to establish ineffective assistance of counsel. A “PCR applicant must show (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. Strickland, 466 U.S. at 687; Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Under the second prong, the PCR applicant “must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Strickland, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

The PCR court correctly found that trial counsel was ineffective for failing to object to the jury instruction limiting the amount of force Respondent was permitted to use during the altercation with the decedent and ultimate struggle over the knife. Trial counsel was ineffective for failing to object to this instruction because it was an incorrect statement of the law. See State v. Robinson, 306 S.C. 399, 401, 412 S.E.2d 411, 413 (1991) (“The trial judge must charge the jury with the ‘current and correct law’ of the State.”); See also S.C. Const. art. V, § 17. An instruction limiting a defendant while he is acting in self-defense to the same force attempted to be used against him is erroneous. State v. Campbell, 111 S.C. 112, 113, 96 S.E. 543, 543-544 (1918)

In Campbell, the defendant shot and killed a man who came at him with a glass bottle. The defendant claimed self-defense. The trial judge instructed the jury that under self-defense the defendant was limited to using as much force as was used against him. Our Supreme Court found the trial court erred in giving this instruction holding:

A person assaulted, being without fault and bringing on the difficulty, **has the right to use such force as is necessary for his complete self-protection** ... The defendant, if without fault, had the right to use such necessary force as required for his complete protection from loss of life or serious bodily harm and **cannot be limited to the degree or quantity of attacking opposing force.**

Id.

Our Supreme Court reaffirmed this holding in Douglas v. State, 332 S.C. 67, 72-73, 504 S.E.2d 307, 309-310 (1998).

Moreover, in State v. Hendrix, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978), the Supreme Court held that “when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased.” The instruction on the degree of force given during Respondent’s trial is in direct conflict with the above holding in Hendrix. Instead of instructing the jury that a defendant may continue to defend himself until it is apparent that the danger to his life and body has ceased as Hendrix holds is proper, the charge given during Respondent’s trial instructed the jury that the defendant must “cease from further violence” at the precise moment that the defendant disarms the aggressor. See App. 197, l. 11 – 198, l. 12. Thus, the jury instruction given during Respondent’s trial is clearly erroneous. Respectfully, this Court must have misapprehended this significant point when rendering its opinion.

Additionally, the cases relied on by state and cited by this Court in its opinion, particularly Golden, are outdated and inconsistent with later holdings by this Court and our Supreme Court on this issue, such as the Campbell, Douglas, and Hendrix cases cited above. Moreover, as Respondent emphasized at oral argument, a significant number of the cases relied on by the state discuss the degree of force permitted when one is resisting arrest, not when one is acting in self-defense during a struggle.

Not only was the charge given an incorrect statement of the law, it was also misleading and confusing to the jury because it was contradictory to the proper instruction the court had given to the jury a moment before that accurately reflected the law on the degree of force permitted when one is acting in self-defense. See State v. Patrick, 289 S.C. 301, 308, 345 S.E.2d 481, 485 (1986), *overruled on other grounds by* Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999) (“Merely superimposing a correct statement of law over an erroneous charge only fosters prejudice and confusion.”).

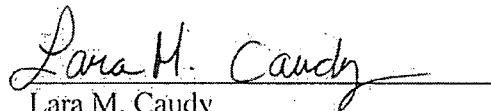
By requesting this instruction pursuant to Golden, the state was attempting to destroy the defense of self-defense by adding a requirement that one in a deadly struggle must somehow determine the struggle is over when the weapon has been taken from the aggressor. That is not the law of South Carolina and it was an obvious error that was highly prejudicial to Respondent given the nature of the struggle in this case. Simply disarming someone for a moment does not make it apparent that the threat of death or serious body injury has ended. The evidence showed that the decedent was still choking Respondent at the time he got the knife from the decedent and stabbed him. Consequently, the PCR court’s finding that Respondent was prejudiced by trial counsel’s failure to object to the erroneous charge was correct. The PCR court correctly granted Respondent relief and this Court should have affirmed the lower court’s ruling.

Our Supreme Court has gone to great lengths in recent years “to make sure the burden to disprove self-defense remains on the State.” State v. Taylor, 256 S.C. 277, 235, 589 S.E.2d 1, 5 (2003). The instruction given to the jury was erroneous because it improperly shifted the burden of proof from the state to disprove self-defense to Respondent in violation of State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998). This erroneous instruction essentially gutted the correct

self-defense instruction that was charged to the jury and improperly acted as a limitation on Respondent's ability to claim self-defense.

Because this Court overlooked the standard of review and misapprehended other significant points when reversing the order of the PCR court granting Respondent relief as shown above, rehearing should be granted.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR RESPONDENT

This 4th day of February, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Bamberg County
James R. Barber, III, Circuit Court Judge

FRANKIE LEE BRYANT,

RESPONDENT,

V.

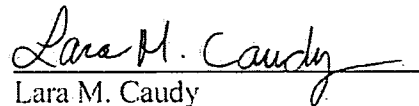
STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2012-206008

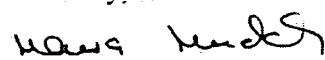
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above captioned case has been served upon David A. Spencer, Esquire, at Reimbert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of February, 2016.


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 4th day
of February, 2016.


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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Bamberg County
James R. Barber, III, Circuit Court Judge

Frankie Lee Bryant, III,

Respondent,

vs.

State of South Carolina,

Petitioner.

**RETURN TO PETITION
FOR REHEARING**

The State now makes its return to the petition for rehearing filed by Respondent Bryant. This Court correctly reversed the PCR court's grant of relief because it was based on an erroneous view of the law.

First, Bryant surmises that this Court applied the wrong standard of review. The State feels assured this Court applied the correct standard. This Court cited Shumpert v. State, 378 S.C. 62, 66, 661 S.E.2d 369, 371 (2008) to note the PCR court's findings will be affirmed if supported by any evidence of probative value, but the PCR court's ruling will be reversed if controlled by an error of law. That is the correct standard.

At trial, the trial court gave the following instruction with regards to self-defense:

A person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily harm.

Therefore, in self-defense, the defendant has the right to use the force needed to avoid death or serious bodily harm.

The force used in self-defense does not have to be limited to the degree or amount of force used by the victim. The defendant has the right to use so much force as appeared to be necessary for complete self-protection in which a person of ordinary reason and firmness would have believed to be needed to prevent death or serious bodily harm.

If the defendant is justified in defending himself, then the defendant is also justified in continuing to defend **until it is apparent** that the danger of death or serious bodily injury has completely ended.

And finally, in self-defense, the degree of resistance ought to be in proportion to the nature of the injury offered; that is, that it should be sufficient to ward off such injury and do no more.

In other words, the moment a man disarms or puts himself out of power of the aggressor to do him further injury, then he should cease from further violence. But if he does commit any further outrage, then he becomes the aggressor.

App. p. 195, line 11 - p. 196. The last paragraph closely tracks the language of Golden v. State, 1 S.C. 292 (1870).

Bryant argues Golden was overruled by State v. Campbell, 111 S.C. 112, 96 S.E. 543, 544 (1918). Bryant relies on the following portion of Campbell:

A person assaulted, being without fault and bringing on the difficulty, has the right to use such force as is necessary for this complete self-protection . . . The defendant, if without fault, has the right to use such necessary force as required for his complete protection from loss of life or serious bodily harm and cannot be limited to the degree or quantity of attacking opposing force.

However, the trial court instructed similar language when the trial court instructed the jury:

The force used in self-defense does not have to be limited to the degree or amount of force used by the victim.

The defendant has the right to use so much force as appeared to be necessary for complete self-protection in which a person of ordinary reason and firmness would have believed to be needed to prevent death or serious bodily harm.

App. p. 197, lines 17-23. The trial court also clearly instructed the jury that: "A person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily harm." Tr. p. 197, lines 11-13. This contradicts the assertion that Petitioner needed to determine "in a mathematical like fashion" the danger passed. See Br. of Resp. p. 16.

Golden is a correct statement of law, one cannot pile on force after the danger has passed, because if the danger has passed, it is no longer self-defense, it is unlawful vindication. This statement of law was confirmed after Campbell in State v. Jones, 133 S.C. 167, 130 S.E.2d 747 (1925) *overruled on other grounds by State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996). Jones held the following:

Once conceded that the defendant in repelling the attack of his assailant, has used more force than was reasonably necessary, his plea of self-defense, which up to the moment of his repelling attack was perfect, immediately falls to the ground, and he is held in law as the aggressor from the beginning of his attack; the degree of his responsibility must be determined therefore by the character of his attack, the nature of the weapon used, and the extent of the injury inflicted, just as if there had been no previous attack upon him.

Jones, 130 S.E. at 750. This Court correctly noted that in State v. Hendrix, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978), the Supreme Court found that a person is justified in continuing to shoot in self-defense "until it is apparent that the danger to his life and body has cease[d]." An additional case reaffirming this principle is State v. Francis, 152 S.C.

17, 39, 149 S.E. 348, 356-57 (1929) (reaffirming the principle that a person's "resistance must not be in enormous disproportion to the injury threatened" pointing out the "rule which admits of no excuse for taking human life except necessity") (citation omitted).

This Court also correctly noted its prior decision in State v. Zeigler, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct. App. 2005) that notes a jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. Id. The instruction did not shift the burden, it just stated a long, still-standing rule of law that the use of self-defense must be proportional. State v. Wood, 1 S.C.L. (1Bay) 351 (1794).

CONCLUSION

For all of the foregoing reasons, this Court should deny the petition for rehearing.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Bar No. 68571

BY: 
DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR PETITIONER

February 11, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Bamberg County
Court of Common Pleas
The Honorable James R. Barber, III, Circuit Court Judge.

FRANKIE LEE BRYANT,

RESPONDENT,

v.

THE STATE OF SOUTH CAROLINA,

PETITIONER.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the the Return to Petition for Rehearing, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Lara M. Caudy, Esquire
SC Commission of Indigent Defense
Post Office Box 11589
Columbia, SC 29201

This 11th day of February, 2016


CAROLINE COLLINS
LEGAL ASSISTANT

The South Carolina Court of Appeals

Frankie Lee Bryant III, Respondent,

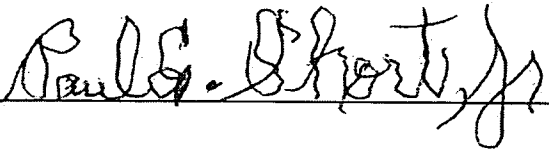
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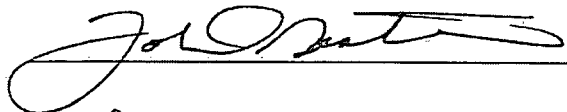
State of South Carolina, Petitioner.

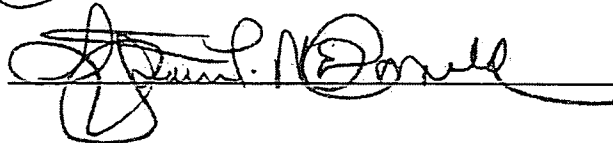
Appellate Case No. 2012-206008

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

cc:

David A. Spencer, Esquire

Alan McCrory Wilson, Esquire

~~Lara Mary Caudy, Esquire~~

Christina Catoe Bigelow, Esquire

FILED

March 24, 2016