

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Spartanburg County
Honorable J. Mark Hayes, Circuit Court Judge

RECEIVED

AUG 04 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHRISTOPHER ALLEN MIDDLETON

APPELLANT

APPELLATE CASE NO 2015-002232

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing appellant's requested jury instructions for self-defense and for the lesser-included offense of second-degree assault and battery?

STATEMENT OF THE CASE

On March 12, 2015, a Spartanburg County grand jury indicted appellant Christopher Allen Middleton for attempted murder and possession of a weapon during commission of a violent crime. R. 433 - 434. On October 12, 2015, appellant was tried before the Honorable J. Mark Hayes and a jury. R. 1. Meghan Gilmer represented the State. R. 1. Joshua Schultz represented appellant. R. 1. The jury convicted appellant on both charges. R. 420, l. 10 – 421, l. 10. Judge Hayes sentenced appellant to concurrent terms of thirty years' imprisonment for attempted murder and five years' imprisonment on the weapons charge. R. 430, l. 19 – 431, l. 4. This appeal follows.

ARGUMENT

The trial court erred in refusing appellant's requested jury instructions for self-defense and for the lesser-included offense of second-degree assault and battery.

Appellant's wife, Robert Undra Cohen-Middleton ("Wife"), accused him of stabbing her. R. 178, l. 21 – 186, l. 3. According to Wife, she returned home from a medical procedure and went to her room to rest. R. 176, ll. 11 – 18. Appellant took her to the doctor and brought her home. R. 174, ll. 1 – 2. Wife got into bed. R. 176, l. 11 – 177, l. 16.

Wife claimed that at some point in the night, appellant entered the room, stood in the door and said, "bitch, I hate you." R. 179, ll. 8 – 9. Appellant had learned that Wife intended to divorce him. R. 180, l. 21 – 181, l. 4. After arguing, Wife claimed appellant stabbed and hit her. R. 181, l. 5 – 187, l. 3. Supposedly after stabbing her, appellant then got in the bed beside Wife and went to sleep. R. 185, ll. 2 – 13.

Wife had another medical procedure scheduled for the next morning. R. 101, ll. 8 – 11. When Wife did not show up for the appointment, a family friend named Loreena Miller-Bobo ("Bobo") and Wife's father went to her house to check on her. R. 101, ll. 15 – 24. R. 102, ll. 13 – 20. Bobo claimed appellant opened the door holding a "something silver" in his hands and had blood on his shorts. R. 112, ll. 2 – 20. Appellant ran into the woods. R. 113, ll. 9 – 13.

Bobo found Wife in her bed. R. 115, ll. 21 – 24. Her father saw blood. R. 143, ll. 10 – 15. The police arrived at about the same time. R. 143, ll. 6 – 7. The EMT who responded "noted several stab wounds" and had Wife transported to the hospital by helicopter. R. 277, ll. 3 – 24. Wife's most serious injury was a stab wound that put a hole in her stomach. R. 88, ll. 9 – 18. Wife ultimately recovered from this wound. R. 188, ll. 6 – 189, l. 17.

Bobo was living with Wife and appellant. R. 94, ll. 7 – 9. The night of the incident, Bobo stayed at a friend's house because appellant and Wife got into an argument. R. 99, ll. 9 – 20. Bobo stated that she left because, “her and Chris had got into it and I just wanted to let stuff die down.” R. 99, ll. 15 – 17.

The first police officer on the scene was given a knife with blood on it by Bobo. R. 155, ll. 6 – 20. The knife was wrapped in a towel. R. 155, ll. 14 – 15. The police recovered another knife during their investigation. R. 243, l. 13 – R. 244, l. 3. When the police took appellant into custody, they noted that he “had some injuries.” R. 246, ll. 19 – 22. Appellant had “lacerations and puncture wounds.” R. 246, ll. 19 – 22. The police officer stated appellant had “three puncture type injuries to the abdomen.” R. 247, ll. 20 – 23. SLED could not exclude appellant as a contributor to the DNA mixture found on the knife recovered from the house. R. 339, ll. 5 – 19. Appellant's blood was found on the other knife recovered by police. R. 343, ll. 15 – 24.

After the close of the evidence, appellant requested a self-defense charge. R. 360, l. 5 – 361, l. 23. Defense counsel argued appellant was entitled to a self-defense charge because of the evidence of appellant's wounds and the DNA evidence on both knives. R. 360, l. 5 – 361, l. 23. The trial judge refused to give a self-defense instruction. R. 372, ll. 12 – 20.

Appellant also requested the trial judge charge the lesser-included offense of second degree assault and battery. R. 362, l. 1 – 365, l. 20. Appellant argued that second degree assault and battery “involves moderate bodily injury, which I believe is a question of fact for the jury.” R. 365, ll. 10 – 12. Defense counsel cited the statutes defining “moderate bodily injury.” R. 364, ll. 11 – 20. The trial judge refused to charge this lesser-included offense. R. 373, ll. 3 – 7.

The trial judge erred in refusing to charge self-defense. “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. Muller, 282 S.C. 10, 10, 316 S.E.2d 409, 409 (1984). “When reviewing the circuit court’s refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant.” State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608-09 (Ct. App. 2012).

A trial judge has the responsibility to craft a self-defense charge tailored to the facts of a case. State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011); State v. Fuller, 297 S.C. 440, 444-45, 377 S.E.2d 328, 331 (1989). As this Court recognized in Fuller, there is a “body of common law self-defense” and trial judges must “consider the facts and circumstances of the case at bar in order to fashion an appropriate charge.” Fuller at 443, 377 S.E.2d at 330.

The trial court ignored evidence that there was a struggle. Appellant knew that Wife planned to divorce him. R. 180, l. 21 – 181, l. 4. Wife testified that they had a disagreement. R. 181, l. 5 – 187, l. 3. Appellant’s DNA was found on both the knife discovered at the scene by Bobo and on the knife later recovered by the police. R. 339, ll. 5 – 19. R. 343, ll. 15 – 24. Furthermore, the wounds the police documented on appellant were strong evidence of a struggle. R. 247, ll. 20 – 23. Appellant’s wounds were puncture wounds—which are consistent with a knife fight rather than wounds suffered in the course of the attack described by Wife.

The trial court’s refusal to give a self-defense charge could not rightfully be based on the defendant’s failure to present any evidence. The defendant has no burden to present evidence. U.S. Const. amends. V, VI, XIV. The State has the burden of disproving self-defense beyond a reasonable doubt. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). Some

evidence of self-defense existed in this case and the trial judge erred in refusing appellant's requested charge.

The trial court also erred in refusing to charge second-degree assault and battery because it was a question of fact whether Wife's injuries were "moderate bodily injuries" as defined in the statute. S.C. Code Ann. § 16-3-600(A)(2). 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). Moreover, when determining whether the evidence requires a charge on a lesser included offense, the court views the facts in the light most favorable to the defendant. See Knoten, 347 S.C. at 302, 555 S.E.2d at 394 (requiring the trial court to view facts in the light most favorable to a defendant when determining whether to charge involuntary manslaughter).

The assault and battery statute defines "moderate bodily injury" as:

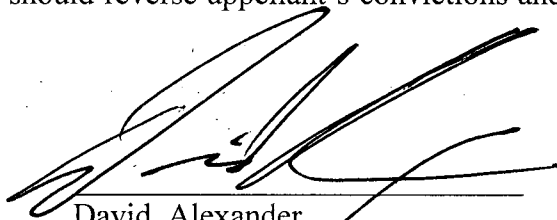
physical injury that involves prolonged loss of consciousness, or that causes temporary or moderate disfigurement **or temporary loss of the function of a bodily member or organ, or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia** or injury that results in a fracture or dislocation. Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.

S.C. Code Ann. § 16-3-600(A)(2) (emphasis added). A person is guilty of second-degree assault and battery if they unlawfully injure another person and it results in "moderate bodily injury." S.C. Code Ann. § 16-3-600(D). Second-degree assault and battery is differentiated from ABHAN because ABHAN requires "great bodily injury," which is defined as "protracted loss or impairment of a bodily member or organ." S.C. Code Ann. § 16-3-600(A)(1) and (B)(1).

Because there was evidence that Wife suffered only a temporary injury to an organ (her stomach), it was a question of fact whether she suffered a great bodily injury or a moderate bodily injury. Appellant was entitled to have the jury determine this question of fact and the trial judge erred in refusing to give this requested charge.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and remand this case for a new trial.

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of August, 2016.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher Allen Middleton states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before The Honorable J. Mark Hayes, which was held on October 12-14, 2015, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, He asks the Court to relieve him as counsel for Christopher Allen Middleton.

Respectfully Submitted,

David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

This 4th day of August, 2016.

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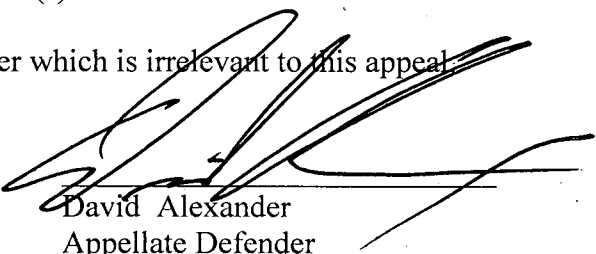
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Trial transcript:
- (2) True-billed indictment(s)

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

August 04, 2016



David Alexander
Appellate Defender

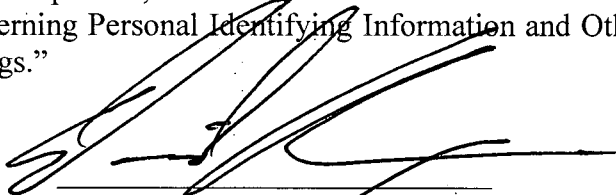
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ATTORNEY FOR APPELLANT

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."

August 04, 2016.

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

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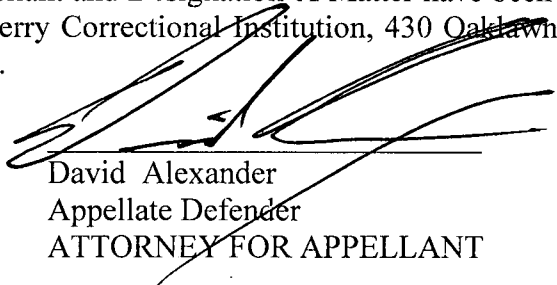
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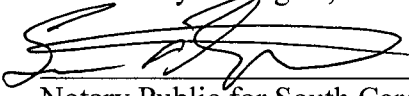
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, 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 have been served on Christopher Allen Middleton, 213662, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 4th day of August, 2016.


David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of August, 2016.

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