STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

The Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT

V.

MATTHEW CORY DWYER,

APPELLANT

Appellate Case No. 2015-002290

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

SUSANNAH R. COLE
Assistant Attorney General
SC Bar No. 68383

South Carolina Office of Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-0265

ERNEST A. FINNEY, III
Solicitor, Third Circuit
141 North Main Street
Sumter, SC 29150
(803) 436-2185

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Cases

APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to charge self-defense when evidence showed that appellant and the decedent, who was ex-military and knew martial arts, got into a fight after a sexual advance in the decedent's moving car and that the appellant was scared?

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

The court properly refused to charge self-defense because there was no evidence supporting three of the elements of self-defense: that the Appellant was without fault in bringing on the difficulty, that the Appellant had a reasonable belief he was in imminent danger, and that there was no other probable means to avoid the danger.

RESPONDENT'S STATEMENT OF THE CASE

A Sumter County Grand Jury indicted Appellant, Mathew C. Dwyer, in July of 2015 for the possession of a weapon during a violent crime and the murder of Johnny Singleton. (Indictment Number 2015-GS-43-0623.) On October 19, 2015, Appellant's case was called to trial before the Honorable Maite Murphy. (Transcript p. 1.) Appellant was represented by John S. Keffer, Esquire. (Tr. p. 1.) Assistant Solicitor John P. Meadors represented the State. (Tr. p. 1.) At the conclusion of the five-day trial, the jury returned a verdict of guilty on both charges. (Tr. p. 1; Tr. pp. 476, line 21 – p. 477, line 14.) Judge Murphy sentenced Appellant to forty-five years' imprisonment for murder and a concurrent term of five years' imprisonment for the weapons charge. (Tr. p. 487, line 22 – p. 488, line 4.) Thereafter, Appellant filed a timely notice of appeal. (Notice of Appeal.)

RESPONDENT'S STATEMENT OF FACTS

On the morning of January 27, 2015, emergency medical personnel responded to the scene of a crashed vehicle located off S.C. Highway 521 in Sumter County. (T. p. 79, lines 7-20.) EMS workers found the vehicle in a ditch, with the rear of the car resting against an embankment. (T. p. 80, lines 1-3.) In the back seat of the vehicle, a dead man was in a seated position. (T. p. 80, lines 8-12.) The victim's legs were draped across the center console. (T. p. 81, lines 19-22.) The rear window was broken out, the front passenger window was down, and the driver's window was broken. (T. p. 82, lines 19-23.) The man had dried blood by his left ear, on his pants near his left ankle, on his pants near the right back pocket, and by the right front pants' pocket. Blood was also on the victim's jacket, passenger side front seat, passenger side front door frame, and on the rear seat. (T. p. 82, line 23 – p. 83, line 3.) EMS noted brain matter on the rear seat below the window on the right side of the car and a wound to the back of the man's head. (T. p. 83, lines 4-7.) The vehicle was in reverse gear. (T. p. 81, lines 3-11.)

Investigator Michael McCauley, a crime scene investigator with the Sumter County Sheriff's Department, responded to the scene that morning. (T. p. 90, line 13 – p. 92, line 17.) The investigating officers were suspicious of the victim's placement inside the car and the blood and bodily fluids surrounding the body. (T. p. 93, lines 1-11.) The victim's head was resting over the back seat, just before the rear window. (T. p. 95, lines 21-24.) Blood found on the victim's pants leg and on the passenger side headrest was more consistent with a transfer pattern than with high velocity spatter from an injury to the back of the head during a car crash. (T. p. 97, lines 7-23, p. 99, lines 18-24.) McCauley also found blood on the outside of the passenger door. (T. p. 100, lines 1-5.) On the rear floorboard behind the passenger's seat, McCauley found a live round of 380 caliber ammunition. (T. p. 110, lines 6-21.) The victim's phone was found in the

woods behind the ditch and embankment in which the car was located. (T. p. 118, line 18 – p. 119, line 7.)

The following day, McCauley attended the autopsy of the victim at the Newberry Pathology Center. (T. p. 113, lines 2-10.) McCauley examined the victim's clothing he was wearing the night he was killed, as well as the bullet recovered from the victim's skull. (T. p. 114, line 2 – p. 115, line 1.) McCauley identified the bullet as a 380 round of ammunition. (T. p. 132, line 21 – p. 133, line 5.)

Dr. Janice Ross, the State's pathologist, performed the autopsy on the man identified as Johnny Singleton on January 28, 2015. (T. p. 180, line 13 – p. 181, line 16.) Ross found the victim had a gunshot wound to the back of the head and a bruise inside his upper lip but appeared to have no other external injuries. (T. p. 183, lines 2-8.) Dr. Ross believed the injury to the upper lip occurred near the time of death. (T. p.183, line 22 - p. 184, line 2.) The gunshot wound to the back of the victim's head indicated the bullet traveled from the back, right side of the head through the brain and toward the front left of the head into the left sinus cavity. (T. p. 184, line 15 - p. 185, line 9.) Dr. Ross opined the gun was at least two feet away from the victim when it was fired. (T. p. 187, lines 18-24.) The victim's dentures were intact and in place at the time of his death, and his toxicology report was negative. (T. p. 186, lines 20-24; p. 189, line 2.)

Janie Mae Shaw testified she played cards with the victim on a daily basis. (T. p. 150, lines 4-8.) On the night of January 26, 2015, Johnny Singleton ate some food and took a nap at Ms. Shaw's house before playing cards with four other people. (T. p. 150, line 19 – p. 151, line 8.) Singleton left between 9:30 and 10:00 pm that night. (T. p. 151, lines 9-16.) As was his custom, Singleton hid his cash of approximately $500 from the evening's card game inside his sock. (T. p. 151, line 17 – p. 152, lines 1-5.) Singleton was angry as he prepared to leave

because someone was calling him repeatedly. (T. p. 153, lines 20-23.) Ms. Shaw also recognized Appellant as a visitor to her house, but not the night Singleton died. (T. p. 154, line 17 – p. 156, line 8.)

Phone logs from the victim's phone revealed multiple calls made to and received from the victim's phone by Appellant. When investigators called Appellant's phone and identified themselves, Appellant claimed to be Novian Sinclair, a prior roommate of his. (T. p. 360, line 17 - p. 364, line 4.) Appellant maintained he had no information about the death of Johnny Singleton, and he claimed he was not with the victim on the night of his death. Appellant did not attempt to explain why his cell phone records showed calls from his phone to the victim's. (T. p. 338, lines 1-9.) The officers executed a search warrant for Appellant's residence, obtained a DNA sample from Appellant, and questioned him about the death of the victim. (T. p. 212, line 10 - p. 216, line 14.) Appellant continued to deny having any knowledge or involvement in the victim's death. (T. p. 242, line 16 - p. 243, line 20.)

Phone records revealed Appellant also called his brother, Stephen, multiple times on the night of the shooting. In his statement to law enforcement officers with the Sumter County Sheriff's Department, Stephen Dwyer said Appellant called him to come pick him up around 10:30 pm off on Hwy 521. (T. p. 285, lines 2-10.) Stephen asked his brother what happened, and Appellant said, "I F'd up." (T. p. 285, lines 7-8.) Stephen, who needed to give a friend a ride to her place of work, agreed to pick his brother up along the way. (T. p. 285, lines 12-22.) Appellant told Stephen he had been shot and asked him to hurry. (T. p. 286, lines 2-4.)

When Stephen found Appellant, he was near a club off of Hwy. 521, walking toward Sumter. (T. p. 285, line 23 - p. 286, line 1.) Appellant's hand was bleeding and was wrapped with something like a shirt. (T. p. 286, lines 5-6.) Appellant told his brother he did not want to go

to the hospital. (T. p. 286, lines 6-8.) After Stephen dropped his friend off at her workplace, he drove Appellant to his house. Stephen asked Appellant what happened to his hand, and Appellant told him he cut it. (T. p. 286, lines 9-14.) Appellant would not give his brothers any details about the victim that night. (T. p. 286, lines 14-21.)

The day after the shooting, Stephen, who had seen the news that morning, deduced his brother was involved in Singleton's death. (T. p. 287, lines 6-12.) Stephen stopped by his brother's house again on his way home from the gym. (T. p. 287, lines 6-8.) Appellant told Stephen he and the victim were fighting in the car, and the man was ex-military and knew karate. Appellant told his brother he was scared and shot the victim in the head, but he did not mean to shoot him in the head. (T. p. 287, lines 12-17; State's Ex. 75.) Appellant told Stephen "that the dude saw the gun. They were in the car when they were tussling. And after he shot him, the car was wrecked and hit a tree. (T. p. 287, lines 17-20; State's Ex. 75.) Appellant took the victim's wallet and money and threw the victim's phone into the woods. (T. p. 287, lines 21-22.) Appellant also told his brother he hid the gun in the back of a truck at the club off of Hwy. 521. (T. p. 289, lines 7-21.) The following day, when Stephen asked his brother again if he killed Johnny Singleton, Appellant told his brother he did not and claimed he was "just playing" and made up the story he told him earlier. (T. p. 288, lines 1-7.)[1]

[1] The case later took an interesting twist. One day during March of 2015, a security guard at Sumter Mall was approached by a woman he did not know and asked if he was a real cop. (T. p. 142, lines 1-221.) The woman wanted to remain anonymous, but told the guard she had information that might help a case. (T. p. 142, line 24 – p. 143, line 2.) The woman handed him a letter and asked him to give it to the police. (T. p. 139, line 12 – p. 140, line 3; p. 143, lines 2-4.) The letter said "Mathew Dwyer" on the top of the envelope (T. p. 145, lines 17-19), and it was addressed to Demetrius Cooper. The guard handed the letter over to Detective Mathew Yates with the Sumter Police Department. (T. p. 140, lines 3-20.)

The Sumter Police Department, determined the subject of the letter was unrelated to a city case, but discovered the county had a pending case to which the letter was relevant. (T. p. 172, line 17 – p. 174, line 21.) Demetrius Cooper, who was Matthew Dwyer's friend, testified for

ARGUMENT

The court properly refused to charge self-defense because there was no evidence supporting three of the elements of self-defense: that the Appellant was without fault in bringing on the difficulty, that the Appellant had a reasonable belief he was in imminent danger, and that there was no other probable means to avoid the danger.

Introduction

Appellant was not entitled to the self-defense charge because the evidence presented at trial through Stephen Dwyer's testimony did not support the required elements of self-defense. The evidence and testimony presented to the jury clearly showed Appellant was guilty of murder. Appellant initiated the meeting with the victim, he brought a weapon to a meeting with an unarmed man, he admitted to his brother he shot the victim after the victim saw the gun, and he shot the victim while Singleton was operating the car. Appellant presented no evidence he was without fault in bringing about the difficulty; he presented no evidence he was in actual imminent danger of losing his life or sustaining serious bodily injury; his defense was based upon a belief of imminent danger, but it was not reasonable; and he presented no evidence he had no other probable means of avoiding the danger when he killed Singleton. Appellant is not entitled to a jury instruction on self-defense.

How the Issue Was Presented at Trial

Appellant elected not to testify at trial, and the defense chose not to present any evidence to the jury. (T. p. 408, lines 9-13; p. 409, lines 2-5.) After the defense informed the trial court it

---

the State. (T. p. 194, lines 7-16.) Cooper said he received an encoded letter from Dwyer. However, the letter also contained a key code so that Cooper could decipher its contents. (T. p. 196, lines 1-17.) In the letter, Dwyer thanked Cooper for "everything you are doing for me." (T. p. 199, lines 12-18.) Dwyer also told Cooper he needed an alibi for January 26th. (T. p. 200, line 15 - p. 201, line 5.) Dwyer told Cooper the story he wanted Cooper to fabricate about his activities that night if anyone asked him. (T. p.200, line 1 - p. 207, line 14.) Cooper forgot about the letter, but he was later surprised that the letter fell into the hands of law enforcement. (T. p. 208, lines 10-21.)

would rest, Appellant requested a jury instruction on self-defense and involuntary manslaughter. (T. p.413, lines 19-25.) The trial judge rejected the charges of self-defense and involuntary manslaughter, stating:

> THE COURT: In regards to the self-defense issue, Mr. Keffer, the court will respectfully deny your motion. The court finds that there is no testimony to establish the elements of self-defense; that the defendant was without fault, and the defendant was imminent danger, and that there was no other way to avoid the danger. The testimony did not establish those three elements. Further, regarding the involuntary manslaughter, the court finds there is no evidence to support that charge. However there is slight evidence to support and if there's any evidence to support a potential voluntary manslaughter charge, the court will charge it. So I will charge the voluntary manslaughter, but not the involuntary manslaughter. Anything further before we bring the jury out?
>
> MR. MEADORS: I beg the court's indulgence. Judge, I was thinking about State v. Belcher on the ride over here today. There is no evidence at all to mitigate through self-defense. I think and before I argue, I wanted to ask Your Honor. I think I'm allowed to argue it, but Your Honor not charge it. I think I am still allowed to argue the inference of malice from a deadly weapon when there is no evidence. I just want to make sure I am right. I know Your Honor may not charge it, but I think I can still argue it. Is that correct?
>
> THE COURT: Yes, sir.
>
> MR. MEADORS: Thank you.
>
> THE COURT: Do you have any objection to that, Mr. Keffer?
>
> MR. KEFFER: No, Your Honor.

(T. p. 417, line 1 – p. 418, line 8.)

In denying Appellant's request, the trial court specifically said there was "no testimony to establish" the elements of self-defense. The court did not suggest the defense failed to meet any particular burden of proof in offering testimony; instead the court properly cited the complete lacking of evidence supporting these elements as the basis for its ruling. Moreover, the court then correctly cited the "any evidence" standard to support a jury instruction when ruling on voluntary manslaughter. Clearly, the court understood the proper standard for ruling on a requested jury charge.

Standard of Review

As this Court has stated, "[t]he trial court is required to charge the correct law applicable to the case. When a party requests the trial court charge a correct and applicable principle of law, the court must charge it. However, the court is not required to use any particular language in explaining the principle." *State v. Marin*, 404 S.C. 615, 619–20, 745 S.E.2d 148, 151 (Ct. App. 2013) (citations omitted). In reviewing jury charges for error, [appellate courts] must consider the [trial] court's jury charge as a whole in light of the evidence and issues presented at trial. *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011).

"'To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.'" *Brandt*, 393 S.C. at 550, 713 S.E.2d at 603 (quoting *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010)). "A jury charge which is substantially correct and covers the law does not require reversal." *State v. Zeigler*, 364 S.C. 94, 105, 610 S.E.2d 859, 865 (Ct. App. 2005) (citing *State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996); *State v. Hoffman*, 312 S.C. 386, 440 S.E.2d 869 (1994)).

The Law of Self Defense in South Carolina

At one time, self-defense was an affirmative defense in this State, and a defendant bore the burden of establishing it by a preponderance or greater weight of the evidence. *State v. McDowell*, 272 S.C. 203, 249 S.E.2d 916 (1978). However, current law requires the State to disprove self-defense, **once raised by the defendant**, beyond a reasonable doubt. *See State v. Fuller*, 297 S.C. 440, 443, 377 S.E.2d 328, 330 (1989) (emphasis added); *State v. Bellamy*, 293 S.C. 103, 105, 359 S.E.2d 63, 64-65 (1987), overruled on other grounds, *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991) ("It is clear that the defendant need not establish self-defense by a preponderance of the evidence but must merely produce evidence which causes the jury to

have a reasonable doubt regarding his guilt."). *State v. Wiggins*, 330 S.C. 538, 544–45, 500 S.E.2d 489, 492–93 (1998) ("[C]urrent law requires the State to disprove self-defense, once raised by the defendant, beyond a reasonable doubt.")

A self-defense charge is not required unless it is supported by the evidence. *State v. Slater*, 373 S.C. 66, 69, 644 S.E.2d 50, 52 (2007); *State v. Goodson*, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994). To establish self-defense in South Carolina, four elements must be present: (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; (3) if his defense is based upon his belief of imminent danger, the defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the same belief and that the circumstances were such that would warrant a person of ordinary prudence, firmness, and courage to strike the deadly blow 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. *State v. Bryant*, 336 S.C. 340, 344-45, 520 S.E.2d 319, 321-22 (1999); *see also Slater*, 373 S.C. at 70; 644 S.E.2d at 52; *Goodson*, 312 S.C. at 280, 440 S.E.2d at 372. To warrant reversal on appellate review, a trial judge's refusal to give a requested charge must be both erroneous and prejudicial. *State v. Burkhart*, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002).

Failure by the defense to present evidence on **any one** of the above elements precludes a jury charge on the law of self-defense. *See, e.g., Bryant*, 336 S.C. 340, 345–46, 520 S.E.2d 319, 322 (1999) (finding that defendant's testimony failed to establish he did not bring on the difficulty; thus, a self-defense charge was not warranted); *State v. Bruno*, 322 S.C. 534, 536, 473 S.E.2d 450, 452 (1996) (finding that appellant "was not entitled to a self-defense charge, because he presented no evidence that he believed he was in imminent danger of losing his life or

sustaining serious bodily injury"); *Goodson*, 312 S.C. at 280, 440 S.E.2d at 372 (finding defendant was not entitled to self-defense charge when he presented no evidence showing actual or perceived imminent danger). Thus, **the burden of production** lies with the defense for evidence supporting a self-defense charge, but the **burden of persuasion** to disprove the elements of self-defense remains with the State. The trial court applied the proper standard in evaluating the evidence.

Analysis

The trial judge properly denied the requested instruction because Appellant failed to produce any evidence to satisfy three of the elements of self-defense. There was no evidence Appellant was without fault in bringing on the difficulty, no evidence that a reasonably prudent person of would have struck the deadly blow to save himself from serious bodily harm or loss of his life, and no evidence Appellant had no other probable means to avoid the danger when he shot the victim.. The State's evidence at trial showed Appellant initiated contact with Singleton, brought a gun to the encounter, and shot the unarmed victim while he was controlling the car. Stephen Dwyer's testimony his brother was scared because the victim, who was ex-military and knew karate, attempted to force himself on Appellant is minimal evidence Appellant believed himself to be in in imminent danger of losing his life or sustaining serious bodily injury, but this belief was not reasonable. Without more, Appellant is not entitled to the self-defense jury instruction.

Initially, Appellant fails to meet the first requirement for the self-defense charge: specifically, Matthew Dwyer was not without fault in bringing on the difficulty. "Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to assert self-defense." *Bryant,* 336 S.C. at 345, 520

S.E.2d at 322. Here, the testimony concerning the events leading to the encounter between the men came from Janie Mae Shaw, who said the victim was angry because someone continued to call his cell phone (T. p. 153, lines 20-23), and the phone records reflecting Appellant made numerous calls to the victim before he shot him.(State's Ex. 82.) According to State's Exhibit 82, Mathew Dwyer made seven calls to Johnny Singleton by 9:55 pm on January 25, 2015. By contrast, Singleton initiated only two calls to Dwyer during that period. (State's Ex. 82.) It is clear from the testimony Appellant was the caller who repeatedly phoned Singleton to set up the meeting between the men.

Further, the only information about the actual encounter arose from Stephen Dwyer's statement to the police detailing what his brother told him happened that night. According to Stephen, the victim gave Appellant money in exchange for sexual favors.[2] (T. p. 274, lines 1-15.) Stephen testified the victim gave Appellant his wallet before anything transpired and then pulled the car over. (T. p. 274, lines 8-13.) Moreover, Stephen told the police his brother possessed a 380 caliber firearm because Appellant pointed it at Stephen a few weeks prior to the shooting. (State's Exhibit 75 at p. 2.) Thus, the evidence showed Appellant brought a loaded gun to the encounter, which he then used to shoot the victim after the victim saw the gun and the men "were tussling." (State's Exhibit 75, p. 2.)

Further, the uncontroverted testimony at trial showed Appellant initiated and brought a loaded 380 caliber firearm to a consensual sexual encounter in exchange for payment from the victim. Stephen's testimony indicated Appellant agreed to and accepted payment from Singleton

[2] In Stephen's testimony on the direct examination, Stephen said his brother "took the wallet and the money" after he shot Singleton. (T. p. 287, lines 21-22.) Reading his testimony with his statement to police, it is unclear whether "took the wallet" refers to a theft of the wallet from the body or refers to Appellant's act of taking the wallet, which was already given to him by the victim, from the car.

before the men began fighting. Such activity could be reasonably calculated to bring the difficulty that arose in this case, which was Appellant's claim he shot the victim in the head after the men began tussling over the sexual services Appellant would provide. *See, e.g. State v. Slater*, 373 S.C. 66, 644 S.E.2d 50 (2007) (finding the defendant was not entitled to a self-defense charge because the record showed Slater approached an altercation in a parking lot with a loaded weapon by his side).

Moreover, Appellant's participation in an unlawful act – the exchange of sexual favors for payment – precludes him from claiming this first element of self-defense. *See State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) ("Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to assert self-defense."). Stephen testified Singleton gave him Appellant his wallet after they discussed the sexual favors and Appellant accepted it "before anything went down." (T. p. 274, lines 5-10.) Even if the court were to accept Stephen's testimony Singleton later attempted to force himself on Appellant, Appellant cannot claim he was without fault in bringing on the difficulty.

Appellant cannot satisfy the second element of self-defense either, as he offered no testimony he was in imminent danger of losing his life or sustaining serious bodily injury. The victim was sixty-five years old and Appellant was in his early twenties at the time of the murder. (T. p. 182 line 4; p. 482, line 24.) Despite his contention the victim was ex-military and knew martial arts, Appellant offered no testimony the victim threatened to kill or even hurt him. Stephen described the interaction between the men as a "tussle," but the victim had no signs of injury other than the gunshot wound and a bruise inside his upper lip, which occurred at the time of death. (T. p. 183, lines 2-8; p. 267, lines 11-14; State's Ex. 75 at p. 2.) The victim's dentures

were still in place and his toxicology report was negative. (T. p. 186, lines 20-24; p. 189, line 2.) If the men did engage in a "tussle," it was not a physically taxing one.

Further, Appellant also told his brother the victim was in control of the vehicle when he shot him, causing the vehicle to crash into a tree. (State's Ex. 75, at p. 2.) Appellant did not explain how the victim could be a threat to him while still maintaining control of the automobile. Indeed, when asked whether Appellant thought "he was going to die, or thought he [was] in danger of suffering serious injury or dying," Stephen said Appellant had not. (T. p. 277, line 23 – p. 278, line 2.) Appellant could have offered direct evidence of the supposed danger he faced that night, but he elected not to testify at trial. The Court is not required to speculate to fill in this information. Thus, he did not satisfy the second element required to entitle him to the self-defense instruction. *See State v. Bruno*, 322 S.C. 534, 536–37, 473 S.E.2d 450, 452 (1996)"(Since Bruno presented no evidence of that he believed he was in imminent danger of losing his life or sustaining serious bodily injury, he fails the second element of self-defense.)

Appellant instead appears to argue he **believed** he was in imminent danger, or the third element of self-defense. Stephen testified his brother was scared because Singleton was ex-military, knew karate, and attempted to force Appellant to perform sexual favors. (IBOA at p. 8.) Although Stephen's testimony did offer minimal evidence Appellant believed he was in danger, Appellant must still show that a reasonably prudent person would have shot the victim to save himself from the victim's threat.

In *State v. Dickey*, 394 S.C. 491, 716 S.E. 2d 97 (2011), the South Carolina Supreme Court found a security guard who fatally shot a man who he escorted from the building was entitled to a directed verdict on self-defense. Dickey, who was disabled, initially responded to a tenant who was fearful of her guest, who was intoxicated and acting in a threatening manner.

*Id.*at 495, 716 S.E.2d at 98-99. Dickey called the police for assistance, then escorted the man from the building, keeping his distance until the man left the building. *Id.* The man walked down the street, then turned to approach Dickey in an "an aggressive manner." *Id.* at 497, 719 S.E. 2d. at 100. Dickey saw the man reach under his shirt and believed him to be reaching for a weapon, so he him. At the scene, Police found a broken liquor bottle with a blood smear matching the victim's blood. *Id.* The court considered several factors in finding Dickey's belief he was in imminent danger reasonable, saying "a person of Petitioner's stature and limited agility would entertain the same fear when faced with an attack by a belligerent, intoxicated, more agile, and younger male, who appeared to be reaching for a weapon." *Id.* at 502, 716 S.E.2d at 102.

By contrast, in the case before the court, Appellant was younger than the sixty-five year old victim. Appellant knew his victim well enough to call the victim repeatedly and then agree to ride in the victim's car. According to Stephen's testimony, the victim gave Appellant his wallet in exchange for Appellant's agreement to provide sexual favors. Appellant offered no evidence of the victim's stature or posture toward him other than he tried to "force" him and a "tussle" broke out. Appellant told his brother that although the victim pulled the car over, he was still operating the vehicle. Therefore, Singleton could not also be fully engaged in a physical confrontation while maintaining control of the car. Moreover, Appellant offered no evidence the victim was armed or intoxicated. The only evidence of the weapon at the scene was the live round of the 380, the bullet in the victim's skull, and Stephen's testimony Mathew possessed such a gun. The fact the victim was ex-military and Appellant believed he knew karate, without more, does not make his reaction in shooting the victim reasonable. And whereas in *Dickey*, the defendant shot the man after he believed the man to be reaching for his weapon, Appellant shot Singleton after the victim "saw the gun" and "didn't mean to shoot him in the head." (State's Ex.

75.) Either the Appellant was inexplicably and unreasonably afraid of the victim, or he shot him accidentally. Neither factual scenario supports the third element of self-defense.

Similarly, Appellant offered no evidence he had no other means of avoiding the shooting death of Singleton. According to Stephen's testimony, the men pulled the car over when the tussle broke out. No evidence was presented that the car door was locked or that the car was in motion, precluding Appellant from simply exiting the vehicle. The evidence showed that even if Appellant were engaged in a struggle with the victim and he was afraid of him, he did nothing to extricate himself from the situation and went straight for his gun. Moreover, Appellant shot the victim as soon as the victim saw the gun, so he never offered the victim a chance to avoid a deadly confrontation by backing down from the "tussle." Accordingly, Appellant's actions proved he failed to meet the fourth required element to be entitled to a self-defense instruction, and the trial judge's ruling he was not entitled to an instruction on self-defense was proper.

For all the reasons discussed above, the trial court properly denied Appellant's request to charge the jury with the self- defense instruction. Indeed, the charges for murder and voluntary manslaughter were the only charges supported by the evidence presented to the jury. As such, Appellant was not entitled to a self-defense charge, and the trial court's ruling should be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

SUSANNAH R. COLE
Assistant Attorney General

ERNEST A. FINNEY, III
Solicitor, Third Circuit
141 North Main Street
Sumter, SC 29150
(803) 436-2185

BY: _____
SUSANNAH R. COLE
SC Bar No. 68383

South Carolina Office of Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-0265

ATTORNEY(S) FOR RESPONDENT

February 17, 2017
Columbia, South Carolina