STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JALANN LEE WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2015-000115

FINAL BRIEF OF 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.

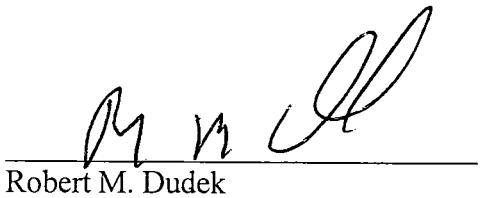
Appellant believed he was in imminent danger, and any reasonable man of ordinary fitness and firmness would have believed he had to strike the fatal blow to save himself from suffering serious bodily injury or from losing his own life. Appellant thus met the second and third elements of self-defense, 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

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JALANN WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2015-000115

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.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Charleston County
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THE STATE,

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v.

JALANN LEE WILLIAMS,

Appellant.

Appellate Case No. 2015-000115

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF THE 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 of law?

RESPONDENT'S STATEMENT OF THE CASE

A Charleston County Grand Jury indicted appellant, Jalann Williams, for murder, armed robbery, and possession of a weapon during the commission of a violent crime. (R.p.4, lines 15-17, p.5, lines 4-7). Appellant proceeded to a jury trial on January 5, 2015 and was represented by Christopher Murphy, Esquire. (R.p.1). Greg Voigt, Esquire and David Osborne, Esquire of the Ninth Circuit Solicitor's Office represented the State. (R.p.1).

On January 8, 2015, the jury found appellant guilty of murder and possession of a weapon during the commission of a violent crime. (R.p.390, lines 2-9). The jury could not reach a verdict on the armed robbery charge, and the Honorable R. Lawton McIntosh declared a mistrial on that count. (R.p.390, lines 10-11; p.392, lines 3-4). Judge McIntosh sentenced appellant to concurrent terms of thirty (30) years' imprisonment for murder and five (5) years' imprisonment for the weapons charge, with credit for time served. (R.p.393, lines 8-12).

This appeal follows.

RESPONDENT'S STATEMENT OF FACTS

A drug deal gone horribly wrong. In his own words at trial, appellant admitted he was the only one who had a gun on the afternoon of January 30, 2013 and he admitted he was the one who shot and killed Akim Ladson. (R.p.244, lines 8-10; p.271, lines 20-25). And the jury believed him—finding appellant guilty of murder and possession of a weapon. (R.p.390, lines 2-9).

Robert Mitchell, appellant's co-defendant, testified he wanted to buy marijuana from the victim, Akim Ladson, on the day of the shooting. (R.p.197, line 21-p.198, line 5). However, Mitchell stated he did not have enough money, so he asked appellant if he could borrow some money from him. (R.p.198, lines 8-17). Mitchell testified he went to get the money from appellant and he, his girlfriend, and appellant smoked some marijuana while they waited outside for Ladson to arrive. (R.p.199, lines 5-14). They waited at a mobile home park in North Charleston, where appellant was staying with his girlfriend. (R.p.63, lines 23-24; p.198, lines 15-21). Mitchell further stated appellant told him he needed to make some money fast, specifically testifying:

> A: [Appellant] was like you know I need to hit a lick you know what I'm saying.
>
> Q: Let me stop you there. [Appellant] needed to hit a lick. What does that mean?
>
> A: A lick is a come up of anyone a jam or anything.
>
> Q: It's a robbery?
>
> A: It could be a robbery. It's a quick come up—that's what a lick is.
>
> . . .
>
> Q: Just a quick way of raising cash?

A: Right.

Q: He needed some money?

A: Right.

(R.p.199, line 19-p.200, line 3, p.200, lines 8-11). Mitchell explained that appellant told him he wanted to rob Ladson and, when Mitchell told appellant he did not think Ladson would have any money, appellant told him, "if [Ladson's] got money you know I'll get that." (R.p.200, line 22-p.201, line 5). Moreover, Mitchell testified he knew appellant had a gun with him that day, that appellant had the gun for as long as Mitchell knew him because in their "line of business some people carry guns," and appellant's plan all along was to steal money and marijuana from Ladson. (R.p.202, lines 20-25; p.223, line 24-p.225, line 19).

Once Ladson arrived, Mitchell testified he and appellant got in the back seats of the SUV, while Ladson was in the front passenger seat and Ladson's girlfriend was driving. (R.p.201, lines 6-18; p.202, lines 10-11). Mitchell stated he was weighing the marijuana on a digital scale when he "heard a commotion" and looked up and saw appellant and Ladson struggling over the gun. (R.p.201, lines 19-21; p.203, lines 9-12). However, Mitchell stated it did not appear Ladson was hitting appellant, or that Ladson was reaching for the gun, but that he saw the gun in appellant's hand. (R.p.204, lines 1-20; p.216, lines 15-16). Mitchell testified he heard one shot and he got out of the SUV and ran toward the mobile home park where they had been waiting for Ladson. (R.p.206, lines 13-21). Mitchell stated he saw appellant run from the SUV as well and hide the gun under a mobile home. (R.p.206, lines 16-17, p.206, lines 22-23). Mitchell further testified he told his girlfriend that appellant robbed Ladson. (R.p.223, lines 11-18).

On cross-examination, Mitchell testified he got into an argument at a store earlier in the day with two men who had tried to steal drugs from him in the past. (R.p.210, line 9-p.211, line

10). Mitchell testified one of the men said he was going to get a gun, so Mitchell told his girlfriend to call appellant because he knew appellant also had a gun. (R.p.210, lines 22-25). However, Mitchell admitted to the jury that the argument was unrelated to the planned drug deal involving Ladson. (R.p.210, lines 1-5).

The victim's girlfriend, Alayah Hamlin, testified she and Ladson had been dating for two years at the time of his murder, and she did not know he sold marijuana when they met. (R.p.29, lines 19-20; p.30, lines 22-25). Hamlin stated she was driving the SUV on the day of the shooting, but she did not know at first that she was driving Ladson to a drug deal. (R.p.32, lines 1-6; p.32, lines 19-20). Moreover, Hamlin testified Ladson did not have a gun or other weapon with him. (R.p.33, lines 2-11). When they arrived to pick up appellant and Mitchell, Hamlin testified she did not want them in the SUV because she did not know them, but Ladson told her it would be ok. (R.p.34, lines 9-18; p.35, lines 19-20). Hamlin testified she was on the phone when she noticed a change in Ladson's tone of voice—Hamlin stated she heard Ladson say "I'm serious" and then a long "no." (R.p.37, line 22-p.38, line 1; p.38, line 8). Hamlin further testified she heard appellant say "give it to me," and assumed he was demanding the marijuana from Ladson. (R.p.38, lines 9-13). Hamlin stated she looked over to see what was going on and saw appellant holding a gun over his head in one hand and holding Ladson's arm down with the other hand. (R.p.37, lines 5-7; p.38, line 23-p.39, line 10; p.39, line 14-p.40, line 1). Hamlin testified Ladson and appellant were struggling and Ladson was trying to fight off appellant. (R.p.40, lines 2-10). Hamlin testified she did not see Ladson hit appellant, and never heard Ladson curse or yell at appellant. (R.p.58, line 18-p.60, line 11). Hamlin testified she heard one shot and then another one a few seconds later. (R.p.38, lines 17-20).

Hamlin testified she got out of the SUV to find help and, because her foot was on the

brake, the vehicle kept rolling and hit a nearby mobile home. (R.p.40, line 23-p.41, line 2; p.41, lines 12-14). During her 911 call which was played for the jury and on cross-examination, Hamlin stated she believed Ladson was being robbed as soon as she turned around and saw the gun in appellant's hand. (R.p.44, lines 11-20; p.51, line 25-p.52, line 7). Moreover, when appellant's trial counsel pressed Hamlin on what she saw during the struggle, counsel stated, "I mean, I don't think there was room for people throwing fists right?" (R.p.54, lines 2-3).

Lauren Thrower, Mitchell's girlfriend, also testified at trial. She stated, prior to Ladson's arrival, appellant showed them his gun and talked about his plan to take any marijuana Ladson had with him. (R.p.89, line 19-p.90, line 4; p.91, lines 13-18). Thrower testified she did not go with appellant and Mitchell, but she waited outside at a picnic table for them to get back. (R.p.91, lines 1-4). Thrower stated, after the shooting, she saw appellant hide the gun under the mobile home, that both men were acting paranoid and, when she asked them what had happened, they finally told her appellant had robbed and shot Ladson. (R.p.93, lines 8-24). Thrower further testified appellant and Mitchell split up the marijuana appellant had stolen from Ladson. (R.p.93, line 25-p.94, line 12).

Appellant's girlfriend, Taylor McLean,[1] testified she gave appellant, Mitchell, and Thrower a ride to Mitchell's apartment after the shooting. (R.p.65, lines 9-13). McLean stated, at the time, she did not know about the murder, but she testified appellant was more quiet than normal. (R.p.64, lines 20-21). McLean further testified she heard Mitchell and Thrower in the back seat talking about getting rid of their cell phones and she could hear a lot of sirens in the area. (R.p.66, lines 1-9).

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[1] Appellant and McLean have two children together. (R.p.62, lines 8-11). McLean lived with her grandmother and children at the mobile home park in North Charleston where appellant was staying at the time of the shooting. (R.p.62, lines 13-14; p.62, lines 20-21).

The first officer to arrive at the scene saw the SUV against the mobile home, with three doors open. (R.p.24, lines 5-6; p.24, lines 8-14). He testified he found Ladson dead inside the vehicle—stretched out, face down, with his feet in the floor of the passenger seat, and his head toward the back seat. (R.p.25, lines 8-9; p.25, lines 17-19). Fingerprints collected from the SUV were later matched to appellant. (R.p.120, lines 4-6; p.184, lines 21-23). Moreover, the gun used in the murder was found under the mobile home and appellant admitted to police that he used it to shoot Ladson twice. (R.p.142, lines 5-7; p.152, lines 1-3). A firearms expert with SLED testified appellant used hollow point bullets to kill Ladson, which expand on impact to cause the most amount of damage. (R.p.193, lines 18-22; p.194, lines 6-13).

The investigator who interviewed appellant after his arrest testified appellant gave conflicting details as to what happened—first stating he never showed the gun to Ladson, but then telling police Ladson reached for it. (R.p.147, lines 10-11; p.148, lines 2-8). Police believed the struggle began after appellant pointed the gun at Ladson, who then realized appellant and Mitchell were not going to pay him for the marijuana. (R.p.146, line 24-p.147, line 8).

Appellant testified Mitchell was going to give him a "couple of grams" of marijuana to smoke after the drug deal and, while he was willing to loan Mitchell some money, he needed it back by the end of the week. (R.p.232, lines 2-9; p.236, lines 18-21). Appellant also made it clear during his testimony that he had the gun because he was worried about the men Mitchell argued with earlier in the day—he **was not** protecting himself from Ladson. (R.p.233, lines 11-17; p.235, lines 2-5). On cross-examination, in response to the question if he was scared of Ladson, appellant testified:

> A: Not in the sense of—I didn't really know him to be afraid of him to be honest with you.

Q: You waited all day for him to show up with that gun but it wasn't because you were afraid of him?

A: No, sir.

Q: Or anything that he would do to you?

A: No, sir.

(R.p.270, lines 10-17). Appellant testified Ladson got "loud" and yelled when appellant asked Mitchell to open the bag of marijuana so he could see what kind it was, and Ladson grabbed appellant's shirt near his neck and pulled him toward the center console. (R.p.241, line 24-p.242, line 9; p.242, lines 13-15; p.243, lines 12-24). Appellant testified he "ended up just pulling out the gun" and shooting Ladson—shooting a man whom he knew did not have a gun. (R.p.244, lines 8-9). Appellant admitted in front of the jury that he never saw another gun, never saw Ladson with a gun, and he was the only one in the SUV to pull out a weapon. (R.p.271, lines 20-25; p.272, lines 15-17). Moreover, appellant admitted he did not tell police Ladson grabbed his neck and never told anyone details of the struggle—until he testified at trial. (R.p.275, line 8-p.276, line 9). Appellant further testified he ran away from the scene of the deadly shooting, without looking back to see if Ladson was alive, and dropped the gun down on the ground next to the mobile home where McLean lived. (R.p.248, lines 1-3; p.248, lines 12-14; p.248, lines 20-22).

ARGUMENT

The trial judge properly refused to instruct the jury on self-defense where the evidence presented did not support the charge and the judge carefully considered the elements of self-defense prior to his ruling.

Relevant Facts:

As referenced above in Respondent's Statement of Facts, the evidence and testimony presented to the jury clearly showed appellant was guilty of murder. Appellant admitted he carried a gun with him to the drug deal. And the witnesses corroborated that testimony—appellant was the **only one** with a gun in his hand on January 30, 2013. Appellant's victim, Akim Ladson, did not have a weapon with him.

At the end of the defense's case, appellant's trial counsel requested a jury instruction on self-defense. (R.p.290, lines 12-14). The trial judge stated he did not think he would charge self-defense, but would look at the elements again and rule the next day. (R.p.290, lines 15-20). The judge stated he was also considering a jury instruction on voluntary manslaughter. (R.p.290, lines 5-7).

The following day, the trial judge rejected a charge on self-defense, stating:

> I've looked through some cases and consulted with my fellow brethren up here and I'm not charging self-defense. I understand your objection and I'll let you put your grounds for objection on the record but in my mind [appellant] fails on the very first element and that is that he was not without fault in bringing on the difficulty.
>
> The basis behind that one is; he 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 himself 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 himself with the victim.

(R.p.295, lines 3-17). The judge further found the evidence failed to support the last element of

self-defense because there was no evidence that once the altercation started, appellant did anything to extricate himself from the situation. (R.p.295, lines 18-21). Instead, the judge found the evidence showed appellant "went straight to his weapon and killed" Ladson. (R.p.295, lines 21-22). Appellant's trial counsel noted his exception to the ruling.[2] (R.p.296, lines 1-3).

Discussion:

The law to be charged is determined by the evidence presented at trial. *State v. Goodson*, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994). When reviewing the trial judge's charge, the charge must be viewed as a whole. *State v. Rabon*, 275 S.C. 459, 461, 272 S.E.2d 634, 635 (1980). If the charge as a whole is substantially correct and adequately covers the law, then reversal is not necessary. *Id.* at 462, 272 S.E.2d at 636.

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); *Goodson*, 312 S.C. at 280, 440 S.E.2d at 372. 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,

[2] The trial judge also ruled he would charge the jury on voluntary manslaughter. (R.p.296, lines 15-16). However, appellant asked the judge not to give that instruction and to proceed solely on the murder charge. (R.p.298, lines 8-12). Prior to agreeing to the waiver, the judge held a lengthy colloquy with appellant to make sure he understood the consequences of going "all or nothing" on the murder charge and the possible sentencing outcome. (R.p.300, line 3-p.301, line 12).

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. 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 an instruction 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). However, to warrant reversal, a trial judge's refusal to give the requested charge must be both erroneous and prejudicial. *State v. Burkhart*, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002).

Despite appellant's contention that the evidence supported a charge on self-defense, respondent submits the trial judge properly denied the requested instruction because there was no evidence that appellant shot the victim in self-defense. The State's evidence at trial clearly showed the victim was not armed, appellant was the only one in the SUV with a gun, and appellant shot the victim twice.

First element of self-defense

The trial judge was correct in finding the evidence failed to support the first element of self-defense because it was clear from the testimony of multiple witnesses that appellant was not without fault in bringing on the difficulty. *See Slater*, 373 S.C. at 70; 644 S.E.2d at 52 (holding a defendant must prove four elements to show he is entitled to a self-defense charge, including that he was without fault in bringing about the difficulty); *Goodson*, 312 S.C. at 280, 440 S.E.2d at 372 (same); *Bryant*, 336 S.C. at 344-45, 520 S.E.2d at 321-22 (same). Robert Mitchell and Lauren Thrower both testified appellant told them about his plan to take marijuana and money from the victim to make some fast money, and that appellant had a gun with him on the day of the shooting. (R.pp.89-91; pp.199-200; p.202; pp.223-25). Moreover, Mitchell and Alayah Hamlin testified they never saw a gun in the victim's hand, and Hamlin stated further that the

victim did not have a weapon with him in the SUV when he was murdered, and she saw appellant holding the gun in the air and pointing it at the victim. (R.p.33; pp.37-40; p.204; p.216).

Additionally, appellant's own testimony does not support a self-defense instruction because he admitted he brought on the difficulty himself by firing a gun at a man he knew did not have a weapon. *See Bryant*, 336 S.C. at 345, 520 S.E.2d at 322 ("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."). Appellant clearly admitted to the jury that he: (1) was not scared of the victim; (2) was carrying the gun as protection in **an unrelated** incident; (3) never saw the victim with a gun; and, (4) was the only one in the SUV to pull out a weapon. (R.p.233; p.235; p.244; pp.270-72).

Appellant seems to contend the trial judge based his ruling regarding the first element solely on the fact that there was no evidence to show appellant had a concealed weapons permit. However, the trial record clearly disputes that assertion because the judge's statements that appellant "voluntarily went to a drug transaction" armed with a gun and appellant "himself engaged in an argument with the victim in this case" demonstrate that the judge considered **all** of the testimony and evidence presented to the jury when finding appellant was not without fault in bringing on the difficulty. (R.p.295).

Furthermore, appellant's reliance on *Slater*, *supra* is misplaced. While respondent agrees the unlawful possession of a weapon does not preclude a self-defense claim, *Slater*, *supra* clearly held the unlawful possession can, under some circumstances, constitute an unlawful activity so as to preclude the defense "if the weapon is the proximate cause of the killing." *Slater*, 373 S.C. at 71, 644 S.E.2d at 53. Here, appellant's unlawful possession of a weapon was the proximate

cause of the victim's murder. Appellant was not merely in unlawful possession of a gun; he carried the weapon with him to a drug deal, got into some sort of struggle with the victim, and, in appellant's own words, "ended up just pulling out the gun" and shooting an unarmed man twice. (R.p.244). Accordingly, appellant's actions, including the unlawful possession of the gun, proved he failed to meet the requirement that he be without fault in bringing on the difficulty and he was not entitled to a charge on self-defense.

Remaining elements of self-defense

The trial judge was also correct in finding the evidence failed to support the other three elements of self-defense because it was clear from the testimony of multiple witnesses that the circumstances of the struggle were not such as would warrant a man of ordinary prudence and courage to strike the deadly blow to save himself from serious bodily harm or losing his own life and that appellant had probable means of avoiding the danger other than to act as he did. *See Slater*, 373 S.C. at 70; 644 S.E.2d at 52 (enumerating the four elements a defendant must prove to show he is entitled to a self-defense charge); *Goodson*, 312 S.C. at 280, 440 S.E.2d at 372 (same); *Bryant*, 336 S.C. at 344-45, 520 S.E.2d at 321-22 (same). Robert Mitchell testified, from what he witnessed of the struggle, it did not appear that the victim was hitting appellant, or that the victim ever reached for the gun. (R.p.204; p.216). Alayah Hamlin testified she saw the victim trying to fight off appellant, she did not see the victim hit appellant, and never heard the victim yell or curse at appellant. (R.p.40; pp.58-60). Additionally, as noted above, appellant's own testimony shows an ordinary man would not be in fear of death or serious injury where appellant admitted the victim did not have a gun and that he was not scared of him. (R.p.233; p.235; p.244; pp.270-72).

Moreover, appellant's contention that the position of the victim's body is evidence of self-

defense, sufficient to warrant a jury instruction, is without merit. The position of the body does not overcome the overwhelming evidence presented in this case that proves the victim did not have a weapon and never grabbed appellant's gun. Therefore, no reasonable person of ordinary prudence and courage would have believed he was in imminent danger such that he had to strike the deadly blow to save himself from death or serious injury.

Finally, contrary to appellant's assertions, the trial judge properly found the evidence showed appellant did nothing to extricate himself from the situation and went straight for his gun. There were two other people in the SUV, in addition to appellant and the victim, who testified to witnessing the struggle. (R.pp.37-40; pp.58-60; p.201; pp.203-204). At trial, appellant testified Robert Mitchell was "[n]ot even helping" him, and Mitchell looked at him like he did not know what to do. (R.p.244, lines 3-7). From his testimony, it could be inferred that appellant did not ask Mitchell to help stop the altercation or look for other ways of avoiding the deadly confrontation. *See Bryant*, 336 S.C. at 345, 520 S.E.2d at 322 (stating that, to be entitled to an instruction on self-defense, the evidence must show the defendant had no other probable means of avoiding the danger). Accordingly, appellant's actions proved he failed to meet the remaining elements to be entitled to a self-defense instruction and the trial judge's ruling must be affirmed.

Therefore, respondent submits that appellant's argument is without merit, and that the trial judge properly refused to instruct the jury on self-defense.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

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February 17, 2016.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Charleston County
R. Lawton McIntosh, Circuit Court Judge

THE STATE,

Respondent,

v.

JALANN LEE WILLIAMS,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings"

This 17th day of February, 2016.

SHERRIE BUTTERBAUGH
Assistant Attorney General

ATTORNEY FOR RESPONDENT

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In the Court of Appeals

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THE STATE,

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v.

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Appellant.

CERTIFICATE OF SERVICE

I, Sherrie Butterbaugh, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert M. Dudek, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 17st day of February, 2016.

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