THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2017-000911

State of South Carolina.....Respondent,

v.

Jeanette Tvonne Glover.....Appellant.

INITIAL BRIEF OF APPELLANT

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Dated: July 11, 2017

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STATEMENT OF THE ISSUES ON APPEAL

I. **Whether the circuit court committed an error of law when it failed to find that Appellant was entitled to a directed verdict because the State did not know that it needed to disprove self-defense and failed to address the issue following a Rule 59(e) motion?**

II. **Whether the circuit court committed an error of law by concluding that a jury instruction on the law of self-defense was not required because all of the elements had not been met?**

STATEMENT OF THE CASE

On June 9, 2015, Jeanette Glover was tried in Orangeburg Municipal Court before the Honorable Barney Houser and a jury. (Return, R. ___). She was convicted of Criminal Domestic Violence and sentenced to complete a batterer's treatment program. (Return, R. ____).

Jeanette Glover appealed her conviction and sentence on June 10, 2015. (Notice of Appeal to the Circuit Court, R. ____).

Judge Houser's Return was filed on June 29, 2015. (Return, R. ___).

The Honorable Maite Murphy heard oral arguments regarding the appeal on September 28, 2015. (Transcript, R. ____).

On April 11, 2016, Judge Murphy issued a Form 4 Order affirming Glover's conviction. (Form 4 Order, dated April 11, 2016, R. ____).

For unknown reasons, Counsel did not receive notice of the entry of the Form 4 Order until January 13, 2017. On January 20, 2017, Counsel filed a Motion to Reconsider pursuant to Rule 59(e), SCRCP. (Motion to Reconsider, R. ____).

Judge Murphy issued a Form 4 Order dated March 30, 2017, and filed on April 12, 2017, which denied Appellant's Motion to Reconsider. (Form 4 Order, dated March 30, 2017, R. ____).

Appellant filed a timely notice of appeal on April 13, 2017.

STATEMENT OF THE FACTS

This appeal arises out of a criminal appeal from the judgment and sentence of the municipal court. Appellant was charged with Criminal Domestic Violence following an incident on January 2, 2015. Public Safety Officers responded to a 911 call about a verbal dispute. (Electronic Trial Transcript). Officer Gill testified that Mr. Glover told him that Mrs. Glover yelled at him and grabbed his face. (Electronic Trial Transcript). Officer Gill also testified that Mrs. Glover told him that Mr. Glover hit her with a closed fist first and that Mrs. Glover told him that there was a history of domestic violence, which had resulted in Mr. Glover being arrested. (Electronic Trial Transcript). The State then called Leroy Glover. (Electronic Trial Transcript). Mr. Glover testified that he hit his wife first and that he got scratched when she was defending herself from him. (Electronic Trial Transcript).

After the State rested its case, the Defense moved for a directed verdict on the grounds that the State did not disprove the elements of self-defense beyond a reasonable doubt. (Electronic Trial Transcript). After hearing arguments from both parties, Judge Houser denied the motion explaining that the Defense had not given advance notice to the State of the theory of self-defense. (Electronic Trial Transcript). Judge Houser reasoned that the Defendant's failure to disclose the theory of self-defense precluded the State the opportunity to know it had to disprove self-defense. (Electronic Trial Transcript).

Defendant chose not to call any witnesses and rested her case. (Electronic Trial Transcript). She requested a charge on self-defense. (Electronic Trial Transcript). Judge Houser refused to instruct the jury on the law of self-defense and relied on his reasoning from his ruling on the directed verdict motion in support. (Electronic Trial Transcript).

The case was then submitted to the jury. (Electronic Trial Transcript). The jury requested clarification from the Court and ultimately returned a guilty verdict. (Electronic Trial Transcript). Defendant was sentenced to complete a batterer's treatment program. (Electronic Trial Transcript).

STATEMENT OF THE ISSUES ON APPEAL PRESENTED TO THE CIRCUIT COURT

I. **Whether the trial court reversibly erred by refusing to grant Appellant's directed verdict motion on self-defense where the discovery produced by the State specifically indicated Appellant struck complaining witness because complaining witness struck her first, where uncontested trial testimony from the prosecution's own witness indicated Appellant acted in self-defense, and where the trial judge forbade invocation of self-defense, ruling that the burden was on the Appellant to "claim self-defense?"**

II. **Whether the trial court reversibly erred by refusing to instruct the jury on the law of self-defense where uncontested trial testimony from the prosecution's own witnesses, including complaining witness, indicated Appellant acted in self-defense, where the trial court ruled the burden was on Appellant to "claim self-defense" and where Appellant's defense rested on self-defense?**

STANDARD OF REVIEW

Appeals from a municipal court conviction are made to the circuit court. S.C. Code Ann. § 14-25-105 (Supp. 2006). The circuit court does not conduct a de novo review in criminal appeals from the municipal court. *Id.* The appellate court "is limited to correcting the circuit court's order for errors of law." *City of Rock Hill v. Suchenski*, 374 S.C. 12, 646 S.E.2d 879 (S.C. 2007).

ARGUMENT

I. THE CIRCUIT COURT COMMITTED AN ERROR OF LAW BY FAILING TO FIND THAT APPELLANT WAS ENTITLED TO A DIRECTED VERDICT AS A MATTER OF LAW IN LIGHT OF THE STATE'S OWN ADMISSION THAT THEY DID NOT KNOW THEY NEEDED TO DISPROVE SELF-DEFENSE

Appellant's first issue for appeal was whether or not the trial court committed reversible error when it denied Appellant's motion for a directed verdict. At the outset, it must be noted

that this issue was not addressed in the Form 4 Order or the Form 4 Order denying Appellant's Motion to Reconsider.

The State admitted at trial during the directed verdict motion that it did not disprove the elements of self-defense and instead argued that it was the Defendant's burden to establish self-defense. The State's argument was based on a misunderstanding of which party has the burden of proof under the law of self-defense and a misplaced reliance on *State v. Davis*, 282 S.C. 45, 317 S.E.2d 452 (1984), which has since been overturned. Moreover, the trial judge denied the Appellant's motion for directed verdict because "no duty to disprove the elements of self-defense had arisen because State had no notice that the Defense was asserting this claim." Brief of State of South Carolina, Page 1. Appellant respectfully submits that the trial judge's statement is a gross misstatement of the law of self-defense, and constitutes a clear error of law, as nothing in the Rules of Criminal Procedure requires a criminal defendant to give advance notice that he intends to rely on self-defense at trial. See S.C. Crim. P. 5 (providing that criminal defendant has duty to disclose alibi and insanity defense). Further, *State v. Dickey*, 394 S.C. 491, 716 S.E.2d 97 (S.C. 2011) requires that the State must disprove self-defense beyond a reasonable doubt at the directed verdict stage when the uncontroverted facts establish self-defense as a matter of law. *Dickey*, 394 S.C. at 499, 716 S.E.2d at 101. Based on the record presented in this case, including the State's own witnesses, and even viewing the facts in the light most favorable to the State, the evidence establishes that the Appellant acted in self-defense as a matter of law as will be discussed in detail below.

II. EVEN IF THE CIRCUIT COURT DID NOT MAKE AN ERROR OF LAW BY AFFIRMING THE TRIAL COURT'S DECISION REGARDING THE DIRECTED VERDICT MOTION, IT COMMITTED AN ERROR OF LAW WHEN IT AFFIRMED THE TRIAL COURT'S DECISION THAT A JURY INSTRUCTION ON SELF-DEFENSE WAS NOT REQUIRED.

"It is well-settled the law to be charged is determined from the evidence presented at trial, and if *any evidence* exists to support a charge, it should be given." *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) (emphasis added). "If there is *any evidence* of self-defense, the issue must be submitted to the jury." *State v. Burkhart*, 350 S.C. 252, 260, 565 S.E.2d 298, 302 (2002) (emphasis added). "Upon request, a defendant is entitled to a jury instruction on self-defense if he has produced evidence tending to show the four elements of that defense." *Stone v. State*, 294 S.C. 286, 287, 363 S.E.2d 903, 904 (1988).

> 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, or he must have actually believed he was in 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 belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order 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. Light, 378 S.C. 641, 664 S.E.2d 465, 469 (2008). If there is more than "one reasonable inference" as to an element of self-defense, then the inference should "be resolved by the jury, not the court." *State v. Jackson*, 384 S.C. 29, 681 S.E.2d 17 (Ct. App. 2009). "The trial judge commits reversible error if he or she fails to give a charge on an issue raised by the evidence and requested by the defendant." *State v. Lee*, 298 S.C. 362, 364, 380 S.E.2d 834, 836 (1989).

Initially, it must be noted that the trial judge refused to provide a self-defense jury instruction because "there was no testimony from the Defense." (Return, R. ____). In other words, the trial judge refused the requested jury instruction because the Appellant did not take the stand. The circuit court committed an error of law when it failed to overturn this improper, and unconstitutional, burden shifting. While Appellant maintains this error is sufficient to

overturn the circuit court's decision, Appellant presented sufficient evidence on each element of self-defense to warrant to the requested jury instruction.

As to the first element of self-defense, Appellant was not at fault in bringing about the difficulty. The complaining witness testified that he struck the Appellant first. The State took issue with the fact that the complaining witness "recanted" his statement from the night in question during the trial. However, much like *State v. Jackson*, the credibility of the complaining witness's testimony was for the jury to decide.

During oral argument, the State focused heavily on the alleged lack of evidence of the second element of self-defense, the "belief" element. The State argued that *State v. Bruno* was controlling and justified the trial court's refusal to give a jury instruction on the law of self-defense. *Bruno* is distinguishable from the case at bar. In *State v. Bruno*, 322 S.C. 534, 473 S.E.2d 450 (1996), the defendant and victim were involved in a road rage incident. *Id.* The defendant then spotted victim's car at a gas station and instructed the driver to pull over. *Id.* Victim was rummaging through his truck while the parties engaged in a verbal altercation. *Id.* Victim was ultimately shot and killed. Defendant testified that "something snapped and I shot him." *Id.* There was no evidence that the Victim made any threatening moves towards the defendant. Accordingly, the court found that he failed to present any evidence that he believed he was in imminent danger; therefore, he was not entitled to a self-defense jury instruction. *Id.* at 537, 473 S.E.2d at 452.

In the present case, Officer Gill testified as to the previous history of domestic violence between Mr. Glover and Appellant and that Appellant was the victim. Further, Mr. Glover testified that he struck Appellant first and that she was defending herself. Based on the record in this case, Appellant was in such imminent danger of serious bodily harm on the night in question. Appellant was entitled to act on reasonable appearances and was not required to wait

for the situation to get worse. *See State v. Rash*, 182 S.C. 42, 188 S.E.2d 435 (1936) ("He doesn't have to wait until his assailant gets the drop on him, he has the right to act under the law of self preservation and prevent his assailant getting the drop on him . . . ."). Furthermore, the law of self-defense does not require the use of any "magic words" during trial testimony in order for a defendant to establish the elements of self-defense. Finally, the law of self-defense does not require the defendant to call any witnesses or take the stand. The State and the trial judge's implications that this was at issue in the trial is a clear violation of the Appellant's constitutional rights.

The third element of self-defense requires that a hypothetical reasonable person would have entertained the same belief. In the present case, a reasonable woman in Appellant's circumstances would have believed that she needed to defend herself based on the fact that Mr. Glover struck her first and she had previously been a victim of domestic violence at his hands. *See State v. Day*, 341 S.C. 410, 535 S.E.2d 431 (2000).

Finally, it is well-established that there is "no duty to retreat where an attack occurs in one's home." *State v. Wiggins*, 330 S.C. 538, 548, 500 S.E.2d 489, 494 (1998). In the present case, the incident occurred in the marital home. The trial testimony established that Ms. Glover was struck first. Accordingly, there is no dispute as to the fourth element in this case.

In the present case, the trial court committed an error of constitutional proportions when it refused to give a jury instruction on self-defense because "there was no testimony from the defense." The circuit court compounded that error when it incorrectly concluded that a self-defense instruction was not required.

CONCLUSION

For the foregoing reasons, discussed in Issue I, Appellant Glover respectfully requests reversal of her conviction, and remand with instruction for entry of a directed verdict of acquittal. In the alternative, for the foregoing reasons, discussed in Issue II, Appellant Glover respectfully requests this Court reverse the circuit court and remand this case for a new trial.

Respectfully submitted,

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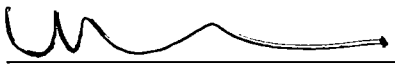
PROOF OF SERVICE

I certify that I have served the **Initial Brief of Appellant** on Respondent by depositing a copy in the United States Mail, postage prepaid, on July 11, 2017, addressed to Jay T. Thompson, Esq., Special Prosecutor for the State of South Carolina at Nelson Mullins Riley and Scarborough, LLP, PO Box 11070, Columbia, S.C. 29211.



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July 11, 2017

The Honorable Jenny Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, S.C. 29201

Re: State v. Jeanette Glover
Appellate Case No. 2017-000911

Dear Ms. Kitchings:

Enclosed is the following:

- INITIAL BRIEF OF APPELLATE (2 copies), and
- PROOF OF SERVICE.

I have also enclosed a self addressed stamped envelope if you would be so kind as to clock in the copies and return one copy back to me.

Finally, please contact me with any questions or concerns regarding this matter.

Sincerely,
ORANGEBURG COUNTY PUBLIC DEFENDER

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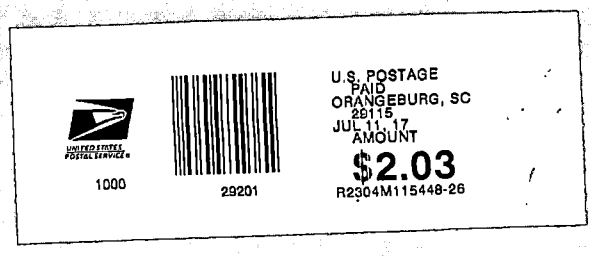

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