ORIGINAL

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY

Court of General Sessions

The Honorable Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2016-000402

THE STATE,

Respondent,

v.

BRANDON HUNTER KENNY RIVERS,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

I.

The trial judge properly declined Appellant's request to charge the jury on self-defense where there was no evidence Brian Steele, the purported shooter in Appellant's version of events, actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; further, Appellant was not entitled to any charge on self-defense where he and Steele brought on the difficulty.

STATEMENT OF THE CASE

Appellant was indicted during the December 2014 term of the Grand Jury for Lancaster County for three counts of attempted murder (2014-GS-29-1538, 2014-GS-29-1539, 2014-GS-29-1540) and failure to stop for a blue light (2014-GS-29-1541). Prior to trial, Appellant pled guilty to failure to stop for a blue light. He was sentenced by the Honorable Thomas A. Russo to imprisonment for a term of three years. Appellant proceeded to a trial by jury on the remaining charges from February 16-19, 2016 in Lancaster, South Carolina. At the conclusion of trial, Appellant was found guilty as indicted. He was sentenced by Judge Russo to imprisonment for a term of twenty-five years for each count of attempted murder, with all sentences running concurrently. Appellant timely field a notice of appeal and subsequently submitted a brief. This Brief of Respondent follows.

STATEMENT OF FACTS

On September 26, 2014, Angela Laney, her nine-year-old daughter, and her husband Terry Laney went to an apartment shared by Kacy Noe, Ronnie Blackwell, Charlotte Parker, and Chris Jones. R. pp. 150-51. Terry Laney was friends with Noe and Blackwell. R. p. 150. Angela Laney testified Terry Laney went to the apartment in order to conduct a transaction for "pills" with Blackwell. R. p. 152. While the Laney family was at the apartment, Kacy Noe's brother, Shane Bolen, came to Noe's apartment. R. p. 154. Bolen's apartment is next to Noe's apartment, and the two units share a common wall. R. pp. 153-54. Laney's daughter was jumping up and down on the couch in Noe's living room with Noe's two daughters when Bolen entered the apartment and immediately confronted the children, complaining, "every time your little fat ass comes over here, you end up knocking shit off my fucking wall." R. p. 155. Angela Laney responded, "You're not going to talk to my daughter that way." R. p. 155. Angela Laney noted Bolen was high on "uppers and downers." R. p. 154. An argument ensued which concluded when Noe told the Laneys, "Y'all get the fuck out of my yard." R. p. 155. The Laneys immediately left the Noe's apartment and went to the home of Jamie Rivers, Appellant's mother. R. p. 155.

Terry and Angela Laney asked Jamie Rivers to babysit their daughter while they went back over to Noe's apartment to "give Shane a proper ass whooping." R. p. 155. Angela Laney noted Appellant was present at his mother's house. R. p. 158. When Terry and Angela Laney left to go back to Noe's house to confront Bolen, Appellant accompanied them on his motorcycle. R. p. 158. Once the group arrived at Noe's house, an argument ensued in the yard causing a neighbor to intervene and tell the Laneys and Appellant that the police would be contacted if they did not leave. R. p. 159.

After the skirmish, the Laneys returned to their home. R. p. 163. Appellant and Angela Laney's brother, Brian Steele, subsequently arrived at the Laney's house and started drinking. R. pp. 164-65. While Appellant was changing jackets at the home, Angela Laney observed him pull two guns out of one jacket and place them into the interior pockets of a different coat. R. p. 166. While Appellant and Steele were at her house, Angela Laney received a text message from Noe that stated, "Why did you bring that skinny ass crackhead, [Appellant], to my house?" R. p. 178. When she received the message, Angela Laney read the message out loud. R. p. 178. Appellant stated, "Fuck that shit, I'm going back over there." R. p.178. After she texted Angela Laney, Noe received a text message from Appellant stating, "This is that skinny crackhead MF. If you would have said that then when I was there earlier, I would have shot and killed all y'all fuckers at that time." R. p. 226. Blackwell subsequently received a phone call from Terry Laney informing him that Appellant and Steele were on the way to Noe's apartment. R. p. 226.

Brian Steele's Testimony

Brian Steele testified at trial for the State.[1] R. pp. 285-314. Steele admitted he and Appellant left the Laney's house to confront Bolen about the incident involving Bolen and the Laney family. R. p. 292. Steele testified he did not see Appellant with a gun while at the Laney's home. R. p. 293. Steele and Appellant then rode on Appellant's motorcycle to the apartment complex where Bolen lived. R. pp. 293-94. Steele testified Noe was on the porch and Blackwell and Jones were standing next to a car. R. p. 295. Blackwell told Steele that Bolen was not home. R. p. 296. Steele knocked on Bolen's door; however, no one answered. R. p. 296. Steele was subsequently asked to leave and informed the police had been called. R. p. 296. Steele returned to Appellant's motorcycle at the same time as Appellant. R. p. 297. Appellant then began

[1] Steele was also charged with three counts of attempted murder. Steele was not promised anything from the State in return for his testimony. R. p. 286.

swearing back and forth with Noe, Jones, and Blackwell, who were all in the yard. R. p. 297. Appellant then reached into his coat pocket and pulled out a gun and began shooting. R. pp. 297-98. Steele saw Jones double over and fall down. R. p. 298. Steele pushed Appellant's arm and yelled at him to stop and Appellant replied, "I'm a real motherfucker." R. p. 298. Steele testified Appellant fired four or five shots in total. R. p. 298. Appellant then drove his motorcycle away from the scene of the shooting. R. p. 298-99. Steele subsequently asked Appellant to let him off the motorcycle. R. p. 299. Steele then ran to his sister's house. R. p. 300.

Ronnie Blackwell's Testimony

Ronnie Blackwell recalled that about an hour after the initial confrontation with Appellant, Terry Laney, and Angela Laney, Appellant and Steele arrived at his home on a motorcycle. R. pp. 198-99. Blackwell stated Appellant never got off the motorcycle, electing to rev the engine and trade insults with Noe, Blackwell, and Jones. R. p. 199. Steele, however, got off the motorcycle and tried to fight "everybody in the world." R. p. 202. Blackwell testified he told Steele he was calling the police, causing Steele to return to the motorcycle and tell Appellant, "Shoot the niggers." R. pp. 203-04. Blackwell noted "beyond a shadow of a doubt, the defendant did the shooting." R. p. 203. Specifically, Blackwell observed the bullets coming from Appellant's gun and Blackwell went out of his way to note Steele did not shoot. R. pp. 203-04. Blackwell recalled Jones, "caught himself trying to duck, that's when the bullet hit him below." R. p. 203.

Kacy Noe's Testimony

Kacy Noe testified Appellant and Steele arrived on Appellant's motorcycle. R. p. 224. Noe stated she was on the porch and Jones and Blackwell were in front of Jones's car. R. p. 225. Appellant stayed on his motorcycle while Steele approached Jones and Blackwell. R. p. 225.

After being told the police were on their way, Steele "just did a U-turn and walked back down the driveway." R. p. 226. Noe observed Steele climb back on the motorcycle, and then she heard three or four gunshots ring out. R. p. 228. Noe recounted everyone diving for cover once the gunshots began. R. p. 228. Noe stated Jones ran to the back of the car and immediately shouted he had been shot. R. p. 228. Noe noted no one that lives at her house has a gun, nor did she see a gun. R. pp. 227-28.

Chris Jones's Testimony

Chris Jones recounted Appellant and Steele returning to the home on Appellant's motorcycle. R. p. 271. Jones testified Appellant and Steele walked up to Bolen's apartment and knocked on the door, however Bolen did not answer. R. pp. 271-72. Jones stated Steele and Appellant then returned to motorcycle where Jones heard Steele tell Appellant to shoot Jones and Blackwell. R. p. 274. Jones observed Appellant dismount the motorcycle and reach in his pocket. R. p. 275. Jones then saw a "spark" and heard somewhere between ten and fourteen gunshots. R. p. 275. One of the bullets fired by Appellant went through Jones's penis and lodged in his right buttock. R. p. 275. Jones was subsequently airlifted to Carolina Medical Center in Charlotte where he had two surgeries over the following two days. R. pp. 276-77. Jones testified at the time Appellant opened fire, no one was shooting at Appellant or Steele. R. p. 284.

Appellant's Testimony

Appellant testified at trial, spinning a vastly different version of events than testified to by Steele, Noe, Blackwell, and Jones. Appellant claimed Steele asked him for a ride back to Bolen's residence because he was "going to whip Shane's ass for talking to [his] niece like that." R. p. 418. Appellant acknowledged he knew Steele was going over there to fight. R. p. 445. Appellant also acknowledged he would "back him up" in the event of a physical altercation

because "if somebody's with me, I'm going to be with them till the end." R. p. 445. Appellant also claimed he did not have a gun when he and Steele went back to confront Bolen. R. p. 418. He alleged the text message Noe sent to Angela Laney where she called him a "skinny crackhead" did not offend him because, "I'm not skinny and I do not smoke crack." R. p. 419. Appellant testified that once Steele went to confront the occupants, someone at the residence declared they were calling the police. R. p. 420. Once he heard the police were being called, Appellant allegedly told Steele "let's go." R. p. 420. Appellant then claimed:

> So I go to get back on my bike, as I go to get back on my bike, I crank my bike up, I pull right to the bowling alley. I turn around. As I turn around, Brian is standing there. He gets on the bike, as he gets on the bike, I turn and look at Chris. When I look at Chris, I see him pull out a gun. I tell Brian, I say, watch out. As I go to pull out, Brian pulls out a gun[2] and starts shooting four times, maybe six at the most. It was not no 10, no 12, no three, no one, none of that. It was at least five to six times.

R. p. 421. Appellant also maintained Steele never implored him to shoot anyone. R. p. 425.

Tonya Snipes's Testimony

Tonya Snipes claimed she was present at Noe's apartment during the shooting. R. p. 391. Strangely, Noe expressly stated Snipes was not present at her apartment that day. R. p. 231. Snipes claimed she went to Noe's apartment to obtain pills. R. p. 393. Snipes claimed she was high on Percocet and Xanax on the day of the incident. R. p. 401. According to Snipes, Appellant and Steele arrived and "acted like they wanted to fight." R. p. 395. Snipes then alleged Jones pulled a gun and Appellant got back onto the motorcycle. R. p. 395. Once Appellant was back on the motorcycle, Snipes claimed Steele began shooting. R. p. 396. Defense Counsel asked Snipes, "how long after Chris shot before Brian shot back?" Snipes claimed that after Jones shot at

[2] This is a significant deviation from the testimony of Angela Laney and Brian Steele. Laney testified she never saw Steele with a gun because her "mama committed suicide my brother don't touch guns." R. p. 183. Similarly Steele noted at trial that he did not have a gun on his person the evening of the shooting, nor did he even own a gun. R. p. 301.

Appellant and Steele, it was a "couple minutes" or "five minutes maybe" before Steele returned fire. R. p. 397. Snipes later stated Jones never fired his gun "because it wasn't real." R. p. 409. Snipes claimed she returned to the house later, which is how she knew the pistol was not real. R. p. 409.

Police Investigation and Pursuit of Appellant

Deputy Chase Minors of the Lancaster County Sheriff's Office was patrolling on September 26, 2014, when he received a call that shots had been fired. R. p. 97. Shortly after receiving the call, Deputy Minors observed a red motorcycle that had been described by officers at the scene as the suspect's vehicle. R. p. 98. After spotting the vehicle, Deputy Minors pulled behind the motorcycle and activated his blue lights. R. p. 98. Upon the activation of his blue lights, Deputy Minors observed the suspect turn around and glance at his patrol vehicle before accelerating. R. p. 99. Deputy Minors and another officer ended up pursuing Appellant for around fifteen minutes before Appellant ultimately wrecked his motorcycle. R. pp. 100-01. Before he wrecked, Appellant was traveling over eighty-five miles per hour. R. p. 100. While Deputy Minors was in pursuit of Appellant, he observed Appellant throwing various objects he retrieved from inside his jacket. R. p. 100-01. After Appellant crashed, officers found him sitting in the middle of a driveway with his hands in the air. Officers subsequently searched Appellant and found a pair of black cotton gloves in the pocket of Appellant's shorts. R. pp. 102-03. Subsequent analysis by SLED confirmed the presence of gunshot residue on the gloves. R. pp. 256-59.

Lieutenant Philip Hall of the City of Lancaster Police Department arrived at the scene of the shooting a little after 10:00 PM. R. p. 79. Lieutenant Hall observed Jones lying on the ground and recalled, "he did have a bullet hole in his penis and it did actually penetrate through and

through on the penis and strike him in the hip." R. p. 79. Once EMS arrived, Lieutenant Hall and the paramedics rolled Jones over so they could begin moving him. R. p. 82. As they rolled Jones over, Lieutenant Hall noticed a starter pistol laying there. R. p. 82. Lieutenant Hall testified the starter pistol was under Jones's backside. R. p. 88. Lieutenant Hall explained a starter pistol does not fire bullets and merely makes a "pop." R. p. 82. Lieutenant Hall clarified starter pistols are the types of guns used at the starting line for marathons. R. p. 82. Ken Taylor, a crime scene investigator with the Lancaster County Sheriff's Office, later analyzed the starter pistol. R. p. 356. Investigator Taylor noted the pistol was filled with a substantial amount of dirt and debris. R. p. 361.

Appellant's Request for a Self-Defense Instruction

During the charge conference, Appellant requested a charge on self-defense. R. p. 464. Specifically, Appellant stated:

> But my request is that there be a self-defense charge with regard to the hand of one, hand of all charge. In other words, some instruction that in the event that the jury concluded that Brian Steele was the shooter in this case, since they're being told that that would subject my client to accomplice liability, that the defense of self-defense would be applicable to my client as a defense as well.

R. p. 464. The trial judge denied Appellant's request, finding:

> From my recollection of all the evidence in the case, regardless of who you want the jury to believe, whether it be the codefendant or Mr. Rivers, both were fairly adamant that their whole purpose in going over there was to fight. Mr. Rivers more so to support the codefendant in his desire to fight. Not that Mr. Rivers had a dog in that fight, so to speak, but that he was taking him over there to fight. And that if he got in a fight, Mr. Rivers was very candid he would have, you know, supported him in that and joined him in that. The - - the other situation is that the codefendant in his testimony never testified that he saw a gun. And that - - so for him to - - first of all, he's the one who goes over there to fight. If he never sees a gun, which he testified he didn't, then it's hard to imagine he's acting in self-defense if he's not defending himself from anything. But be that as it may, the evidence in this case just didn't support - - in my opinion, didn't support a charge on self-defense, but I certainly would note your position.

R. pp. 466-67.

ARGUMENT

I.

The trial judge properly declined Appellant's request to charge the jury on self-defense where there was no evidence Brian Steele, the purported shooter in Appellant's version of events, actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; further, Appellant was not entitled to any charge on self-defense where he and Steele brought on the difficulty.

Appellant contends the trial judge erred in refusing to charge self-defense because Appellant and Snipes testified Jones pulled out a gun as Appellant and Steele were leaving the scene. Appellant's argument lacks merit, as the record does not support a charge of self-defense for two reasons. First, Appellant was not entitled to use Steele as the basis for his right to a self-defense instruction where Steele testified that none of the victims pulled a weapon and that Appellant was the shooter. There is thus no evidence that Steele, who was the purported shooter in Appellant's version of events, actually believed he was in imminent danger of losing his life or sustaining serious bodily injury. Second, Appellant was not entitled to a charge of self-defense where he and Steele brought on the difficulty in the case. Finally, any alleged error in the case is harmless due to overwhelming evidence of Appellant's guilt. Any alleged error is further harmless where Appellant was not prejudiced by the trial judge declining to charge self-defense because the charge was not pertinent to Appellant's defense theory.

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In reviewing a trial judge's jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). An appellate court will not reverse a trial judge's decision regarding a jury charge absent an abuse of discretion. State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006).

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). The trial judge is required to charge only the current and correct law of South Carolina. State v. Buckner, 341 S.C. 241, 246, 534 S.E.2d 15, 18 (Ct. App. 2000). "No instruction should be given by the trial judge, at the request of the appellant, which tenders an issue which is not presented or supported by the evidence." State v. Weaver, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975).

"Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). To warrant reversal, the trial judge's refusal to give a requested charge must be both erroneous and prejudicial. State v. Hughey, 339 S.C. 439, 450, 529 S.E.2d 721, 727 (2000), *overruled on other grounds by* Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009).

To establish self-defense in South Carolina, four elements must be present: (1) the defendant was without fault in bringing on the difficulty; (2) the defendant actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) a reasonable, prudent person of ordinary fitness and courage would have entertained the same belief; and (4) the defendant had no other probable means of avoiding the danger of losing his life or sustaining serious bodily injury other than to act as he did. State v. Santiago, 370 S.C. 153, 634 S.E.2d 23 (Ct. App. 2006) (citing Jackson v. State, 355 S.C. 568, 57-71, 586 S.E.2d 562, 562 (2003); State v. Day, 341 S.C. 410, 416, 535 S.E.2d 431, 434 (2000)). If any one of the four elements required by law is not present, a defendant is not entitled to a self-defense instruction. State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010).

In Appellant's case, the second element of self-defense was not met, as there was no evidence in the record to support the proposition that the actor actually believed he was in imminent danger of losing his life or sustaining serious bodily injury. Appellant's request for a self-defense charge was predicated on Defense Counsel's belief that the jury could conclude Steele was the shooter in the case, and since Appellant was subject to accomplice liability, Steele's alleged right to self-defense would be applicable to Appellant as well. There is insufficient evidence in the record to support this proposition. Appellant's assertion of a right to self-defense is rather unique in that it requires proof that another person actually believed he was in imminent danger of losing his life or sustaining serious bodily injury.[3] Since Appellant's theory of self-defense is vicarious, based on a potential claim held by Steele, Appellant is faced with unique evidentiary bars in order to prove self-defense which he is unable to clear. Appellant utterly failed to provide **any** evidence Steele actually believed he was in imminent danger of losing his life or sustaining serious bodily injury. There is **no** evidence demonstrating Steele's state of mind at the time of the shooting other than Steele's testimony which explicitly contradicts Appellant's assertion. Steele's testimony directly refutes any assertion he actually believed he was in imminent danger. Not only did Steele testify that he was not the shooter, Steele testified that neither Jones, Noe, nor Blackwell displayed a weapon at any time during the confrontation at their residence. Instead, Steele's testimony firmly established that Appellant, without facing any threat or clear provocation, fired at Jones, Noe, and Blackwell after declaring "I'm a real motherfucker." Because Steele's testimony reveals nothing about a subjective, actual belief of imminent danger on his part, Appellant has failed to present any evidence to warrant a

[3] Even assuming, arguendo, Appellant could point to sufficient evidence in the record establishing Steele's state of mind at the time he allegedly fired on Jones, Noe, and Blackwell, Respondent has been unable to find any case in South Carolina where a criminal defendant has been able to assert vicarious self-defense. To the extent Appellant relies on the evidence that Steele fired the gun, none of that evidence goes to Steele's state of mind and Appellant's argument still fails.

charge on self-defense. See State v. Bruno, 322 S.C. 534, 536, 473 S.E.2d 450, 452 (1996) (finding defendant 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."). See also Neal v. Booker, 497 Fed. App'x 445, 450-51 (6th Cir. 2012) (finding where Neal raised a vicarious claim of self-defense based on a potential claim by the shooters, but not by Neal himself who was prosecuted on a theory of aiding and abetting, Neal was not entitled to argue self-defense where he failed to "adduce any evidence suggesting that the passengers in his car had an honest and reasonable belief of the danger of serious bodily harm or death.").

Similarly, Appellant was unable to satisfy the first element of self-defense, as he and Steele were at fault in bringing on the difficulty. Appellant was very candid that he knew Steele was going to fight Bolen and that he would "back him up" in the event of violence because "if somebody's with me, I'm going to be with them till the end." R. p. 445. "Any act of an accused that is reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to assert self-defense." State v. Dickey, 380 S.C. 384, 394, 669 S.E.2d 917, 922 (Ct. App. 2008). " '[O]ne who provokes or initiates an assault cannot escape criminal liability by invoking self-defense. . . .' " State v. Bryant, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999) (quoting Ferdinand S. Tinio, Comment Note: Withdrawal, After Provocation of Conflict, As Reviving Right of Self-Defense, 55 A.L.R.3d 1000, 1003 (1974)). After an accused provokes or initiates an assault, the accused must withdraw from the conflict and communicate his withdrawal through words or actions in order to restore the right to assert self-defense. Bryant, 336 S.C. at 345, 520 S.E.2d at 322.

Appellant attempts to circumvent his liability in bringing about the difficulty by asserting, "he had no reason to believe the confrontation would involve deadly force. He saw no

guns and did not know that Steele had a gun." Br. of App. p. 13. Appellant further asserts he and Steele withdrew from the altercation at the time the shooting began. Br. of App. p. 13. These arguments lack merit. Appellant and Steele went to Noe's residence to enact physical violence and achieved just that. Appellant received text messages calling him a "skinny crackhead" which clearly enraged him, as he reacted by stating, "Fuck that shit, I'm going back over there." R. p. 178. Appellant then texted Noe, "This is that skinny crackhead MF. If you would have said that then when I was there earlier, **I would have shot and killed all y'all fuckers at that time**." R. p. 226. Appellant's text message evinces an intent to fight with more than just his fists. Regardless of whether he or Steele was the shooter, Appellant seems to have gotten the precise result he desired. Further, Appellant and Steele's return to the motorcycle when told the police had been called did not constitute a "withdrawal." Appellant was on or around his motorcycle for the duration of the confrontation. In order to withdraw from the confrontation, Appellant would have to do more than stay in the area he was for the entirety of the dispute. Rather than leaving the area and withdrawing from the conflict, Appellant strategically repositioned himself to his motorcycle to facilitate a speedy escape after the shots were fired.

Finally, even if the trial court somehow erred in declining Appellant's request for a self-defense instruction, any alleged error in this case was harmless due to overwhelming evidence of Appellant's guilt. Error is harmless when it could not reasonably have affected the result of the trial. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990). The key factor for determining whether a trial error constitutes reversible error is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012) (citations and internal quotations are omitted). Angela Laney observed Appellant reacted angrily to text messages calling him a "skinny

crackhead." Appellant then texted Noe, the sender of the offensive message, "This is that skinny crackhead MF. If you would have said that then when I was there earlier, I would have shot and killed all y'all fuckers at that time." After the shooting, Appellant was directly identified as the shooter by Noe, Blackwell, and Jones, all of whom knew and recognized Appellant. Appellant was also implicated as the shooter in the case by his co-defendant, Brian Steele. Upon being spotted by the police, Appellant fled, leading officers on a chase reaching speeds of over eighty-five miles per hour, during which Appellant threw various items from his jacket onto the roadway. Appellant's flight is significant because evidence of flight and other guilty conduct is admissible in South Carolina because a defendant's act of making false or conflicting statements or attempting to flee after committing a crime supports an inference of guilty knowledge and intent on the part of the defendant. State v. Thompson, 278 S.C. 1, 10, 292 S.E.2d 581, 587 (1982), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991). Such an inference is appropriate because "it is not to be supposed that one who is innocent and conscious of that fact would flee." State v. Crawford, 362 S.C. 627, 635, 608 S.E.2d 886, 890 (Ct. App. 2005); see also State v. Freely, 105 S.C. 243, 250, 89 S.E. 643, 645 (1916) ("The flight of one charged with crime has always been held to be some evidence tending to prove guilt. Solomon wrote as a proverb the 'wicked flee when no man pursueth;' and Shakespeare made guilty Hamlet to soliloquize that 'conscience does make cowards of us all.' "). After crashing his motorcycle and finally being detained by police, gloves were found in Appellant's pocket that tested positive for gunshot residue. All of this evidence leads to the obvious conclusion that Appellant was guilty of three counts of attempted murder.

Significantly, error is further harmless where Appellant was not prejudiced by the trial judge declining to charge self-defense. Appellant's theory of the case was one of mere presence

rather than one of acting in concert. Under Appellant's theory of the case, he was merely present at the scene and did not know Steele was armed. During his charge to the jury, the trial judge stated, "However mere presence at the scene of a crime is not sufficient to convict one as a principal on this theory. . . . Mere presence at the scene is not sufficient to prove someone guilty of a crime. A defendant's presence where a crime is being committed or mere association with one who commits a crime does not make a defendant an accomplice or an aider and abettor of the person who is committing the crime." R. p. 526. This instruction rendered any error harmless, as the jury could either find Appellant guilty as a principal under the State's theory of the case, or the jury could find Appellant was not guilty of anything, as he was merely present at the scene under Appellant's theory of the case. The self-defense instruction, therefore, was not pertinent to Appellant's defense theory whatsoever. Appellant's convictions and sentences should be affirmed.

CONCLUSION

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

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

April 20, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
The Honorable Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2016-000402

THE STATE, ...RESPONDENT

v.

BRANDON HUNTER KENNY RIVERS, ...APPELLANT.

DESIGNATION OF MATTER

The undersigned certifies that this Final Brief of Respondent 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."

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April 20, 2017