THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable Maite Murphy, Circuit Court Judge

Case No. 2015-CP-38-00690
Appellate Case No. 2017-000911

State of South Carolina, ... Respondent,

v.

Jeanette Tvonne Glover, ... Appellant.

AMENDED INITIAL BRIEF OF RESPONDENT

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COUNTER-STATEMENT OF THE ISSUES ON APPEAL

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II. Did the circuit court properly affirm the municipal court's exclusion of Ms. Glover's proposed jury instruction on self defense because she failed to present evidence as to all four elements of self defense?

COUNTER-STATEMENT OF THE CASE[1]

Appellant Jeanette Glover was arrested and charged with Criminal Domestic Violence under S.C. Code Ann. § 16-25-20 (Supp. 2015)[2] on January 2, 2015. On June 9, 2015, Ms. Glover was tried by a jury in the Municipal Court for the City of Orangeburg before the Honorable Barney M. Houser. (Return, R. ___.) Ms. Glover did not assert self defense as a defense or notify the State that she intended to present a defense of self defense. At the conclusion of the State's case, she moved orally for a directed verdict, arguing the State did not disprove the elements of self defense beyond a reasonable doubt. (Trial Tr. at 40:1–40:2, R. ___; Trial Audio Recording Track 03 at 0:02–1:06, R ___.) After hearing arguments from both parties, the trial court denied the motion, noting Ms. Glover had not claimed self defense at the time she moved for a directed verdict and finding that the State was not obligated to disprove the elements of self defense until the defendant claimed it as a defense. (Trial Tr. at 42:11–43:12, R. ____; Trial Audio Recording Track 03 at 4:50–6:15, R ___.) Even after this ruling, Ms. Glover chose not to present a case in chief, resting her case without calling any witnesses or presenting any evidence. (Trial Tr. at 44:2–44:5, R. ____; Trial Audio Recording Track 04 at 0:00–0:06, R ___.) At the close of evidence, Ms. Glover requested a jury charge on self defense, which the court declined to give.

At the conclusion of the one-day trial, the case was submitted to the jury, which returned a guilty verdict. (Trial Tr. at 66:2–66:11, R.___; Trial Audio Recording Track 07 at 0:21–0:32, R ___.) Ms. Glover was convicted of a first offense under S.C. Code Ann. § 16-25-20 (Supp. 2015)

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[1] Respondent does not agree to be bound by Appellant's Statement of the Case and includes its own statement as provided by Rule 208(b)(2), SCACR.

[2] S.C. Code Ann. § 16-25-20 was substantially amended effective June 4, 2015 when the South Carolina Criminal Domestic Violence law was overhauled. However, the applicable statute under which Appellant was charged, tried, and convicted was the version in effect before the June 4, 2015 amendment.

and sentenced to 30 days imprisonment or a fine of $2,130, with the provision that the sentence would be completely suspended upon the completion of a six-month batterers' management program. (Trial Tr. at 67:14–68:2, R. ___; Trial Audio Recording Track 08 at 0:24–0:31, R ___; *see also* Municipal Court Disposition Sheet, R. ___.)

The following day—June 10, 2015—Ms. Glover appealed her conviction and sentence to the Circuit Court. Judge Houser filed his Return on June 29, 2015. The appeal was heard by the Honorable Maite Murphy in the Court of Common Pleas for Orangeburg County, South Carolina on September 28, 2015. (*See* Transcript, R. ___.) Judge Murphy affirmed Ms. Glover's conviction on April 11, 2016. (*See* Order Affirming Conviction, R. ___.)

On January 20, 2017, Ms. Glover filed a Motion to Reconsider Pursuant to Rule 59(e), SCRCP. (Notice of and Motion to Alter or Amend the Court's Order, R. ___.) Judge Murphy denied the Motion to Reconsider on March 30, 2017. (*See* Order Denying Motion, R. ___.) This appeal followed.

COUNTER-STATEMENT OF THE FACTS

This appeal arises from Ms. Glover's battery of her husband. On January 2, 2015, officers were dispatched to the Glovers' residence in reference to a dispute between Ms. Glover and Mr. Glover. (Trial Tr. at 15:1–15:12, R. ___; Trial Audio Recording Track 02 at 9:18–9:46, R ___.) Upon arrival, Officer Robert Gill interviewed the Glovers and took photographs of the parties and any injuries sustained. (Trial Tr. at 18:11–19:10, R. ___; Trial Audio Recording Track 02 at 13:35–14:51, R ___.) Mr. Glover told Officer Gill that Ms. Glover had yelled at him and grabbed his face and that he "felt blood dripping from nose." (Trial Tr. at 17:3–6; 20:12–13; 21:3–6, R. ___; Trial Audio Recording Track 02 at 11:29–43; 15:42–16:00; 16:28–16:36, R ___.) Officer Gill observed visible evidence of facial injury to Mr. Glover. (Trial Tr. at 20:12–21:2, R. ___; Trial Audio

Recording Track 02 at 15:41–16:28, R ___.) Ms. Glover told the officer that Mr. Glover had hit her first,[3] but Officer Gill found her account to be implausible because she had not sustained any visible injury and her story was not consistent with the physical evidence. (Trial Tr. at 21:24–22:4, R. ___; Trial Audio Recording Track 02 at 17:27–17:47, R ___.) Accordingly, Officer Gill determined that Ms. Glover was the primary aggressor, which resulted in her arrest. (Trial Tr. at 17:25–18:3, R. ___; Trial Audio Recording Track 02 at 12:35–12:45, R ___.) Mr. Glover subsequently drafted a formal written statement largely corroborating his statements to Officer Gill on the night in question. (Voluntary Statement of Leroy Glover, January 2, 2015, R. ___.)

STANDARD OF REVIEW

When considering an appeal from the denial of a directed verdict, the appellate court "views the evidence and all reasonable inferences in the light most favorable to the State." *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). "If there is *any* direct evidence or *any* substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." *State v. Weston*, 367 S.C. 279, 292–93, 625 S.E.2d 641, 648 (2006) (citations omitted) (emphasis added). "When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence," *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006), and an appellate court will reverse the denial of a directed verdict "only when there is *no* evidence to support the ruling below," *Steinke v. S.C. Dep't of LLR*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999) (emphasis added).

[3] Contrary to the assertion in Ms. Glover's Initial Brief, there was no testimony that Mr. Glover struck Ms. Glover with a "closed fist."

"An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (citations omitted). "When instructing the jury, the trial court is required to charge only principles of law that apply to the issues raised in the pleadings and developed by the evidence in support of those issues." *Id.* at 390, 529 S.E.2d at 539 (citations omitted).

ARGUMENT

This appeal seeks to fundamentally change South Carolina criminal law by adding *de facto* elements that must be proven in every criminal offense for which self defense could be asserted as a defense, regardless of whether those elements are actually part of the offense and regardless of whether the defendant actually seeks to claim self defense. By arguing that the State has the burden to disprove all elements of self defense even if the defendant does not raise it as a defense, Ms. Glover asserts that the State must presumptively and preemptively introduce evidence to disprove a defense that has never been raised, or else the defendant must be acquitted as a matter of law. On its face, this argument is logically flawed and cannot be supported under South Carolina law.

When a defendant asserts that she should not be convicted of a crime because she was acting in self defense, South Carolina law places the burden on the State to prove that the defendant was not acting in self defense. However, when the defendant does not claim self defense, there is no such burden on the State. If the Court were to find in favor of Ms. Glover in this appeal, the Court would be inserting a never-recognized presumption into every criminal offense requiring the finder of fact to presume that a defendant acted in self defense unless proven otherwise. Under the framework presented by Ms. Glover, there would be no requirement that a defendant even claim that she acted in self defense; rather, the elements of self defense would be automatically

merged into every applicable criminal offense as additional elements that the State must prove beyond a reasonable doubt.

I. MS. GLOVER WAS NOT ENTITLED TO A DIRECTED VERDICT BECAUSE SHE FAILED TO PROPERLY AND TIMELY RAISE THE CLAIM OF SELF DEFENSE.

At the close of the State's case at trial, Ms. Glover orally moved for directed verdict, arguing the State had not borne its burden of proving beyond a reasonable doubt that Ms. Glover had not battered her husband in self defense. (Trial Tr. at 40:1–40:2, R. ___; Trial Audio Recording Track 03 at 1:04–08, R ___.) The trial court denied the motion, noting Ms. Glover had not claimed self defense at the time she moved for a directed verdict and finding that the State was not obligated to disprove the elements of self defense until the defendant claimed it as a defense. (Trial Tr. at 42:11–43:12, R. ___; Trial Audio Recording Track 03 at 4:50–6:15, R ___.) Ms. Glover now erroneously argues this constituted reversible error. *See* Appellant's Brief at 4–5.

Ms. Glover's argument incorrectly assumes that in every prosecution involving a crime for which a defendant *could* claim self defense, the State has an affirmative duty to preemptively disprove the elements of self defense during the State's case in chief, even if the defendant has not raised the defense and has given no indication she intends. This is indisputably false. South Carolina precedent is clear that the State's duty to disprove a claim of self defense arises only after the defendant has asserted that defense. *See, e.g., State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011) ("[*W*]*hen a defendant claims self-defense*, the State is required to disprove the elements of self-defense beyond a reasonable doubt.") (citation omitted) (emphasis added);[4] *State*

[4] Ms. Glover relies on *Dickey*, *see* Appellant's Brief at 5, but fails to acknowledge the defendant in *Dickey* did precisely what Ms. Glover failed to do here, namely assert a claim of self defense that placed the burden on the State to rebut that claim. *See Dickey*, 394 at 498, 716 S.E.2d at 100 ("*At the beginning of Petitioner's September 2006 trial*, his counsel moved for the dismissal of Petitioner's murder charge pursuant to the recent enactment of the 'Protection of Persons and Property Act,' which codified the common law Castle Doctrine.") (emphasis added).

v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002) ("Current law requires the State to disprove self-defense, *once raised by the defendant*, beyond a reasonable doubt.") (quoting *State v. Wiggins*, 330 S.C. 538, 544, 500 S.E.2d 489, 492–93 (1998)) (emphasis added).[5]

In this case, Ms. Glover failed to raise the claim of self defense at any point before her directed verdict motion. As articulated in *Dickey* and *Wiggins*, the State is not required to disprove self defense before the defendant has raised it as a defense. Here, Ms. Glover did not raise her claim of self defense until after the State rested, thereby depriving the State of the opportunity to present any additional evidence to disprove Ms. Glover's claim. South Carolina law does not require the State to disprove a claim of self defense that has not been raised. Thus, the trial court properly denied Ms. Glover's motion for directed verdict on the grounds that she did not notify the State that she planned to assert a defense of self defense.

II. MS. GLOVER WAS NOT ENTITLED TO A DIRECTED VERDICT BECAUSE THE TESTIMONY AND EVIDENCE DID NOT INCONTROVERTIBLY ESTABLISH HER CLAIM OF SELF DEFENSE.

Even assuming the State was obliged to preemptively rebut the claim of self defense during its case in chief despite the fact that Ms. Glover had not asserted that defense (an assumption that, as explained above, is incorrect), the Record presents an additional sustaining ground for the trial court's decision. *See, e.g., Williams v. Smalls*, 390 S.C. 375, 381, 701 S.E.2d 772, 775–76 (Ct. App. 2010) (noting that "we can affirm for any reason appearing in the record"). As explained more fully below, the trial court correctly denied Ms. Glover's motion for directed verdict because the testimony and evidence before the jury did not incontrovertibly establish her claim of self defense, and thus a directed verdict was inappropriate.

[5] The fact that this requirement is established in case law rather than in the Rules of Criminal Procedure is of no moment.

At the directed verdict stage, a defendant is entitled to a directed verdict on its claim of self defense only if the facts establishing the elements of the defense are uncontroverted. *Butler*, 407 S.C. at 381, 755 S.E.2d at 460 (affirming trial court's denial of directed verdict on the basis of self defense, noting a directed verdict was inappropriate due to the absence of uncontroverted facts, *i.e.*, there were multiple and inconsistent accounts of the altercation that were inconsistent with the evidence of defendant's injuries) ; *see also State v. Oates*, __ S.C. __, __ S.E.2d __, 2017 WL 3161126, at *7–9 (Ct. App. July 26, 2017) (affirming trial court's refusal to grant defendant's motion for directed verdict based on self defense, holding a defendant is entitled to a directed verdict on the issue of self defense only if "the *uncontroverted* facts established self-defense as *a matter of law,*" and noting that conflicting evidence before the jury meant the claim of self defense had *not* been incontrovertibly established as a matter of law) (emphasis in original) (quoting *Butler*, 407 S.C. at 381, 755 S.E.2d at 460).

In the case at bar, the trial court denied Ms. Glover's motion for directed verdict because the testimony presented at trial demonstrated inconsistencies between her injuries (or lack thereof) and the claim she was attacked by Mr. Glover. (Trial Tr. at 42:22–42:25, R. ___; Trial Audio Recording Track 03 at 5:17–26, R ___.) At trial, the State presented two witnesses: Officer Gill and Mr. Glover. Officer Gill testified that although Ms. Glover told him she was hit first, he determined she was actually the primary aggressor because there were no visible injuries to her face. (Trial Tr. at 17:25–18:3, R. __; Trial Audio Recording Track 03 at 12:35–44, R ___.) He testified that the photographic evidence he collected did not support her version of the story but, in contrast, *did* support the version of events that Mr. Glover explained to him on the date of the incident. (Trial Tr. at 22:11–22:17; 29:19–30:2, R. __; Trial Audio Recording Track 02 at 18:00–12; 24:49–25:10, R ___.) Mr. Glover's trial testimony—that he had struck the first blow, after

which Ms. Glover scratched him and caused his facial injuries—was contrary to both the written and verbal statements he previously gave regarding the incident. (*See* Trial Tr. at 34:11–34:21; 36:4–36:11, R. ___; Trial Audio Recording Track 02 at 29:46–30:06; 31:15–29, R___.) Therefore, the evidence was not uncontroverted as required for a directed verdict in the defendant's favor, and the trial court did not err by denying Ms. Glover's motion.

III. MS. GLOVER WAS NOT ENTITLED TO A JURY INSTRUCTION ON SELF DEFENSE BECAUSE SHE DID NOT PRESENT EVIDENCE AS TO ALL THE ELEMENTS OF A SELF DEFENSE CLAIM.

Ms. Glover contends on appeal that she presented sufficient evidence on all four elements of self defense to warrant a jury instruction on this defense. *See* Appellant's Brief at 7–8. As explained below, her argument is incorrect. Ms. Glover did not present any evidence at all other than the testimony she elicited on cross examination of the State's witnesses.

A trial judge should not charge a jury with a requested instruction if doing so would submit an issue to the jury that is unsupported by the evidence. *State v. Goodson*, 312 S.C. 278, 281, 440 S.E.2d 370, 372 (1994). A defendant is entitled to a jury instruction on self defense only if there is evidence establishing all of the following:

> (1) he was without fault in bringing on the difficulty; (2) he believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) he had no means of avoiding the danger; and (4) that a reasonably prudent person of ordinary firmness and courage would have entertained the same belief about the danger.

Jackson v. State, 355 S.C. 568, 570–71, 586 S.E.2d 562, 563 (2003). A defendant's failure to produce evidence as to any one of these elements is fatal to his claim of self defense, and as a result, to his entitlement to a jury instruction on self defense. *See State v. Bruno*, 322 S.C. 534, 536, 473 S.E.2d 450, 451 (1996) (noting the 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."); *Goodson*, 312 S.C. at 280, 440 S.E.2d at 372 (holding the trial

judge did not err in failing to instruct the jury on self defense because the defendant presented no evidence to show that he believed he was in imminent danger of losing his life or sustaining serious bodily injury at the time he shot the victim).

In this case, Ms. Glover failed to elicit any testimony from any witnesses or present other evidence that might suggest she believed she was in imminent danger of losing her life or sustaining serious bodily injury. Further, neither of the State's witnesses testified as to Ms. Glover's state of mind. Accordingly, there was no evidence from which a jury could determine that Ms. Glover actually acted under the subjective belief she was in imminent danger.[6] The trial court correctly determined there was no evidence to demonstrate that Ms. Glover acted under the belief she would sustain immediate bodily harm if she did not protect herself with physical force. (*See* Trial Tr. 43:1–43:5, R. ___; Trial Audio Recording Track 02 at 5:30–46, R ___.[7]) Nor was

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[6] Ms. Glover's appellate brief effectively concedes this point, arguing her subjective state of mind can be deduced via a series of logical inferences based on the circumstances, but failing to point to any testimony or evidence establishing or even attempting to opine on her subjective mental state at the time of the crime. *See* Appellant's Brief at 7.

[7] Ms. Glover erroneously asserts in her appellate brief that the trial court's refusal to direct a verdict was a result of her decision not to take the stand in her own defense and that this ruling constituted an "unconstitutional burden shifting":

> 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.

Appellant's Brief at 6. Her argument is incorrect. The latter two sentences quoted above reach a conclusion not supported by the trial court's actual statements. The trial court never stated his ruling was based on Ms. Glover's failure to take the stand herself. Rather, it was due to the defense team's failure to establish the elements of self defense through *any* evidence or testimony. The law is clear that "[t]o establish self-defense, *the defendant must establish* . . . he actually believed he was in imminent danger." *State v. Washington*, 367 S.C. 76, 81, 623 S.E.2d 836, 838 (Ct. App. 2005) (emphasis added) (citation omitted). In the case at bar, there was no evidence whatsoever to establish this element of the defense, and thus the trial court did not err by declining to charge the jury on a defense that had no support in the record evidence.

there any evidence upon which any jury could have found she was actually in imminent danger of death or grievous injury. Indeed, quite the opposite, Ms. Glover's counsel told the jury the disagreement between Mr. and Ms. Glover was nothing more than a garden-variety marital argument. (*See* Trial Tr. 11:10–16, R. ___; Trial Audio Recording Track __ at ____, R ___ ("Couples fight. Not every negative interaction between husband and wife is a CDV. Sometimes things happen. Someone gets mad. Someone yells. Someone touches someone in some way. That doesn't make it CDV. That doesn't make it a crime.").) Mr. Glover's trial testimony—which contradicted his prior statements and which was contradicted by all the record evidence—is woefully insufficient to establish actual danger of imminent death or serious harm, and thus provides to basis upon which to charge the jury. *See Goodson*, 312 S.C. at 280, 440 S.E.2d at 372 (affirming trial court's refusal to charge self defense, noting the assertion at trial that the victim "was 'coming at him'" at the time of the incident was contradicted by all the other testimony and evidence, and concluding there "is no evidence that Goodson was actually in imminent danger").

In the absence of evidence to support each of the elements of self defense, the trial court was not obliged to charge the jury on self defense, and it was not error for the court to decline to do so. *See State v. Santiago*, 370 S.C. 153, 161, 634 S.E.2d 23, 28 (Ct. App. 2006) (finding the trial judge did not err in refusing to charge the jury on self defense "[b]ecause the record demonstrates as a matter of law the absence of at least one element of self-defense").

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the decision of the Court of Common Pleas for Orangeburg County, South Carolina.

Respectfully submitted,

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October 23, 2017

THE STATE OF SOUTH CAROLINA
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APPEAL FROM ORANGEBURG COUNTY
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The Honorable Maite Murphy, Circuit Court Judge

Case No. 2015-CP-38-00690
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State of South Carolina, ... Respondent,

v.

Jeanette Tvonne Glover, ... Appellant.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

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Amended Initial Brief of Respondent

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October 23, 2017

Hand Delivered
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RE: *State of South Carolina v. Jeanette Glover*
Appellate Case No. 2017-000911
Common Pleas Case No. 2015-CP-38-00690
Our File No.: 33044/01544

Dear Ms. Kitchings:

Enclosed please find the original and one (1) copy of an **Amended Initial Brief of Respondent and Proof of Service** in the above-referenced matter to comply with the Court's Order of October 17, 2017.

We ask that you please file the original document and return a clocked-in copy to us via our courier.

By copy of this letter to counsel of record, we are serving them with a copy of the document.

Very truly yours,

Jay T. Thompson

JTT:lwd
Enclosures
cc: Minh L. Wyman