STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-000282

THE STATE, ...RESPONDENT,

v.

ALTON JAMAUL CROSBY,.....APPELLANT.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's motion for a mistrial because Appellant voluntarily testified in an attempt to present evidence meriting a self-defense charge. The trial judge did not instruct the jury on self-defense because neither the State or Appellant presented evidence satisfying the four requirements for such a charge.

STATEMENT OF THE CASE

On May 6, 2016, the Spartanburg County Grand Jury indicted Appellant for assault and battery of a high and aggravated nature (ABHAN). On February 8, 2017, Appellant proceeded to a jury trial before the Honorable R. Keith Kelly. Charles William Snyder, III, Esquire, represented Appellant; Assistant Solicitor Spenser Holloran Smith, Esquire, represented the State. The jury found Appellant guilty of second-degree assault and battery. The trial judge sentenced Appellant to three years' incarceration and a fine of $2,500.

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On December 31, 2015, Calvin Vinson, the director of the Miracle Hill Rescue Mission was at work when one of the guests informed him an incident occurred between Appellant and the victim, Dennis Talford, in the stairwell of the mission. Vinson found Talford "profusely" bleeding at the bottom of the stairs, with blood splattered "up and down the stairwell." Vinson subsequently found Appellant in line for a meal, where the latter denied any incident occurred. (R.p.5, line 7–R.p.7, line 2).

Officer Shanetta Thompson of the Spartanburg City Police Department arrived at the mission as E.M.S. was about to take Talford to the hospital. She approached Appellant while he was still in line and spoke privately with him in an adjoining room. Initially, Appellant denied having any knowledge of the assault against Talford. Officer Thompson and Vinson decided to watch the security footage of the stairwell to determine what occurred. The security footage showed: (1) Appellant and Talbert recognizing each other as they stand in their respective positions at the top and bottom of a set of stairs; (2) as the men pass each other at the halfway point, Talbert touches Appellant's shoulder; (3) Appellant shrugs off the contact, reaches the bottom of the stairs and the exit to the stairwell, and then assaults Talbert on the stairs; (4) Appellant punches Talbert several times in various parts of the body, then puts him in a sleeper hold until he loses consciousness and allows him to fall to the bottom of the stairs. After watching the video, Officer Thompson arrested Appellant. (R.p.7, line 3–R.p.8, line 25; R.p.10, line 10–R.p.16, line 11; State's Exhibit 1).

At the conclusion of the State's case, Appellant decided against testifying. However, when the parties began discussing the appropriate jury charges, the trial judge stated he would not provide a self-defense charge because the defense failed to present evidence supporting the

elements of said charge. Trial counsel indicated this information "might require . . . rethinking [Appellant]'s decision not to take the witness stand," which the trial judge indicated he would allow. After a brief conference, trial counsel indicated Appellant decided he would testify. (R.p.20, line 18–R.p.27, line 6).

Appellant testified that prior to the incident, he and Talford had a prior, non-violent altercation. When asked what happened in the stairwell and whether Talford punched him first, Appellant stated he'd "rather not say" and failed to provide substantive responses. When trial counsel asked him whether he was scared, he claimed "it was a form of fear." Finally, when trial counsel asked him whether he felt trapped in the stairwell at the time of the assault, Appellant asked trial counsel to explain his question. Trial counsel attempted to ask a leading question, and when the trial judge ordered him to rephrase the question trial counsel ended his direct examination. On cross-examination, Appellant admitted the prior altercation between him and Talbert was not serious and that he failed to tell Officer Thompson about the assault. (R.p.27, line 14–R.p.31, line 24).

Before jury instructions, trial counsel renewed his demand for a charge on self-defense. Again, the trial judge denied the request. Trial counsel then moved for a mistrial, claiming Appellant would not have testified but for the fact he believed he was required to do so to earn a self-defense charge. He argued the security video footage and Officer Thompson testimony both indicated Appellant acted in self-defense and the trial judge violated Appellant's Fifth Amendment right against self-incrimination by requiring his testimony. (R.p.33, line 15–R.p.35, line 25).

In response, the trial judge noted Appellant voluntarily waived his right not to testify and that trial counsel could have sought other evidence to establish the elements of self-defense, such

as other witnesses who appeared in the video, but failed to do so. The trial judge explained that while the State has the burden of disproving self-defense, evidence supporting each of the elements of the charge must be in the record before the State is required to actually do so. Moreover, the trial judge found the security footage clearly disputed a finding of self-defense because it showed: (1) Appellant descended the stairs to attack Talbert; (2) Appellant choked and slapped him while he climbed the stairs; and (3) Appellant applied a chokehold at the top of the stairs and allowed Talbert to fall. The trial judge admitted it was the State's burden to disprove the elements of self-defense, but that Appellant failed to make an initial showing of the elements required for the charge. Accordingly, the trial judge denied the motion. (R.p.36, line 1–R.p.39, line 6).

ARGUMENT

The trial judge properly denied Appellant's motion for a mistrial because Appellant voluntarily testified in an attempt to present evidence meriting a self-defense charge. The trial judge did not instruct the jury on self-defense because neither the State or Appellant presented evidence satisfying the four requirements for such a charge.

Appellant argues the trial judge erred in denying trial counsel's motion for a mistrial because the trial judge coerced Appellant into "involuntarily waiving his right to remain silent and testifying at trial in order to obtain a self-defense jury instruction" and still failed to give the instruction to the jury. The State disagrees with this allegation of error. Appellant voluntarily testified in an attempt to provide enough evidence to merit a self-defense charge. However, due to his failure to give appropriate testimony, and the lack of such evidence in the State's case, the trial judge properly refused to issue the charge and denied trial counsel's motion for a mistrial.

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 decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Inman, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011); State v. Meggett, 398 S.C. 516, 524, 728 S.E.2d 492, 496 (Ct. App. 2012). The granting of a motion for a mistrial is an extreme measure that should be taken only when the incident is so grievous the prejudicial effect can be

removed in no other way. Inman, 395 S.C. at 565, 720 S.E.2d at 45. A mistrial should be granted only when absolutely necessary and a defendant must show both error and resulting prejudice to be entitled to a mistrial. Meggett, 398 S.C. at 524. 728 S.E.2d at 496.

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 the instant case, the trial judge did not err in denying trial counsel's motion for a mistrial because the trial judge did not force Appellant to testify and did not wrongfully refuse to issue the self-defense charge. As noted by the trial judge, it is improper to charge self-defense if there is not evidence establishing all four requirements of the charge. See id., 388 S.C. at 553–54, 698 S.E.2d at 585–86. Notably, the witnesses' testimonies and the security video failed to provide any evidence Appellant was in, or at least believed he was in, imminent danger of sustaining serious bodily injury or had no other means of avoiding the danger. In fact the video evidence indicated the opposite: Talbert only touched Appellant's shoulder and Appellant reached the bottom of the stairwell, which was also an exit, before turning around and attacking Talbert on the stairs. Because the State's evidence did not support all four elements of self-defense, the trial judge correctly asserted he was not required to charge it without evidence supporting the missing elements. See id.

The trial judge never forced Appellant to testify. Appellant decided to testify to provide evidence supporting a self-defense charge as a strategic decision. Unfortunately, Appellant failed to present the necessary testimony to earn the charge. When given the opportunity to explain what occurred in the stairway, Appellant elected to not provide his perspective of the event. When asked his motivation, he only stated he thought he felt "a form of fear" and failed to mention any concern of death or substantial bodily harm. Finally, Appellant failed to explain why he might have felt he had no other means of avoiding the danger of the situation. Ultimately, it was Appellant's failure to provide testimony supporting self-defense which

prevented the trial judge from giving the appropriate charge. See Weaver, 265 S.C. at 137, 217 S.E.2d at 34 (stating a trial judge will not issue a jury charge not supported by the evidence).

Appellant willingly testified in an attempt to earn a self-defense charge. As noted by the trial judge, the State's case did not present evidence supporting every element of self-defense. Appellant's failure to present evidence supporting the charge falls squarely on his own shoulders. Because the trial judge did not err in finding a self-defense charge was inappropriate, even after Appellant's testimony, his actions could not have been the basis of a mistrial. See Hughey, 339 S.C. at 450, 529 S.E.2d at 727.

Accordingly, the trial judge did not err in denying Appellant's motion for a mistrial.

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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CERTIFICATE OF COUNSEL

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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