

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Frankie Lee Bryant, III, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2016-000876

Appeal from Bamberg County
James R. Barber, III, Circuit Court Judge

Memorandum Opinion No. 2018-MO-013
Heard January 11, 2018 – Filed March 28, 2018

REVERSED

Lara M. Caudy, of Columbia, for Petitioner.

Attorney General Alan M. Wilson and Senior Assistant
Attorney General David A. Spencer, both of Columbia,
for Respondent.

PER CURIAM: The court of appeals reversed the post-conviction relief (PCR) court's order granting Petitioner Frankie Lee Bryant a new trial. We reverse the court of appeals and reinstate the grant of PCR pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to ineffective assistance of counsel: *McKnight v. State*, 378 S.C. 33, 40, 661 S.E.2d 354, 357 (2008) ("In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) counsel's deficient performance prejudiced the applicant's case."); *Smith v. State*, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) ("In reviewing the PCR court's decision, this Court is concerned only with whether there is any evidence of probative value to support that decision."); *Smalls v. State*, Op. No. 27764 (S.C. Sup. Ct. filed Feb. 7, 2018) (Shearouse Adv. Sh. No. 6 at 45) ("We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them.").

2. As to the jury instructions on self-defense: *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984) (establishing the recommended jury instruction on self-defense: "Self-defense is a complete defense. If established, you must find the defendant not guilty. There are four elements required by law to establish self-defense in this case. First, the defendant must be without fault in bringing on the difficulty. 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 belief of imminent danger, a reasonably 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 save himself from serious bodily harm or losing his own life. 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. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense. These are the elements of self-defense."); *State v. Fuller*, 297 S.C. 440, 443, 377 S.E.2d 328, 330 (1989) ("In charging self-defense, we instruct the trial court to consider the facts and circumstances of the case at bar in order to fashion an appropriate charge."); *State v. Day*, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000) ("As we held in *Fuller*, a trial judge should specifically tailor the self-defense instruction to adequately reflect the facts and theories presented by the defendant. A self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues raised by the defendant.") (internal citations omitted); *State v. Blurton*, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002) ("Only law applicable to the case should be charged to the jury. Instructions that do not fit the facts of the case may serve only to confuse the jury."); *State v. Rothell*, 301

S.C. 168, 169–70, 391 S.E.2d 228, 229 (1990) ("It is error to give instructions which may confuse or mislead the jury.").

REVERSED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Frankie Lee Bryant III, Respondent,

v.

State of South Carolina, Petitioner.

Appellate Case No. 2012-206008

Appeal From Bamberg County
Doyet A. Early, Trial Judge
James R. Barber, III, Post-Conviction Relief Judge

Unpublished Opinion No. 2016-UP-023
Heard September 8, 2015 – Filed January 20, 2016

REVERSED

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Interim Senior
Assistant Deputy Attorney General John Benjamin Aplin,
and Assistant Deputy Attorney General David A.
Spencer, all of Columbia, for Petitioner.

Chief Appellate Defender Robert Michael Dudek and
Appellate Defender Lara Mary Caudy, both of Columbia,
for Respondent.

PER CURIAM: Frankie Bryant was convicted of voluntary manslaughter. Bryant filed an application for post-conviction relief (PCR), which the PCR court granted. The State appeals, arguing the PCR court erred in finding counsel was ineffective for failing to object to the jury instruction on self-defense because the instructions substantially charged the correct law and were not prejudicial. We reverse pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to our standard of review: *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013) ("On appeal in a PCR action, this [c]ourt applies an 'any evidence' standard of review."); *Shumpert v. State*, 378 S.C. 62, 66, 661 S.E.2d 369, 371 (2008) ("A PCR court's findings will be upheld on review if there is any evidence of probative value supporting them."); *id.* ("Where the PCR court's decision is controlled by an error of law, however, this [c]ourt will reverse.").
2. As to the ineffectiveness of counsel: *Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (stating in order to obtain PCR relief, "[f]irst, the burden of proof is upon petitioner to show that counsel's performance was deficient as measured by the standard of reasonableness under prevailing professional norms. Second, the petitioner must prove that he or she was prejudiced by such deficiency to the extent of there being a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." (emphasis omitted)).
3. As to the jury charge, we find the instructions substantially charged the correct law and were not prejudicial: *Gibbs v. State*, 403 S.C. 484, 495, 744 S.E.2d 170, 176 (2013) ("In evaluating whether a PCR applicant has suffered prejudice as a result of a jury charge, the jury charge must be viewed in its entirety and not in isolation."); *State v. Zeigler*, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct. App. 2005) ("Generally, the trial judge is required to charge only the current and correct law of South Carolina."); *State v. Fripp*, 397 S.C. 455, 460, 725 S.E.2d 136, 139 (Ct. App. 2012) ("A jury charge consisting of irrelevant and inapplicable principles may confuse the jury and constitutes reversible error where the jury's confusion affects the outcome of the trial." (citation omitted)); *State v. Day*, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000) ("[A] trial judge should specifically tailor the self-defense instruction to adequately reflect the facts and theories presented by the defendant."); *State v. Wood*, 1 S.C.L. (1 Bay) 351 (1794) ("The general rule of law is, 'that wherever the assault or battery proceeds from the plaintiff[s] . . . own fault, as where he gives the first blow, . . . there . . . is sufficient justification to the defendant.' But there must be, however, in all cases, some proportion between the battery given and the first assault. . . . So that the degree of resistance ought to be

in proportion to the nature of the injury offered; that is, that it be sufficient to ward off such injury, and no more. For the moment a man disarms or puts it out of the power of the aggressor from doing him further injury, he ought to desist from using further violence; and if he does commit any further outrage, he, in his turn, then becomes the aggressor."); *Golden v. State*, 1 S.C. 292, 302 (1870) ("It is not every resistance that will justify an enormous battery. The force applied must have a due regard to the purpose it is to accomplish."); *State v. Campbell*, 111 S.C. 112, 113, 96 S.E. 543, 543-44 (1918) ("A person assaulted, being without fault in bringing on the difficulty, has the right to use such force as is necessary for his complete self-protection, or which in the mind of a person of ordinary reason and firmness would reasonably prevent the assailant from taking his life or inflicting serious bodily harm. . . . The defendant, if without fault, [has] the right to use such necessary force as required for his complete protection from loss of life or serious bodily harm, and [cannot] be limited to the degree or quantity of [the] attacking opposing force."); *State v. Hendrix*, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978) ("The rule is that ordinarily one is not justified in shooting or employing a deadly weapon after the adversary has been disarmed or disabled."); *id.* ("However, the rule is also that 'when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased[.]'" (quoting 40 C.J.S. *Homicide* § 131(b) at 1020 (1944)¹)); *Zeigler*, 364 S.C. at 106, 610 S.E.2d at 865 ("If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error.").

REVERSED.

SHORT, GEATHERS, and MCDONALD, JJ., concur.

¹ The current citation is 40 C.J.S. *Homicide* § 189 (2014).