STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WAYNE CORDARO HANKINSON,

APPELLANT

APPELLATE CASE NO. 2017-002603

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by ruling appellant was not entitled to an instruction on self-defense where appellant testified the complainant attacked him with a knife before what appeared to be a consensual sexual encounter, appellant was defending himself against that armed attack by the complainant and not seeking to sexually assault her, since appellant's testimony was evidence he was acting in self-defense, and not trying to sexually assault or illegally confine the complainant against her will when she attacked him with a knife?

2.

Whether the court erred by ruling appellant was not entitled to ten peremptory challenges pursuant to S.C. Code § 14-7-1110, where the statute lists "criminal sexual conduct" as one of the crimes for which a defendant is entitled to ten peremptory challenges, and appellant was indicted for assault with intent to commit criminal sexual conduct which contains the same punishment as the principal and the statute did not break out "criminal sexual conduct" into "different degrees"?

STATEMENT OF THE CASE

Appellant was indicted at the November 2016 term of the Aiken County Grand Jury for the offenses of assault with intent to commit criminal sexual conduct in the first degree, kidnapping, and possession of a weapon during the commission of a violent crime. R. *. Appellant's case was called to trial on August 29, 2017, before the Honorable Brooks P. Goldsmith, and a jury. David Hayes, Barry Thompson, and William McKellar represented appellant. Ashley Hammack and Samuel Grimes were the assistant solicitors. Tr. 1.

On August 31, 2017, the jury found appellant not guilty of the weapons offense[1] but convicted him of assault with intent to commit criminal sexual conduct in the first degree and kidnapping. Tr. 266, ll. 12-25. Judge Goldsmith sentenced appellant to concurrent twelve-year prison terms. Tr. 274, l. 22 – 275, l. 2. This appeal follows.

[1] The complainant had testified appellant pulled a gun on her, and told her to disrobe after she rebuffed his sexual advances following them smoking marijuana, drinking, and watching a movie together. Tr. 67, l. 19 – 73, l. 5.

STANDARD OF REVIEW

Self-defense instruction

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). Thus, an appellate court "is bound by the [circuit] court's factual findings unless they are clearly erroneous." Id. Appellate courts do not re-evaluate the facts based on their own view of the preponderance of the evidence but simply determine whether the [circuit court]'s ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). State v. Williams, 400 S.C. 308, 733 S.E.2d 605, (Ct. App. 2012).

If there is **any evidence** in the record from which it could reasonably be inferred that the defendant acted in **self-defense**, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error. State v. Light, 378 S.C. 641, 649-650, 664 S.E.2d 465, 469 (2008).

Preemptory challenges

S.C. Code Ann. § 14–7–1110 (2017) ("Any person who is arraigned for the crime of murder, manslaughter, burglary, arson, criminal sexual conduct, armed robbery, grand larceny, or breach of trust when it is punishable as for grand larceny, perjury, or forgery is entitled to peremptory challenges not exceeding ten .... Any person who is indicted for any crime ... other than those enumerated above has the right to peremptory challenges not exceeding five ...."). See, State v. Anderson, 276 S.C. 578, 281 S.E.2d 111 (1981)(exhausting all available strikes to prove prejudice).

ARGUMENT

1.

The court erred by ruling appellant was not entitled to an instruction on self-defense where appellant testified the complainant attacked him with a knife before what appeared to be a consensual sexual encounter, appellant was defending himself against that armed attack by the complainant and not seeking to sexually assault her, since appellant's testimony was evidence he was acting in self-defense, and not trying to sexually assault or illegally confine the complainant against her will when she attacked him with a knife.

Relevant Facts

The complainant was a twenty-year-old student from Rockville, Maryland attending Paine College in Augusta when she met appellant at the downtown library in Augusta. It was May 17, 2016, and the complainant was leaving the library. Appellant came outside the library. "He just started talking to me. He introduced himself and we just started talking. . . . Maybe five minutes. It wasn't that long." The complainant was waiting for her ride, and she exchanged phone numbers with appellant. Tr. 57, l. 3 – 60, l. 16.

The complainant went to the movies with some friends later in the day. She remembered: "It's the newest movie about the mummy girl with tattoos on her face. I don't remember what it was called though." App. 60, l. 19 – 61, l. 11.

Following the movie, the complainant testified that appellant sent her a text message asking her what she was doing. She texted appellant that her after movie plans to go out "had got cancelled, and "I told him that we could hang out." App. 61, ll. 15-24. The text message exchanges between the complainant and appellant that evening were introduced as Defendant's Exhibit 3. R. *.

They show, at 1:03 pm, the complainant told appellant "I'm going to the movies with a group of my friends, but a little later after that I'll be free." R. *. At 9:51 pm, the complainant texted appellant, saying, "Me and my friend are going downtown tonight. We could meet up." Appellant answered that he would call the complainant later. R. *.

At 11:40 that evening, the complainant told appellant, "The plans for downtown got cancelled so if you want to scope me you can." She gave appellant her address at 11:45. R. *. Appellant told her he was coming in his loud green truck, and he picked her up. R. * (Defendant's Exhibit 3).

The complainant at the time was living with some Augusta University students. Since she was from Rockville, Maryland, she maintained she was not very familiar with with the area. Regardless, appellant picked her up and drove towards Aiken. The complainant later claimed she thought they were going to a party at the home of appellant's cousin. She apparently made that assertion for the first time at trial. Tr. 62, l. 1 – 63, l. 22.

The complainant recalled that they stopped at a store to buy snacks, beer, and alcohol. Appellant then drove to his house, which was "on a dirt road in the back of like some trees and it was like a really old house, yeah." Tr. 62, l. 1 – 67, l. 25.

Once inside, appellant put on a movie which the complainant said was about "like a man who robs banks and he was like a part of a group who robbed banks and that's what they did. They robbed banks. I don't know."[2] Tr. 67, l. 19 – 68, l. 6.

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[2] The complainant identified the movie they were watching at appellant's house as "The Mummy starring Tom Cruise." See Defendant's Exhibit 5, R. *. However, the complainant was forced to admit on cross-examination that this movie was not released until 2017, which was after the 2016 incident the complainant said became nonconsensual. See Defendant's Exhibit 6, R. *.

The complainant said while watching the movie they smoked "a small piece of a joint and we kind of like smoked a joint and just talked and just watched the movie and that was pretty much it." Tr. 68, ll. 18-23. The complainant's version and appellant's version of what occurred that night were consistent up to this point. Again, the defense introduced the text messages between them that night as Defendant's Exhibit 3. R. *.

The complainant said after appellant showed her his dogs in the back yard they came back inside the house, and "he kind of wrapped his arms around me and was trying to be like, you know, [be] affectionate, and I just kind of was like, not into that, just trying to hang out, you know. It's not – it's not why I'm here." Tr. 69, l. 23 – 70, l. 13.

The complainant related that appellant continued to make "advances" and "he started rubbing on my leg. He came in, like trying to kiss my neck and was just going over, like, yeah, leaning over." Tr. 71, ll. 7-10.

The complainant said she talked to appellant about his two daughters, and she claimed, "You know, trying to like deescalate it because I know it doesn't feel good to be rejected. So I was trying to move the conversation forward." Tr. 71, ll. 14-22.

The complainant maintained about ten minutes later appellant left the room. "When he came back in the room, he had a gun with him and was pointing at me and told me to get up and to take my clothes off." The complainant claimed the gun was "like a gun you see in cowboy movies, where like they pull the chamber out, they put the bullets in and then they snap it back and kind of like, like push it so it revolves a little bit." Tr. 71, l. 14 – 72, l. 22.

The complainant said she was "like in shock for a second" wondering if "this was a joke. I started crying, started panting and then I, like, was trying to figure out some way to bribe him so I was offering my phone." "Eventually I did take my shirt off." Tr. 73, ll. 6-15.

The complainant maintained that appellant ignored her offers to give him her physical belongings. "He just kept repeating, like, take your clothes off, take your clothes off, like that was it." Tr. 73, ll. 16-22.

The complainant claimed that appellant tried to drag her into the bedroom, that she was pulling away from him and she kept tapping his arm to indicate that "like, I couldn't breathe." Tr. 77, l. 4 – 80, l. 2. Appellant let go of her and the complainant said she grabbed a knife that was on the stereo speaker and "kind of swung around trying to defend myself." "[I] missed him, fell back down and he grabbed the knife out of my hand." Tr. 80, ll. 3-19.

The complainant testified that appellant grabbed the knife by the blade and he "was like, Damn, you cut me, like, look what you did. You cut me, like, I'm done, I'm done. You cut me. Just go grab your stuff and, like, I'll take you home." Tr. 80, ll. 20-24.

The complainant said when appellant went into the room "to collect my stuff . . . I ran out the front door." Tr. 81, ll. 19-24. She ran down the street and she met what she termed "a random guy." This man, David Blanken, was walking down the street and asked him if he had a phone. She told the man "this guy's trying to like rape me." Tr. 82, l. 15 – 84, l. 5.

"He [Blaken] offered me his shirt, but that was pretty much it." She claimed appellant then drove his truck to where they were, told Blaken to mind his own business, and then drove away in his truck.[3] Tr. 84, l. 1 – 85, l. 6.

The complainant recalled "after he [appellant] was talking to the guy, I seen another group of people and I kind of ran up to them and I think after he [appellant] seen (sic) that I

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[3] Blaken remembered seeing the complainant that evening without a shirt on the streets of Bath. South Carolina. She "was real hysterical and screaming for help." Blaken said appellant drove up in his truck, and "he got out of the car threatening, threatening her, told me to mind my own business and tried to get her to go with him." The police were called, they arrived, and spoke to the complainant. Tr. 115, l. 3 – 117, l. 2.

wasn't getting back in his truck and I wasn't about to like go anywhere else with him, he pulled off . . . there was a lady, a man, and her dog; and the lady took me inside to get a shirt to wrap my hand and to call the cops." Tr. 85, ll. 1-15. The following day, the complainant picked appellant's photograph out of a six-man photographic lineup. Tr. 88, l. 2 – 90, l. 11.

On cross-examination, the complainant stated she grabbed the knife and swung it at appellant. She claimed appellant grabbed the knife out of her hand which cut both of them. She remembered appellant responded: "I'm done, go get your stuff." Tr. 102, l. 15 – 104, l. 16.

The complainant admitted there was not anything in her statement about going to a party at appellant's cousins house after appellant picked her up that night. There was also no claim of "not feeling right" when they purchased alcohol at the store. Neither was there a mention of appellant showing the complainant his dogs. Tr. 108, ll. 9-19. As stated, the decedent acknowledged that she must have been in error about watching a Tom Cruise movie at appellant's house, since the movie did not come out until a year after this incident. Tr. 108, l. 23 – 110, l. 25.

Appellant's testimony

Appellant took the stand in his own defense. He was a thirty-year-old welder, and he was at the downtown Augusta library on May 27, 2016, because "I was working on shutdowns and my job was about to end so I was at the library trying to find another gig." Tr. 171, ll. 3-23.

Appellant remembered meeting the complainant "mostly because she looked good in the pants she had on." Appellant acknowledged he exchanged phone numbers with the complainant after their short conversation. "I texted her my name so she could lock my number in her phone. . . . I went to my truck and she texted me back by then and I sent her another text and I left. . . . I went home after that." Tr. 172, ll. 4-16.

Appellant was dating another woman at that time. This woman's mother called appellant and told him her daughter had too much to drink and she was in the hospital. Appellant went to the hospital to see her. Appellant recalled, "We texted the evening. Me and [the complainant]." Tr. 172, l. 17 – 173, l. 14.

"She [the complainant] let me know that she was able to hang out with me because I texted her earlier and asked her if she would be able to hang out and she told me she had plans, but while I was at the hospital, she told me it was cool and I told her once I'd left there I would call her to see what was going on." Tr. 173, ll. 18-24.

Appellant said later that evening he asked the complainant if she wanted to come to his house and the complainant agreed. Appellant remembered: "I told her, I'm frisky. And she said, I knew you were going to be trouble." Appellant picked up the complainant, they stopped at a store and bought beer, snacks and alcohol. Tr. 174, l. 11 – 175, l. 17.

Once at appellant's house, "I put a movie on and handed her the rest of the DVD's and told her if she saw something she wanted to watch, just let me know I'd put it in." Tr. 175, ll. 18-22.

Appellant and the complainant's testimony largely matched to this point. Appellant confirmed that he smoked "a joint" with the complainant and they were both drinking. Tr. 176, l. 20 – 177, l. 4. While sitting on the couch, appellant said he pulled the complainant's leg over his and started rubbing her leg and making out with the complainant. The complainant took off her jewelry and her shirt and told appellant she had to use the restroom. Tr. 177, l. 23 – 179, l. 25.

It was at this point that appellant's testimony of what happened and the complainant's testimony of what happened diverged. The following occurred on direct examination of appellant:

> Q: [What] happened next?
>
> A: I'm just sitting there drinking my beer waiting on her to come back. When she came back, she sat down and I saw her, I put my beer over in the corner, like it is in the picture so I wouldn't knock it over. And when I turned around, **she turned around with the knife in my face** like, around at the same time and she said you just -- you just want some pussy don't you.
>
> Q: Hold on. Let's -- where was this knife?
>
> A: It was on the TV stand.
>
> Q: Are we talking about the TV stand where the joint and the beer's at?
>
> A: Yes.
>
> Q: Right underneath the TV?
>
> A: Yes.
>
> Q: Why was your knife on the TV stand in the living room?
>
> A: Because I put it there because I was working on my truck earlier, working on my speakers and I cut -- used it to cut the wire because that's the only knife I had. That knife usually is in my truck because I use it at work.
>
> Q: Okay.
>
> A: I didn't find one I just used that knife because it was there.

Tr. 180, l. 12 – 181, l. 10 (emphasis added).

Appellant said when the complainant made another comment about him just wanting "[s]ome pussy don't you." "I pushed her hand away and told her to get the knife out of my face . . . She was like kind of smirking at me." Tr. 181, ll. 17-25.

Appellant grabbed for the knife and he cut himself in the process. Tr. 182, l. 3 – 184, l. 5. The two began to wrestle over the knife, and "she told me to get the -- she said get the fuck off her. And she snatched her hand away. She tried to pull her arm away, but I still had her hand and when she snatched her hand, I saw the blood go from my hand over by the TV stand . . ." Tr. 184, ll. 5-15. "*I told her to give me the knife because if she cut me one more time I was going to mess her up.*" The complainant continued to fight appellant for control of the knife. As the struggle continued, appellant "choked [her] a little bit and she released the knife." "When she released the knife, I told her to go get her stuff so I could take her home." Tr. 184, l. 8 – 187, l. 6.

Appellant went and got the complainant's personal items "and when I turned around she was walking, running out the door." Appellant got in his truck and drove after the complainant "and I told her to get in the truck and she told me she ain't going nowhere with me, she want her stuff. I told her get in the truck so I can take you home, I'll give you the stuff." Tr. 187, ll. 7-25.

Appellant did remember that Blanken was with the complainant at this point. "But I was getting out of the truck. I was going to tell him what was going on. He acted like he wanted to fight. He was doing -- just like he wanted to fight. I couldn't hear what he was saying [because the truck was loud], but I could tell what was going on. . . . I got back in my truck and I left."

Appellant was bleeding badly and "freaked out" so he went to a friend's house in Augusta. Tr. 188, ll. 6-25. Appellant said his father later called him and told him the police were at his house and were "going to kick the door in because I tried to rape somebody." Appellant tried to find an attorney and "I eventually turned myself in." "There was no gun, at all." As seen, the jury found appellant not guilty on the firearm offense. Tr. 189, ll. 1-17.

Requests to charge

Defense counsel asked for a self-defense instruction based on appellant's testimony that the complainant pulled a knife on him and that there was a fight over the knife. Tr. 191, ll. 7-12. The judge asked the solicitor about appellant's request for a self-defense instruction. Assistant Solicitor Grimes responded, "I'm not sure that you can kidnap a person in self-defense. I don't think you can assault with intent to commit CSC with self-defense. Those would obviously be different factual allegations that [would] contradict the State's evidence, but it's not a defense that would justify any actions he's been charged with." The solicitor noted that appellant denied having a firearm. Tr. 192, l. 23 – 193, l. 22.

Defense counsel Hayes again repeated that appellant "is acting in self-defense. He does choke her. And he is fighting with her over the knife. If the jury were to be confused that that is actually a part of it, self-defense may explain that he has the right to defend himself." Tr. 192, ll. 3-22.

The solicitor continued with his apparent argument that because appellant was charged with the particular crimes of assault with intent to commit criminal sexual conduct and kidnapping that self-defense could not be a legitimate defense. Tr. 192, l. 23 – 193, l. 22. The judge said he agreed with the solicitor that a self-defense instruction would not be proper, and he would not charge it. Tr. 192, l. 17 – 193, l. 25.

Defense counsel argued to the jury in closing that any realistic view of the events of that night -- and the text messages -- led to the conclusion that "This plan was to have sex. Question is, why did it not go to having sex."[4] Tr. 197, l. 5 – 199, l. 11.

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[4] The jury struggled to reach its verdict, and the judge gave an Allen v. United States, 164 U.S. 492 (1896) instruction. Tr. 252-254.

Discussion

The solicitor here essentially argued that self-defense could never be a proper defense when a defendant was charged with assault with intent to commit criminal sexual conduct or kidnapping. That was respectfully, wrong. Defense counsel correctly noted after the verdict that the not guilty verdict on the weapons charge was a strong indication the jury did not believe the complainant's story about appellant pulling a gun on her, and more.

Regardless, if the complainant's testimony was true appellant was guilty of assault with intent to commit CSC, and kidnapping. If appellant's testimony was true, which he strongly urges it was, then he was not guilty by reason of self-defense for fighting off the knife stuck in his face by the complainant.

Getting stabbed with a knife in the face or otherwise is going to cause great bodily harm, and likely permanent disfigurement at a minimum. Appellant had every legal right to fight to get the knife away from the bizarrely acting complainant as he explained it to the jury in his testimony.

In State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000), the Court held the defendant, in that death penalty case, was entitled to a self-defense instruction. The Court noted that a defendant had the right to act on appearances, and that the right to act in self-defense was not limited to a situation where the defendant said he mistakenly saw a weapon in the victim's hands. See, also, State v. Fuller, 397 S.C. 440, 377 S.E.2d 328 (1989); State v. Jackson, 327 S.C. 271, 87 S.E.2d 681 (1955). Here, both appellant and the complainant testified that a struggle occurred over a knife, a deadly weapon, and it was undisputed they both were injured. Unlike Starnes, a struggle over a knife occurred.

The Court in Starnes also held that a defendant "has the right to act under the law of self-preservation and prevent his assailant [from] getting the drop on him." State v. Starnes, 531 S.E.2d

at 912, *citing* State v. Rash, 182 S.C. 42, 50, 188 S.E.2d 435, 438 (1936). See, also, State v. Day, 341 S.C. 410, 535 S.E.2d 431, 434 (2000).

Appellant here was in his own home at the time, he did not have a duty to retreat or to put himself in more danger by risking retreat, and he had the right to get the knife away from the complainant to save himself from further injury. See State v. Jackson, 227 S.C. 271, 279, 87 S.E.2d 681, 685 (1955); McAninch and Fairey, The Criminal Law of South Carolina, Chapter 6, at pp. 473-477 (3rd ed. 1996).

Moreover, a defendant is entitled to an instruction on self-defense if there is **any evidence of it in the record**, and, if there is *any evidence* then the trial judge's refusal to charge self-defense is reversible error under those circumstances. See, State v. Light, 378 S.C. 641, 650, 664 S.E.2d 465, 649, (2008).State v. Muller, 282 S.C. 10, 316 S.E.2d 409 (1984).

Under appellant's testimony, he was not at fault for bringing about the difficulty when the complainant unexpectedly produced a knife, and stuck it in his face. See, State v. Light, supra. Appellant was being threatened with a deadly weapon, here, what appellant said was a sharp knife – where it was undisputed appellant and the decedent were injured fighting over it. Appellant had the right to self-defense when faced with a deadly weapon being stuck in his face, and a struggle over that deadly weapon.

The ultimate facts of this case from the claimant's perspective or appellant's were highly unusual since both agreed appellant offered to drive the complainant home after this occurred. Regardless, appellant respectfully submits that ceasing to fight, and moving on *once the aggressor is disarmed* should be encouraged as a matter of policy rather than the defending party completely plummeting the aggressor because he did not throw the first punch or introduce the deadly weapon into the situation.

The evidence in this highly unusual record contained evidence of self-defense which entitled appellant to that jury instruction. Since appellant was erroneously denied a self-defense instruction he is entitled to a new trial. State v. Light, supra;

2.

The court erred by ruling appellant was not entitled to ten peremptory challenges pursuant to S.C. Code § 14-7-1110, where the statute listed "criminal sexual conduct" as one of the crimes for which the defendant was entitled to ten peremptory challenges, appellant was indicted for assault with intent to commit criminal sexual conduct which contains the same punishment as the principal and the statute did not break out "criminal sexual conduct" into "different degrees."

Relevant Facts

S.C. Code §14-7-1110 states: "Any person who is arraigned for the crime of murder, manslaughter, burglary, arson, *criminal sexual conduct*, armed robbery, grand larceny, or breach of trust when it is punishable as for grand larceny, perjury, or forgery *is entitled to peremptory challenges not exceeding ten*, and the State in these cases is entitled to peremptory challenges not exceeding five." (emphasis added).

Defense counsel noted that the crime of criminal sexual conduct or assault with intent to commit criminal sexual conduct was punishable the same of prison time. The penalty was zero to thirty years in prison. Counsel correctly pointed out the statute did not break out the differences in degrees of criminal sexual conduct. Tr. 8, l. 14 – 22.

The solicitor argued that appellant was not charged with any crime that would allow him ten strikes. She said it was "clear" that appellant was not entitled to ten peremptory challenges on the assault with intent to commit criminal sexual conduct indictment. Tr. 8, l. 25 – 9, l. 22. Defense counsel responded that the legislature had added armed robbery, for example, as another offense entitling a defendant to ten challenges, and that the older case law urged by the state

should not be controlling. The judge ruled that he agreed with the solicitor and appellant would only be entitled to five peremptory challenges. Tr. 9, l. 23 – 10, l. 9.

Discussion

In State v. Lambert, 276 S.C. 398, 279 S.E.2d 364 (1981), the Court reasoned that S.C. Code § 14-7-1110 (1976), then allowed a defendant charged with rape to be entitled to ten peremptory challenges. The Court noted that because appellant was charged with criminal sexual conduct with a minor, rather than rape, that he was *not* entitled to ten peremptory challenges.

The Court reasoned that the legislature could have included criminal sexual conduct as an offense pursuant to S.C. Code § 14-7-1010, entitling Lambert to ten peremptory challenges after it amended the statute from "rape" to criminal sexual conduct. The legislature has now done so, adding criminal sexual conduct and armed robbery as offenses entitling a defendant to ten peremptory challenges.

Defense counsel correctly argued that the offense of assault with intent to commit criminal sexual conduct carried the same penalty as the completed offense. The legislature did not discriminate as to other degrees of criminal sexual conduct. There was no rational reason to therefore distinguish between criminal sexual conduct and assault with intent to commit criminal sexual conduct when it came to peremptory challenges. There was respectfully, given the same penalty for the noncompleted offense, to think the legislature would not have intended consistent treatment in jury selection peremptory challenges.

Appellant fully understands that peremptory challenges are not constitutionally required, and rest within the sole discretion of the legislature. See State v. Bailey, 273 S.C. 467, 257 S.E.2d 231 (1979). However, if the defendant in State v. Lambert was tried at the time of the

present statute, S.C. Code § 14-7-1010, he would have been entitled to ten peremptory challenges, as should appellant Hankinson in this case for his criminal sexual conduct crime.

Finally, since appellant was erroneously denied his right to ten peremptory challenges, the manner in which appellant ultimately exercised his peremptory challenges should not be a consideration, or more accurately used against him. There is no way to know how appellant may have exercised his peremptory challenges in a much different manner if he had double the number of peremptory challenges, ten rather than five, and there is respectfully no principled way to do a practical prejudice analysis despite State v. Green, 301 S.C. 347, 392 S.E.2d 157 (1990) line of cases which should be reconsidered.

State v. Green and its line of cases demands that a defendant must use all of his preemptory challenges to prove prejudice where that is going to result in striking jurors, for the sake of striking jurors, where those jurors under our modern jurisprudence "have a right to serve" seemingly equal to a defendant's right to a fair trial.[5] See Georgia v. McCollum, 505 U.S. 42 (1992)(defendant's impermissible use of peremptory challenges). This is true in a system where gender and racial stereotypes in jury selection are respectfully already abundant, and striking jurors to merely to preserve a reversible legal issue for appeal -- here the correct application of S.C. Code § 14-7-1010 -- should no longer be demanded. Appellant should be granted a new trial on this issue as well.

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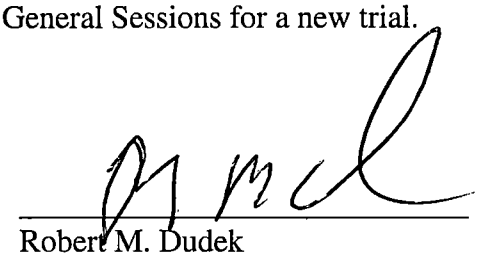
[5] Appellant understands the "right to serve" is not a right that can be demanded in any particular case, but it does not change the overall point that jury service is a right for all citizens to participate in so that verdicts are respected as being the verdict of the overall community. See Powers v. Ohio, 499 U.S. 400 (1991).

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed, and this case remanded to the Aiken County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of January, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WAYNE CORDARO HANKINSON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Wayne Hankinson, #373802, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 25th day of January, 2019.

Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 25th day of January, 2019.

(L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.