STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

Opinion No. 2019-UP-035 (S.C. Ct. App. Filed January 23, 2019)

2016-GS-42-02403

THE STATE,

RESPONDENT,

V.

ALTON JAMAUL CROSBY,

PETITIONER

APPELLATE CASE NO 2017-000282

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that pursuant to the South Carolina Court of Appeals' Opinion issued in this case on January 23, 2019, a Petition for Rehearing was filed on February 7, 2019, which was denied by the South Carolina Court of Appeals on February 21, 2019.

QUESTION PRESENTED

The Court of Appeals erred in upholding the trial judge's refusal to give a self-defense jury charge and in holding in effect that no violation of petitioner's right to remain silent occurred when petitioner was forced to testify involuntarily on the issue of self-defense per the trial judge's remarks that **no self-defense charge would be given sans [petitioner's] testimony** because the rulings were contrary to the Fifth and Fourteenth Amendments.

STATEMENT OF THE CASE

Petitioner Alton Jamaul Crosby was tried by jury on the charge of assault and battery of a high and aggravated nature during the February 2017 term of the Spartanburg County General Sessions Court before Judge R. Keith Kelly. The jury found petitioner guilty of second degree assault and battery. Judge Kelly sentenced petitioner to imprisonment for a period of three years. Charles William Snyder represented petitioner at trial and Assistant Solicitor Spencer Holloran Smith appeared on behalf of the state.

Petitioner appealed his conviction and sentence. On January 23, 2019, the South Carolina Court of Appeals affirmed petitioner's conviction and sentence. See State v. Crosby, Unpublished Opinion No. 2019-UP-035 (S.C. Ct. App. filed on January 23, 2019). App. 1-2. On February 7, 2019, petitioner filed a petition for rehearing in the case. App. 3-9. On February 21, 2019, the South Carolina Court of Appeals issued an Order denying petitioner's petition for rehearing. App. 10. This petition that follows is a writ of certiorari requesting review of the South Carolina Court of Appeals' decision in this case.

ARGUMENT

The Court of Appeals erred in upholding the trial judge's refusal to give a self-defense jury charge and in holding in effect that no violation of petitioner's right to remain silent occurred when petitioner was forced to testify involuntarily on the issue of self-defense per the trial judge's remarks **that no self-defense charge would be given sans [petitioner's] testimony** because the rulings were contrary to the Fifth and Fourteenth Amendments.

This was an assault and battery case. Petitioner raised the following issue on appeal:

> The trial judge erred in denying appellant's motion for a mistrial because the Fifth Amendment was violated when appellant was coerced into involuntarily waiving his right to remain silent and testifying in order to obtain a self-defense jury instruction, which the trial judge ultimately failed to charge despite appellant's testimony, because the state's evidence supported the self-defense claim in the case.

After the state rested, petitioner stated that "[he] decided not to testify." R. 23, l. 19. The defense rested and then counsel in effect raised the issue of self-defense in the case. The trial judge responded by stating that self-defense had not been raised and that no self-defense instruction would be charged unless petitioner testified in the case. R. 24, l.5 – R. 26, l.11. **Counsel asked "you will not instruct [self-defense] if [petitioner] does not testify," and the trial judge answered "yeah."** R. 26, lines 2-4. As a result, petitioner, who previously informed the trial judge that he did not wish to testify, (R. 23, lines 19-21), was forced to reverse his initial decision not to testify and actually testify in his defense of self-defense at trial, presumably because this was the only way to secure a self-defense jury instruction in the case. R. 26, lines 1-25.

Thus, petitioner testified involuntarily at trial. Petitioner testified that he was living at Miracle Hill Rescue Mission and that Talford lived there also, and that when he passed Talford

in the stairwell in question, he (Talford) hit him, and that he felt trapped and fearful so he responded in effect in self-defense when he struck Talford. Also, there was a prior altercation between the two men that occurred before this event. R. 28, l. 1 – R. 31, l. 19. After petitioner testified, the defense rested. R. 32, l. 1-3.

Then, defense counsel moved for a mistrial as follows:

> [Petitioner] would not have testified but for the fact that he thought he had to [testify] to get a charge of self-defense...as the Court instructed some evidence from the defense would have to be presented to get the charge of self-defense. R. 34, l. 15-19.
>
> The evidence in the case that was presented was there was a video...[which showed] that Mr. Talford punched Mr. Crosby first...I believe that raised the question that any actions on his part was in self-defense..R. 35, lines 8-13.
>
> Again, [petitioner] did not want to testify at trial and felt like he needed to get the charge of self-defense, and as the case law proves or demonstrates that one would be entitled to that charge regardless of whether or not we present any evidence. R. 35, l. 17-21.

Also, the trial judge subsequently ruled that petitioner was not entitled to a self-defense jury charge. R. 36, l. 17 – R. 38, l. 7; R. 39, l. 2-6.

Then, after the trial judge improperly coerced petitioner into waiving his right to remain silent and into testifying at trial in violation of the Fifth Amendment, and article 1, §12 of the South Carolina State Constitution, the trial judge failed to give a self-defense jury charge, which was supported by the evidence.

On appeal, this Court held as follows:

> **PER CURIAM**: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Santiago*, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006) ("An appellate court will not reverse the [circuit court's] decision regarding jury charges absent an abuse of discretion."); *id.* ("A self-defense charge is not required unless the evidence supports it."); *State v. Douglas*, 411 S.C. 307, 318, 768 S.E.2d 232, 238-39 (Ct. App. 2014) (listing the elements of self-defense as: (1) the defendant must have been without fault in bringing on the difficulty; (2)

> the defendant must have (a) been in imminent danger of losing his life or sustaining serious bodily injury or (b) believed he was in such imminent danger; (3) if his defense is based on his belief of imminent danger, "a reasonably prudent man of ordinary firmness and courage would have entertained the same belief." If he actually was in imminent danger, the circumstances would have warranted "a man of ordinary prudence, firmness and courage" to act as he did; and (4) he had "no other probable means of avoiding the danger" than to act as he did); *State v. Bryant*, 336 S.C. 340, 346, 520 S.E.2d 319, 322 (1999) (stating the appellant easily could have avoided the conflict by leaving the open parking lot where the situation arose); *State v. Inman*, 395 S.C. 539, 656, 720 S.E.2d 31, 45 (2011) ("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."); *id.* (concluding that the circuit court correctly denied the defendant's motion for a mistrial because he did not show prejudice).

However, the Court of Appeals held in effect by inference that no self-incrimination violation occurred in the case and that no error occurred after the request to charge self-defense was denied when it was clear that the trial judge improperly coerced petitioner into waiving his right to remain silent and into testifying at trial in violation of the Fifth Amendment, and article 1, §12 of the South Carolina State Constitution, and the trial judge erred in failing to give a self-defense jury charge, which was supported by the evidence.

To the contrary, petitioner's Fifth Amendment's right to remain silent was violated in this case. Petitioner invoked his right to remain silent, but subsequently withdrew and waived this right and testified per the belief that his self-defense claim would not be entertained sans his testimony. An accused has a right to remain silent, and not testify, and put the state to its burden of proof. State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987) citing to State v. Sloan, 278 S.C. 435, 298 S.E.2d 92 (1982); State v. Atkins, 353 S.C. 312, 577 S.E.2d 450 (2003). See Doyle v. Ohio, 426 U.S. 610 (1978), where the Court held that an accused has the right to remain silent and the exercise of that right cannot be used against him. The Fifth Amendment provides that no person shall be compelled in any criminal case to be a witness against himself. See also South Carolina State Constitution Article 1, §12. In Brown v. State, 340 S.C. 590, 533 S.E.2d

308 (2000), the Court held that "the decision to testify or not is as perilous one [because] if a defendant does not testify, he [will] forego the opportunity to tell the jury his version of events [and] on the other hand, if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions [but nonetheless] a waiver of this Fifth Amendment right must be knowing and voluntary. The Court of Appeals erred in finding no Fifth Amendment violation in this case.

In addition, the Court of Appeals erred in ruling that self-defense did not apply in this case and in refusing to give a self-defense jury instruction. Only three witnesses testified at trial: petitioner and state's witnesses Calvin Vinson and Officer Shanetta Thompson. Calvin Vinson, who was the Director of the Miracle Hill Rescue Mission testified that he found Talford bleeding and lying at the bottom of a staircase of the building on December 31, 2015. Vinson stated that he was told that an incident occurred between petitioner and Talford, and that the event was captured on a (DVD) surveillance camera. R. 5, l. 11 – R. 8, l. 25.

Police officer Shanetta Thompson testified that she found Talford injured upon her arrival at the scene on the date in question, and that she arrested petitioner at the scene after watching the DVD taped recording of the event. R. 10, l. 1 – R. 15, l. 18. However, on cross examination, Officer Thompson admitted that the videotape showed that Talford initiated the contact with petitioner during the physical altercation and that Talford punched petitioner. R. 16, lines 1-10.

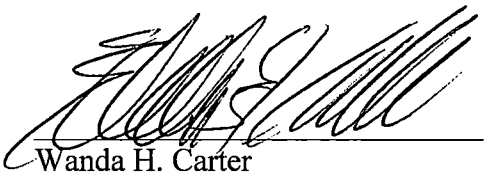
Indeed, the evidence presented at trial revealed that there was a physical altercation between petitioner and Talford at the top of a staircase inside that building and that Talford was the aggressor who hit petitioner first and that petitioner then struck Talford about the head in self-defense. R. 3, l. 14 – R. 4, l. 8.

Petitioner's self-defense claim was supported by the videotape and the testimony of the state's witness (police officer). Defense counsel's opening statement also reveals this when he asked the jury "to pay close attention to the video...[in order to] see that [petitioner] was defending himself." R. 4, l. 11-25. The trial judge in effect coerced petitioner to prove self-defense by forcing to him to testify at trial rather than allow reliance on the state's evidence presented at trial sans his testimony on the issue of self-defense. In effect, this forced petitioner to prove self-defense by testifying when it was the state's burden to disprove self-defense. Here, Talford was the aggressor who began the fight and thereafter, petitioner acted out of fear in self-defense. In a case of self-defense, the law to be charged is determined from the facts presented in the case. State v. Bryant, 336 S.C. 340, 520 S.E. 2d 319 (1999). If there is any evidence in the record from which it can be reasonably inferred that an accused justifiably inflicted a wound in self-defense, then the accused is entitled to a charge on the law of self-defense. State v. Stone, 285 SC 386, 330 S.E. 2d 286 (1985). In order to establish self-defense, the defendant must have been without fault in bringing on the difficulty and was or believed he was in actual imminent danger of losing his life or sustaining serious bodily injury, which a reasonably prudent person would have so believed, and that he had no other means of avoiding the danger. State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984). Moreover, when one claims self-defense, the state is required to disprove the elements of self–defense beyond a reasonable doubt. State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998); State v. Williams, 400 S.C. 308, 733 S.E.2d 605 (2012). The Court of Appeals erred in upholding the trial judge's failure to charge self-defense in the case.

CONCLUSION

Based on the forgoing argument, counsel for petitioner requests that this Court grant this petition and allow full briefing on the above raised points.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 25th day of March, 2019.

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CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on William F. Schumacher, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Alton Jamaul Crosby, at 504 Franklin Street, Spartanburg, SC 29301, this 25th day of March, 2019.

Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE
ME this 25th day of March, 2019.

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.