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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHARLES GREEN, JR.,

APPELLANT

APPELLATE CASE NO. 2013-002526

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court committed reversible error by refusing to charge the jury on self-defense where testimony was presented that Appellant encountered two armed men who were repeatedly antagonistic towards him and who had his money and where Appellant's girlfriend made a statement to police that although Appellant shot at one of the men, the two men shot at Appellant first.

STATEMENT OF THE CASE

On May 19, 2011, the Beaufort County Grand Jury indicted Appellant Charles Green on counts of attempted murder, possession of a weapon during the commission of a violent crime, and possession of a firearm by a person convicted of a felony. R. 174. On November 18, 2013, Appellant proceeded to trial before The Honorable J. Ernest Kinard and a jury. Thomasine Trasi Campbell represented Petitioner and Hunter P. Swanson represented the State. R. 1. The jury found Appellant guilty of the lesser-included offense of assault and battery of a high and aggravated nature, and they found him guilty on the two weapons counts. R. 163, line 4—R. 164, line 3. The trial judge handed down concurrent sentences of two years of incarceration for the possession by a person convicted of a felony charge, five years for the possession of a weapon during the a violent crime charge, and ten years for the assault and battery charge. R. 173, lines 3-11.

ARGUMENT

THE TRIAL COURT REVERSIBLY ERRED BY FAILING TO CHARGE SELF-DEFENSE BECAUSE TESTIMONY WAS PRESENTED TO SUPPORT EACH ELEMENT OF SELF-DEFENSE.

FACTS

At trial the State alleged that on April 6, 2011, Appellant approached and fired a shotgun at Clifton Henry in front of a Food Lion grocery store. R. 2, line 16—R. 3, line 4. Clifton Henry testified that he was at Channon Preston's house that morning when Appellant and his girlfriend, Ashley, drove up and threw two twenty dollar bills at them. Henry and Preston then walked to Food Lion. Appellant and his girlfriend then drove to Food Lion, and Appellant walked to them and asked for the money back. Henry and Preston obliged, Appellant walked back to his car, spun around with the gun, and shot at him. He caught pellets in his legs and arm.

R. 59, line 12—R. 71, line 4.

The State called Investigator Adam Zsamar with the Beaufort County Sheriff's Office, who responded to a report of the shooting. R. 38, line 11—R. 43, line 9. He testified that as part of his investigation, he went to Channon Preston's home on Murray Drive near the Food Lion based on a report that an altercation involving gunshots occurred there before the Food Lion shooting. Investigator Zsamar learned that Preston and his mother, who also lived there, kept multiple guns in the house, and the mother was missing one on the day of the shooting. R. 43, line 11—R. 46, line 12.

The State also called Investigator Jeremiah Fraser, who also responded to the shooting. R. 82, line 16—R. 94, line 18. He stated on April 7, 2011, his investigation led him to Appellant's home to make an arrest. As he did so, his girlfriend, Ashley, "started

to holler that: He didn't start it, they shot at him first; was the first words out of her mouth [sic] once we took him into custody." R. 93, lines 16-20.

At the close of evidence, Appellant's counsel requested a jury charge on self-defense, stating that the testimony supported the charge. The judge denied the request, stating, "[T]here's no evidence, no direct testimony of it. And it's hearsay on hearsay. No bullet markings, he had no guns on him. . . . The guy—the victim testified he was not armed and did not shoot." R. 113, lines 6-24.

DISCUSSION

The trial court reversibly erred by failing to charge self-defense because testimony was presented to support each element of self-defense. The following four elements make up the complete defense of self-defense.

> 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 reasonable 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.

State v. Fuller, 297 S.C. 440, 442-43, 377 S.E.2d 328, 330 (1989)

Once a defendant raises the issue of self-defense, the State must disprove it beyond a reasonable doubt. *State v. Wiggins*, 330 S.C. 538, 544, 500 S.E.2d 489, 492-93 (1998). "If there is evidence of self-defense, the issue should be submitted to the jury

upon request," and the trial court commits reversible error by failing to give a requested charge on an issue raised by the evidence. *State v. Hill,* 315 S.C. 260, 261-62, 433 S.E.2d 848, 849 (1993). Thus, testimony that a decedent fired a gunshot at a defendant who fired the fatal shot in return can support a self-defense charge. *State v. Taylor*, 261 S.C. 437, 200 S.E.2d 387 (1973). "'The general rule is that the failure to object to, or failure to move to strike, testimony renders such competent and accordingly entitled to be considered to the extent it is relevant.'" *State v. Burton*, 356 S.C. 259, 266, 589 S.E.2d 6, 9 (2003) (quoting *State v. Frank*, 262 S.C. 526, 205 S.E.2d 827 (1974)).

In this case, testimony was presented that Henry and Preston instigated a conflict with Appellant at the Food Lion, and Appellant was forced to fire at Henry to protect himself. Investigator Zsamar testified he went to Preston's home on Murray Drive based on a report that an altercation involving gunshots occurred there before the shooting. He also testified Preston's mother was missing a gun. Investigator Fraser then testified that Appellant's girlfriend gave a statement that Henry and Preston shot at him first. Considering Henry's unlikely story of how he came to possess Appellant's money, taken together the evidence supports the finding that Henry and Preston repeatedly acted antagonistically toward Appellant on the day of the incident. Further, the two came to possess Appellant's money and were ostensibly in possession of a gun. Thus, the evidence supports a finding that Appellant was without fault in encountering the armed, antagonistic men, and fearing imminent danger, he had no reasonable choice but to fire back.

The trial judge concluded that the testimony of Appellant's girlfriend that Henry and Preston fired at Appellant first could not support a charge for self-defense because it

was "hearsay on hearsay" and inconsistent with other evidence. The trial judge erred because the testimony was relevant and admitted into the record without objection and was therefore competent to support the charge. Apodictically, that the testimony was inconsistent with other evidence presented at trial was immaterial.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests reversal of his convictions for assault and battery of a high and aggravated nature and possession of a weapon during the commission of a violent crime and remand for a new trial.

Respectfully submitted,

Benjamin John Tripp
Appellate Defender

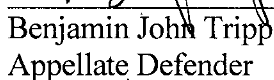
ATTORNEY FOR APPELLANT

This 21st day of April, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief 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."

April 21st, 2015



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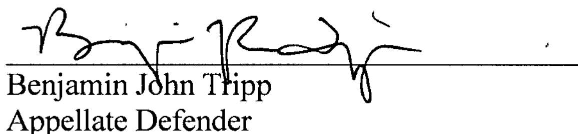
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mary W. Leddon, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 21st day of April, 2015.



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

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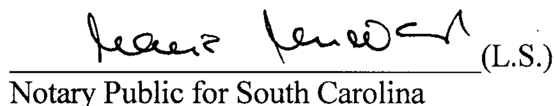
_________________________(L.S.)
Notary Public for South Carolina

My Commission Expires: July 3, 2023.