

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable William Jeffrey Young, Circuit Court Judge
Appellate Case Tracking No. 2016-001785

RECEIVED
APR 16 2019
SC Court of Appeals

The State,

Respondent,

vs.

Rhajon Akeem Reshae Sanders,

Appellant.

RETURN TO PETITION FOR REHEARING

On March 6, 2019, this Court correctly affirmed Appellant's conviction and sentence. Appellant contends this Court misapprehended or misapplied certain case law to the facts of this case. The State submits the Court properly analyzed each issue regarding the trial court's jury charge on self-defense,¹ allowance of certain evidence into the record, and prohibition on addressing other irrelevant information. Accordingly, the Court should deny the Petition for Rehearing.

Self-Defense Instructions

The State submits first and foremost that Appellant was not entitled to a jury instruction on self-defense. As discussed fully in the State's Brief, all arguments of which are incorporated in this Return, Appellant failed to establish at least two of the required elements of self-defense. No evidence presented at trial indicated Appellant was without fault in bringing on the difficulty, and no evidence indicated his actions were reasonable under any circumstances. His waiving

¹ The State does continues to assert Appellant was not entitled to the jury charge on self-defense, a determination not made by this Court.

and addressing Washington clearly precipitated Washington pulling up his pants and heading across the street—the actions Appellant alleged were sufficiently dangerous to place him in fear of harm. Further, no person of even minimal prudence, firmness, and courage (and certainly not one of an ordinary amount) would have believed it reasonable to shoot Washington under the circumstances of this case. As a result, there could be no error by the trial court in any of its jury instructions related to self-defense.

This Court correctly analyzed the denial of Appellant's request for an act on appearances charge, as discussed fully in the State's Brief. This Court properly found Fuller and the factors considered in the case were clearly distinguishable from the case at hand. Additionally, as discussed in the State's brief both Nichols and Jackson are vastly different from the facts of the current case, indicating the trial court did not err in refusing to give the charge under the facts of this case.

This Court also properly affirmed the trial court's decision not to give a no duty to retreat charge as it was not warranted. As discussed in the State's Brief, Appellant would have to show he was either being attacked—and using the doctrine for defensive and not offensive purposes—or he would have to show that by retreating he would increase his danger of being killed or suffering serious bodily injury. This Court properly analyzed the relevant case law and its application to the facts of this case which indicated no basis for giving the charge.

Finally on the self-defense charge, the Court properly found the jury instruction, when read as a whole as required, properly charged the jury the burden on the State to disprove self-defense and did not impermissibly shift the burden. First, the wording given was the same wording requested by Appellant, so he cannot complain that he received the instruction he

requested. Additionally, when read as a whole, the trial court made it clear the burden was on the State.

High-Crime Neighborhood

This Court properly considered the relevant facts and case law regarding the trial court's decision not to allow Appellant to contend he was justified in shooting an unarmed individual because of the nature of the neighborhood and to disallow inferences from being improperly drawn by his counsel. The issue is fully discussed in the State's Brief, which is incorporated by reference. The character of the neighborhood is irrelevant when considering the particular facts and circumstances of this case for self-defense. Additionally, any error in failing to allow the testimony is entirely harmless in light of the facts and circumstances presented by Appellant's testimony and the fact no reasonable person could conclude Appellant's actions in shooting an unarmed, and unprovoked individual were reasonable. Finally, there was no error in restricting the "inference" Appellant's counsel could draw during closing argument because the inference was not a valid inference from the testimony he relied upon.

Cross-Examination on Drugs

This Court correctly determined the issue related to the cross-examination about the marijuana was not preserved for review on appeal. As discussed in the State's Brief, which is incorporated by reference, the objection made was a general objection without any specifics presented to the trial court and any further objection was stated during an off the record conversation which was never placed on the record. The general objection which does not specify the particular ground on which the objection is based is insufficient to preserve a question for review. An objection made during an off-the-record conference which is not made part of the record does not preserve the question for review.

Appellant has failed to demonstrate any fact or case law which was either misapprehended or overlooked by this Court. The Court's opinion properly analyzed all the issues addressed by Appellant in his Petition for Rehearing. As a result, this Court should deny the Petition for Rehearing.

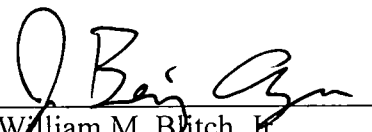
CONCLUSION

For all of the foregoing reasons, the State requests the panel deny the petition for rehearing.

Respectfully submitted,

ALAN WILSON
Attorney General

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Assistant Attorney General

BY: 
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ATTORNEYS FOR RESPONDENT

April 16, 2019

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PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Return to Petition for Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 16th day of April, 2019.


ANNE A. MUELLER
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
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ALAN WILSON
ATTORNEY GENERAL

April 16, 2019

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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RE: State v. Rhajon Sanders
Appellate Case Tracking No. 2016-001785

Dear Ms. Kitchings:

Please find enclosed for filing the original and six (6) copies of the Return to Petition for Rehearing, with proof of service, in the above-referenced case.

Sincerely,

for William M. Blich, Jr.
Senior Assistant Attorney General
S.C. Bar No. 15608

WMB/
Enclosures

cc: Wanda H. Carter, Esquire (2 copies enclosed)
Victim Advocacy Division (enclosure)