

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County
Honorable Brooks P. Goldsmith, Circuit Court Judge
Appellate Case Tracking No. 2017-002603

RECEIVED

JUN 25 2019

SC Court of Appeals

The State,

Respondent,

vs.

Wayne Cordaro Hankinson,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. **The trial court properly ruled Appellant was not entitled to a jury instruction on self-defense.**

- II. **The trial court properly ruled Appellant was not entitled to ten peremptory challenges.**

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

The victim, a twenty-year-old student from Rockville, Maryland, lived in Augusta, Georgia. (Tr. p. 58, 6-15). She attended the summer tutoring program through First Presbyterian before continuing her education at Paine College in Augusta. (Tr. p. 58, 6-15). Joseph met Appellant when he approached her outside the downtown Augusta library on May 17, 2016. (Tr. p. 59, 9-24). The victim and Appellant spoke for about five minutes and exchanged phone numbers while the victim waited for her ride. (Tr. p. 60, 6-12).

At trial, the defense introduced the text messages exchanged between the victim and Appellant from that night. The text messages showed, at 1:02 pm, Appellant asked victim what she was doing that evening. (Def. Ex. 3). The victim responded that she and her friends were going to the movies and that she would be free after the movies. (Def. Ex. 3). The victim went to the movies with friends later that afternoon. (Tr. p. 60, 20-24).

Later that evening, at 9:09 pm, the victim messaged Appellant and told him she was headed home from the movies. (Def. Ex. 3). In response, Appellant indicated he was at the hospital and would call the victim when he left and asked if the victim was going to “let me come scoop u up.” (Def. Ex. 3). The victim informed Appellant she was going downtown with friends and they could meet up. (Def. Ex. 3). At 11:40 pm, victim messaged Appellant and informed him they were no longer going downtown, and he could pick her up and she provided her address. (Def. Ex. 3). Appellant subsequently picked up the victim.

After being picked up they drove for a while, but because the victim was not familiar with the area, she did not know where they were going. (Tr. p. 63, 15-17). Appellant told her they were going to his cousin’s party but ended up at Appellant’s home “somewhere in SC.” (Tr. p. 62, 21-25; p. 63, 1-25; p. 64, 1-3). Before going to Appellant’s home, they stopped at a

gas station to get snacks and beers. (Tr. p. 64, 8-9). Appellant then drove to his house, located in Aiken, SC. (Tr. p. 64, 17-18).

Once inside the house, the victim and Appellant watched a movie. (Tr. p. 67, 22-23). The victim testified she did not know the title of the movie, but it was “about like a man who robs banks”¹ (Tr. p. 68, 4-6). While watching the movie, the victim and Appellant smoked a joint and drank a beer. (Tr. p. 69, 20-23). During the movie, Appellant showed her his dogs outside and, when walking back inside, Appellant attempted to wrap his arms around the victim to which she responded “[i]t’s not - - it’s not why I’m here.” (Tr. p. 69, 24-25; p. 70, 1-3).

The victim and Appellant went back inside and continued to watch the movie; she sat on the couch, and Appellant sat on the other couch. (Tr. p. 70, 16-25). Appellant “came over and sat beside me and tried to like make more advances and I was just like, you know, not into that, not trying to do that. We’re just here to hang out and just relax.” (Tr. p. 71, 3-6). Victim further explained Appellant “started rubbing on my leg. [Appellant] came in, like trying to kiss my neck and was just coming over, like, yeah, leaning over.” (Tr. p. 71, 8-10). After the victim told the Appellant “no,” he went back to his original seat “on the other couch.” (Tr. p. 71, 12-13).

Attempting to “de-escalate” her rejection of Appellant’s advances, the victim talked to Appellant about his “daughters and stuff.” (Tr. p. 71, 16-22). After about ten minutes of conversation, Appellant got up, told her he would be right back, and left the room. (Tr. p. 71, 25; p. 72, 1-7).

The victim explained, when Appellant “came back in the room, he had a gun with him, and he was pointing at me and he told me get up and to take my clothes off.” (Tr. p. 72, 12-14).

¹ Appellant asserts that the victim misidentified the movie the two watched at Appellant’s house as “**The Mummy**” starring Tom Cruise. (BOA p. 5). However, the victim identified the movie she saw with her friends earlier that day was about a mummy, and the movie she watched at Appellant’s home was about bank robbers. (Tr. p.60, 20-24, p. 68, 2-6); (see also BOA pp. 4-5).

Victim described the gun: "It was small. It looked kind of old and rusted. And it was a gun -- the best way I can explain it, it's 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. p. 72, 17-22).

The victim was "in shock for a second, just trying to figure out, like, is this really happening, is this a joke." (Tr. p. 73, 7-9). Victim "started crying, started panting . . . trying to figure out some way to bribe [Appellant], so I was offering my phone [T]he few dollars I had in my purse I took off my necklaces and stuff and [Appellant] still was just like take your clothes off, take your clothes off. And eventually I did take my shirt off." (Tr. p. 73, 9-15).

After victim removed her shirt and necklace, Appellant continued to point the gun at her and block the exit as she pleaded with him: "I was asking [Appellant], like, you know, think about your daughters. What if somebody was trying to do this to your daughters? You know, he was screaming, like I don't care, I don't care. Like, take your clothes off." (Tr. p. 76, 19-23). At this point, the victim reached for her phone to call 911 and Appellant "kind of launched at me and threw his arm around my neck and was like pulling me towards the bedroom." (Tr. p. 77, 12-13).

As Appellant attempted to pull her into the back bedroom, she fought by grabbing onto things to keep him from pulling her into the bedroom. (Tr. p. 77, 20-23). The struggle between the victim and Appellant continued with Appellant's arm around the victim's neck into the first room of the house where they both fell into boxes. Appellant still had his arm wrapped around her neck, preventing her from breathing, after they fell into the boxes. (Tr. p. 78, 19-20, 24-25; p. 79, 4-10). Victim testified she could not speak because Appellant's grip was so tight around

her neck, but she was able to “tap” Appellant’s arm to indicate she could not breathe, and he let her go. (Tr. p. 79, 13-25; p. 80, 1-5).

Upon being let go, the victim “lunged” for a knife on top of a speaker, and “swung around trying to defend myself.” (Tr. p. 80, 7-9). The victim described the knife as “black” with “three silver things on it” and that it was “rigid.” (Tr. p. 80, 18-19). The victim missed Appellant and fell back down. Appellant “grabbed the knife out of [her] hand” by the blade. (Tr. p. 80, 12-16). According to the victim, Appellant stated: “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. p. 80, 22-24). The victim’s hand was also injured by the knife during the altercation. (Tr. p. 81, 6).

The victim told Appellant “[h]e could go get [her] stuff, but [she] was not going back in there.” (Tr. p. 81, 14-18). The Appellant went to collect victim’s belongings, and victim ran out the front door in just her pants, shoes, and bra. (Tr. p. 81, 21-25; p. 82, 1-3). Upon reaching the “middle” of the street, the victim said she turned to look back, and Appellant was at the “front door” and then he “disappeared into the house and [she] ran down the street.” (Tr. p. 82, 17-19). The victim was in an unfamiliar location attempting to seek help when she met David Blanken walking down the street. The victim was screaming “this guys trying to rape me, like help me. Like, do you have a phone? Call the cops. Like, I don’t have my shirt on, like you help me, this guy’s trying to like rape me.” (Tr. p. 83, 15-20).

Blanken offered victim his shirt, and at this point, Appellant drove up in his truck. (Tr. p. 84, 1-21). Blanken testified Appellant pulled up in a “green Chevrolet truck,” and “got out of the car threatening, threatening [victim], told [Blanken] to mind [his] own business.” (Tr. p. 116, 9-14). The victim saw another group of people and ran to them; this group helped victim by giving

her a shirt, bandaging her hand, and calling the police. (Tr. p. 85, 13-15). After she ran to the other group of people, Appellant pulled off. (Tr. p. 85, 2-6). The following day, the victim chose Appellant's photograph in a lineup. (Tr. p. 88, 19-25).

Appellant's Testimony

Appellant, remembered meeting the victim "mostly because she looked good in the pants she had on." (Tr. p. 172, 2-3). Appellant admitted he exchanged phone numbers with the victim at the close of their conversation even though he was dating another woman who was in the hospital when he met victim. (Tr. p. 172).

For the most part, Appellant's and victim's testimony match up until they were seated on the couch at his house. Appellant maintained he pulled the victim's leg over his and "started rubbing on her leg and I was kissing on her neck and she never said anything, she never told me to stop or anything like that." (Tr. p. 177, 24-25; p. 178, 1-2). Appellant further contends he "started rubbing on her breasts and I started sucking on her breasts and I told her to take her shirt off because her bra was over, like over her breasts and it was kind of hard for me to get to them, so I asked her to take her shirt off. She still had on her shirt, her jacket, and all her clothes that she came in." (Tr. p. 178, 2-7). Appellant testified the victim went to the restroom after removing her jewelry and shirt. (Tr. p. 179, 24-25).

Appellant explained he was seated on the couch "drinking my beer waiting on [the victim] to come back." (Tr. p. 180, 13-14). Appellant further testified that when the victim "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." He then claimed: "And when I turned around, [the victim] 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.” (Tr. p. 180, 14-19). The following colloquy on the victim’s behavior and Appellant’s state of mind took place:

Q. What was her demeanor like at that time?

A. She was like kind of smirking at me.

Q. What do you mean by smirking?

A. She had a [playful] look on her face.

Q. Okay. What was your demeanor like?

A. I really - - I just told - - I thought she was playing.

(Tr. p. 181, 23-25; p. 182, 1-5).

Appellant testified he pushed victim’s hand out of his face once, and then he “reached for her again” and victim responded “[n]o, you just want some pussy.” (Tr. p. 182, 14-15). Appellant then asserted he reached for the knife and the victim swiped and cut him on his finger. (Tr. p. 182, 15-17). He explained he “became angry.” (Tr. p. 183) After Appellant realized victim cut his finger, the following testimony occurred over direct examination:

A: After she did it, I grabbed her hand and I kind of twisted it and attempted -- I was going to take the knife out of her hand. But when I did, she like grimaced and she jumped up. When she jumped up, I got up --

Q: What was it like when you grabbed her arm? Were you playful?

A: Not at all, no, sir.

Q: What was it like?

A: Like I said **I was angry** and I was using force.

Q: What happened?

A: I kind of twisted her hand and she grimaced and jumped up and when she jumped up, I jumped up too 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 and --

(Tr. p. 183, 18-21; p. 184, 1-15) (emphasis added).

Appellant maintained he told victim “to give me the knife because if she cut me one more time I was going to mess her up.” (Tr. p. 185, 16-17). Then, Appellant testified he and the victim fell into the boxes as he tried to get the knife from her and it was at that point he “wrapped [his] arm around her neck and [he] told her to let the knife go. And she didn’t let it go so [he] applied pressure. And when [he] applied pressure, she kind of choked a little bit and she released the knife.” (Tr. p. 186, 22-25; p. 187, 1-2).

Upon victim releasing the knife, Appellant testified he told the victim to get her stuff and he would take her home; however, the victim refused to get her stuff, so Appellant went to gather her belongings. (Tr. p. 187, 5-9). Appellant testified he saw victim “walking, running out the door.” (Tr. p. 187, 10). Appellant then testified he got into his truck and drove after the victim. When he reached the victim, with David Blanken, Appellant claimed “leaned over and [he] rolled the window down and [he] told [victim] to get in the truck and she told [him] she ain’t going no where with [him], she want her stuff. [He] told her get in the truck [so he] can take [her] home, [he’ll] give [her] the stuff.” (Tr. p. 187, 20-24). Appellant remembered Blanken was with the victim when he pulled up in his truck. Appellant maintained that he “pulled up right beside [Blanken]. [Blanken] was walking towards [victim] though” and he could not distinguish what they were discussing because of his “loud truck.” (Tr. p. 188, 7-10). Appellant claimed he was “getting out of the truck. [He] was going to tell [Blanken] what was going on. [Blanken] acted like [Blanken] wanted to fight. [Blanken] was doing -- just like [Blanken] wanted to fight. [He] couldn’t hear what [Blanken] was saying, but [he] could tell what was going on. [He] got back in [his] truck and [he] left.” (Tr. p. 188, 10-16).

Afterward, Appellant “freaked out” and was “bleeding like crazy” and went to a friend’s house in Augusta. (Tr. p. 188, 18-25). After a call from Appellant’s father informing him that the police were looking for him and saying that he “tried to rape someone,” Appellant testified he tried to find an attorney and “eventually turned himself in.” (Tr. p. 189, 8-14).

ARGUMENT

I. The trial court properly ruled Appellant was not entitled to a jury instruction on self-defense.

Appellant contends the trial court judge erred in refusing to give a self-defense charge to the jury. Appellant asserts that his testimony contradicted the victim's testimony and that the victim was the aggressor which entitled him to a jury charge on self-defense. Nonetheless, Appellant's argument lacks merit because he failed to establish his entitlement to the charge on self-defense. Appellant failed to provide evidence he was in imminent danger or even believed he was in imminent danger of losing his life or sustaining serious bodily injury. Additionally, he failed to establish that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger. Finally, given the unique facts and circumstances of this case, a self-defense charge would have only served to confuse the jury. Accordingly, the trial court judge properly denied the request to charge self-defense.

Standard of Review

In criminal cases, the appellate court "sits to review errors of law only and is bound by the trial court's factual findings unless those findings are clearly erroneous." State v. Palmer, 415 S.C. 502, 511, 783 S.E.2d 823, 827 (Ct. App. 2016) (citing State v. Edwards, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009)). A trial court must charge the current and correct law of South Carolina. See State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006). In reviewing a trial judge's jury instructions, the appellate court must view the jury charge as a whole and in consideration of the evidence and issues from trial. State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2013). However, "[o]nly the law applicable to the case should be charged to the jury." State v. Blurton, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002). Absent an abuse of discretion; an appellate court will not reverse the trial judge's decision regarding a jury

charge. State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006). “To warrant reversal, a trial judge’s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.” State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010).

Merits

Even assuming self-defense could be a properly chargeable defense to kidnapping, Appellant failed to demonstrate his entitlement to the charge.² Unless supported by the evidence, a self-defense charge is not required. State v. Light, 378 S.C. 641, 649, 664 S.E.2d 465, 469 (2008) (citing State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994)). “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.” Light 378 S.C. at 650, 664 S.E.2d at 469 (citing State v. Slater, 373 S.C. 66, 644 S.E.2d 50 (2007)); State v. Frazier, 401 S.C. 224, 233, 736 S.E.2d 301, 306 (Ct. App. 2013). In order to warrant a self-defense charge, the record must contain evidence of four elements:

- (1) the defendant must be without fault in bringing on the difficulty;
- (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury;
- (3) if his defense is based upon his belief of imminent danger, the defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life; and
- (4) the defendant had no other probable means of avoiding the danger.

² Appellant has failed to point to a single case in this state or any state indicating self-defense is should be instructed to the jury when the defendant is facing either kidnapping or assault with intent to commit CSC charges.

Light, 378 S.C. at 649, 664 S.E.2d at 469.³ If any of the four elements required by law is not present, a defendant may not have a self-defense instruction. State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010). Instructions that do not fit the facts of the case may serve only to confuse the jury. State v. Blurton, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002).

In the case *sub judice*, Appellant’s claim of entitlement to a self-defense fails on two prongs of the test. First, Appellant has failed to provide evidence he either was in actual imminent danger or reasonably believed he was in imminent danger of serious bodily injury of loss of life. Second, he has failed to establish a reasonably prudent person would have held the same belief under the circumstances.

In order to establish entitlement to a self-defense charge, there must be some evidence that the defendant was in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury. Here, Appellant’s own testimony is the best evidence of his state of mind at the time of the kidnapping. Appellant’s testimony began by indicating the victim “had a [playful] look on her face” and that he “thought she was playing.” (T.182). He then explained that she did it again and this time he reached for the knife and got cut. He clearly did not believe she was planning to actually harm him with the knife since he believed she was playing and reached for the knife. “[T]he slayer must actually believe that he is in danger. A man cannot take advantage of appearances, that he knows are only appearances, to slay his fellow man.” State v. Herron, 116 S.C. 282, 108 S.E. 93, 94 (1921).

At that point, instead of being afraid of what was going to happen to him, Appellant instead testified “I became angry.” (T.183). He never testified he became afraid she would use

³ Appellant has not included a requested charge. At trial, he requested the court “consider giving self-defense” Based on the fact it appears Appellant was in his home, he likely would not have to prove the fourth element—the duty to retreat—under the castle doctrine.

the knife to kill him or cause great bodily injury. Instead, he testified he was “angry” or “mad” and that he “was angry and [used] force.” (T.183-184).

Someone playing does not justify the use of force and a kidnapping in self-defense. In order to meet the element, one must show they were in actual risk of harm—which was never shown in this case—or one believed they were in risk of harm—which is clearly belied by his belief she was playing and that her continued playing only made him angry not afraid. Additionally, given Appellant’s testimony he believed the victim was merely playing and took it too far, no reasonable person would agree with a belief that the force used by Appellant was necessary because no reasonable person would believe they were in imminent danger of harm or death.

Further, Appellant was charged with the crime of assault with intent to commit first degree CSC pursuant to section 16-3-656 of the South Carolina Code. In order to convict, the State must prove: 1) an assault, and 2) criminal intent to commit criminal sexual conduct in the first degree. See State v. Ervin, 333 S.C. 351, 356, 510 S.E.2d 220, 223 (Ct. App. 1998), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Section 16-3-652 of the South Carolina Code defines CSC in the first degree:

(1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven: (a) The actor uses aggravated force to accomplish sexual battery. (b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act.

S.C. Code Ann. § 16-3-652 (2019).

The plea of self-defense is one that foundationally rests upon the law of necessity. See State v. Rivers, 186 S.C. 221, 196 S.E. 6 (1938). A plea of self-defense requires an admission

that the criminal conduct alleged by the indictment(s) occurred. That is to say, a defendant claiming self-defense ultimately admits to the elements of the charged offenses but provides a justification to exonerate the otherwise criminal conduct. Valverde v. State, 490 S.W.3d 526, 528 (Tex. App. Ct. 2016). It is beyond logic how one can maintain the intent to commit a sexual battery with aggravated force or under aggravating circumstances but justify it by acting in self-defense. As a result, the requested self-defense charge is clearly inapplicable to the crime of assault with intent to commit first degree CSC.

Additionally, if Appellant was not acting with the criminal intent to commit first degree CSC, whether because of acting in self-defense or for any reason, the jury would acquit. There is no need for a charge on self-defense. The element of the crime requiring intent is all that is necessary to be charged for the jury to be able to make the proper determination. See State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (“A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.”(citations omitted)).

Also, Appellant failed to specify which crime or crimes he believed were justified by his claimed self-defense. Because it is clearly inapplicable to the assault with intent to commit CSC crime, the trial court properly declined his request for a generally applicable charge of self-defense. Appellant never asked to solely apply the charge to the kidnapping charge. As a result, the court did not abuse its discretion in refusing to give a charge that would have only served to confuse the jury. See State v. Stukes, 416 S.C. 493, 498, 787 S.E.2d 480, 482 (2016) (“Jury instructions should be designed to enlighten the jury and aid it in arriving at a correct verdict. Regardless of whether the charge is a correct statement of the law, instructions which confuse or mislead the jury are erroneous.”).

The crime of kidnapping under § 16-3-910 of the South Carolina Code of Laws states “[w]hoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry another person by any means whatsoever without authority of law . . . is guilty of a felony” S.C. Code Ann. § 16-3-910 (2019). In addition to charging the above, the trial court charged the jury that the kidnapping must be unlawful, which he explained: “is something which the law does not sanction, permit, allow, condone, or provide justification for.” In the instant case, a separate self-defense charge would only serve to confuse the jury when it is clearly not applicable to the crime of assault with intent to commit CSC and the jury has already been told that it is not kidnapping if it is justified. See e.g., State v. Belcher, 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009) (“It is axiomatic that some matters appropriate for jury argument are not proper for charging.”).

Because a charge of self-defense was not warranted, and would have only served to confuse the jury, the trial court did not commit an abuse of discretion in rejecting the request to charge. Accordingly, the trial court properly denied the request to charge self-defense and this Court should affirm Appellant’s convictions and sentences.

II. The trial court properly ruled Appellant was not entitled to ten peremptory challenges.

Appellant contends that the trial court judge erred by granting him only five and not ten peremptory challenges during the jury selection process. However, section 14-7-1110 of the South Carolina Code defines which the offenses are entitled to ten peremptory challenges, and assault with intent to commit criminal sexual conduct (CSC) is not enumerated in the statute. Nonetheless, Appellant asserts that he should have received ten peremptory challenges because assault with the intent to CSC potentially carries the same penalty as the criminal offense of criminal sexual conduct. The penalty is not what determines the number of peremptory strikes, but instead it is the unambiguous language of the statute in which the legislature has determined which offenses receive ten strikes versus five.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). A trial judge shall not deny or impair a defendant's right to peremptory challenges; and if such denial or impairment occurs, then "no showing of actual prejudice is required to find reversible error." State v. Short, 333 S.C. 473, 477, 511 S.E.2d 358, 360 (1999).

Merits

A criminal defendant has the right to a fair trial by an impartial jury under the federal and state constitutions. See U.S. Const. amend. VI; S.C. Const. art. I, § 14; State v. Zeigler, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005). This guarantee includes the right to a selection process that is unbiased and fair to the defendant and the jurors. State v. Coaxum, 410 S.C. 320, 327, 764 S.E.2d 242, 245 (2008). Certainly, it is the trial judge's obligation to certify that the impaneled

jury encompasses impartial, unbiased, and fair jurors. State v. Powers, 331 S.C. 37, 43, 501 S.E.2d 116, 119 (1998).

Peremptory challenges are not constitutionally mandated; rather, they are exercises of privilege granted at the sole discretion of the legislature as a means to achieve the end of an impartial jury. State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). The ability to use this privilege as a matter of right is legislatively constrained to the extent allowable by the statute. State v. Bailey, 273 S.C. 467, 469, 257 S.E.2d 231, 232 (1979). The State may withhold peremptory challenges entirely without infringing on a defendant's constitutional rights. Rivera v. Illinois, 556 U.S. 148, 152 (2009); Georgia v. McCollum, 505 U.S. 42, 57 (1992). The existence and control over peremptory challenge usage and consequences of "erroneous denial" of these challenges lie within each state's law at the discretion of that state's legislature. Rivera, 556 U.S. at 152.

The South Carolina legislature has authorized that any defendant charged with the crimes 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" shall have the right to not more than ten peremptory challenges. S.C. Code Ann. § 14-7-1110 (2019). Also, as mandated by the legislature, any defendant charged with any other crime or offense other than those specifically enumerated in § 14-7-1110 shall not receive more than five peremptory challenges. Id.

A trial judge shall not deny or impair a defendant's right to peremptory challenges; and if such denial or impairment occurs, then "no showing of actual prejudice is required to find reversible error." State v. Short, 333 S.C. 473, 477, 511 S.E.2d 358, 360 (1999); See Ross v. Oklahoma, 487 U.S. 81, 89 (1988) ("[T]he 'right' to peremptory challenges is 'denied or

impaired’ only if the defendant does not receive that which state law provides.”). Nevertheless, “[b]efore reversible error can be found, the complaining party must, of course, establish the denial of his right to exercise a peremptory challenge.” Short, 333 S.C. at 478, 511 S.E.2d at 361.

“The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature.” State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)).

All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used. A statute’s language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself.

State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (internal citations omitted).

“Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Id.

In the case *sub judice*, Appellant was not charged with “murder, manslaughter, burglary, arson, criminal sexual conduct, armed robbery, grand larceny, breach of trust when it is punishable as for grand larceny, perjury, or forgery[.]” S.C. Code Ann. § 14-7-1110 (2019). Instead, Appellant was charged with assault with intent to commit criminal sexual conduct (CSC) and kidnapping. Based upon the plain and unambiguous language of § 14-7-1110, Appellant statutorily should not have received ten peremptory challenges. See e.g., State v. Martin, 293 S.C. 46, 48, 358 S.E.2d 697, 698 (1987) (“Instead, regardless of the number of charges to be tried together, a defendant is entitled to a total of ten peremptory challenges **if any of the enumerated crimes in § 14-7-1110 are present and to a total of five peremptory**

challenges in all other cases.” (emphasis added)); State v. Miller, 258 S.C. 573, 575, 190 S.E.2d 23, 24–25 (1972) (“The crime of armed robbery, of which appellant was convicted, is not listed among those offenses entitling a defendant to ten peremptory challenges; but falls within the category of crimes not specifically enumerated in the statute. Therefore, a defendant charged with armed robbery is entitled to only five peremptory challenges, and the trial judge was correct in so limiting the appellant.”).

Conversely, the Appellant contends on appeal the crime of criminal sexual conduct is punishable with potentially same amount of prison time as the crime of assault with intent to commit criminal sexual conduct and, for that reason, asserts Appellant should have been entitled to ten peremptory challenges. Notably though, the entitlement to more peremptory challenges based on the potential sentencing time a criminal defendant is facing has not been mandated by the South Carolina legislature; instead, the South Carolina legislature has elected to enumerate specific offenses for which it authorizes more peremptory challenges. See Bailey, 273 S.C. at 469, 257 S.E.2d at 232; See also Rivera, 556 U.S. at 152 (recognizing “state law controls the existence and exercise of peremptory challenges”). Thus, Appellant was not entitled to more peremptory challenges based on the potential amount of prison time he was facing.

Accordingly, the trial judge properly granted the Appellant the statutorily permitted five peremptory challenges, which was all he was authorized based upon the unambiguous language of § 14-7-1110. The trial judge committed no error in conducting the jury selection process and did not impair or deny the Appellant’s right to peremptory challenges in any manner. Appellant’s convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

June 25, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JUN 25 2019
SC Court of Appeals

Appeal from Aiken County
Honorable Brooks P. Goldsmith, Circuit Court Judge
Appellate Case Tracking No. 2017-002603

The State,

Respondent,

vs.

Wayne Cordaro Hankinson,

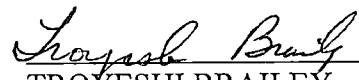
Appellant.

PROOF OF SERVICE

I, Troyeshi Brailey, certify that I have served the within Initial Brief of Respondent on Appellant by depositing copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, 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 25th day of June, 2019.


TROYESHI BRAILEY
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ALAN WILSON
ATTORNEY GENERAL

June 25, 2019

RECEIVED

JUN 25 2019

SC Court of Appeals

Robert M. Dudek, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Wayne Cordaro Hankinson
Appellate Case Tracking No. 2017-002603

Dear Mr. Dudek:

I am enclosing copies of the Brief of Respondent in the above-referenced case. If you have any questions, please do not hesitate to contact me.

Sincerely,

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

Enclosures

cc: Honorable Jenny A. Kitchings (original and nine enclosed)
Victim Services