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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Charleston County
Hon. R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2017-000727

The State, Respondent,

v.

Jalann Williams, Petitioner.

RETURN TO PETITION FOR REHEARING

On June 19, 2019, this Court properly affirmed the trial court's decision refusing to charge self-defense because Petitioner was not without fault in bringing on the difficulty. The Court affirmed the ruling following a thorough analysis applying the facts of the case to both state and federal law. Contrary to Petitioner's assertions in the petition for rehearing, the Court did not misapprehend or overlook any relevant facts or law applicable in this case. Accordingly, this Court should deny the petition.

Petitioner contends this case is not a logical extension of existing state law. However, the Court properly applied the facts of Petitioner's case to find bringing a loaded, unlawfully-possessed gun to an illegal drug deal was a violation of state and federal law. *State v. Williams*, Op. No. 27895, at pp.16-17 (S.C. Sup. Ct. filed June 19, 2019) (Shearouse Adv. Sh. No. 25). First, it is undisputed the parties were involved in an illegal marijuana deal which violates state and federal law, and it violates federal law to use or carry a gun during such a crime. Second, Petitioner armed himself with a weapon, not to defend himself, but prior to participating in a

drug deal. (R.p.232; p.270). As argued in Respondent's brief, Petitioner brought on the difficulty by starting the argument that led to the struggle with the victim and the shooting, verifying the Court's analysis of the nexus between drugs and weapons, and its conclusion "the mere presence of guns at illegal drug transactions *produces*" the potentially deadly violence. *Williams*, Op. No. 27895, at p.17 (emphasis in original).

This Court carefully distinguished Petitioner's case from *State v. Burriss*, 334 S.C. 256, 513 S.E.2d 104 (1999), to note the defendant in *Burriss* was entitled to an accident jury charge because he "was not doing anything 'in violation of law' except unlawfully possessing a pistol" when he acted in self-defense. *Williams*, Op. No. 27895, at pp.17-18. Petitioner, however, was intentionally taking part in an illegal drug deal and had illegally armed himself. The facts of Petitioner's case make it a logical extension of *State v. Slater*, 373 S.C. 66, 644 S.E.2d 50 (2007), as explained by the Court. Both Petitioner and Slater armed themselves with guns for the purpose of entering into situations they "knew to be rife with violence." *Williams*, Op. No. 27895, at pp.18-19. As discussed in the Respondent's brief, Petitioner's unlawful possession of the pistol was the proximate cause of the difficulty that led to victim's death because Petitioner began the argument with the victim during a situation where Petitioner admitted tensions and emotions were high. (R.pp.241-43). Petitioner's decision to carry a gun to a marijuana deal demonstrates an awareness of the potential for danger or violence. As correctly found by this Court, Petitioner's act of taking an unlawfully-possessed gun to an illegal drug deal was not "merely incidental" to arming himself in self-defense. *Williams*, Op. No. 27895, at p.19. The decision by this Court is well-founded in the facts of the case.

Both the dissent and Petitioner contend the majority's holding is misplaced. Specifically, the dissent argues the current self-defense case law "adequately sets forth the parameters of how

judges and juries are to consider the question of whether a drug-dealing or drug-purchasing defendant was or was not 'without fault in bringing on the difficulty,'" and a self-defense charge was warranted in Petitioner's case given the evidence presented. *Id.* at pp.21-22. Petitioner argues the holding mandates a "guilty of *murder or not guilty only* scenario" which is "very unfair" to other defendants, and also bars the charging of lesser-included offenses.

Respondent respectfully disagrees that the facts presented support a self-defense jury instruction even analyzing the issue using our state's current case law, as proposed by the dissent. *Id.* at p.21. Petitioner started the argument about the marijuana, fired once, and, after admitting the shot caused the victim to pause, Petitioner fired a second time. (R.pp.245-46). As argued in Respondent's brief, Petitioner brought about the difficulty and escalated the violence at a point in time when he could have extricated himself from the situation and ended the confrontation. Petitioner's co-defendant ran from the vehicle following the first gunshot and Petitioner never asked either of the other two people in the SUV for help. (R.p.245; p.206). While not addressed in the Court's opinion, Respondent continues to maintain these facts demonstrate the trial court properly refused to instruct the jury on self-defense because Petitioner failed to show he did anything to extricate himself from or avoid the deadly confrontation, in addition to failing to show he was not without fault in bringing on the difficulty. (R.pp.295-96); *see also State v. Bryant*, 336 S.C. 340, 344-45, 520 S.E.2d 319, 321-22 (1999) (explaining to establish self-defense in South Carolina, a defendant must show he was not at fault in bringing on the difficulty, he was in actual danger of losing his life or sustaining serious bodily injury, a reasonably prudent person of ordinary firmness and courage would have entertained the same belief and would have struck the deadly blow to save himself, and the defendant had no other probable means of avoiding the danger).

Finally, the Court's decision does not foreclose the possibility of either a self-defense charge for a future defendant in a similar scenario, or a charge for a lesser-included offense if the evidence supports it. *See State v. Goodson*, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994) (holding the law to be charged is determined by the evidence presented at trial). The majority opinion need not address when to charge a lesser-included offense because the issue was not before the Court and Petitioner refused the trial court's offer to charge voluntary manslaughter. (R.pp.296-301). Respondent submits the Court carefully considered the impact its holding would have when acknowledging there may be a future case in which a "defendant will convince the trial court he has produced evidence he was not at fault in bringing on the violent occasion." *Williams*, Op. No. 27895, at p.20. However, the Court concluded the facts of Petitioner's particular case precluded a self-defense charge after a thorough analysis of state and federal law as applied to the evidence presented.

Petitioner has failed to demonstrate any fact or case law which was either overlooked or misapprehended by the Court. The majority opinion properly analyzed all the issues addressed by Petitioner in his petition for rehearing. Rehearing is not warranted. Therefore, this Court should deny the petition and affirm its original decision finding Petitioner was not entitled to a self-defense instruction.

CONCLUSION

For all of the foregoing reasons, Respondent requests the Court deny the petition for rehearing.

Respectfully submitted,

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July 18, 2019.

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THE STATE,

RESPONDENT,

V.

JALANN WILLIAMS,

PETITIONER.

PROOF OF SERVICE

I, Sherrie Butterbaugh, counsel for the Respondent, certify that I have served the Return to Petition for Rehearing on Petitioner by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Robert M. Dudek, Esq., South Carolina Commission on Indigent Defense, Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.

This 18th day of July, 2019.

SHERRIE BUTTERBAUCH
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ATTORNEY FOR RESPONDENT

ALAN WILSON
ATTORNEY GENERAL

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July 18, 2019

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: *The State v. Jalann Williams*
Appeal from Charleston County
Appellate Case No. 2017-000727

Dear Mr. Shearouse:

Enclosed for filing in your office is the original and six (6) copies of the *Return to Petition for Rehearing* in the above-referenced case, together with the *Proof of Service*.

Thank you for your assistance in this matter.

Sincerely,

Sherrie Butterbaugh
Assistant Attorney General

SB:brb
Enclosures
cc: Robert M. Dudek, Esquire (w/two copies of encls.)
The Honorable Scarlett A. Wilson, Solicitor 9th Judicial Circuit (w/copy of encls.)
Trisha Allen, Victim Advocacy Division (w/copy of encls.)