STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MATTHEW CORY DWYER,

APPELLANT

APPELLATE CASE NO. 2015-002290

FINAL BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to charge self-defense when evidence showed that appellant and the decedent, who was ex-military and knew martial arts, got into a fight after a sexual advance in the decedent's moving car and that the appellant was scared?

STATEMENT OF THE CASE

On July 9, 2015, a Sumter County grand jury indicted appellant for murder and a weapons charge. R.549 – 550. On October 19, 2015, appellant was tried before the Honorable Maite Murphy and a jury. R. 1. John P. Meadors represented the State. R. 1. John S. Keffer represented appellant. R. 1. The jury convicted appellant. R. 420, l. 15 – 421, l. 17. Judge Murphy sentenced appellant to forty-five years' imprisonment for murder and a concurrent term of five years' imprisonment on the weapons charge, R. 422, l. 16 – 423, l. 4. This appeal follows.

ARGUMENT

The trial court erred in refusing to charge self-defense when evidence showed that appellant and the decedent, who was ex-military and knew martial arts, got into a fight after a sexual advance in the decedent's moving car and that the appellant was scared.

Introduction

In his opening statement, defense counsel admitted that on the night of the decedent's death, appellant was with him in the car and there was an altercation. R. 19, ll. 8 – 15. He told the jury "this is a case of self-defense." R. 19, ll. 10 – 13. Despite the State's theory of the case resting on the testimony of appellant's brother, Stephen Dwyer ("Stephen"), who the solicitor credited in his closing statement with stating that appellant was in the car with decedent—possibly for sex—when they had a fight and appellant shot the decedent in a moving car, the trial judge refused to charge self-defense. R. 381, l. 15 – 385, l. 24. R. 218, ll. 1 – 15. R. 231, ll. 6 – 20. R. 361, ll. 1 – 8.

Ruling that "the testimony did not establish" the elements of self-defense, the trial court's ruling inverted the standard for giving this charge, placing the burden on the defendant to prove self-defense to receive a charge. R. 361, ll. 1 – 8. See State v. Frazier, 401 S.C. 224, 233, 736 S.E.2d 301, 306 (Ct. App. 2013) ("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."). The trial judge's ruling eviscerated the defense and left trial counsel to argue lack of malice and voluntary manslaughter in closing. R. 392, l. 8 – 401, l. 7.

Factual Background

On the night of January 26, 2015, the decedent, Johnny Singleton ("Singleton") was playing cards with friends. R. 94, l. 16 – 95, l. 8. He left between 9:30 and 10:00 PM. R. 95, ll. 9 – 12. He was alone. R. 95, ll. 9 – 12. His phone had been ringing throughout the night and Singleton left upset. R. 97, l. 17 – 98, l. 11. One of Singleton's friends remembered seeing appellant at her house when Singleton was also present. R. 96, l. 18 – 97, l. 6.

The police found Singleton's car wrecked backwards in a ditch early the next morning. R. 108, l. 14 – 109, l. 8. Singleton was dead in the car. R. 25, ll. 17 – 23. The car was in reverse gear. R. 25, ll. 9 – 11. Singleton's body was "found in the back seat of the vehicle, in a seated position, with his legs across the center console." R. 25, ll. 17 – 23. The rear window was shattered, the driver's window was broken, and the passenger front window was down. R. 26, ll. 13 – 23. The police concluded that the car was damaged from "reversing into the ditch itself." R. 38, ll. 22 – 25. The next day, from the autopsy, the police learned Singleton had been shot in the back of the head. R. 37, ll. 20 – 24.

The police found Singleton's phone in the woods behind the car. R. 62, l. 21 – 63, l. 3. After taking the phone into evidence, an investigator began calling the numbers in Singleton's phone. R. 304, l. 17 – 311, l. 14. The police determined that Singleton and appellant had called each other that night. R. 304, l. 17 – 311, l. 14. They executed a search warrant at appellant's residence and took him into custody. R. 183, ll. 7 – 192, l. 11. Appellant denied knowing anything about Singleton's death. R. 192, ll. 9 – 11.

The police summoned appellant's brother, Stephen, to the station and interrogated him for over six hours. R. 241, ll. 10 – 19. They threatened Stephen with prosecution. R. 243, ll. 14

– 19. Stephen testified that the police told him that if he did not "say the right thing, I can be charged with accessory." R. 248, l. 6 – 249, l. 2.

The State called Stephen as a witness. R. 205, ll. 21 – 24. On the night of Singleton's death, Stephen got a call from appellant. R. 208, ll. 5 – 11. Appellant wanted Stephen to pick him up on a highway in Sumter County. R. 208, l. 21 – 210, l. 22. When Stephen picked him up, appellant "looked beat up. Like really beat up." R. 210, ll. 23 – 25. Appellant "looked like he was in a fight." R. 211, ll. 5 – 8. Appellant's hand was bleeding. R. 211, ll. 18 – 21. Stephen took him home. R. 212, l. 25 – 213, l. 11.

Stephen later saw Singleton's death on the news and asked his brother what happened. R. 215, l. 10 – 216, l. 5. Stephen testified about what appellant told him:

> Well he just said, I ain't know if he had been knowing this man or not. But in the car, he said man gave him the wallet. Being that was the type of person he was, I guess the man had – he said the man had gave him the wallet earlier because he wanted favors. **He wanted like sexual favors.** I didn't know why they was going up there, but he wanted sexual favors. Matthew said that the man gave him the wallet before anything ever went down. And then on the way, on the way going there, I guess, he wanted Matthew to do some things for him. And Matthew just told me that he ended up pulling over. And that's when they pulled over. And he's probably force himself and they got in a tussle or whatever.

R. 218, ll. 1 – 15. Stephen continued:

> And yeah, he just say that after they pulled over**, the man had really got more aggressive and try to force him to do whatever. And that's how he got into a fight.** And when he **say as they was fighting, he stumbled across a gun**.... I guess it was in the man's car already. **And that's when he just picked it up, and he said he shot him.** He didn't know if he was dead or not. He just got out of the car and then called me.

R. 218, ll. 1 – 10 (emphasis added).

The solicitor attempted to impeach Stephen with a statement the police typed, Stephen signed, and was entered into evidence. R. 428-429. In this statement, Stephen told the police that "Matthew told me that him and the dude was tussling in the car, and that the dude knew Karate, and had been military. And he got scared and said that he shot him in head." R. 231, ll. 6 – 20. Appellant and Singleton "were tussling" in the car and after Singleton got shot, "the car was wrecked and hit a tree." R. 231, ll. 6 – 20. Stephen's statement also says, "Matthew told me that the dude that got killed was a fagot [sic] and that he used to rape boys." R. 428-429.

On cross-examination, Stephen testified:

> Q. There was a fight.
>
> A. That's right.
>
> Q. He was scared, is that correct?
>
> A. That's correct.
>
> Q. I mean, that's in your statement. Your brother told you he was scared, is that right?
>
> A. That's right.
>
> Q. He also told you that this individual knew karate. Is that right?
>
> A. That's correct.

R. 244, l. 18 – 245, l. 15. A transcript of Stephen's interview with the police was entered into evidence. R. 430-487.

Defense counsel requested a self-defense instruction at the charge conference. R. 357, l. 15 – 359, l. 7. He cited Stephen's testimony and the statements entered into evidence showing that appellant was scared and that his actions were reasonable. R. 357, l. 15 – 359, l. 7. Defense counsel argued to the court that "no matter how small, the evidence is there to at least offer that

charge in self-defense." R. 357, l. 15 – 359, l. 7. He gave Judge Murphy a copy of State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008).

The solicitor responded, "We don't think that there's **any evidence** of self defense **whatsoever**. . . " and then recited some of the elements of self-defense without much in the way of argument. R. 360, ll. 3 – 25 (emphasis added). Judge Murphy ruled:

> In regards to the self defense issue, Mr. Keffer, the court will respectfully deny your motion. The court finds **that there is no testimony to establish the elements of self defense**; that the defendant was without fault, and the defendant was imminent danger, and that there was no other way to avoid the danger. The testimony **did not establish** those three elements.

R. 361, ll. 1 – 8 (emphasis added).

Discussion

The trial judge erred by not viewing the evidence and inferences in the light most favorable to appellant and by essentially placing the burden on appellant to prove self-defense. Light at 649-50, 664 S.E.2d at 469. Defense counsel gave the trial judge a copy of Light, but the court inexplicably ignored the principles set forth by the Supreme Court. R. 359, ll. 2 – 4. Light requires a self-defense charge in this case. It is the State, not appellant, who has the burden of disproving self-defense beyond a reasonable doubt and appellant raised the facts necessary to submit the issue to the jury. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011).

Light holds that when "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 at 649-50, 664 S.E.2d at 469. The trial judge failed to follow this command from Light when she reviewed the evidence in the case. The court did not use the "any evidence" standard. The court also failed to view the facts and inferences in the light most favorable to appellant. See State v. Williams, 400 S.C.

308, 314, 733 S.E.2d 605, 608-09 (Ct. App. 2012) ("When reviewing the circuit court's refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant."). Nor is a court permitted to weigh the credibility of the witnesses. See State v. Rogers, 405 S.C. 554, 569 n.5, 748 S.E.2d 265, 273 n.5 (Ct. App. 2013) (stating that at the directed verdict stage—which uses the same "any evidence" standard as a jury charge—the court may not weigh the credibility of witnesses).

The facts of Light make it clear that self-defense should have been charged in this case. The Supreme Court held the trial judge erred in not charging self-defense because evidence contained in one of the defendant's contradictory statements supported the charge. Id. Here, while Stephen gave somewhat contradictory statements, Light makes it clear that contradictions are no bar to receiving a self-defense charge. Id.

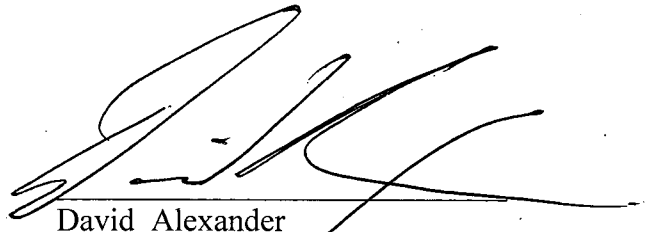
Stephen's testimony presented sufficient facts on each element to submit the question of self-defense to the jury. Stephen said that appellant and Singleton were in the car together consensually. Singleton began to force himself sexually on appellant. This raises the first element of self-defense—that appellant was without fault in bringing on the difficulty. State v. Wiggins, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998). Stephen testified and said in his statement that appellant was scared, believed that Singleton knew karate, and had raped people. This sufficiently raises the second element that appellant believed he was in imminent danger. Id. Singleton and appellant got into a fight and, during the struggle, appellant found a gun and shot Singleton. This evidence sufficiently raises the third and fourth elements of self-defense—that appellant acted reasonably and had no other means of avoiding the danger. Id. The evidence also shows that the car was moving during the fight, which further demonstrates that appellant could not avoid the danger by simply running away. Despite the solicitor's previous

assertion at the charge conference that there was no evidence "whatsoever" to support self-defense, his primary witness provided all of the elements necessary to send the case to the jury with a self-defense instruction.

Appellant's entire strategy was based on receiving a self-defense charge. R. 20, ll. 11 – 13. Defense counsel told the jury in his opening statement, "We believe that the evidence is going to suggest, is going to show this is a case of self defense. That is not murder." R. 20, ll. 11 – 13. When the trial judge refused the request, appellant was left without the ability to make good on the promise of his opening in closing argument. Further compounding the error in not charging self-defense, at the charge conference, the trial court agreed with the solicitor that a charge of inferred malice from use of a deadly weapon was not proper under State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) because it was charging voluntary manslaughter, but nevertheless later gave the charge. R. 361, l. 18 – 362, l. 8 (agreeing that inference from a deadly weapon should not be charged); R. 413, ll. 14 – 21 (giving the prohibited Belcher charge). Not only did appellant not receive the self-defense charge to which he was entitled, he received an erroneous charge on inferred malice. This Court should reverse.

CONCLUSION

For the above-stated reasons, this Court should reverse appellant's convictions and remand this case for a new trial.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of March, 2017.

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."

March 27, 2017

David Alexander
Appellate Defender

South Carolina Commission on
Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343