

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Perry M. Buckner, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

RECEIVED

NOV 27 2019

SC Court of Appeals

V.

DONTARIOUS JARON WRIGHT,

APPELLANT

APPELLATE CASE NO. 2019-000492

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in failing to tailor the self-defense jury instruction to the facts presented where the judge refused to instruct the jury a person is not required to wait until his assailant gets the drop on him in order to exercise self-defense where there was evidence Appellant shot the deceased because he feared the deceased would shoot him in retaliation for cooperating with the police about a prior shooting and the deceased was walking toward his car where the police ultimately found a handgun?

STATEMENT OF THE CASE

On January 25, 2018, a Beaufort County grand jury indicted Appellant for murder (2017-GS-07-1337) and possession of a weapon during the commission of a violent crime (2017-GS-07-1338). R. 622-623; R. 625-626. The state, represented by Mary Jones and Kimberly Smith, called the case for trial on March 11-13, 2019, before the Honorable Perry M. Buckner and a jury. R. 1-2. The jury found Appellant guilty as charged. R. 472, l. 24 – R. 473, l. 15. Judge Buckner sentenced Appellant to forty years imprisonment for murder and 5 years imprisonment for the weapon. R. 492, ll.6-15; R. 624; R. 627.

On March 18, 2019, Appellant served his notice of appeal. This brief follows.

STANDARD OF REVIEW

“A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.” State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608 (Ct. App. 2012) (quoting State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010)). “The law to be charged must be determined from the evidence presented at trial.” Id. (quoting State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000)). “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.” Id. at 314, 733 S.E.2d at 608-609. “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 [circuit court’s] refusal to do so is reversible error.” Id. at 314, 733 S.E.2d at 609 (quoting State v. Day, 341 S.C. 410, 416-417, 535 S.E.2d 431, 434 (2000)).

ARGUMENT

The trial judge erred in failing to tailor the self-defense jury instruction to the facts presented where the judge refused to instruct the jury a person is not required to wait until his assailant gets the drop on him in order to exercise self-defense where there was evidence Appellant shot the deceased because he feared the deceased would shoot him in retaliation for cooperating with the police about a prior shooting and the deceased was walking toward his car where the police ultimately found a handgun.

Relevant facts

It was undisputed that Appellant shot the deceased. The question for the jury was whether Appellant shot the deceased with malice aforethought, in the sudden heat of passion based on sufficient legal provocation, or in self-defense. Jamel “J.D.” Washington shot Appellant in the leg. R. 234, ll. 7-17; R. 352, ll. 3-8. After the shooting, Appellant stayed away from Washington, his associates, and the area in which Washington frequented. State’s Exhibit #37.

When Appellant began dating his girlfriend, he began visiting with her family, including Frank “Mikey” Young, Jr. R. 193, ll. 13-22; R. 194, l. 20 – R. 195, l. 1; State’s Exhibit #37. In early August 2017, Adrian Lamont “Mont” Manigo ran into each other. R. 231, l. 13 – R. 233, l. 1. Mont was J.D.’s “errand boy.” State’s Exhibit #37. Mont warned Appellant to “keep his hand out of the cookie jar.” R. 232, l. 15 – R. 233, l. 1; R. 233, ll. 20-23; R. 234, ll. 18-20.

On August 22, 2017, Appellant was visiting Young. R. 195, l. 20 – R. 196, l. 10; State’s Exhibit #37. Michael “Peter Piper” Grant and Derio Young were also there. R. 195, l. 20 – R. 196, l. 10; R. 212, ll. 9-12; R. 212, l. 24 – R. 215, l. 17; State’s Exhibit #37. While Appellant and the others were hanging out under a tree in the middle of the front yard, Mont arrived in a

Tahoe. R. 198, ll. 11-16; R. 205, ll. 14-18; R. 217, ll. 5-12; State's Exhibit #37. Fearful that Mont was going to shoot him in retaliation for informing the police that J.D. had shot him previously or that J.D. was in the Tahoe with Mont, Appellant shot Mont as Mont walked to his Tahoe. R. 200, ll. 15-20; R. 218, l. 5; State's Exhibit #37. Mont died as a result of the gunshot wound to his chest. R. 398, ll. 9-15.

During the subsequent police investigation, it was shown that Appellant's fears were well-founded. In the center console of Mont's Tahoe, the police found a .9 millimeter handgun. R. 284, l. 10 – R. 285, l. 6; State's Exhibit #21. Additionally, the police found a ballcap beside Mont's body and a ballcap in the front passenger seat of the Tahoe. R. 290, ll. 2-6; R. 291, ll. 5-19. Finally, the police found three .9 millimeter shell casings, which were determined to have been fired by the same gun, and a Wynn .38 Super P shell casing that was fired by a different gun. R. 290, l. 9 – R. 291, l. 1; R. 344, l. 8 – R. 347, l. 8. In fact, Mont had gunshot residue primer on his hands. R. 334, ll. 20-24.

At the conclusion of the presentation of evidence, the judge entertained the lawyers in his chambers for the charge conference. R. 407, ll. 13-14; R. 407, ll. 22-23. When the conference was placed on the record, defense counsel noted her request for an instruction that "South Carolina does not require that any Defendant wait until his assailant gets the drop on him, and all defendants have the right to act in the law of self preservation and prevent the assailant from getting the drop on him." R. 409, ll. 9-16; R. 616. Judge Buckner declined the request, stating, "And I don't think there was any evidence in this trial to require that that be charged." R. 409, ll. 17-20.

During his instructions to the jury, Judge Buckner charged the jury on the elements of self-defense. R. 456, l. 16 – R. 459, l. 23. Pursuant to counsel's request, the judge instructed the

jury may consider “[e]vidence of prior difficulties between the person, Defendant and the victim” “in deciding whether a threat existed, whether the Defendant had a reason to believe a threat existed, and how serious that threat was.” R. 408, ll. 6-15; R. 458, ll. 9-13; R. 616. However, the judge failed to instruct the jury that a person is not required to wait until his assailant gets the drop on him in order to exercise self-defense. Thus, at the conclusion of the instructions, trial counsel renewed her request. R. 468, ll. 16-25.

Discussion

The South Carolina Supreme Court has long held that a trial judge has the responsibility to craft a self-defense charge tailored to the facts of a case. State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011); State v. Fuller, 297 S.C. 440, 444-45, 377 S.E.2d 328, 331 (1989). As recognized in Fuller, there is a “body of common law self-defense” and trial judges must “consider the facts and circumstances of the case at bar in order to fashion an appropriate charge.” Fuller, 297 S.C. at 443, 377 S.E.2d at 330.

In Fuller, the defendant solicited a prostitute. Id. at 441, 377 S.E.2d at 329. However, when the pair arrived at the prostitute’s trailer, they discovered it was occupied. The defendant then left. Id. When the defendant later returned to the prostitute’s trailer, he found a car driven by a white woman was blocking the road. Id. The defendant asked her to move her car. Id. Two men approached the defendant’s car and asked him “what he was ‘trying to do to that white lady.’” Id. One of the men used a racial slur and grabbed the defendant by the throat. Id. at 441, 377 S.E.2d at 329-30.

The defendant fired a warning shot allowing him to drive away. Unbeknownst to the defendant, the street was a dead end. Id. at 442, 377 S.E.2d at 330. Due to the men blocking his escape, the defendant ultimately crashed his car against a rail. Id. The two men yelled, “‘we’re

going to take care of you.” Id. The defendant thought he saw something shiny in one of the men’s hands and fired four shots at them, killing both. Id. No gun was found on the men. Id.

The trial judge only instructed the jury on the basic elements of self-defense. Id. The Court held it was error to only give the general charge when the defendant “repeatedly requested additional charges.” Id. at 443, 377 S.E.2d at 330. The Court found the trial judge erred by not giving three specific charges on self-defense that further explained the principles in the general charge. First, the trial judge failed to charge the jury that the defendant had the right to act on appearances. Id. at 443-44, 377 S.E.2d at 330-31(citing State v. Jackson, 277 S.C. 271, 87 S.E.2d 681 (1955)). Second, the trial judge failed to charge the jury that “words accompanied by hostile acts, may, depending on the circumstances, establish a plea of self-defense.” Id. (citing State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951)). Third, the trial judge failed to charge that an individual has no duty to retreat “if by doing so he would increase his danger of being killed or suffering serious bodily injury.” Id. (citing State v. Hardin, 114 S.C. 280, 103 S.E. 557 (1920)).

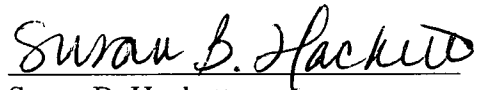
The South Carolina Supreme Court held a trial judge erred in failing to charge on the specific elements of self-defense that were applicable to the defendant’s theory in State v. Day, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000). As stated by the Court, “[a] self-defense charge is erroneous where the trial court fails to charge on elements of the defense which were applicable to the issues raised by the defendant.” Id. The Court found the instruction given in Day incomplete because the trial judge failed to instruct the jury that the defendant had the right to judge the conduct of the deceased more harshly than otherwise because of the deceased’s drug consumption. Id.; see also State v. Hendrix, 270 S.C. 653, 660-661, 244 S.E.2d 503, 507 (1978)(including the intoxication of the deceased under its analysis of the imminent peril element of self-defense and stating

intoxication would provide a basis for the defendant to judge the conduct of his adversary more harshly than otherwise).

The trial judge erred in failing to tailor the self-defense instruction to the evidence presented at trial. Appellant's ability to act prior to the deceased getting the jump on him was an important consideration for the jury. This aspect was crucial to the jury's determination as to whether Appellant was in imminent danger, whether the belief was reasonable, and the amount of force necessary to repel the threat. The trial judge failed to guide the jury's consideration of self-defense with this legal fact, which was required to enable the jury to understand how to make a determination of the reasonableness of the threat posed by the deceased.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of November, 2019.

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THE STATE,

RESPONDENT,

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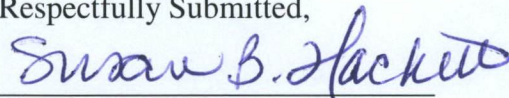
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Dontarious Jaron Wright states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of Appellant's trial before Judge Perry M. Buckner, which was held on March 11-13, 2019, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. Pursuant to Anders v. California, 386 U.S. 738 (1967), she has briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Dontarious Jaron Wright.

Respectfully Submitted,



Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

This 27th day of November, 2019.

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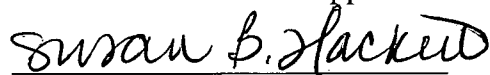
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Entire trial transcript;
- (2) State's Exhibits #1, 2, 3, 4, 5, 6, 12, 15, 16, 20, 21 (photos);
- (3) State's Exhibit #37 (DVD);
- (4) Court's Exhibit #5 (transcript);
- (5) Court's Exhibit #6 (request to charge);
- (6) True-billed indictments; and
- (7) Sentence sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

November 27, 2019



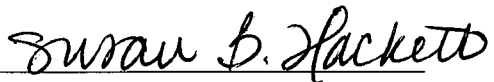
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ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

November 27, 2019.



Susan B. Hackett
Appellate Defender

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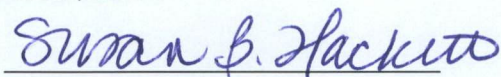
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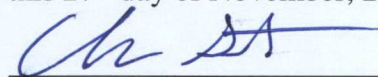
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Melody J. Brown, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Dontarious Jaron Wright, 343780, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 27th day of November, 2019.


Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of November, 2019.

 (L.S)

Notary Public for South Carolina

My Commission Expires: September 30, 2029