STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

V.

DALE ELROY MATHIS,

APPELLANT.

APPELLATE CASE NO. 2018-001932

FINAL BRIEF OF APPELLANT

RECEIVED
DEC 17 2019
SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by refusing to tailor the self-defense instruction to adequately reflect the evidence presented at trial, specifically to include language that "a defendant has the right to use so much force as appeared to be necessary for complete self-protection," where this instruction was crucial to the jury's understanding of the law of self-defense and without this element the instruction was incomplete?

STATEMENT OF THE CASE

A Greenville County grand jury indicted Appellant on February 21, 2017 for murder and possession of a weapon during the commission of a violent crime. R. 421. His case was called to trial on October 15, 2018 before the Honorable Alex Kinlaw, Jr., and a jury. R. 1. Assistant Solicitors Hunter Blouin and Jonathan Gregory represented the state, and Alex Kornfeld represented Appellant. R. 1.

On October 18, 2018, the jury found Appellant guilty as indicted. R. 417, l. 22 – 418, l. 6. He was sentenced to life without parole for murder pursuant to S.C. Code Ann. § 17-25-45. R. 420, ll. 11-15. The judge did not impose a sentence for the weapons offense. See S.C. Code Ann. § 16-23-490 (stating five-year sentence does not apply in cases where a life sentence without parole is imposed for the violent crime).

This appeal follows.

STANDARD OF REVIEW

"The trial judge is required to charge only the current and correct law of South Carolina." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010) (citing Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004)). "The law to be charged must be determined from the evidence presented at trial." Id. (quoting State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001)) (internal quotation marks omitted).

"A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused." Id. (quoting State v. Austin, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989)). "However, if the trial judge refuses to give a specific charge, there is no error if the charge actually given sufficiently covers the substance of the request." Id. (quoting Austin, 299 S.C. at 458, 385 S.E.2d at 831).

"An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Marin, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (citing State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007)). "In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." Id. (quoting State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011)). "The substance of the law is what must be instructed to the jury, not any particular verbiage." Id. (quoting State v. Smith, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994)). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." Mattison, 388 S.C. at 479, 697 S.E.2d at 583 (citing State v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002)).

STATEMENT OF FACTS

While coyote hunting on January 29, 2016, Chad Taylor discovered the body of a white male on private property in northern Greenville County. R. 11, l. 24 – 15, l. 14; R. 195, ll. 20-22. The body looked like it had been "tossed to the side of the road" and "possibly drug" after the decedent had died. R. 27, ll. 7-19; R. 197, ll. 8-17. The body was facedown. The decedent's pants were pulled down to his knees and his pockets were turned out. He was not wearing any shoes. His shirt was partially pulled upward exposing a large gaping wound to his back. R. 196, ll. 3-15. He had no wallet or other identification on his person. R. 196, ll. 18-21. The decedent was later identified through his fingerprints as forty-two year old Jamie Howard. R. 52, ll. 12-19; R. 196, l. 22 – 197, l. 7.

During its investigation, law enforcement discovered that Howard's car had been found burned behind a remote county park on January 20, 2016. R. 200, l. 13 – 201, l. 20. An arson investigator with the Greenville County Sheriff's Office determined the fire originated in the passenger compartment of the car and that it had been intentionally set. R. 100, l. 3 – 101, l. 14. The car was "burned completely to the metal floorboard." R. 99, ll. 3-8. All of the combustible materials, including the foam seats and the plastic door paneling, were burned. R. 98, l. 20 – 99, l. 8.

Investigators obtained a search warrant for Howard's cell phone and determined his phone had last been used on January 19, 2016. R. 199, l. 5 – 200, l. 10. They also learned from Wells Fargo, where Howard banked, that his debit card had last been used on that same date. There was an attempted purchase at the Dollar General that was ultimately declined. R. 201, l. 21 – 202, l. 24. Investigators obtained surveillance footage of this transaction from the Dollar General and identified Davia Smith as the individual who attempted to use Howard's card. R.

202, l. 13 – 203, l. 24; R. 77, l. 17 – 78, l. 3; R. 83, ll. 12-24. Based on this evidence and information law enforcement gathered from interviews of various individuals, Davia Smith and Appellant were identified as persons of interest. R. 203, ll. 17-24.

Appellant, who was fifty-three years old in January 2016, and Davia, who was twenty-seven, dated for several years despite their significant age gap. R. 109, l. 16 – 110, l. 11. They both suffered from heroin and methamphetamine addiction and were homeless. R. 113, l. 13 – 114, l. 16. In January 2016, they lived with Jimmy Blackwell in Greer. R. 111, ll. 5-8; R. 113, ll. 4-12. While she was dating Appellant, Davia had also been dating Jamie Howard on and off for about a year. Appellant knew about Davia's relationship with Howard and "was good with [it]." R. 116, l. 9 – 118, l. 17; R. 327, ll. 10-11. Howard sold methamphetamine and would supply Davia with drugs when Appellant could not. R. 38, l. 9-17.

On January 19, 2016, Davia woke up at Jimmy Blackwell's house feeling "dope sick." She was physically ill because she had gone "so long without" drugs even though she had used drugs the day before. R. 120, ll. 12-23. Appellant had been gone for hours with his nephew and had not returned. Desperate, Davia called Howard and asked him to bring her "some drugs." R. 121, ll. 9-17. Howard arrived at Blackwell's house around 1:00 pm and gave Davia "pills," which made her feel better. R. 122, ll. 19-23. While Howard was at the house, Appellant and his nephew returned. After his nephew left, Appellant asked Howard for a ride to his cousin's house. R. 122, ll. 4-18; R. 307, l. 19 – 308, l. 18. Davia claimed that both Appellant and Howard were also "high at this point." R. 122, l. 24 – 123, l. 2.

All three got into Howard's car. Howard was driving, Davia was in the front passenger seat, and Appellant was in the middle of the backseat. When they arrived at Appellant's cousin's house, which was about a five minute drive, Howard parked on the side of the road near the

driveway. He did not want to pull into the driveway because it was not paved very well. R. 123, l. 25 – 125, l. 10. Appellant and Davia's accounts of what occurred next differed significantly.

Appellant testified that during the five minute drive, the three argued after Howard said he was "going to make a threesome video with Davia." Referring to Appellant, Howard asked Davia, "When are you going to quit hanging around this pussy?" R. 309, l. 10 – 310, l. 6. Appellant told Howard there was "no sense in disrespecting me like that." He then heard Davia say, "He's got a knife." R. 309, l. 14 – 311, l. 22. After he heard Davia's warning, Appellant "slapped the back of [Howard's] seat," which leaned all the way forward because the locking mechanism was broken, and pinned Howard against the steering wheel. R. 309, l. 14 – 312, l. 3; R. 314, ll. 14-16.

Appellant announced he was getting out of the car and removed his hand from the back of Howard's seat. The seat then came all the way back into a reclining position and Howard turned toward Appellant. It was then that Appellant saw the knife. "It looked like a medieval dagger." R. 312, ll. 7-24. The two struggled over the knife. Appellant tried to grab the knife at first but was unsuccessful. As Howard was "coming at" Appellant with the knife, Appellant hit him twice in the face with his cane and then "hooked" him around the neck with the cane once.[1] R. 315, l. 17 – 316, l. 14. With the use of the cane, Appellant pulled Howard on top of him. During this part of the altercation, the knife, which was still in Howard's hand, went into his side near his back. The knife never left Howard's body. Appellant continued to hold Howard down "in a bear hug" until he stopped moving. R. 316, l. 15 – 317, l. 13; R. 319, ll. 9-14.

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[1] Appellant suffers from Crohn's disease and is physically disabled. He walks with the assistance of a cane. He was injured in a serious car accident and has a plate in his hip as a result. Additionally, Appellant suffers from degenerate bone disease in his knees and hip. R. 127, ll. 4-16; R. 322, l. 24 – 323, l. 12.

Appellant testified that he was scared for his life during the altercation, that he thought Howard was going to stab him, and that he was merely trying to defend himself from the attack. R. 319, ll. 15-25. He did not mean for Howard to die. R. 317, ll. 14-15; R. 322, ll. 14-17. There had been several past events where Howard had been aggressive toward Appellant or tried to attack him which increased Appellant's fear during the altercation. R. 323, l. 20 – 325, l. 19. For example, on one occasion, Howard tried to strike Appellant with a metal pipe when he was lying in bed but was stopped by another individual. R. 267, l. 15 – 270, l. 20; R. 323, l. 20 – 324, l. 14. On another occasion, Howard pointed a gun at Appellant when Appellant tried to stop Howard from "beating on" Davia in the front yard of a house they were visiting. R. 277, l. 11 – 281, l. 25; R. 324, ll. 15-25. There was also an occasion where Howard shattered the windshield of Appellant's pickup truck with a samurai sword. R. 297, l. 2 – 300, l. 9; R. 325, ll. 3-14. In addition to Howard's prior physical acts of aggression, he was also younger and much stronger than Appellant who had numerous physical ailments. R. 322, l. 24 – 323, l. 16.

After the fight, Appellant did not call 911 because he "panicked" and was "freaked out." He later burned Howard's car because he was "scared" and "high on methamphetamine." R. 318, ll. 6-8; R. 322, ll. 4-19.

Davia's story was much different than Appellant's. She was also charged with murder in connection with Howard's death. While she testified she did not have a deal with the solicitor's office in exchange for her testimony, she was impeached with a recorded telephone call she made from the detention center shortly before trial in which she told the person on the other line that as long as she did not "stumble on [her] testimony" she would be allowed to plead guilty to accessory after the fact and be sentenced to "time served and probation." R. 180, l. 15 – 184, l. 7.

Davia claimed that after Howard parked on the side of the road near the edge of the driveway, Appellant got out of the car. R. 131, ll. 18-23. Out of nowhere, Appellant, who was standing just outside the car, "took his cane and hooked it around [Howard's] neck." R. 132, ll. 10-19. Davia claimed as Appellant was pulling on the cane, Howard leaned his seat back, pushed his feet off the steering wheel, and turned around. R. 132, l. 20 – 133, l. 7. As he turned around, Howard grabbed a large hunting knife from in between the driver's seat and the center console. R. 133, ll. 14-25. Davia claimed Appellant immediately took the knife from Howard and stabbed him in the side. R. 134, ll. 1-14.

Davia testified that she sat in the passenger seat in shock during the altercation and never screamed or yelled. R. 136, ll. 9-14. After Appellant stabbed Howard, Davia claimed Appellant got into the backseat of the car, asked her to get into the driver's seat, and directed her to drive to a road about two minutes away. R. 136, l. 15 – 137, l. 9. Davia pulled into a field and Appellant removed Howard's body from the car. R. 137, ll. 12-19. Davia admitted to attempting to use Howard's debit card at the Dollar General shortly thereafter. R. 138, l. 8 – 142, l. 23.

ARGUMENT

The trial judge erred by refusing to tailor the self-defense instruction to adequately reflect the evidence presented at trial, specifically to include language that "a defendant has the right to use so much force as appeared to be necessary for complete self-protection," where this instruction was crucial to the jury's understanding of the law of self-defense and without this element the instruction was incomplete.

How the Issue was Presented Below

During the charge conference, Appellant requested the trial judge instruct the jury that a defendant has the right to use "so much force as appeared to be necessary for complete self-protection" arguing this instruction was relevant to his defense and to the facts presented. R. 391, l. 19 – 392, l. 1. The state argued that the self-defense instruction proposed by the trial judge "already covered" the requested charge and thus the additional language would be "duplicative." R. 392, ll. 2-5. Agreeing with the assistant solicitor's "rationale," the trial judge denied Appellant's request and refused to charge the degree of force instruction. R. 392, ll. 6-7.

Discussion

The trial judge abused his discretion by refusing to charge the degree of force instruction requested by Appellant since it is a correct statement of the law and was supported by the evidence presented. The judge was required to tailor the self-defense instruction to reflect the facts and theories presented by Appellant. Appellant was prejudiced by the judge's refusal because the assistant solicitor repeatedly emphasized the nature of the fatal injury and the characteristics of the knife as evidence Appellant was guilty of murder. See R. 359, l. 1 – 360, l. 6; R. 374, l. 18 – 375, l. 14.

"At one time, self-defense was an affirmative defense in this State, and a defendant bore the burden of establishing it by a preponderance or greater weight of the evidence." State v. Wiggins, 330 S.C. 538, 544, 500 S.E.2d 489, 492 (1998) (citing State v. McDowell, 272 S.C. 203, 249 S.E.2d 916 (1978)); See State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984) (where our Supreme Court removed the burden of proving self-defense from the defendant and placed it on the state).

"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." State v. Day, 341 S.C. 410, 416-417, 535 S.E.2d 431, 434 (2000) (quoting State v. Muller, 282 S.C. 10, 316 S.E.2d 409 (1984)).

In Davis, the Supreme Court suggested a standard self-defense instruction. 282 S.C. at 46, 317 S.E.2d at 453. However, in State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989), the Court made clear that it did not intend Davis to be the exclusive self-defense charge. State v. Burkhart, 350 S.C. 252, 262, 565 S.E.2d 298, 303 (2002). Instead, "a trial judge should specifically tailor the self-defense instruction to adequately reflect the facts and theories presented by the defendant." Day, 341 S.C. at 418, 535 S.E.2d at 435 (citing Fuller, 297 S.C. 440, 377 S.E.2d 328). "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. (citing Fuller, 297 S.C. 440, 377 S.E.2d 328).

In Day, the Supreme Court held the trial judge's failure to charge the specific elements of self-defense that were applicable to Day's theory constituted reversible error. 341 S.C. at 418, 535 S.E.2d at 435. The Court found the trial judge's instruction was incomplete because it failed to include a charge indicting: (1) Day had a right to judge the conduct of the decedent more

harshly than otherwise because of the decedent's drug consumption, and (2) the jury could consider prior instances of violence or unprovoked aggression by the decedent in determining whether Day had a reasonable belief of imminent danger. Id. Part of Day's defense was his argument that the decedent had previously pulled a gun on him and that the decedent was in a "drug induced paranoia" the day of the incident. Id. Consequently, the Court held the jury charge, which only included the standard self-defense instruction as outlined by our Supreme Court in Davis, along with the charge on the right to act on appearances, was incomplete because the trial judge failed to charge on the decedent's substance abuse or his prior acts of violence. Id. Ultimately, the Court reversed Day's convictions and sentence and remanded for a new trial.

In State v. Campbell, 111 S.C. 112, 96 S.E. 543 (1918), the defendant shot and killed a man who came at him with a glass bottle. The defendant claimed self-defense. The trial judge charged the jury that under self-defense the defendant was limited to using as much force as was used against him. Our Supreme Court found the trial judge erred in giving this charge and held:

> A person assaulted, being without fault in bringing on the difficulty, **has the right to use such force as is necessary for his complete self-protection** ... The defendant, if without fault, had the right to use such necessary force as required for his complete protection from loss of life or serious bodily harm and cannot be limited to the degree or quantity of attacking opposing force.

Id. (emphasis added).

The Supreme Court reaffirmed this holding in Douglas v. State, 332 S.C. 67, 72-73, 504 S.E.2d 307, 309-310 (1998). Likewise, in State v. Hendrix, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978), the defendant shot the decedent four times in rapid succession, but alleged self-defense at trial. The state argued Hendrix used excessive force by firing more than once. In directing a verdict of acquittal, the Court held "when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has

ceased." Id. at 661, 244 S.E.2d at 507 (quoting 40 C.J. S. Homicide § 131(b) at 1020 (1944)) (internal quotation marks omitted).

The charge requested by Appellant, that "a defendant has the right to use so much force as appeared to be necessary for complete self-protection," is a correct statement of the law and was supported by the evidence presented at trial. Based on our Supreme Court's holding in Fuller and Day, the trial judge was required to specifically tailor the self-defense instruction to adequately reflect the facts and theories presented by Appellant. Appellant asserted he acted in self-defense during the altercation with Howard when Howard was ultimately stabbed in the side with the knife. Consequently, the trial judge abused his discretion by refusing to charge this element of self-defense.

Appellant was prejudiced by the judge's refusal because the assistant solicitor repeatedly emphasized the nature of the fatal injury and the characteristics of the knife as evidence Appellant was guilty of murder. See R. 359, l. 1 – 360, l. 6; R. 374, l. 18 – 375, l. 14. For example, the solicitor argued in closing:

> To prove murder, the State had to prove that there was a killing. Well, Dr. Fulcher's report: homicide. Cause of death: 12-inch stab wound through the heart.
>
> There must be an intent to kill. Factor, the character of the act, getting stabbed with a very, very large knife. The instrument used: a very, very, large knife. The manner in which the instrument was used: stabbed in the side and piercing the heart three separate times. The purpose to be accomplished: to kill Jamie Howard, and that resulted in death.
>
> . . .
>
> And with malice aforethought, hatred, ill will or hostility existing towards another person existing just before or at the time of the act, either express or implied, express being I'm going to kill you, implied, inferred from the totality of the circumstances in which you're presented.

R. 374, l. 18 – 375, l. 14.

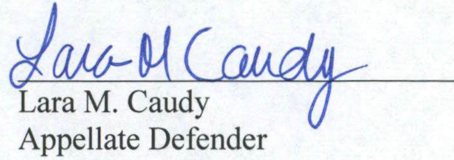
The solicitor also described the injury as "five significant redirected distinct wound paths, the deepest of which was 12 inches long," and repeatedly emphasized the "five distinct paths" suggesting Appellant used excessive force. R. 359, l. 1 – 360, l. 6.

Because the trial judge abused his discretion by refusing to specifically tailor the self-defense instruction, this Court should reverse Appellant's convictions and sentence and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,



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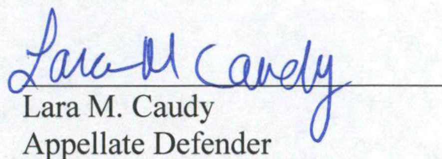
December 17, 2019.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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."

December 17, 2019.



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