ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable Alex Kinlaw, Jr., Circuit Court Judge
Appellate Case No. 2018-001932

THE STATE,

Respondent,

vs.

DALE ELROY MATHIS,

Appellant.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF THE 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?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUE ON APPEAL

Did the trial court abuse its discretion in denying Appellant's requested jury instruction as duplicative where the existing instructions fully covered the applicable law regarding the degree of force that may be used in self-defense and where Appellant's stated trial defense articulated that he never possessed or used the knife against victim?

STATEMENT OF THE CASE

Appellant was indicted by a Greenville County Grand Jury on February 21, 2017, for murder and possession of a weapon during the commission of a violent crime. Appellant proceeded to trial on these charges on October 15, 2018, before the Honorable Alex Kinlaw, Jr., and a jury. (R. p. 1). Assistant Solicitors Hunter Blouin and Jonathan Gregory represented the State. Defense counsel, Alex Kornfield, represented Appellant at trial. (R. p. 1). On October 18, 2018, the jury found Appellant guilty of murder, but acquitted Appellant on the charge of possession of a weapon during the commission of a violent crime. (R. p. 417, line 23 through p. 418, line 6). Appellant was sentenced to life without parole for murder pursuant to S.C. Code Ann. § 17-25-45. (R. p. 420, lines 11-15).

This appeal follows.

STANDARD OF REVIEW

"The role of the trial court is to charge the jury correctly based on the evidence presented at trial." *State v. Marin*, 404 S.C. 615, 623, 745 S.E.2d 148, 153 (Ct. App. 2013), aff'd as modified, 415 S.C. 475, 783 S.E.2d 808 (2016) (citing *State v. Brandt*, 393 S.C. at 549, 713 S.E.2d at 603). "An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." *State v. Williams*, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005)(citing *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007)(citing *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). "It is error for the trial court to refuse to give a requested instruction which states a sound principle of law when that principle applies to the case at hand,

and the principle is not otherwise included in the charge." *State v. Williams*, 367 S.C. at 195, 624 S.E.2d at 445. 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. *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003). The substance of the law is what must be instructed to the jury, not any particular verbiage. *State v. Smith*, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994)(citing S*tate v. Rabon*, 275 S.C. 459, 272 S.E.2d 634 (1980)). 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, 583 (2010).

STATEMENT OF FACTS

On January 29, 2016, the body of Jamie Howard (hereinafter "victim") was discovered on the side of a field in Greenville County by a local hunter, Chad Taylor. (R. p. 15, lines 2-13). Victim's body had a large stab wound above the left buttocks, but did not have "suspected blood" running out of the wound. (R. p. 27, lines 20-25; p. 55, lines 8-12). Victim's body was found with his pants pulled down, his pocket turned out, his shoes missing, and clean socks. (R. p. 29, line 18 through p. 30, line 14; p. 53, lines 1-2). Spare change was found in the area around the body, the surrounding ground did not have signs of blood flow from the body, and the surrounding foliage suggested the body had been dragged through the field to the place it was discovered. (R. p. 27, lines 7-19; p. 30, lines 6-8). The Coroner's testimony demonstrated that victim sustained at least five stab wounds, all wound paths originated from the same entry point, and the longest of these wound paths measured approximately twelve inches in length. These stab wounds punctured the heart, lungs, spleen, and liver. (R. p. 57, lines 7-23). In addition to the stab wounds, the autopsy revealed that victim had blunt trauma to the face, a superficial wound to the left shoulder, and an incised injury to the web of the hand indicative of a defensive

injury. (R. p. 55, lines 8-20; p. 61-62; p. 63). Also, the coroner testified that the hyoid bone in the front of victim's throat was fractured and accompanied by hemorrhaging, indicating trauma in the form of pressure or strangulation to the neck prior to death. (R. p. 64, line 16 through p. 65, line 15). Toxicology revealed the presence of methamphetamines. (R. p. 65-66).

Testimony from witnesses demonstrated that victim had a history of using and selling drugs, including methamphetamine. (R. p. 36, lines 17-22; p. 114, lines 9-12). Victim owned a cobalt blue PT Cruiser. (R. p. 46, lines 15-18). On January 21, 2016, Victim's vehicle was found completely burned out. (R. p. 90, line 22 through p. 91, line 15). Investigation of the burn scene revealed evidence that the car had been set on fire using gasoline as an accelerant. (R. p. 94-101).

Davia Smith (hereinafter "Ms. Smith") was present during victim's death and testified at length about what she witnessed. At the outset of her testimony she admitted that her statements to police changed over the course of the investigation, as she was attempting to avoid trouble. In her first interview she denied knowing anything about victim's death. (R. p. 115, lines 4-23). She was more forthcoming in her second statement.

She testified at trial that she loved victim, but was also romantically involved with Appellant at the time. (R. p. 116, line 16 through p. 117, line 25). She testified that Appellant was not happy that she was still seeing victim. (R. p. 119, lines 17-21). She testified that on the day of victim's death she called victim to bring her some drugs and pick her up from Appellant's home. (R. p. 121, lines 7-23). Appellant pulled up while victim was still there and Appellant asked for a ride to his brother's house. (R. p. 122, lines 4-18). During the drive Ms. Smith testified that victim was driving, Appellant was behind victim, and she was seated in the passenger seat. When they arrived, victim pulled a u-turn and Appellant began to exit the vehicle. (R. p. 125, lines 9-11). Ms. Smith testified that before closing the door Appellant used

his cane to hook victim around the neck and then yanked back hard. Victim attempted to get out from cane's hook by sliding his seat back and turning around. (R. p. 132, line 2 through p. 133, line 7). Victim also grabbed the large knife he had between his seat and the center console. (R. p. 133, lines 8-22). In his efforts, Appellant took the knife from victim and stabbed victim in the side. (R. p. 134, line 1 through p. 135, line 12). Ms. Smith testified that she was in a state of shock from what had happened. (R. p. 136, lines 11-14).

Ms. Smith testified that Appellant told her to get into the driver's seat and drive. At his instruction, Ms. Smith drove to the field where Appellant dumped victim's body. Appellant then got into the driver's seat and drove them both away from the scene. (R. p. 136, line 20 through p. 137, line 22). Ms. Smith testified that Appellant took victim's wallet, and drove them to the Dollar General. Ms. Smith testified that since she was still clean she went into the store to buy clean clothes for Appellant, cleaning supplies, and a couple of other items. She testified that Appellant handed her victim's credit card to pay for the items, but victim's PIN was invalid and she ultimately left the store without making the purchase. (R. p. 138-142). She next testified that they drove to pick up Dale's nephew, Jake, so that he could help Appellant move victim's body toward the woods. (R. p. 143, lines 1-24). They drove back to the field where victim's body had been left, but she testified that Jake could not bring himself to help move the body; he did ultimately take victim's shoes though. (R. p. 144, lines 14-24). Ms. Smith testified that Jake threw the knife over the nearby bridge and into the river; she personally threw the phone into the river. (R. p. 144, line 18 through p. 145, line 18).

Ms. Smith, Jake, and Appellant drove to a friend's house after which she testified that Appellant and Jake drove the car away. When Appellant returned he told her he got rid of it, but was not specific. (R. p. 145; p. 150, lines 17-21). Ms. Smith testified that Appellant threatened

that if she ever told anyone about victim's death, "she would be laying out there with him". (R. p. 152, lines 2-15). Defense counsel successfully cross-examined Ms. Smith, bringing into question what she actually saw occur. Ms. Smith admitted that she would do whatever she needed to help herself out of her own legal troubles. (R. p. 184-186). On redirect, she was clear that she did not have any pre-arranged deal for leniency, had not discussed such a deal, and that Appellant began the altercation when he used his cane to hook and pull victim toward the backseat. (R. p. 186, line 8 through p. 188, line 15).

Appellant was arrested in connection with victim's death on February 12, 2016. (R. p. 205, lines 14-23). In his subsequent mirandized interviews with police, Appellant admitted to stabbing victim out of jealousy and burning the vehicle. (R. p. 214, lines 4-13). Officer Bailey, who was present for Appellant's statements, corroborated the accuracy of Appellant's confessions because they contained details that had not been released to the public. (R. p. 214, line 23-25). Appellant confessed that he burned the vehicle to get rid of the evidence and that he tossed the knife into the river. (R. p. 215, lines 8-22). Officer Bailey testified that Appellant gave multiple versions of what happened in his various statements to police. (R. p. 216, line 5 through p. 217, line 4).

- The first suggested he attacked victim to prevent him from raping Ms. Smith. (R. p. 220, lines 4-10).
- The second suggested that he was not present for victim's death at all, but that Ms. Smith confessed to him that she had killed victim. (R. p. 221, lines 6-24).
- In the third story Appellant admitted to being in the car, being jealous and angry regarding victim's comments about sexual activity with Ms. Davis, and using his

cane to hook victim around the neck. In this version, Ms. Smith was the individual who stabbed victim. (R. p. 226-228).

Appellant's testimony confirmed that he told law enforcement these various versions of events during his mirandized statements. (R. p. 331, line 17 through p. 333, line 18). Officer Bailey noted that none of Appellant's versions of stories involved a claim of self-defense, but had stated something to the extent that he did not mean to kill victim. (R. p. 228, line 18 through p. 229, line 1).

Appellant testified at trial that the three individuals were in the car and arguing about victim making a threesome video with Ms. Smith. During this time Appellant claimed that victim emasculated him. (R. p. 309, lines 4-24). Appellant testified that victim instigated the physical attack by reaching for his knife, and that was when he pushed victim's seat forward pinning him against the steering wheel. (Appellant claimed at trial that the driver's seat had a faulty seat lock/spring). (R. p. 310, line 4 through 311, line 6). Appellant testified that he pleaded with victim to just let him get out of the vehicle and leave. (R. p. 312, lines 8-12).

Appellant testified that victim pulled the knife from an area between his seat and the door. (R. p. 313, line 2-6). He testified that victim turned around with the knife in his left hand, and "that's when I took the knife." (R. p. 315, lines 1-5). He then testified that he used the cane and "tried to grab the knife out of his hand." (R. p. 315, lines 16-19). He then testified that he was not successful in getting the knife from victim. (R. p. 316, lines 4-8). It was at this point that Appellant testified he hooked victim with his cane. (R. p. 316, lines 13-17). Appellant testified that victim still had possession of the knife and that when he pulled victim on top of him the knife went into victim's side. (R. p. 316, line 22 through p. 317, line 13; p. 342, lines 23-25).

Appellant claimed he had victim in a bear hug and did not know victim had been stabbed until he quit moving. (R. p. 319, lines 9-14).

He claimed that he and Ms. Smith were "freaked out" and did not dial 911 to report the incident. (R. p. 318, lines 6-8). Appellant testified that he was high when he first spoke with law enforcement and told Officer Bailey that he stabbed victim to prevent him from raping his girlfriend. He testified that that explanation was a lie. (R. p. 318, lines 9-22). Appellant confirmed that he disposed of the body in the field, but claimed he never rumbled through victim's pockets and did not take victim's wallet. (R. p. 343, lines 14-19; p. 321, lines 13-24). He admitted to burning the PT Cruiser, claiming again that he did so because he was freaked out. (R. p. 322, lines 1-13). He also confirmed at trial that his statement to police that he "lost his cool" when victim spoke of making a sex tape was a truthful statement. (R. p. 322, lines 20-23).

On cross-examination Appellant confirmed each of his previous false statements to police. (R. p. 331, line 17 through p. 334, line 19). Appellant also confirmed that none of his previous statements to police included information about the driver's seat having a faulty lock/spring on it. (R. p. 334, lines 20-25). Appellant testified that at the time of his statements to police he did not claim self-defense and did not know what self-defense was. (R. p. 343, lines 2-5).

ISSUE AS IT WAS PRESENTED AT TRIAL

Prior to the jury charge conference, Judge Kinlaw provided the parties with a list of the court's intended charges, compiled based upon what the Court observed as evidence presented during trial. (R. p. 353, lines 13-17). Judge Kinlaw acknowledged that defense counsel had submitted a number of requests that were not included in his list, including a "degree of force" charge. (R. p. 353, lines 18-24). The court noted that his self-defense charge was the standard charge, and he then allowed counsel the evening to review the list and to bring forth any arguments to the court's proposed jury instructions the following day. (R. p. 354, lines 1-8).

After the parties delivered closing arguments the following day, Judge Kinlaw entertained arguments regarding the intended jury instructions. At that time, defense counsel argued as follows to the court:

> Your Honor, I would request that degree of force be charged to the jury, specifically, so much force as appeared to be necessary for complete self-protection is a relevant charge in this case and needs to be charged concerning his state of mind as to when – what he was seeing, what he knew about Mr. Howard before, and when he was coming around, what he had to do to stop Mr. Howard from getting him with the knife.

(R. p. 391, line 19 through p. 392, line 1). The State responded to the argument that the court's proposed instructions on self-defense would already cover the requested charge, and that the suggested charge would be duplicative. Judge Kinlaw agreed with the solicitor's rational and denied the requested charge. (R. p. 392, lines 2-7).

After concluding the charge conference, Judge Kinlaw proceeded to instruct the jury on Appellant's charges and the relevant law. The court gave the following instruction regarding self-defense:

> "The defendant in this case has raised the defense – affirmative defense of self-defense. Self-defense is a complete defense, and if

it is established, you must find the defendant not guilty. The State has the burden of disproving self-defense by proof beyond a reasonable doubt.

If you have reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, then you must find the defendant not guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, then you must find the defendant guilty.

The following elements are required to establish self-defense: Number 1, without fault. First, the defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense.

Number 2, imminent danger. The second element of self-defense is that the defendant was actually in imminent danger of death or serious bodily injury, or that the defendant actually believed he was in imminent danger of death or serious bodily injury.

If the defendant was actually in imminent danger, ***it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury.*** If the defendant believed he was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would have had the same belief.

In deciding whether the defendant was or believed he was in imminent danger of death or serious bodily injury, you should consider all of the facts and circumstances surrounding the crime, including the physical condition and characteristics of the defendant as well as the victim.

Number 3, no other way to avoid the danger. The final element of self-defense is that the defendant ***had no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular case.*** The defendant does not have to show that he was actually in danger. It is enough if the defendant believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief. The defendant has the right to act on appearances even though the defendant's belief may have been mistaken. It is for you to decide whether the defendant's fear of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation.

> Size and age. The relative sizes, ages, and weights of the defendant and the victim may be considered ***in deciding the apparent or actual need for force in self-defense and the amount of force needed.***
>
> Victim's reputation – victim's violent reputation. The reputation of the victim as a violent person may be considered in deciding whether there was a need for force, ***whether the defendant had reason to believe there was a need for force and whether deadly force was reasonably necessary.***
>
> Prior violence by the victim. Prior instances of violence by the victim may be considered in deciding whether the defendant actually believed he was in imminent danger of death or serious bodily injury or was actually in imminent danger.

(R. p. 404, line 7 through p. 407, line 1) (emphasis added). No further objections to the matter were raised by defense counsel and at the conclusion of the jury instruction the jury was permitted to deliberate. The jury then returned a verdict of guilty on the charge of murder, and a verdict of not-guilty on the charge of possession of a weapon during the commission of a violent crime. (R. p. 417, line 23 through 418, line 6).

ARGUMENT

I. The trial court did not abuse its discretion in denying defense counsel's request for additional instruction on self-defense regarding "degree of force," and specific language stating: "so much force as appeared to be necessary for complete self-protection."

The trial court did not abuse its discretion in denying defense counsel's motion for specific instruction that in self-defense a defendant is entitled to use "so much force as appeared to be necessary for complete self-protection." The court's existing jury charges sufficiently instructed the jury regarding the manner in which degree of force may be judged in the context of self-defense and a court is not obliged to give instruction of specifically requested language in light of a satisfactory charge. Appellant's conviction and sentence should therefore be affirmed.

A court is not required to charge any particular verbiage of law, so long as the substance of the law is accurately presented. *State v. Smith,* 315 S.C. at 554, 446 S.E.2d at 415; *State v.*

Marin, 404 S.C. 615, 623, 745 S.E.2d 148, 153. Here the trial court gave a thorough and accurate instruction on the law of self-defense, and the content of that instruction informed the jury on four separate occasions that the degree of force, including deadly force, is the force reasonably necessary based upon the circumstances presented to the defendant. As was argued by the solicitor and confirmed by the trial court, further instruction on the permissible degree of force was unnecessary given the content of the existing charge.

The Court's instruction provided four separate articulations relating to instruction of degree of force. The first is demonstrated in discussion of the second element of self-defense: the need for imminent danger or reasonably belief of imminent danger. Therein, the trial court's instruction noted that, "If the defendant was actually in imminent danger, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury." (R. p. 405, lines 8-15). By this instruction, the jury was made aware that deadly force is permissible if it is used to prevent death or serious bodily injury under circumstances where a person of ordinary firmness and courage would deem it necessary. Second, the third element concerning avoidance of danger articulated that the "defendant must have no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular case." (R. p. 405, line 22 through p. 406, line 1). Such an instruction demonstrated to the jury that the Appellant may use deadly force in self-defense if the circumstances of the particular case seemingly present no other probable way to avoid death or serious injury.

While these two instructions were sufficient, the court provided further instruction on degree of force in its supplemental self-defense charges given in light of the evidence presented at trial. In instructing the jury on the potential consideration of size and age, the court noted that

such factors "may be considered in deciding the *apparent* or *actual need* for force in self-defense *and the amount of force needed.*" (R. p. 406, lines 12-15)(emphasis added). As defense counsel's requested charge dealt with "apparent necessity" the requested charge is fully engulfed by the language used by Judge Kinlaw during trial. Lastly, and in certain satisfaction of the law related to the requested charge, the trial court instructed that that the jury may consider as a factor the victim's violent reputation "in deciding whether there was *a need for force*, whether the *defendant had reason to believe there was a need for force*, and whether deadly force was *reasonably necessary.*" (R. p. 406, lines 16-21). In totality, the instruction of the court comprehensively covered the requested charge and merely utilized different language than the language proposed by defense counsel. *State v. Smith*, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994)(citing S*tate v. Rabon*, 275 S.C. 459, 272 S.E.2d 634 (1980)).

Appellant's claim on appeal argues that the trial court erred in denying the request on the grounds that the existing jury instruction was not tailored by the court to include instruction on degree of force. Appellant argues that the court's failure to instruct the jury as requested was in violation of *Fuller* and *Day*, and that the State's "emphasis" on the five separate wound paths resulted in prejudice to Appellant in the absence of the requested instruction. Appellant gave no consideration or discussion to the language of the existing charge, despite the solicitor and court both articulating that the reason for denying the charge was that the existing instruction sufficiently covered the law in question.

The holding in *Fuller* does not specifically address "degree of force" charges, or a factual scenario comparable to the case at hand. *State v. Fuller*, 297 S.C. 440, 377 S.E.2d 328 (1989). *Fuller* merely instructs that a trial court "consider the facts and circumstances of the case at bar in order to fashion an appropriate charge." *State v. Marin*, 404 S.C. at 624, 745 S.E.2d at 153.

Likewise, *Day* does not address "degree of force" and only finds error in the court not tailoring the standard self-defense charge to the evidence presented. *State v. Day*, 341 S.C. 410, 418, 535 S.E.2d 431, 435 (2000). Appellant cannot establish an abuse of discretion in the absence of discussing the trial court's rational for denying defense counsel's motions as duplicative. In light of the excerpts discussed, Appellant cannot demonstrate that the existing charge did not make the jury fully aware of the law concerning "degree of force" permissible in self-defense.

Appellant's arguments suggest that the additional instruction was necessary and that prejudiced ensued in its absence because the State focused on the coroner's testimony that victim had five separate "wound paths". Secondly, disregarding the fact that Appellant offered four different stories to law enforcement in his mirandized statements made prior to trial, his trial testimony offered a fifth story that he never possessed the knife and did not utilize the knife against victim. Instead, he testified that victim was in possession of the knife and that victim inadvertently stabbed himself when Appellant was holding onto victim. (R. p. 317, lines 1-11). Under Appellant's presented theory at trial, a "degree of force" instruction was unnecessary as Appellant's theory argues that he did not use deadly force in the first place. Under such a premise, there can be no prejudice in the court's denial of the specific language requested by defense counsel. In the absence of prejudice, there is no reversible error by the court. *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010).

CONCLUSION

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

(Signature on following page)

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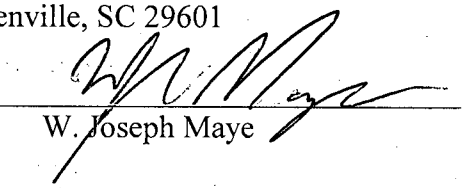
BY: 
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DALE ELROY MATHIS,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 6th day of January, 2020.

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