STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Thomas L. Hughston, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIFFANY MAE MILES,

APPELLANT

APPELLATE CASE NO. 2019-000893

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by failing to adequately and completely instruct the jury on self-defense pursuant to State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984) and State v. Glover, 284 S.C. 152, 326 S.E.2d 150 (1985), when there was evidence from which the jury could have reasonably inferred Appellant acted in self-defense when she struck her boyfriend of thirteen years after he strangled her, and by failing to properly instruct the jury on the burden of proof as it relates to self-defense pursuant to State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998) and State v. Addison, 343 S.C. 290, 294, 540 S.E.2d 449 (2000)?

STATEMENT OF THE CASE

A Lancaster County Grand Jury indicted Appellant on March 29, 2018 for second degree domestic violence. R. 255-256. Her case was called to trial on May 13, 2019 before the Honorable Thomas J. Hughston, Jr., and a jury. R. 1. Assistant Solicitors Henry McMaster, Jr. and Ashley McMahan represented the state. R. 1. Ryan Payne and Edwin Palacio represented Appellant. R. 1.

On May 15, 2019, the jury found Appellant guilty as indicted. R. 243, ll. 24-25. She was sentenced to one year imprisonment and a $2,500 fine suspended upon the service of two years' probation. R. 253, ll. 5-9.

This appeal 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)) (internal quotation marks omitted). "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)) (internal quotation marks omitted); See Mattison, 388 S.C. at 478, 697 S.E.2d at 583 (stating appellate courts should "consider the court's jury charge as a whole in light of the evidence and issues presented at trial"). "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 (citing Cole, 338 S.C. at 101, 525 S.E.2d at 512-513). "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)) (alteration in original).

ARGUMENT

The trial judge erred by failing to adequately and completely instruct the jury on self-defense pursuant to *State v. Davis*, 282 S.C. 45, 317 S.E.2d 452 (1984) and *State v. Glover*, 284 S.C. 152, 326 S.E.2d 150 (1985), when there was evidence from which the jury could have reasonably inferred Appellant acted in self-defense when she struck her boyfriend of thirteen years after he strangled her, and by failing to properly instruct the jury on the burden of proof as it relates to self-defense pursuant to *State v. Wiggins*, 330 S.C. 538, 500 S.E.2d 489 (1998) and *State v. Addison*, 343 S.C. 290, 294, 540 S.E.2d 449 (2000).

Relevant Facts

During the evening of November 6, 2017, after Appellant picked her three children up from school, she was involved in a single vehicle car accident. R. 192, ll. 16-19; R. 194, ll. 24-25. Appellant, who was driving, lost control of the car, which crashed into a ditch. Tr. 193, ll. 3-7. No one was injured. R. 66, ll. 16-20. A Lancaster County Sheriff's deputy, who was driving by, stopped to help and ensure Appellant and her children were okay. R. 193, ll. 13-21.

The rear bumper of the car, which was the family's only vehicle, was previously damaged. Appellant had tied a rope around the bumper and then attached the rope to the handle of one the doors to prevent the bumper from dragging on the road as she was driving. R. 206, ll. 3-7. Immediately before the accident, Appellant "felt a drag, and the car started turning." Appellant tried to keep the vehicle under control. To avoid hitting a guardrail, Appellant tuned the car into a ditch. R. 193, ll. 3-7. Appellant was forced to make a split second decision. R. 193, ll. 8-10. She suspected the loose bumper caused the accident.

Appellant called her boyfriend of thirteen years and the father of her two youngest children, Robert Bowers, to tell him about the accident. Appellant's son testified that Appellant

was "nervous" to call Bowers because she was afraid "he was going to beat her." R. 129, ll. 9-11; R. 137, ll. 2-4. Bowers ultimately came to the scene. He was extremely angry at Appellant and blamed her for the accident. R. 129, ll. 9-19; R. 194, ll. 2-9. He suspected she had been drinking alcohol. R. 67, ll. 4-10. However, Appellant vehemently denied drinking prior to the accident and, notably, the deputy who responded to the accident did not conduct any field sobriety tests nor arrest Appellant for driving under the influence. R. 193, l. 13 – 194, l. 1.

A man who owned a nearby used car business helped the family pull the car out of the ditch with his pickup truck. R. 135, ll. 7-13. Appellant then drove the damaged car to Bowers' aunt's house, which was nearby. R. 137, ll. 18-23; R. 194, ll. 13-23. Bowers followed behind her with the children in his grandmother's truck, which he had borrowed. R. 137, ll. 18-23.

Bowers was very angry with Appellant while the family was at his aunt's house. Bowers' uncle had to "cool him down." R. 139, ll. 16-24. After Bowers calmed down a little, the family went home.

After the family got home, Appellant talked on the phone with an old family friend while in the living room. While she was on the phone, Bowers came into the room. R. 197, ll. 3-15. He became even "madder" because he "caught" Appellant on the phone. R. 197, l. 16 – 198, l. 2. Bowers got on top of Appellant, who was sitting, straddled his legs around her body, and grabbed her throat. R. 198, ll. 3-7. Bowers "whole weight was on [Appellant] as he was choking [her]." R. 198, ll. 3-11. Appellant's daughter tried to pull Bowers off of Appellant. This caused Bowers to lean even harder into Appellant. A cigarette that was in Bowers mouth ended up going down Appellant's throat during the altercation. R. 198, ll. 13-19.

Appellant put her knee up in an attempt to push Bowers off of her. After Bowers started sliding back off the chair, Appellant "was able to get up and around him." R. 198, ll. 20-23.

Appellant ran to the bathroom. R. 199, ll. 11-13. Bowers followed her and spread his arms out to prevent her from leaving the bathroom. R. 199, ll. 14-18. However, Appellant, who is only ninety-four pounds and four feet, eight inches tall, was able to squeeze out under Bowers' arms. R. 189, ll. 15-18; R. 199, ll. 19-20. Bowers eventually called 911 and blamed the altercation on Appellant. Appellant ran to safety at a neighbor's house before an officer arrived. R. 201, ll. 14-16.

When Bowers was on the phone with the 911 dispatcher, Appellant tried to knock the phone out of his hand "so she could run." R. 201, ll. 2-13. She admitted it was possible her ring struck Bowers' ear causing it to bleed. R. 202, ll. 19-22. This was Bowers' only injury.

Request to Charge and Jury Instruction

During the charge conference, Appellant requested the trial judge instruct the jury on self defense. R. 221, ll. 21-23. The judge agreed to do so. He asserted, "I will give a self-defense charge. A mutual combat, self-defense or whatever charge. I will give something along those lines." R. 221, l. 24 – 222, l. 1.

The trial judge ultimately instructed the jury as follows:

> I just have to tell you that she has raised the defense in addition to saying that, "I am not guilty," that through her testimony, at least, raised the defense of - - at least that is how I understood her testimony to be - - two other things that she wants you to consider in deciding whether she is guilty of this crime or not.
>
> She said that this was mutual combat, we both agreed to fight it out, basically, is what she is saying. That is what we refer to as mutual combat. Both parties decide to fight it out. Then under the law, neither is guilty of having committed a crime.
>
> If that is your view of this testimony or evidence, and you take all of that into consideration in deciding whether the State has met its burden of proof, that is what you can decide this case on.

> Also, she has raised an issue of self-defense. She is saying, "I was just defending myself in this situation. He was the one that was beating me up and all I did was defend myself." That is, under the law, a good defense.
>
> In order to establish self-defense, ***she [Appellant] has to show*** that she was without fault in bringing on the difficulty; that she actually believed that she was in danger of being harmed, and all she could do was defend herself and harm him under those circumstances.
>
> Again, ***she [Appellant] doesn't have to establish that beyond a reasonable doubt; either mutual combat or self-defense.*** She wants you to consider that in deciding whether the State has met its burden of proof of proving her guilty of the charge as I have defined that for you. That is what the law is in regard to this.

R. 238, l. 11 – 239, l. 21 (emphasis added).

When asked at the conclusion of the jury instructions whether he had any exceptions to the charge, defense counsel stated, "No, Your Honor." R. 241, ll. 6-11.

Discussion

The trial judge erred by failing to adequately and completely instruct the jury on self-defense, including the four elements of self-defense and the state's burden of disproving self-defense beyond a reasonable doubt, when there was evidence from which the jury could have reasonably inferred Appellant was acting in self-defense when she struck Bowers.

In State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984), our Supreme Court issued a model self-defense instruction and suggested all trial court judges use the charge in those cases in which the facts indicate a self-defense charge is proper. That instruction is as follows:

> Self-defense is a complete defense. If established, you must find the defendant not guilty. There are four elements required by law to establish self-defense in this case. First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness

> and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense. These are the elements of self-defense.
>
> If you have a reasonable doubt of the defendant's guilt after considering all the evidence including the evidence of self-defense, then you must find him not guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt after considering all the evidence including the evidence of self-defense then you must find him guilty.

Id. at 46, 317 S.E.2d at 453.

This instruction was made ***mandatory*** in State v. Glover, 284 S.C. 152, 326 S.E.2d 150 (1985); See also State v. Bellamy, 293 S.C. 103, 359 S.E.2d 63 (1987), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

Subsequently, in State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998), our Supreme Court specified that the state has the burden of disproving self-defense. The Court asserted, "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." Wiggins, 330 S.C. at 544, 500 S.E.2d at 492 (citing State v. McDowell, 272 S.C. 203, 249 S.E.2d 916 (1978)). "However, current law requires the State to disprove self-defense, once raised by the defendant, beyond a reasonable doubt." Id. at 544, 500 S.E.2d at 492 (citing State v. Fuller, 297 S.C. 440, 443, 377 S.E.2d 328, 330 (1989)). Accordingly, "[w]hen self-defense is properly submitted to the jury, the defendant is entitled to a charge, if requested, that the State has the burden of disproving self-defense by proof beyond a reasonable doubt." State v. Addison, 343 S.C. 290, 294, 540 S.E.2d 449 (2000).

In this case, the trial judge's instruction on self-defense, as set forth above, failed to adequately and completely cover the law. The judge did not charge the jury with the mandatory

instruction set forth by our Supreme Court in Davis nor did he properly advise the jury as to the burden of proof as required by Wiggins and Addison. Instead, the judge's instruction placed the burden on Appellant to prove she acted in self-defense when she struck Bowers.

Because the trial judge erred by failing to properly instruct the jury on self-defense, a charge to which Appellant was entitled since there was evidence in the record from which the jury could have reasonably inferred Appellant was acting in self-defense when she struck Bowers, this Court should reverse Appellant's conviction and sentence and remand for a new trial.

CONCLUSION

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

Respectfully Submitted,

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of March, 2020.

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tiffany Mae Miles 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, which was held on May 13-15, 2019 before the Honorable Thomas L. Hughston, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Tiffany Mae Miles.

Respectfully Submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of March, 2020.

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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) Complete Trial Transcript Dated May 13-15, 2019;
(2) True-Billed Indictment;
(3) Sentence Sheet.

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

March 12, 2020

Lara M. Caudy
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ATTORNEY FOR APPELLANT

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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."

March 12, 2020.

Lara M. Caudy
Appellate Defender

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ATTORNEY FOR APPELLANT

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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 William M. Blitch, Jr., 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 Tiffany Mae Miles, at 1450 Kelly Drive, Lancaster, SC 29270, this 12th day of March, 2020.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of March, 2020.

Lindsey M. Matthews (L.S)
Notary Public for South Carolina
My Commission Expires: October 22, 2024.