

RECEIVED

Aug 31 2020

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM EDGEFIELD COUNTY
Court of General Sessions

Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2020-001081

Case Nos. 2017-GS-19-01817,
2017-GS-19-01818,
2017-GS-19-01819, and
2015-GS-19-00351

The State, Respondent,

v.

Montrell Deshawn Troutman, Petitioner.

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Wm. Grayson Lambert
BURR & FORMAN LLP
Post Office Box 11390
Columbia, S.C. 29211
(803) 799-9800

Robert Michael Dudek
Chief Appellate Defender
Post Office Box 11589
Columbia, S.C. 29211
(803) 734-1343

Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
REPLY BRIEF.....	1
I. Mathis’s false testimony about his conviction gave Troutman the right to explore that subject in more detail	1
II. This error was not harmless.....	3
CONCLUSION.....	5

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Cases</u>	
<i>State v. Clark</i> , 315 S.C. 478, 445 S.E.2d 633 (1994).....	2
<i>State v. Dickey</i> , 394 S.C. 491, 716 S.E.2d 97 (2011)	4
<i>State v. Holder</i> , 382 S.C. 278, 676 S.E.2d 690 (2009).....	5
<i>State v. Mizzell</i> , 349 S.C. 326, 563 S.E.2d 315 (2002).....	3
<i>State v. Starnes</i> , 340 S.C. 312, 531 S.E.2d 907 (2000)	4

REPLY BRIEF

At trial, the State never tried to explain why Keith Mathis left his dying friend's side. In the Court of Appeals, the State never offered a theory on Mathis's flight. And now in this Court, the State doesn't start trying to make sense what Mathis did.

Troutman, however, has a theory: Leric Merriweather had a gun in his car during his confrontation with Troutman (a gun Merriweather threatened to get before quickly getting in and out of his car), and after the shooting, Mathis took the gun so that the police wouldn't find it. But the trial court did not let Troutman pursue this theory by cross-examining Mathis about his history of lying to protect Merriweather.

The State says the trial court was right, calling the cross-examination Troutman wanted to pursue a "fishing expedition" based on "rank speculation." Just because the State uses these terms does not mean these terms are accurate. In fact, looking at all of the evidence in the record shows that Troutman's theory is a reasonable one. The Sixth Amendment's Confrontation Clause therefore gave Troutman the right to pursue it by questioning Mathis about it.

I. Mathis's false testimony about his conviction gave Troutman the right to explore that subject in more detail.

The State's argument that the Confrontation Clause was not violated is that because Mathis's conviction for lying to the police came out, his "credibility was sufficiently impeached." (Return 8.) That argument ignores the evidence and the law.

First, it ignores the fact that Mathis told the jury—after having admitted his conviction for giving false information to the police—that what he told the police "wasn't false." (App. 274, line 15.) This denial of having lied could have downplayed the

significance of the conviction in the jury’s mind. His credibility therefore may not have been “sufficiently impeached.”

Second, the State’s argument disregards the *falsus in uno, falsus in omnibus* doctrine. In other words, the State overlooks the legal import of Mathis’s insistence that he did not give false information to the police. Mathis told the jury he didn’t give false information to police. That was a lie. Once Mathis told the jury this lie, the jury was free to reject any of his other testimony—especially on that same subject. Thus, even though Mathis denied having lied to police in 2011 to protect Merriweather (his “really good” friend) during the proffer, (*see* App. 278, lines 12–24), the jury could have easily rejected that denial.

In thinking about this issue, it’s worth stepping back from the specific testimony and legal doctrines to consider how unusual this case is. This is not a situation in which a witness has some random prior conviction that could be used to impeach him under Rule 609, SCRE. Rather, the prior conviction involved remarkably similar facts. It involved the decedent in this case and another shooting. That means the prior conviction goes to the witness’s credibility even more than a conviction usually would.

But for the jury to understand the import of this conviction, Troutman had to be able to question Mathis about the underlying facts of it. The Sixth Amendment guarantees Troutman the right to question Mathis about these facts. Under that constitutional right, a criminal defendant gets “[c]onsiderable latitude” to cross-examine witnesses about bias,” *State v. Clark*, 315 S.C. 478, 481, 445 S.E.2d 633, 634 (1994), and trial courts can preclude such cross-examination only when “the record

. . . clearly show[s] the cross-examination is inappropriate,” *State v. Mizzell*, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002). In light of the unusual circumstances here, the record does not clearly show that cross-examination of Mathis about the facts of his 2011 conviction was clearly inappropriate. To the contrary, the record shows that such cross-examination was essential (and likely would have been essential even if Mathis hadn’t lied about lying to the police).

Mathis had lied to police about a shooting incident and Leric Merriweather before. Now, in this case, he left his dying friend’s side and did not talk to the police for months after the shooting. That is odd (to say the least). Most people would be eager to tell the police who killed a dear friend. But not Mathis. One way (perhaps the only way) to make sense of that is Troutman’s theory: Mathis was covering for Merriweather—again.

II. This error was not harmless.

The State’s harmless-error argument is like its merits one: simple but wrong. Summarized in a sentence, the State’s argument is that no one saw Merriweather with a gun and Troutman admitted Merriweather wasn’t holding a gun when Troutman shot him, so cross-examining Mathis could not have changed the jury’s verdict. (*See* Return 9–11.)

The State is mistaken. Recall that Troutman’s defense wasn’t that he did not shoot Merriweather, but rather than he shot Merriweather in self-defense. Self-defense applies whenever a defendant reasonably believed he was in imminent danger based on

the other person's words accompanied by hostile actions. *See State v. Dickey*, 394 S.C. 491, 501, 716 S.E.2d 97, 102 (2011).

The State myopically focuses on the fact that Merriweather was not holding a gun at the moment he was shot. In doing so, the State ignores (indeed, never even mentions) that Merriweather said he was going to get a gun. (*See* Return 4.) In the middle of the confrontation that resulted in Merriweather's death, Merriweather insisted that Troutman's gun did not have any bullets in it, and then Merriweather said he was going to get his gun. He promptly got back into his car briefly and then back out. (App. 236, lines 8–13; 253, lines 11–15; 500, line 10.) A reasonable juror could have easily believed that Merriweather made good on his statement that he was getting his gun. And a reasonable juror could have also easily believed that when Merriweather came at Troutman with his fists "balled up" as if "he wanted to fight," (App. 237, lines 21–23; 263, lines 1–6), that Troutman reasonably believed that fight would end with Merriweather pulling out the gun and trying to shoot Troutman.

This Court has already held that a person does not have to wait for someone "to fire or aim at him before acting in self-defense." *State v. Starnes*, 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000). A person should likewise not have to wait for another person to pull a gun. By then, it may be (and, except for the most well-trained person, probably is) too late to defend oneself. Moreover, drawing such a bright-line rule that the aggressor had to actually pull a gun would be inconsistent with this Court's repeated observation that self-defense "depend[s] on the circumstances." *Dickey*, 394 S.C. at 501, 716 S.E.2d at 102.

Giving effect to this long-standing principle of self-defense means the Confrontation Clause violation here was not harmless. Mathis was, as the State admits, a “significant” witness here. (Return 9.) Given that evidence must be “overwhelming” for a constitutional violation to be harmless, *State v. Holder*, 382 S.C. 278, 285, 676 S.E.2d 690, 694 (2009), it’s hard to fathom a Confrontation Clause violation regarding a “significant” witness could ever be harmless. Had the jury heard the cross-examination about his prior history with Merriweather, the jury could have reached a different conclusion on the self-defense question. Troutman is therefore entitled to a new trial.

CONCLUSION

The petition for certiorari should be granted.

Respectfully Submitted,

s/ Wm. Grayson Lambert
Wm. Grayson Lambert
S.C. Bar No. 101282
BURR & FORMAN LLP
Post Office Box 11390
Columbia, S.C. 29211
(803) 799-9800

Robert Michael Dudek
Chief Appellate Defender
Post Office Box 11589
Columbia, S.C. 29211

Counsel for Petitioner

August 31, 2020
Columbia, SC