STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Charleston County

Honorable Roger M. Young, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

MAULIQUE ALEXANDER HEYWARD,

APPELLANT.

APPELLATE CASE NO. 2019-001711

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FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in refusing to charge self-defense where the defendant's testimony created factual issues that were required to be resolved by the jury?

STATEMENT OF THE CASE

A Charleston County grand jury indicted appellant for murder and a weapons charge and on August 12, 2019, appellant was tried before the Honorable Roger M. Young, Sr., and a jury. R. 1. T. Richard Waring, II, and Price Sigal represented the State. R. 1. Ted Smith, Jr. and Martha Kent Runey represented appellant. R. 1. The jury convicted appellant on both counts. R. 378, l. 9 – 14. Judge Young sentenced appellant to forty years' imprisonment for murder and a consecutive five years' imprisonment on the weapons charge. R. 392, l. 18 – 25.

STANDARD OF REVIEW

"[An appellate court] will not reverse a trial court's decision regarding a jury instruction absent an abuse of discretion. When reviewing the [trial] court's refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant. The law to be charged to the jury is determined by the evidence presented at trial. If there is any evidence to support a jury charge, the trial [court] should grant the request." State v. White, 425 S.C. 304, 311, 821 S.E.2d 523, 527 (Ct. App. 2018) (internal quotations and citations omitted).

ARGUMENT

The trial court erred in refusing to charge self-defense because the defendant's testimony created factual issues that were required to be resolved by the jury.

Factual and Procedural Background

Appellant Maulique Heyward testified in his own defense. R. 262, l. 24 – 263, l. 4. Heyward was at a friend's apartment smoking a cigarette in the parking lot with his friend, Li'l Man. R. 264, l. 6 – 266, l. 16. A man Heyward had never seen before walked up to the door of his friend's apartment and got halfway through when Li'l Man asked him "what the hell you doing here." R. 266, l. 17 – 268, l. 23. The strange man was the decedent, Garrett Mitchell. R. 266, l. 17 – 268, l. 17. The decedent walked out of the apartment, but the argument continued. R. 267, l. 3 – 9.

When the argument became "heated," the decedent pulled a gun on Heyward and Li'l Man. R. 319, l. 10 – 324, l. 22. Li'l Man saw the gun first and jumped on the decedent. R. 319, l. 10 – 324, l. 22. Heyward jumped into the fight and during the struggle, Heyward could hear the "click, click, click" of the decedent attempting to fire the gun at him. R. 319, l. 10 – 324, l. 22.

Heyward wrested control of the gun from the decedent. R. 266, l. 10 – 271, l. 22. He admitted telling the decedent, "You tried to kill me, so I'm going to kill you." R. 267, l. 10 – 21. While Heyward tried to figure out what was wrong with the gun, the decedent "kept coming" towards him. R. 268, l. 1 – 8. Heyward shot him. R. 268, l. 1 – 8. Heyward testified that he was scared and believed he was still in danger. R. 270, l. 1 – 6. Heyward acknowledged that the decedent ceased threatening him after Heyward got the gun, but Heyward did not want to turn

his back because he "didn't know if he had another gun, and, like I said, he was pursuing." R. 270, l. 19 – 271, l. 2. Everything "just happened so fast." R. 271, l. 6 – 22.

Heyward said in his mind, "it was a do or die or life or death situation being that we just fought for the gun, and, like I said, I did not know if he had another gun, you know, couldn't turn my back on him." R. 280, l. 9 – 17. He had no other way to get away from the situation. R. 281, l. 10 – 16. Heyward said that at no point during the altercation did he ever feel safe and never felt like the fight was over even after Heyward got the decedent's gun. R. 298, l. 3 – 18. Despite appellant's testimony, the trial judge refused to charge self-defense. R. 317, l. 1 – 318, l. 13.

The State's theory of the case was that Heyward and a woman that he barely knew through Facebook conspired to lure the decedent to the apartment to rob him. R. 43, l. 2 – 44, l. 3. R. 134, l. 8 – 135, l. 8. Heyward admitted to exchanging messages with the woman, Tynetra Hamilton, on Facebook, but denied ever meeting up with her or going to her house. R. 281, l. 21 – 282, l. 9.

Hamilton first testified in camera at an identification hearing. R. 73, l. 9 – 100, l. 8. Hamilton initially testified she had never met Heyward in person and denied identifying him in a lineup. R. 74, l. 2 – 76, l. 17. She did not remember hanging out with the decedent the night of the incident. R. 76, l. 21 – 77, l. 12. The solicitor played recordings and Hamilton said she did not remember saying anything that was played. R. 76, l. 20 – 78, l. 18. The court then gave Hamilton a warning about committing perjury. R. 79, l. 2 – 80, l. 6. Judge Young then appointed an attorney to represent Hamilton and the court recessed to enable the lawyer to speak with her. R. 80, l. 7 – 83, l. 21.

After the recess, Hamilton's lawyer informed the court that she intended to testify truthfully. R. 83, l. 22 – 85, l. 3. Hamilton then, in response to the solicitor's questions, testified that she saw Heyward the night of the shooting and had communicated with him on Facebook. R. 85, l. 6 – 86, l. 24. Heyward supposedly told her to call someone to set up a robbery under the pretense of a marijuana deal. R. 87, l. 12 – 89, l. 17. She went with the decedent to the scene and saw Heyward and Li'l Man rob him. R. 90, l. 5 – 92, l. 5. The decedent pulled out his gun and, after a struggle, Heyward got control of the gun. R. 92, l. 2 – 15. The decedent held up his arms and Heyward shot him. R. 92, l. 16 – 93, l. 4. Hamilton acknowledged identifying Heyward in a lineup and the court ruled her identification was admissible. R. 93, l. 5 – 96, l. 4. R. 101, l. 18 – 103, l. 3.

Before the jury, Hamilton testified consistently with her post-perjury warning testimony at the identification hearing. R. 120, l. 15 – 129, l. 22. She admitted lying to the police after the incident. R. 132, l. 2 – 11. At the end of direct examination, she agreed she had not been charged in connection with the shooting but opined that she had not exposed herself to any charges with her testimony. R. 133, l. 2 – 23. After the court overruled the State's objection, appellant cross-examined Hamilton about the crimes and sentences she avoided by cooperating with the prosecution, including possible life imprisonment for murder. R. 136, l. 3 – 140, l. 16. When asked if she wanted to "please the solicitor" with her answers, Hamilton replied, "Yes, sir." R. 140, l. 23 – 25.

Hamilton further admitted she had met Heyward only once and talked to him on Facebook only once. R. 134, l. 13 – 23. Heyward did not know the decedent. R. 134, l. 11 – 12. She admitted coming up with the decedent as a potential robbery victim. R. 134, l. 13 – 16. She admitted telling the solicitors in a prior meeting that the decedent threw the first punch in the

fight. R. 149, l. 24 – 150, l. 4. She clarified on re-direct that the decedent's punch was only after the robbery. R. 157, l. 4 – 11.

The police obtained a surveillance video that the lead investigator agreed was not "stellar clear." R. 237, l. 9 – 14. The video depicts the altercation and the shooting, but only in the upper left-hand corner of the frame. State's Ex. 61. The State played a zoomed-in version during Heyward's testimony. State's Ex. 62. R. 282, l. 20 – 285, l. 22. Heyward said he was on the right and Li'l Man was in the middle. State's Ex. 62. R. 282, l. 20 – 285, l. 22. Heyward agreed that after he got the gun, the video showed about 10-12 seconds where there was separation between him, and the decedent and the decedent was not attacking him. R. 284, l. 11 – 285, l. 2. Heyward acknowledged the decedent was asking him not to shoot but stated that "everything happened fast" and he "wasn't even thinking straight." R. 291, l. 1 – 25. Heyward denied setting up any robbery. R. 282, l. 5 – 11.

At the charge conference, appellant asked the court to charge self-defense. R. 300, l. 20 – 301, l. 2. The solicitor said he did not think appellant's "idea of self-defense" complied with the law but said he would leave the decision on whether to charge self-defense "to the Court's discretion." R. 301, l. 9 – 13.

The court then went through each element of self-defense. R. 302, l. 8 – 307, l. 15. Judge Young agreed that Heyward's testimony created a jury question on whether he was without fault in bringing on the difficulty. R. 302, l. 17 – 303, l. 10. The judge stated his opinion that after the decedent was disarmed and the elapse of 10-15 seconds, it "really boils down to would a reasonably prudent person believe at that time that even though he had disarmed him—disarmed the victim, and he possessed the gun for approximately 15 seconds, if that person was moving towards him still, which really isn't supported that much by the video,

would a reasonably prudent person believe that he was in imminent danger by an unarmed person." R. 305, l. 23 – 306, l. 5. The judge also stated he was "hard pressed" to see a jury question on the duty to retreat after appellant had disarmed the decedent and the elapse of seconds. R. 306, l. 13 – 307, l. 5. Judge Young summarized his thoughts stating, "I just struggle to say that the jury even needs to consider that there is a self-defense defense available to him. **That's totally giving him the benefit of the doubt."** R. 307, l. 2 – 5 (emphasis added). The trial judge took the matter under advisement overnight and, the next morning, placed his ruling on the record that he would not charge self-defense. R. 309, l. 6 – 317, l. 21. Appellant objected after the judge ruled and again in his motion for a new trial, which was denied without a hearing. R. 318, l. 11 – 13. R. 395. R. 396.

Discussion

The trial court's refusal to give appellant the "benefit of the doubt" ignored the law regarding when a court should charge self-defense. Courts are supposed to give defendants the benefit of the doubt when a defendant requests a self-defense charge. See State v. White, 425 S.C. 304, 311, 821 S.E.2d 523, 527 (Ct. App. 2018) ("When reviewing the [trial] court's refusal to deliver a requested jury instruction, appellate courts must consider the evidence in a light most favorable to the defendant."). The trial court did not view the evidence in the light most favorable to the defendant and failed to recognize that if any evidence existed supporting the claim of self-defense, it becomes an issue for the jury to decide.

The trial court based its ruling primarily on the fact that the decedent had been disarmed and the elapse of time after the disarming and the shooting. R. 317, l. 1 – 21. The facts of this case demonstrate that the ruling was illogical. Appellant, who was unarmed, only seconds before had disarmed the decedent who possessed the gun. Yet despite this uncontroverted fact,

the trial judge prevented the jury from hearing this case because it was now the decedent who was unarmed.

The trial court also ignored appellant's testimony that the decedent "kept coming toward me." R. 268, l. 6 – 8. Appellant said the decedent "kept coming, he kept coming, that's why I shot him." R. 268, l. 7 – 8. The decedent "had a size advantage" and "kept pursuing." R. 269, l. 20 – 270, l. 1. Appellant believed he was in danger. R. 270, l. 4 – 5. Appellant "did not want to turn my back because I didn't know if he had another gun, and, like I said, he was pursuing." R. 270, l. 19 – 271, l. 2. The quality of the video is so terrible that it cannot, as a matter of law, deprive appellant of his self-defense claim. Appellant's testimony entitled him to have a jury decide the question of self-defense.

When "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. Light, 378 S.C. 641, 649-50, 664 S.E.2d 465, 469 (2008). The court did not use the "any evidence" standard.

Nor is a court permitted to weigh the credibility of the witnesses. See State v. Rogers, 405 S.C. 554, 569 n.5, 748 S.E.2d 265, 273 n.5 (Ct. App. 2013) (stating that at the directed verdict stage—which uses the same "any evidence" standard as a jury charge—the court may not weigh the credibility of witnesses). Here, the court improperly weighed appellant's credibility. The court disregarded appellant's testimony that the decedent continued to come at him and pursue him and that appellant never felt like he was not being threatened.

Appellant testified that he was afraid that the decedent had another gun. A defendant does not have to wait on an assailant to "get the drop on him" before firing. State v. Rash, 182 S.C. 42, 50, 188 S.E.2d 435, 438 (1936). A defendant also has no duty to retreat "if by doing so

he would increase his danger of being killed or suffering serious bodily injury." State v Fuller, 297 S.C. 440, 444, 377 S.E.2d 328, 331 (1989). Appellant's testimony created jury issues on each element of self-defense. This Court should reverse so that the jury can consider appellant's defense.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and remand for a new trial.

s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of December, 2020.

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 10, 2020.

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