STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Rodger M. Young, Circuit Court Judge

THE STATE,.....RESPONDENT

v.

MAULIQUE ALEXANDER HEYWARD,.....APPELLANT

FINAL BRIEF OF RESPONDENT

Appellate Case No. 2019-001711

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APPELLANT'S STATEMENT 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?

RESPONDENT'S COUNTER ARGUMENT ON APPEAL

Did the trial court err in refusing to instruct the jury on the issue of self-defense because the evidence presented revealed that the Defendant was not in immediate danger at the time of the offense?

STATEMENT OF THE CASE

On December 18, 2016, Ms. Tynetra Hamilton was contacted by the Appellant to create a scheme to rob someone. That night the Appellant along with his co-defendant an individual known as "Lil Man" came to Ms. Hamilton, told her to call up someone, and to "hit someone who looked like they had money." (R. p. 157 lines 19-23) At that time Ms. Hamilton only knew the victim for two months, as they previously connected on Facebook. She informed the victim that they were going to the Appellant's house in order to purchase marijuana. However, the intent of the Appellant and his co-defendant was to commit a robbery once the victim appeared. Once they got to the location the victim gave money to the Appellant to purchase marijuana, however, the Appellant and co-defendant began to go into his pockets attempting to take the victim's wallet and his cell phone. (R. p. 124 line 19 – p. 125 line 7) As they were going into the victim's pockets a fight ensued. During this fight the victim pulled out a gun and pointed it at the Appellant and his co-defendant. (R. p. 126 lines 16-17) The victim pulled the trigger but the gun didn't work because the safety was still on. (R. 126 lines 16-17) That's when the Appellant and his co-defendant fought the victim for the gun. (R. p. 126 lines 21-24) The Appellant was able to wrestle the gun away from the victim and pointed it at the victim who raised his hands. (R. p. 127 lines 2-3) At that time the Appellant told the victim "you tried to kill me, now I'm gonna kill you." (R. p. 267 lines 18-19) He proceeded to shoot the victim three times, once in the head and once in each shoulder. After shooting of the victim all three of the individuals ran away from the scene. The victim was later transported to the hospital where he later died.

After the incident officers of the North Charleston police department arrived at the scene. While canvassing the area looking for witnesses' officer Jonathan Lynch actually spoke to the Appellant, however, at that time he was not aware he was a potential suspect. The Appellant was

found at a building near where the incident occurred. The Appellant told Officer Lynch that he heard four to six shots then saw a black male running away. (R. p. 56 lines 4-6)

Later Ms. Hamilton turned herself in at the North Charleston police department headquarters to confess in taking part in this murder. She identified the Appellant as the shooter, and later picked him out of a photo-lineup. (R. p. 217 lines 20-21) The police also recovered surveillance video of the incident. With the identification of Ms. Hamilton, and the video showing the Appellant shooting the victim, he was arrested and charged with the offense of murder and possession of a weapon during the commission of a violent crime.

On August 12, 2019, the Appellant's case was called for trial before the Honorable Rodger M. Young. Present was the Appellant along with his attorneys Ted Smith, Jr. and Martha Kent Runey. Representing the State was T. Richard Waring and Price Sigal of the Ninth Circuit Solicitor's office.

During trial the Appellant decided to testify. During his testimony the Appellant stated that he did not know the victim and never set up a robbery with Ms. Hamilton. R. p. 334 lines 23-25) The Appellant stated that he saw the victim trying to unlawfully enter an apartment. He and his co-defendant were in the parking lot when they saw this and they approached the victim. (R. p. 266 lines 12-22) They got into an argument in the doorway and the victim walked off. Words were later exchanged and the victim pulled out a gun and pointed it at him and his co-defendant. (R. p. 267 lines 10-17) They got into a fight where the Appellant he was able to wrestle the gun away from the victim. He then pointed the gun at the victim and he admitted saying, "you tried to kill me, now I'm gonna kill you," however, the Appellant testified that he did not mean he had any intentions of killing the victim. (R. p. 267 lines 18-23) The Appellant stated that he was trying to figure out what was wrong with gun and while he was looking down at the gun the victim kept

approaching him, so then he shot the victim. (R. p. 268 lines 1-8) After he shot the victim they all ran away from the scene. (R. p. 285 lines 20-22)

During trial, counsel for the Appellant requested the trial court give a self-defense jury instruction, the trial court denied this request. It was trial court's opinion that the fifteen seconds between the time he got the gun, and firing the fatal shot revealed that there was no actual imminent danger of death or serious bodily harm. (R. p. 304 lines 6-9) The court also decided that during these fifteen seconds the Appellant admitted he stated to the victim, "I'm going to kill you," which disposes any issue of whether or not he had any alternative means to do anything other than shooting the victim, who was clearly no longer a threat. (R. p. 317 lines 6-17) Due to the State proving beyond a reasonable doubt that one of the elements of self-defense did not apply, the trial judge denied the Appellant's request to issue a self-defense jury instruction. (R. p. 317 lines 18-21)

The Appellant was eventually found guilty by a jury of his peers for the offenses of murder and possession of a weapon during the commission of a violent crime. Upon the conclusion of this trial and final verdict, the Appellant appeared before the trial court for sentencing. The trial court issued a sentence of forty years incarceration for the offense of murder and five years for the offense of possession of a weapon during the commission of a violent crime. The trial court ordered that these sentences to be served consecutively. (R. p. 392 lines 22-25)

The Appellant has now filed this notice of appeal before this court. Within this appeal the Appellant argues that the trial court erred in not instructing the jury on self-defense. The Respondent will argue that the state was able to prove that one of the elements needed to establish self-defense did not apply in the present case. Therefore, he was not entitled to a jury instruction

for self-defense. The Respondent now requests this honorable court to affirm the decision of the trial court. The Respondent's brief supporting the above referenced defenses follows.

STANDARD OF REVIEW

In criminal cases the appellate court sits to review errors of law only. *State v. Wilson,* 345 S.C. 1, 5, 545 S.E.2d 827 (2001). In criminal cases, the appellate court is bound by factual findings of the trial court unless an abuse to discretion is shown. *State v. Blackwell-Selim,* 392 S.C. 1, 3, 707 S.E2d 426, 427 (2011). A jury charge on self-defense is not required unless it is supported by the evidence. *State v. Bryant,* 336 S.C. 340, 344, 520 S.E.2d 319, 321 (1999). Current law requires the State to disprove beyond a reasonable doubt self-defense, once raised by the Defendant. *State v. Wiggins,* 330 S.C. 538, 544, 500 S.E.2d 489, 492 (1998). An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court committed an abuse of discretion. *Clark v. Cantrell,* 339 S.C. 369, 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 is not supported by the evidence. *Cole v. Raut,* 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008).

ARGUMENTS

1. **Due to the evidence presented the trial court did not err in not giving a self-defense jury instruction.**

The Appellant claims that the trial court erred in denying his request for a jury instruction on self-defense. In order to establish self-defense in South Carolina each of the following four elements must be present:

> (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger a reasonably prudent person of ordinary firmness and courage would have entertained the same belief that he

> was actually in imminent danger and the circumstances were such as would warrant a person of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or loss of his own life; and (4) the defendant had no other probable means of avoiding the danger.

Bryant, 336, S.C. at 344, 520 S.E.2d, at 321 (1999).

Due to the Appellant's testimony, the trial court decided he did satisfy the first element of self-defense. He testified that he was in the parking lot of his apartment when the victim tried to enter without permission. Although, this was refuted by the State which introduced evidence that this was a planned robbery, for the purposes of self-defense the trial court decided to give more weight to the evidence presented by the Appellant. The trial court ruled however, that the State proved that the one of the elements did not apply. The State produced a surveillance video revealing a fifteen second period where the gun was pointed at the victim by the Appellant. The Appellant admitted that during that time span he did tell the victim "I'm gonna kill you," then proceed to shoot the victim three times. The trial court ruled that there was no longer any imminent danger because he was the one with the weapon pointing it at the victim. The trial court also ruled that this fifteen second period proved he was not in any imminent danger. A reasonable ordinary and prudent person would also not think they were in danger. The court ruled that the evidence revealed the Appellant was not entitled to a self-defense jury instruction.

The trial court viewed the evidence in the light most favorable to the defendant and then made the decision not to give the jury instruction for self-defense. The trial court made this decision because the State offered sufficient proof beyond a reasonable doubt that the defendant was not in any imminent danger, a major element of self-defense. If the facts do not raise to self-defense the Appellant is not automatically allowed a charge on self-defense. 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 that defense. *State v. Light,* 378 S.C. 641, 651, 664 S.E.2d 465, 469 (2008)(emphasis added). The evidence in the record reveals that the Appellant actions were not reasonable when it comes to self-defense.

Within the record the trial court went into detail the evidence presented refuting the possibility the Appellant was in any imminent danger of death or serious bodily injury. During the incident the victim was disarmed for a period of fifteen seconds where the Appellant admittedly stated "you tried to kill me, now I'm gonna kill you." The trial court stated "you know again, the victim was disarmed at that point. I'm just hard pressed to say that is a jury question to say that the Defendant had an arguable no choice but to stand there and defend himself because he believed, in essence, that the victim was still a danger to him, even though he had disarmed him, and there was about 15 seconds passed."(R. p. 306 lines 17-23)

The trial court also found that the Appellant had sufficient time and presence of mind to make a threat that he was going to kill the victim, then he had other ways to avoid the danger by retreating or just not shooting the victim. (R. p. 307 lines 11-15) "The time and threat disposes any issue of whether or not he had any alternative means of doing anything other than shooting the victim who was no longer a threat of death or serious bodily injury to the Appellant." (R. p. 317 lines 14-17)

The State also introduced surveillance video of the incident. This video revealed the fifteen second period while the Appellant held the victim at gun point. There is no evidence in that video that revealed that the victim approached the Appellant as the Appellant stated in his testimony which caused him to fire the fatal shot.

The trial court decided that the Appellant made arguments for three of the four factors; however, the State was able to prove that the Appellant was not in imminent danger of losing his

life. With the information presented by the State and the testimony of the Appellant even looking at the evidence in the light most favorable to the Appellant, a reasonable person would not think they were in danger. The fact the victim was disarmed for fifteen seconds and the Appellant saying "I'm going to kill you," disposes any issue of whether or not he had any alternative means to do anything other than shooting the victim. Clearly at that point there was no longer any threat of death or serious bodily injury.

A self-defense charge is not required unless it is supported by the evidence. *Light,* 378 S.C. at 649, 664 S.E.2d at 469. The evidence presented did not reveal that the Appellant was in any danger of losing his life or being seriously injured. He had disarmed the victim, and there was a fifteen second period where he actually admitted to threatening the victim's life. The factors are clear unless you are in the threat of serious imminent danger of losing life or serious bodily injury or you have no means or duty to retreat, you cannot use deadly force against another person. There is no evidence that reveals either of these conditions existed. The Appellant was pointing a gun at an unarmed person, and the video revealed that the victim never came at the Appellant prior to being shot. They were outside so the Appellant could have easily retreated back into the apartment and not shot the victim.

There was also other evidence presented by the State that would refute that the Appellant committed this action in defending himself. He ran after shooting the victim, and did not call for help nor call 911. He was questioned by the police near the scene that night and lied telling them that he was not involved, and informed them that he saw another individual running away from the scene. He also hid the murder weapon. Looking at the totality of the circumstances the Appellant was not in any danger at the time he fired the fatal shot.

The most important element of self-defense is that the Defendant was in some type of threat of serious bodily injury or even death. That did not exist in this case, so the trial court made the proper decision in not giving a jury instruction regarding a matter where the elements were not present to show self-defense. On appeal, the trial court's jury instructions are viewed as a whole and in light of the evidence and issues presented at trial. *State v. Logan,* 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013). In reviewing jury instructions for error, the appellate court must consider the instruction as a whole in light of the evidence and issues presented at trial. *State v. Mattison,* 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010).

CONCLUSION

For all of the foregoing reasons the Respondent respectfully request this court to affirm the decision of the lower court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE
Appellate Case No. 2019-001711

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 30th day of December, 2020.

s/ Tommy Evans, Jr.
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