STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JASON EDWIN STOOTS,

APPELLANT

APPELLATE CASE NO 2020-000430

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in refusing to charge the jury with the law on self-defense when there was evidence presented that Appellant acted in self-defense?

2. Did the trial judge err in refusing to charge the jury with the law on the defense of accident when there was evidence presented that while acting in self-defense, Appellant accidentally struck his wife causing injury?

STATEMENT OF THE CASE

In January of 2020, the Greenville County Grand Jury indicted Appellant, Jason Edwin Stoots, for domestic violence first degree, indictment #2019-GS-23-4604. (R. p. **, Indictment). On March 3, 2020, Appellant proceeded to jury trial before the Honorable Alex Kinlaw. Christopher Shipman represented Appellant at trial. Brittany Scott prosecuted the case. The jury found Appellant guilty of the lesser included offense of domestic violence second degree. Judge Kinlaw sentenced Appellant to three (3) years suspended with eighteen months of probation. A timely notice of intent to appeal was served on March 5, 2020. This appeal follows.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court "is bound by the [circuit] court's factual findings unless they are clearly erroneous." Id. "This Court does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the [circuit court]'s ruling is supported by any evidence." State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

ARGUMENT

The trial judge erred in refusing to charge the jury with the law on self-defense when there was evidence presented that Appellant acted in self-defense.

The jury found Appellant guilty of domestic violence second degree against his wife, Kimberly Stoots. At the time of the incident, Appellant and his wife were separated and living apart. (Tr. p. 83, lines 5-24). Appellant testified, "Later that evening, I want to say between 9:00 and ten o' clock, I received a text that said, Kim wants you to come here now." (Tr. p. 126, lines 5-7). Appellant picked up his wife and they went to Taco Bell. (Tr. p. 127, lines 4-13; p. 83, lines 16-18). Appellant testified that his wife was upset and while they were in the Taco Bell drive thru she claimed that a female was tracking Appellant's radio signals. (Tr. p. 127, lines 16-23). The wife admitted to methamphetamine use and testified, "And I'm not the only one who's ever lost teeth as a result of that." (Tr. p. 95, lines 18-21). Appellant then testified that his wife attacked him in the car. (Tr. p. 128, line 18 – p. 129, lines 1-11). Appellant testified that, "She just got irate and upset about this person that was tracking the radio signals. I have a vision problem. I couldn't see from a distance, just maybe 100 yards. And she was just upset, throwing arms. And she hit me, and I just grabbed both her arms, so, you know, it was like push and pull. And then the next thing I know, it was just – I felt my hand – the back side of my hand hit her right there." (Tr. p. 128, line 21 – p. 129, lines 1-4). Appellant testified that he did not mean to hit her in the mouth and when asked if he struck her hard in the mouth he testified, "No. I mean, I was just holding her wrist and all that and it was going back and forth. It was accidental." (Tr. p. 129, lines 7-11).

The wife testified that the line at the drive thru was backed up and she did not want to wait. (Tr. p. 84, lines 1-9). The wife testified, "And he said, why are you in such a hurry? Who are you in a hurry to go – the f-word." (Tr. p. 84, lines 11-13). She testified, "And then I said,

nobody. I said, why are you not in a hurry? Who you had already (indicating), and then I straightened him out." (Tr. p. 84, lines 16-18). The wife claimed that Appellant punched her. (Tr. p. 85, line 10). The wife denied attacking Appellant. (Tr. p. 89, lines 6-10). She testified that Appellant stopped at several convenience stores before taking her back to her uncle's house where she was staying. (Tr. p. 86, line 11 – p. 87, lines 1-19). Appellant left and the wife drove to her parents' house four or five miles away where an ambulance was called to take her to the hospital. (Tr. p. 90, line 15 – p. 91, lines 1-16).

The emergency room doctor testified at trial that the wife had swelling and bruising to her face, a cut to her inner lip and an upper tooth was displaced. (Tr. p. 72, lines 8-13). The doctor testified that a CT scan of her brain, face and neck were ordered and she was treated for the bleeding from her mouth. (Tr. p. 72, line 13 – p. 73, lines 1-11). The CT scans were negative for fractures or dislocations. (Tr. p. 73, lines 12-15).

At the close of testimony counsel for Appellant requested charges on both self-defense and accident. (Tr. p. 162, line 17 – p. 182, lines 1-14). Prior to discussing the self-defense charge, the judge asked counsel for Appellant, "If, in fact, you take the facts as you outline them, why didn't your client just get out of the car and leave?" (Tr. p. 166, lines 19-22). Counsel, citing McAninch, Fairey, and Coggiola, THE CRIMINAL LAW OF SOUTH CAROLINA (6th Ed. 2013), argued that because deadly force was not used that there was no duty to retreat. (Tr. p. 167, line 7 – p. 172, lines 1-5). Counsel additionally argued that one does not need to anticipate serious bodily injury to use non-deadly force in self-defense. (Tr. p. 169, line 11 – p. 170, 171, lines 1-24). Instead, counsel argued that proportionality was the key when non-deadly force is used in self-defense. (Tr. p. 169, line 11 – p. 172, lines 1-5). The State objected to the self-defense charge. (Tr. p. 172, line 9 – p. 174, lines 1-8).

The judge refused to charge self-defense stating:

> I'm not inclined to charge self-defense. Let me just put on the record where my thought process is. I'm familiar with those cases that you cited, Mr. Shipman, and I think a lot of those cases, particularly the cases involving deadly force, obviously, weren't cases like this.
>
> But in domestic violence cases, when you try to define proportionality, I think you still got to consider several things. One is – and this is something that's come up time and time again in domestic violence cases, is the difference in sizes of the individuals that you're talking about. And even though that's not reflected in a lot of the case law, but the cases that are tried now and cases that come before the Court, when you look at the totality of the circumstances, you must give some consideration to what was the size, weight, ability of the defendant versus the size, weight, ability of the victim, which is one of the reasons that I asked you earlier regarding Mr. Stoots's reaction, why didn't he just leave, and I understand what you just told me regarding the case law. I know about that.
>
> But, we've got a difference in size of the prospective parties. And you've got to take that into consideration. I think when you talk about proportionality of the response, you also got to take into the consideration the totality of the circumstances. Who was in a better position to leave the altercation?
>
> And I think that those factors when you look at those factors, coupled with what I heard, I'm not inclined to charge self-defense. Of course, I'll note your objection, not only to that, on the record, but I'll also note your objection to the Court's failure to charge criminal domestic violence 3rd degree.

(Tr. p. 176, line 8 – p. 177, lines 1-21). After the jury reached a verdict, Appellant renewed the objection to the trial judge's refusal to instruct the jury on the law of self-defense. (Tr. p. 260, lines 1-5). The trial judge erred in refusing to instruct the jury on the law of self-defense. The error requires reversal.

In State v. Williams, 400 S.C. 308, 314–15, 733 S.E.2d 605, 608–09 (Ct. App. 2012), the South Carolina Court of Appeals wrote:

> "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. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (internal citations omitted). "The law to be charged must be determined from the evidence presented at trial." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000) (internal citations omitted); see also 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. Cole, 338 S.C. at 101, 525 S.E.2d at 512–13.
>
> "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." State v. Day, 341 S.C. 410, 416–17, 535 S.E.2d 431, 434 (2000).

Viewing the evidence in the light most favorable to the Appellant, there is evidence in the record from which it could be reasonably inferred that Appellant acted in self-defense when he used non-deadly force and grabbed his wife's arms when she attacked him while sitting in his car at the Taco Bell drive thru. The trial judge's refusal to instruct the jury on self-defense constitutes reversible error.

In State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011), the South Carolina Supreme Court, discussing the use of **deadly** force in self-defense, wrote:

> A person is justified in using deadly force in self-defense when:
> (1) The defendant was without fault in bringing on the difficulty;
> (2) The defendant ... actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
> (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief ...; and
> (4) 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.

The last three factors discussed above, however, should not apply when deciding if **non-deadly** force in self-defense is justified. In McAninch, Fairey, and Coggiola, THE CRIMINAL LAW OF SOUTH CAROLINA (6th Ed. 2013) p. 620, the authors wrote:

> The defense of self-defense is much less readily available when a person asserting the defense responds with deadly force than when he responds with non-deadly force. Most reported decisions in this jurisdiction deal with deadly force but read

> as though they are laying down blanket rules for the defense of self-defense generally. Yet thoughtful analysis reveals that the two situations differ in two significant respects: first, one need not anticipate *serious* bodily harm before responding with non-deadly force; and, second, one need not retreat before responding with non-deadly force.

The authors acknowledge that there are no reported South Carolina cases directly on point holding that the duty to retreat does not arise or that *serious* bodily injury need not be anticipated when self-defense is attempted with non-deadly force but note substantial authority in other jurisdictions and cite to State v. Abbott, 174 A.2d 881, 885 (N.J. 1961) and the Model Penal Code § 3.04 (1962). The authors additionally cite State v. Wood, 1 S.C. L. (1 Bay) 351 (1794), writing, "As the Court observed, for every assault it was not 'reasonable that a man should be banged with a cudgel. That a small blow will not justify an enormous beating . . . .' Id. Nonetheless the clear implication of the case is that one need not submit to every assault either. A person is entitled to defend against reasonably anticipated unlawful bodily harm even though it would not be serious, but in defending, he must respond proportionally."

In the present case Appellant was without fault in bringing on the difficulty. Appellant was entitled to defend against the attack by his wife in his car by grabbing her arms to try and block the blows. His non-deadly force used in self-defense was proportional to the wife's attack. The trial judge seemed to find that Appellant had a duty to abandon his car in order to be entitled to assert self-defense. Under the facts of this case Appellant should not be required to abandon his car or leave the altercation in order to assert self-defense. By analogy, if deadly force had been warranted and used is self-defense, pursuant to S.C. Code §16-11-440(C), Appellant would have had no duty to retreat. It follows that there is no duty to retreat and abandon your car before using non-deadly force in self-defense.

The trial judge's refusal to instruct the jury on the law of self-defense deprived the jury of the opportunity to decide if Appellant should be found not guilty based on self-defense. The trial judge erred in refusing to give the requested self-defense charge. The error requires reversal

2. The trial judge erred in refusing to charge the jury with the law on the defense of accident when there was evidence presented that while acting in self-defense, Appellant accidentally struck his wife causing injury.

As discussed above, at trial Appellant testified that, "She [the wife] just got irate and upset about this person that was tracking the radio signals. I have a vision problem. I couldn't see from a distance, just maybe 100 yards. And she was just upset, throwing arms. And she hit me, and I just grabbed both her arms, so, you know, it was like push and pull. And then the next thing I know, it was just – I felt my hand – the back side of my hand hit her right there." (Tr. p. 128, line 21 – p. 129, lines 1-4). Appellant testified that he did not mean to hit her in the mouth and when asked if he struck her hard in the mouth he testified, "No. I mean, I was just holding her wrist and all that and it was going back and forth. It was accidental." (Tr. p. 129, lines 7-11).

At the close of testimony counsel for Appellant requested charges on both self-defense and accident. (Tr. p. 162, line 17 – p. 182, lines 1-14). Specifically, with regard to the defense of accident, counsel for Appellant cited State v. Brown, 205 S.C. 514, 32 S.E.2d 825 (1945) and State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994). (Tr. p. 162, lines 17-24). Trial counsel argued that Appellant was entitled to an accident charge because the harm or degree of harm was unintentional, Appellant was acting lawfully and the injury was not the result of negligence. (Tr. p. 163, lines 9-25). The State objected to the accident charge. (Tr. p. 165, line 15 – p. 166, lines 1-12). The judge refused to charge accident stating, "I'm not inclined to charge the accident. I'm not going to charge accident." (Tr. p. 167, lines 4-5). After the jury reached a verdict,

Appellant renewed the objection to the trial judge's refusal to instruct the jury on the law of the defense of accident. (Tr. p. 260, lines 1-5). The trial judge erred in refusing to instruct the jury on the law of the defense of accident. The error requires reversal.

In State v. White, 425 S.C. 304, 311, 821 S.E.2d 523, 527 (Ct. App. 2018) the South Carolina Court of Appeals wrote:

> "[An appellate court] will not reverse a trial court's decision regarding a jury instruction absent an abuse of discretion." State v. Stanko, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013). "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." State v. Williams, 400 S.C. 308, 314, 733 S.E.2d 605, 608–09 (Ct. App. 2012). "The law to be charged to the jury is determined by the evidence presented at trial." State v. Gaines, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008). "If there is any evidence to support a jury charge, the trial [court] should grant the request." State v. Brown, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004).

Viewing the evidence in the light most favorable to the Appellant, there is evidence to support a jury charge on the defense of accident.

In State v. Brown, 205 S.C. 514, 32 S.E.2d 825, 828 (1945), the South Carolina Supreme Court wrote:

> Where the death of a human being is the result of accident or misadventure, in the true meaning of the term, no criminal responsibility attaches to the act of the slayer. If it be shown that the killing was unintentional; that it was done while the perpetrator was engaged in a lawful enterprise, and was not the result of negligence, the homicide will be excused on the score of accident. 26 Am.Jur., Sec. 220, Page 305. It is not such matter of defense as throws upon or shifts to the accused the burden of proving that the homicide occurred by accident or misadventure; the burden rests upon the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide.

While the Brown case cited above involved an involuntary manslaughter conviction that was the result of a head on car accident and involved a directed verdict issue rather than a failure to charge accident, the discussion of the accident defense is applicable to the present case.

In State v. Owens, 427 S.C. 325, 330, 831 S.E.2d 126, 128 (Ct. App. 2019), cert. granted (Mar. 12, 2020), the South Carolina Court of Appeals wrote:

> The defense of accident (sometimes called misadventure) protects a defendant who, while acting lawfully and with due care, unintentionally causes harm to another. The defense has three elements: (1) the harm was unintentional, (2) the defendant was acting lawfully, and (3) due care was used in the handling of the weapon. See State v. Commander, 396 S.C. 254, 271, 721 S.E.2d 413, 422 (2011); see also State v. Brown, 205 S.C. 514, 521, 32 S.E.2d 825, 828 (1945) ("If it be shown that the killing was unintentional; that it was done while the perpetrator was engaged in a lawful enterprise, and was not the result of negligence, the homicide will be excused on the score of accident.").

As discussed above, Appellant also requested a jury instruction on self-defense. "While it is true accident and self-defense 'are often mutually exclusive,' a trial court should charge both when there is evidence in the record to support both charges. See Williams, 400 S.C. at 317, 733 S.E.2d at 610." State v. White, 425 S.C. 304, 312, 821 S.E.2d 523, 528 (Ct. App. 2018). There is evidence in the record to support both charges. Under the specific facts of this case, accident and self-defense are not mutually exclusive. There is evidence in the record that Appellant was acting lawfully in self-defense when he grabbed his wife's arms after she attacked him in his car in the Taco Bell drive thru. While Appellant was using non-deadly force in self-defense and holding the arms of his wife to block her blows, during the push and pull she was accidentally hit in the mouth. The harm to the wife was unintentional and Appellant was not negligent. The trial judge erred in refusing to charge the jury with the law on the defense of accident. The error requires reversal.

CONCLUSION

Based on the above arguments this Court should reverse Appellant's conviction and remand the case for a new trial.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of January, 2021.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

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Honorable Alex Kinlaw, Circuit Court Judge

THE STATE,

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JASON EDWIN STOOTS,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blitch, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Jason Edwin Stoots at 10 Randall Drive, Taylor, SC 29687, this 14th day of January, 2021.

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT