STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County

R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RONALD BROWN,

APPELLANT

APPELLATE CASE NO. 2019-001784

FINAL BRIEF OF APPELLANT

JOANNA K. DELANY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred where it refused to charge the jury on defense of others, where Appellant Brown testified he returned fire to prevent the decedent from shooting towards Appellant's children, since the court must give a defense of others charge where there is evidence adduced at trial that the defendant was acting in defense of others?

STATEMENT OF THE CASE

During the January term of 2018, a Williamsburg County Grand Jury indicted Appellant for murder and possession of a weapon during the commission of a violent crime. R. 426 - 427. Appellant proceeded to trial before the Honorable R. Ferrell Cothran, Jr., and a jury, from September 30 – October 3, 2019. R. 1. Appellant was represented by Grant Smalldone. R. 1. The State was represented by Warren Anderson and Ernest Finney, III. R. 1.

Appellant was found not guilty of murder but he was found guilty of the lesser-included offense of voluntary manslaughter and guilty of the weapon charge. R. 416, ll. 13-20. The court sentenced Appellant to serve consecutive terms of imprisonment for eighteen years for voluntary manslaughter and five years for possession of a weapon during the commission of a violent crime. R. 423, l. 24 – 424, l. 4.

This appeal follows.

STANDARD OF REVIEW

Generally, the trial judge is required to charge only the current and correct law of South Carolina. *State v. Burkhart*, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). "The law to be charged is determined from the evidence presented at trial." *Douglas v. State*, 332 S.C. 67, 73, 504 S.E.2d 307, 310 (1998). "[I]n order for the trial court to give a defense of others charge, there must be some evidence adduced at trial that the defendant was indeed lawfully defending others." *State v. Starnes*, 340 S.C. 312, 323, 531 S.E.2d 907, 913 (2000). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *Burkhart*, 350 S.C. at 261, 565 S.E.2d at 303. "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010).

"If there is any evidence to support a jury charge, the trial judge should grant the request." *State v. Brown*, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004). "However, [the court is] not confined to the State's version of the facts. The law to be charged is determined by the evidence presented at trial." *State v. Gourdine*, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996); *see also State v. Sales*, 285 S.C. 113, 114, 328 S.E.2d 619, 620 (1985) (holding trial court erred in charging duty to retreat where appellant claimed right of self-defense through doctrine of defense of others).

ARGUMENT

The trial court erred where it refused to charge the jury on defense of others, where Appellant Brown testified he returned fire to prevent the decedent from shooting towards Appellant's children, since the court must give a defense of others charge where there is evidence adduced at trial that the defendant was acting in defense of others.

The trial court must give a jury instruction when, in the light most favorable to the defendant, there is any evidence to support the charge. Appellant Brown testified he shot back at the decedent to keep the decedent from continuing to fire in the direction of Brown's children. The court's refusal to instruct the jury on defense of others was error since Brown's testimony was evidence he was acting in defense of another.

Relevant facts

In 2017, the appellant, Ronald Brown, was in his forties with no criminal record. He worked at a charcoal plant in Lake City and was married with two small children—an infant and a toddler. His lawyer would later say Brown, who was called "Junior," was no "Harvard graduate" but he loved his kids. R. 300, l. 7 – 319, l. 7; R. 34, ll. 1-2; R. 423, ll. 13-14; R. 374, ll. 24-25; R. 97, ll. 19-22.

On October 20, 2017, Brown went to the White Oak community to sell Anne and Quamella McCormick charcoal for a family reunion. Brown's wife was with him and their children were also in the car. Brown gave the McCormicks the charcoal and was paid. R. 97, l. 13 – 103, l. 11. However, before he could leave, his car was blocked in by Matthews Cooper, who was also known as "Tweety," and Cooper's friend Neil. R. 305, l. 10 – 306, l. 8. The day would see Cooper dead and Brown charged with murder.

Brown testified that he had owed Cooper (Decedent) ten dollars for marijuana for a week or two, and that when Decedent and Neil appeared, Decedent threatened Brown that he "gone 'f' me up." Brown offered to pay Decedent the money but Neil stepped in and hit Brown. Decedent then hit Brown again, and a fight ensued. Neil retrieved a gun and the two men demanded all of Brown's money. Brown explained the two men passed the gun back and forth between them, saying, "Who gonna to shoot him." Brown said he gave them all of his money, which was about one hundred and ninety dollars. The men told Brown he had "ten seconds to get up outta there or they gonna kill me." R. 306, l. 11 – 309, l. 21.

A number of people saw the fight, and Brown's wife asked Quamella McCormick to take their kids away into the house, away from the fight. Quamella was already holding the baby and took the toddler too. R. 169, l. 22 – 170, l. 7; R. 109, l. 13 – 110, l. 3.

Brown obeyed the men's command to leave and said he "hog-tailed" it to his car and drove away with his wife but quickly noticed his children were no longer in the car. R. 310, ll. 5-10. Brown was upset, "because if they are doing this over $10 – over $10 – trying to kill me over $10, they gone crazy. I just kinda figured this is, I gots to go get my children." R. 310, ll. 19-22. Because Decedent had a gun and threatened to kill Brown moments before, Brown had his wife pull over and he got his .40 caliber pistol out of the trunk and put it in his pants. "Why did I get the gun? Because I was scared they might, for my safety and my kids safety, that's the only reason." R. 311, l. 13 – 312, l. 16.

Brown said when he pulled back up, "I'm looking to see if that car that Neil and [Decedent] was in was there, and it wasn't there. So I thought, I said, thank God. Everything is cool . . ." Brown saw a McCormick girl with one of his children. "I told my old lady go get my child, go get the kids so she – and I'm gone get two cigarettes from Freddie." R. 314, ll. 10-25.

But, as he walked through the yard, Brown said Decedent "pops up like a jack-o'-lantern and fires on me. Pow! Bullet flies past my face." Brown knelt down, got his gun out and fired back because one of his children was being brought out. "I come up, the other sister was walking my child up that way **when he fired and my child could've got hit at that time** . . . **So I fired to try to get him back from shooting**, **shooting that way** – in case he might shoot –" R. 315, ll. 2-19 (emphasis added).

Brown said Decedent shot at him first, after saying, "Yeah, what's up now?"

> [**H**]**e shot at me first. I didn't see it coming. He could've hit, he could've hit my child** actually because the way he was standing and the way I'm walking to the driveway and my child is coming from straight ahead and they got my child in her hand, in they hand and they walking straight ahead. If I would've – if they would've been walking faster he definitely would got hit, somebody would've got hit. She would've got hit or my child, one of the two.

R. 316, ll. 16-17; R. 318, ll. 7-14 (emphasis added).

Brown said he returned fire on Decedent "**to tried to get him away**, **tried to get him away from**, **um**, **from where my children** – **shooting that way where my children out**." R. 318, ll. 16-23 (emphasis added). After shooting, Brown ran back to his car and drove off, feeling it was "too chaotic" to try to get the kids after all. (His mother or sister eventually picked them up later.) R. 320, l. 16 – 321, l. 6; R. 348, ll. 24-25; R. 119, ll. 13-18.

Decedent ran into a field, where he collapsed and died in the arms of Anne McCormick, who told Investigator Kennedy she held Decedent's hand while he died. Decedent had passed away by the time first responders arrived. R. 117, l. 2 – 118, l. 15; R. 210, l. 14 – 211, l. 25. When police officers rolled over Decedent's body, they found a revolver with three spent shells inside it underneath his body. R. 203, l. 20 – 204, l. 6. Decedent's hands were checked for gunshot residue but none was found. However, Jennifer Nates, a SLED officer who was

qualified as an expert in trace evidence, said that blood pouring onto Decedent's hands from his wound or McCormick holding his hand could have removed any gunshot residue. R. 245, ll. 7-15; R. 247, ll. 8-12; R. 256, l. 1 – 257, l. 25; R. 266, l. 6 – 267,

State's witnesses corroborated parts of Brown's story and disagreed with parts of Brown's explanation, but no one saw all of the shots being fired. R. 115, l. 4 – 116, l. 18; R. 157, l. 16 – 158, l. 6; R. 173, l. 3 – 174, l. 25.

During the charge conference, defense counsel asked that, in addition to a charge on self-defense, the jury be charged on defense of others. Defense counsel argued that Brown's testimony about fearing for the "safety of his children" supported such a charge. R. 354, ll. 6-14.

However, the trial court denied the request. "[T]here's no testimony that [Decedent] was anywhere in aggressive towards his children. The fact that his children may have been shot as an innocent bystander, I don't think, qualifies for the defense of others. He was defending himself." R. 354, ll. 20-24. The court continued, "[T]here's no testimony that he drove up and somehow his children were in harm, that may be what his thought process that they've may been hit by a bullet, but he's defending himself because he's the one getting shot [a]t. There's nothing in the record that there's any animosity towards those children, they['re] tiny little children." R. 355, ll. 10-16.

The jury deliberated for a little less than two hours and it asked to be recharged on the elements of self-defense and on the lesser offense of voluntary manslaughter. R. 412, l. 7 – 416, l. 5. Appellant was convicted of voluntary manslaughter and possession of a weapon during the commission of a violent crime. He was sentenced to imprisonment for eighteen years and five years, terms to be served consecutively. R. 416, ll. 13-20; R. 423, l. 24 – 424, l. 4.

Discussion

There was evidence presented at trial that Brown acted in defense of his child. The court's failure to charge the jury on defense of others was error here. "The law to be charged to the jury is determined by the evidence presented at trial." *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused." *State v. Austin*, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989). "If there is any evidence to support a jury charge, the trial judge should grant the request." *State v. Brown*, 362 S.C 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004). 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) (citing *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 512-13 (2000)).

"Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults a friend, relative, or bystander if that friend, relative, or bystander would likewise have the right to take the life of the assailant in self-defense." *State v. Starnes*, 340 S.C. 312, 322-23, 531 S.E.2d 907, 913 (2000) (citing *State v. Long*, 325 S.C. 59, 480 S.E.2d 62 (1997)). "To establish self-defense, the defendant must establish (1) he was without fault in bringing on the difficulty; (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) a reasonably prudent person of ordinary firmness and courage would have entertained the same belief; and (4) he had no other probable means of avoiding the danger." *State v. Long*, 325 S.C. at 62, 480 S.E.2d at 63 (citing *State v. Bruno*, 322 S.C. 534, 473 S.E.2d 450 (1996)).

In *Starnes*, 340 S.C. at 323, 531 S.E.2d at 913, the Supreme Court found the defendant was not entitled to a charge on defense of others because Starnes did "not suggest he shot" in order to protect another. The Supreme Court in *Starnes* cited *State v. Alford*, 264 S.C. 26, 212 S.E.2d 252 (1975),[1] for the holding that a defendant is not entitled to a defense of others charge "where defendant did not testify he was shooting for a purpose other than to protect himself . . ." *Id*. "[I]n order for the trial court to give a defense of others charge, there must be some evidence adduced at trial that the defendant was indeed lawfully defending others." *Douglas v. State*, 332 S.C. 67, 73, 504 S.E.2d 307 (1998). Here, Brown testified he shot for a purpose other than to protect himself—he said he shot to protect his child.

Brown said he retrieved his gun out of concern for his own safety and the safety of his children. However, Brown testified that he shot Decedent to keep Decedent's bullets from hitting his child. Brown said that he returned fire on Decedent "to tried to get him away, tried to get him away from, um, from where my children – shooting that way where my children out." R. 318, ll. 16-23. Brown said Decedent shot at him first, and he shot back to draw fire away from his child, who was being brought outside at the time. "I come up, the other sister was walking my child up that way when he fired and **my child could've got hit at that time** . . . **So I fired to try to get him back from shooting, shooting that way** . . ." R. 315, ll. 2-19 (emphasis added). Brown's testimony was evidence that he acted in defense of others and the trial court's failure to charge the jury on this defense was error. *Douglas*, 332 S.C. at 73, 504 S.E.2d at 307.

Although the trial court here charged the jury on self-defense, it did not instruct the jury that "under the law of self-defense, a person may not only take life in his own defense but also in defense of a relative." *State v. Sales*, 285 S.C. at 114, 328 S.E.2d at 620. *See also State v. Norris*,

[1] *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009).

253 S.C. 31, 38, 168 S.E.2d 564, 567 (1969) ("The right of the father to defend his daughter is coextensive with the right of the daughter to defend herself.") The trial court erred when it refused to instruct the jury on defense of others since Brown's testimony was evidence that acted in the defense of another. The deprivation of a correct, applicable instruction on this defense was error. *Douglas*, 332 S.C. at 73, 504 S.E.2d 307; *Brown*, 362 S.C at 262, 607 S.E.2d at 95.

"[T]o warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *State v. Burkhart*, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002). "Failure to give requested jury instructions is not prejudicial error where the instructions given afford the proper test for determining the issues." *Id*. at 263, 565 S.E.2d at 304. Here, Appellant was prejudiced since the court failed to instruct the jury that under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults another if the other would likewise have the right to take the life of the assailant in self-defense. *Starnes*, 340 S.C. at 322-23, 531 S.E.2d at 913.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentences and remand for a new trial.

s/ *Joanna K. Delany*
Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of January, 2021.

RECEIVED
Jan 22 2021
SC Court of Appeals

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."

January 22, 2021.

s/ *Joanna K. Delany*
Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT