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 REPLY BRIEF OF APPELLANT

---

KATHRINE H. HUDGINS
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**



**Other Authorities**

## ARGUMENTS IN REPLY

1. **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.**

There is evidence in the record that Appellant acted in self-defense when he used non-deadly force and grabbed his wife's arms when she attacked him, also using non-deadly force, while sitting in his car at the Taco Bell drive thru. Appellant acted intentionally when he restrained his wife from hitting him by grabbing her arms. While Appellant testified that the strike to the wife's mouth was accidental, as discussed in issue two, the act of grabbing her arms was intentional and done in self-defense using non-deadly force.

The requirements for the use of non-deadly force in self-defense have not been addressed by the South Carolina appellate courts. In State v. Williams, 319 S.C. 54, 56–57, 459 S.E.2d 519, 520 (Ct. App. 1995), the South Carolina Court of Appeals wrote:

> We do not reach the question of whether the evidence otherwise entitled Williams to a charge on the law of self-defense where Williams and the victim shared a jail cell at the time of the assault and Williams testified he responded with nondeadly force to the victim's failed effort to hit him with his hand. See State v. Schroeder, 199 Neb. 822, 261 N.W.2d 759 (1978) (a prisoner confined in a jail cell has no duty to retreat before using force to defend himself); WILLIAM SHEPARD McANINCH & W. GASTON FAIREY, THE CRIMINAL LAW OF SOUTH CAROLINA, at 498 (2d ed. 1989) ("There seem to be no reported South Carolina cases directly on point holding that the duty of retreat does not arise or that *serious* bodily injury need not be anticipated when defense is attempted with non-deadly force, but there is substantial authority to this effect in other jurisdictions.").

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.

As to the first factor, Appellant in the present case was without fault in bringing on the difficulty. As discussed in the brief of Appellant, neither the belief of serious bodily injury nor the duty to retreat should be required when non-deadly force is used, as here. When determining what is required in order to respond with non-deadly force in self-defense this Court should simply require that the response be reasonable and in proportion to the threat. As the Court noted in State v. Wood, 1 S.C.L. 351, 346–47 (1794):

> The general rule of law "that wherever the assault or battery proceeds from the plaintiff or prosecutor's own fault; as where he gives the first blow &c. there it is sufficient justification to the defendant." But there must be however, in all cases, some proportion between the battery given, and the first assault. For Lord Holt lays it down as a rule, that the meaning of the plea *son assault* is, that the defendant struck *in his own defence Esp.* 389. So that the degree of resistance, ought to be in proportion to the nature of the injury offered; that is, that it be sufficient to war off such injury, and no more. For the moment a man disarms or puts it out of the power of the aggressor from doing him further injury, he ought to desist from using further violence; and if he does commit any further outrage, he, in his turn, then becomes the aggressor. In *Salk.* 642, a question was, what assault was sufficient to maintain such plea? Lord Holt said, that Wyndham, J. would not allow such plea, if it was an *unequal return*. His lordship then says, that for every assault, he did not think it reasonable that a man should be *banged with a cudgel*. That a small blow will not justify an enormous beating, &c. That the meaning of the plea was, that the *defendant struck in his own defence.*

In the present case it was reasonable for Appellant to grab his wife's arms in response to her attack. Appellant's response was in proportion to the wife's attack. Appellant was entitled to use non-deadly force in self-defense.

While a person has a duty to retreat before using **deadly force** when in his or her own car on a public highway, State v. McGee, 185 S.C. 184, 193 S.E. 303 (1937), the duty to retreat

should not apply when non-deadly force is used. Again, this Court should simply require that when acting in self-defense using non-deadly force, the response must be reasonable. In this case it would not have been reasonable to require Appellant to retreat by getting out of his car at the Taco Bell drive thru before grabbing his wife's arms in self-defense.

In State v. Hill, 315 S.C. 260, 261–62, 433 S.E.2d 848, 849 (1993), the South Carolina Supreme Court wrote:

> If there is evidence of self-defense, the issue should be submitted to the jury upon request. State v. Lee, 293 S.C. 536, 362 S.E.2d 24 (1987); State v. Muller, 282 S.C. 10, 316 S.E.2d 409 (1984). The law to be charged to the jury is determined by the evidence presented at trial. Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991). Conversely, a trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence. Id.; State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989).

In the present case there is evidence in the record that Appellant acted in self-defense, using non-deadly force. The trial court committed reversible error in refusing to charge self-defense, as requested.

**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.**

Counsel for Appellant specifically requested a jury charge on the defense of accident citing 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). The trial judge refused the request. (Tr. p. 167, lines 4-5). The trial judge erred. The trial judge's instruction to the jury on criminal intent did not cure the error in failing to charge accident.

In State v. Owens, 427 S.C. 325, 333-34, 831 S.E.2d 126, 130 (Ct. App. 2019), cert. granted (Mar. 12, 2020), the South Carolina Court of Appeals wrote:

We recommend the following language when instructing jurors on the defense of accident:

> The defendant has raised the defense of accident. Harm to another, including death, is excusable on the ground of accident if the harm was caused by the unintentional and lawful act of a defendant exercising due care. For the defense of accident to apply, you must find: (1) the act of the defendant that caused the harm was accidental and not intentional; (2) the act was lawful; and (3) the act was not careless, negligent, or reckless.
>
> If you find the defense of accident applies, you must find the defendant not guilty. However, if the State has proven beyond a reasonable doubt that any of the three elements of the defense of accident do not apply, then the defendant is not entitled to the defense. A defendant engaged in unlawful conduct, including the unlawful possession of a weapon, is entitled to claim the defense of accident unless the State has proven beyond a reasonable doubt that the unlawful conduct was not merely incidental to but was the direct and foreseeable cause of the Victim's harm.
>
> When the evidence supports an accident charge on behalf of a defendant who has lawfully armed himself in self-defense, we suggest the following additional instruction consistent with Burriss and McCaskill:
>
> A defendant exercising due care who accidentally harms another while acting in self-defense is acting lawfully. Therefore, a defendant can be acting lawfully, even if he is in unlawful possession of a weapon, if you find he was entitled to arm himself in self-defense and the victim was shot by accident by the unintentional discharge of the weapon.

The instruction suggested by the Court of Appeals accurately reflects the law on accident and should have been charged in the present case. The general instruction on criminal intent was not sufficient to explain the defense of accident. The general instruction on criminal intent simply addressed the mental state the prosecution was required to prove but failed to explain the elements of the defense of accident.

In State v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 302–03 (2002), the South Carolina Supreme Court wrote:

> In general, the trial judge is required to charge only the current and correct law of South Carolina. Cohens v. Atkins, 333 S.C. 345, 509 S.E.2d 286 (Ct.App.1998). A jury charge is correct if it contains the correct definition of the law when read as a whole. Keaton v. Greenville Hosp. Sys., 334 S.C. 488, 514 S.E.2d 570 (1999). The substance of the law must be charged to the jury, not particular verbiage. Keaton.

The jury instruction in the present case entirely omitted a correct definition of the defense of accident. Appellant was entitled to an instruction on the defense of accident. The substance of the defense of accident was not adequately covered by the criminal intent instruction.

## 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 1st day of June, 2021.

RECEIVED
Jun 01 2021
SC Court of Appeals

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

---

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 Reply Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and a copy of the Initial Reply Brief of Appellant has been served on Jason Edwin Stoots at 10 Randall Drive, Taylors, SC 29687, this 1st day of June, 2021.

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT