STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JARVIS DESHUN LUCAS,

APPELLANT.

APPELLATE CASE NO. 2021-000664

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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 judge erred in refusing to give a full and complete self-defense charge, including that if the defendant was justified in striking the first blow, then he was entitled to continue to defend himself until the danger had ended; and that words accompanied by hostile acts may establish the right to self-defense?

STATEMENT OF THE CASE

On February 22, 2019, a Spartanburg County grand jury indicted appellant Jarvis Deshun Lucas for murder and a weapons charge. On June 7, 2021, appellant was tried before the Honorable J. Derham Cole and a jury. R. 1. Spenser Holloran Smith and James Nathan Ozmint represented the State. R. 1. Suzanne H. White and Daniel James MacDonald, IV, represented appellant. R. 1. The jury convicted appellant. R. 632, l. 16 – 21. Judge Cole sentenced appellant to life imprisonment. R. 652, l. 18 – 25. This appeal follows.

STANDARD OF REVIEW

The failure to give appellant's requested jury instructions is reviewed under the abuse of discretion standard, which occurs when the court's ruling is based on an error of law or is without evidentiary support. State v. Sims, 426 S.C. 115, 129, 825 S.E.2d 731, 738 (Ct. App. 2019).

ARGUMENT

The trial judge erred in refusing to give a full and complete self-defense charge, including that if the defendant was justified in striking the first blow, then he was entitled to continue to defend himself until the danger had ended; and that words accompanied by hostile acts may establish the right to self-defense.

Appellant testified that he had no other choice but to kill the decedent, Willie Earl Goggins, in self-defense, when Goggins unexpectedly tried to rob him with a knife for money for crack cocaine. R. 502, l. 3 – 511, l. 14. Appellant and Goggins had been hanging out together in a field with several other people drinking. R. 483, l. 11 – 501, l. 11. Appellant bought beer for the group. R. 483, l. 11 – 501, l. 11. Surveillance videos captured appellant and Goggins in a convenience store buying beer and being friendly with each other. R. 483, l. 11 – 501, l. 11.

Appellant asked one of the people in the field, Mr. Russell, to buy marijuana for him. R. 483, l. 11 – 501, l. 11. While he waited on Russell to procure the marijuana, appellant continued to drink beer and socialize with Goggins and the other people in the field, including Rita Lee ("Lee"), Deb Dandy, a man named "Tim," and "Mr. Pork Chop." R. 483, l. 11 – 501, l. 11. Of these people, the only one to testify at the trial was Rita Lee.

Russell returned with the marijuana. R. 501, l. 4 – 21. Appellant walked to meet Russell and Goggins joined him. R. 501, l. 4 – 21. Appellant previously gave Goggins money to get rolling papers from the convenience store and when Russell came with the marijuana, appellant got a paper from Goggins. R. 501, l. 4 – 21.

Goggins then said to appellant, "Now, give me some money." R. 501, l. 19 – 25. Goggins did not want marijuana and appellant understood Goggins to mean that he needed money for crack cocaine. R. 502, l. 3 – 503, l. 14. Appellant told Goggins he did not smoke crack. R. 502, l. 3 –

503, l. 14. Goggins said, "you're going to give it to me" and pulled out a knife. R. 502, l. 3 – 503, l. 14.

Appellant retreated, backing up, but his exit was blocked by a bush. R. 504, l. 12 – 505, l. 15. Goggins advanced and swung the knife at appellant. R. 505, l. 18 – 506, l. 11. Appellant told him to stop and Goggins swung the knife again. R. 505, l. 18 – 506, l. 11. Appellant pulled out a knife that belonged to a friend. R. 506, l. 1 – 11. R. 478, l. 20 – 479, l. 13. He told Goggins, "I have one, too." R. 506, l. 1 – 11. Appellant had never seen the switchblade-style knife until that day. R. 478, l. 20 – 479, l. 13.

Goggins then made another wide swing with the knife, aiming for appellant's throat. R. 506, l. 6 – 507, l. 5. Appellant was afraid for his life. R. 507, l. 19 – 25. He knew that if he turned to run, Goggins would cut him. R. 508, l. 1 – 6. Appellant stepped towards Goggins and the two men collided. R. 508, l. 10 – 16. Appellant stabbed Goggins three times in the chest. R. 508, l. 10 – 16. Goggins fell and appellant ran for the safety of his nearby house. R. 509, l. 1 – 22. Goggins died from the wounds. R. 454, l. 7 – 461, l. 2.

The police recovered Goggins' knife from beside his body. Def. Ex. 6. The knife was a folding pocketknife with an alligator on the handle. Def. Ex. 6. When the police recovered the knife, it was not fully open. R. 211, l. 4 – 10. Def. Ex. 6. Goggins' front pocket was turned out. R. 225, l. 2 – 5.

Rita Lee testified for the State and gave a different account of the fight. Lee agreed that everyone, including appellant, was drinking and getting along well in the field. R. 231, l. 12 – 237, l. 15. When Russell returned with the marijuana, she said Goggins became angry because Goggins had contributed two dollars for the purchase, but appellant would not share. R. 239, l. 4 – 19. Goggins wanted either his money or his share of the marijuana. R. 239, l. 4 – 19.

Lee said that appellant pulled out his knife. R. 239, l. 4 – 19. Goggins pulled out his knife in response and said "I got one of them too." R. 239, l. 4 – 19. But, according to Lee, Goggins then put his knife back in his pocket and said "it wasn't that serious." R. 239, l. 4 – 19. Only after Goggins put away his knife did appellant attack him. R. 239, l. 4 – 19. She claimed Goggins was backing up as appellant attacked him. R. 245, l. 14 – 23. After Goggins fell face-first, appellant supposedly said, "The bitch going to die slowly." R. 246, l. 2 – 9.

The police responded quickly to the scene and heard Lee's version of events. R. 210, l. 6 – 9. Officers went to appellant's house and appellant quickly surrendered himself and was compliant with the police. R. 292, l. 18 – 293, l. 18. A body camera captured appellant's arrest and the solicitor used appellant's exit from the house smoking marijuana against him repeatedly during cross-examination to make appellant seem as if he had no remorse for Goggins' death. R. 538, l. 25 – 546, l. 1.

Appellant submitted requests to charge dealing primarily with self-defense which were marked as Court's Ex. 1. R. 655-66. After the trial court charged the jury, appellant requested the court additionally charge "if the defendant is justified in striking the first blow that they're justified in continuing to do so until it's apparent that the danger to the life and body has ceased and words accompanied by hostile acts may, depending on the circumstances, establish a plea of self-defense." R. 630, l. 20 – 631, l. 2. Judge Cole refused to give the additional charges. R. 631, l. 5 – 7.

The trial court erred in refusing appellant's requested charges. A trial judge has the responsibility to craft a self-defense charge tailored to the facts of a case. State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011); State v. Fuller, 297 S.C. 440, 444-45, 377 S.E.2d 328, 331 (1989). As this Court recognized in Fuller, there is a "body of common law self-defense" and trial

judges must "consider the facts and circumstances of the case at bar in order to fashion an appropriate charge." Fuller at 443, 377 S.E.2d at 330.

Appellant's requested charges were correct statements of the law and required under Fuller. The charge concerning words accompanied by hostile acts has been valid since at least 1951. State v. Harvey, 220 S.C. 506, 68 S.E.2d 409 (1951). The charge concerning a defendant's right to continue defending himself until the danger has passed so long as he was justified in acting was recognized in State v. Hendrix, 270 S.C. 653, 661-62, 244 S.E.2d 503, 507 (1978).

Neither of these requests were adequately covered by Judge Cole's self-defense charge. But see State v. Marin, 415 S.C. 475, 783 S.E.2d 808 (2016). While the judge's charge gave general directions on reasonableness and that a defendant had a right to act on appearances, it did not specifically mention that appellant was entitled to consider Goggins' words—his demand for money—when exercising his right to self-defense. Judge Cole's charge also contained a confusingly worded section on deadly force that was not present in the Marin charge. R. 623, l. 7 – 11. The court charged, "It is therefore a person's duty to avoid the use of deadly force and the taking of human life where it is possible to avoid such action even if such avoidance—so long as such avoidance can be taken without increasing the danger to one's self." R. 623, l. 7 – 11. This instruction improperly carves out an additional, incorrect consideration on the right to use deadly force as separate from the elements of self-defense.

Appellant's requested instruction regarding being justified in striking the first blow would have clarified this unfortunate inclusion in the court's charge. Because appellant stabbed Goggins three times, not once, this error prejudiced him. The court failed to give a complete self-defense charge under Fuller. In this close case where the jury asked questions about malice and self-defense

and the issues of fact boiled down to a credibility contest between appellant and Rita Lee, Goggins' friend, the error cannot be harmless. This Court should reverse.

CONCLUSION

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

s/David Alexander
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

This 11th day of May, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JARVIS DESHUN LUCAS,

APPELLANT.

APPELLATE CASE NO. 2021-000664

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jarvis Deshun Lucas states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge J. Derham Cole, which was held on June 7 - 11, 2021, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Jarvis Deshun Lucas.

Respectfully Submitted,

s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of May, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
May 11 2022
SC Court of Appeals

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JARVIS DESHUN LUCAS,

APPELLANT.

APPELLATE CASE NO. 2021-000664

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) Trial Transcript dated June 7 – 1, 2021;
(2) Court's Exhibit No. 1;
(3) Court's Exhibit No. 2;
(4) State's Exhibit No. 21 (transported);
(5) State's Exhibit No. 23 (transported);
(6) Indictments; and
(7) Sentence Sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

s/David Alexander
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

This 11th day of May, 2022.

RECEIVED
May 11 2022
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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."

s/David Alexander
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

This 11th day of May, 2022.