



State, The (Columbia, SC)

1989-03-07

Section: METRO/REGION

Edition: FINAL

Page: 1D

STATE SUPREME COURT OVERTURNS MANSLAUGHTER CONVICTION

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A violent, racially tinged confrontation ended three years ago in gunfire and the deaths of two white men on Two Notch Road in Columbia.

Albert Fuller Jr., a black, off-duty corrections officer, said the men chased him shouting taunts of "nigger," and that one was holding a shiny object that looked like a gun to him. Fuller said he shot and killed them in self-defense.

The trial judge used a model charge already approved by the state Supreme Court to instruct the jury on the elements needed to prove self-defense. The jury found Fuller innocent in one death, and guilty of voluntary manslaughter in the other. But a divided Supreme Court on Monday said that the model charge on self-defense alone wasn't sufficient, and Fuller should get a new trial.

Fuller, 32, will be tried again in the death of James R. Phillips, 35, the manager of the Celebrity Supper Club on Two Notch Road. Phillips was killed along with Oliver Lee Dixon, also 35, who was part-owner of the club

Their bodies were found in the front seat of a blue Chevrolet El Camino about 3 a.m. on Sept. 20, 1986, near the nightclub. Fuller was arrested at the scene without resistance and charged with two counts of murder.

Fuller was "ecstatic" about the ruling, according to defense attorney **Jack Swerling**, who talked to Fuller by phone at McCormick Correctional Institution, where he had been serving a 30-year sentence. **Swerling** said he would try to arrange bond for Fuller by the end of the week.

Swerling said the decision sets a precedent requiring judges, when necessary, to give additional instructions to juries that explain the elements of self-defense.

Self-defense is one of the oldest defenses in common law. Basically, it means that people have a right to use force, even deadly force in some instances, if in danger or they believe they are in danger.

In a 1984 decision called State vs. Davis, the Supreme Court wrote out a set of jury instructions for judges to use that outlines the four legal elements of self-defense.

A defendant cannot be at fault for being in a difficult situation. He must be in imminent danger - or believe he is in danger -- of losing his life or being seriously injured. A jury must find that a reasonable person of ordinary courage would have acted the same as the defendant. And the defendant has to be shown to have had no other way of avoiding danger to save himself.

Fuller's attorneys requested additional instructions, but Circuit Judge Marion H. Kinon gave only the Davis charge. The Supreme Court said that was a mistake.

Justice Jean Toal, writing for the four justices in the majority, said the Supreme Court never intended the Davis charge to be an exclusive charge. In this instance, the majority said Fuller had a right to three additional charges.

The jury should have been told that a defendant has a right to act on appearances; that words, accompanied by hostile acts may, depending on the circumstances, establish a plea of self-defense; and that a defendant has no duty to retreat from a dangerous situation if the retreat would increase his danger of being killed or injured, Justice Toal said.

Justices David Harwell, Lee Chandler and Earnest Finney concurred in the majority decision.

But Chief Justice George T. Gregory Jr., in a brief but adamant dissent, said the Davis charge was adequate to cover the law on self-defense without additional instructions on special circumstances.

Gregory said the majority conclusion "places an onerous burden on the trial judge to charge proposed variations on a legal principal merely because the facts may be viewed as supporting the requested charge."



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