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May 7, 2024

Honorable Chief Justice
and Associate Justices
Supreme Court of New Jersey
P.O. Box 970
Trenton, NJ 08625

Re: State v. John T. Bragg
App. Div. Docket No. 3502-21

Your Honors:

Please accept this letter in lieu of a more formal petition to review the Appellate Division's unpublished decision of today, which affirmed defendant's convictions and sentence. Defendant respectfully disagrees with the court's decision and relies on his Appellate Division brief in support of this petition for certification. However, defendant wishes to highlight his particular disagreement with the court's treatment of his challenge to the faulty self-defense instruction.

There was no question that Mr. Bragg, Anderson, and Fletcher were all seriously injured in a violent confrontation. The only issue the jury needed to decide was whether defendant acted in self-defense, using a necessary level of force to repel attackers who

tried to rob him in his own home. To properly decide that issue, the jury needed to be told that defendant did not have a duty to retreat from his own dwelling to avail himself of self-defense. The trial court failed to give that instruction, and the State – through cross-examination of defendant and in summation – repeatedly emphasized that defendant had numerous opportunities to escape the apartment safely. Thus, there is a substantial likelihood that the jury rejected self-defense because it believed that defendant could have fled the confrontation when the law imposes no such duty.

The Appellate Division excused the charge error by noting that “[t]he State presented substantial objective evidence showing that the apartment was not defendant’s dwelling. Defendant presented only his self-serving testimony.” (Slip Op. 19-20). Yet, it is well-established that if the jury is presented with two contrasting versions of the facts, the evidence should be viewed in “the light most favorable to the defendant” when deciding whether defendant is entitled to a jury instruction. State v. Galloway, 133 N.J. 631, 648-49 (1993). The existence of a factual dispute is the reason the charge must be given, not withheld.

Indeed, there was substantial evidence that the apartment at issue was defendant’s dwelling. True, Mr. Bragg did not have a formal lease, and he was in the process of moving all of his belongings from his niece’s house to the apartment. But the law does not impose legal formality or luxurious living conditions to be a dwelling. Mr. Bragg testified that he traded a used vehicle for six months’ rent. He had been staying at the

apartment for a “few weeks” before the incident. He had an electronic fob to enter the building, and the key to the apartment door, which he obtained from the sublessor. He had a bed, cookware, a TV, and personal belongings in the apartment. And he told Anderson and Fletcher that it was his apartment. It matters little that Anderson saw the sublessor’s mail in the apartment, or that defendant used the sign-in sheet when entering. That is to be expected if you have an informal sublease; a swap of a used car for six months’ rent.

The law on self-defense does not provide lesser rights to poor people, depending on how nice or stable their homes are. N.J.S.A. 2C:3-11c defines dwelling as “the actor’s home or place of lodging,” and the facts of this case so clearly met that definition that the trial court was obligated to charge the non-duty to retreat, no matter what position counsel took, or the trial court’s post-verdict assessment of defendant’s credibility.

Of course, the State could have argued to the jury that the apartment was not defendant’s dwelling. But that is a factual argument, not a reason to not give the jury a proper self-defense charge.

The Appellate Division’s second reason for excusing the charge error was that, “given the guilty verdict returned on fourteen of the nineteen counts, it is clear that jury did not believe defendant’s testimony and was obviously convinced he was the aggressor.” (Slip Op. 20). But as undersigned counsel explained when this very concern was raised at the oral argument, we have no idea what the jury would have found, had it

been given a proper jury instruction. Indeed, this Court has consistently held that we cannot meaningfully cobble together a version of the facts the jury must have found based on apparently inconsistent verdicts, or for any other reason. See State v. Banko, 182 N.J. 44, 53-56 (detailing reasons for permitting inconsistent verdicts); State v. Grunow, 102 N.J. 133, 148 (1986) (citing “tradition of the common law” that “does not permit us to speculate upon the foundations of a jury verdict”).

It is respectfully submitted that this case presents a question of general public importance insofar as it construes the self-defense statute to provide lesser protections to poor people who have less stable housing and will have greater difficulty meeting the Appellate Division’s enhanced definition of “dwelling.” Rule 2:12-4.

CONCLUSION

For the foregoing reasons, defendant’s petition for certification should be granted.

Respectfully submitted,

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Attorney for Defendant-Petitioner

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CERTIFICATION

I hereby certify that the foregoing petition presents substantial issues of law and is filed in good faith and not for purposes of delay.

/s/ Stefan Van Jura
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cc: Colin J. Rizzo, A.P.