STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM OUTLER, JR.,

APPELLANT.

APPELLATE CASE NO. 2021-000682

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court abused its discretion by refusing to direct a verdict on the murder charge where the evidence was undisputed that the decedent swung an axe at appellant, appellant gained control of the axe in the ensuing continuous struggle in which the decedent was killed since appellant's criminal culpability may have been voluntary manslaughter if he was not guilty by reason of self-defense but there was no direct or substantial circumstantial evidence that he killed the decedent with "malice aforethought"?

STATEMENT OF THE CASE

Appellant was indicted at the October, 22, 2020, term of the Jasper County grand jury for the offense of murder. R. p. *. His case was called to trial on June 14, 2021, before the Honorable Carmen T. Mullen, and a jury. Carolyn Carmody and Patrick Hall represented appellant. The assistant solicitors were Hunter Swanson and Rachel Janowski. Tr. 2.

On June 16, 2021, the jury found appellant guilty of murder after being instructed on the verdict options of murder, voluntary manslaughter, and not guilty by reason of self-defense. Tr. 246, l. 9 – 252, l. 20. The sentencing hearing was held on June 18, 2021, before the Honorable Carmen T. Mullen. At the conclusion of the sentencing hearing, Judge Mullen sentenced appellant to thirty years' imprisonment for murder. Tr. 294, ll. 1-3.

This appeal follows.

STANDARD OF REVIEW

The defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Weston, 267 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the trial court must submit the case to the jury. State v. Weston, 267 S.C. 279, 292-293, 625 S.E.2d 641, 648 (2006).

ARGUMENT

The court abused its discretion by refusing to direct a verdict on the murder charge where the evidence was undisputed that the decedent swung an axe at appellant, appellant gained control of the axe in the ensuing continuous struggle in which the decedent was killed since appellant's criminal culpability may have been voluntary manslaughter if he was not guilty by reason of self-defense but there was no direct or substantial circumstantial evidence that he killed the decedent with "malice aforethought."

Relevant facts

Jasper County Sheriff's Deputy Robert Edwards, Jr., was working off-duty security for the Motel 6 on the night of August 7, 2018. Tr. 89, ll. 5-22. At about 3:30 in the morning Edwards was conversing with fellow Deputy Joseph Frierson in the parking lot of the Motel 6 when a man approached them riding a bicycle. Tr. 89, ll. 17-22. Both officers said the man rode directly up to them. He said: "I think I killed my girlfriend...." Tr. 90, ll. 11-15. The deputies identified that man in court as appellant. Tr. 90, l. 21 – 91, l. 6.

Edwards admitted this was "definitely a unique, one-of-a-kind experience for me." Tr. 98, ll. 3-7. Edwards read appellant his Miranda[1] warnings and asked him if he had ever been diagnosed with any "mental illness" given the unusual nature of the situation. Appellant apparently had not. Tr. 98, ll. 8-11.

Edwards recalled that appellant told him he and his girlfriend had been in an argument. His girlfriend grabbed an axe and swung it at him. Appellant had been able to get the axe away from her during the continuous struggle that followed, and he hit her in the head with the axe head

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

several times. All of this happened at their home at 303 Heyward Road in Jasper. Tr. 98, l. 25 – 99, l. 6.

Appellant told Edwards he could not call the police afterwards because he did not have a phone. Instead, Edwards remembered, appellant told him that he had called his father from a phone at the nearby Best Western. Appellant's father told him to immediately get in touch with law enforcement, which appellant did in the Motel 6 parking lot. Tr. 99, l. 18 – 100, l. 14.

On cross-examination, Edwards admitted appellant was not under the influence of any substance when they talked to him at 3 a.m. that morning in the parking lot. Tr. 102, ll. 14-21. Edwards said although appellant was upset at the time, he was calm enough to explain that his girlfriend had grabbed the axe during the verbal argument. Tr. 104, l. 12 – 105, l. 8.

When appellant was interviewed at the police station, he told the investigators that his girlfriend had swung an axe at him during the argument at their house. Appellant was able to get the axe away from her during the struggle, and he first hit her in the ribs and the back with the axe handle. He then hit her in the head. Appellant told the police that the decedent began bleeding badly when he hit her with the axe the third time, so he left. Appellant went to the Best Western Hotel where he called his father. Appellant then rode his bicycle to the Motel 6 where he told officer Edwards what had occurred. Appellant's interview, State's Exhibit No. 3, is on file with this Court.

Jasper County Sheriff's Deputy Dominique Riley was dispatched to appellant's residence at 303 Heyward Street following appellant's statement to Deputy Edwards in the Motel 6 parking lot. Tr. 106, l. 8 – 107, l. 13. "When I pulled into the yard right in front of the home, there was a white male inside of the house by the name of Mr. Martin Bennett. When I spoke to him, he said that he was coming to see his girlfriend, who he said is the victim, basically." Tr. 108, ll. 3–10.

Bennett had a bouquet of flowers in his hand. Deputy Riley walked around the back of the house where he found the decedent lying about five yards from the back porch. Riley detained Bennett at that time. Tr. 108, ll. 18-23.

Deputy Riley remembered that once he located the decedent her children came outside. Tr. 114, ll. 13-17. The decedent's grandmother was also home in the residence. Neither the grandmother nor the children had witnessed the fatal encounter. Tr. 115, ll. 15-22.

Deputy Joseph Frierson was the other deputy in the Motel 6 parking lot in the early morning hours of August 7, 2018. Frierson remembered that appellant rode his bicycle into the parking lot of the Motel 6 up to where Frierson was talking with Deputy Edwards. Appellant told both officers: "I think I effed up." Tr. 135, l. 19-20. "I said, what do mean? He said, I think I killed my old lady. We read him his Miranda and detained him at that time. He told us that it occurred at 303 Heyward Street in the Point South area of Jasper County." Tr. 135, ll. 15-23.

Frierson testified that he went to the Heyward Street scene where he found the decedent laying on the ground in a pool of blood. Tr. 136, ll. 5-9. Frierson remembered seeing the decedent's other boyfriend, Martin Bennett, at the home where appellant lived with the decedent. Tr. 142, ll. 14-22.

The pathologist, Dr. Ellen Reimer conducted the autopsy on the decedent on August 8, 2018, at MUSC. Tr. 163, l. 3 – 164, l. 13. Dr. Reimer said the decedent had "three impact sites to the head. Two were to the back of the head. One was to the right side of the back of the head." Dr. Reimer said the most severe injury was to the left side of the back of the head behind the ear. Tr. 164, ll. 14-23.

Dr. Reimer opined that each separate blow could have killed the decedent. Tr. 165, ll. 14-17. The toxicology report showed the decedent had cocaine in her system and a blood alcohol reading of .014. Tr. 218, ll. 7-16.

Defense witness Dr. Alex Pappas was an expert in clinical and forensic toxicology. Dr. Pappas told the jurors that the cocaine use had been within hours of the decedent's death. Tr. 218, l. 25 – 219, l. 11.

Appellant's father also testified for the defense. He told the jurors that when told appellant telephoned him after the axe fight with the decedent that he told appellant "to find a police officer as quickly as he could and explain to them what had taken place." Tr. 210, ll. 16-19. He directed appellant to call the police or to find a police officer "because it was the right thing to do. It was just the right thing to do." Tr. 211, ll. 2-14.

Directed verdict motion

Defense counsel Carmody moved for a directed verdict at the close of the state's case. Counsel argued the state failed to present evidence appellant acted with malice aforethought. Counsel reminded the judge that the decedent swung an axe at appellant, appellant had to react and make a split-second decision to defend himself. While defense counsel maintained appellant was acting in self-defense at the time he was attacked with the axe, she argued the state had also failed to show that appellant acted with the "malice aforethought" necessary for a murder charge.[2] Tr. 184, l. 11 – 185, l. 18.

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2 Defense counsel filed a pre-trial motion for immunity under the "stand your ground" provision of the Castle Doctrine Act. However, that motion was strangely denied without a hearing where there was no record of defense counsel ever asking for an evidentiary hearing, and only verbal arguments about immunity were made. Counsel repeated her request for immunity when motions were made out of the presence of the jury throughout the trial.

The solicitor argued that there was evidence that the decedent was having an affair with another man at the time, and she noted the brutality of the injuries to the decedent. The solicitor said that while the jury could find appellant guilty of voluntary manslaughter, she still maintained there was enough evidence appellant acted with malice to send the murder charge to the jury. Tr. 185, l. 22 – 186, l. 22.

The judge denied the directed verdict motion while agreeing the jury could find appellant guilty of voluntary manslaughter. The judge reasoned that the verdict choice was a jury matter since she thought there was some evidence of malice. Tr. 186, l. 25 – 187, l. 6.

Defense counsel renewed her directed verdict motion at the close of the defense case. Tr. 233, ll. 18-25. The judge again denied the directed verdict motion and said the jury would be given the verdict options of murder, voluntary manslaughter and self-defense. Tr. 234, l. 11 – 235, l. 21.

Discussion

The defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Weston, 267 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the trial court must submit the case to the jury. State v. Weston, 267 S.C. 279, 292-293, 625 S.E.2d 641, 648 (2006).

The trial judge should also grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty of the offense charged. State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004); State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). Suspicion implies a belief or an opinion as to the defendant's guilt based upon facts or circumstances which do not amount to proof. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001).

Murder in South Carolina is "the killing of another person with malice aforethought, either express or implied." Sellers v. State, 362 S.C. 182, 607 S.E.2d 82 (2005).

Here, the evidence was undisputed that appellant was attacked with an axe by the decedent. It is undoubtedly horrifically terrifying to be attacked with an axe. It was also undisputed that the decedent was legally intoxicated, and she also had recently ingested cocaine which can lead to increased aggression in the angry attacker.

Appellant was defending himself and all parties involved acknowledged that the killing in this case could very well have been voluntary manslaughter -- the killing of another human being in a heat of passion upon a sufficient legal provocation. See State v. Knoten, 347 S.C. 296, 303, 555 S.E.2d 391, 394 (2001); State v. Cole, 338 S.C. 97, 101-02, 525 S.E.2d 511, 512 (2000). However, appellant's actions under these facts did not amount to "malice aforethought." Appellant simply did not have any time to reflect, and to cool off, to form the malice aforethought necessary for murder since the deadly blows occurred quickly after the intoxicated angry decedent swung an axe at appellant. Cf. In re Walter M., 386 S.C. 387, 688 S.E.2d 133 (2009).

While voluntary manslaughter and self-defense were jury questions given the evidence in this case, there was no direct or substantial circumstantial evidence appellant acted with malice aforethought given the highly unusual facts of this case where the decedent attacked him with an axe. The judge abused her discretion by refusing to direct a verdict of acquittal on the charge of murder.

CONCLUSION

By reason of the foregoing arguments, this Court should issue a verdict of acquittal.

Robert M. Dudek
Chief Appellate Defender

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ATTORNEY FOR APPELLANT

This 22nd day of July, 2022.

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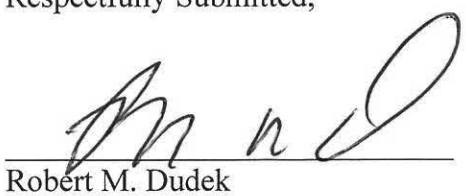
PETITION TO BE RELIEVED AS COUNSEL

Counsel for William Outler, Jr., states:

1. He is Chief 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 Carmen T. Mullen, which was held on June 14-16 and 18, 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 William Outler, Jr.

Respectfully Submitted,



Robert M. Dudek
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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) Entire Trial transcript of June 14-16 and 18, 2021;
(2) Indictment; and,
(3) State's Exhibit No. 3 (Outler interview).

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

Robert M. Dudek
Chief Appellate Defender

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ATTORNEY FOR APPELLANT

This 22nd day of July, 2022.

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."

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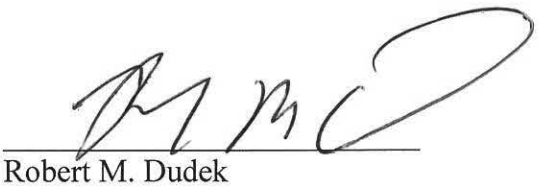
CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders brief of appellant and designation of matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on William Outler, Jr., #385546, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, this 22nd day of July, 2022.



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