ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
Hon. Deadra L. Jefferson, Circuit Court Judge

The State,

Respondent,

v.

Christopher Spriggs,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The trial court properly charged the law of voluntary manslaughter under the facts of this case. Further, the trial court's pre-trial comments regarding the need for a charge conference and the possible charges to the jury did not constitute a promise on which Appellant reasonably could rely.

II. Any error in charging the jury that malice may be implied through the use of a deadly weapon was entirely harmless given the jury's finding of no malice by convicting Appellant of voluntary manslaughter.

III. The trial court did not err in denying the admission of the foreman's affidavit when the affidavit sought to divulge the jury's deliberation process and served no relevant purpose. Further, any error in the denial of the admission of the affidavit is entirely harmless.

STATEMENT OF THE CASE

Appellant was indicted for murder. On March 30, 2009, he proceeded to trial before the Honorable Deadra L. Jefferson and a jury. The jury convicted Appellant of the lesser-included offense of voluntary manslaughter, and Judge Jefferson sentenced him to fifteen years in prison. Appellant filed a Motion for Reconsideration of Sentence and a Motion for a New Trial. Judge Jefferson denied both motions by separate Orders filed August 17, 2009.

Appellant filed a Motion to Allow Juror to Submit Affidavit on August 24, 2009, and the juror submitted the Affidavit on August 26, 2009. Before obtaining a ruling, Appellant filed his Notice of Appeal on August 26, 2009. On October 29, 2010, after the State asserted Appellant waived his right to contest this issue by filing the Notice of Appeal, this Court remanded the issue of the juror affidavit to the trial court for a ruling. The trial court filed an Order denying the motion on March 11, 2011. This appeal follows.

ARGUMENT

I. The trial court properly charged the law of voluntary manslaughter under the facts of this case. Further, the trial court's pre-trial comments regarding the need for a charge conference and the possible charges to the jury did not constitute a promise on which Appellant reasonably could rely.

Appellant contends the trial court erred in charging voluntary manslaughter after the trial court allegedly "promised" pre-trial and before hearing any of the evidence presented to not charge voluntary manslaughter. The trial court properly charged the law based on the evidence presented. The court's comment was not intended as a final ruling on the issue, but should instead be read as an indication she normally gave the defendant what he asked for in charges to the jury, especially in light of the discussion between counsel and the trial court. It was entirely unreasonable for Appellant to rely on a pre-trial ruling regarding jury charges, make no effort to confirm the ruling prior to determining whether he would testify, or expect the court to refuse to charge relevant and appropriate law based on the facts presented to the jury.

Prior to trial, the following colloquy occurred between the trial court and Appellant's counsel:

MR. BUTLER:	Finally, just for the record, I believe Your Honor was in receipt of e-mails from the State indicating that prior to submitting the case to the jury they intend to ask for a manslaughter charge.
THE COURT:	I'm not dealing with any of that.
MR. BUTLER:	I know. But I just want to put on the record that they have already decided they plan to ask for that and it will become relevant later.

THE COURT:	Well, I haven't read that frankly and, you know, I'm not going to prepare the jury charge until I've heard all the evidence.
MR. BUTLER:	I understand.
THE COURT:	And the Court will only charge the applicable law as supported by the facts of the case.
MR. BUTLER:	Yes, ma'am.
THE COURT:	And I don't know how it's going to develop.
MR. BUTLER:	Yes, ma'am.
THE COURT:	So I don't know whether any lesser-included is going to be appropriate or whether he's going to request any. And, frankly I'm going to defer to what the defendant wants. So if he wants to go all or nothing I'm going to give it to him. That should resolve that for everybody.
MR. BUTLER:	That resolves that perfectly, thank you.

(T.48-49; R. 4-5) (emphasis added). After all the evidence was presented by both parties, the trial court indicated her intention to charge the jury on murder, voluntary manslaughter, and defense of others. (T.1004-1005; R. 880-881). Appellant objected and the trial court noted her previous comments were "before I heard all of the case. And generally I give the defendant exactly what they ask for, but I'm not required to do that. I'm required, as the gatekeeper, to look at the totality of the case." (T.1012-1013; R. 888-889). The trial court made it perfectly clear her prior ruling was not a final or binding ruling, and instead, it was merely a statement that her "inclination is to give a defendant what they ask for, absent some other circumstance." (T.1015-1017; R. 891-893). Appellant then moved for a mistrial based on the trial court's intention to charge voluntary manslaughter, and the trial court denied the motion. (T.1038; 1041; R. 914; 917). The trial court charged voluntary manslaughter as she

indicated in the official charge conference. (T.1087-1088; R.963-964). Subsequently, Appellant filed a motion for a new trial, which was also denied. (Motion for New Trial and Order Denying Defendant's Motion for New Trial; R. 1003; 1033).

Propriety of Voluntary Manslaughter Charge

"The law to be charged must be determined from the evidence presented at trial." State v. Brayboy, 387 S.C. 174, 179, 691 S.E.2d 482, 485 (Ct. App. 2010) (citing State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001)). A trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993).

"It has long been the law in this State that 'to warrant the court in eliminating the offense of manslaughter it should very clearly appear that there is no evidence whatever tending to reduce the crime from murder to manslaughter.'" Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991) (quoting State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 565 (1969)).

Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. See State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000). Both heat of passion and sufficient legal provocation must be present at the time of the killing. Id. The sudden heat of passion, upon sufficient legal provocation, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence. State v. Wharton, 381 S.C. 209, 214, 672

S.E.2d 786, 788 (2009). The South Carolina Supreme Court has held that an overt, threatening act or a physical encounter may constitute sufficient legal provocation. State v. Pittman, 373 S.C. 527, 573, 647 S.E.2d 144, 168 (2007) (citing State v. Gardner, 219 S.C. 97, 105, 64 S.E.2d 130, 134 (1951). In State v. Martin, the South Carolina Supreme Court explained sufficient legal provocation can result from "the parent who sees his child, or the child who sees the parent, suffering under the hand of ruffian violence." State v. Martin, 216 S.C. 129, 133, 57 S.E.2d 55, 56 (1949), *overruled on other grounds by* State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009); see also, State v. Ferguson, 20 S.C. L. (2 Hill) 619 (1835). This Court has also made it clear violence to a third party, including a relative or friend, is sufficient legal provocation to support a voluntary manslaughter charge. See State v. Smith, 304 S.C. 129, 131, 403 S.E.2d 162, 163 (Ct. App. 1991).

In this case, there was ample evidence justifying the charge of voluntary manslaughter. Several witnesses testified Appellant was upset or angry when he learned the victim beat his mother. (T.564-565; 644; 690; 741; 785; 813; R. 473-474; 553; 598; 649; 693; 721). Further, the victim charged Appellant, became embroiled in a fight with Appellant, and then went after Appellant's mother or boyfriend. (T.81-84; 87-89; 748-754; R. 37-40; 43-45; 656-662). These actions constituted the necessary legal provocation causing Appellant's sudden heat of passion which would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and resulted in the stabbing of the victim by Appellant. Accordingly, because there was evidence justifying the charge of voluntary manslaughter, the trial court was required to offer the lesser included offense and did not commit error in issuing the charge.

Pre-Trial Ruling Not Final

Additionally, the trial court's comment was not a final decision on the law, but merely a statement that she will usually defer to the desires of the defendant. (T.1112-1113; R.988-989). Consideration of the full colloquy between counsel and the court is important to discern the trial court's intentions. As she stated, however, the court is not required to only charge the defendant's requests, but is required to charge the applicable law. See Knoten, 347 S.C. at 302, 555 S.E.2d at 394. The court is required to determine the law to be charged based on the evidence presented at trial, and cannot reasonably make this decision in a pre-trial ruling. See State v. Hernandez, 386 S.C. 655, 660, 690 S.E.2d 582, 585 (Ct. App. 2010) ("The evidence presented at trial determines the law to be charged to the jury.") (citing State v. Brown, 362 S.C. 258, 261-62, 607 S.E.2d 93, 95 (Ct. App. 2004)).

Further, the Courts of this State have held on numerous occasions that pre-trial rulings are not final and are subject to alteration based on developments during the trial. See State v. Floyd, 295 S.C. 518, 521, 369 S.E.2d 842, 843 (1988) ("Trial judges must not be held, conclusively, to preliminary rulings made without benefit of all the pertinent and relevant evidence."); see also, State v. Forrester, 343 S.C. 637, 642-43, 541 S.E.2d 837, 840 (2001); State v. Kirton, 381 S.C. 7, 43, 671 S.E.2d 107, 125 (Ct. App. 2008). The trial court made it abundantly clear the final charge would be based on the evidence presented at trial and would not be determined until the charge conference. She repeatedly indicated she had no means of determining what would be charged at such an early stage of the proceedings and she would not make a determination until after learning how the case develops. (T.48-49; R. 4-5).

The issue was not raised as a motion regarding the charges to be given, but even if Appellant's counsel's note for the record was in the nature of an actual motion, it would be most similar to a motion *in limine*. The issue of jury charges is not addressed pre-trial because it is based on how the evidence at trial develops, exactly like a pre-trial evidentiary ruling. As Judge Jefferson noted several times, she would not know if a lesser-included charge was necessary or appropriate until after she heard the evidence. She could not make a fully informed decision until after all evidence was presented and made that stance clear to counsel. Cf. State v. Smith, 383 S.C. 159, 167, 679 S.E.2d 176, 180 (2009) (finding court's denial of mistrial based on counsel waiving objection was not conclusive, final ruling because court only later learned "all the relevant facts, law, and arguments" to make a final decision).

Again, this is very similar to asking the judge to preclude or include certain testimony, but the preliminary ruling is clearly subject to change based on how the case unfolds. State v. Floyd, 295 S.C. 518, 520, 369 S.E.2d 842, 843 (1988) (stating a ruling on a motion in limine is subject to change based on events at trial). Judge Jefferson made her comments as a preliminary ruling and nothing more. She never intended to make a final ruling regarding jury charges without hearing the evidence presented.

The comments by Judge Jefferson amounted to nothing more than her initial impressions and her inclination to charge what the defendant requested. See e.g., State v. Cheatham, 349 S.C. 101, 112, 561 S.E.2d 618, 624 (Ct. App. 2002) (Judge's pre-trial comments regarding the evidence merely amounted to his initial impressions and did not constitute an order). The trial court did not make the pre-trial comments in this case as a

final ruling, and, especially in light of the full discussion between the trial court and counsel, it should not be considered a final order.

Reliance Not Reasonable

Appellant contends he reasonably relied on the comments by the trial court in preparing and effectuating his trial strategy. In support of his argument, Appellant cites State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001). As explained by Appellant, the trial court in Jones indicated **during a charge conference** he would give the reasonable doubt charge found in State v. Manning.[1] Jones' trial attorney specifically incorporated the language from Manning into his closing argument. The trial court then, upon request from the solicitor, utilized different language in his charge to the jury. The South Carolina Supreme Court found: "Appellant **reasonably relied** upon the judge's representation that he intended to give that charge to the jury. The decision to alter the charge, after the argument, was fundamentally unfair." Jones, 343 S.C. at 578, 541 S.E.2d at 821 (emphasis added).

Appellant and the Court in Jones both rely in part on State v. Woomer, 277 S.C. 170, 284 S.E.2d 357 (1981). In Woomer, the defendant was directly induced to testify by the trial court's limitation on the scope of his testimony. The solicitor went beyond the limited scope and the court issued a curative instruction. In reversing, the South Carolina Supreme Court found: "Once the trial court induced appellant to testify by limiting the scope of the testimony, Woomer **had a right to rely** on that assurance, and the solicitor's violation of the limited scope of cross examination was fundamentally unfair." Woomer, 277 S.C. at 173, 284 S.E.2d at 358 (emphasis added).

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[1]State v. Manning, 305 S.C. 413, 409 S.E.2d 372 (1991).

Both cases require the defendant to have reasonably relied on the judge's ruling to their detriment before any changes impact the fundamental fairness of the defendant's trial. These cases are distinguishable from the instant case because Appellant did not have justification to rely on the pre-trial comments by the judge.

In State v. McWee, the defendant's attorneys asked the trial judge whether he would charge the jury during the penalty phase that if it found an aggravating circumstance but recommended a life sentence, appellant would not be eligible for parole until the service of thirty years' imprisonment. The judge initially indicated he would give such a charge. However, at the beginning of the penalty phase, the judge stated he would not give a parole eligibility charge after all. State v. McWee, 322 S.C. 387, 391, 472 S.E.2d 235, 238 (1996). The Supreme Court concluded: "after carefully reviewing the entire record, we find no evidence the trial judge's initial indication he would give a parole eligibility charge influenced either voir dire, the selection of jurors, or the presentation of evidence during the guilt phase of trial." Id. at 392, 472 S.E.2d at 238. As a result, it was not "fundamentally unfair" for the trial court to subsequently refuse to give the parole eligibility charge. Id.

In this case, as in McWee, there is no evidence, other than some hindsight-based allegations of how trial strategy could have been different, that Appellant reasonably relied on the trial court's pre-trial comments regarding the jury charges. In actuality, the Record in this case indicates it was entirely unreasonable for Appellant's trial counsel to rely on the comments.

In the instant case, it should have been clear to Appellant's counsel that the State did not believe Judge Jefferson's ruling was a final ruling, but was instead merely instructive or

indicative of what she may do based on how the case was presented. The State routinely asked about Appellant's state of mind during trial. The State highlighted the fact Appellant was angry or upset at the time he heard from his mother and at the time of the stabbing. (T.565; 644; 690; 741; 784-785; R. 474; 553; 598; 649; 692-693).

Further, Appellant's trial counsel had the opportunity to verify the court's ruling and chose not to do so. After one of the evening breaks during Appellant's presentation of his case, the trial court begins by asking for any proposed charges and whether either side has written proposed charges. She also indicates she will hold a charge conference. (T.910; R. 793). This discussion presented an excellent opportunity for counsel to verify the court's ruling on the jury charge.

Significantly, Appellant's trial counsel maintains the decision that Appellant would not testify was directly based on the fact the judge indicated planned to give Appellant what he asked for, "all or nothing." After the State rested its case, Appellant told the court he planned to testify. (T.830; R. 738). After presenting several witnesses, Appellant decided not to testify, allegedly based on the fact the court was not planning to charge voluntary manslaughter. (T. 994-995; Affidavit of Beattie Butler and Affidavit of Marybeth Mullaney; R. 870-871; 1012; 1017). At that time, counsel could have prevented any confusion by getting an actual final ruling from the court regarding the charges she planned to give to the jury. Her prior comments indicated she wanted to hear the evidence; so after all the evidence was presented, counsel should have reconfirmed her *in limine* ruling. His failure to get a final ruling, and his subsequent trial strategy, was entirely unreasonable in light of the developments during trial. This case is much more analogous to the facts and circumstances

of McWee, and counsel's reliance on the judge's pre-trial ruling on jury charges is not "reasonable reliance" as required by Jones and Woomer to find reversible error.

II. Any error in charging the jury that malice may be implied through the use of a deadly weapon was entirely harmless given the jury's finding of no malice by convicting Appellant of voluntary manslaughter.

Appellant contends the trial court committed reversible error in charging the jury malice may be inferred by the use of a deadly weapon. Any error in the charge is clearly harmless because the jury found Appellant acted entirely without malice. The jury did not infer malice from the use of the deadly weapon because it found Appellant guilty of voluntary manslaughter.

Appellant is correct in stating the South Carolina Supreme Court found "a jury charge instructing that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify the homicide." State v. Belcher, 385 S.C. 597, 600, 685 S.E.2d 802, 803-804 (2009). The Court, however, also reiterated the long-standing rule: "Errors, including erroneous jury instructions, are subject to harmless error analysis." Id. at 611, 685 S.E.2d at 809 (citing Lowry v. State, 376 S.C. 499, 510-11, 657 S.E.2d 760, 766 (2008)). Further, where an erroneous jury charge does not contribute to the jury's verdict, the error is harmless. See State v. Jefferies, 316 S.C. 13, 446 S.E.2d 427 (1994).

In this case, the error is entirely harmless and could not have contributed to the jury's verdict finding Appellant guilty of voluntary manslaughter. "The difference between manslaughter and murder is the absence of malice in the former and the presence of malice in the latter." State v. Pilgrim, 320 S.C. 409, 414, 465 S.E.2d 108, 111 (Ct. App. 1995), *overruled on other grounds by* State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996). The jury

found Appellant guilty of voluntary manslaughter; so, it had to find he acted without malice. An erroneous jury instruction indicating malice can be inferred from the use of a deadly weapon can have no prejudicial impact when the jury returns a verdict specifically finding Appellant acted without malice. Such is the circumstance of this case. Accordingly, while it may have been error for the court to charge the jury regarding the inference of malice from a deadly weapon, the error is entirely harmless.

III. The trial court did not err in denying the admission of the foreman's affidavit when the affidavit sought to divulge the jury's deliberation process and served no relevant purpose. Further, any error in the denial of the admission of the affidavit is entirely harmless.

Appellant contends the trial court erred in denying his motion to admit the affidavit of the jury foreman. The affidavit is an attempt to attack the validity of the jury's verdict, and to lend impermissible support to Appellant's theory regarding the impact of charging voluntary manslaughter. Further, the vast majority of the affidavit is irrelevant to refute the footnote in the Judge's Order denying Appellant's Motion for New Trial, which is Appellant's alleged purpose for the admission of the affidavit. Finally, any error in failing to admit the affidavit is entirely harmless and has no bearing on Appellant's conviction and sentence.

Rule 606(b) of the South Carolina Rules of Evidence provides:

> Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

Further, "Rule 606 thus draws a distinction between evidence of external influences on the jury's deliberations and comments of jurors occurring during deliberations. While the rule allows evidence of the former to be introduced, it prohibits the introduction of the

latter." Shumpert v. State, 378 S.C. 62, 66, 661 S.E.2d 369, 371 (2008). In State v. Hunter, the Supreme Court held juror testimony involving internal misconduct may be received only when necessary to ensure fundamental fairness. 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995). The Supreme Court explained an affidavit must "measure up to the high bar that precedent sets for the seriousness of allegations that juror testimony must raise before it may be admitted." Shumpert, 378 S.C. at 68, 661 S.E.2d at 372.

The Affidavit in this case certainly does not measure up to the high bar of seriousness of allegations sufficient for its admission. Nothing in the Affidavit indicates any comments or actions by the jurors which impact the fundamental fairness of Appellant's trial as is necessary in order to admit the Affidavit under the Hunter and Shumpert standards. Appellant claims his intent is to refute a footnote in the trial court's Order denying Appellant's Motion for a New Trial. As such, the deliberation of the jurors and the preliminary vote has absolutely no impact on the fundamental fairness of his underlying trial, certainly not in the nature seen in Hunter. There is no allegation of misconduct, no allegation of intimidation, no allegation of any impropriety at all sufficient to warrant admission of the Affidavit.

Further, portions of the Affidavit are completely irrelevant to Appellant's intention to refute the footnote of the trial court, and serve merely as an attempt to interject improper and impermissible facts into the determination regarding the validity of the voluntary manslaughter charge. The Affidavit explains the foreman's personal considerations for voting against a murder conviction and is entirely irrelevant to whether the vote was 10-2 as stated by the trial court's footnote. The only paragraph which could even be considered

remotely relevant is paragraph 7, and again, it utterly fails to meet the standard set forth in Shumpert and Hunter for admissibility.

Finally, even if there was error in denying the admission of the Affidavit, Appellant has failed to demonstrate any harm he has suffered. The footnote he seeks to refute was not of any significance in the trial court's denial of his Motion for a New Trial. The trial court specifically stated it was an afterthought, something she gave no weight to at all in her determination. (Hearing August 24, 2009, page 22-25; R. 1185-1188). She stated: "My decision would have been the same if the vote was 8/4, 9/3, whatever, it wouldn't have mattered to me." (Hearing August 24, 2009, page 23; R. 1186). The trial court made it clear she would deny Appellant's Motion regardless of the information being provided by the foreman about the jury's preliminary vote. (Hearing August 24, 2009, page 24; R. 1187). Accordingly, Appellant cannot demonstrate how he was prejudiced by the trial court's refusal to admit the improper juror Affidavit into evidence.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, ELLEN DUBOIS, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 30th day of April 2012

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