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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER D. SHUMPERT,

APPELLANT

APPELLATE CASE NO. 2023-000568

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court reversibly erred by refusing to provide a jury instruction on the lesser-included offense of voluntary manslaughter?

STATEMENT OF THE CASE

Appellant Christopher Shumpert was indicted by the Lexington County Grand Jury for murder on February 7, 2022; he was later indicted for assault and battery of a high and aggravated nature (ABHAN) and possession of a weapon during a violent crime on April 4, 2022. R. 578—R. 583 (Indictments). The charges arose from a shooting incident occurring on the evening of March 27, 2020, at a location off Fish Hatchery Road in Lexington County. R. 75, ll. 2-15; R. 578—R. 583 (Indictments).

Appellant's case proceeded to trial before the Honorable Debra R. McCaslin and a jury from April 27th through 30th, 2023. R. 1. Appellant was represented by Stanley L. Myers and Lester McGill "Gill" Bell, while the State was represented by Rhonda Patterson and Bradley Pogue. R. 1.

The jury found Appellant guilty on all counts. R. 555, ll. 5-19. The trial court sentenced Appellant as follows: forty (40) years for murder; twenty (20) years for ABHAN; and five (5) years for possession of a weapon during commission of a violent crime. All sentences were to be served concurrently, and credit was given for 1097 days of time served. R. 576, ll. 7-22; R. 584—R. 589 (Sentence sheets).

STANDARD OF REVIEW

"The law to be charged to the jury is determined by the evidence presented at trial." State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "The trial court is required to charge a jury on a lesser-included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense." State v. Sams, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014); see also State v. Drafts, 288 S.C. 30, 340 S.E.2d 784 (1986); State v. Gourdine, 322 S.C. 396, 472 S.E.2d 241 (1996). "An appellate court will not reverse the trial [court]'s decision absent an abuse of discretion." State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Id. at 570, 647 S.E.2d at 166–67. "The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law." Id. at 570, 647 S.E.2d at 167. "In determining whether the evidence requires a charge on a lesser-included offense, the [appellate court] must view the facts in the light most favorable to the defendant." Sams, 410 S.C. at 308, 764 S.E.2d at 513 (citing State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000)). "The charge request is properly rejected when there is no evidence tending to show the defendant was guilty of the lesser offense." Id. (citing State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996); State v. Cooney, 320 S.C. 107, 463 S.E.2d 597 (1995); State v. Gadsden, 314 S.C. 229, 442 S.E.2d 594 (1994)).

STATEMENT OF THE FACTS

On the morning of March 27, 2020, Appellant Christopher Shumpert (Appellant) and his girlfriend Jaqueline Aiken (Jackie) were at a trailer on Fish Hatchery Road in Lexington County owned by their friend, Barry Chavis, Jr. (Chavis). Present at the time were two other friends who stayed there as well, David "Bubba" Payton (Bubba), and his girlfriend Jada Ellison (Jada).[1] R. 92, ll. 19—R. 93, ll. 25; R. 113, ll. 9—R. 114, ln. 22; R. 165, ll. 12-13; R. 212, ln. 4—R. 214, ln. 16. Appellant and Jackie left later in the morning and went to the home of another friend named Lane on Treemount Lane. According to Jackie, she was trying to earn back the money she owed Jada. R. 143, ln. 19—R. 144, ln. 2; R. 187, ln. 6—R. 188, ln. 20.

Later in the day, Chavis drove his Dodge Dakota truck, along with Jada and Bubba, over to Lane's house for Jada to collect $50 owed to her by Jackie.[2] R. 95, ln. 17—R. 96, ln. 25; R. 216, ln. 22—R. 217, ln. 21. Those present at Lane's residence included Appellant, Appellant's brother Caleb, Jackie, Chavis, Jada, Bubba, and another friend, Steven Phillips (Phillips). R. 97, ll. 1-4. Once there, words were had at Appellant's car between Jada and Jackie. The two fought outside the car, and Jada ultimately took $100 from Jackie rather than just $50.[3] R. 97, ln. 16—R. 18; 144, ln. 22—R. 145, ln. 17; R. 188, ln. 18—R. 191, ln. 7; R. 217, ll. 13-25.

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1 At the time of the incident, Appellant and Jackie were 18 years old, Jada was 17 years old, and Bubba was 20 years old, while Chavis was 28 years of age. Although only Jada and Bubba were living at Chavis' trailer, other people frequently came over. R. 93, ll. 2-7; R. 113, ln. 23—R. 22; R. 183, ln. 8—R. 184, ln. 3; R. 228, ln. 23—R. 229, ln. 17; R. 397, ll. 21-24.

2 Although it is unclear specifically when the money was loaned by Jada to Jackie, it is undisputed that Jackie owed Jada $50. R. 116, ll. 2-25; R. 143, ll. 8-20; R. 216, ll. 5-21.

3 Jada would later justify taking the extra $50 as money that Jackie also owed to Phillips. R. 123, ln. 19—R. 124, ln. 22; R. 190, ln. 24—R. 191, ln. 7.

Chavis, Jada, Bubba, and Phillips all left immediately in Chavis' truck down Treemount Lane, while Appellant, Jackie, and Caleb followed behind in Chavis' Chevrolet Malibu. Appellant pulled his car in front of Chavis' truck, stepped out, and approached the front of the truck in the road. He was unarmed. R. 98, ln. 19—T. 99, ln. 16; R. 124, ln. 23—R. 5; R. 145, ln. 22—R. 147, ln. 1; R. 191, ln. 11—R. 193, ln. 25; R. 218, ln. 12—R. 219, ln. 18; R. 236, ll. 1-7. Chavis got out of his truck with a pistol.[4] The two argued; Chavis fired a shot in the ground and told Appellant to get in his car and leave. R. 99, ll. 17—R. 100, ln. 9; R. 125, ll. 6-23; R. 146, ln. 1–R. 147, ln. 1; R. 219, ln. 23–R. 220, ln. 22; R. 236, ln. 24—R. 237, ln. 2; R. 238, ll. 15—R. 241, ln. 23.

The parties separated and left—Chavis drove back to his mobile home. R. 101, ll. 4-5; R. 126, ll. 7-18. Meanwhile, Appellant was extremely upset by the prior incident, and went to the Gaston home on Earline Drive of his friend's stepfather, Corey Chaney (Chaney) at approximately 5:44 pm. Appellant was looking for his friend Daniel Jones (Jones). R. 149, ln. 2—R. 150, ln. 5; R. 195, ll. 4-11; R. 250, ln. 6—R. 251, ln. 12; R. 253, ll. 3-14; R. 261, ln. 6—R. 262, ln. 9; R. 374, ll.15—R. 375, ln. 2. After being told Jones was not there, Appellant drove with Jackie to the nearby home of Jones' grandparents. Jones was present; he had his AR style rifle and provided a 9mm pistol to Appellant. They then left to Chavis' mobile home, dropping-off Jackie on the side of the road about 150 yards before arrival. R. 151, ln. 10—R. 154, ln. 18; R. 382, ln. 21—R. 383, ln. 2.

Appellant pulled-up at Chavis' approximately 45 minutes after Chavis, Jada, Bubba, and Steven arrived at the trailer. R. 221, ll. 1-10. Others present included Jada, who walked from the

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[4] Although Bubba testified Chavis put his gun out of his window and fired into the ground, Jada and Jackie's testimony indicated Chavis got out of his truck before confronting Appellant but could not recall a shot being fired. R. 99, ll. 17—R. 100, ln. 9; R. 125, ll. 6-23; R. 146, ln. 1–R. 147, ln. 1; R. 219, ln. 23–R. 220, ln. 22.

front porch to the car, Chavis, who was by his truck, Bubba, who was on the porch, and Keith Kimbler (Kimbler), who was nearby at Chavis' workshop with dirt bikes. Phillips and one other person were also at the residence. When Appellant stopped his car in front of Chavis' property, both he and Jones exited the Malibu and stood by the doors. R. 102, ln. 1—R. 103, ln. 17; R. 108, ll. 9-25; R. 224, ll. 6-7; R. 245, ll. 2-4. Appellant and Jones waived and pointed their guns, and Appellant walked up to Chavis. The two argued, and Appellant pointed his gun at Chavis. At some point, Appellant fired a shot in Chavis' direction, and Chavis headed toward his truck, which is also where he kept his pistol. Jones fired his rifle as well. R. 104, ln. 4–R. 106, ln. 9; R. 128, ln. 14—R. 129, ln. 23; R. 222, ln. 24—R. 226, ln. 18; R. 243, ln. 25—R. 245, ln. 23; R. 314, ll. 5-19; R. 411, ll. 3-15. Appellant and Jones got back in the Malibu and left while purportedly firing more shots. R. 226, ll. 4-7. 911 was called at 7:30 pm, and police arrived seven minutes later. R. 75, ll. 2-23.

Chavis was lying on the ground by his truck. He had been shot three times and succumbed to his wounds: one grazed his right jaw; another struck his right buttock and exited his thigh; the third struck his right back and exited the right side of his neck. Kimbler had also been shot in the leg and was on the porch when police arrived.[5] R. 76, ln. 3—R. 77, ln. 23; R. 470, ln. 2—R. 478, ln. 20. Police collected a total of thirteen (13) 9mm shell casings fired by the FNS 9 pistol used by Appellant, and eight (8) .300 Blackout shell casings fired by the Diamondback DB15 Rifle used by Jones. R. 270, ll. 9-13; R. 367, ll. 13-25; R. 420, ll. 11-13; R. 422, ll. 15-17; R. 432, ln.7—433, ln. 21.

The total time between Appellant stopping at Chaney's home in Gaston shortly after the the first incident on Treemount Lane, and 911 being called after the second at Chavis' trailer was

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[5] Although Kimbler survived the incident, he later passed on due to unrelated issues before trial. R. 356, ln. 16—R. 357, ln. 18.

approximately 1 hour and 45 minutes. R. 375, ln. 2-9. Jones was arrested at his grandparents' home that night. Appellant was arrested early the next morning at a hotel in Aiken County. R. 359, ll. 3-5; R. 363, ln. 13-21; R. 366, ll. 13-15.

Appellant's case proceeded to jury trial from March 27th through 30th, 2023. R. 1. During the jury charge conference, Trial Counsel (Counsel) for Appellant sought an instruction on voluntary manslaughter. Specifically, Counsel indicated evidence existed in the record regarding sufficient legal provocation by Chavis when he fired his pistol in the ground as Appellant approached the truck on Treemount Lane, that Appellant was in an erratic and angry state of mind all the way up to the shooting of Chavis, and that the question of whether the cooling off period was sufficient was a jury question. R. 453, ln. 16—R. 454, ln. 5; R. 456, ln. 15—R. 457, ln. 5. The trial court denied Counsel's requested charge as follows:

> Now, as far as voluntary, ... I don't think the Court sees it. I mean, I just don't because these are the facts. I've got three witnesses who testified. Two of them say they didn't even see a gun or hear a gun and they were present at the site. Then I've got one witness who says they saw him shoot into the ground, and words were exchanged. Nobody has elicited on those words. I don't hear any threats or I'm coming to kill you or anything else and, in fact, the testimony is that the defendant leaves a location, he goes to his stepfather's house, he is looking for guns and even wants the stepfather to go with him and the stepfather says no, testimony shows that he said, call the police and leave my son out of it.
>
> He gets back into the car, then he drives to this Daniel's grandmother's house where he does get his hands on guns, and probably more telling is that he drops the girlfriend off on the dirt road and probably an hour and a half, I don't know what your timeline says, I couldn't see it from the bench but, and I know that there's case law out there everywhere. There's three minutes is enough, five minutes is enough, seven hours, that would charge voluntary, but in this case this guy had an hour and a half to decide, drops his girlfriend off at the dirt road, in fact, he picks up a co-defendant, a guy who's not even involved in any of these arguments, period. And they arm themselves and go to the house

> where I hear again words are exchanged and this is the testimony in this case. I don't even know what words were exchanged or what was said because nobody has said that. It appears that nobody knows, but I'll tell you this, 21 shots were fired and it just wasn't the victim in this case. There was another victim that was also harmed.
>
> And, you know, and I'm looking at it in a light most favorable to the defendant. I don't see that it warrants a charge for voluntary. I don't see the legal provocation. I don't see the sudden heat of passion. This was two girls that were arguing and one person has testified, just one, that he got out of the car and fired a shot into the ground, told him to go home I believe is what the testimony was, told him to go home is what my note said. Nobody testified that he was threatening him, threatened to kill him. He told him to go home. Instead, he went and armed himself. I don't think that warrants a voluntary so that's my ruling.

R. 463, ln. 5—R. 464, ln. 25. Counsel renewed his objection multiple times. R. 495, ln. 22—R. 496, ln. 1; R. 498, ll. 15-21; R. 537, ln. 2-5; R. 552, ll. 18-21.

Appellant was convicted on all three counts of murder, ABHAN, and possession of a weapon during commission of a violent crime. R. 555, ll. 5-19. The trial court imposed an overall sentence of forty (40) years. R. 576, ll. 7-22; R. 584—R. 589 (Sentence sheets).

This appeal follows.

ARGUMENT

The trial court reversibly erred by refusing to provide a jury instruction on the lesser-included offense of voluntary manslaughter.

The trial court erred in refusing to charge voluntary manslaughter as a lesser-included offense to murder. Evidence in the record included testimonial evidence of sufficient legal provocation when, during the first incident between Appellant and Chavis on Treemount Lane, Chavis got out of his truck armed with a pistol, argued with Appellant, and even fired a shot into the ground. Moreover, testimony also indicated Appellant's response was one of heat of passion in that he was angry and "out of control" when he left the scene, found Jones, returned to Chavis' trailer while armed, and continued to argue with Chavis. Further, the question of whether the overall time frame between the initial legal provocation and final act of shooting amounted to a reasonable time to cool was a question within the province of the jury, not the court. Accordingly, under the any evidence standard, the trial court should have provided an instruction on the lesser-included offense of voluntary manslaughter.

In determining whether voluntary manslaughter should be charged as a lesser offense of murder, the court must view the evidence in the light most favorable to the defendant." State v. Cottrell, 376 S.C. 260, 262, 657 S.E.2d 451, 452 (2008) (holding that voluntary manslaughter should have been charged as a lesser included offense to murder). Thus, a request to charge voluntary manslaughter "is properly rejected only where there is no evidence whatsoever of the lesser offense." Id. (internal quotations omitted).

An appellate court views the evidence in the light most favorable to the defendant in determining whether the evidence required a charge of voluntary manslaughter. State v. Gadsden, 314 S.C. 229, 442 S.E.2d 594 (1994). Only when the record contained no evidence to support voluntary manslaughter should the trial court decline to charge the jury concerning the

lesser-included offense. State v. Cooley, 342 S.C. 63, 67-68, 536 S.E.2d 666, 668-669 (2000). "To warrant the court in eliminating the offense of manslaughter it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." State v. Wharton, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009); see also Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991) (emphasis in original) (holding that in murder cases, trial courts should charge manslaughter unless "there is no evidence whatsoever tending to reduce the crime from murder to manslaughter").

Manslaughter is defined by Section 16-3-50 of the South Carolina Code as "the unlawful killing of another without malice, express or implied." S.C. Code Ann § 16-3-50 (Westlaw, current through end of 2023). The offense is further defined by common law as "the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." Cottrell, 376 S.C. at 262, 657 S.E.2d at 452. "Sudden heat of passion upon sufficient legal provocation" mitigating felonious killing to manslaughter "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. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) (citing State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993) (quotations omitted).

"The provocation must be such as to render the mind of an ordinary person incapable of cool reflection and produce an uncontrollable impulse to do violence." Cooley, 342 S.C. at 67, 536 S.E.2d at 668. "A legal provocation is some act which, either alone or in connection with words or circumstances is calculated to throw one into a passion." Gadsden, 314 S.C. at 232, 442 S.E.2d at 596. "[I]n order to constitute 'sudden heat of passion upon sufficient legal provocation,' the fear must be the result of sufficient legal provocation and cause the defendant

to lose control and create an uncontrollable impulse to do violence." State v. Starnes, 388 S.C. 590, 598, 698 S.E.2d 604, 609 (2010). "[A]n overt, threatening act or a physical encounter may constitute sufficient legal provocation." 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)).

"[F]ear resulting from an attack can constitute a basis for voluntary manslaughter." Starnes, 388 S.C. at 598, 698 S.E.2d at 609. While fear of an attack, by itself, is not enough to satisfy the heat of passion element, "the principle that a person's fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion." Id. A person's mind may be rendered incapable of cool reflection by "exasperation, rage, anger, sudden resentment, or terror." State v. Franklin, 310 S.C. 122, 125, 425 S.E.2d 758, 760 (Ct. App. 1992). However, "[w]here death is caused by the use of a deadly weapon, words alone, however opprobrious, are not sufficient to constitute a legal provocation." State v. Locklair, 341 S.C. 352, 360, 535 S.E.2d 420, 424 (2000) (citing State v. Gardner, 219 S.C. 97, 104, 64 S.E.12d 130, 134 (1951)).

In the present case, the trial court erred by refusing to charge the lesser-included offense of voluntary manslaughter for three reasons: (1) Chavis' verbal and physical conduct towards Appellant on Treemount Lane indeed amounted to sufficient legal provocation; (2) Appellant's state of mind was rendered incapable of cool reflection by rage and anger; and (3) Appellant was incapable of cool reflection from the time of the incident on Treemount Lane to the time the shooting occurred. As such, the trial court erred by failing to charge voluntary manslaughter.

First, contrary to the trial court's ruling, the record, when viewed as a whole and in the light most favorable to Appellant, contains evidence of sufficient legal provocation. See, e.g., Sams, 410 S.C. at 308, 764 S.E.2d at 513 ("In determining whether the evidence requires a charge on

a lesser-included offense, the [appellate court] must view the facts in the light most favorable to the defendant.") (citing Cole, 338 S.C. at 97, 525 S.E.2d at 511); see also Cooley, 342 S.C. at 67-68, 536 S.E.2d at 668-669. When Appellant walked unarmed from his Malibu towards Chavis' truck on Treemount Lane, testimony indicated Chavis got out of his truck armed with a pistol, walked toward Appellant, and argued with him. Further, evidence also included testimony that Chavis was not only armed, but that he used his firearm by shooting it into the ground. R. 98, ln. 19—R. 100, ln. 9; R. 124, ln. 23—R. 125, ln. 23; R. 145, ln. 22–R. 147, ln. 1; R. 191, ln. 11—R. 193, ln. 25; R. 218, ln. 12–R. 220, ln. 22; R. 236, ln. 1—R. 237, ln. 2; R. 238, ll. 15—R. 241, ln. 23. While words alone are insufficient to constitute legal provocation, the evidence in the present case taken in the light most favorable to Appellant show Chavis' actions of bringing a gun to an argument and shooting it were indeed threatening actions amounting to "an overt, threatening act or a physical encounter [constituting] sufficient legal provocation." Pittman, 373 S.C. 527, 573, 647 S.E.2d 144, 168 (2007) (citing Gardner, 219 S.C. at 105, 64 S.E.2d at 134) (alteration added).

Second, Appellant's state of mind immediately after the incident on Treemount Lane was one of heat of passion as a result of Chavis' words and conduct. Testimony from both Jackie and Chaney indicated Appellant was angry and acting out of control. Further, it was due primarily to Chavis' actions on Treemount Lane. R. 149, ln. 2—R. 150, ln. 5; R. 195, ll. 4-11; R. 250, ln. 6—R. 251, ln. 12; R. 253, ll. 3-14; R. 261, ln. 6—R. 262, ln. 9; R. 374, ll.15—R. 375, ln. 2. In other words, Appellant was acting under an uncontrollable impulse to do violence, and his mind was rendered incapable of cool reflection by "exasperation, rage, anger, sudden resentment, or terror." Franklin, 310 S.C. at 125, 425 S.E.2d at 760.

Finally, evidence in the record showed that Appellant was incapable of cool reflection from the time of the incident on Treemount Lane up until when the shooting occurred. When considering whether a period of time is reasonable to cool after provocation, South Carolina Courts have long required examination of all surrounding circumstances. See, e.g., State v. McCants, 28 S.C.L. 384, 391 (S.C. App. L. 1843) ("In all cases where the time of cooling may be considered, whether the time be regarded as evidence of the fact of cooling, or as constituting, of itself, when reasonable, legal deliberation, the whole circumstances are to be taken into the estimate in determining whether the time be reasonable."); see also Pittman, 373 S.C. at 572, 647 S.E.2d at 168. Examples of such circumstances include "[t]he nature of the provocation, the [defendant's] physical and mental constitution, his condition in life and peculiar situation at the time of the affair, his education and habits (not of themselves voluntary preparations for crime,) his conduct, manner and conversation throughout the transaction; in a word, all pertinent circumstances may be considered, and the time in which an ordinary man, in like circumstances, would have cooled, is the reasonable time." Id. Importantly, where evidence exists allowing a jury to reasonably infer that the defendant was acting under "an incontrollable impulse to do violence," then the matter is for the jury to decide—"even if the jury could have dawn an equally reasonable inference that [the defendant] acted in a deliberate, controlled manner." State v. Oates, 421 S.C. 1, 26-28, 803 S.E.2d 911, 924-26 (Ct. App. 2017) (holding the jury could reasonably infer from the evidence—including shooting six times—that the defendant was "incapable of cool reflection" and acting under an "incontrollable impulse to do violence").

For example, in State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001), the defendant was threatened and cut by his paramour in the leg. He ran out of the apartment to the parking lot, obtained a foot long steel bar from the trunk of his car, and returned to the apartment. Id. 347

S.C. at 301, 555 S.E.2d at 394. The two argued again, the defendant claimed he was cut again, but this time he killed his paramour by striking her in the head with the metal bar. Id. Under such circumstances, a voluntary manslaughter instruction was warranted despite the fact that the defendant left the apartment, armed himself, returned, and confronted the decedent. Id. 347 S.C. at 306, 555 S.E.2d at 396. Thus, even where a defendant leaves an initial encounter where sufficient legal provocation occurred, arms himself, and returns whereupon further argument and assault occurs, he is still entitled to a voluntary manslaughter charge.

Further, in State v. Johnson, 333 S.C. 62, 508 S.E.2d 29 (1998), the defendant and several others were at the home of the decedent. The decedent took the keys of the defendant and refused to give them back. The defendant left for approximately 15-20 minutes. He returned, knocked on the door asking for the decedent; after the two had words, a fight ensued between them. When the decedent was winning the fight, the defendant pulled his gun and shot. Id. 333 S.C. at 64, 508 S.E.2d at 30. Despite the fact that the defendant had initially left and returned after approximately 20 minutes, the Court held that voluntary manslaughter should have been charged to the jury because at the time of the shooting the two had words and were fighting. Id.

Finally, in State v. Payne, 434 S.C. 121, 862 S.E.2d 81 (Ct. App. 2021), the Court of Appeals also addressed a situation where an initial encounter between the defendant and decedent occurred prior to the second deadly encounter. In that case, the defendant was sitting with three girls outside at the home of a friend. The decedent walked up from behind the home and argued with the defendant. The defendant noticed a bulge in the decedent's clothes that he believed was a gun. Id. 434 S.C. at 131-33, 862 S.E.2d at 86-87. The decedent left up the road and stood across the street from the defendant's home. The defendant left his friend's shortly after in his car and arrived at his house. He argued again with the decedent in the road, and the

decedent pulled his gun. After the decedent fired a shot, the defendant drew his own gun and fired several times. Id. Under such circumstances, the Court held that, when viewed in the light most favorable to the defendant, a voluntary manslaughter charge should have been given because evidence existed that the defendant acted under an uncontrollable impulse to do violence, even though the defendant followed the decedent up the road and argued with him again, and even though a jury could also have reasonably inferred the defendant was acting in a "deliberate, controlled manner." Id. 434 S.C. at 156-57, 862 S.E.2d at 99. In other words, because evidence in the record existed supporting the elements of the lesser-included offense of voluntary manslaughter, it was a matter for the jury to decide.

In the present case, evidence existed in the record that Appellant was incapable of cool reflection after he was provoked by Chavis on Treemount Lane all the way up to the time of the shooting. Testimony from multiple witnesses indicated Appellant was angry, upset, and out of control the entire time after the provocation. He remained angry, upset, and out of control when looking for Jones; he remained angry, upset, and out of control when he found Jones and was armed; and he remained angry, upset, and out of control when he returned to Chavis' where the two again argued. As such, the fact that the legal provocation occurred an hour and forty-five minutes before the shooting should likewise have been a matter for the jury to decide. See Johnson 333 S.C. at 64, 508 S.E.2d at 30; Knoten, 347 S.C. at 306, 555 S.E.2d at 396; Oates, 421 S.C. at 26-28, 803 S.E.2d at 924-26. Accordingly, the trial court erred by refusing to charge the lesser-included offence of voluntary manslaughter.

CONCLUSION

For the foregoing reasons, Appellant Christopher Shumpert respectfully requests reversal of his conviction of murder, and remand for a new trial.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of January, 2024.

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V.

CHRISTOPHER D. SHUMPERT,

APPELLANT

APPELLATE CASE NO. 2023-000568

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher D. Shumpert 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 Debra R. McCaslin, which was held on March 27-30, 2023, 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 Christopher D. Shumpert.

Respectfully Submitted,

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of January, 2024.

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CHRISTOPHER D. SHUMPERT, APPELLANT

APPELLATE CASE NO. 2023-000568

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 dated March 27-30, 2023;
(2) Indictments;
(3) Sentence Sheets.

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

Breen Richard Stevens
Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

This 16th day of January, 2024.

RECEIVED
Jan 16 2024
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."

Breen Richard Stevens
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

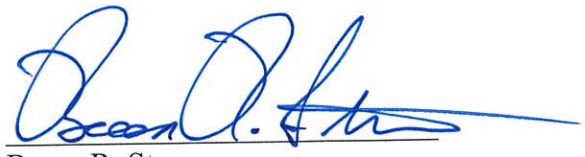
CHRISTOPHER D. SHUMPERT,

APPELLANT

APPELLATE CASE NO. 2023-000568

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 Christopher D. Shumpert, #390712, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29210, this 16th day of January, 2024.



Breen R. Stevens
Appellate Defender

ATTORNEY FOR APPELLANT