STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Horry County
Honorable Steven H. John, Circuit Court Judge

State of South Carolina, Petitioner,

vs.

Donnielle K. Matthews, Respondent.

Opinion No. 2023-UP-399 (S.C. Ct. App. Filed Dec. 13, 2023)

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

Counsel for Petitioner hereby certifies that a Petition for Rehearing was filed in the South Carolina Court of Appeals on December 15, 2023. The Petition for Rehearing was denied by Order filed January 25, 2024.

STATEMENT OF ISSUE ON CERTIORARI

I.

Whether the Court of Appeals erred in holding that the trial court erred in instructing the jury on the lesser included offense of voluntary manslaughter when evidence existed from which the jury could infer that Respondent killed Victim in the heat of passion upon sufficient legal provocation.

STATEMENT OF THE CASE

Procedural History

In November 2017, a Horry County Grand Jury indicted Respondent Donnielle K. Matthews for one count of murder. Prior to trial, Respondent moved for immunity from prosecution under the Protection of Persons and Property Act. On July 28-29, 2020, an evidentiary hearing was held before the Honorable Steven John regarding Respondent's motion for immunity and the admissibility of Respondent's statements under Jackson v. Denno[1]. After testifying at the immunity/Denno hearing, Respondent withdrew her motion for immunity under the Act. On June 14-18, 2021, a jury trial was held in the Horry County Court of General Sessions with the Honorable Steven John presiding. Respondent was represented by Ralph Wilson, Sr., Esq. The State was represented by Assistant Solicitors Martin Spratlin and Seth Oskin of the Fifteenth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Respondent of the lesser included offense of voluntary manslaughter. A sentencing hearing was convened on June 22, 2021 to determine whether Respondent was a victim of spousal abuse within the meaning of S.C. Code § 16-25-90. The trial judge sentenced Respondent to thirty years' imprisonment but determined that Respondent qualified as a victim of spousal abuse under S.C. Code § 16-25-90. Respondent filed a timely notice of appeal and an initial brief.

On appeal, Matthews claimed the trial court erred in charging the jury on the lesser included offense of voluntary manslaughter because there was no evidence Respondent stabbed Victim in the sudden heat of passion upon sufficient legal provocation. Respondent argued there was only evidence that she acted with malice or that she acted in self-defense.

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[1] Jackson v. Denno, 378 U.S. 368 (1964).

The Court of Appeals issued an unpublished opinion reversing and remanding Matthews's conviction, finding the trial court abused its discretion by instructing the jury on voluntary manslaughter. (App'x pp. 1164-1166). Thereafter the State filed a petition for rehearing with the Court of Appeals on December 15, 2023. The petition for rehearing was denied on January 25, 2024. This Petition for a Writ of Certiorari now follows on behalf of the State.

Factual Background

Respondent met Dennis Green (Victim) in June 2011. (App'x p. 686). The two began dating soon thereafter and by the end of 2011, Respondent and Victim were engaged to be married. (App'x p. 688). At the time Respondent and Victim met, Victim was also in a romantic relationship with the mother of his children, Alethia Price. (App'x pp. 569-570). At some point, Victim, Respondent, and Price began a polyamorous relationship. (App'x p. 571). After a brief period of living together, Price moved out of Victim and Respondent's apartment. (App'x pp. 570-574). According to Price, she moved out because her presence in the home sparked jealousy by Victim and Respondent if she got too close to either person. (App'x p. 573). Price maintained a sexual relationship with Victim and Respondent until Victim and Respondent got married in 2015. (App'x pp. 577-578; State's Exhibit #89).

Respondent and Victim made their marital home in Covington, Georgia, but Victim often travelled to Horry County on the weekends while Respondent remained behind in Georgia. (App'x pp. 710-713). In early 2017, Victim met Antoinette Vereen (Antoinette) at a club in Horry County. (App'x p. 357). Victim disclosed that he was in an open marriage and that he and Respondent would often bring other women into their marriage. (App'x p. 357). Antoinette and Victim continued to see each other for a number of weeks and eventually became sexually intimate. (App'x p. 359, 384).

During the week of July 4, 2017, Respondent was invited to spend the week in Myrtle Beach by her mother and Victim. (App'x p. 719). In the early morning hours of July 7, 2017, Respondent and Victim planned to spend the evening with Antoinette in order for Antoinette and Respondent to get to know each other. (App'x p. 359). At approximately 12:30 AM, Respondent and Victim picked up Antoinette from her home in the Longs area of Horry County. (App'x pp. 360-362). After briefly stopping at Victim's mother's house, the trio went to Ricky's Dockside bar in Little River where they had a few alcoholic beverages. (App'x pp. 360-361). After approximately one hour, the three left Ricky's Dockside and went to a strip club called Thee Dollhouse. (App'x p. 363). At the strip club, the trio continued to drink alcohol. At some point, Respondent followed Antoinette to the bathroom and attempted to kiss her. (App'x pp. 364-365). The attempted kiss made Antoinette uncomfortable, and she rebuffed Respondent's advances. (App'x p. 365).

At approximately 4:00 AM, the three left the strip club and went to eat at Denny's. (App'x p. 366). While at Denny's, Respondent followed Antoinette to the bathroom a second time and tried to kiss her when she exited the bathroom stall. Antoinette rebuffed Respondent's advances a second time. (App'x pp. 368-369). When the two returned to the table, Respondent tried to kiss Antoinette a third time. As Antoinette tried to pull away, Victim asked Respondent to give Antoinette some space. (App'x pp. 370-371). Approximately thirty minutes after their food arrived, Victim indicated he was ready to leave. (App'x pp.371-372). The trio left the restaurant and walked to Victim's car. Victim got in the driver's seat while Antoinette got in the passenger's side and Respondent got in the backseat. (App'x pp. 374-375). Shortly after getting into the car, Respondent hit Victim in the side of the face with a closed fist and exclaimed "you shouldn't have married me; you should've married her." (App'x p. 375, lines 12-20). Victim drove Antoinette

home. When they arrived at her home, Antoinette offered the front seat to Respondent. According to Antoinette, "with an attitude, [Respondent] said no, I'll sit in the back seat." (App'x p. 377, line 7). Once inside her home, Antoinette sent Victim three text messages beginning at approximately 5:13 AM saying that she loved him and missed him. (App'x pp. 377-379). Antoinette would later opine "I think [Respondent] was more so jealous of how [Victim] maybe had looked at me. [Respondent] wanted me for herself." (App'x p. 385, lines 14-15).

At approximately 5:19 AM, Matthew Harden, a security officer at Seacoast Hospital, witnessed Respondent arrive in the emergency room with Victim. (App'x p. 311). Victim had been stabbed twice in the right side of his chest. (App'x pp. 620-621). When Victim and Respondent arrived, Officer Mark Martin of the Horry County Police Department was sitting in the parking lot of Seacoast Hospital typing reports. (App'x p. 285). Martin was alerted by security that a stabbing victim had just come into the emergency room. (App'x p. 285). Martin entered the hospital to speak with Respondent and his interaction was recorded on his body camera. (State's Exhibit #1). Martin described Respondent's demeanor as "hysterical" and "belligerent". (App'x p. 286, lines 10-11). Respondent repeatedly told Martin that she did not know what happened, but also said she and Respondent stopped at a gas station in North Myrtle Beach. (State's Exhibit #1). According to Respondent, Victim returned from the gas station holding his stomach. Respondent physically demonstrated how Victim held his stomach for Martin. (State's Exhibit #1). Respondent asserted "[Victim] knows these people, he might not tell you." (State's Exhibit #1).

Victim was subsequently transported to from Seacoast Hospital to Grand Strand Medical Center in Myrtle Beach. At Grand Strand, Respondent spoke with Officer Brandon Beaudoin of the North Myrtle Beach Police Department. (App'x p. 421). The interaction was recorded on Beaudoin's body camera. (State's Exhibit #14). Respondent told Beaudoin that she and Victim

stopped at a gas station past Dodge's Chicken. (State's Exhibit #14). According to Respondent, Victim got back in the car after going into the gas station and told her to take him to the hospital. (State's Exhibit #14). Respondent gave a written statement to Beaudoin and asked if Beaudoin wanted to photograph her hands. (State's Exhibit #14, #23). However, Respondent never told Beaudoin that Victim attacked her or otherwise mentioned sustaining any physical harm from Victim.

Respondent spoke to law enforcement a third time when she spoke with Detective Andrew Franklin of the North Myrtle Beach Police Department outside the waiting room of Grand Strand Medical Center. (App'x pp. 452-453). Their interaction was captured on Franklin's body camera. (State's Exhibit #33). Respondent again told Franklin that she and Victim stopped at a gas station and Victim went inside to get cigarettes. (State's Exhibit #33). Once he returned to the car, Victim asked Respondent to move to the driver's seat and then he revealed that he had been stabbed. (State's Exhibit #33). Respondent emphasized that she didn't want to sound stupid or for the police to think she was a dumb blonde. (State's Exhibit #33). Respondent said that a friend of hers broke two of her fingernails. (State's Exhibit #33). When asked who she and Victim were partying with, Respondent did not mention Antoinette and said "we weren't partying with anybody." (State's Exhibit #33). Respondent once again declined to tell law enforcement that she was physically assaulted by Victim in any way. (State's Exhibit #33). Toward the end of the interview, Respondent declared "everybody is a suspect, nobody likes [Victim]; they're jealous, he got the pretty girl...." (State's Exhibit #33).

Victim subsequently died at Grand Strand Medical Center from a stab wound that pierced his heart. (App'x p. 621). Law enforcement allowed Respondent to leave Horry County and return to her mother's home in Orangeburg. (App'x p. 651). Detective Greg Lent and Detective Jack

Johnson of the Horry County Police Department traveled to Orangeburg to speak with Respondent at her mother's house on July 8, 2017. (App'x pp. 640-641). Respondent accompanied Lent and Johnson to the Orangeburg Police Department to be interviewed and their interview was recorded. (App'x p. 643; State's Exhibit #89). During her fourth interview with law enforcement, Respondent claimed she and Victim fought each other previously, but it "wasn't a big deal" and it was like "fighting my brother." (State's Exhibit #89 22:30-23:30). Later in the interview, while acknowledging that she and Victim fought during the morning of July 7, Respondent maintained she wasn't afraid of Victim. Throughout the interview, Respondent did not tell law enforcement about Antoinette and her role in the evening, but Respondent seemingly referred to Antoinette when she acknowledged they ran into one of Victim's girlfriends at Ricky's and that person went with them to the strip club. (State's Exhibit #89). Respondent claimed not to know who this person was, but admitted the girlfriend was at Denny's when Respondent and Victim arrived. (State's Exhibit #89). Respondent claimed that she and Victim left Denny's alone and when they got to their car, Respondent initially got in the back seat but eventually moved into the front seat as they left the parking lot. (State's Exhibit #89).

After leaving Denny's, Respondent claimed, she and Victim stopped at two separate places on their way home, but could not recall where they stopped. After the second stop, Victim returned to the car and handed Respondent a pack of cigarettes. (State's Exhibit #89). Victim told Respondent to take him to the hospital and Respondent noticed Victim was bleeding. (State's Exhibit #89). Respondent initially claimed that she did not remember stabbing Victim, but later stated that Victim said "oh my God, I can't believe you just stabbed me." (State's Exhibit #89 02:11:00-02:12:00). Respondent also stated that she only stabbed Victim once when she was asked how many times she stabbed him. Respondent also claimed Victim asked her not to say anything

about the stabbing. At the conclusion of the interview, Respondent was placed under arrest for murder. At trial, Respondent admitted in opening statements that she stabbed Victim, but maintained she did so in self-defense after Victim attacked her in the car. (App'x p. 273). Antoinette testified on behalf of the State at trial. Antoinette testified Respondent told her at Ricky's Dockside that "[Respondent] was to the point to where she would kill, she had been through so much to the point where she would kill." (App'x p. 405). Respondent did not specify who she would kill. (App'x p. 405). The State entered text messages from Respondent's phone at trial. One text sent to a friend on May 4, 2017 read:

> Yo I've been quiet about a lot of things throughout our entire relationship...six years in I just can't find it in me to just shut up...[Victim] gets away with a lot I just don't tell anybody the things he does it let him know that I know what he does...it pisses me off so bad when he tried to play innocent or make ne (sic) seem like I'm being crazy OR STUPID!! I can overlook a lot but after a while, **I just snap**...he know this and still plays with me like I won't fuck him up...but then I go back to being quiet lmao?

(App'x p. 558, lines 13-22) (emphasis added). Another text message from Respondent to her father that was sent at 5:06 AM on July 7 read:

> He showing off for somebody else...I told him he ain't no man and called him a bitch...He says my daddy is a bitch...So I called you do (sic) he could say it to go himself...He hangs up the phone. The next time I bring this muthafucker to Baltimore to (sic) better beat his ass..."

(App'x p. 540, lines 17-21). Respondent testified in her own defense at trial. Respondent denied that she hit Victim inside the car, but instead maintained that Victim pulled her into the front when she reached for her phone charger in the front console. (App'x p. 757, 761-763). According to Respondent, she stabbed Victim as they were fighting in the front seat. (App'x p. 765). Soon thereafter, Respondent claimed Victim told her to make up a story regarding how he was stabbed. (App'x p. 769). On cross examination, Respondent admitted her story about Victim being stabbed

at the gas station was a lie and admitted she didn't tell law enforcement about Antoinette's role in the evening. (App'x p. 789, 793-794).

Respondent also presented the testimony of Dr. Whitney Danso. Dr. Danso administered two diagnostic tests to Respondent and diagnosed Respondent with Post Traumatic Stress Disorder (PTSD) as a result. (App'x pp. 816-817). In rebuttal, the State presented the testimony of clinical psychologist Robert Charles Nelson. Nelson doubted Respondent's PTSD diagnosis and determined that the diagnostic tests administered by Dr. Danso indicated Respondent was malingering. (App'x pp. 947-948, 955). At the conclusion of trial, the jury convicted Respondent of the lesser-included offense of voluntary manslaughter.

ARGUMENT

The Court of Appeals reversed and remanded Matthews's conviction for voluntary manslaughter finding that in "viewing the evidence in the light most favorable to Matthews" the trial judge reversibly erred by instructing the jury on the lesser-included offense of voluntary manslaughter. The State respectfully disagrees with the conclusion of the Court of Appeals and asks this Court to grant the State's Petition for a Writ of Certiorari because the Court of Appeals used the wrong standard by viewing the evidence solely in a light most favorable to Mattews and the trial judge did not err in instructing the jury on the lesser-included offense of voluntary manslaughter[2].

I. The Court of Appeals erred in holding that the trial court erred in instructing the jury on the lesser included offense of voluntary manslaughter because evidence existed from which the jury could infer that Respondent killed Victim in the heat of passion upon sufficient legal provocation.

The Court of Appeals misconstrued the applicable law and applied the wrong standard when evaluating whether the evidence presented during trial supported a voluntary manslaughter instruction. As previously noted, this Court expressly indicated it viewed the evidence "in a light most favorable to Matthews" before concluding there was no evidence presented from which the

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[2] The State acknowledges that in the Final Brief of Respondent there was a citation to State v. Brayboy, 387 S.C. 174, 691 S.E.2d 482 (Ct. App. 2010), quoting the wrong standard, however the remainder of the brief analyzed the facts based on the correct standard of review. Generally, it is recognized administrative officers of the state cannot estop the state through mistaken statements of law. See Greenville County v. Kenwood Enterprises, Inc., 353 S.C. 157, 172, 577 S.E.2d 428, 436 (2003); overruled on other grounds by Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005). The doctrine of estoppel is rarely applicable against the federal government and is only invoked in the most serious circumstances. Thus, as a general rule, equitable estoppel against the federal government is strongly disfavored, if not outright disallowed, and the federal government may not be estopped on the same terms as any other litigant. 28 Am. Jur. 2d Estoppel and Waiver § 142 (Footnotes omitted).

jury could reasonably infer Matthews acted in the sudden heat of passion. And, in so doing, this Court cited to our Supreme Court's decision in State v. Niles, 412 S.C. 515, 772 S.E.2d 877 (2015), for the proposition: "When determining whether the evidence requires a charge on voluntary manslaughter, the court must view the facts in the light most favorable to the defendant."

Critically though, the proper standard for evaluating whether a jury charge—on voluntary manslaughter or anything else—is warranted by the evidence does *not* involve an evaluation of the evidence in favor of one side or the other but, instead, simply involves looking to whether there is *any evidence* to support the requested charge. See State v. Drafts, 288 S.C. 30, 32, 340 S.E.2d 784, 785 (1986) ("A trial judge is required to charge a jury on a lesser included offense if there is evidence from which it could be inferred that a defendant committed the lesser offense rather than the greater."); State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002) ("A trial court has a duty to give a requested instruction that correctly states the law applicable to the issues and which is supported by the evidence. If *any evidence* exists to support a charge, it should be given." (emphasis added)). And, in the specific context of voluntary manslaughter, our Supreme Court has emphasized: "To warrant a court's 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. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993).

In applying a different standard and viewing the evidence in a light most favorable to Matthews's on appeal, this Court appeared to rely on the language it identified from Niles suggesting such a review of the evidence in a light most favorable to the defendant was the proper analysis that should be applied. However, Niles—and all the cases that Niles relied upon—involved a situation in which *the defendant* was the moving party seeking a voluntary manslaughter and the defendant's request was denied. See Niles, 412 S.C. at 518, 772 S.E.2d at

878 (evaluating whether the trial judge erred by refusing Niles's request for a voluntary manslaughter jury instruction). Conversely, in this case, *the State* was the moving party, which makes it the exact opposite situation addressed by the Supreme Court in Niles and, thus, meant a different analysis was warranted. See State v. Wharton, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009) ("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.").

"To justify charging [a] lesser crime, the evidence presented must allow a rational inference the defendant was guilty only of the lesser offense." State v. Geiger, 370 S.C. 600, 607, 635 S.E.2d 669, 673 (Ct. App. 2006). "The court looks to the totality of the evidence in evaluating whether such an inference has been created." Id. "A trial judge must charge a lesser included offense if there is **any** evidence from which the jury could infer the defendant committed the lesser rather than the greater offense." White, 361 S.C. at 412, 605 S.E.2d at 542 (emphasis added) "A request to charge a lesser included offense is properly refused only when there is no evidence that the defendant committed the lesser rather than the greater offense. State v. Brayboy, 387 S.C. 174, 180, 691 S.E.2d 482, 485 (Ct. App. 2010).

Voluntary manslaughter is a lesser included offense of murder. State v. Sams, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014). "Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000). "Heat of passion alone will not suffice to reduce murder to voluntary manslaughter. Both heat of passion and sufficient legal provocation must be present at the time of the killing." State v. Pittman, 373 S.C. 527, 572, 647 S.E.2d 144, 167 (2007). "In determining whether the act which cause death was impelled by heat of passion or by malice, all the surrounding

circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing." State v. Gardner, 219 S.C. 97, 104, 64 S.E.2d 130, 134 (1951).

Fighting is sufficient legal provocation to warrant a voluntary manslaughter instruction. State v. Davis, 278 S.C. 544, 546, 298 S.E.2d 778, 779 (1983). "An overt, threatening act or physical encounter may constitute sufficient legal provocation." State v. Hernandez, 386 S.C. 655, 661, 690 S.E.2d 582, 585 (2010). "Adultery may, in some instances, serve as 'sufficient legal provocation.'" State v. Gadsden, 314 S.C. 229, 233, 442 S.E.2d 594, 597 (1994).

"The sudden heat of passion, upon sufficient legal provocation, which mitigates a felonious killing to manslaughter, 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. Walker, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996). "Even when a person's passion has been sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable person would have cooled, the killing would be murder and not manslaughter." State v. Knoten, 347 S.C. 296, 303, 555 S.E.2d 391, 395 (2001). "Whether an accused cooled off prior to a violent act must be determined by a review of all the circumstances surrounding the event and the people involved." Hernandez, 386 S.C. at 661, 690 S.E.2d at 585.

Here the trial judge made the following ruling on the State's request to charge the jury on the offense of voluntary manslaughter:

> All right, sir. I'm going to charge voluntary manslaughter. I do believe there is some evidence in the record to—there is evidence in the record that it could've occurred

> based on the heat of passion and sufficient legal provocation. Again, referring to some of the testimony that I talked about at the—in denying the motion for directed verdict[3], that same evidence would also indicate voluntary manslaughter, and I'm going to charge that to the jury and charge that them to (sic) as lessor included offense.

(App'x p. 983, line 23- p. 984, line 6). The trial judge further elaborated on the specific facts that led to his ruling:

> All right. Yesterday we were talking about murder and voluntary manslaughter, and there's two notes that I have put down and I forgot to put them in the record. Again, I'm referring to all of the evidence in the case when I made those decisions about charging murder and voluntary manslaughter. But I did want to note there were two other comments or statements that were made in this case by the witness, and basically, the third party involved that night when she indicated that at the—leaving the Denny's, when she said that the defendant struck the victim. She also made the comment that you should have married her and not me. And then when they got to the—her residence and they dropped her off, she asked the defendant, are you getting into the seat, into the front seat and the defendant answered, no, with an attitude. So, all that just goes to those things that we talked about in deciding about murder and voluntary manslaughter.

(App'x p. 995, line 21- p. 996, line 12).

The aforementioned rulings show the trial judge properly determined that evidence existed from which the jury could conclude that Respondent killed Victim in the heat of passion upon sufficient legal provocation. Because both heat of passion and sufficient legal provocation must be present to warrant a charge on voluntary manslaughter, it is instructive to address each element separately.

Heat of Passion

Here, the trial judge was presented with evidence regarding the unique nature of Respondent and Victim's relationship, the testimony of Antoinette as well as Respondent's own

[3] When ruling on Respondent's motion for a directed verdict, the trial judge noted his role was not "to judge the credibility or the believability of the testimony and the evidence presented. My job is to look at whether or not the evidence exists." (App'x p. 981, lines 1-3).

text messages showing her state of mind just prior to the stabbing, and a timeline of events showing that Respondent had very little time to cool down and reflect on her actions. Respondent freely admitted she and Victim were in an open relationship. (State's Exhibit #89). Despite the openness of their relationship, Respondent was not immune from the jealousy that may arise in a polyamorous relationship. Antoinette testified that Respondent attempted to kiss her three times throughout the night, but Respondent's attempts were not reciprocated by Antoinette. (App'x pp. 365-371). Antoinette opined that Respondent was jealous of Antoinette and Victim's relationship because Respondent wanted Antoinette all for herself. (App'x p. 385). Respondent's anger and jealously was demonstrated in her assault of Victim that was accompanied by the comment "you shouldn't have married me; you should've married her." (App'x p. 375, lines 19-20). Respondent was apparently still angry when the trio arrived at Antoinette's home and Respondent refused to move to the front seat. (App'x p. 377). Respondent's behavior was further demonstrated by Officer Martin's interaction with her in the immediate aftermath of the stabbing and his description of Respondent's demeanor as "hysterical" and "belligerent." (State's Exhibit #1; App'x p. 286, lines 10-11).

In addition to Antoinette's testimony, the trial judge had Respondent's text messages to consider as evidence that Respondent was acting in the heat of passion. The State produced a text message sent from Respondent's phone approximately two months before Victim's death where Respondent confided to a friend "I can overlook a lot but after a while, **I just snap**..." (App'x p. 558, lines 19-20) (emphasis added). Respondent also sent a message to her father at 5:06 AM that threatened physical harm upon Victim the next time he came to Baltimore. (App'x p. 540, lines 17-21). This text message was evidence of both Respondent's anger towards Victim and her wish to inflict physical violence upon Victim in the minutes immediately before she stabbed him.

In addition to evidence of Respondent's angry state of mind just prior to the stabbing, the trial judge had evidence of how little time Respondent had to cool down from her anger. Antoinette estimated that she, Victim, and Respondent left Denny's at approximately 4:57 AM. (App'x p. 380). Victim took her straight home and she arrived at her home approximately 5:09 AM. (App'x p. 381). A few minutes after she went inside her home, Antoinette texted Victim that she loved him at 5:13 AM. (App'x p. 381). At approximately 5:19 AM, or ten minutes after Respondent and Victim dropped off Antoinette at her home, Victim arrived at the hospital with two stab wounds. (App'x p. 311). Respondent would later claim she remembered the events leading up to the stabbing but did not remember the stabbing itself. (State's Exhibit #89 02:09:20-02:09:30). Therefore, there was evidence before the trial judge, that over an approximately ten minute period of time, Respondent was so angry with Victim she could not remember stabbing him later. This was evidence that Respondent experienced an uncontrollable impulse to do violence. When considering the testimony of Antoinette, Respondent's text messages, and the short timeline of events, the trial judge appropriately concluded that evidence existed from which the jury could infer that Respondent was acting under the heat of passion when she stabbed Victim.

Sufficient Legal Provocation

The trial judge was presented with evidence of sufficient legal provocation from both the State and the defense. Antoinette testified that Respondent hit Victim inside their car and then said "you shouldn't have married me; you should've married her." (App'x p. 375, lines 19-20). Thus, Antoinette's testimony alone establishes a physical confrontation between Respondent and Victim regarding Victim's infidelity. Even if the jury were to disbelieve Antoinette's testimony, Respondent freely admitted in her own testimony that she and Victim had a physical altercation after Victim pulled her into the front seat of the car. (App'x p. 762-765). Therefore, while

Respondent claimed she was acting in self-defense in response to Victim's physical aggression, her testimony is evidence from which a jury could determine that she stabbed Victim upon sufficient legal provocation. Voluntary manslaughter and self-defense are not mutually exclusive. See State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998) (finding the State presented sufficient evidence to create an jury issue regarding whether defendant was acting in self-defense or was guilty of voluntary manslaughter). The jury could have believed Respondent's testimony that Victim assaulted her in the car, but still determine that she did not satisfy the four elements of self-defense but rather killed Respondent after sufficient legal provocation. The trial judge appropriately declined to weigh the evidence presented and merely concluded that evidence existed from which a jury could infer that Respondent acted upon sufficient legal provocation.

Because evidence existed that Respondent stabbed Victim while in the heat of passion upon sufficient legal provocation, the trial judge properly instructed the jury on the lesser included offense of voluntary manslaughter. The Court of Appeals stated it looked at the evidence in the light most favorable to Matthews, however that was not the standard that should have been applied. The proper standard that should have been applied is whether there is **any evidence** that supports a charge it should be given. Therefore, this court should find the trial judge did not abuse his discretion in instructing the jury on the lesser-included offense of voluntary manslaughter and find in accordance with the proper standard of review, that evidence existed to support the trial court's determination.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests this Court to grant this Petition for a Writ of Certiorari.

Respectfully submitted,

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February 26, 2024

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Horry County
Honorable Steven H. John Circuit Court Judge

State of South Carolina, Petitioner,

vs.

Donnielle K. Matthews, Respondent.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served the State's Petition for Writ of Certiorari and Appendix on Lara M. Caudy, counsel of record for the Respondent, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 26th day of February, 2024.

Grace Sommer

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To: lcaudy@sccid.sc.gov
Cc: Ambree Muller; smcinnis@sccid.sc.gov
Subject: The State v. Donnielle K. Matthews (2021-000677)

Good Afternoon Ms. Caudy,

Attached please find the State's Petition for Writ of Certiorari and Appendix in The State v. Donnielle K. Matthews (2021-000677). Due to the large file size, we have served these documents according to your agency's preference. These documents will be filed today with the Court of Appeals and Supreme Court via the AIS OneDrive System.

Thank you!

Grace Sommer , Legal Assistant

South Carolina Attorney General's Office

Criminal Appeals | Office 803-734-3835 | gracesommer@scag.gov

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Filename	Size
MATTHEWS Donnielle - State's PWC (03513553xD2C78).PDF	1.24 MB
MATTHEWS Donnielle - Appendix Vol. 1 (03512995xD2C78).PDF	3.3 MB
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