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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County
The Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

QUINTERIOUS R. TRUESDALE,

APPELLANT.

Appellate Case No. 2022-000903

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S ISSUE PRESENTED

I.

Whether the court erred by refusing to charge voluntary manslaughter where it was undisputed that the decedent and appellant shot each other when appellant walked in on the decedent in bed with a woman, who appellant testified was still his girlfriend in the house he shared with her, since the judge erred as a matter of law by ruling "it's either self-defense or heat of passion," and also by incorrectly ruling that appellant's girlfriend not being his spouse could not legally give rise to the "heat of passion" necessary for voluntary manslaughter?

STATEMENT OF THE CASE

Quinterious Truesdale (hereinafter "Appellant") was indicted as follows: murder and possession of a firearm during the commission of a violent crime (2021-GS-29-422); 1st degree burglary and possession of a firearm during the commission of a violent crime (2021-GS-29-423); possession of a firearm or ammunition by a person convicted of a felony violent crime (2021-GS-29-2024); and possession of a handgun by a person convicted of a crime of violence (2021-GS-29-2025). Appellant proceeded to a jury trial before the Honorable Judge Maite Murphy on June 14, 2022. Appellant was represented by attorney Devon Nielson, Esq. The State was represented by attorneys Melissa McGinnis and Nicole Workman, Assistant Solicitors for the 6th Circuit.

At the conclusion of the trial Appellant was found guilty of all charges. (Tr. p. 600-602). Judge Murphy sentenced Appellant to concurrent life sentences for both his murder conviction and his burglary conviction. Judge Murphy sentenced Appellant to concurrent 5-year sentences for the possession of a firearm convictions under indictments 2021-GS-29-2024 and 2025. The possession of a weapon convictions accompanying the murder and burglary indictments did not receive sentencing pursuant to statute. (Tr. p. 605-606). This appeal now follows.

BRIEF ARGUMENT

Stated simply, Appellant cannot not rely upon the concept of infidelity to establish a heat of passion killing with legal provocation when both his and Ms. Mingo's testimonies demonstrated that Appellant knew Ms. Mingo was seeing other people and/or had a steady boyfriend no less than *14 hours prior to the crime and without any perceived heat of passion arising at the time.* To the extent Appellant relies upon his trial argument that Mr. White shot first (a theory completely incompatible with the State's case), his testimony unwaveringly asserted his efforts to retreat and fire in self-defense, and there is no testimony or evidence of any kind that Appellant was angered

by Mr. White such that he succumbed to an uncontrollable impulse to do violence. Appellant failed to demonstrate any evidence that would support the existence of both the requisite elements for a charge of voluntary manslaughter, and Appellant's various arguments as to error by the trial court are either simply incorrect, or of no consequence given the factual record that was before the trial court.

STATEMENT OF FACTS

The Crime

In the early morning hours of September 24, 2020, Appellate broke into the home of his former girlfriend, victim Yashima Mingo (hereinafter "Ms. Mingo"), while wearing a ski mask and moving the outside doghouse into position so as to step up and crawl through a window. Appellant turned on the bedroom light and confronted Ms. Mingo and her boyfriend, victim Shamon White (hereinafter "Mr. White"), who were both asleep in bed at the time of Appellant's intrusion. After confronting Ms. Mingo and pointing the gun at her, he asks Mr. White what he is doing in Ms. Mingo's home and tells him to leave. He then fires the 9mm Springfield pistol in the direction of Mr. White[1]. Mr. White returned fire with a gun he kept under his pillow, and both Mr. White and Appellant sustained severe injuries from the gunfight that took place. Ms. Mingo ran outside and dialed 911. Appellant survived his injuries, but Mr. White died from his wounds shortly after the shooting.

The Trial

Ms. Mingo testified that she had been in an on-and-off relationship with Appellant that began in either 2017 or 2018. In April of 2020, Ms. Mingo lived at 205 Hood Street in Lancaster,

[1] Ms. Mingo could not be certain whether these initial shots struck Mr. White or not. Ultimately, Mr. White suffered at least three gunshot wounds, but the pathologist was unable to tell for certain if one wound was a separate entry of an existing gunshot wound. (Tr. p. 132).

South Carolina. The lease had Ms. Mingo and two of her children's names on the lease.[2] Appellant's name was not on the lease, but he had his name on the electricity bill. Ms. Mingo explained that due to a delinquent bill the power company would not permit her to have power to her new residence billed under her name. (Tr. p. 134-138). Appellant confirmed this arrangement during his own testimony. (Tr. p. 451). Ms. Mingo testified that while she and Appellant were dating, he would contribute money toward that bill. However, that was Appellant's only financial contribution, according to Ms. Mingo. (Tr. p. 138). On cross examination Ms. Mingo testified that she attempted to take the power bill out of his name after their breakup, but Appellant would not provide her the correct account information to do so and that Duke Energy would not permit her to change the information because it was not her information being changed, but rather Appellant's. She did not attempt to call Duke energy about this issue.[3] (Tr. 183-186).

Appellant received a key to the backdoor from the previous tenant prior to Ms. Mingo moving into the home, but he soon provided the key to Ms. Mingo, after which Ms. Mingo testified that he did not possess a key to the home in any fashion and was dependent upon her to let him into the residence.[4] She testified that while they were dating Appellant lived at her home, but that he stayed at the home over night sporadically. (Tr. p. 136-140).

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[2] On cross examination Ms. Mingo acknowledged that she has five children and that her other 3 children were not listed on the lease agreement. (Tr. p. 181-183).

[3] On cross examination, Ms. Mingo testified that Appellant was never consistently living with her at any point. She wanted to change the power bill to her name because Appellant threatened to cut off the power. She tried calling once but noted that there was no point in the effort because Appellant would not provide her the correction information to change the bill. (Tr. p. 209-211).

[4] This issue was visited again during cross examination, but Ms. Mingo's testimony remained the same with further clarifications. Appellant received the backdoor key from the previous tenant before Ms. Mingo moved into the home and the key was relinquished to her when they later had a dispute. Ms. Mingo testified that, for a couple of months, Appellant simply did not have a key to the home. The gist of the Ms. Mingo's testimony is that while Appellant may have stayed there frequently, she considered it her house, not *his* or *theirs*. He was not paying for the home, so it was not his house to come and go as he wished. (Tr. p. 190-193).

Ms. Mingo testified that she fully ended her romantic relationship with Appellant in mid-July of 2020; this was around the time that she had an altercation that led to Appellant violently breaking all of the TVs that were in her home. Ms. Mingo testified that she moved all of Appellant's belongings that she was aware of out of the home, and at Appellant's instruction delivered them to Tamika Ingram. (Tr. p. 141-143). She herself temporarily moved out of the home and into her cousin's home due to the lack of any television in her house and her inability to repair or buy new sets. (Tr. p. 143-144). She initially cut off all communication with Appellant, but as they already had a child together, she later permitted communications and encounters for the purpose of allowing Appellant to see his child. Ms. Mingo moved back into her 205 Hood Street residence after a couple of weeks, in mid-August of 2020. (Tr. p. 141; p. 144; p. 145-148). Also, during this time Ms. Mingo began dating Mr. White and he stayed at her home almost every night. (Tr. p. 144-145; p. 148).

On September 23, 2020, Appellant visited Ms. Mingo's home in order to see their child and stayed approximately 10 to 15 minutes. During that time Ms. Mingo gave Appellant back a shirt she found in the laundry and rebuked his discussion of possibly getting back together. (Tr. p. 147-155). At this point, Ms. Mingo learned that Appellant had learned from others that she had a "boyfriend or something". This was part of the conversation that Appellant brought up when inquiring about getting back together. (Tr. p. 163). Appellant was not permitted to stay any longer due to Ms. Mingo needing to take her kids to her mother's home at 2pm. She did not tell Appellant where she worked, when she worked, or what shift she would be at work, and Appellant conceded that he did not know where Ms. Mingo worked at this time. (Tr. p. 195-196; p. 452).

Ultimately, Ms. Mingo arrived at work, but was told that they did not need her services that night. She chose to use her time to go out to dinner with Mr. White and return home for a

night without her kids. When they returned from dinner Ms. Mingo parked her car in the same location she had parked previously: in front of her house. (Tr. p. 150-153). Before going to bed, Ms. Mingo made sure that the front and back door were both locked. (Tr. p. 158).

That same night, during the early morning hours of September 24, 2020, the crime occurred. Ms. Mingo testified that she and Mr. White were woken up to Appellant cutting on the light and standing at the foot of the bed. Appellant was wearing a black ski mask with the eyes and mouth cut out, and a camouflage or army fatigue jacket. Ms. Mingo testified that Appellant would often wear a hat or toboggan cap on the top of his head, but it was not normal that he would wear one over his face in the manner he had it when the crime occurred.[5] (Tr. p. 160-161; p. 186-188) She testified that Appellant initially had a gun pointed at her. She testified that Appellant then told her: "Didn't I tell you what I'd do to you and myself about, like, our family?" Ms. Mingo begged Appellant: "please don't do this." Appellant responded by turning the gun to Mr. White, saying: "Bro, why you here, you need to get up and leave." After saying this he then shot Mr. White twice. (Tr. p. 161-163). Ms. Mingo testified that she was not certain if Appellant actually struck Mr. White during those first two shots, and that she thought the gun could have been aimed at beside the bed in an effort to scare Mr. White. However, when Appellant pointed the gun back at her she testified that Mr. White grabbed the gun from under his pillow and shot back at Appellant. The two then exchanged gunfire for a few seconds. (Tr. p. 164-165). Evidence demonstrates that Appellant's 9mm Springfield was recovered from the scene and was determined to be jammed. (Tr. p. 296; p. 462).

[5] Appellant's case-in-chief attempted to present evidence about his owning more than one ski mask, but he admitted that his other supposed ski mask might just be a regular toboggan. (Tr. p. 490).

After the shooting, Mr. White remained in bed, Appellant dropped to the floor at the foot of the bed and then proceed to the kitchen. Ms. Mingo called 911, and Appellant ultimately asked her to take him to the emergency room, but he did not ask that she call the police. Mr. White told her that he believed he had been shot, which Ms. Mingo confirmed when she looked at him. After which Mr. White was no longer able to communicate and Ms. Mingo left the home out the front door until police arrived. (Tr. p. 165-1169; p. 202-203).

Ms. Mingo testified as to certain aspects of the home and yard and their proximity to doors and windows. Ms. Mingo had a dog which lived both inside and outside. When the dog stayed outside, it had a doghouse in the middle of the yard. Ms. Mingo testified that the doghouse was located in the middle of the yard as usual when they returned home on the night of September 23rd, and she did not move it. (Tr. 156-159). However, investigation of the area showed that the doghouse had been moved to underneath the window of her children's bedroom, that bedroom window was open, and Ms. Mingo had not opened that window. (Tr. p. 174-176). She further testified that she was running the air conditioning that night and does not open the windows of the house. (Tr. p. 156-159).

Ms. Mingo also testified that there was a trashcan and three big boxes in front of the back door. She testified that she would not have been able to go through the backdoor without moving those items, and that they were where she had left them both before and after the crime. Ms. Mingo also testified that when she left the home to call 911, the front door was still locked. (Tr. p. 176-179). She concluded her direct examination by testifying that Appellant 1) entered the home at approximately 2 or 3am, 2) shot first while wearing a ski mask on his face, 3) had not been invited nor had permission to be in her home that night, 4) did not to her knowledge possess a key to the home, and 5) was not living in her home at the time of the crime.

During the defense's case-in-chief, Appellant put forth the testimony of Tamika Ingram, who happens to be the godmother of Appellant. She testified that she had not received Appellant's belongings at her home in the summer of 2020. (Tr. 400). She testified that she was aware of Appellant's and Ms. Mingo's breakup though. (Tr. p. 401).

Appellant's mother, Donna Truesdale, testified that Appellant was living at Ms. Mingo's Hood Street address beginning in April and noted that "as long as she was there, he was there." (Tr. p. 403-404). However, on cross examination she testified that she did not know where he lived, but assumed that he was living on Hood Street and that both she and Ms. Mingo would pick him up from work and bring him to the 205 Hood Street house during the months of August and September. (Tr. p. 410-411). Despite her testimony on this matter she also confirmed that she was aware that Ms. Mingo would have other men in the home during this time period. She testified that this was "nothing new" for Ms. Mingo and would happen on a regular basis. She added that this behavior was fine with Appellant because "that's the way they do now. All them play and think it's a big old game, but it's not. At the end of the day somebody ends up getting hurt. He was doing what he was doing. She was doing what she was doing. Everybody else – I can't judge them, but that's what they was doing." (Tr. p. 41,1 line 20 through p. 412, line 18).

She testified that she did not inform Appellant's probation officer that he was not living at her home during that time and claims to have seen Appellant and Ms. Mingo together in her home during the first week of September. (Tr. p. 404-405). She does not believe they were broken up as of that first week of September. (Tr. p. 405). However, she also provided text message history relating to the broken TVs incident from both Ms. Mingo and Appellant. The date for those texts was August 24th. She testified that after his arrest in this case, Appellant asked her to go by and collect his things that Ms. Mingo had thrown out of the house. Ms. Truesdale drove by the house

to look but chose not to comply with Appellant's request "cause he should have never took it over there." (Tr. p. 406).

Appellant next put forth witness Rodney Cloud. He testified that he would pick up Appellant from the 205 Hood Street address every week during the year they worked together. He also testified that he had planned to pick Appellant up from 205 Hood Street on September 24, 2020. He had never picked up Appellant from anywhere else. Appellant's best friend, Marcus Drakeford, also testified that Appellant was living at the house on Hood Street in the Summer of 2020, and that he saw Appellant there every day after he would get off work, and within a couple days of the incident he had seen Appellant's property on the inside of the home. He further testified that Appellant would not have to knock to gain entry, but would simply use a key to open the front door. (Tr. p. 430-435).

Lastly, Appellant testified on his own behalf. He testified that he and Ms. Mingo had been in a relationship since 2014 or 2015. He claims that there were times they were not together, but that he was living at the 205 Hood Street address during the Summer of 2020. He continued to live there when Ms. Mingo moved briefly to Carolina Court. (Tr. p. 443-444). Appellant admitted that he did not tell his SCPPP agent about living at the Hood Street address "*because lawfully I wasn't supposed to be around Yashima due to my previous charge*" of criminal domestic violence for which his SCPPP supervision was related.[6] (Tr. p. 444, lines 5-25). Appellant believed that Ms. Mingo still wished to be with him even after the domestic violence issue. (Tr. p. 445). Appellant

[6] Counsel for Appellant presented State's Exhibit 174 to address a handwritten notation on his sentencing sheet stating "Victim not requesting an RO". (Tr. p. 445). Appellant would later testify that due to his CDV charge, he did not want to get into trouble so he did not wish to argue with Ms. Mingo and was attempting to leave quickly just prior to the shooting. (Tr. p. 461).

testified that he kept this matter secret from his probation officer, and instead met with his probation officer at his mother's home at 1767 Usher Road. (Tr. p. 446).

Appellant directly contradicted the testimony offered by Mr. Cloud, by noting that it is not true that he never stayed at his mother's house during the Summer of 2020; he in fact agreed that he stayed at his mother's "occasionally" for the purpose of going to work the next day. (Tr. p. 448). Appellant testified that during the whole summer the "majority of my belongs [sic] was at Yashima's house." (Tr. p. 449). Appellant confirmed the power bill arrangement that he and Ms. Mingo reached due to her unpaid bill, but testified that it was also because he lived there too. (Tr. p. 451). He confirmed that he was contacted indirectly by Ms. Mingo's cousin to allow him to go see his daughter on September 23rd, and explained that he needed to see his daughter (despite supposedly living in the same home as the child) because Ms. Mingo was taking the kids to her mother's that night and the kids wanted to see him. He testified to knowing that she was working third shift that night, but conceded to not knowing where she was working. (Tr. p. 452).

Appellant next testified that he was fully aware that Ms. Mingo was seeing other people during this time period. Moreover, to the best of his knowledge, he also believed Ms. Mingo knew he was seeing other people as well. (Tr. p. 453). Again, this information was known to Appellant without it giving rise to an emotional outrage or feeling of betrayal.

On the night of the crime, Appellant testified that he was with his friend Nykethious Cunningham, *and that he* ***and Mr. Cunningham*** *had left the City Avenue area to go get some clothes from the Hood Street house.*[7] While he was at the 205 Hood Street house for that purpose the incident occurred. Appellant testified that he did not expect her to be there that night because

[7] No where in the remaining record is there any indication that Appellant was accompanied to the 205 Hood Street residence and the defense did not call Mr. Cunningham to testify.

she had told him she would be working the third shift at an out-of-town location.[8] Appellant testified that he had a backdoor key to the 205 Hood Street house, and stated: "It was like -- that was a key, like, connected to, like, a necklace. I had a key ring, like, just a ring with a key on it that belong to the house on 205 West Hoot Street." (Tr. p. 455, line 21 through 458, line 6). No such key was admitted as evidence by the defense, no such key was located by law enforcement from the crime scene, and Appellant was not asked on direct examination about the current location of the key.[9] Appellant described the boxes and trash can that are at the back door, but his testimony does not address whether these items were blocking his supposed entrance on the night of the crime. (Tr. p. 457-458).

Appellant testified to coming into the house while it was dark and turning the bathroom light on before proceeding to the master bedroom that he claimed to share with Ms. Mingo. (Tr. p. 459). He proceeded to turn on that bedroom light and thereafter saw Ms. Mingo waking and leaning up in bed. She asked him what he was doing there, to which he responded that he was getting some clothing and then walked toward the closet. Appellant testified that he saw another figure in the bed with Ms. Mingo, but thought it was her oldest daughter. (Tr. p. 459-460).

Appellant testified that he and Ms. Mingo were arguing and that he had his back to her while moving toward the closet; it was at that time that he was struck by multiple gunshots. (Tr. p. 461). Appellant stated that his next effort was to try and retreat, and that he returned fire with his Springfield 9mm pistol. *However, because of the "heat of the moment" he was not able to*

[8] Ms. Mingo's job is in close proximity of her home, and could not be considered "out of town".
[9] The only key entered into evidence was State's Ex. 168, a key on a lanyard that Appellant testified matched the door to his mother's house, and for which video evidence showed that it did not unlock the doors of 205 Hood Street. (Tr. p. 356-357; p. 457).

recall when he fired those shots during the course of events.[10] (Tr. p. 462). Appellant stated that during his retreat out of the bedroom he was shot again in the face and hand, and ultimately fell to the floor. The wound to his hand forced him to drop his gun. Appellant testified that his ski mask was "already folded" and does not remember taking it off. Appellant stated that he fell unconscious for a moment. (Tr. p. 463-465).

Appellant testified that when he came to, he told Ms. Mingo to call 911 and attempted to stumble toward the kitchen for a long drink of water, and feeling that his body was drained of energy. (Tr. p. 465). He then stumbled to the couch in the living room. Appellant testified that he wanted both the cops and an ambulance called for assistance. (Tr. p. 465-466). Appellant testified that he had no reason to what [sic] to kill Mr. White, had no grudges or problems with Mr. White, and had never even met Mr. White. (Tr. p. 467). When asked why he shot Mr. White that night he responded that he did not fire first and stated: "Really just to -- like I had to defend myself. Like I was really trying to, like, leave. Like, I was getting shot at so I really did try to leave. But it had got to a point where I had to try and like defend myself." (Tr. p. 468, lines 1-7). *Appellant expressly denies the truth of the state's version of events*, which included his pointing the gun at both victims while standing at the foot of the bed. (Tr. p. 468). Appellant then identified a Nike shoebox and a pair of basketball shorts that he stated belonged to him from State's exhibits 148 and 149.

On cross examination Appellant conceded that he told Chief Small that his home address was 1767 Usher Road and that he lived there with his mom. His initial response when asked why he told the officer this, in contrast to his trial testimony, was "I don't know." (Tr. p. 474; p. 353). He then followed with the explanation: "Because at the time, due to the incident and stuff like that,

[10] Appellant's testimony does not attribute any particular emotion or choice of action to this phrasing of the circumstances.

I had already made up my mind, like that's where I was going back too, my mom's house. I wasn't going back to the 205 West Hood Street, not due to the incident." (Tr. p. 474, lines 18-22; p. 475). He also attributed Mr. Cloud's and Mr. Drakeford's conflicting testimonies to misunderstanding the questions they were being asked. (Tr. p. 477-478).

Appellant confirmed that there are usually boxes stacked up at the backdoor of the home. However, his response to whether he recalled seeing the trashcan and boxes on Officer Sharperson's body cam or whether he knocked those boxes down during his supposed entry into the home via the backdoor was: "I don't remember". (Tr. p. 484-485). When asked why he did not just turn on a light once inside the home so he could move around, he "just chose not to." (Tr. p. 486). Appellant testified that "[he doesn't] remember whether his ski mask was covering his face when he came into the bedroom, but then confirmed he had it covering his face. (Tr. p. 487; 489). Appellant testified that he wore it that way because it was cold that night, despite conceding 1) his prior hearing testimony that he wore it that way for fashion, 2) the evidence that the police officers were wearing short sleeve uniforms, and 3) testimony from Ms. Mingo was that she was running her A/C that night. (Tr. p. 494-496). He further confirmed that Ms. Mingo questioned why he was in the home that night. Appellant testified that he did not expect Ms. Mingo to be home that night, but also did not see that her car was parked in front of the home. (Tr. p. 487-488).

Appellant conceded during cross examination that he told hospital staff that he could not recall what happened when he got shot. He then testified that he could not recall phone calls he made after his arrest. (Tr. p. 496). He *denied remembering* multiple phone calls from prison where he allegedly stated 1) "I was done with this girl weeks and months ago. I was only paying her back for messing up her TVs"; 2) "I came to get my things 'cause I was done with her.'"; and 3) "I snuck in there to get my things." (Tr. p. 498-499). Also stated that he thought he was walking

away when he got shot in the back, in contradiction to his earlier testimony that his back was turned at the closet when he was shot. (Tr. p. 499-500).

When asked "And is it possible, 'cause you said you don't remember everything. Is it possible that you fired two shots and Shamon surprised you and he shot back. And you tried to shoot a couple more times and then your gun jammed. And when you turned away you said, oh, shoot, my guns jammed. I'm trying to leave and that's when you got shot in the back. Is that possible?", Appellant responded: "I don't know." (Tr. p. 500). He followed with testimony that it was "impossible" that "[he] came in, saw Yashima, the mother of your child in bed with another man and [ ] started shooting because that made [him] mad." (Tr. p. 503).

STANDARD OF REVIEW

"An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). An abuse of discretion "means nothing more or less than that the ruling of the trial court was without reasonable factual support, resulted in prejudice to the rights of appellant, and therefore, in the circumstances, amounted to error of law." *Bridges v. Wyandotte Worsted Co.*, 239 S.C. 37, 40, 121 S.E.2d 300, 302 (1961). "If there is any evidence *to warrant a jury instruction*, a trial court must, upon request, give the instruction." *State v. Smith*, 391 S.C. 408, 412, 706 S.E.2d 12, 14 (2011) (emphasis added). "To justify charging the lesser crime, the evidence presented must allow a rational inference the defendant was guilty only of the lesser offense. The court looks to the totality of the evidence in evaluating whether such an inference has been created." *State v. Geiger*, 370 S.C. 600, 607, 635 S.E.2d 669, 673 (Ct. App. 2006) (internal citations omitted) "A jury charge which is substantially correct and covers the law does not require reversal." *State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010).

"In reviewing jury charges for error, [the appellate court] must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011). The denial of a requested jury charge is subject to harmless error analysis, and both error and prejudice must be demonstrated in order to warrant reversal. *State v. Commander*, 396 S.C. 254, 270-71, 721 S.E.2d 413, 422 (2011); *State v. Battle*, 408 S.C. 109, 116, 757 S.E.2d 737, 740 (Ct. App. 2014).

ARGUMENT

I. Appellant did not present evidence that would warrant a voluntary manslaughter charge and as such, the court did not err in denying the charge.

Appellant fails to satisfy the any evidence standard for warranting a voluntary manslaughter charge in this case. As such, the trial court did not err in denying the requested charge during the charge conference. Any commentary by the court that might constitute an inaccurate legal assertion is inevitably harmless for lack of prejudice because Appellant failed to meet the evidentiary standard necessary to warrant the charge.

a. The record facts fail to constitute evidence for voluntary manslaughter

Voluntary manslaughter is the unlawful killing of another human being in a sudden heat of passion, brought upon by sufficient legal provocation. *State v. Walker*, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996). This heat of passion must carry such sway that it would produce an "uncontrollable impulse to do violence." *State v. Cole*, 338 S.C. 97, 102, 525 S.E.2d 511, 513 (2000). It is true that our Supreme Court has ruled that self-defense and voluntary manslaughter are not mutually exclusive, but likewise our Court has found that a self-defense case can lack the necessary evidence to support voluntary manslaughter. *State v. Starnes*, 388 S.C. 590, 698 S.E.2d 604, 608–09 (2010). "Whether a voluntary manslaughter charge is warranted turns on the facts." *Id.* at 597. As a result, the basis for sufficient legal provocation can be difficult to discern, and has

led to our courts' frequent struggle to delineate it from evidence sounding in self-defense. *Id.* at 597-598. Our courts have held that an unprovoked attack can constitute sufficient legal provocation for a heat of passion killing, but they have also found that a defendant's fear alone is insufficient to satisfy an entitlement to voluntary manslaughter. *State v. Starnes*, 388 S.C. 590, 698 S.E.2d 604 (2010); See *State v. Childers*, 373 S.C. 367, 645 S.E.2d 233 (2007). "The evidence must demonstrate that the fear manifested itself in an uncontrollable impulse to do violence. *Id.* at 598-599. A jury instruction for voluntary manslaughter is only proper if there is evidence to demonstrate *both* a sudden heat of passion *and* sufficient legal provocation under the circumstances presented. *State v. Starnes*, 388 S.C. 590, 597, 698 S.E.2d 604, 608 (2010); *State v. Cole*, 338 S.C. 97, 102, 525 S.E.2d 511, 513 (2000); *State v. Byrd*, 323 S.C. 319, 322, 474 S.E.2d 430, 432 (1996).

The "any evidence" standard utilized in determining whether a jury charge should be given, is not one that can disregard reason and rational inference; any evidence means any evidence creating a *reasonable inference*. Numerous cases speak to this legal principle. See *State v. Moore*, 245 S.C. 416, 421, 140 S.E.2d 779, 781 (1965); *State v. Lambright*, 279 S.C. 535, 537, 309 S.E.2d 7, 8 (1983); *State v. Gilmore*, 396 S.C. 72, 82, 719 S.E.2d 688, 693 (Ct. App. 2011); *State v. Geiger*, 370 S.C. 600, 607, 635 S.E.2d 669, 673 (Ct. App. 2006) *State v. Small*, 307 S.C. 92, 94, 413 S.E.2d 870, 871 (Ct. App. 1992). As such, Appellant must do more than conjure a theoretical or irrational view of the facts to support an otherwise unsupportable inference from the evidence. And, he must present a rational inference of the record evidence that does not rely upon the contention that the jury would accept in part and reject in part the evidence presented by the State in support of the greater charge. *State v. Funchess,* 267 S.C. 427, 430, 229 S.E.2d 331, 332 (1976).

Appellant fails in both of these endeavors. His arguments for an interpretation of the evidence supporting heat of passion and legal provocation are neither reasonable nor rational, and they rely in part upon the state's case of malice while disregarding the facts that would otherwise negate a voluntary manslaughter inference. Here, regardless of which theory of voluntary manslaughter the Appellant attempts to defend, Appellant fails to present an argument where both elements of voluntary manslaughter are present by reasonable inference. As our Supreme Court has stated, this type of issue "turns upon the facts" and the facts of this case are insufficient.

Appellant first, and primarily, attempts to rely upon the classic infidelity angle of voluntary manslaughter, which under the facts of this case would require the *alleged* infidelity to serve as both the basis for a heat of passion and the sufficient legal provocation. However, under such an argument *neither* of these elements is satisfied.

Regarding the heat of passion element, Appellant attempts to portray Ms. Mingo's testimony that Appellant stated, "Didn't I tell you what I'd do to you and myself about, like, our family." as evidence of voluntary manslaughter while ignoring the glaringly obvious and numerous factual limitations at play. (Brief of Appellant, p. 9). First, the statement itself demonstrates a *premeditated* and malicious predisposition for violence based on jealously. After all, Appellant did not happen upon this scene, the evidence supports that he secretly entered the home through a window while armed and wearing a ski mask. Second, even if Appellant were to rely upon this portion of the record to support his argument, both his own testimony and Ms. Mingo's testimony *demonstrate that he was aware that she had a boyfriend.* This knowledge can be attributed to Appellant for a considerable amount of time based upon his own testimony, and at a minimum, no fewer than 14 hours prior to the shooting. Such an amount of time demonstrates that even if Ms. Mingo's relationship status was new and upsetting news to him at midday on September 23rd, he

had a more than adequate cooling off period under the law.[11] See *State v. Cole*, 338 S.C. 97, 102, 525 S.E.2d 511, 513 (2000) (ruling that three to five minutes was sufficient cooling off period). Any action taken on the basis of anger as to Ms. Mingo's romantic endeavors can therefore only be categorized as malicious aforethought – *a minimum, 14 hours of aforethought to be precise.*

Appellant cannot attempt to claim a heat of passion for *supposed* infidelity he already knew about and was likewise committing himself. The facts tend to demonstrate that regardless of whether Appellant believed he stilled lived at the 205 Hood Street address, he and Ms. Mingo did not have nor expect an exclusive and loyal romantic relationship that would serve as a foundation for a heat of passion arising from surprising infidelity. Appellant on appeal cannot in one breath rely upon testimony of Appellant wanting to "get back together" while also claiming betrayal by a "current" girlfriend – which is essentially the argument he is attempting to make. (See Brief of Appellant, p. 4; p. 12). The record testimony presented by Appellant himself demonstrates that he did not view Ms. Mingo's actions as even constituting infidelity on her part – he casually admits that both he and Ms. Mingo were seeing other people. Such a circumstance is not a rational manslaughter substitution for murder, and such is inherently reliant upon selectively adopting only certain portions of the state's case in violation of *Funchess*.

Likewise, this scenario does not present a sufficient legal provocation for which Appellant can be said to have acted with an uncontrollable impulse to do violence. Stated simply, two different stories were presented in this case. Ms. Mingo testified to Appellant breaking in through the window, while armed and wearing a ski mask[12], and then shooting first despite Appellant's

[11] Ms. Mingo testified that their brief meeting to allow Appellant to see his child took place at about 12:00pm. (Tr. p. 149).

[12] The ski mask and gun – unlike the supposed backdoor key – were recovered and admitted as evidence at trial.

own admission that he knew Ms. Mingo to be dating other men before the time of the incident. Legal provocation does not arise from any alleged infidelity, and there is no other action or circumstance for which legal provocation can even be argued to originate. Ultimately, Appellant was asked plainly during cross examination about the possibility that he became angry seeing Ms. Mingo in bed with another man. His response was to declare such a version of events "impossible." (Tr. p. 503). Under Appellant's explanation of events, he claims to have been shot in the back while completely unaware of Mr. White's presence, which he responded to by first attempting to retreat, and then shooting in self-defense. There are occasions where the facts of a case might support charging both voluntary manslaughter and self-defense, but this case is not such an occasion.

In what appears to be an alternate theory for relief, Appellant asserts in a single sentence that "appellant's testimony that the decedent shot at him first as appellant was looking in the closet for clothes . . . was also evidence which warranted a voluntary manslaughter instruction." (Brief of Appellant, p. 12). Appellant provides little further discussion of this as a theory for overturning the conviction aside from some basic caselaw that notes gunshots from an assailant can constitute adequate legal provocation for voluntary manslaughter. Absent from this discussion, however, is evidence that would suggest he experienced a heat of passion that led to his succumbing to an uncontrollable impulse to do violence. Appellant testified to fearing for his life, but the only manifestations of that fear was his alleged efforts to retreat and then to fire in self-defense. See *Starnes,* at 598-599 (Noting that fear alone is insufficient to warrant a voluntary manslaughter charge, the defendant must demonstrate that the fear manifested itself in an uncontrollable impulse to do violence.); *State v. Childers*, 373 S.C. 367, 645 S.E.2d 233 (2007).

The absence of further argument is understandable, given that Appellant's testimony

lacked any indication that he harbored anger or fear that manifested in a desire to do harm, and he explicitly stated he fired in self-defense after attempting to retreat from the threat. These facts, and the remaining record, lend absolutely no evidence to the heat of passion element. For that reason, Appellant's alternate argument is likewise deficient under the law.

b. The ruling of the trial court was proper.

The trial court's ruling denying the voluntary manslaughter charge was not in error because the record evidence did not support the charge, and as a whole, the charge given was accurate and adequately covered the law. Any commentary by the court as to the necessity of adultery to induce a heat of passion would be harmless because of the absence of evidence presented at trial.

Appellant's first assertion against the trial court is that it erred in categorically "ruling that voluntary manslaughter could not exist in a murder prosecution." (Brief of Appellant, p. 11). This is a clear overstatement of trial court's ruling, wherein Judge Murphy explicitly stated that the charge is inconsistent with *Appellant's* arguments of self-defense, and ruled that there had not been evidence presented that would categorize Appellant's action as one resulting from heat of passion. (Tr. p. 520-521). At no time did the court issue a ruling that, regardless of circumstances, the law forbids both charges in the same case..

Following this assertion, the court articulated that it did not find heat of passion arising out of the defense's case (that [Appellant] reacted only after he was shot), and "one of the points where sudden heat of passion can come up, is fighting [sic] ones spouse in the act of adultery. Clearly, the parties are not spouses and I don't think that would be as well." Appellant asserts reversable error on the part of the trial court for categorically claiming that only adultery between spouses can lead to a heat of passion killing. While Respondent acknowledges that the court's phrasing and reference were less than ideal, it is also not the clear categorical ruling that Appellant

prescribes it to be. In light of the court's language used to frame the issue is "***one of*** the points where sudden heat of passion can come up, is fighting [sic] ones spouse in the act of adultery. Clearly, the parties are not spouses and ***I don't think that would be as well***" would suggest that the court was merely acknowledging that the specific nature of Ms. Mingo's and Appellant's relationship would not arise to the level that could support a heat of passion killing, while also noting the very clear fact that they were not married. The court's inartful phrasing can be viewed as considering the same absence of loyalty and the inability to rely upon infidelity as a basis for the charge, just as Respondent has done above.

However, even if it were a black and white ruling by the trial court, as Appellant suggests, the ruling would not result in prejudice. The evidence necessary to support the charge is entirely absent and the court was correct to deny the charge. The fact that the court phrased its ruling in such a way does not make for reversible error.

"A jury charge which is substantially correct and covers the law does not require reversal." *State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010). The denial of a requested jury charge is subject to harmless error analysis, and both error and prejudice must be demonstrated in order to warrant reversal. *State v. Commander*, 396 S.C. 254, 270-71, 721 S.E.2d 413, 422 (2011); *State v. Burdette*, 427 S.C. 490, 496, 832 S.E.2d 575, 578 (2019). "In making a harmless error analysis, [this court's] inquiry is ... whether the erroneous charge contributed to the verdict rendered." *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) (quoting *State v. Kerr*, 330 S.C. 132, 145, 498 S.E.2d 212, 218 (Ct. App. 1998)). "When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" *Id.* (quoting *Kerr*, 330 S.C. at 144-45, 498 S.E.2d at 218).

In order to warrant the charge, Appellant must demonstrate that there was evidence of *both* heat of passion and legal provocation. As argued above, Appellant has failed to demonstrate such evidence exists. *State v. Starnes*, 388 S.C. 590, 597, 698 S.E.2d 604, 608 (2010). Therefore, no prejudice arises and Appellant is not entitled to a reversal and new trial.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

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