RECEIVED
Apr 23 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUINTERIOUS R. TRUESDALE,

APPELLANT

APPELLATE CASE NO. 2022-000903

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF ISSUE ON APPEAL

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

Appellant was indicted at the April 9, 2021, term of the Lancaster County Grand Jury for the offenses of murder, burglary in the first degree, possession of a firearm during the commission of a violent crime, and possession of a weapon by a person convicted of a felony, violent crime. R. 536. Appellant's case was called to trial on June 12, 2021, before the Honorable Maite Murphy, and a jury. Devon Nielson represented appellant. Melissa McGinnis and Nicole Workman were the assistant solicitors. R. 1

At the conclusion of the trial, the jury found the appellant guilty on each count. R. 531, ll. 2-21. Judge Murphy sentenced appellant to life imprisonment without parole for murder, life imprisonment for burglary in the first degree, and five years imprisonment for possession of a weapon by a person convicted of a felony violent crime. No sentence was imposed on the possession of a weapon during a commission of a violent crime conviction due to the impositions of the life sentences. R. 534, l. 8 – 535, l. 5.

This appeal follows.

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." Sams, 410 S.C. at 308, 764 S.E.2d at 513; 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)).

ARGUMENT

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.

Introduction

As will be seen infra, it was undisputed that the power bill for 205 West Hood Street was in appellant's name. Defense Exhibit #3. R. 542. Appellant testified that he was still living there with his girlfriend, Yashima Mingo, at the time of the fatal incident on September 24, 2020. Mingo had a child with appellant. Mingo claimed she and appellant were "like on and off" and that appellant was no longer living with her at 205 West Hood Street on September 24, 2020. R. 71, ll. 2-9. Appellant conversely testified that he still lived there, he presented witnesses that he lived there, and that he had a key to the house. Mingo maintained that she made appellant give her his key back at some point.

Relevant facts

Appellant was twenty-six years old at the time of trial. He testified that he was living with Mingo on West Hood Street on September 24, 2020, just as he had been since moving in, which was in late April of 2020. R. 370, l. 20 – 373, l. 23. Appellant had a prior criminal domestic violence conviction involving Mingo, but it was undisputed that their relationship continued after that incident. R. 375, ll. 6-12.

There would be much discussion during the trial about a ski mask that appellant wore. Appellant admitted to wearing the ski mask -- which the state contended was unrelated to COVID-19 -- as a "fashion statement." Appellant stated that he did not know whether he had the ski mask pulled up or down at the time he walked in on Mingo and the decedent in bed. R. 419, l. 13 – 420, l. 8.

Appellant testified that he went by the house at approximately three o'clock in the morning on September 24, 2020, to get some clothes. Appellant did not expect for Mingo to be home because she had told him earlier that day that she was working third shift that night. R. 386, l. 16 – 387, l. 15. Appellant let himself into the house with his backdoor key. R. 387, ll. 15-17.

Appellant related that the house was very small, and it was pitch black when he entered. R. 389, ll. 17-23 Appellant turned on the bathroom light first and he went into the master bedroom he shared with Mingo. R. 389, l. 19 – 390, l. 10.

Appellant remembered that Mingo was awakened by him entering the bedroom. She asked him: "What I had going on, like, what I was doing in there. And I was letting her know that I was coming to get some clothes and I proceeded to go towards the closet." R. 390, ll. 17-23.

Appellant saw "a figure in the bed" with Mingo, which at first, he thought was Mingo's oldest daughter. Appellant testified that he had his back to Mingo and the bed looking for his clothes in the closet when shots were fired at him, and indeed hit him. Appellant thought that he was shot three times, "once in the right buttock." Appellant said his instinct was to retreat but then "it was at the heat of the moment" that he began firing with his 9mm Springfield at the man in bed with Mingo. R. 392, l. 21 – 393, l. 19.

Appellant explained that there was only one way out of the bedroom, and he had been shot in his face and in the hand. The badly wounded appellant dropped his gun when he fell to the floor. R. 394, l. 1 – 395, l. 7.

Mingo testified that appellant was actually wearing his ski mask over his face at the time the decedent shot him, and appellant shot the decedent. She contended appellant shot at the decedent first while the decedent was in bed with her, and that the decedent returned fire. R. 395, ll. 4-7.

Appellant remembered that Mingo called 911. Appellant was able to stumble into the kitchen and he began "constantly drinking water out of the faucet like drinking water, drinking water... when I thought I had enough energy, I stumbled my way to the living room and flopped down on the couch." R. 396, ll. 6-17.

When EMS and the police arrived after the 911 call, it was undisputed that the wounded appellant was still laying on the couch. Appellant said he was returning fire to defend himself at the time he shot and killed the decedent who was naked in bed with his girlfriend, Mingo. R. 398, ll. 15-20.

Yashima Mingo told a different story. Mingo admitted the power bill at her house on West Hood Street was in appellant's name. However, she contended she only put the bill in appellant's name because she had back bills that were unpaid, and she therefore had to use appellant for this purpose. R. 70, l. 24 – 71, l. 25. Appellant conversely testified that he shared in paying for the household expenses with Mingo. Mingo admitted that appellant had a key to the house originally, but she claimed she made him give it back when trouble developed in their relationship. R. 72, l. 18 – 74, l.1.

Mingo maintained that appellant only lived with her "off and on," and that she had to leave the door open if she knew appellant was coming to the house, or he would call or text her to unlock the door. R. 74, ll. 9-17. Mingo contended that she "broke up" with appellant in the middle of July 2020 after being "off and on through the summer". R. 75, 11. 1-5.

Mingo related that appellant broke the television sets in the house and that she could not afford to buy new television sets. She therefore stayed with her cousin in the Carolina Court Apartments for a time, and then she moved back into the West Hood house in mid-August 2020. R. 77, l. 6 – 78, l. 3.

Mingo admitted she started dating Shamon White, a/k/a "Charleston", during this time period. R. 78, l. 21 – 80, l. 4. She remembered that on September 23, 2020, appellant came by to see his daughter. Mingo claimed that she found a shirt that appellant had left behind and she gave it back to him that day. Mingo also contended that around this time that her new boyfriend, Charleston, was probably staying with her "like every night" on West Hood Street. R. 81, l. 23 – 82, l. 17.

That September 23, 2020, day, Mingo remembered that appellant "was talking about like us getting back together and stuff." They also talked about their child. R. 82, l. 18 - 83, l. 2.

Mingo contended that appellant only stayed for about fifteen minutes and that she let him know that she had to take her "kids to my mom because I had to work. So he didn't stay long. He had someone wait out for him." R. 83, ll. 10-14. Mingo worked at Springs Hospital in Lancaster. R. 83, l. 10 – 84, l. 15.

Mingo was supposed to be at work at 5:00 that afternoon, so she first drove her five children to Fort Mill to stay with her mother while she worked that night. Fort Mill was about a forty-five minute drive away from Lancaster. R. 85, ll. 2-20.

When Mingo got to the hospital that afternoon at five o'clock, she was told that she was not needed that evening, and that she could take the night off if she wished. Mingo therefore went back home to Hood Street, "[t]ook a shower and I had called Shamon [Charleston] to let him know that I did not have to come to work." Mingo said that she did not go to get her children from her mother in Fort Mill because "I just felt like I needed a break, I have five kids and I would rather get a break." R. 86, l. 23 – 87, l. 14.

Mingo testified that she went with Charleston, and they got some food. They then went to the house at 205 West Hood Street. Mingo contended at that time that she lived in the house with her five children and that Charleston, the new boyfriend, came by the house and he often stayed there overnight. R. 87, l. 24 – 88, l. 10.

Mingo maintained that she locked the doors before she went to bed that night with Charleston. R. 92, l. 12 – 94, l. 6. Mingo confirmed that this was a very small house. R. 94, ll. 2-6.

Mingo remembered waking up that night when the bedroom light got turned on. She said she saw appellant standing next to the bed with a ski mask covering his face. R. 94, l. 14 – 96, l. 2. Mingo testified that appellant was holding a gun and "was pointing it at me first." The following occurred on direct examination of Mingo:

> Q. You first. Did he say anything to you?
>
> A. He was -- about what he'll, like, what he'll to me *or his feeling about his family. I guess he was considering me and my kids his family or whatever.*
>
> Q. Slow down a little bit and talk right into the microphone. I'm sorry, let me have you repeat that part.
>
> Q. What did he tell you?

A. Basically, going -- telling us stuff by, he was like, "Didn't I tell you what I'd do to you and myself about, like, our family." I think he was, like I said, *myself and my kids as his, like, I guess, like, we're family.*

Q. Okay. What did you say to that?

A. I was begging him 'cause he had the gun pointed at me, so I was begging him, like, think about our daughter. Like, you know, like, please, don't do this, don't.

Q. And what happened after that?

A. He took the gun like from pointed at me to getting pointed at Shamon.

Q. Did he say anything to Shamon?

A. He was telling him that he need to get out the bed. He was like, Bro, why you here? You need to get up and leave.

Q. When he was there earlier that day, had you told him about Shamon?

A. He had said somebody had told him that I had a boyfriend or something, and I was like, yeah. That came up in a conversation on -- when he was talking about us getting back together.

Q. Did he know Shamon?

A. No, ma'am.

Q. Had he ever meet him before?

A. No, ma'am.

Q. *So he said something to Shamon about needing to leave, then when happened?*

A. He just shot him.

Q. Say that again? I'm sorry.

A. He shot him.

Q. He shot him?

A. Uh-huh.

Q. How many times did he shoot?

A. He shot twice.

R. 96, l. 5 – 97, l. 23. (emphasis added).

Mingo said the decedent always slept with a gun under his pillow, and that he "was able to shoot him [appellant] back and I don't know how many times they both fired at each other" but eventually the shooting stopped. The decedent was still in bed with her naked during the exchange of gunshots. R. 98, l. 10 – 99, l. 25.

Mingo remembered that appellant fell to the floor when the decedent shot him, and Mingo called 911. She saw appellant go into the kitchen. Mingo testified that appellant asked her to put him in her car and take him to the emergency room. R. 100, l. 25 – 101, l. 7.

Appellant was taken to the hospital by EMS where he recovered, but the decedent died in the bed inside the West Hood bedroom. R. 103, l. 19 – 104, l. 2.

On cross-examination, Mingo identified a photograph of appellant's ski mask, but she claimed "it's not the way he had it on. He actually had it pulled over his face." R. 120, l. 17 – 121, l. 5. On redirect examination, Mingo claimed that she could not remember how many times the decedent shot at appellant. She also maintained that she did not even realize that anyone had been hit during the gun fire "until Quinterious dropped to the bottom of the bed." When she looked more closely at the decedent in the bed she saw that he was also badly wounded. R. 142, l. 24 – 143, l. 6.

Police officer Scott Williamson remembered going to the Hood Street residence at about three a.m. that morning. "We encountered Ms. Mingo in the driveway. She said that there were

two people inside that were shot." Appellant was found inside the house on the couch. R. 156, l. 20 – 157, l. 22. "We found Mr. White in the bed." R. 157, ll. 23-25. It appeared to Williamson that he was deceased. R. 158, ll. 1-2.

The pathologist, Dr. Susan Presnell, testified that the decedent had at least three gunshot wounds to his body. R. 44, l. 8 – 46, l. 16. The gunshot wound to the abdomen was what killed the decedent. The decedent had marijuana in his system. R. 60, l. 10 – 61, l. 14.

Discussion

The judge committed an error of law by ruling self-defense and voluntary manslaughter could not coexist in a murder prosecution. A jury charge on self-defense and voluntary manslaughter may be warranted depending on the facts of the case. Since there was evidence of both self-defense and voluntary manslaughter in this case, the judge erred by refusing to instruct on voluntary manslaughter. See State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001).

In State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001), the defendant's various inconsistent statements and versions of what occurred at the time of the fatal incident did not preclude an instruction on voluntary manslaughter where there was evidence of voluntary manslaughter in the record.

Similarly, in State v. Crosby 355 S.C. 47, 584 S.E.2d 110 (2003) the Supreme Court reversed this Court and held an instruction on involuntary manslaughter was also warranted even though the defendant also asked for an instruction on voluntary manslaughter. The seemingly inconsistent theories of the defense in Crosby, and the defense not wanting a jury instruction on accident, did not change the fact that there was evidence of both voluntary and involuntary manslaughter in the case, and Crosby was therefore entitled to instructions on both lesser-included offenses.

The judge also erred in a matter of law by ruling that appellant could not maintain both self-defense and voluntary manslaughter as a jury verdict options. The judge also committed reversible error by ruling that because Mingo was appellant's girlfriend, and not his spouse, that seeing her in bed with another man could not rise to the level of the "heat of passion" necessary for voluntary manslaughter. As this noted in State v. Grubbs, 353 S.C. 374, 382, 577 S.E.2d 493, 497 (Ct. App. 2003), "[t]he 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 normally 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. Cole, 338 S.C. 97, 101-02, 525 S.E.2d 511, 513 (2000).

Whether the person in bed with another man was the spouse, the significant other, or a girlfriend was not dispositive on the legal issue of "heat of passion" and the judge committed an error of law by ruling that it was a controlling factor.

Further, Mingo's testimony about appellant talking about their relationship and their family immediately before he shot the decedent in bed with Mingo was further evidence of appellant's heat of passion at the time. Mingo had also testified that appellant earlier in the day had talked about his strong feelings for Mingo and the child they shared together.

Even appellant's testimony that the decedent shot at him first as appellant was looking in the closet for his clothes, and that appellant, while wounded, returned fire, and killed the armed decedent as the decedent lay in bed with appellant's girlfriend was also evidence which warranted a voluntary manslaughter instruction.

In State v. Lowry, 315 S.C. 396, 434 S.E.2d 272 (1993), our Supreme Court held that a voluntary manslaughter instruction was mandated where there was strongly conflicting evidence. The prosecution witnesses testified the victim had spread his arms away from his body to show he had no weapon just before the shooting, while defense witnesses conversely testified the victim had belittled the defendant and moved towards the defendant in a menacing fashion with his arms and hands outstretched as if to grab the defendant.

If appellant "caught" his girlfriend in bed with the decedent, and his ability to reason was dethroned, appellant was entitled to an instruction on voluntary manslaughter since this circumstance was a classic voluntary manslaughter circumstance. See State v. Emerson, 78 S.C. 83, 58 S.E. 974 (1907) (Even finding a person's child in an act of sexual intercourse can be an adequate provocation to mitigate murder to manslaughter). McAninch and Fairey, The Criminal Law of South Carolina (3d ed.1996) at p. 160. This was true regardless of who the jury believed fired the first shot. Self-defense and voluntary manslaughter, as seen above, are simply not mutually exclusive.

The threat of an imminent deadly assault is sufficient to acquire a voluntary manslaughter instruction in a murder case. State v. Jackson, 301 S.C. 41, 398 S.E.2d 615 (1990). Here, gunshots were actually fired which constituted an adequate legal provocation for purposes of voluntary slaughter. See State v. Gilliam, 296 S.C. 395, 373 S.E.2d 596 (1998). Even pointing a gun at a defendant is sufficient to constitute an adequate legal provocation. See State v. Penland, 275 S.C. 537, 273 S.E.2d 765 (1981). See, also, State v. Davis, 278 S.C. 544, 298 S.E.2d 778 (1983).

To eliminate charging the offense of voluntary manslaughter in any specific case, there *must be no evidence whatsoever* of the lesser included offense of voluntary manslaughter. See State v. Knoten, 347 S.C. 296, 303, 555 S.E.2d 391, 394 (2001), *citing* State v. Cole, 338 S.C. 97,

101, 525 S.E.2d 511, 513 (2000). There was an abundance of evidence of voluntary manslaughter in this case, and it was reversible error not to charge it. State v. Knoten, 347 S.C. 296, 303, 555 S.E.2d 391, 394 (2001); State v. Lowry, 315 S.C. 396, 434 S.E.2d 272 (1993)

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed and this case remanded to the Lancaster County Court of General Sessions for a new trial.

Robert M. Dudek
Chief Appellate Defender

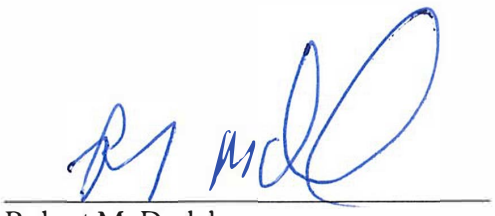
ATTORNEY FOR APPELLANT

This 23rd day of April, 2024.

RECEIVED
Apr 23 2024
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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."



Robert M. Dudek
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

April 23rd, 2024.