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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable Grace Gilchrist Knie, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAMEUN J. SANDERS,

APPELLANT

APPELLATE CASE NO. 2022-001631

SANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

In this self-defense case, did the trial court err in denying appellant's motion for a new trial after juror affidavits revealed the unfairly prejudicial impact of the solicitor erroneously telling the jury during her closing argument that appellant had a duty to retreat?

STATEMENT OF THE CASE

An Aiken County grand jury indicted appellant Dameun Sanders for murder and a weapons charge and on November 10, 2022, appellant was tried before the Honorable Grace Gilchrist Knie and a jury. R. 1. Heather DeLoach and Jacqueline Charbonneau represented the State. R. 1. Nicholas McCarley represented appellant. R. 1. The jury convicted appellant. R. 483-84. Judge Knie sentenced appellant to forty-five years' imprisonment for murder and a concurrent sentence on the weapons charge. R. 495. On June 15, 2023, Judge Knie held a hearing on appellant's motion for a new trial. R. 499. On June 29, 2023, Judge Knie denied the motion and this appeal follows. R. 532.

STANDARD OF REVIEW

This Court reviews the improper comment by the solicitor in the context of the entire record to determine whether appellant was deprived of a fair trial. Fortune v. State, 428 S.C. 545, 550, 837 S.E.2d 37, 40 (2019).

ARGUMENT

In this self-defense case, the trial court erred in denying appellant's motion for a new trial after juror affidavits revealed the unfairly prejudicial impact of the solicitor erroneously telling the jury during her closing argument that appellant had a duty to retreat.

On August 13, 2020, appellant Dameun Sanders ("Sanders") and the decedent, Garrick Kelly ("Kelly") attended a birthday party for Michael Sampson. R. 121, 187, 322. Sanders had known Kelly all of his life. R. 356. No witnesses for the State or the defense heard any arguing or fighting before hearing the gunfire which led to Kelly's death. R. 191, 225, 322. Sanders testified he shot Kelly in self-defense after Kelly threatened him and shot at him. R. 346-48.

Joanne Ginyard was the State's first, and best, witness. She lived next door to the party. R. 122-23. She had known Sanders and Kelly since they were small and they called her "Auntie." R. 125. Ginyard saw Sanders sitting in a car in front of her house. R. 125. Kelly was sitting on the porch. R. 126.

When Ginyard next looked outside, she saw Sanders with a gun getting out of his car. R. 126. On direct-examination, Ginyard claimed Sanders "growled" at her when she told him they don't have "that kind of carrying on down here." R. 126. Ginyard turned around and went back in the house. R. 126. On cross-examination, Ginyard admitted that in a recorded statement she gave to the police the day of the shooting, she did not say anything about Sanders growling. R. 136.

Ginyard then heard gunshots. R. 127. She called 911. R. 128. She heard two different kinds of gunshots. R. 129. She said the difference was between a big gun and a small gun. R. 129. She claimed Sanders had "a big gun," saw Sanders on the ground and thought perhaps his gun had kicked and knocked him down. R. 130. In her statement to investigators on the day of

the shooting she said did not know whether someone was shooting at Sanders or what took place. R. 137. After the shooting, Sanders left in a black car. R. 133. Ginyard described the crowd as "scattering out." R. 133. She went outside and Kelly was dead in the car. R. 134. She was not sure if anyone came near the car after she went back into her house. R. 134.

The State called Jennifer Jones who attended her brother's birthday party. R. 187. She said, "there was a lot of people there." R. 188. Jones knew both Sanders and Kelly. R. 188- 89. Jones was leaving and started hearing gunshots. R. 193. She said she was used to hearing gunshots. R. 193. She took cover and waited two or three minutes until the shooting stopped, then walked around the house to see what was happening. R. 195. She saw Sanders with a big, dark gun. R. 195. Sanders was standing towards the rear driver side of the Honda Pilot where Kelly's body was found. R. 156, 196.

Answering the state's question, Jones said she saw no one other than Sanders with a gun at the party. R. 197. But Jones heard multiple guns fired during this incident and told police the same. R. 198-99.

Tyquan Williams was distantly related to Sanders. R. 220. Sanders came to Williams' house the morning of the shooting with Joshua Gray. R. 220. Williams later went to the party with some friends in his black Mercedes. R. 224. While he was in the left of the yard, he heard gunshots. R. 225. He was scared and ran, but paused to throw his Aunt, Ginyard, a bag of weed. Once he saw cars leaving, Williams got his weed back from Ginyard and got in his car. R. 227.

The back door was opened and when Williams turned around to look, he saw the tip of the gun and was given orders to drive. R. 227. Williams believed that the gun was not a handgun. R. 228. The man in the backseat (who was Sanders) instructed Williams to drive and eventually

got out at a stop sign. R. 228. Williams did not see anyone with a gun before the shooting started. R. 230. He described the scene after the shooting as chaotic. R. 232.

When the police arrived, they found Kelly's body in the backseat of the open Honda Pilot. R. 155. The police found a total of twenty-two shell casings at the scene. R. 185. The casings were all the same caliber, but two different colors and by three different manufacturers. R. 181. Ten casings were found outside the Honda Pilot and twelve inside. R. 185. The State's firearms expert could not tell from the casings whether one gun or two guns fired them. R. 273. The number of guns that could fire this caliber were enormous. R. 275. The State's lead investigator explained the witnesses' hearing of two different guns by telling the jury that a fireworks factory was near the house. R. 283-84.

The defense's first witness was Andrew Sampson. R. 320. The party was for Andrew Sampson's brother. R. 321. Sampson had known Kelly all of his life. R. 322. He also knew Sanders. R. 322. Both men were at the party and Sampson never heard any arguing. R. 322. Samson had seen Kelly almost every day for the two weeks prior to the shooting and Kelly had a gun on him every single time. R. 323. Kelly usually carried a 9 mm but after it was stolen, he carried a big long black assault rifle. R. 323.

On the day of the shooting, Sampson saw Kelly's assault rifle in the backseat of the Honda Pilot. R. 323-24. He was in the kitchen when he heard the gunshots. R. 324. Like the State's witnesses, he heard two different kinds of gunshots. R. 324. When he went outside, he saw Kelly in the backseat dead and Sanders with a gun. R. 325. He did not see Sanders fire the gun. R. 325. Kelly's assault rifle was next to him in the Honda pilot. R. 325-26.

Sanders testified he shot Kelly in self-defense. R. 346. When Sanders arrived at the party, he noticed that the door of the Honda Pilot was open and saw an assault rifle on the

floorboard. R. 352. He also noticed another assault rifle pointed skyward by the back rear tire on the driver's side. R. 352. No one was in the car at that time. R. 352. Sanders said it was normal to see guns in the area. R. 352.

When Sanders wandered into the yard searching for a cell phone signal, Kelly accused Sanders of having sex with the mother of his child. R. 346. Kelly then pulled a pistol on Sanders. R. 346. Kelly grabbed an assault rifle that had been leaning against the outside of the Honda Pilot. R. 347.

Kelly shot at Sanders with the pistol. R. 347. Sanders felt a bullet fly past his face. R. 348. Kelly began to reach for the other large assault rifle on the floorboard of the Honda Pilot. R. 348. Kelly pointed the gun at Sanders and Sanders began shooting. R. 348. Sanders hopped in the back of Williams' car and told them to drop him off somewhere. R. 349.

Sanders knew that Kelly would shoot him because he had known Kelly for a long time. R. 356. Kelly told Sanders that if he found out that Sanders had been sleeping with his girlfriend, "you know what time it is," which Sanders took as a threat. R. 368. Sanders guessed that whoever was left at the party moved Kelly's guns that remained behind when Sanders left the scene. R. 370.

The parties had a charge conference with Judge Knie before closing arguments. R. 384-85. Judge Knie gave both sides a copy of her charge and neither side had any objections. R. 384-85. The court's charge stated, "The Defendant had no duty to retreat if doing so the danger of being killed or suffering bodily injury would increase." R. 460.

Despite agreeing to this charge in advance, during her closing argument on self-defense, the solicitor said, "And the third element, the one that he would never be able to prove in anything that you heard this week is that he had no other way to avoid the danger. He has a duty

to retreat.” R. 416. Before arguments began, Judge Knie instructed the opposing side to stand if they had an objection and she would address the objection efficiently. R. 466. Soon after the solicitor erroneously told the jury Sanders had a duty to retreat, Judge Knie noted an objection and held a bench conference. R. 416. After the bench conference, the solicitor told the jury, “I misspoke just now when I said the third element, the third element is no other way to avoid danger. That’s the third element.” R. 416.

After closing arguments and the charge concluded, the court addressed Sanders’ objection. R. 466-73. Defense counsel objected to the incorrect statement of law that Sanders had a duty to retreat. R. 467. The court said it “asked counsel to correct that, which she did during the same closing.” R. 467. Defense counsel argued that the solicitor’s correction was insufficient because she never said Sanders had no duty to retreat. R. 468. The State claimed it had adequately corrected the misstatement of law. R. 469-71. After replaying the contested portion of the argument, the trial judge ruled that she had given the jurors the law and that the solicitor’s statement after the bench conference that she misspoke “cures that problem.” R. 472. The trial court asked defense counsel if he wanted to move for a mistrial and defense counsel declined. R. 472-73.

During the long deliberations, the jury asked to be recharged on the elements of self-defense. R. 476. The court again read its entire self-defense charge. R. 476-80. Afterwards, defense counsel reiterated his objection concerning the solicitor’s argument that appellant had a duty to retreat. R. 480-81. Defense counsel asked the court to tell the jury unequivocally appellant had no duty to retreat. R. 481. The judge declined, ruling that she had now given the jury the correct law on self-defense twice. R. 481-82.

The trial court held a hearing on Sanders' motion for a new trial. R. 499. Judge Knie noted that she received emailed documents from defense counsel. R. 505-506. One of the documents sent by the defense was an affidavit from an attorney, Auline Ponder, who spoke to the jurors after the trial. R. 508-509. R. 529. Sanders argued that a new trial was required because what the jurors told Ponder showed the prejudice caused by the solicitor's erroneous argument that Sanders had a duty to retreat. R. 508-512. At no point did the State object under Rule 606, SCRE to the court's consideration of the jurors' statements contained in the Ponder Affidavit.

Seven jurors told Ponder that the defendant's duty to retreat was discussed in deliberations. R. 529. One juror said it was "the determining factor in rendering their verdict." R. 529. Another said many of them strongly considered the duty to retreat. R. 529. Another juror said that the duty to retreat took up "the bulk of their deliberations" and was a "focal point." R. 529. Yet another juror agreed that the duty to retreat "was the main thing" and opined that the result should have been a hung jury. R. 529.

The State argued the court's charge cured any misstatement. R. 512-513. The judge took the matter under advisement at the hearing. R. 514-516. Two weeks after the hearing, the court issued a written order denying Sanders' motion with no analysis of the issue raised, the juror statements, or the legal arguments. R. 532.

The trial court erred in denying appellant's motion for a new trial. The uncontested juror statements showed a denial of due process caused by the solicitor's misstatement of the law. See Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166-67 (1998). In Simmons, the solicitor made improper comments about parole eligibility in a burglary case under a prior statute where the jury could have recommended mercy. Id. Even though the evidence of Simmons' guilt was

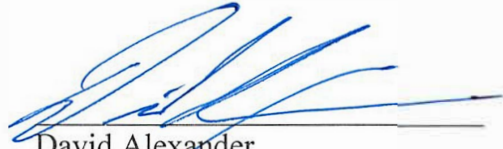
overwhelming, the Court reversed because the solicitor's improper comments prevented the jury from "fairly considering" mercy. Id. at 340, 503 S.E.2d at 167-68.

The solicitor's "improper argument so unfairly prejudiced the defendant as to deprive him of a fair trial." Fortune v. State, 428 S.C. 545, 556, 837 S.E.2d 37, 43 (2019). The Court in Fortune granted a PCR applicant a new trial because the egregious remarks of the solicitor during closing deprived him of a fair trial.

Like in Simmons, the improper comment by the solicitor here went directly to the heart of the case and injected a non-existent element of self-defense into the jury's deliberations. Normally a judge's instructions might be presumed to cure any such error, but what the jury told Ponder shows that the error was not cured at all. Sanders showed he was deprived of a fair trial and due process in this close self-defense case. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and remand for a new trial.



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 27th day of August, 2024.

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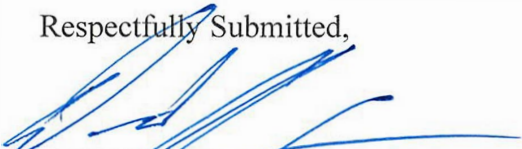
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Dameun J. Sanders states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Grace Gilchrist Knie, which was held on November 10, 2022, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Dameun J. Sanders.

Respectfully Submitted,



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 27th day of August, 2024.

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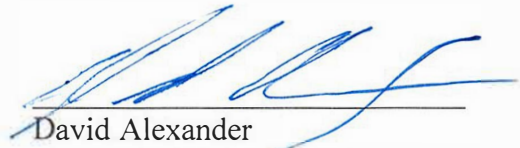
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments
- (2) Sentencing Sheets
- (3) Trial Transcript dated November 10, 2022
- (4) Post-trial Transcript dated June 15, 2023
- (5) Defendant's Motion for a New Trial
- (6) Email from Trial Lawyer to Judge Knie
- (7) Affidavit of Auline Ponder
- (8) Order Denying Motion for a New Trial

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



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ATTORNEY FOR APPELLANT

This 27th day of August, 2024.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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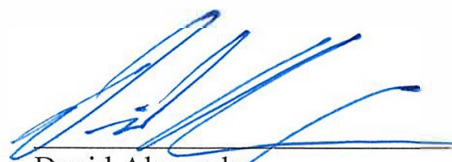
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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Dameun J. Sanders, #390651, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 27th day of August, 2024.



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