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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Heath P. Taylor, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JASON BARRY BELL,

APPELLANT

APPELLATE CASE NO. 2023-001326

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Appellant told the police he killed his elderly father as an act of mercy. Did the trial court err in refusing to charge voluntary manslaughter to the jury because, under the plain language of the statute, evidence existed that this was "the unlawful killing of another without malice?"

2.

Did the trial court err in admitting a jail call in which appellant was mean to his elderly mother because it was bad character evidence prohibited by Rule 404 and Rule 403?

3.

Did the trial court err under the Confrontation Clause in admitting the results of a third-party toxicology report through the pathologist?

STATEMENT OF THE CASE

A Dorchester County grand jury indicted appellant Jason Barry Bell for the murder of his father, Jim Bell. R. 508. On August 7, appellant was tried before the Honorable Heath P. Taylor and a jury. R. 1. David Osborne and Jillian Frederick represented the State. R. 2. Ash Chisholm and Pierce Wehman represented appellant. R. 2. The jury convicted appellant. R. 493. Judge Taylor sentenced him to life imprisonment. R. 506. This appeal follows.

STANDARD OF REVIEW

The issues on appeal are reviewed for abuses of discretion.

ARGUMENT

1.

Appellant told the police he killed his elderly father as an act of mercy. The trial court erred in refusing to charge voluntary manslaughter to the jury because, under the plain language of the statute, evidence existed that this was "the unlawful killing of another without malice."

Introduction

Rightly so, a defendant cannot control a solicitor's selection of charges. When a prosecutor overcharges a defendant, the best a defendant can do is request a lesser-included offense. When a prosecutor charges the wrong crime, and the right crime is not a lesser-included offense, the best a defendant can do is hope for an acquittal.

Appellant Jason Bell ("Jason") told the police he killed his suffering father, Jim Bell ("Bell") as an act of mercy. State's Ex. 9. The solicitor did not charge Jason with assisted suicide under S.C. Code Ann. § 16-3-1090. He only charged Jason with murder. Appellant asked for the lesser-included offense of voluntary manslaughter, which, by the statutory language, would fit, but the trial court refused. Jason was convicted of the only charge before the jury—murder—and sentenced to life imprisonment.

Factual Background

Police and paramedics arrived at Jim and Rose Bell's house early on the morning of New Year's Day. R. 168- 70. R. 179-80. Rose called 911 after finding her elderly husband dead in his recliner from a gunshot wound to the head. R. 170. Visible in the police body cams is an oxygen machine beside Bell's recliner. State's Ex. 4.

Jason told the first officer on the scene that he and his father planned to watch the college football championships on New Year's Day. R. 173. Jason told the paramedic that Bell had

complained of increased pain and Rose did not contradict him. R. 181-83. Jason did not immediately admit to shooting his father. R. 176. The police did not find any suicide notes. R. 176. The blood on Bell's temple was dry and the paramedic noted rigor in his jaw. R. 179-80.

Coroner Paul Brothers arrived at the scene at 9:20 a.m. R. 185. The police chief told the coroner that it was a possible suicide. R. 187. The coroner found Bell seated in a chair facing the television. R. 188. He had a knitted throw over his legs up to his midriff. R. 188. A suit jacket was on top of that. R. 188. The coroner pulled back the blanket. R. 188. He heard a thud and saw a revolver had fallen to the floor. R. 188.

At first, the coroner believed he saw only one bullet wound in Bell's head. R. 188. The coroner asked a deputy to pick up the gun and open the cylinder. R. 191. They saw two spent casings in the cylinder and the remaining holes were empty. R. 191. The coroner immediately concluded that Bell's death was not a suicide because you "can't shoot yourself in the head with a revolver more than one time." R. 191.

The police talked to Jason at the scene and then took him to the police station. State's Ex. 4. He did not immediately admit to shooting his father. R. 176. Some of his early interactions with the police at the station were captured on a body cam. State's Ex. 19. Jason told an officer that when he was small, his father told him that if he ever asked for a gun to blow his brains out, that Jason should give it to him. State's Ex. 19, Clip 2. Jason said he was not even ten years old when Bell asked him that. State's Ex. 19, Clip 2. He said he was thinking about telling this to the St. George Chief of Police. State's Ex. 19, Clip 2. He later said that when he returned home from North Carolina, his brother had just killed himself and he did not get along with his parents. State's Ex. 19, Clip 3. Afterwards, though, their relationship improved and they "were getting along great." State's Ex. 19, Clip 3.

During a smoke break outside, Jason admitted to the chief that he had killed his father. R. 204-05. Before the smoke break, the recording equipment did not capture his discussions with the police inside the interrogation room. R. 260-62. Jason's interview with the police in the interrogation room after the smoke break was recorded. State's Ex. 9.

Jason said he began drinking early on the day of New Years' Eve trying to work up the courage to put his father out of his misery. State's Ex. 9. He thought, prayed, and cried the rest of the day. State's Ex. 9. When his parents went out, Jason got the pistol that his father always kept beside his chair. State's Ex. 9. The pistol was there for when Bell could no longer take the pain. State's Ex. 9.

Jason waited until the fireworks began and went downstairs. State's Ex. 9. He was not angry with his father; he loved him. State's Ex. 9. Jason just wanted it to be quick and painless and for his father to stop suffering. State's Ex. 9. He made sure his father was asleep and then shot him twice in the head. State's Ex. 9. He ran upstairs and cried himself to sleep. State's Ex. 9.

Bell had been in pain and had been screaming. State's Ex. 9. Jason could hear his father screaming even when Jason was in his own bedroom. State's Ex. 9. Bell had a high tolerance for pain. State's Ex. 9. Jason told a story about fishing with his father and after Bell hooked himself in the arm, Bell pushed the hook through the skin, cut the barb off with a multi-tool, and then went right back to fishing. State's Ex. 9. At the end of the interview, the police told Jason they were charging him with murder.

The State introduced evidence from Bell's friends that Jason and Bell had an antagonistic relationship. They also testified that Bell would not have killed himself. An improperly admitted toxicology report showed Bell had no pain medication in his system. R. 407.

During an improperly admitted telephone call from jail with his mother, Jason acknowledged that his he already knew that he would receive no inheritance from his father's will. State's Ex. 92.

Bell was diagnosed with pulmonary fibrosis in early 2015. R. 354. This disease causes someone to become short of breath. R. 354. No cure exists for pulmonary fibrosis and it eventually would have caused Bell's death. R. 355. Bell also had a problem with his aortic valve and nerve compression in his neck. R. 356. He had problems with both shoulders and had surgery on one of them. R. 356. Bell had begun falling in the last years of his life. R. 360-61. The coroner testified about the medical findings in the autopsy. R. 194. Bell had an enlarged heart twice the size of a normal heart, hardened arteries, and aortic valve stenosis. R. 194-95. Bell was 76 years old. R. 347.

Legal Discussion

The court asked for the parties' positions on a voluntary manslaughter charge. R. 430-31. The solicitor said the charge "doesn't fit by any standard." R. 430. Defense counsel cited the text of the statute and argued that the facts fit the statute. R. 430-31. Counsel acknowledged the cases defining voluntary manslaughter, but said, "our position would be that's exactly what we've got here today." R. 430. "Because otherwise it leaves kind of a—a hole in the [law] where if you have an unlawful felony without malice, that it an—if voluntary manslaughter doesn't fit, it means it's just not a crime at all, which I don't think makes any sense." Defense counsel argued alternatively that the facts fit the judge-made law on heat of passion and that if the judge viewed the facts in the light most favorably to appellant, the charge should be given and left to the jury to decide. The court denied the request, citing judge-made law on heat of passion and legal provocation. R. 432-34.

"'Murder' is the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10. The manslaughter statute reads, "A person convicted of manslaughter, or the unlawful killing of another without malice, express or implied, must be imprisoned not more than thirty years or less than two years." S.C. Code Ann. § 16-3-50. As trial counsel argued, the facts of this case fit the statute. In the light most favorable to appellant, Jason killed his father as an act of mercy, not as an act of malice. These facts fit the plain language of the manslaughter statute. It was an unlawful killing without malice.

Defense counsel was correct that a hole in the law existed—but only in this case because the solicitor did not bring the proper indictment. South Carolina has an assisted suicide statute. Section 16-3-1090 would have fit the facts of this case. It states. "It is unlawful for an person to assist another person in commiting suicide." S.C. Code Ann. § 16-3-1090(B). The act criminalizes participating in a physical act by which a person commits suicide. Id. The hole in the law does not exist because of the legislature, but because of the way the solicitor charges the case. The solicitor then capitalized on his charging discretion by opposing a manslaughter charge.

Voluntary manslaughter is defined by the courts as the unlawful killing of a human being in sudden heat of passion upon a sufficient legal provocation. State v. Wood, 362 S.C. 135, 607 S.E.2d 57 (2004). None of these elements appear in the text of the statute. A mercy killing does fit the text of the statute.

Florida recognizes in its statutes that assisted suicide is manslaughter. "Every person deliberately assisting another in the commission of self-murder shall be guilty of manslaughter..." Fla. Stat. Ann. § 782.08. So does Alaska. Alaska Stat. Ann. § 11.41.120.

By the plain text of our statute, appellant could have been found guilty of killing his father without malice. Ample evidence existed that Bell was ill. Jason's interview stating that he

killed his father to end his suffering was admitted into evidence. The lower court erred in not charging manslaughter.

2.

The trial court erred in admitting a jail call in which appellant was mean to his elderly mother because it was bad character evidence prohibited by Rule 404 and Rule 403.

Appellant moved pre-trial to suppress the admission of a jail call between appellant and his mother, inter alia, because it was evidence of bad character. R. 54-60. The State claimed the call had some relevance to motive—that Jason thought he was getting money in Bell's will. Nothing in the call supports this allegation by the State.

What does support the State's motive in introducing the call is that it knew the weakness of its case was proving malice. The solicitor acknowledged that the existence of malice would be "the material issue at fact here for the jury to determine. R. 55. The solicitor then complained that the State no longer gets the charge that malice is inferred from use of a deadly weapon." R. 55. The solicitor argued against Rule 403, acknowledging that the unfair prejudice would be that "maybe he's rude to his mama on the phone. . . ." R. 56.

The jail call is approximately six minutes long. State's Ex. 92. Jason tells his mother he got a letter that she had been appointed the personal representative of his father's estate. He asks if that meant he had been left something in the will. His mother replied that everything was left to her. Jason responds, "That's what I thought. Did not know if it was part of the legalese that he had to send something to me. I thought me and him had talked about it. Nothing coming to me." State's Ex. 92.

The rest of the call concerns getting money from his mother for the canteen at the jail. This discussion starts off polite. Jason's mother says she does not know how to put money on the

canteen. Jason continues to press her and offers the name of someone who can help. He becomes exasperated and calls her by her first name. He accuses her that she told him she was going to put money on his account three weeks ago. State's Ex. 92.

His mother curtly replies, "I haven't told you anything because I'm not promising you anything." Jason responds, "Well then I promise you right now that this will be the last time I call." Rose says, "Okay. Fine." The call ends. State's Ex. 92.

Defense counsel argued that nothing in the call about the will showed any temporal connection to the killing. R. 56-57. The call only showed Jason manipulating his mother to get canteen money, which was bad character. R. 57-58. Appellant argued this was irrelevant and violated Rule 403. R. 57-58. The judge ruled it was admissible and did not violate Rule 403. R. 60.

Rule 404 prohibits bad character evidence. Rule 404(a), SCRE. The State sought admission of this jail call to show that Jason manipulated his mother and was mean to her. The State's shaky reasoning then would find that if Jason was mean to his mother, then he was mean to his father and must have killed him. As defense counsel correctly argued, there was no temporal connection to the killing. In order to be admissible, bad character evidence must have some logical connection to the crime. State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020); State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). The solicitor argued the call showed that Jason "thought he was getting money and he wanted to confirm it." R. 55. Nothing in the call supports this argument. No logical connection existed and this evidence only served to parade Jason's meanness to his mother before the jury.

Rule 403 prohibits the admission of evidence when its unfair prejudice outweighs its probative value. Rule 403, SCRE. The evidence here had zero probative value. As the solicitor

candidly stated, the unfair prejudice was that Jason was mean to his elderly mother who had lost her husband of over fifty years. No jurors—especially South Carolina jurors—take kindly to sons disrespecting their grieving elderly mother. In this close case with shaky evidence of malice, the improper admission of this bad character evidence requires reversal.

3.

The trial court erred under the Confrontation Clause in admitting the results of a third-party toxicology report through the pathologist.

The solicitor asked the pathologist if he had reviewed Bell's toxicology report. R. 405. When the solicitor began to ask what the report showed, appellant objected. R. 405-06. The court held a bench conference. R. 406. After the bench conference, the solicitor asked a series of questions on whether pathologists rely on toxicology reports. R. 406-07. When the solicitor asked if the report showed any pain medications in Bell's system, appellant objected again and his objection was overruled. R. 407. The pathologist said Bell had "No medications of any sort." R. 407.

The court later allowed appellant to place his objection on the record. R. 425. Appellant stated that the pathologist could not "read in the results of the toxicology in this case." R. 425. Appellant stated that he objected under hearsay and the confrontation clause. R. 425. Defense counsel stated that he could not "cross-examine on methodology or conclusions or anything like that." R. 425. The trial court ruled that experts can rely on reports from other experts and that the report was admissible. R. 426.

Our Supreme Court reversed on this exact issue in State v. Brewer, 438 S.C. 37, 882 S.E.2d 156 (2022) cert. denied 143 S.Ct. 2649 (June 20, 2023). In Brewer, the issue was the overdose of

a child on pain medications in a grandmother's sippy cup. The pathologist read the results of the toxicology report from another lab.

The Brewer Court found the toxicology report was testimonial and violated the confrontation clause. See also Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009). The Court reversed because of the centrality of the toxicology report.

This case is just like Brewer. The toxicology report was read into the record by the pathologist. Whether Bell was in pain was central to the State's case. The State's witnesses, Rose Bell and Janette Mizell said that Bell had not been in any pain. R. 367. R. 309. Jason told the police that his father was in excruciating pain and he wanted to end his suffering. State's Ex. 9. Appellant could not cross-examine the lab that performed the toxicology testing and was stuck with the pathologist's answer. Just like in Brewer, this Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's conviction.

David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 21st day of March, 2025.

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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."

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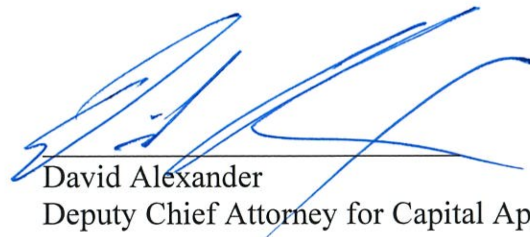
JASON BARRY BELL,

APPELLANT

APPELLATE CASE NO. 2023-001326

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon R. Brandon Larrabee, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 21st day of March, 2025.



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From:	Stock, Chris
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Date:	Friday, March 21, 2025 11:25:00 AM
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Mr. Larrabee,

Please find attached for service the Final Brief of Appellant for Jason Barry Bell's appeal which will be filed today with the Court of Appeals.

Thank you.

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