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Apr 14 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

William H. Seals Jr., Circuit Court Judge

Appellate Case No. 2020-000560
2025-UP-0019

Sincere J. Owens,

Petitioner,

v.

State of South Carolina,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on March 17, 2025.

QUESTION PRESENTED

I. DID THE COURT OF APPEALS ERR IN NOT FINDING TRIAL COUNSEL DEFICIENT FOR FAILING TO OBJECT TO A JURY CHARGE ON VOLUNTARY MANSLAUGHTER AND THAT THE DEFICIENCY SUBSTANTIALLY PREJUDICED THE PETITIONER?

STATEMENT OF THE CASE

The Petitioner was tried on September 13-14, 2010 in Colleton County for murder and possession of a weapon during the commission of a violent crime. The jury specifically acquitted the Petitioner on the charge of murder on a special verdict form. The jury did, however, convict the Petitioner of voluntary manslaughter and possession of a weapon during the commission of a violent crime. Presiding Judge D. Craig Brown sentenced the Petitioner to twenty-seven (27) years on the voluntary manslaughter and five (5) years on the possession of a weapon during a violent crime to be served consecutively.

The Petitioner filed a timely appeal. Office of Appellate Defense perfected the appeal pursuant to Anders v. California, 386 U.S. 738 (1967). Office of Appellate Defense was relieved as counsel and the remittitur was returned to the circuit court on November 21, 2014.

The Petitioner timely filed and served his Application for Post Conviction Relief (PCR) on June 19, 2015. Owens raised the issue of ineffective assistance of counsel for failing to objection to the voluntary manslaughter charge in his PCR Application. The State filed its Return to the

Application on October 26, 2018. Petitioner's PCR hearing occurred on April 1, 2019 before the Honorable William H. Seals, Jr. The PCR was denied in an email sent April 4, 2019, as were all other PCRs heard on April 1-3, 2019. Judge Seals' email instructed the Attorney General to prepare all the orders denying PCR without any further instruction to the A.G's office. (App. at p. 118). An Order dismissing the Petitioner's PCR Application was filed on October 18, 2019.

The Petitioner filed and served a Motion to Alter or Amend the Judgment on October 18, 2019 under Rule 59(e) of the South Carolina Rules of Civil Procedure. The State informally, by email, posted its Return to the Petitioner's Motion to Alter or Amend on January 13, 2020. The Petitioner supplemented his Motion to Alter or Amend on January 10, 2020 to address the issues raised in the State's informal Return to Petitioner's pending Motion. In the Rule 59(e) Supplemental Motion, Owens moved to Amend his PCR Application to conform with the evidence presented at the PCR hearing under Rule 15(b) (SCRCP) to address the concurrent issues raised for both the voluntary and involuntary manslaughter jury charges.

The PCR Court filed a Form 4 Order denying the Petitioner's Motion to Alter or Amend on March 16, 2020. (App. at p. 154-156). The Form 4 Order did not address any of the issues raised in the Petitioner's Rule 59(e) Motion or Supplemental Motion to alter or amend pursuant to Rule 15(b) SCRCP. The Court of Appeals affirmed the judgment of the circuit court Owens v. State, 2025-UP-0019 finally on March 17, 2025. This Petition for a Writ of Certiorari follows.

SUMMARY OF THE FACTS

The State's theory of the murder case was that on April 22nd 2009 Sincere Owens shot and killed Keith Williams. A single bullet struck Williams in the buttocks. Owens fired the shot somewhere in between Annie Glover's residence and the decedent's residence both of which are on

Francis Street in the City of Walterboro, South Carolina. The Petitioner and the decedent, Keith Williams, each had a child with Shante Glover. (App. at p. 13, l. 1-14, l. 6). Shante Glover's grandmother, Annie Glover, provided afternoon childcare for Shante's children, one fathered by Owens and the other by Williams. The grandmother lived only a few houses from Williams's residence.

Earlier in the day Williams was at Shante's workplace (Subway Restaurant), he was upset and talking disrespectfully to Shante. Williams was apparently upset about the fact that she and Owens were back together as a couple. Williams was still upset when he left Shante's workplace. Because of this, Shante thought it would be better for her not go near Williams' residence and asked Owens to pick up her kids from Annie Glover's residence instead of her, to avoid any further confrontation with Williams. (App. at p. 16, l. 14-23). Owens took Shante's SUV and went to Francis Street to get the kids from Annie Glover's house. Shante kept a pistol in the glove-box of the SUV. (App. at p.17, l. 23- p.18, l. 1).

There was only one witness, other than the Petitioner, that saw the events of the shooting unfold, and that was Mark McCune[1], a witness called by the State. According to McCune, Williams just got home from work, checked his mailbox and Williams verbally confronted Owens by saying, "what did you say? What you say?" (App. at p. 6, l. 16- 8, l. 14). McCune saw Owens with a gun. (App. at p. 8, l. 15-16). McCune then testified at the jury trial when being questioned by the State as follows:

Q. "All right. Who had the gun?

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[1] Mr. Mark McCune was incorrectly referred to as "Martin" McCune at the PCR hearing.

A. Sincere.

A. Okay. And he [Owens] wasn't trying to shoot him [Williams] or nothing, you know. He pulls the gun and he was like, "Man, I should - - " and then he stopped. He didn't finish his statement. He was like - - and Keith was like, "Oh, so you got a gun? "You got a gun?" and he started walking off and Sincere fired three times at the ground, you know, trying to scare him. And he ran and he must be got hit in the back."

(App. at p. 8, l. 17-23). McCune further testified:

Q. "All right. So your testimony, now, is that this was an accidental shooting? That he just shot at the ground to try to scare him?

A. Yeah, the first shot was at the ground, and then, you know, he just kind of like aimed, like he was shooting, but he was still shooting at the ground. He was still shooting - - not towards like trying to shoot him, but he was shooting at the ground."

(App. at p. 9, l. 10-17). Still further, McCune testified:

A. "Yeah, that he was shooting at him at the - - you know, he wasn't pointing at him. He was shooting at the ground.

Q. And that's what your testimony is?

A. Yeah." (App. at p. 10, l. 2-5).

ARGUMENT

I. THE COURT OF APPEALS ERR IN NOT FINDING TRIAL COUNSEL DEFICIENT FOR FAILING TO OBJECT TO A JURY CHARGE ON VOLUNTARY MANSLAUGHTER AND THAT THE DEFICIENCY SUBSTANTIALLY PREJUDICED THE PETITIONER.

Based upon the facts of this case, the Court of Appeals has vastly expanded the elements or definitions of "sudden heat and passion" and "sufficient legal provocation," almost beyond recognition. Citing, Leggette v. State, 440 S.C. 590, 892 S.E.2d 153 (Ct.App. 2023), the Court of Appeals used an analogy of those facts to dilute the crime of murder. Under the Court's rational now anytime a defendant (or the State) can show there were "prior troubles" between the decedent and the defendant a charge of voluntary manslaughter will be given to the finders of fact. The temporal element of "sudden heat and passion" has been obliterated. The Court of Appeals has greatly and too far expanded what facts create a voluntary manslaughter charge.

In this case, it should have been a charge on murder or nothing. The decedent was running away from the Petitioner and got shot in buttocks (in the back). To heck with prior difficulties, the Court needs to look at what is happening on the scene and at the time of the fatal shot(s). The facts bear out that when the decedent was approaching the Petitioner and asking "what's up," the Petitioner took the deliberate steps to withdraw to his girlfriend's SUV, retrieve a semi-automatic pistol and fire while the decedent was running away.

Likewise the Court of Appeals has greatly and too far expanded the facts which establish "sufficient legal provocation." This case would hold that saying "what's up," even in a menacing manner in the street is sufficient legal provocation to kill someone you don't particularly care for. "Voluntary manslaughter is not a lesser included offense of self-defense." State v. Starnes, 388 S.C. 590, 598, 698 S.E.2d 604, 609 (2010). In State v. Cooley, 342 S.C. 63,70, 536 S.E.2d 666 (2000), this Court warned the State against improperly moving for an unwarranted charge of voluntary manslaughter in a murder case by stating, "[t]his is a cautionary tale for solicitors as to the pitfalls of requesting a potential 'compromise' charge which is unsupported by the evidence." Mr. Owens'

case should likewise be "a cautionary tale," which applies to trial counsel for not objecting to a 'compromise' charge of voluntary manslaughter when such a charge is unwarranted.

In the typical murder indictment, the State affirmatively obtains a true bill alleging "malice aforethought," describing the acts of the indicted. No facts are presented which would lead to a "count two-voluntary manslaughter." Manslaughter is a creature of statutory law. See, Section 16-3-50 S.C. Code of Laws. The defendant in a murder case can now be side-swiped at will from crafty solicitors to obtain a compromised verdict.

CONCLUSION

WHEREFORE, the Petitioner prays thast this Honorable Court will GRANT the Petition for a Writ of Certiorari.

Respectfully Submitted,

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