STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Sr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES BRIDGES BYRD,

APPELLANT

APPELLATE CASE NO. 2024-001482

ANDERS 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 judge abused his discretion by refusing to direct a verdict of acquittal where there was no direct or substantial circumstantial evidence that appellant killed the decedent, his friend and roommate, with malice aforethought while both men were experimenting with LSD and the decedent became aggressive and was "manhandling" appellant when appellant shot him?

STATEMENT OF THE CASE

Appellant was indicted at the September 17, 2021 term of the Spartanburg County grand jury for the offenses of murder and possession of a weapon during the commission of a violent crime. R. p. *. His case was called to trial on August 26, 2024, before the Honorable J. Derham Cole, Sr., and a jury. Robert Hall, Abigail Gowdy, and Eve Waszak represented appellant. James Edward Hunter was the assistant solicitor. Tr. 1.

On August 28, 2024, the jury found appellant guilty on both counts. Tr. 280, ll. 3-9. Judge Cole sentenced appellant to life imprisonment for murder and did not impose a sentence on the weapons conviction pursuant to statute. Tr. 288, ll. 48.

This appeal follows.

STANDARD OF REVIEW

"A case should be submitted to the jury when the evidence is circumstantial 'if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.'" State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). "Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt." Id. "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." Id. at 139, 708 S.E.2d at 776-777. "On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state." Id. at 139, 708 S.E.2d at 777; see also State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court's denial of the directed verdict motion. Hepburn, 406 S.C. at 429, 753 S.E.2d at 409.

ARGUMENT

The judge abused his discretion by refusing to direct a verdict of acquittal where there was no direct or substantial circumstantial evidence that appellant killed the decedent, his friend and roommate, with malice aforethought while both men were experimenting with LSD and the decedent became aggressive and was "manhandling" appellant when appellant shot him.

Relevant facts

Twenty-six-year-old Courtney Pearson was living on Swain Avenue in Boiling Springs in June of 2021. Tr. 46, l. 4 – 47, l. 20. On the night of the fatal incident, Pearson was living with her fiancé Clint, her fiancé's father Randy Martin, and appellant. The decedent, Kush Patel, was Courtney's "best friend" and Patel was also appellant's good friend. They were drinking and partying on the night of the incident. Her fiancé had a shot "or two" of liquor that night, and they went to bed at "nine or nine-thirty." Tr. 47, l. 17 – 48, l. 6.

The decedent, Kush Patel, came over that weekend night to play video games, barbecue, and drink with them. Tr. 48, l. 10 – 49, l. 14. Before she went to bed, Courtney remembered that the decedent was in appellant's room playing video games. Courtney said she awoke late that evening hearing laughter and "maybe a bump and a bang here and there, but that's it." Tr. 49, ll. 22-25.

Courtney never heard any shouting or anything that sounded "like a fight," just laughter -- "boys being boys." However, she did hear a "loud popping," and "I didn't know if it was somebody breaking in. I didn't know if it was a firecracker. I just knew it was loud, and I was worried about Randy [Martin]." Tr. 50, ll. 2 – 18. She yelled for her fiancé to get his gun and to be sure no one was breaking into the house. In the meantime, Courtney called 9-1-1. Tr. 50, l. 12 – 51, l. 13.

On cross-examination, Courtney said she thought she heard more than six gunshots that night. Tr. 52, l. 3 – 53, l. 11.

Spartanburg County sheriff's deputy Joshua Chrobak was dispatched to the scene of the shooting that night on Swain Avenue. Chrobak went to high school with all of the young people in the house that night at Boiling Springs High School. Tr. 54, l. 4 – 55, l. 16.

Chrobak remembered he arrived a little before four a.m. that morning, and he saw "Kush Patel laying on the couch. I observed him to be breathing at that time. And blood on the floor." Tr. 56, ll. 7-11. He remembered those present as being "Courtney, Kush, Mr. Byrd, Mr. Martin, and Clint." Tr. 56, ll. 14-17. He stated that Randy Martin told him "what happened," and he arrested appellant at that time. Tr. 56, ll. 18-22.

While at the police station, appellant began talking to Chrobak so he activated his body-worn camera. Appellant said that the decedent was out of his mind that night and he shot him. He did not know "the cause" apparently of "the behavior." See State's Exhibit No. 17, on file with this Court. Tr. 58, l. 1 – 59, l. 24.

Investigator Parham of the Florence County Sheriff's Department remembered seeing a Taurus 9mm weapon on the table inside the house on Swain Avenue. Tr. 64, l. 7 – 65, l. 16. Investigator Parham described the house as "dirty" -- beer cans and liquor bottles were observed in the open as well as a marijuana bowl. Tr. 72, l. 5 – 73, l. 12. A closed pocketknife was found in the shorts that the decedent, Patel, was wearing that night. Tr. 76, ll. 5-20.

Randy Martin testified he had lived at the Swain Avenue address since 1966. It was the Martin family home. Tr. 86, ll. 1-16.

Martin testified that appellant had lived with him about a year at the time of this incident. Martin said on a typical Saturday, "the boys" would come over to his house and "they would

drink a little. They would smoke some pot. And to me, James [appellant] or Kush [the decedent], neither one could handle their alcohol a lot. A typical Saturday night about ten-thirty, they would be asleep." Tr. 86, l. 17 – 88, l. 4. Martin said his son, Clint, and his girlfriend, fiancé Courtney went to bed every night by about nine o'clock since Clint "wasn't drinking any alcohol" at that time. Tr. 88, ll. 5-10.

Martin remembered at about eight or nine o'clock that fatal night, he was watching television. He did not drink. Tr. 89, ll. 12-23. Martin had been sick, and he had a prescription for Xanax at the house. Tr. 90, ll. 1-19.

Martin recalled that appellant and Kush came back out of appellant's bedroom where they were playing video games at about ten-thirty that night. Tr. 90, l. 20 – 91, l. 10. Appellant and Kush left the house and came back about twenty minutes later. Tr. 92, l. 20 – 93, l. 19.

Martin fell asleep in front of the television, and he remembered he was awoken at about three a.m. by appellant. Appellant "told me that they had went and got some acid and that he didn't want to be feeling the effects of it anymore." Appellant also told Martin: "Kush is being aggressive to me." "I said, I have some Xanax. You might can take it. Go in there and lay down and try and get some sleep." Martin remembered that appellant took the Xanax as advised. Tr. 94, l. 17 – 95, l. 19.

At little after three a.m., appellant "came through the hall door into the living room" and that Kush was following him. Tr. 96, l. 15 – 97, l. 21. Martin testified that Kush was following appellant around the living room in a menacing fashion and that Kush declared: "All my buddies are pussies." Tr. 98, l. 8 – 100, l. 3.

As Martin watched the two men walk around the living room, suddenly: "I didn't see nothing but flashes, and just flash after flash after flash. I didn't think it was ever going to stop."

Tr. 100, l. 4 – 101, l. 24. Martin said the incident was "terrifying" and that his dog, who was sitting on the couch, was shot and killed. Tr. 102, ll. 1-19.

Martin grabbed the gun from appellant with his right hand, and "I slapped him harder than I ever slapped anybody in my life, and I said, 'what the f- have you done?' I said, 'get in that room and sit in that recliner.' And I took the gun to the kitchen table." Tr. 103, ll. 16-20. "Clint and Courtney was (sic) coming down the hall at that time. I said, 'call 9-1-1, Kush has been shot.' Clint was carrying a Mossberg pump shotgun" at the time. Tr. 103, ll. 21-25.

On cross-examination, Martin said he knew appellant and Kush were "on some kind of hallucinogenic drugs. I didn't know what it was they had took (sic). He [appellant] just said it was acid. And I felt like I needed to do something. If I'd saw (sic) the gun, I'd have went for the gun, but I didn't see it." Tr. 109, l. 23 – 110, l. 18.

The pathologist, Dr. Michael Ward, testified that he conducted an autopsy on the decedent on December 7, 2021. Dr. Ward said that the decedent, Kush, was five-foot-nine, and he weighed one hundred and ninety-seven pounds. Tr. 118, l. 16 – 119, l. 15. Dr. Ward offered that there were eleven separate wounds, and several projectiles were still inside the decedent's body. There were a total of twenty entrance and exit wounds. Tr. 119, ll. 16-23. Tr. 119, l. 23 – 120, l. 21.

There was stippling on the decedent's body, which indicated some shots were from as close as two-or-three feet away. A gunshot wound to the decedent's chest was fatal. Tr. 125, l. 10 -126, l. 21.

Spartanburg county investigator John Guest was telephoned about the shooting in this case at about 3:50 a.m. Tr. 142, l. 1 – 143, l. 9. A little later, Guest read appellant his Miranda

rights and started interviewing him at about 4:46 a.m. at the police station. Tr. 146, l. 5 – 147, l. 16.

Appellant admitted he recently under the influence of drugs and he told Guest he "[w]as very, very, very fucked up on acid." Tr. 148, l. 24 – 149, l. 5. "He [appellant] told me that he and Kush went to buy the LSD acid from Brandon Medlock that they were friends with and that they split the acid on the drive back to Swain Avenue. They bought 2.5 grams and split the amount of acid." Tr. 150, ll. 8-13.

Guest elaborated: "[H]e told me that Kush has been a friend of his since high school. They took the acid that night, and that Kush was having a bad trip on the acid and was talking crazy. Said he was concerned just because of the way Kush was talking, kind of out of his head a little bit, that he went and got a gun out of the dresser in his bedroom. I believe, put it in his waistband, put it in his pants..." Tr. 151, ll. 1-21.

Appellant admitted during the interview that he "fucked up and that he did shoot him. They asked him if he had a weapon, and he said 'no.' He said he messed up." Tr. 152, ll. 13-17. Guest testified appellant told him he tried to get Kush to take Xanax to calm down, but Kush refused to take it. Tr. 152, l. 13 – 153, l. 3. Appellant did not know whether Kush had a gun or a knife at the time of the fatal encounter. Tr. 153, ll. 4-9.

Investigator Guest on direct examination offered that appellant told him, "[h]e got scared and that was his fault." Tr. 155, ll. 3-6. Guest said appellant explained, "when Kush was talking strange, he said he went and got the gun from the dresser. And he went to Mr. Martin to ask for a Xanax, and it went from there." Tr. 156, ll. 20-25.

The defense case

Appellant took the stand in his own defense. He was working for Crown Healthcare Laundry Service at the time of trial. Tr. 170, l. 17 – 171, l. 3. Appellant testified that Kush had been a good friend. They went fishing together, cooked out on the grill, and played video games together. Tr. 172, l. 2 – 173, l. 15. Appellant and the decedent also went to target practice together. Tr. 174, ll. 13-22. Appellant acknowledged on some nights he would drink and smoke marijuana with the decedent. Tr. 175, ll. 10 – 17.

The night before the fatal incident, the decedent said he would bring over some mushrooms and they would mix the psychedelic mushrooms into a chocolate bar. Tr. 175, l. 25 – 176, l. 12. The following day, the decedent could not find any mushrooms, but he told appellant could get some LSD instead. They went to purchase the LSD at about eleven o'clock that night. Tr. 176, l. 21 – 177, l. 17. Appellant stayed in the car while the decedent purchased the LSD. It was a ten-minute drive back to appellant's house on Swain Avenue. Tr. 177, l. 2 – 178, l. 3.

This was the first time appellant had experimented with LSD. Appellant said, "the color is more vibrant. You're more in a -- in a happier emotional state. Things feel different. Just really hard, kind of hard, to explain." Tr. 178, l. 21 – 179, l. 6. Appellant said the decedent seemed to be having the same experience as he was on the LSD. Tr. 179, ll. 4-5.

They then watched videos on YouTube in his bedroom, and they both were in a good mood until the decedent became aggressive. The decedent pinned appellant against a wall. "At first, I thought he was playing, and after a while it got to the point where it didn't feel like he was playing anymore." Appellant testified the decedent was stronger than him, and this aggressive

behavior occurred at about two-or-two-thirty in the morning. Appellant told the decedent to "leave me alone" at that point. Tr. 180, l. 16 – 183, l. 7.

Shortly thereafter, at about three o'clock that morning, appellant woke up Mr. Martin to ask him for a Xanax because he had been told earlier by the decedent that Xanax "can reverse the effects of acid." Tr. 183, ll. 8-25. Appellant took half of the Xanax or Valium and tried to give the decedent the other half, but the decedent refused to take it. Tr. 184, ll. 5-8.

Appellant recalled trying to put his keys in his dresser, which also was where his firearm was kept, but the decedent suddenly came towards him. Appellant quickly closed the dresser drawer. However, the decedent opened the dresser drawer and he "acted as if he was grabbing the firearm. I closed it back and asked what he was doing. He didn't answer. He proceeded to try to open the drawer again. That's when I grabbed it [the gun] before he could. He grabbed my arm, so I grabbed his. He grabbed my other arm." Tr. 185, l. 7 – 186, l. 9.

As they continued to struggle, appellant was able to grab the gun and "retreat to the living room with Randy [Martin]." Tr. 186, ll. 2-15. Appellant was afraid the decedent would get the gun away from him so he tried avoiding him by moving around the small living room. Tr. 187, ll. 18-21. While they were in the living room, the decedent told them "that he was surrounded by a bunch of pussies." Tr. 188, ll. 4-8.

Appellant continued to retreat, going backwards in the living room. The decedent continued to come towards appellant, and "I backed into something that put me to a stop. That's when I panicked and fired." The decedent was coming at appellant at this time. Tr. 188, l. 9 – 189, l. 25. Appellant was very afraid the decedent was "going to overpower me and take the firearm from me and possibly use it against me." Tr. 190, ll. 1-4.

Appellant acknowledged he did not tell all these details to the police immediately after the shooting, and he did say he accepted responsibility because he was the one who "fired the gun." Tr. 191, ll. 15-25.

Appellant testified he still thought if he had not stopped the decedent, that the decedent would have taken his gun and shot him. Tr. 192, ll. 1-5. Appellant stated that his back was up against the wall, and he did what he had to do at the time. Tr. 193, ll. 1-2.

On cross-examination, appellant said the decedent had backed him into a corner, "I had nowhere else to go" and he fired his gun. Tr. 206, ll. 1-9. Appellant confirmed that the decedent "manhandled" him before he was able to shoot. Tr. 208, ll. 4-6.

Clinton Martin testified he awoke to the sound of about a dozen gunshots, and he "grabbed my shotgun and walked to the hallway. When I got into the living room, James [appellant] was pacing the room saying Kush was trying to –" The solicitor objected to hearsay at this point, and the judge overruled the objection. "I walked into the living room; James was pacing the room saying Kush was trying to attack him." Tr. 210, l. 12 – 211, l. 2.

Courtney Pearson testified that appellant said that night that "Kush was trying to hurt and/or kill him, but that's all I really recall." Tr. 214, l. 22 – 215, l. 4.

Directed verdict motion

At the close of the state's evidence, defense counsel moved for a directed verdict. Tr. 168, l. 14 – 169, l. 15. The judge denied the directed verdict motion. Tr. 169, ll. 16-18. Defense counsel renewed his motion for a directed verdict after the defense case, and the judge denied the motion again. Tr. 217, ll. 13-20.

Discussion

There was no direct or substantial circumstantial evidence that appellant shot Kush, his friend, with malice aforethought. They were both using LSD, which obviously does not excuse any conduct, but the evidence showed the decedent was attacking appellant when appellant shot him.

Further, there was no evidence appellant acted with *evil intent*. Malice aforethought which has been defined as acting in a state of "hatred, ill will, or hostility towards another person . . . with an intent to inflict an injury or under circumstances that the law will infer an evil intent . . . there must be a combination of the previous evil intent and the act." State v. Burdette, 427 S.C 490, 498 832 S.E.2d 575, 580 (2019).

This case is distinguishable from In re Walter M., 386 S.C. 387, 688 S.E.2d 133 (Ct.App. 2009) where this Court held the trial court did not abuse its discretion in denying a motion for a directed verdict where the defendant shot and killed his friend. The evidence in that case showed that the defendant retrieved a deadly weapon from his brother's closet, walked to another room, opened a window, and pointed the gun at his friend who was outside. This Court reasoned: "Because the family court *could infer malice from a defendant's use of a deadly weapon* or from the evidence that the discharge of the weapon was likely not accidental, this evidence was sufficient to overcome Appellant's motion for a directed verdict." In re Walter M., 386 S.C. 387, 391, 688 S.E.2d 133, 134 (Ct.App. 2009). (emphasis added).

Appellant submits that State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), although a jury charge case, while not permitting the trial judge to instruct the jury that it may infer malice from the use of deadly weapon, also mandates that trial judge may not rely on this inference of

malice from the directed verdict stage, and that In re Walter M., 386 S.C. 387, 688 S.E.2d 133 n. 2 (Ct.App. 2009) should therefore be modified or overruled.

When removing the inference of malice in this case from the use of deadly weapon, the trial judge was left with evidence the decedent was aggressive and attacking appellant when appellant shot him. This was a case of self-defense or voluntary manslaughter, but there was no direct evidence or substantial circumstantial evidence of murder -- malice aforethought – and the directed verdict motion should have been granted.

Further, appellant also had the right to act on appearances pursuant to State v. Fuller, 297 S.C. 440, 443-44, 377 S.E.2d 328, 331 (1989), and the evidence in this case was similar to State v. Hendrix, 270 S.C. 653, 659-60, 244 S.E.2d 503, 506-07 (1978), since appellant had no duty to retreat because appellant was living in the house where he was attacked by the decedent. Further, appellant here told the decedent to leave him alone and armed himself because of the decedent's aggressive erratic behavior. Yet, the decedent continued to act in threatening fashion towards appellant, and appellant objectively feared being injured or killed by the physically stronger decedent. Finally, appellant continuing to fire his weapon, as in Hendrix, and this did not disqualify appellant from claiming self-defense as a matter of law at the directed verdict stage. See, also, State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011).

The judge should have directed a verdict since there was no direct or substantial circumstantial evidence of the element of malice aforethought necessary for the murder charge. See State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000); State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011); State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011); State v. Schrock, 288 S.C. 129, 322 S.E.2d 450 (1984); and State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2011).

This Court should respectfully issue a directed verdict of acquittal since the trial judge abused his discretion by denying that motion.

CONCLUSION

By reason of the foregoing arguments, this Court should issue a verdict of acquittal.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of June, 2025.

RECEIVED
Jun 26 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable , Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES BRIDGES BYRD,

APPELLANT

APPELLATE CASE NO. 2024-001482

PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Bridges Byrd states:

1. He is Chief 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 , which was held on August 26-17, 2024, 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 James Bridges Byrd.

Respectfully Submitted,

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of June, 2025.

RECEIVED
Jun 26 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable , Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES BRIDGES BYRD,

APPELLANT

APPELLATE CASE NO. 2024-001482

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) True-billed indictment:
(2) Entire trial transcript
(3) State's Exhibit 17 (Body-worn Camera (#3) Josh Chrobak)
(4) State's Exhibit 18 (Suspect Interview).

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

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

This 26th day of June, 2025.

RECEIVED
Jun 26 2025
SC Court of Appeals

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."

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

This 26th day of June, 2025.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Sr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

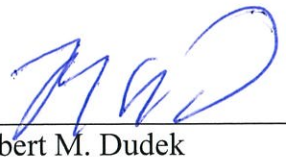
JAMES BRIDGES BYRD,

APPELLANT

APPELLATE CASE NO. 2024-001482

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 James Bridges Byrd, #395043, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 26th day of June, 2025.



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