RECEIVED
Nov 06 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Lexington County
The Honorable Walton J. McLeod, IV, Trial Judge

THE STATE,

Respondent,

v.

LAVON BERNARD JULIUS,

Appellant.

Appellate Case No. 2023-001994

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

KAYLEE C. KEMP
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6307

S. R. HUBBARD, III
Eleventh Circuit Solicitor's Office
205 E. Main Street, Suite 309
Lexington, South Carolina 29601

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to charge voluntary manslaughter where there was evidence elicited by the state that the decedent pulled a gun on appellant and grabbed him by his shirt, where the judge instructed the jury on self-defense, since appellant was also entitled to a charge on voluntary manslaughter given this evidence of decedent's use of a deadly weapon and him initiating physical contact with appellant?

RESPONDENT'S COUNTER-STATEMENT OF ISSUE ON APPEAL

Whether the trial court properly refused to instruct the jury on voluntary manslaughter when Appellant's wife testified that he killed the Victim in self-defense because the Victim pointed a gun at Appellant and grabbed his shirt but presented no further evidence that Appellant killed the Victim on an "uncontrollable impulse" to do violence upon sufficient legal provocation?

STATEMENT OF THE CASE

At the June 2022 term, the Lexington County Grand Jury indicted Lavon Bernard Julius (Appellant) for the offense of murder. (R. p. 320). Appellant thereafter proceeded to jury trial on December 11–13, 2023, before the Honorable Walton J. McLeod, IV. David Mauldin, Esq. and J. Eric Bassett, Esq. represented Appellant. Assistant Solicitors Robert McNair and Sutania Fuller represented the State. (R. p. 1). At the conclusion of trial, the jury found Appellant guilty of murder and the trial court sentenced Appellant to life imprisonment. (R. pp. 317-318).

This appeal now follows.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Wharton*, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009). "The evidence presented at trial determines the law to be charged to the jury." *State v. Gilliland*, 402 S.C. 389, 400, 741 S.E.2d 521, 527 (Ct. App. 2012). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *Cook v. State*, 415 S.C. 551, 556, 784 S.E.2d 665, 667 (2015). "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*.

"In reviewing jury charges for error, [the appellate court] must consider the [trial] court's jury charge as a whole in light of the evidence and issues presented at trial." *Barber v. State*, 393 S.C. 232, 236, 712 S.E.2d 436, 438 (2011) (quoting *State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010)). "In determining whether the evidence requires a charge on a lesser-included offense, [the appellate court] view[s] the facts in the light most favorable to the defendant." *State v. Williams*, 427 S.C. 148, 156, 829 S.E.2d 702, 706 (2019). "To warrant reversal, a trial [court's] charge must be both erroneous and prejudicial." *State v. Otts*, 424 S.C. 150, 155, 817 S.E.2d 540, 543 (Ct. App. 2018) (quoting *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003)).

STATEMENT OF FACTS

Around approximately 10:40 PM on the night of January 29, 2022, residents of the Town & Country apartment complex in Lexington, heard four gunshots in quick succession outside of their apartments. At trial, one resident testified that just seconds after the shots were fired, he looked out his window and observed Appellant walking around the corner of the building from where the shots were fired, looking "calm" and "nonchalant."[1](R. pp. 22-25, 34). When law enforcement arrived a few minutes later, they found the Victim—15-year-old Zeloni E.—lying on the ground in a grassy area next to an apartment building. He had suffered several gunshot wounds, and a fatal gunshot wound through his chest. (R. pp. 61, 79, 111).

Upon arrival, Officer Truel , one of the responding officers, had an initial interaction with Appellant, in which he observed Appellant next to the Victim "maybe trying to do CPR or something on him[;]" but when asked where the Victim was shot at, Appellant said, "I don't know" and then walked away from the scene. (R. pp. 203–204, 220-222, State's Ex. 55 (Truel Bodycam)). Truel checked Victim's neck for a pulse and he concluded that he was deceased by that point. Law enforcement then started securing the scene. (R. p. 204, ll. 7–21).

About 20 minutes later, after law enforcement began processing the crime scene, Officer Truel encountered Appellant a second time in the parking lot next to the crime scene and asked him if he had seen anything, not knowing at the time that Appellant was involved. Appellant gave Officer Truel conflicting statements. Appellant initially indicated that he was inside when the shots occurred; then said he was outside in the parking lot when the shots were fired; then claimed he did not know the Victim and then corrected himself and said that he did. Appellant stated that after he heard the shots, he tried giving the Victim aid, but "got scared and ran away." (R. pp. 206–208).

[1] The other neighbor who testified also described Appellant's demeanor as "normal" after hearing the gunshots and seeing Appellant walking outside. (*See R. p. 34*).

Appellant's wife, Constance, was in the parking lot at the same time, and indicated to another officer that Appellant was the shooter. Appellant was subsequently detained and *Mirandized*.[2]At that time, Appellant denied involvement in the shooting and denied that he had a gun, and instead repeatedly told officers "just take me to jail." (R. pp. 208-210, 252-258).

Despite reports of multiple gunshots, law enforcement only recovered one 9mm shell casing about "10 or 15 steps" from where the Victim was found in front of his apartment. (R. pp. 85–86, 91). No guns or weapons were recovered from the Victim or near the Victim's body. The following morning, law enforcement recovered a gun that was discarded behind the apartment buildings that was missing four shots from its magazine. (R. pp. 88–89).

The medical examiner, Dr. Ellen Reimer, testified that Victim sustained four distinct gunshot wounds with an additional graze wound to the chin. Two of the wounds—one to the left side of the abdomen and one to the right thigh—were straight front to back injuries while the major fatal wound through the upper chest was "front to back and downward." Dr. Reimer stated that such an injury, combined with the graze wound to the chin, could be consistent with the Victim bending over after being shot in the abdomen. Dr. Reimer also noted that it was quite possible for the Victim to have taken 10 to 15 steps after being shot before collapsing to the ground. (R. pp. 109-111, 113-120).

Constance, Appellant's wife, testified that Appellant was out the night of the shooting with their daughter at a "kid's birthday party" that was actually an "adult part[y]" with drinking.[3]Constance stated that Appellant got home around 10:30 PM and noted that she saw a

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[3] McCrea, who was at the party, indicated that he and Appellant both drank alcohol for a substantial period of time, enough so that McCrea needed a ride home. Despite the alcohol consumption, Appellant drove himself and his daughter home. (R. pp. 165-173).

notification on her phone from a camera facing the parking lot. Appellant then let their daughter into the house but remained "outside talking to a man"—in fact "having a conversation with Zeloni." (R. pp. 40-42). Constance stated that they were having a normal conversation and were not arguing or acting aggressive. However, within seconds of closing and locking the door,[4] Constance stated she heard gunshots. Shortly thereafter, Appellant came back inside with a gun in his pocket and hid it under a cushion under one of their chairs. When she asked Appellant what had happened, Appellant initially told Constance that Victim had "pulled a gun out on him and grabbed his shirt" but also claimed he "didn't know what happened" and "wasn't involved." Despite his claim that he was assaulted and nearly shot by the Victim, Constance stated that Appellant appeared calm. (R. pp. 44-46; *see also* State's Ex. 57 (Apartment Video)). Constance testified that Appellant went back outside to try and help the Victim but went back in the house when law enforcement showed up. (R. pp. 47-48). Constance recalled her conversation with Appellant while they were in the apartment again together for the second time:

> A. . . . I was just trying to figure out what happened and if something had happened, that he needed to go outside and let the police know what was going on.
>
> Q. Did he want to do that?
>
> A. Not really.
>
> Q. What did he want to do?
>
> A. He wanted to take a nap at the time.
>
> Q. Now, did you also have him [sic] more questions about what, if anything, this kid had done that may have provoked this?

[4] Constance repeatedly emphasized on direct, cross, re-direct, and re-cross that she was downstairs—not upstairs—when the shooting took place. (*See R*. pp. 44, 65, 73-74). Video footage taken from an interior camera shows Appellant's daughter walking upstairs when the four shots rang out and a second clip shows Appellant walking upstairs with his phone in his hand. (*See* State's Ex. 57).

A. *The only thing he said was that he asked for a cigarette. That was it.*

Q. His explanation was the kid asked for a cigarette?

A. *Yes sir.*

Q. Did he say the kid had done anything to him?

A. *No.*

(R. 48) (emphasis added).

The last time Appellant left the apartment, Constance stated that she followed him and witnessed him "tossing his gun behind the building."[5] She noted that it was unusual for Appellant to have the gun on him because he would usually keep it "in the middle console of the car." She also noted that Appellant would use the phrase "Is you good?" when there was an issue with something or someone. (R. pp. 51, 70).

Travis W., a friend of the Victim, was talking with the Victim on the phone when he was shot and killed. He testified that while they were on the phone,[6] he heard the Victim ask someone for a cigarette to which a man replied, "Is you good?" He then heard a gunshot and the sound of the Victim struggling to breathe. A few moments later, he heard the Victim's mother screaming her son's name. (R. pp. 157-161).

The Victim's mother, Juanita Ellison, testified that the Victim was outside of her apartment[7] talking on the phone while she was inside "right beside the wall" where the Victim

[5] One of the other neighbors observed Appellant walking down the sidewalk to the back of the building where the gun was eventually found. (R. 33-34). And footage from Truel's dashcam also shows Appellant walking back to the described location. (*See R*. pp. 222-224; State's Ex. 56 (Video Composite)).

[6] Testimony also revealed that Appellant was likely also on a phone call at the time of the shooting with his friend McCrea, but McCrea did not recall hearing anything regarding the shooting. (R. pp. 168-170, 184-187).

[7] Victim was living with his family in apartment 4-A, at the end of the building closest to the road, while Appellant lived in 4-E with his wife and daughter. (R. pp. 38, 84, 218).

ended up. After hearing gunshots and waiting briefly, she went to the door and saw Appellant outside appearing "nonchalant." Ms. Ellison asked Appellant "were those gunshots?" to which Appellant stated "I don't know. Buddy is around there, laying on the ground." (R. pp. 190-192, 195). Ms. Ellison testified that Appellant followed her to the Victim's body and rolled him over from a face-down position.[8] When asked about the aid Appellant attempted to give to Victim, Ms. Ellison stated: "I don't think he was trying to do CPR. It was more like he was palpating, like, just checking his chest." Ms. Ellison testified that she did not hear any arguing or conversation outside prior to the gunshots. (R. pp. 194-195).

Following the close of the State's case, Appellant elected not to testify. (R. pp. 266-267). Appellant then requested a jury charge on self-defense and voluntary manslaughter based on Appellant's initial statement to Constance that the Victim had a gun and tried to grab him. The State responded to the request for both charges generally by noting the lack of evidence corroborating Appellant's account:

> And, in this case, we have one of many statements that he made to his wife that the victim pulled a gun on him. The other statements he made was he did it, he didn't do it. Other than that, there is no evidence whatsoever in this record that this victim did anything to him. There's no evidence of self-defense. No evidence of a fight or words or threats or anything of that nature. It's just this one statement, taken in isolation, that he made to his wife among many other statements. Whether that's enough to get a charge, . . . I don't think it is.

(R. pp. 268–269). When the trial court requested further argument on whether to give a voluntary manslaughter charge, specifically, defense counsel stated:

> We request that as well based on some of the same evidentiary concerns that being grabbed and perhaps seeing a gun is in evidence, and lack of malice, other than the intoxication, which is what the State is saying. Again, having the split second. The grab is an assault

[8] Investigator Miramontes corroborated the fact that Victim was face-down after he was shot since he had "[g]rass clippings still stuck to his lips and face." (R. p. 80).

> and battery. It's not just mere words. The statement "Is you good?" indicates that the other fellow might have had a problem and the defendant is trying to assess the situation.

(R. p. 271). The State responded by emphasizing that the evidence the defense relied on does not support legal provocation or heat of passion:

> I mean, there's got to be a legal provocation. There's case law that says it's got to be – you're basing it on fear, it has to be such that would just overcome your will. Right? . . . The case law that I have seen where it could be self-defense or it could be voluntary manslaughter, it's the fear just overcomes – it's like the heat of passion but it's just based on fear, and . . . we don't have that in this case.

(R. p. 271). The trial court agreed with the State's position regarding voluntary manslaughter and declined to charge it but gave a tailored self-defense charge after further debate and discussion. (R. pp. 272-280). Subsequently, the jury convicted Appellant of murder. (R. p. 317).

ARGUMENT

The trial court properly refused to instruct the jury on voluntary manslaughter when Appellant's wife testified that he killed the Victim in self-defense because the Victim pointed a gun at Appellant and grabbed his shirt, but presented no further evidence that Appellant killed the Victim on an "uncontrollable impulse" to do violence upon sufficient legal provocation.

The trial court properly declined to charge the jury on voluntary manslaughter where the evidence did not support the required elements for the charge. Appellant appears to conflate the evidence and elements required for a self-defense charge with the elements required for a voluntary manslaughter charge and disregards the crucial components a voluntary manslaughter charge requires. Appellant argues that a voluntary manslaughter charge was warranted because of the statement he made to his wife that the Victim grabbed his shirt and pulled a gun on him. However, Appellant overlooks that there is no other evidence to support that the Victim had a gun at the time he was killed, nor that there was any history of altercations between Appellant and the Victim prior to the shooting, nor any ensuing argument between the two at the time the Victim was killed. The evidence simply shows that the Victim asked Appellant for a cigarette, Appellant asked him "Is you good?" and then Appellant shot the Victim four times without hesitation or further explanation.

For a defendant to be entitled to a voluntary manslaughter charge, "there must be evidence of *both* sufficient legal provocation and heat of passion at the time of the killing." *State v. Smith*, 391 S.C. 408, 413, 706 S.E.2d 12, 15 (2011) (emphasis added). "A defendant is not entitled to a voluntary manslaughter charge merely because he was in a heat of passion." *State v. Starnes*, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010) (citing *State v. Wharton*, 381 S.C. 209, 215, 672 S.E.2d 786, 788 (2009)). "Conversely, a defendant is not entitled to voluntary manslaughter merely because he was legally provoked." *Starnes*, 388 S.C.at 597, 698 S.E.2d at 608; *See State v. Pittman*,

373 S.C. 527, 576, 647 S.E.2d 144, 170 (2007) ("holding although sufficient legal provocation arguably existed, there was no evidence the defendant was in a heat of passion."). Our state Supreme Court in *Wharton* explains that:

> The sudden heat of passion, upon sufficient legal provocation, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally 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.

Wharton, 381 S.C. at 214, 672 S.E.2d at 788.

Appellant relies on testimony from his wife which indicated Appellant came into their house and closed the door within seconds of her hearing the gunshots. (R. p. 44). Constance testified that she asked Appellant if he was involved in the shooting and he initially told her that "the young man pulled a gun out on him and grabbed his shirt." (R. p. 45). However, Appellant never told investigators or otherwise presented any evidence that the Victim had a gun or a weapon at the time of the killing. There was no gun or weapon belonging to the Victim recovered on his body or in the immediate area surrounding him. (R. p. 272). There is no evidence to support that Appellant was afraid of the Victim, that they were involved in previous altercations which would cause Appellant to be fearful of the Victim, or that there was an ensuing altercation at the time the Victim was killed. In fact, the evidence shows the absence of any altercation at all. The only viable explanation presented is that Appellant was simply annoyed that the Victim routinely asked him for cigarettes when he happened to see him. (R. p. 39).

When Constance continued to question Appellant, she testified that, "[t]he only thing [Appellant] said was that [the Victim] asked for a cigarette. That was it." (R. p. 48). Travis W., who was on the phone with the Victim at the time he was shot, testified that the last thing he heard the Victim say was: "Can I get a cigarette?" He then heard a male voice ask: "Is you good?"

followed by a gunshot and the Victim trying to breathe. (R. p. 158-159). Travis W. testified that he did not hear any arguing between "Is you good?" and the gunshot. (R. p. 163). The circumstance on which Appellant has based his defense is that the Victim was a six foot three, two-hundred-and-thirty-pound male, who pulled a gun on Appellant and grabbed his shirt. (*See* Initial Brief of Appellant at 12-13). Even viewing the evidence in Appellant's favor, it accounts for a theory of self-defense - a defense that justifies the killing - rather than mitigate a murder charge.[9]

Even if this Court finds there to be legal provocation on the basis that there was testimony asserting that the Victim presented a gun and grabbed Appellant's shirt, which Respondent submits there was not sufficient evidence to support, there was no evidence presented that Appellant was overcome by a sudden heat of passion as would produce an "uncontrollable impulse to do violence." *See State v. Cole*, 338 S.C. 97, 102, 525 S.E.2d 511, 513 (2000).

Cook v. State, 415 S.C. 551, 784 S.E.2d 665 (2015) is instructive under these circumstances. The *Cook* Court compares its facts with those of *State v. Niles*, 412 S.C. 515, 772 S.E.2d 877 (2015), finding that the facts do not suggest the defendant was acting in the sudden heat of passion:

> In *State v. Niles*, Niles shot at the victim twice after the victim pulled out his gun and shot at Niles, knocking out the rear windows of Niles' vehicle. 412 S.C. at 520, 772 S.E.2d at 879. Niles stated, "I shot twice. I went pow, pow." *Id*. Niles, like Cook, shot at the victim twice; yet, we determined that fact was not enough to establish Niles was acting under an uncontrollable impulse to do violence. We find the same here. Finally, we do not believe Cook's statement "before I knew it, I fired a shot" warrants a charge of voluntary manslaughter. The State argues this statement could be interpreted to mean Cook lacked self-control when he shot victim, and thus acted under an uncontrollable impulse to do violence. We disagree. Due to the short, swift motion of firing a gun, we believe this statement could be heard in any case in which the defendant is charged with firing a weapon, even out of self-defense. Thus, we do

[9] Respondent does not concede that the evidence warrants a self-defense charge, however, at trial, the court charged the jury on self-defense over the State's objection that the evidence does not warrant the instruction.

> not believe this statement is indicative as to whether Cook was acting under an uncontrollable impulse to do violence.

Cook, 415 S.C. at 558, 784 S.E.2d at 668 (2015).

The *Cook* Court then differentiates its facts from that of *State v. Lowry*, 315 S.C. 396, 434 S.E.2d 272 (1993):

> In *Lowry*, the victim approached Lowry outside a grocery store and began berating him. *Id*. at 398, 434 S.E.2d at 273. The two men began arguing and "bumping chests." *Id*. Lowry then aimed a pistol at the victim and pulled the trigger, but the pistol was unloaded. *Id*. After Lowry's friend broke up the fight, the victim went inside the store. *Id*. Lowry, loaded a clip of ammunition into his pistol, fired a single shot into a nearby sign, and followed victim into the store where the two began arguing again. *Id*. The victim then raised his arms above his head, taunting Lowry. *Id*. Lowry then shot him in the chest, cursed him, and shot him again, but this time in the head. *Id*. This Court determined the trial court erred in refusing to instruct the jury regarding the offense of voluntary manslaughter because there was testimony which, if believed, tended to show the victim and Lowry were in a heated argument. *Id*. at 399, 434 S.E.2d at 274.
>
> In *Lowry*, there was both a physical and verbal altercation to support a finding of sudden heat of passion. Here, there was only a verbal altercation, which was very brief. Further, in *Lowry*, it was evident to the witnesses that there was an altercation between Lowry and the victim due to their conduct. In contrast, the witnesses here could hardly tell Cook and victim were arguing. In addition, Lowry actively pursued the victim, whereas Cook attempted to walk away from victim. Collectively, Lowry's actions suggest that he was acting in the sudden heat of passion. Cook's actions do not do the same.

Cook, 415 S.C. at 558-559, 784 S.E.2d at 668-669 (2015).

The circumstances and evidence of Appellant's case are void of any indication that Appellant was acting in the sudden heat of passion. Notably, Constance testified that after Appellant came back to the house after she heard the gunshots, Appellant laid a gun under a cushion of one of their chairs. (R. p. 45). She testified that Appellant usually kept his gun in the

car, and it was unusual for him to bring the gun inside of their apartment to store it. (R. p. 51). Further, Constance testified that Appellant would have no reason to go by the Victim's apartment on the night he was killed because it was not the direct route to their apartment. (R. p. 60). Considering Appellant appeared to be annoyed that the Victim asked him for a cigarette every time the Victim saw him, it does not support that Appellant was acting on uncontrollable impulse, but in premeditation, when he sought out the Victim. There is no testimony to suggest that Appellant and the Victim had any history which would explain the interaction. Further, at no point is there any evidence to suggest that Appellant lacked control over his actions. Accordingly, the facts of this case suggest Appellant shot Victim either with malice or in self-defense.

Therefore, the trial court properly declined to charge voluntary manslaughter considering the evidence did not support that Appellant killed the Victim in a sudden heat of passion upon sufficient legal provocation.

CONCLUSION

Based on the foregoing reasons, Respondent respectfully asks this Court to affirm Appellant's conviction and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

KAYLEE C. KEMP
Assistant Attorney General
S.C. Bar No: 107073

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6307

By: *s/Kaylee C. Kemp*
Kaylee C. Kemp

November 6, 2025
Columbia, South Carolina

ATTORNEYS FOR THE RESPONDENT