

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Case No. 2012-213249

The State,

Respondent,

v.

Carvin Holman,

Appellant.

INITIAL BRIEF OF APPELLANT

Franklin B. Joyner, Jr.
Post Office Box 1434
Cheraw, South Carolina 29520
(843) 253-5316

Robert M. Dudek
Chief Appellate Defender
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorneys for Appellant

RECEIVED
NOV 26 2013
SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities 3

Statement of Issues..... 4

Statement of the Case 5

Statement of Facts..... 6

Law 8

Argument..... 10

 1. The trial court erred in admitting graphic pictures of Victim’s body because the prejudicial effect of the pictures’ greatly outweighed their probative value when the pictures showed the top half of Victim’s head blown off and a large volume of blood and brain matter splattered on the ground. 10

 2. The trial court erred in ruling Defendant was not entitled to a voluntary manslaughter instruction despite evidence that Defendant’s wife was in an adulterous relationship with decedent..... 13

Conclusion 15

TABLE OF AUTHORITIES

Cases

State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009)..... 9

State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000)..... 9

State v. Collins, 398 S.C. 197, 727 S.E.2d 751 (Ct. App. 2012)..... 8, 10, 11

State v. Cottrell, 376 S.C. 260, 657 S.E.2d 451 (2008)..... 9, 13

State v. Davis, 50 S.C. 405, 27 S.E. 905 (1897)..... 14

State v. Dickerson, 395 S.C. 101, 716 S.E.2d 895 (2011)..... 8

State v. Gardner, 219 S.C. 97, 64 S.E.2d 130 (1951)..... 14

State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007) 9

State v. Griffin, 277 S.C. 193, 197 S.E.2d 631 (1981) 9, 14

State v. Holder, 382 S.C. 278, 676 S.E.2d 690 (2009) 11

State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008)..... 9

State v. Torres, 390 S.C. 618, 703 S.E.2d 226 (2010)..... 8

U.S. v. Stout, 509 F.3d 796 (6th Cir. 2007)..... 8

Other Authorities

Black’s Law Dictionary, 1323 (9th ed. 2009)..... 8

SCRE RULE 403 8

STATEMENT OF ISSUES

1. The trial court erred in admitting graphic pictures of Victim's body because the prejudicial effect of the pictures' greatly outweighed their probative value when the pictures showed the top half of Victim's head blown off and a large volume of blood and brain matter splattered on the ground.
2. The trial court erred in ruling Defendant was not entitled to a voluntary manslaughter instruction despite evidence that Defendant's wife was in an adulterous relationship with decedent.

STATEMENT OF THE CASE

Appellant Carvin Holman was arrested in Holly Hill, S.C. on June 25, 2011, and charged with murder, burglary 1st degree, kidnapping, criminal sexual conduct 1st degree, and possession of a weapon during the commission of a violent crime. These charges arose from the shooting death of Anthony James and kidnapping of Debbie Holman. The Orangeburg County grand jury indicted appellant on the above charges on August 10, 2011. This case was tried before a jury in the Orangeburg County court of General Sessions on October 15, 2012, Judge Edgar W. Dickson, presiding. On October 18, 2012, the jury convicted appellant of murder, burglary 1st, kidnapping, and possession of a weapon during the commission of a violent crime. On the murder and burglary 1st degree, appellant was sentenced to life without parole. On the kidnapping, appellant was sentenced to 40 years. On the possession of a weapon during the commission of a violent crime, appellant was sentenced to 5 years. All sentences run concurrently.

STATEMENT OF FACTS

Appellant and his wife, Debbie Holman, had been married for 13 years at the time this incident occurred. Tr. p. 106 line 112. They have two children. Tr. p. 107 line 6. Appellant and his wife separated in June 2011. Tr. p. 108 line 8. Upon separation, wife became romantically involved with Appellant's best friend, Anthony James. Tr. p. 108 line 9, p. 143 line 22. Wife was also taking the kids and moving in with James. Tr. p. 110 line 3.

On June 23, 2011, Appellant called wife to discuss their relationship and kids. Tr. p. 111 line 23. That evening, wife went to Appellant's home to further discuss these issues. Tr. p. 113 line 9. Shortly after entering Appellant's home, the discussion escalated into an argument. Tr. p. 114 line 1. During the argument, wife tried to leave the home. Tr. p. 114 line 11. As she reached the door, Appellant brandished a rifle and refused to let her exit. Tr. p. 114 line 11.

After a few hours passed, the subject of discussion turned to wife's paramour, Anthony James. At approximately 10:00 pm, Appellant drove wife to James' home for the purpose of confronting him about the relationship. Tr. p. 118 line 22. James was not home. Tr. p. 124 line 2. At that point, Appellant and his wife drove back to his residence where they stayed until the next day. Tr. p. 124 line 2.

At approximately 1:00 pm the next day, Appellant and his wife drove to James' residence and parked in the back. Tr. 129 line 24. Appellant parked the car adjacent to the steps leading to James' back door. Tr. p. 130 line 20. Appellant immediately exited the vehicle and took with him a 30/30 rifle. Tr. p. 131 line 15. James met Appellant at the door. Id. Appellant then entered James' residence via the back door. Tr. p. 161 line

19. As soon as Appellant exited the car, Wife jumped behind the wheel and drove away. Tr. p. 161 line 22. Wife testified that as she was driving away, she could hear the sound of a gun shot from inside James' residence. Tr. p. 132 line 8. Wife immediately drove a short distance to the Holly Hill Police Department to report the incident. Tr. p. 133 line 20.

As wife sped away, Jessie James, who lives across the street from Anthony James, heard a loud noise and stepped out onto his front porch. Tr. p. 206 line 25. As soon as he stepped out on the porch he saw Anthony James on the ground, laying on his back. Tr. p. 207 line 13. James further testified that a black male walked up to Anthony James and stood over him. Tr. p. 207 line 20. While standing over him, the black male reloaded the gun and fired a shot into Anthony James' head. Tr. p. 208 line 7. The black male immediately walked off into the woods with the rifle. Tr. p. 208 line 18. Jessie James immediately called 911 to report the incident. Tr. p. 209 line 25. Appellant's statement is consistent with the testimony of Jessie James. State's Exhibit 2.

After the incident, Appellant fled the scene and was at large until he was apprehended the next day. Following arrest, Appellant gave a statement concerning the incident. This statement was entered as State's exhibit #2. Tr. p. 330 line 18.

Investigation was conducted by the Orangeburg County Sheriff's Department. Investigators took pictures of Anthony James' body. Many of the pictures were graphic in nature. During the trial, Appellant timely objected to the introduction of these photographs based on the grounds that their prejudicial effect outweighed any probative value. Tr. p. 46 line 17, Tr. p. 250 line 4. The trial court overruled Appellants objection and entered the photographs marked as exhibits 24-28. Tr. p. 250 line 4.

At the close of evidence, Appellant requested the trial court instruct the jury on voluntary manslaughter. The trial court ultimately refused and noted Appellant's objection on the record. Tr. p. 357 line 4.

LAW

SCRE Rule 403

The admission of evidence is within the trial court's discretion and will not be reversed on appeal absent an abuse of the discretion. State v. Dickerson, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011).

Rule 403 provides that, "although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." SCRE RULE 403. "Probative" means "tending to prove or disprove." Black's Law Dictionary, 1323 (9th ed. 2009). Probative value is the measure of the importance of that tendency to the outcome of a case. State v. Collins, 398 S.C. 197, 202, 727 S.E.2d 751 (2012). It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues. Id. "The more essential the evidence, the greater the probative value." Id. quoting U.S. v. Stout, 509 F.3d 796, 804 (6th Cir. 2007). Thus, a court analyzing probative value considers the importance of the evidence and the significance of the issues to which the evidence relates. Id.

"Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are...not necessary to substantiate material facts or conditions." State v. Torres, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010). When balancing the danger of unfair prejudice against the probative value, the determination must be based on the entire record and will turn on the facts of each case. State v. Lyles, 379 S.C. 328, 338,

665 S.E.2d 201, 206 (Ct. App. 2008) citing State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007).

Voluntary Manslaughter

In determining whether voluntary manslaughter should be charged as a lesser included offense of murder, the court must view the evidence in the light most favorable to the defendant. State v. Cottrell, 376 S.C. 260, 262, 657 S.E.2d 451 (2008). A voluntary manslaughter charge need not be given where it very clearly appears there is no evidence whatsoever tending to reduce the crime from murder to manslaughter. Id.

Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000). The killing of a wife's paramour, a wife's lover, is reduced to manslaughter only when the husband comes upon the pair in guilty embrace or in a flagrantly suggestive situation. State v. Griffin, 277 S.C. 193, 199, 197 S.E.2d 631, 634, (1981) overruled on other grounds by State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). The husband who kills the paramour after there is a cooling time is guilty of murder. Id.

ARGUMENT

- 1. The trial court erred in admitting graphic pictures of Victim's body because the prejudicial effect of the pictures' greatly outweighed their probative value when the pictures showed the top half of Victim's head blown off and a large volume of blood and brain matter splattered on the ground.**

While a trial court may have wide discretion in the Rule 403 context, Appellant submits that this is not an unreviewable discretion and a review of the evidence in the case at bar demonstrates the line was crossed. See Collins, 398 S.C. at 202.

Appellant was unfairly prejudiced as a result of the admission of State's Exhibits 24-28. The five photographs admitted are graphic and shocking. They depict decedent laying on his back, face up, in his front yard. State's Exhibit 24 is taken from the decedent's left. It is the most gruesome of the five photographs. It shows in vivid detail decedent's head with the top half of the skull missing. Scattered all around is brain matter and blood. The contents of decedents head has turned the grass from green, to bright red.

State's Exhibit 25 is taken from the perspective of decedent's feet. It shows decedent's blood covered head and his right forearm ripped open. State's Exhibit 26 shows decedent's abdomen with blood pouring out of a gunshot wound. State's Exhibit 27 shows decedent's bloody back and his shirt saturated in blood. Finally, State's Exhibit 28 shows decedent's ripped open forearm. It depicts shredded skin and exposed muscle and tendon.

Viewing these photographs causes an intense emotional response and a level of sympathy for the decedent that would not otherwise be present. It is difficult to look at

each photograph individually, and the combined effect of all five is disturbing. The photograph that shows the remains of decedent's skull is chilling. The danger of unfair prejudice of the admitted photographs is extreme.

Appellant was unfairly prejudiced by these photographs. This Court has held that prejudice that is "unfair" is distinguished from the legitimate impact all evidence has on the outcome of a case. Collins, 398 S.C. at 207. Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision made on an improper basis. Id. Photographs pose a danger of unfair prejudice when they have "an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one." State v. Holder, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009).

The photographs had very little probative value in light of the totality of evidence presented. If the State's true intent was not to arouse the emotion of the jury, they could have made simple alterations to the photos which would have greatly reduced the risk of unfair prejudice. For example, they could have used a diagram to show the position of decedent's body and location of the injuries. They could have relied on the testimony of numerous witnesses presented at trial. They could have covered the body with a sheet. They could have even presented the photos in black and white. The State did none of these. Instead, they presented vivid photographs containing the type of vibrant colors which are so apt to arouse a burning emotional response.

These photos add an improperly emotional visual element not present in witness testimony. This visual element does far more to create a danger of unfair prejudice than

it does to add probative value. As presented to the jury, these photos have a tendency to lure the jury into declaring guilt based on emotion, not logic. This is the type of unfair prejudice that substantially outweighs the probative value of these photographs. The photographs in this case are simply beyond the limits of what our law permits a jury to consider. Accordingly, Appellant requests this Court find the trial court abused its discretion in admitting the photographs and grant a new trial on all charges.

2. The trial court erred in ruling Defendant was not entitled to a voluntary manslaughter instruction despite evidence that Defendant's wife was in an adulterous relationship with decedent.

The trial judge's denial of Appellant's request to charge voluntary manslaughter was erroneous. To warrant refusal of such a charge, there must be no evidence whatsoever tending to reduce the crime from murder to manslaughter. Cottrell, 376 S.C. at 262. In this case, it is undisputed that Appellant's wife was in an adulterous relationship with decedent. At the time this incident occurred, wife was in the process of moving herself and Appellant's children into decedent's residence. Further, there is evidence that wife complained to Appellant about decedent "having her on drugs" and "raping her." State's Exhibit 2.

This evidence justifies a voluntary manslaughter verdict. First, Appellant's passion was aroused by the fact that his wife and children were moving into another man's home. Second, shortly after learning the above, Appellant's passion was further aroused when his wife explained that she had been forced to take drugs and subsequently raped by that same man.

The jury certainly could have concluded under these circumstances that Appellant was acting under the influence of an understandable rage, and that rage forced him to fire a third shot at decedent as he lay supine on the ground. In fact, evidence of such "overkill" is just as consistent with the heat of passion as with malice, and does not eliminate Appellant's right to a possible voluntary manslaughter verdict as a matter of law.

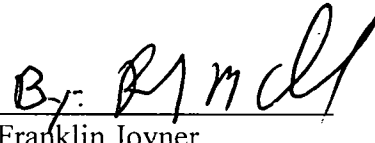
It is well settled that the killing of a wife's paramour, a wife's lover, is reduced to manslaughter only when the husband comes upon the pair in guilty embrace or in a flagrantly suggestive situation. Griffin, 277 S.C. at 199. Sudden heat of passion upon sufficient legal provocation...must be such as 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. State v. Gardner, 219 S.C. 97, 64 S.E.2d 130 (1951)(citing State v. Davis, 50 S.C. 405, 27 S.E. 905 (1897)). The fact that wife and decedent were not found in a "guilty embrace" is not dispositive of the flagrant facts here. Appellant was very emotional because of his wife and children moving in with decedent. Add to that the fact that decedent forced Appellant's wife to use drugs and then raped her, and you will find an "ordinary person incapable of cool reflection." You will find a loving husband possessed by an "uncontrollable impulse to do violence."

When viewed in the light most favorable to Appellant, as the law directs, the evidence supports a voluntary manslaughter charge. Appellant requests this Court find that the trial court erred when it denied a charge on voluntary manslaughter.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests this Court reverse the judgment of the Circuit Court and grant a new trial on all charges.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "By: F. Joyner", written over a horizontal line.

Franklin Joyner
Attorney for Appellant

Robert M. Dudek
Chief Appellate Defender

November 26th, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-1477 to 1481

RECEIVED

NOV 26 2013

SC Court of Appeals

The State,

Respondent,

v.

Carvin Holman,

Appellant.

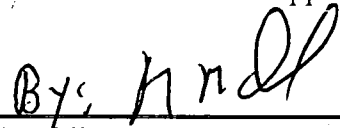
DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

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

1. Transcript of Proceedings:
 1. Opening Statements, p. 95-104;
 2. Testimony of Debbie Holman, p. 105-172;
 3. Objection to State's Exhibit's 24-28, p. 46, line 17, p. 179, line 9-25, p. 250, line 4;
 4. Testimony of Jessie James, p. 203-216;
 5. Testimony of Lt. Gerald Carter, p. 245-279;
 6. Testimony of Inv. Riley Godwin p. 317-346;
 7. Defendant's objection to Court's refusal to charge voluntary manslaughter, p. 357, line 4;
 8. Closing Arguments, p. 360-401;
 9. Jury Charge, p. 402-427;
 10. Sentencing, p. 430-434;
 11. State's Exhibits 1, 2, and 24-28.

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

Date: November, 26th, 2013



Franklin B. Joyner, Jr.
Post Office Box 1434
Cheraw, South Carolina 29520
(843) 253-5316

Robert M. Dudek
Chief Appellate Defender
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Edgar W. Dickson, Circuit Court Judge

RECEIVED
NOV 26 2013
SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

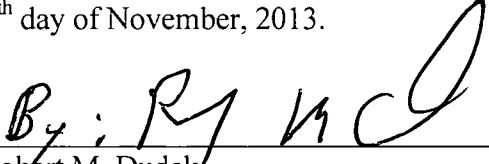
CARVIN HOLMAN,

APPELLANT

APPELLATE CASE NO. 2012-213249


CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald Zelenka, Esquire, at South Carolina Attorney General's Office, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 26th day of November, 2013.

By: 
Robert M. Dudek
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 26th day of November, 2013.



Notary Public for South Carolina
My Commission Expires: July 3, 2023.