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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

J. Mark Hayes, II, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NATHANIEL B. BEEKS,

APPELLANT

APPELLATE CASE NO. 2013-001783

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

In a trial where the only issue was whether Appellant committed murder or voluntary manslaughter, the trial judge erred in instructing the jury that words alone would not satisfy the element of voluntary manslaughter requiring sufficient legal provocation to negate malice and by failing to instruct the jury that legally sufficient provocation includes a very emotional argument.

STATEMENT OF THE CASE

On August 16, 2011, a Greenville County grand jury indicted Appellant for murder (2011 – GS – 23 – 6315) and grand larceny (2011 – GS – 23 – 6316). R.*(Indictments). The prosecution, represented by Judy Munson, called the case for trial before the Honorable J. Mark Hayes, II, and a jury on August 12, 2013. Randy Chambers represented Appellant. Tr. 1. At the conclusion of the state's case, Judge Hayes granted Appellant's motion for a directed verdict on the charge of grand larceny because the prosecution failed to present evidence as to the value of the car, which was allegedly stolen. Tr. 214, line 21 – Tr. 215, line 8. Judge Hayes indicated there was sufficient evidence to send the lesser-included charge of petty larceny to the jury, however. Tr. 215, lines 9 – 18. Thereafter, the prosecution moved to amend the indictment to a petit larceny. Tr. 215, lines 19 – 25. When Appellant did not object, Judge Hayes granted the motion to amend the indictment. Tr. 216, lines 5 – 11. The jury found Appellant guilty of murder and guilty of petit larceny. Tr. 278, lines 15 – 21. Judge Hayes sentenced Appellant to life imprisonment for murder, and to thirty days' imprisonment for petit larceny. He ordered the sentences to be served concurrently. Tr. 289, line 23 – Tr. 290, line 2; R.*(sentence sheets).

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

Appellant and the deceased had been romantically involved sentence 1999. Tr. 46, line 22 – Tr. 47, line 6; Tr. 131, lines 1 – 6. Darlene Bartee, the deceased's coworker, testified that the deceased had met someone new - a love interest - shortly before her death. Tr. 96, lines 9 – 20. On the Thursday before her death, the deceased and Bartee discussed how the deceased would end her relationship with Appellant. Tr. 97, line 25 – Tr. 98, line 10.

On Friday, April 22, 2011, Appellant and the deceased were joking and getting along well according to the deceased's daughter, Faith Smith. Tr. 65, lines 8 – 25. On Saturday, Appellant and the deceased visited in the home of the James Crawford. Tr. 86, lines 8 – 18. According to Crawford, something the deceased said to Appellant "triggered him off something." Appellant jumped off the couch and walked out the front door. Appellant returned and engaged in additional conversation with the deceased. Appellant then threw a beer under the coffee table and left again. Appellant was very upset and had "sweat popping off him." Tr. 87, lines 10 – Tr. 88, line 21.

On Saturday night, Smith arrived to the home she shared with the deceased. When she arrived, Smith observed Appellant leave the home, get into the deceased's car, and drive away. Tr. 49, line 17 – Tr. 51, line 13. When Smith entered the home, she found her mother dead and the home in disarray. Tr. 51, line 20 – Tr. 52, line 18.

Darron Montgomery grew up with Appellant. Tr. 134, lines 6 – 20. Montgomery and Appellant discussed the deceased's death while the two were incarcerated in the detention center. Tr. 134, line 25 – Tr. 135, line 5. Appellant told Montgomery that he and the deceased were in a heated argument. When the deceased "wouldn't shut up,"

Appellant grabbed her and "just choked her." Tr. 135, line 24 – Tr. 136, line 3; Tr. 143, lines 20 – 23. Although Montgomery did not know why they were arguing, he knew the argument took place at the house. Tr. 137, lines 16 – 21.

Appellant had fresh scratches on his face when he was arrested on April 28, 2011. Tr. 170, line 22 – Tr. 171, line 6. When the arresting officer asked about the scratches, Appellant explained the deceased had "slapped him or punched him or hit him or someway struck him to cause the scratches on his face." Tr. 174, line 12 – Tr. 175, line 6. Appellant told the arresting officer that the deceased told him she was seeing another man during their argument. Appellant "snapped, … grabbed her, threw her to the floor and started choking her." Tr. 172, line 18 – Tr. 173, line 2.

According to the pathologist, the deceased died as a result of manual strangulation. Tr. 206, lines 17 – 19. The deceased likely lost consciousness within twenty seconds and expired within a minute. Tr. 209, line 23 – Tr. 210, line 8. The bruising pattern on the deceased's neck was consistent with the assailant coming from the front. Tr. 210, lines 11 – 21.

ARGUMENT

In a trial where the only issue was whether Appellant committed murder or voluntary manslaughter, the trial judge erred in instructing the jury that words alone would not satisfy the element of voluntary manslaughter requiring sufficient legal provocation to negate malice and by failing to instruct the jury that legally sufficient provocation includes a very emotional argument.

Relevant facts

Charge Conference

During the charge conference, Judge Hayes informed the parties that when instructing the jury concerning voluntary manslaughter, he would explain that sufficient legal provocation was a necessary element. His charge would explain:

> Sufficient legal provocation must be the type that would make a person of ordinary reason and caution to become enraged and to lose control temporarily. The provocation needed for voluntary manslaughter, must come from some act of or related to the victim. Words alone, however vulgar or insulting are not enough to be legal provocation. Where death is caused by the use of a deadly weapon, the words must be accompanied by some overt, threatening act which would have produced the heat of passion.

Tr. 227, lines 2 – 11. Appellant objected to the charge wherein the judge said "words alone are not enough. It has to be – – there has to be an accompanied act." Appellant argued that "a very emotional argument" would satisfy the requirement of legal provocation, but the charge as given required something more than a verbal argument. Tr. 228, line 23 – Tr. 229, line 6. Appellant argued that the judge's instruction informed the jury that an argument alone could not provide legal provocation. Tr. 230, lines 15 – 21. Surprisingly, the prosecution agreed with Appellant's argument. The prosecutor

explained "these weren't just mere words. These were words that had effect." Tr. 230, line 24 – Tr. 231, line 12.

The evidence showed that the deceased had a new man in her life and told Appellant about her new relationship during the course of their argument that precipitated her death. Tr. 232, line 15 – Tr. 233, line 5. The lack of evidence that the deceased "didn't hit him, she didn't spit at him, she didn't really do anything to him other than say something to him" coupled with the judge's instruction that words alone were insufficient to satisfy the element of legal provocation of manslaughter would leave the jury unable to find the defendant guilty of manslaughter. Tr. 233, lines 6 – 17.

Appellant provided the court with a suggested instruction. R.* (Court's Exhibit 1). Specifically, he asked the judge to charge the jury:

> A sufficient legal provocation is one that would cause a person of ordinary reason and prudence to become provoked and experience sudden heat and passion. A sufficient legal provocation need not overpower knowledge, rationality, and volition. Instead, it need only be sufficient to disturb or upset reason and render the mind of an ordinary person incapable of cool reflection.
>
> By way of example, and only by way of example, provocation that is legally sufficient to negate malice includes conduct: (6) like very emotional arguments.

R. * (Court's Exhibit 1). Appellant distinguished South Carolina case law providing that when death is caused by a deadly weapon, words alone are insufficient to constitute legal provocation. Additionally, Appellant cited controlling case law to support his position that a very emotional argument provides legally sufficient provocation. Tr. 237, line 2 – Tr. 238, line 15.

The judge denied Appellant's request. Tr. 240, lines 7 – 20; Tr. 241, lines 5 – 9. The trial judge stated that the charge as a whole was proper and he would not change it to include the request made. Tr. 241, lines 11 – 16.[1]

Closing arguments

In the prosecutor's closing argument, she asked the jury to decide whether the evidence showed a man "shattered in grief over the loss of the relationship" or acting with malice. Tr. 244, lines 3 – 6. She asked the jury if the injuries suffered by the deceased were the result of "the actions of somebody just snapping" or "the actions of someone committing an intentional, wrongful act without just cause or excuse." Tr. 244, lines 12 – 14. The prosecutor asked the jury what did the deceased do that would provide sufficient legal provocation to classify her death as manslaughter. Tr. 246, lines 16 – 23. After giving a litany of examples such as being wrapped in the arms of another man, breaking off an engagement, being pregnant with another man's baby, looking at "kiddie porn" on a computer, or killing someone's pet, the prosecutor argued the deceased did not do anything that equaled sufficient legal provocation. Tr. 247, lines 1 – 11. The prosecutor argued to the jury that Appellant and the deceased had "a big ole fight." She pointed to the deceased's missing wig, broken fingernail, abrasions on her elbow and face, and two scratches on Appellant to support her inference that the two had fought prior to the deceased's death. Tr. 251, lines 8 – 17.

In closing, Appellant argued that he did not intend to kill the deceased. Tr. 253, lines 4 – 6. Appellant informed the jury that the only issue was whether he choked the

[1] Appellant renewed his objection at the conclusion of the jury instructions. Tr. 275, lines 13 – 16.

deceased to death with malice or "was there provocation such that he was provoked to a sudden heat and passion." Tr. 253, lines 17 – 22. Appellant argued that involvement in a physical altercation, a threat, and being involved in "a very emotional type of argument" were examples of legal provocation. The evidence showed that he and the deceased were engaged in a very emotional type of argument. The "very narrow issue" for the jury to decide was whether Appellant was provoked such that he lost the reason a person of ordinary prudence and rationality would have and did he act with sudden heat of passion. Tr. 254, lines 6 – 17.

Appellant disputed the prosecution's argument that the relationship between the deceased and appellant was not "much of a relationship" by pointing out the two had been involved since 1999. Tr. 254, lines 18-25. Appellant argued that he was moved to "sudden heat and passion by being told that she didn't want to see him anymore. And that she wanted to date somebody else." Tr. 257, lines 13 – 19. Appellant argued "somebody acting with that kind of passion, you lose control of yourself. You snap." Tr. 259, lines 16 – 24. Appellant elaborated: "And then confronted with the loss of this relationship and the thought of her being with someone else, in the midst of this very emotional argument, apparently he was getting physical even before he grabbed her and choked her. He snapped. He was provoked with sudden heat and passion." Tr. 262, lines 8 – 13.

Jury Instructions

Concerning the elements of murder, the trial judge instructed the jury that "[i]nferred malice may also arise when the deed is done with a deadly weapon." After giving the jury examples of deadly weapons, the judge explained:

> A hand or a fist is not normally considered a deadly weapon. However, under some circumstances, depending on the manner and the means of its

> use, the wounds inflicted and other relevant facts, a hand[] or fist may be considered a deadly weapon. It is for you to decide in this case, beyond a reasonable doubt whether or not a hand or fist has been used as a deadly weapon.

Tr. 271, lines 12-19. Then the judge instructed the jury on the elements of voluntary manslaughter:

> To prove voluntary manslaughter, the state must prove beyond a reasonable doubt that the defendant took the life of another in the sudden heat and passion, based on sufficient legal provocation. ... Sudden heat and passion may, for a time, affect a person's self-control and temporarily disturb a person's reason. The sudden heat of passion must be the type that would make an ordinary person unable to coolly reflect on his actions and would produce an uncontrollable impulse to do violence.
>
> Sufficient legal provocation must be the type that would make a person of ordinary reason and caution, become enraged and to lose control temporarily. The provocation needed for voluntary manslaughter, must come from some act of or related to the victim. Words alone, however vulgar or insulting are not enough to be legal provocation. Where death is caused by the use of a deadly weapon, the words must be accompanied by some overt, threatening act which could have produced the heat of passion.
>
> The exercise of a legal right, no matter how offensive it is to another, is never sufficient legal provocation for voluntary manslaughter.

Tr. 271, line 24 – Tr. 272, line 5.

Discussion

Although it is a correct statement of the law that "mere words, no matter how opprobrious, are insufficient to constitute adequate legal provocation," this statement is correct only when "death is caused by the use of a deadly weapon." See State v. Rogers, 320 S.C. 520, 525, 466 S.E.2d 360, 362-363 (1996); State v. Johnson, 324 S.C. 38, 476 S.E.2d 681 (1996). In State v. Levelle, 34 S.C. 120, 13 S.E. 319 (1891), overruled on other grounds by State v. Torrence, 305 S.C. 45, 405 S.E.2d 315 (1991), the Supreme Court held the trial judge properly charged the jury that "provocation by words only, no matter how

opprobrious, would not be sufficient" to support voluntary manslaughter. According to the Court, "[t]his broad statement of the doctrine must be understood as applying to a case where the death was caused by the use of a deadly weapon, as it may be different where the death results from the use of some agency not likely to produce death, as, for example, from a blow with the fist." Id.

The South Carolina Supreme Court "has held in several cases that it is proper to charge voluntary manslaughter where the defendant and the victim had been in a heated argument prior to the murder." State v. Locklair, 341 S.C. 352, 360, 535 S.E.2d 420, 424 (2000). The Court found a trial judge properly instructed a jury on voluntary manslaughter where there was testimony that at a Christmas party several hours before the shooting the defendant, who had been drinking, and his wife had been arguing. State v. Kahan, 268 S.C. 240, 233 S.E.2d 293 (1977).

In State v. Gardner, 219 S.C. 97, 105, 64 S.E.2d 130, 134-135 (1951), the trial court refused to charge the jury on voluntary manslaughter, and the Supreme Court found this was in error. In light of the evidence that a butcher knife and/or scissors were used to kill the deceased, the Court explained that "where death is caused by the use of a deadly weapon, words alone, however, opprobrious, are not sufficient to constitute a legal provocation." Id. at 104, 64 S.E.2d at 134. Thus, the evidence of a mere argument would not be sufficient for a charge on voluntary manslaughter. The Court noted that the evidence, which could be construed as "meaning nothing more than that [defendant]'s wife severely reprimanded or violently censured him, and that they became engaged in a heated argument," was not enough to charge voluntary manslaughter due to the use of a deadly weapon. On the other hand, the same evidence could be reasonably construed to indicate the deceased, who was

the defendant's wife, had engaged in "some overt, threatening act or a physical encounter." Therefore, the defendant was entitled to a charge on voluntary manslaughter. Id. at 105, 64 S.E.2d at 134-135.

The Supreme Court held a charge of voluntary manslaughter was appropriate where a witness testified the defendant and the deceased had been "fighting." Based upon this testimony, the jury could fairly and logically deduce provocation and heat of passion. State v. Davis, 278 S.C. 544, 546, 298 S.E.2d 778, 779 (1983). In a similar case, the Court found the record supported a charge of voluntary manslaughter where there was evidence that the defendant "was in a heated argument" with the deceased. Additionally, the defendant testified "he was afraid for his life because [the deceased] physically threatened him." According to the Court, "fear can constitute a basis for voluntary manslaughter." State v. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998). In another case, the Court explained "verbal confession of adultery, no matter what the content, would be insufficient to warrant a voluntary manslaughter charge" where the killing was done with a deadly weapon because words alone are insufficient to constitute legal provocation in that circumstance. State v. Cooley, 342 S.C. 63, 68, 536 S.E.2d 666, 668-669 (2000).

On the other hand, the Court determined Locklair was not entitled to an instruction on voluntary manslaughter because Locklair used a deadly weapon – a gun – to kill the deceased and the only evidence of provocation was that the deceased "got smart" with him. In light of controlling case law that when a deadly weapon is used, words alone were insufficient to prove legal provocation, the Court held Locklair was not entitled to the jury instruction. Locklair, 341 S.C. at 361, 535 S.E.2d at 424.

In the instant matter, the trial court correctly charged the jury that in order for the jury to find Appellant guilty of voluntary manslaughter, the state was required to prove beyond a reasonable doubt the defendant took the life of another in the sudden heat and passion, based on sufficient legal provocation. The judge correctly charged the jury on the definitions of sudden heat of passion and legal provocation. However, the judge erred by failing to give the jury clear instructions concerning conduct that constitutes legal provocation as requested and by charging the jury that words alone were insufficient. Specifically, Appellant asked the trial court to tell the jury that legal provocation includes conduct like a very emotional argument. The judge's instruction that "[w]ords alone, however vulgar or insulting, are not enough to be legal provocation" left the jury with no option but to find a lack of sufficient legal provocation. South Carolina law provides that only when a deadly weapon is used to cause death does legal provocation require more than words alone. All of the evidence in Appellant's case pointed to manual strangulation; therefore, the cause of death would permit the provocation to occur from words alone.

The judge's charge was particularly problematic in light of his instruction that the jury could infer malice from a deadly weapon, which may include hands and fists. Although the charge was un-objected to, it clearly violated controlling Supreme Court precedent. In State v. Belcher, 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009), the Court held "that where evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon." The judge's instruction on voluntary manslaughter acknowledged that evidence was presented to reduce or mitigate the homicide.

The lack of evidence of clear instruction on what constitutes legal provocation in the absence of a deadly weapon coupled with the judge's instruction that words alone were insufficient to satisfy the element of legal provocation left the jury unable to find the defendant guilty of manslaughter. The judge's instruction permitting an inference of malice exacerbated the erroneous instructions concerning legal provocation.

CONCLUSION

Appellant respectfully requests this Court reverse his conviction for murder and remand for a new trial.

Respectfully submitted,

Susan B. Hackett

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Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of January, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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THE STATE,

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V.

NATHANIEL B.BEEKS,

APPELLANT

APPELLATE CASE NO. 2013-001783

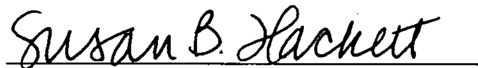
DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) Trial transcript dated August 12-14, 2013 pages: 1, 35-39, 44-75; 84-110; 115-124; 128-144; 162-176; 197-216; 221-235; 237-238; 240-242; 244-275; 278; 289-290;
(2) Court's Exhibit #1 (Defense's Request to Charge);
(3) True–billed indictment(s); and
(4) Sentence sheets.

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

January 13th, 2014



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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 J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Nathaniel B. Beeks, #227332 at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 13th day of January, 2014.

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of January, 2014.

_______________ (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022 .