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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Charleston County
Hon. Deadra L. Jefferson, Circuit Court Judge
Appellate Case Tracking No. 2014-000771

The State, Respondent,

v.

Christopher Spriggs, Petitioner.

Opinion No. 2013-UP-435 (S.C. Ct. App. filed November 27, 2013)

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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TABLE OF CONTENTS

STATEMENT OF QUESTIONS PRESENTED

I. The Court of Appeals correctly affirmed the trial court's decision to charge voluntary manslaughter. The charge of voluntary manslaughter was proper under the facts of this case. Further, the trial court's pre-trial comments regarding the need for a charge conference and the possible charges to the jury did not constitute a promise on which Petitioner reasonably could rely.

II. The Court of Appeals correctly affirmed Petitioner's conviction and sentence because any error in charging the jury that malice may be implied through the use of a deadly weapon was entirely harmless given the jury's finding of no malice by convicting Petitioner of voluntary manslaughter.

STATEMENT OF THE CASE

Procedural History

Petitioner was indicted for murder. On March 30, 2009, he proceeded to trial before the Honorable Deadra L. Jefferson and a jury. The jury convicted Petitioner of the lesser-included offense of voluntary manslaughter, and Judge Jefferson sentenced him to fifteen years in prison. Petitioner filed a Motion for Reconsideration of Sentence and a Motion for a New Trial. Judge Jefferson denied both motions by separate Orders filed August 17, 2009.

Petitioner filed a Motion to Allow Juror to Submit Affidavit on August 24, 2009, and the juror submitted the Affidavit on August 26, 2009. Before obtaining a ruling, Petitioner filed his Notice of Appeal on August 26, 2009. On October 29, 2010, after the State asserted Petitioner waived his right to contest this issue by filing the Notice of Appeal, this Court remanded the issue of the juror affidavit to the trial court for a ruling. The trial court filed an Order denying the motion on March 11, 2011.

The Court of Appeals affirmed his conviction and sentence. State v. Spriggs, Op. No. 2013-UP-435 (S.C.Ct. App. Filed November 27, 2013). Petitioner filed a Petition for Rehearing which was denied on March 21, 2014. Petitioner served his Amended Petition for Writ of Certiorari on May 13, 2014. This Return follows.

ARGUMENT

I. The Court of Appeals correctly affirmed the trial court's decision to charge voluntary manslaughter. The charge of voluntary manslaughter was proper under the facts of this case. Further, the trial court's pre-trial comments regarding the need for a charge conference and the possible charges to the jury did not constitute a promise on which Petitioner reasonably could rely.

Petitioner contends the Court of Appeals erred in affirming the trial court's decision in charging voluntary manslaughter after the trial court allegedly "promised" pre-trial and before hearing any of the evidence presented to not charge voluntary manslaughter. As the Court of Appeals found, the trial court properly charged the law based on the evidence presented. The court's comment was not intended as a final ruling on the issue, but should instead be read as an indication she normally gave the defendant what he asked for in charges to the jury, especially in light of the discussion between counsel and the trial court. Further, as the Court of Appeals concluded, it was unreasonable for Petitioner to rely on a pre-trial ruling regarding jury charges. Petitioner made no effort to confirm the ruling prior to determining whether he would testify, and unreasonably expected the court to refuse to charge relevant and appropriate law based on the facts presented to the jury.

Prior to trial, the following colloquy occurred between the trial court and Petitioner's counsel:

MR. BUTLER:	Finally, just for the record, I believe Your Honor was in receipt of e-mails from the State indicating that prior to submitting the case to the jury they intend to ask for a manslaughter charge.
THE COURT:	I'm not dealing with any of that.

MR. BUTLER:	I know. But I just want to put on the record that they have already decided they plan to ask for that and it will become relevant later.
THE COURT:	Well, I haven't read that frankly and, you know, I'm not going to prepare the jury charge until I've heard all the evidence.
MR. BUTLER:	I understand.
THE COURT:	And the Court will only charge the applicable law as supported by the facts of the case.
MR. BUTLER:	Yes, ma'am.
THE COURT:	And I don't know how it's going to develop.
MR. BUTLER:	Yes, ma'am.
THE COURT:	So I don't know whether any lesser-included is going to be appropriate or whether he's going to request any. And, frankly I'm going to defer to what the defendant wants. So if he wants to go all or nothing I'm going to give it to him. That should resolve that for everybody.
MR. BUTLER:	That resolves that perfectly, thank you.

(App.4-5) (emphasis added).

Petitioner made a decision not to testify at trial. The court conducted a colloquy into this fact after Petitioner had discussions with counsel. After all the evidence was presented by both parties, the trial court indicated her intention to charge the jury on murder, voluntary manslaughter, and defense of others. (App.880-881). Petitioner objected and the trial court noted her previous comments were "before I heard all of the case. And generally I give the defendant exactly what they ask for, but I'm not required to do that. I'm required, as the gatekeeper, to look at the totality of the case." (App. 888-889). The trial court made it perfectly clear her prior ruling was not a final or binding

ruling, and instead, it was merely a statement that her "inclination is to give a defendant what they ask for, absent some other circumstance." (App. 891-893). Petitioner then moved for a mistrial based on the trial court's intention to charge voluntary manslaughter, and the trial court denied the motion. (App. 914; 917). After knowing the decision of the trial court to charge voluntary manslaughter, no attempt was made to call Petitioner to testify. He did not rest his case until after the trial court denied his motion for a mistrial, so the opportunity for him to testify still existed. (App.917).

The trial court charged voluntary manslaughter as she indicated in the official charge conference. (App.961-963). Subsequently, Petitioner filed a motion for a new trial, which was also denied. (Motion for New Trial and Order Denying Defendant's Motion for New Trial; App. 1003; 1033).

Propriety of Voluntary Manslaughter Charge

"The law to be charged must be determined from the evidence presented at trial." State v. Brayboy, 387 S.C. 174, 179, 691 S.E.2d 482, 485 (Ct. App. 2010) (citing State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001)). A trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993).

"It has long been the law in this State that 'to warrant the court in eliminating the offense of manslaughter it should very clearly appear that there is no evidence whatever tending to reduce the crime from murder to manslaughter.'" Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991) (quoting State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 565 (1969)).

Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. See State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000). Both heat of passion and sufficient legal provocation must be present at the time of the killing. Id. 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. State v. Wharton, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009). This Court has held that an overt, threatening act or a physical encounter may constitute sufficient legal provocation. State v. Pittman, 373 S.C. 527, 573, 647 S.E.2d 144, 168 (2007) (citing State v. Gardner, 219 S.C. 97, 105, 64 S.E.2d 130, 134 (1951)). In State v. Martin, this Court explained sufficient legal provocation can result from "the parent who sees his child, or the child who sees the parent, suffering under the hand of ruffian violence." State v. Martin, 216 S.C. 129, 133, 57 S.E.2d 55, 56 (1949), *overruled on other grounds by* State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009); see also, State v. Ferguson, 20 S.C. L. (2 Hill) 619 (1835). This Court has also made it clear violence to a third party, including a relative or friend, is sufficient legal provocation to support a voluntary manslaughter charge. See State v. Smith, 304 S.C. 129, 131, 403 S.E.2d 162, 163 (Ct. App. 1991).

In this case, there was ample evidence justifying the charge of voluntary manslaughter.[1] Several witnesses testified Petitioner was upset or angry when he learned the victim beat his mother. (App. 473-474; 553; 598; 649; 693; 721). Further, the victim

1 Further, as noted by the Court of Appeals opinion, Petitioner's counsel conceded there was no challenge to the sufficiency of the evidence to support the charge of voluntary manslaughter.

charged Petitioner, became embroiled in a fight with Petitioner, and then went after Petitioner's mother or her boyfriend. (App. 37-40; 43-45; 656-662). These actions constituted the necessary legal provocation causing Petitioner's sudden heat of passion which would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and resulted in the stabbing of the victim by Petitioner. Accordingly, because there was evidence justifying the charge of voluntary manslaughter, the trial court was required to offer the lesser included offense if requested, and the court did not commit error in issuing the charge.

Pre-Trial Ruling Not Final

Additionally, the trial court's comment pre-trial was not a final decision on the law, but merely a statement that she will usually defer to the desires of the defendant. (App.986-988). Consideration of the full colloquy between counsel and the court is important to discern the trial court's intentions. As the trial court stated, the court is not required to only charge the defendant's requests, but is required to charge the applicable law. See Knoten, 347 S.C. at 302, 555 S.E.2d at 394. The court is required to determine the law to be charged based on the evidence presented at trial, and cannot reasonably make this decision in a pre-trial ruling. See State v. Hernandez, 386 S.C. 655, 660, 690 S.E.2d 582, 585 (Ct. App. 2010) ("The evidence presented at trial determines the law to be charged to the jury.") (citing State v. Brown, 362 S.C. 258, 261-62, 607 S.E.2d 93, 95 (Ct. App. 2004)).

Further, as the Court of Appeals held, pre-trial rulings are not final and are subject to alteration based on developments during the trial. See State v. Floyd, 295 S.C. 518, 521, 369 S.E.2d 842, 843 (1988) ("Trial judges must not be held, conclusively, to

preliminary rulings made without benefit of all the pertinent and relevant evidence."); see also, State v. Forrester, 343 S.C. 637, 642-43, 541 S.E.2d 837, 840 (2001); State v. Kirton, 381 S.C. 7, 43, 671 S.E.2d 107, 125 (Ct. App. 2008). The trial court made it abundantly clear the final charge would be based on the evidence presented at trial and would not be determined until the charge conference. She repeatedly indicated she had no means of determining what would be charged at such an early stage of the proceedings and she would not make a determination until after learning how the case develops. (App. 4-5).

The issue was not raised pre-trial as a motion regarding the charges to be given, but even if Petitioner's counsel's note for the record was in the nature of an actual motion, it would be most similar to a motion *in limine*. The issue of jury charges is not addressed pre-trial because it is based on how the evidence at trial develops, exactly like a pre-trial evidentiary ruling. As Judge Jefferson noted several times, she would not know if a lesser-included charge was necessary or appropriate until after she heard the evidence. She could not make a fully informed decision until after all evidence was presented and made that stance clear to counsel. Cf. State v. Smith, 383 S.C. 159, 167, 679 S.E.2d 176, 180 (2009) (finding court's denial of mistrial based on counsel waiving objection was not conclusive, final ruling because court only later learned "all the relevant facts, law, and arguments" to make a final decision).

Again, this is very similar to asking the judge to preclude or include certain testimony, but the preliminary ruling is clearly subject to change based on how the case unfolds. State v. Floyd, 295 S.C. 518, 520, 369 S.E.2d 842, 843 (1988) (stating a ruling on a motion in limine is subject to change based on events at trial). Judge Jefferson made

her comments as a preliminary ruling and nothing more. She never intended to make a final ruling regarding jury charges without hearing the evidence presented.

The comments by Judge Jefferson amounted to nothing more than her initial impressions and her inclination to charge what the defendant requested. See e.g., State v. Cheatham, 349 S.C. 101, 112, 561 S.E.2d 618, 624 (Ct. App. 2002) (Judge's pre-trial comments regarding the evidence merely amounted to his initial impressions and did not constitute an order). The trial court did not make the pre-trial comments in this case as a final ruling, and, especially in light of the full discussion between the trial court and counsel, it should not be considered a final order.

Reliance Not Reasonable

Petitioner contends he reasonably relied on the comments by the trial court in preparing and effectuating his trial strategy. In support of his argument, Petitioner cites State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001). As explained by the Court of Appeals, this case differs significantly from Jones. In Jones, the trial court indicated **during a charge conference** he would give the reasonable doubt charge found in State v. Manning.[2] Jones' trial attorney specifically incorporated the language from Manning into his closing argument. The trial court then, upon request from the solicitor, utilized different language in his charge to the jury. This Court found: "Petitioner **reasonably relied** upon the judge's representation that he intended to give that charge to the jury. The decision to alter the charge, after the argument, was fundamentally unfair." Jones, 343 S.C. at 578, 541 S.E.2d at 821 (emphasis added).

[2]State v. Manning, 305 S.C. 413, 409 S.E.2d 372 (1991).

Petitioner and the Court in Jones both rely in part on State v. Woomer, 277 S.C. 170, 284 S.E.2d 357 (1981). In Woomer, the defendant was directly induced to testify by the trial court's limitation on the scope of his testimony. The solicitor went beyond the limited scope and the court issued a curative instruction. In reversing, the South Carolina Supreme Court found: "Once the trial court induced appellant to testify by limiting the scope of the testimony, Woomer **had a right to rely** on that assurance, and the solicitor's violation of the limited scope of cross examination was fundamentally unfair." Woomer, 277 S.C. at 173, 284 S.E.2d at 358 (emphasis added).

Both cases require the defendant to have reasonably relied on the judge's ruling to their detriment before any changes impact the fundamental fairness of the defendant's trial. These cases are distinguishable from the instant case because Petitioner did not have justification to rely on the pre-trial comments by the judge, especially in light of the experience and knowledge of Petitioner's counsel.

In State v. McWee, the defendant's attorneys asked the trial judge whether he would charge the jury during the penalty phase that if it found an aggravating circumstance but recommended a life sentence, appellant would not be eligible for parole until the service of thirty years' imprisonment. The judge initially indicated he would give such a charge. However, at the beginning of the penalty phase, the judge stated he would not give a parole eligibility charge after all. State v. McWee, 322 S.C. 387, 391, 472 S.E.2d 235, 238 (1996). This Court concluded: "after carefully reviewing the entire record, we find no evidence the trial judge's initial indication he would give a parole eligibility charge influenced either voir dire, the selection of jurors, or the presentation of evidence during the guilt phase of trial." Id. at 392, 472 S.E.2d at 238. As a result, it was

not "fundamentally unfair" for the trial court to subsequently refuse to give the parole eligibility charge. Id.

In this case, as in McWee, there is no evidence, other than some hindsight-based allegations of how trial strategy could have been different, that Petitioner reasonably relied on the trial court's pre-trial comments regarding the jury charges. In actuality, the Record in this case indicates it was entirely unreasonable for Petitioner's trial counsel to rely on the comments.

In the instant case, it should have been clear to Petitioner's counsel that the State did not believe Judge Jefferson's ruling was a final ruling, but was instead merely instructive or indicative of what she may do based on how the case was presented. The State routinely asked about Petitioner's state of mind during trial. The State highlighted the fact Petitioner was angry or upset at the time he heard from his mother and at the time of the stabbing. (App. 474; 553; 598; 649; 692-693).

Further, Petitioner's trial counsel had the opportunity to verify the court's ruling. After one of the evening breaks, the trial court begins by asking for any proposed charges and whether either side has written proposed charges. She also indicates she will hold a charge conference. (App. 793). This discussion presented an excellent opportunity for counsel to verify the court's ruling on the jury charge.

Significantly, Petitioner's trial counsel maintains the decision that Petitioner would not testify was directly based on the fact the judge indicated planned to give Petitioner what he asked for, "all or nothing." After the State rested its case, Petitioner told the court he had a full opportunity to discuss with his lawyers his decision to testify, and he planned to testify at the trial. (App. 738). After presenting several witnesses,

Petitioner decided not to testify, allegedly based on the fact the court was not planning to charge voluntary manslaughter. (Affidavit of Beattie Butler and Affidavit of Marybeth Mullaney; App. 870-871; 1012; 1017).

At that time, counsel could have prevented any confusion by getting an actual final ruling from the court regarding the charges she planned to give to the jury. Her prior comments indicated she wanted to hear the evidence; so after all the evidence was presented, counsel should have reconfirmed her *in limine* ruling. His failure to get a final ruling, and his subsequent trial strategy, was entirely unreasonable in light of the developments during trial. Further, Petitioner had not rested his case at the time the trial court concluded she would charge voluntary manslaughter and denied Petitioner's motion for a mistrial. Petitioner could easily have asked to be called to the stand at this point as a result of the "change" in circumstances. Petitioner made no attempt to testify at his trial, and did not even proffer the testimony he would have provided.[3]

This case is much more analogous to the facts and circumstances of McWee, and as the Court of Appeals found counsel did not have a right to rely on the pre-trial "promise" by the trial court. Counsel's reliance on the judge's pre-trial ruling on jury charges is not "reasonable reliance" as required by Jones and Woomer to find reversible error.

3 Counsel attempted to provide information in his affidavits that he would have challenged the State's theory of provocation and heat of passion. However, no actual testimony was proffered and so there is no basis to discern any prejudice from the failure to call Petitioner. See e.g., State v. Simmons, 360 S.C. 33, 46, 599 S.E.2d 448, 454 (2004) (stating the failure to make a proffer of excluded evidence will preclude review on appeal); Legrande v. Legrande, 178 S.C. 230, 182 S.E. 432 (1935).

II. The Court of Appeals correctly affirmed Petitioner's conviction and sentence because any error in charging the jury that malice may be implied through the use of a deadly weapon was entirely harmless given the jury's finding of no malice by convicting Petitioner of voluntary manslaughter.

Petitioner contends the Court of Appeals erred in failing to find the trial court committed reversible error in charging the jury that malice may be inferred by the use of a deadly weapon. Any error in the charge is clearly harmless because the jury found Petitioner acted entirely without malice. The jury did not infer malice from the use of the deadly weapon because it found Petitioner guilty of voluntary manslaughter.

Petitioner is correct in stating this Court found "a jury charge instructing that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify the homicide." State v. Belcher, 385 S.C. 597, 600, 685 S.E.2d 802, 803-804 (2009). The Court, however, also reiterated the long-standing rule: "Errors, including erroneous jury instructions, are subject to harmless error analysis." Id. at 611, 685 S.E.2d at 809 (citing Lowry v. State, 376 S.C. 499, 510-11, 657 S.E.2d 760, 766 (2008)). Further, where an erroneous jury charge does not contribute to the jury's verdict, the error is harmless. See State v. Jefferies, 316 S.C. 13, 446 S.E.2d 427 (1994).

In this case as the Court of Appeals properly found, the error is entirely harmless and could not have contributed to the jury's verdict finding Petitioner guilty of voluntary manslaughter. "The difference between manslaughter and murder is the absence of malice in the former and the presence of malice in the latter." State v. Pilgrim, 320 S.C. 409, 414, 465 S.E.2d 108, 111 (Ct. App. 1995), *overruled on other grounds by* State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996). This Court has indicated the difference

between murder and voluntary manslaughter is "whether an act which caused death was impelled by heat of passion or by malice." State v. Pittman, 373 S.C. 527, 575, 647 S.E.2d 144, 169 (2007); see also, State v. Gaffney, 24 S.C. Law (1 Rice) 431 (1839) (finding a verdict of manslaughter "negatives the malice only" included in a charge of murder).

The jury found Petitioner guilty of voluntary manslaughter; so, it had to find he acted without malice. An erroneous jury instruction indicating malice can be inferred from the use of a deadly weapon can have no prejudicial impact when the jury returns a verdict specifically finding Petitioner acted without malice. See e.g., Tate v. State, 351 S.C. 418, 426, 570 S.E.2d 522, 527 (2002) ("An erroneous malice instruction is harmless if, based on all of the evidence presented to the jury, it did not contribute to the verdict."). Such is the circumstance of this case. Accordingly, while it may have been error for the court to charge the jury regarding the inference of malice from a deadly weapon, the Court of Appeals correctly concluded the error is entirely harmless.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

June 13, 2014

STATE OF SOUTH CAROLINA

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PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Return to Petition For Writ of Certiorari to the Court of Appeals by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

John H. Blume, Esquire
Emily Paavola, Esquire
900 Elmwood Avenue
Suite 101
Columbia, South Carolina 29201

I further certify that all parties required by Rule to be served have been served. This 13th day of June, 2014.

Sally Ellison

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ALAN WILSON
ATTORNEY GENERAL

June 13, 2014

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Re: State v. Chrsitopher Spriggs
Appellate Case Tracking No. 2014-000771

Dear Mr. Blume and Ms. Paavola:

I am enclosing two (2) copies of the Return to Petition for Writ of Certiorari to the Court of Appeals in the above-referenced case.

If you have any questions concerning this matter, please contact me.

Sincerely,

William M. Blitch, Jr.
Assistant Attorney General
S.C. Bar No. 15608

cc: Honorable Daniel E. Shearouse (original and six enclosed)
Honorable Jenny A. Kitchings
Victim Services (enclosure)