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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable D. Craig Brown, Circuit Court Judge

Case No. 2011-GS-07-1673

The State..... Respondent

v.

Rajerick Lovelle Knight..... Appellant

APPELLANT'S FINAL BRIEF

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STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Circuit Court err in failing to charge the jury with the lesser included offense of voluntary manslaughter where the only evidence showed Petitioner feared for his life and where there was evidence he acted in the sudden heat of passion and with sufficient legal provocation in killing the decedent?
- II. Did the Circuit Court err when it excluded relevant evidence of Petitioner's state of mind which supported the lesser included offense of voluntary manslaughter?

STATEMENT OF THE CASE

I. Procedural History

Petitioner Rajerick Knight was arrested on July 29, 2011 in Jacksonville, Florida, for the murder of Travis Holmes, which occurred on or about July 26, 2011. (R. p. 13, line 15-p. 14, line 8; R. p. 143, line 22-p. 144, line 6.) The grand jury indicted Petitioner for murder and the possession of a weapon during the commission of, or attempt to commit, a violent crime. Indictments. The case was tried before a jury in the Beaufort County Circuit Court, Court of General Sessions on November 26-29, 2012, with the Honorable D. Craig Brown, Circuit Court Judge, presiding.¹ (R. p. 1.) On November 29, 2012, the jury convicted the Petitioner as charged, and the court sentenced him to life imprisonment on the murder conviction and five years on the weapons count. (R. pp. 442-456; R. p. 461.) The Notice of Appeal was filed on December 12, 2012. (R. p. 462.) The issues set forth in this appeal are whether the trial judge erred in declining Petitioner's request for a lesser included offense instruction on voluntary manslaughter and whether the trial judge's refusal to admit relevant evidence prejudiced the Petitioner

¹ Arie Bax, Esquire, represented the Petitioner at trial.

because such evidence further supported a lesser included offense instruction to the jury.²

The relevant facts are as follows:

II. The Evidence Proffered and Presented at Trial

The shooting death of Travis Holmes (also known as “Travy”) took place on June 26, 2011, during daylight in a Subway fast food restaurant at Cross Creek shopping center in Beaufort, armed with surveillance cameras. (R. p. 28, lines 1-4; R. p. 77, line 15-p. 78, line 20; R. p. 123, lines 14-24; R. p. 199, lines 9-15.) The Petitioner presented evidence that he shot Holmes in self-defense, but the trial judge refused his request to submit a perfect or an imperfect self-defense charge to the jury. (R. pp. 396-399.) In addition, although evidence was presented supporting the lesser included offense of voluntary manslaughter, the trial judge refused the Petitioner’s request to submit that charge for the jury’s consideration. (R. pp. 399-401.)

On the day of Holmes’s death, Petitioner and his childhood friend Shiecarra Smalls went to the Subway to purchase sandwiches for the Petitioner and Petitioner’s pregnant girlfriend, LaShaunica Allen (also known as “Peanut”). (R. p. 114, lines 2-19; R. p. 323, line 2-p. 325, line 7.) The Petitioner testified:

As I grabbed my sandwiches and turn to leave, I saw Mr. Holmes like my heart just dropped into my stomach. I was just terrified to see him, but I was trying to dodge him to my fullest abilities and I still ran into the one person who I didn't want to see that day.

...

We were trying to rush of the store and get – walk past Mr. Holmes, but he was just like staring me down. And it was so much attention between us. Shiecarra tried to break the tension by telling him hi. She was like, Hi,

² (See generally R. pp. 387-442; R. pp. 446-456.)

Travis, how you doing. And he barely said anything to her. She was on the left-hand side of me. I was on the right-hand side and he was on the right side of me. While we were walking by, he barely acknowledged her. He walk pass me and just was like, Man, I'm gone kill you boy. And when we were leaving out the door, I really rushed out the door. Then me and Shiecarra made it outside.

.....

I mean, me and Shiecarra Smalls, Miss Smalls we were making our way to my car. And I was just explaining to her like did you hear what he said just now. Like, man, he just gone keep trying to kill me. You know, Travy, you know what type of guy he is. And I was just keep telling her that. I told her he just shoot up the house. He just took a son from me. And I was telling her this. I got her to the car. And when we got to the car, that's when I just felt like I didn't want be ...

.....

I just felt like I couldn't live like that any more, hiding, running and from Mr. Holmes and just always being a victim to Mr. Holmes.

(R. p. 325, line 12-p. 326, line 22.)

The Petitioner does not dispute that when he reentered the Subway, he shot and killed Holmes.³ (R. p. 320, lines 22-24.) "I wanted to end the threat of my life." (R. p.339, line 12; R. p. 328, lines 2-5.) The Petitioner then left the Subway and returned to his car. (R. p. 328, lines 19-20.)

The following evidence was presented and proffered at trial supporting Petitioner's defense and the mitigation of his murder charge.

³ He testified that when he reentered the Subway, he did not brandish his gun or immediately shoot Holmes because he did not want to harm the other people in the store. (R. p. 327, line 22-p. 328, line 5.) The Petitioner put the gun "right up against him to make sure the bullet didn't have any chance to hitting any innocent person." (R. p. 328, lines13-17.)

a. Petitioner's reasonable fear of Holmes

Petitioner was deeply afraid and "very frightened" of Holmes based on his belief that Holmes previously threatened to kill Petitioner (R. p. 321, lines 14-16.); that Holmes fired numerous shots into Petitioner's home causing the miscarriage of Petitioner's child (R. p. 288, line 11-p. 289, line 4; R. p. 290, lines 2-5; R. p. 318, line 20-p. 319, line 5.); that Holmes's modus operandi once he sets his sights on an enemy is not limited to endangering the life of his enemy but may also include the endangering of Holmes's own family (R. p. 332, lines 1-25; R. p. 51, line 1-p. 52, line 2; R. p. 176, line 2-p. 182, line 2.); and Holmes's direct threat to kill Petitioner when confronted at Subway. (R. p. 325, line 12-p. 326, line 22; R. p. 322, lines 7-15; R. p. 341, lines 5-6.) When Holmes made a direct verbal threat to kill Petitioner when confronted at Subway, Petitioner perceived a life or death situation and his shooting Holmes was a matter of self-defense:

Mr. Holmes put me in a situation where I had to choose life or death. I'm young, I didn't want to die. Didn't want to get murdered in cold blood, so I choose life. I choose to live, so I choose to fight for my life and attack the who was attacking my life. I just wanted to live and I wanted to stay alive. I didn't want to get killed by Mr. Holmes.

.....

I was always scared for my life with Mr. Travis especially after the incident where he showed he didn't have any remorse for his cousin or her child to try to kill me by shooting through our house. Every day I woke up I thought I was going to die being in a situation with Mr. Holmes.

.....

I was very scared about what could happen to my children. I had already lost a child behind this whole situation. I wish y'all could meet Robert. Robert is -- that's my everything, that's my heart. I wouldn't be able to make it if I lost Robert behind this situation.

(R. p. 332, lines 1-25.)

Petitioner believed that Holmes fired numerous shots at Petitioner's home on May 30, 2011.⁴ (R. p. 321, lines 14-16.) Although Petitioner believed those shots were directed at him, a gunshot grazed Petitioner's girlfriend's⁵ shoulder and caused her to miscarry⁶ their child together. (R. p. 288, line 11-p. 289, line 4; R. p. 290, lines 2-5; R. p. 318, line 20-p. 319, line 5.)

Petitioner testified that moments before the May 30, 2011 shooting, a neighbor approached him and communicated that people were looking for, and threatening to kill Petitioner. (R. p. 314, lines 3-7.) The neighbor also testified that, prior to the shooting that night, three cars approached Petitioner's home and communicated they planned to shoot up the residence. (R. p. 305, lines 9-21.).⁷ Petitioner was at the neighbor's house when the shots were fired at his trailer. (R. p. 303, line 8-p. 304, line 19; R. p. 315, lines 3-11; R. p. 280, line 17-p. 281, line 1; R. p. 314, lines 16-24.)

The shots described were "too many to count." (R. p. 303, line 8-p. 304, line 19; R. p. 315, lines 3-11.) Seven .45 caliber shell casings and ten .9 millimeter shell

⁴ On May 30, 2011, officers responded to a call about shots being fired at 1 Donaldson Drive, where LaShaunica Allen and Petitioner lived with LaShaunica's natural son, Robert, who was adopted by Petitioner. (R. p. 201, line 23-p. 202, line 13; R. p. 216, line 23-p. 217, line 1; R. p. 245, lines 6-19; R. p. 266, line 19-p. 267, line 23; R. p. 332, line 21-p. 333, line 9.)

⁵ Allen was also a cousin of Holmes. (R. p. 341, lines 2-6; R. p. 330, line 23-p. 331, line 4.)

⁶ LaShaunica Allen testified that she was in bed when the shots began. (R. p. 277, lines 9-13.) She was pregnant and fell off the bed. (R. p. 277, line 14-p. 278, line 8.) She crawled to her son and shielded him with her body until the police arrived. (R. p. 278, lines 6-18; R. p. 278, line 22-p. 280, line 16.)

⁷ LaShaunica Allen also testified as to the knocking earlier that night. (R. p. 274, lines 9-20.) She said, "Earlier like around five or six someone was knocking on the door and pretty hard." (R. p. 274, lines 9-20.) She testified that she did not answer the door because "Rajerick always told me not to." (R. p. 274, lines 9-20.)

casings were recovered from that crime scene. (R. p. 206, lines 1-7.) Forensic evidence indicated that two shooters were involved. (R. p. 257, lines 20-23.) One witness testified that he saw two people jump out of a white truck parked at a nearby driveway, run across the middle of a yard, and open fire on the trailer located at 1 Donaldson Drive. (R. p. 264, line 21-p. 268, line 17.)

Investigators were unable to get neighborhood folks to talk after that shooting incident. They would not provide their names and did not want to be involved – “Nobody would talk.” (R. p. 246, line 16-p. 247, line 19; R. p. 254, line 12- p. 255, line 14.) The investigator was never able to talk to Travis Sentell Holmes about the incident, and the case was “administratively closed” on June 22, 2011. (R. p. 242, line 19-p. 244, line 12.)

Investigators relied on word of mouth leads provided by LaShaunica Allen. (R. p. 255, lines 15-18; R. p. 256, line 6-p. 257, line 23.) One such lead was that Travis Sentell Holmes was one of the shooters. (R. p. 256, line 22-p. 257, line 19.) LaShaunica Allen testified that when she provided the investigator with Travis Holmes’s name, the investigator indicated he had also heard that Travis Holmes was responsible. (R. p. 291, lines 16-20.) The Petitioner testified that Travis Sentell Holmes⁷ was one of the shooters. (R. p. 321, lines 14-16.)

b. Holmes’s reputation for violence.

As the Petitioner testified: “I had knowledge about [Travis Sentell Holmes] being a very dangerous person and I know about things that he done.” (R. p. 321, lines 22-

⁷ Petitioner testified that he knew Holmes “had problems with [him]” for reasons such as moving in with Holmes’s friend in Florida and dating Holmes’s cousin. (R. p. 330, line 17-p. 331, line 4.) Such problems, though, were unprovoked according to Petitioner’s testimony: “Never ever did anything to Mr. Holmes, never.” (R. p. 331, line 9.)

24.) “Basically from the community and my knowledge I know that he’s known to tote a gun and he’s a shooter.” (R. p. 322, lines 2-3.)

Petitioner’s knowledge of Holmes’s violent past goes back to incidents which occurred in 2008 and 2009. (R. p. 354, lines 5-12; R. p. 51, line 1-p. 52, line 2; R. p. 176, line 2-p. 182, line 2.) In 2008, Holmes allegedly shot up an associate of Petitioner’s, James Odom’s, home. (R. p. 51, line 1-p. 52, line 2; R. p. 176, line 2-p. 182, line 2; R. p. 357.) While out on bond for those charges, Petitioner understood that Holmes shot into a car holding Odom and one of Holmes’s cousins. (R. p. 51, line 1-p. 52, line 2; R. p. 176, line 2-p. 182, line 2.) The 2008 and 2009 incidents were not admitted into evidence.

In addition, Smalls testified that based on what she knew about Holmes from the community, she was concerned that he was going to shoot at the vehicle as he exited the Subway. (R. p. 124, line 21-p. 125, line 6; R. p. 125, lines 21-24.) She assumed she would need to “dodge bullets”. (R. p. 125, lines 7-15.)

c. Petitioner feared Holmes, perceived Holmes to be an “ongoing threat,” and believed he was in “imminent danger” when he saw Holmes at Subway.

In camera, Dr. Thomas Martin, a forensic psychiatrist, was proffered by the defense⁸ to testify as to Petitioner’s state of mind. (R. p. 343, line 7-p. 344, line 5.) Dr. Martin conducted a psychiatric evaluation interview of the Petitioner on September 27, 2012.⁹ (R. p. 351.) Dr. Martin testified that he became familiar with the circumstances

⁸ The record relating to defense counsel’s arguments in support of Dr. Martin’s testimony and the Court’s ruling on the issue can be located at R. p. 374, line 9-p. 380, line 10; R. p. 381, line 10-p. 387, line 8.

⁹ Dr. Martin preliminarily observed that the Petitioner had no major psychiatric illness which influenced him either at the time of the evaluation or at the time of the murder;

surrounding the Subway shooting as well as the circumstances surrounding the Petitioner's life leading up to the shooting, in addition to the records of the case. (R. p. 352.) In his examination of the Petitioner, Dr. Martin testified that the Petitioner expressed emotions of fear and stress based on events leading up to the shooting of Travis Holmes. (R. p. 352.) Dr. Martin testified that the Petitioner experienced a fearful awareness of Travis Holmes. (R. p. 352.) Dr. Martin explained:

[Knight] depicted Mr. Holmes as rather a terrorizing in the county. He also depicted for me several times when Mr. Holmes had alleged committed violent crimes, made violent threats against him and his family. It was at that time that I contacted your office and I wanted to know more about the victim in this case. And at that time, you sent materials that supported that there was an investigation of such shootings at his place where his female friend pregnant at the time had been injured, later miscarried earlier that year as well as other violent incidents. He felt that his life essentially living in that county which he felt he had no chance to move from his place of residence at the time that his life and probably his family's life were in eminent danger. And when he went to Subway and saw the victim, he reacted to those fears and that imminent danger.

....
It seems like he was living under a reign of terror the way he simply put it.

(R. p. 353, lines 3-18; R. p. 354, lines 3-4.) Dr. Martin testified as to his belief that the Petitioner's fear was reasonable based on Travis Holmes's prior record which involved "some violent crime shootings into homes, into vehicles" of individuals known to Knight, and some close acquaintances of Knight, in 2008 and 2009. (R. p. 354, lines 5-12.)

In addition to the Petitioner's ongoing fear based on Holmes's reputation, the Petitioner relayed to Dr. Martin an understanding that Holmes wanted to kill him. (R. pp. 364-367.) The Petitioner's understanding was based on hearsay within the community,

that the Petitioner would have been criminally responsible for his behaviors around the July 11, 2011, time frame; and that the Petitioner had no diminished capacity problems. (R. pp. 351-352.)

including his girlfriend's family (and his girlfriend is Holmes's cousin). (R. pp. 364-367.) Moreover, the Petitioner reported to Dr. Martin his fear based on he and his girlfriend's belief that Holmes was responsible for a shooting which occurred at the Petitioner's trailer several months prior to Holmes's death. (R. p. 357.) The shooting injured the Petitioner's girlfriend and caused the Petitioner's girlfriend to miscarry their child together. (R. p. 357.)

Q: In your discussions with Mr. Knight and your observations of him, did it appear that he perceived the threat from Mr. Holmes to be ongoing and continuing throughout that entire period of time?

A: Yes, the way he described it was it was never going to end.

(R. p. 357, lines 17-22.)

Dr. Martin testified that the Petitioner perceived Holmes to be an "ongoing threat" to both the Petitioner and his family because Holmes was at large, and on bond, in the community. (R. p. 355, lines 13-21.) Dr. Martin testified that he pressed the Petitioner as to why he took the matter into his own hands, and the Petitioner explained that he and his girlfriend had reported Travis Holmes to the police as a result of the shooting and that no one had picked him up or attempted to arrest Holmes. (R. p. 355, line 22-p. 356, line 10.)

STANDARD OF REVIEW

To warrant a court's eliminating the offense of voluntary manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to voluntary manslaughter. State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000). A trial judge is required to charge a jury on a lesser included offense if there is evidence from which it could be inferred that a defendant committed the lesser

offense rather than the greater.” State v. Hernandez, 386 S.C. 665, 660 (2010). In determining whether the evidence requires a charge of voluntary manslaughter, the Circuit Court views facts in a light most favorable to the Defendant. State v. Byrd, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996). Where there is any evidence to support a jury charge, the trial judge should grant the request and will be reversed where such refusal to charge is both erroneous and prejudicial to the defendant. Id. The evidence presented at trial determines the law to be charged to the jury. State v. Brown, 362 S.C. 258, 261-62, 607 S.E.2d 93, 95 (Ct. App. 2004). “The [circuit] court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.” State v. Niles, 400 S.C. 527, 537, 735 S.E.2d 240, 245 (Ct. App. 2012).

The admission or exclusion of evidence is an action within the sound discretion of the Circuit Court and will not be disturbed on appeal absent an abuse of discretion. State v. Tapp, 398 S.C. 376, 385, 728 S.E.2d 468, 473 (2012). An abuse of discretion occurs when the conclusions of the Circuit Court are either controlled by an error of law or are based on unsupported factual conclusions. Id. To warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice. State v. White, 372 S.C. 364, 373-74, 642 S.E.2d 607, 611 (Ct. App. 2007). To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or the lack thereof. Id.

A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion. State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009).

ARGUMENT

This appeal is about the failure of the trial court to instruct the jury about the lesser included offense of voluntary manslaughter in a murder trial. The error was prejudicial because the accused acted in what he believed to be self-defense in order to avoid being killed by someone known to be violent who had attempted to kill him before. Even though the evidence presented in support of a voluntary manslaughter jury charge surpassed the “any evidence” standard, additional relevant evidence proffered but not admitted further supported the lesser included offense charge.

- I. **The Circuit Court erred in failing to instruct the jury to consider the lesser included offense of voluntary manslaughter where there was evidence that Petitioner’s fear of the decedent resulted from sufficient legal provocation based on the totality of the circumstances which made him incapable of cool reflection.**

The evidence presented at Petitioner’s murder trial required a charge of the lesser included offense of voluntary manslaughter and exceeded the “any evidence” standard. Petitioner’s fear resulted from sufficient legal provocation and the totality of the circumstances made him incapable of cool reflection.

A voluntary manslaughter jury charge turns on the facts, and if the facts disclose any basis for the charge, the charge must be given. State v. Starnes, 388 S.C. 590, 596-99, 698 S.E.2d 604, 608-09 (2010). Voluntary manslaughter¹⁰ is the unlawful killing

¹⁰ Self-defense and the lesser included offense of voluntary manslaughter should be submitted to the jury if supported by the evidence; such charges are not mutually exclusive. State v. Niles, 400 S.C. 527, 534, 735 S.E.2d 240, 244 (Ct. App. 2012). The rationale for this rule is that the jury may fail to find all the elements of self-defense but could find sufficient legal provocation and heat of passion to conclude the defendant was guilty of voluntary manslaughter. Id. The Petitioner recognizes that South Carolina has not adopted legal concept of “imperfect self-defense;” nonetheless, there is

a human being in a sudden heat of passion upon sufficient legal provocation. State v. Wharton, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009). Both sufficient legal provocation and heat of passion must be present at the time of the killing to support a jury instruction on voluntary manslaughter. Id. at 215, 672 S.E.2d at 788.

“[S]udden heat of passion upon sufficient legal provocation is defined as an act or event that ‘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.’ While the act or event ‘need not dethrone the reason entirely, or shut out knowledge and volition,’ it must cause a person to lose control.” State v. Starnes, 388 S.C. 590, 596-99, 698 S.E.2d 604, 608-09 (2010); State v. Pittman, 373 S.C. 527, 572 (2007)(“The sudden heat of passion, upon sufficient legal provocation, while it not need to dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, 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.”).

Fear resulting from an attack can constitute a basis for voluntary manslaughter if such fear is the result of sufficient legal provocation and causes the defendant to lose control and create an uncontrollable impulse to do violence. State v. Starnes, 388 S.C. 590, 596-99, 698 S.E.2d 604, 608-09 (2010) (recognizing that fear will warrant a

evidence the Petitioner thought he was acting in self-defense, which further supports Petitioner’s position that he was entitled to a voluntary manslaughter instruction because he was acting on a legitimate fear based on the decedent’s prior violent acts.

voluntary manslaughter charge where it manifests itself “in an uncontrollable impulse to do violence” and the defendant is “incapable of cool reflection as a result of fear”).

The Petitioner in this case had a reasonable fear based on the totality of the circumstances.¹¹ Testimony revealed that Holmes had a reputation for violence (R. pp. 321-322; R. pp. 124-125; R. pp. 51-52.); that Holmes was feared in the community (R. pp. 321-322; R. pp. 124-125; R. pp. 51-52.); and that Holmes was feared by the Petitioner (R. p. 332, lines 1-25.). The evidence supports Petitioner’s awareness of and sensitivity to Holmes’s reputation for making a threat and following through with the threat by way of gunfire. For example, testimony regarding the 2011 incident revealed Petitioner’s understanding that Holmes and an associate sprayed numerous bullets into his trailer at a time when he was supposed to be home and after verbalizing an intent to kill him to at least one neighbor. (R. p. 288, line 11-p. 289, line 4; R. p. 290, lines 2-5; R. p. 318, line 20-p. 319, line 5; R. p. 321, lines 14-16; R. p. 332, lines 1-25.) As a result of those gunshots, the Petitioner’s girlfriend’s shoulder was grazed, and the Petitioner and his girlfriend endured a miscarriage. (R. p. 288, line 11-p. 289, line 4; R. p. 290, lines 2-5; R. p. 318, line 20-p. 319, line 5.) Petitioner, his girlfriend, and his son all endured the fear of what the Petitioner believed to be a result of Holmes carrying out another threat by way of gunfire. (R. p. 281, lines 2-8; R. p. 305, lines 19-21; R. p. 314, lines 3-7; R. p. 325, line 12-p. 326, line 22.) The evidence supports the Petitioner’s belief that he faced a life or death situation when Holmes said “Man, I’m gone kill you boy.” (R. p. 325, line 12-p. 326, line 22.)

¹¹ As discussed in Section II, *infra*, the Petitioner’s knowledge of the 2008 and 2009 incidents described in subpart (b) of the Statement of Facts, *supra*, also contributed to this reasonable fear which prompted Petitioner’s uncontrollable impulse when confronted by Holmes at the Subway in July of 2011.

An overt threatening act or an unprovoked attack with a deadly weapon may also constitute sufficient legal provocation so long as there was no “cooling off” period between the provocation and the killing. State v. Niles, 400 S.C. 527, 536, 735 S.E.2d 240, 245 (Ct. App. 2012). “In determining whether an act which caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing.”. State v. Pittman, 373 S.C. 527, 575, 647 S.E.2d 144, 169 (2007). Whether an accused cooled off prior to a violent act must be determined by a review of all the circumstances surrounding the event and the people involved. State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 566 (1969). Petitioner’s above-described belief that Holmes fired numerous gunshots into his home causing the loss of his child in May of 2011 and Holmes’s threat to kill Petitioner at the Subway amounted to an overt threatening act. When he next saw Holmes at Subway after the case against Holmes had been administratively closed, Petitioner did not have time to “cool off” under the circumstances.

The lower court’s overly broad interpretation and application of State v. Hernandez, 386 S.C. 655, 658-59, 690 S.E.2d 582, 584 (Ct. App. 2010) effectively denied the Petitioner the “any evidence” standard in this case. Whether an accused cooled off prior to a violent act is determined by a review of all the circumstances surrounding the event and the people involved, and the circumstances set forth in State v. Hernandez are readily distinguishable from the present case. The sole encounter between the victim and the defendant in Hernandez resulted from the defendant’s

ejection from a party at the victim's home wherein the victim grabbed the defendant by the neck and threw him toward the porch. Id. at 658-59, 690 S.E.2d at 584. Following that encounter, the defendant went home, and retrieved his gun with the intent to use it against the victim if the victim "messed with him again." Id. The defendant returned to the party and continued drinking, appearing calm and tranquil to other party-goers. Id. When the defendant's friend started fighting with another guest, the defendant encountered the victim again. Id. The victim insulted the defendant, and the defendant shot the victim in the face because of the insult and not because the victim threw him out of the party earlier that night. Id. at 661-62; 690 S.E.2d at 586.

The facts surrounding the "cooling off" period in Hernandez make that case inapposite to the present one. "While the law has not defined a bright-line rule for what constitutes a sufficient time for cooling off, this Court has determined that whether the defendant's actions during the intervening time between the provocation and the killing indicates the absence of sudden heat of passion is an appropriate question for the court." Id. at 662, 690 S.E.2d at 586 (quoting State v. Pittman, 373 S.C. 527, 575, 647 S.E.2d 144, 169 (2007)).

As thoroughly recited in the Statement of the Case, pages 1 to 8, *supra*, the circumstances in this case have much deeper and more impactful roots than those described in Hernandez. Here, the 2011 shooting incident at Petitioner's trailer combined with Holmes's verbal threat at Subway constituted sufficient legal provocation and easily satisfies the "any evidence" standard supporting a charge of voluntary manslaughter. There is no evidence of a prolonged "cooling off" period as was the case in Hernandez. (See, e.g., R. p. 325, line 12-p. 326, line 22; R. p. 332, lines 1-25.) Under

the totality of the circumstances of the present case, where there was evidence that the Petitioner was incapable of cool reflection as a result of fear, the court's reliance on Hernandez effectively rejected the any evidence standard and resulted in prejudice to the Petitioner.

II. The Circuit Court erred when it failed to admit additional relevant evidence which further supported a jury charge for the lesser included offense of voluntary manslaughter.

Although the evidence set forth in Section I, *supra*, reveals that the Petitioner readily met the "any evidence" standard required for a lesser included offense charge, the Petitioner was prejudiced by the trial court's refusal to admit evidence of additional specific instances of violence by Holmes which contributed to the Petitioner's state of mind.¹² (R. p. 51, line 1-p. 52, line 2; R. p. 176, line 2-p. 182, line 2.) The Petitioner was further prejudiced by the trial judge's refusal to admit testimony of a forensic psychiatrist who opined that Petitioner reasonably believed Holmes was an ongoing threat such that Petitioner was living in a "reign of terror". (R. p. 353, lines 3-18; R. p. 354, lines 3-4.)

a. The Petitioner was prejudiced by the Circuit Court's failure to admit additional relevant evidence supporting a voluntary manslaughter charge where evidence of specific instances of violence by the decedent would have shown that the decedent was known to shoot his enemies following chance encounters in public locations.

Petitioner in this case had knowledge of specific instances of violence by Holmes dating back to 2008 and 2009 where it was alleged Holmes shot someone in their house, saw that person in a public place, followed that person from the public place until that person has left the public place, and then fired at that person again. (R. p. 176, line

¹² Arguments as well as the court's ruling on the specific instances of violence are located at R. p. 43, line 15-p. 52, line 18 and R. p. 176, line 2-p. 185, line 12.

2-p. 182, line 2.)¹³

The solicitor argued that such instances were inadmissible because incidents dating two or three years back were too remote to meet the admissibility standard. (R. p. 176, line 2-p. 185, line 14.) Counsel for the Petitioner, by contrast, argued that no such bright line exists and that the Court must instead look at each case on an individualized basis under a Rule 403, SCRE analysis to determine whether there is a close enough relationship in facts and their impact on the defendant's knowledge and state of mind to make it more probative than prejudicial. (R. p. 176, line 2-p. 185, line 14.) The objection was noted, and the Court ruled that the 2008 and 2009 incidents were not directed towards the Petitioner and that, since those incidents were directed at others, they were not so closely connected at point of time or occasion with the homicide to reasonably indicate the state of mind of the deceased. (R. p. 184, line 19-p. 185, line 12.) The ruling effectively precluded testimony from the investigator who handled the 2008-2009 incidents involving James Odom that defense counsel sought to introduce. (R. p. 176, line 10-p. 178, line 20; R. p. 187, line 8-p. 189, line 3.) The trial judge further instructed Petitioner not to bring up his knowledge of those incidents. (R. p. 192, line 21-p. 193, line 4.)

Specific instances of violence by the decedent are admissible where they are so closely connected in point of time or occasion with the homicide so as to produce a reasonable apprehension of great bodily harm. State v. Hill, 129 S.C. 166, 123 S.E. 817 (1924); State v. Amburgey, 206 S.C. 426, 429, 34 S.E.2d 779, 780 (1945) (holding that

¹³ The Petitioner's knowledge of such incidents was not offered for the truth of the matter asserted but rather to show his state of mind when he encountered Holmes at the Subway in July of 2011. (R. pp. 179-182.)

evidence of other specific instances of violence on the part of the deceased are admissible if directed against the defendant, or, if directed against others, were so closely connected in point of time or occasion with the homicide as to produce reasonable apprehension of great bodily harm).

There is no bright line test which indicates what constitutes being “so closely connected in point of time or occasion” with the homicide to as to produce a reasonable apprehension of great bodily harm. (R. p. 183, line 1-p. 185, line 12.) The Court in State v. Brown, 321 S.C. 184, 187, 467 S.E.2d 922, 924 (1996), for example, found that a specific incident of violence which occurred twenty-three years prior was too remote to be admissible under those circumstances. In State v. Day, 341 S.C. 410, 419-21, 535 S.E.2d 431, 436-37 (2000), by contrast, the prior act of violence which occurred within four months of the death was admissible to prove that the defendant had a reasonable apprehension of violence when dealing with the decedent. The testimony demonstrated that the decedent acted “very violently when he felt he had been deceived or double-crossed by a confidant.” The evidence was relevant to the defendant’s theory of self defense because he claimed that he thought the decedent may pull a gun on him if he thought the defendant deceived him. The decedent’s conduct in holding a gun to another’s head because he was suspicious of her was further evidence of the continuous and consistent pattern of the decedent’s drug – induced, violent paranoia, which the defense attempted to establish during trial. See State v. Mekler, 368 S.C. 1, 12-14, 626 S.E.2d 890, 896-97 (Ct. App. 2005) aff’d, 379 S.C. 12, 664 S.E.2d 477 (2008) (holding prior incident of criminal domestic violence was admissible to prove defendant had reasonable apprehension of great bodily harm from decedent and

holding that prior act of violence by decedent as to another three months prior to his death was so closely connected at point of time to indicate his state of mind at the time of the shooting). The 2008 and 2009 instances of conduct in this case are in line with the spirit of Mekler and Day and are not so far removed to be likened to Brown.

For example, in Mekler, analogous to the present case and as presented to the lower court, this appellate court reversed the lower court's decision to preclude testimony by the defendant regarding her knowledge of the decedent's violent capabilities learned from the decedent's wife. State v. Mekler, 368 S.C. 1, 626 S.E.2d 890 (Ct. App. 2005) aff'd, 379 S.C. 12, 664 S.E.2d 477 (2008). There, the defendant testified that at the time of her confrontation with the decedent, she could not simply go inside her home and lock the door because she knew the decedent would beat in her door and come in. Id. As argued before the lower court, that testimony bore on whether or not her actions were reasonable. Id. Because that defendant knew the decedent would kick the door through, the defendant shot him through the door. Id.

In this case, the 2008 and 2009 incidents directed at others which the Petitioner had knowledge of, combined with the 2011 incident at Petitioner's trailer which was directed towards the Petitioner according to some evidence, are relevant to show the Petitioner's state of mind. As was the case in Mekler, the Petitioner pulled the trigger because he wanted to live and knew what the decedent was capable of. As was the case in Mekler, the evidence excluded demonstrated a continuous and consistent pattern of violence on the part of the decedent. "When juxtaposing the prejudicial effect 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). In this case, the probative value of these instances outweighs any prejudice to the state. By contrast, the Petitioner was prejudiced by the exclusion of such instances of conduct which would have been additional evidence supporting a voluntary manslaughter and imperfect self defense charge. The Petitioner's knowledge of the 2008 and 2009 incidents instilled a reasonable fear that when he left the Subway, he would be followed and shot by Holmes because of Holmes's alleged conduct in instances where he has set his sights on an enemy. Knowledge of those incidents, combined with the May of 2011 shooting incident at Petitioner's trailer, would have helped the jury understand the Petitioner's uncontrollable impulse to shoot Holmes at the Subway. The jury was deprived of the whole story, and the Petitioner was deprived of testifying as to all of the circumstances giving rise to his mental state and genuine belief that his own death was imminent but for his shooting Holmes at the Subway.

b. The Circuit Court erred by failing to admit proffered testimony relevant to Petitioner's state of mind.

The Petitioner proffered testimony by Dr. Thomas Martin, a forensic psychiatrist, to testify as to the mental state of the Petitioner. Citing Rules 703 and 704, SCRE, and other South Carolina law discussed below, Petitioner's trial counsel argued that state of mind is admissible and relevant in any case where state of mind of the defendant is implied or involved in an element of the offense that is charged. (R. p. 374, line 9-p. 387, line 3.) Petitioner's trial counsel stated, "The state of mind of my client is an essential element of the elements of murder because if the jury has any information or any evidence that they can infer that there was some kind of provocation or that there was some kind of reasonable threat of harm perceived by the defendant, they can find

either manslaughter or not guilty under self defense.” (R. p. 374, line 22-p. 375, line 3.)¹⁴

The trial judge disallowed the testimony¹⁵ on the grounds that “Dr. Martin’s testimony is simply in some sense to bolster the defendant’s testimony and his resulting actions by virtue of expert testimony.” (R. p. 401, line 15-p. 404, line 9.) Petitioner’s trial counsel objected to the Court’s ruling and attempted to make further argument but was precluded from making further argument.¹⁶ (R. p. 404, line 12-p. 405, line 2.)

The lower court erred in failing to admit the testimony of Dr. Martin because an expert can express an opinion about the ultimate issue in the case. State v. Wilkins, 305 S.C. 272, 276, 407 S.E.2d 670, 672-73 (S.C. Ct. App. 1991); see Rule 704, SCRE (“Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.”).

Specifically, “[q]uestions going to an expert’s knowledge of state of mind of the accused at the time of the crime are proper, and the expert’s opinion as to state of mind

¹⁴ Petitioner’s trial counsel went on to say, “That is the jury’s purview and I’m really scared here that we’re about to take away the jury’s purview here today. I feel that any lack of being able to help the jury make their decision and then any attempt to take away their ability to make the proper decision is going to be obviously reversible error here.” (R. p. 375, lines 3-9.)

¹⁵ The trial judge further stated, “[B]ased upon what I have heard here today and based on the applicable law in this state, the Court will not allow the testimony of Dr. Martin. However, and this was the reason that I wanted his testimony proffered. However, if I am wrong on that, his testimony is in the record and the Court of Appeals or the Supreme Court can adequately determine based on their review of the testimony and the facts of this case whether or not I err in disallowing his testimony.” (R. p. 404, lines 1-9.)

¹⁶ Petitioner’s trial counsel stated: “Your Honor, just to protect the record, obviously, we disagree with the Court’s ruling and object to the Court’s ruling. I’d like to go through a couple of things.” (R. p. 404, lines 13-16.) The trial judge responded: “Mr. Bax, I’ve already heard argument on it. Your objection is noted for the record. I made my ruling. The rules provide that once I make my ruling, I’m not going to hear any more argument on it. Your objection is so noted for the record and I think your client’s interest is protected on that.” (R. p. 404, lines 17-22.)

is admissible.” Id. Expert testimony is relevant to a claim of self-defense. State v. Hill, 287 S.C. 398, 399, 339 S.E.2d 121, 122 (1986) (overruling the lower court’s decision that such testimony was cumulative and irrelevant and recognizing that such expert testimony is not only relevant but critical in the battered woman’s syndrome context). In State v. Atkins, 303 S.C. 214, 220-21, 399 S.E.2d 760, 763-64 (1990), the Court held that the Defendant’s state of mind was relevant and expert testimony as to the Defendant’s state of mind on the day of the crimes was proper.¹⁷

In addition, the lower court’s justification for disallowing the testimony on the basis that it simply bolstered the Petitioner’s testimony is without merit. In State v. Williams, 386 S.C. 503, 516-17, 690 S.E.2d 62, 68-69 (2010), the solicitor proffered and the court admitted testimony by a doctor who interviewed the defendant subsequent to his arrest. The appellant argued that a doctor’s testimony impermissibly bolstered and vouched for the solicitor’s decision to seek the death penalty. Id. at 516, 690 S.E.2d at 68. The doctor was submitted as a lay witness, rather than an expert witness, but the Court’s opinion implies that she could have also been called as an expert witness. Id. at 516-17, 690 S.E.2d at 68-69. The Court held that the doctor could testify as to her factual observations of the course of her interview as a lay witness but recognized that a witness with the doctor’s professional expertise may also be called upon to deliver

¹⁷ During the trial of this case, the Solicitor argued that expert testimony regarding the defendant’s state of mind based on reasonable fear is only allowable in relation to rape trauma and battered women syndrome. (R. p. 371, line 16-p. 373, line 17.) While much of the case law on the issue does involve that syndrome, it should be noted that Atkins did not involve a battered woman case. As Petitioner’s trial counsel stated before the circuit court, such testimony has been allowed outside of the contexts suggested by the Solicitor, and such testimony has never been disallowed in contexts outside of those suggested by the Solicitor.

expert testimony. Id. at 516, 690 S.E.2d at 69. The Court noted that the solicitor “was not bound to call her in that capacity so long as her testimony was limited to lay matters.” Id.

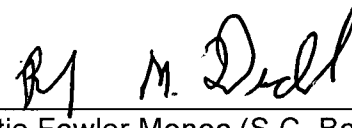
Because an expert opinion as to state of mind is admissible, the exclusion of Dr. Martin’s testimony was improper and prejudicial to the Petitioner. The proffered testimony demonstrated the reasonableness of the Petitioner’s fear, supported a lesser included offense jury charge, and would have assisted the fact finder in understanding why the Petitioner was incapable of cool reflection when confronted by the decedent at the Subway.

Conclusion

The Circuit Court’s decision should be reversed because the trial judge failed to charge the jury with the lesser included offense of voluntary manslaughter where there was evidence supporting that charge. In addition, the trial judge committed reversible error when he excluded relevant evidence of the Petitioner’s state of mind, which supported the lesser included offense of voluntary manslaughter. Both of these errors prejudiced the Petitioner and warrant reversal.

For the foregoing reasons, the Petitioner requests that this Honorable Court remand this case to the Circuit Court for a new trial with instructions (1) that the Petitioner may present evidence of the aforementioned specific instances of violence committed by the decedent; (2) that the testimony of Dr. Thomas Martin be admitted; and (3) that the Circuit Court charge the jury with the lesser included offense of voluntary manslaughter where, as here, there is evidence of the same.

Respectfully Submitted,

By 

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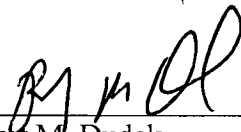
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July ^{17th} 2014
Charleston, South Carolina

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 14, 2014



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Beaufort County
D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

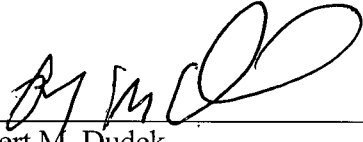
V.

RAJERICK KNIGHT,

APPELLANT

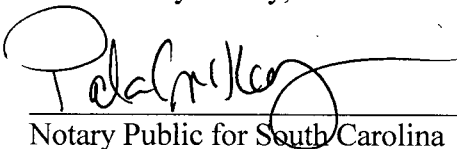
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Kaycie S. Timmons, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 14th day of July, 2014.


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of July, 2014.



Notary Public for South Carolina
My Commission Expires: July 24, 2022

(L.S.)