

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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NOV 25 2015

Appeal from Spartanburg County

SC Court of Appeals

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERIC LAMONT OWENS,

APPELLANT

APPELLATE CASE NO. 2015-000927

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to charge voluntary manslaughter when the shooting was the result of a sucker punch by the alleged victim and the record was devoid of proof of malice?

STATEMENT OF THE CASE

On June 12, 2014, a Spartanburg County grand jury indicted appellant for murder and possession of a firearm during the commission of a violent crime. R. 305. On April 20, 2015, appellant was tried before the Honorable Roger L. Couch and a jury. R. 1. Abel Gray and Chris Bain represented the State. R. 1. Roger Poole represented appellant. R. 1. The jury convicted appellant on both counts. R. 296, ll. 5 – 22. Judge Couch sentenced appellant to concurrent terms of five years' imprisonment on the weapons charge and thirty-five years' imprisonment for murder. R. 301, l. 17 – 302, l. 3. This appeal follows.

ARGUMENT

The trial court erred in refusing to charge voluntary manslaughter when the shooting was the result of a sucker punch by the alleged victim and the record was devoid of proof of malice.

It was undisputed that the decedent, Stanley Jones¹ (“Jones”) sucker punched appellant during a party. R. 120, ll. 1 – 11. The solicitor admitted as much in the first words of his opening statement: “Sucker punch and a shotgun.” R. 86, l. 17. Shaina Wallace (“Shaina”) testified that she was at a party with appellant, Jones and several other people drinking and playing cards. R. 120, ll. 1 – 10. Appellant and Jones went outside and started arguing. R. 120, ll. 1 – 10. Jones hit appellant and he fell to the ground. R. 120, ll. 1 – 10. Talina Wallace also witnessed the fight and described Jones hitting appellant first. R. 185, ll. 3 – 10. Jones hit appellant in the jaw. R. 122, l. 25 – 123, l. 1.

Appellant was angry. R. 185, ll. 6 – 7. R. 123, ll. 2 – 3. He left the party with Shaina. R. 123, ll. 5 – 12. Shaina, who admitted that she lied in her statements to the police and was charged with accessory after the fact and obstruction of justice, claimed appellant had her drive him back to their house so he could get his gun. R. 123, ll. 7 – 12. R. 140, l. 7 – 144, l. 12. R. 139, l. 24 – 139, l. 2. Shaina claimed appellant got “a long gun” from their house and made her drive him back to the party. R. 124, l. 3 – 126, l. 11. Jones had already left the party. R. 126, ll. 12 – 24. They eventually went back home. R. 126, l. 25 – 127, l. 1.

Derrick White (“White”) testified for the State. White pled guilty to accessory after the fact. R. 204, ll. 2 – 7. He had not been sentenced at the time of his testimony. R. 207,

¹ Jones is frequently referred to in the transcript by his nickname, “Man.” R. 111, l. 23 – 112, l. 1. Appellant is frequently referred to by his nickname, “E.” R. 120, ll. 12 – 13.

ll. 4 – 5. White was told he would be sentenced after appellant “[got] his sentence.” R. 207, ll. 9 – 13. White also had a long criminal record that included several counts of burglary, receiving stolen goods, and a drug charge. R. 208, l. 15 – 209, l. 15. White admitted lying in three of the four statements he gave to the police. R. 206, ll. 2 – 9.

At trial, White claimed appellant came to his house one morning and told him to drive him to Jones’s house because of the sucker punch the night before. R. 193, l. 10 – 194, l. 16. White believed there was going to be a fistfight. R. 194, l. 17 – 195, l. 16. According to White, appellant got out of the car at Jones’s house and White heard Jones say, “you gonna shoot me now?” R. 196, ll. 22 – 25. Appellant supposedly replied, “Damn right” and shot Jones in the side with a shotgun. R. 196, l. 22 – 21.

Jones bled to death from a gunshot wound. R. 226, ll. 18 – 20. Pretrial, the State admitted that no gun was ever found. R. 48, ll. 20 – 22. The State also admitted that no projectile was ever found. R. 50, ll. 15 – 24.

At the close of the evidence, appellant requested a charge on voluntary manslaughter. R. 246, ll. 20 – 24. The trial judge heard extensive argument on the issue of whether the evidence supported a voluntary manslaughter charge. R. 246, l. 18 – 253, l. 23. The trial judge ruled that the time which elapsed between the sucker punch and the shooting was a “cooling off period overnight.” R. 250, ll. 8 – 12. The trial judge also rejected appellant’s argument that, based on the manslaughter statute, appellant was entitled to the charge if the State failed to prove malice. R. 246, l. 18 – 253, l. 23. When making his ruling, Judge Couch noted that appellant’s argument related to malice raised “an interesting question.” R. 253, ll. 22 – 23.

The trial judge erred in not charging voluntary manslaughter for two reasons. First, the jury could have disbelieved the State's witnesses concerning malice. Second, the trial judge erred in ruling as a matter of law that a sufficient amount of time had passed to amount to a "cooling off" period. As argued by appellant, the statutory definition of manslaughter is simply a killing without malice: "A person convicted of manslaughter, or the unlawful killing of another without malice, express or implied, must be imprisoned not more than thirty years or less than two years." S.C. Code Ann. § 16-3-50. As pointed out by trial counsel during his argument to the court, the witnesses completely lacked credibility because of their admissions that they lied in their contradictory statements. R. 250, l. 13 – 251, l. 12. These problems with the witnesses meant that the jury could find an absence of malice if they disbelieved these witnesses. The trial judge continually asked for appellant to provide some specific fact that "eliminated the malice." R. 246, l. 25 – 253, l. 20. Trial counsel admitted that he could point to no specific fact, but repeatedly argued that the witnesses might not be believed. R. 246, l. 25 – 253, l. 20. The trial judge erred in rejecting this argument and requiring appellant to provide some other fact in support of his argument.

The trial judge also erred in finding that a "cooling off" period deprived appellant of a voluntary manslaughter charge. "Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." State v. Cole, 338 S.C. 97, 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. A sudden heat of passion has also been described as "an uncontrollable impulse to do violence." Id. at 101-02, 525 S.E.2d at 513 (internal quotations omitted). Viewing the evidence in the light most favorable to

appellant, Jones's sucker punch made appellant angry and would qualify as sufficient legal provocation.

The trial judge erred by not viewing the evidence in the light most favorable to appellant on the issue of the cooling off period. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001) ("In determining whether the evidence requires a charge of voluntary manslaughter, the Court views the facts in a light most favorable to the defendant."). "Even when a person's passion has been sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would be murder and not manslaughter." Id. at 303, 555 S.E.2d at 395.

In Knoten, the evidence showed that the defendant and the decedent got into an argument, the defendant left the place of the argument, retrieved a weapon, and returned. Id. at 305, 555 S.E.2d at 396. The decedent struck appellant first. Id. The Court rejected the State's argument that a cooling off period had passed as a matter of law and determined that the trial judge erred in refusing to charge voluntary manslaughter. Id.

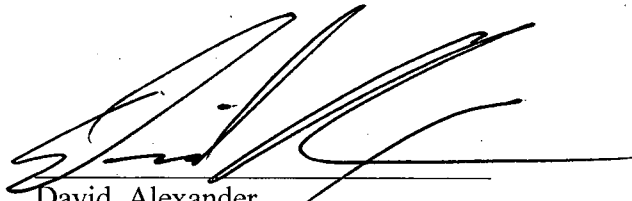
Just as in Knoten, it was undisputed that appellant was struck first by Jones. The solicitor called it a sucker punch. R. 86, l. 17. White's testimony established that appellant was still angry about the sucker punch the next day and was seeking revenge. R. 194, l. 6 – 195, l. 6. Viewing these facts in the light most favorable to appellant, a jury could have found that appellant had not "cooled off" and was still operating under an uncontrollable impulse to do violence. The trial judge erred in depriving appellant of his

right to have the jury make this factual determination. This Court should reverse and grant appellant a new trial.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and this case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of November, 2015.

STATE OF SOUTH CAROLINA

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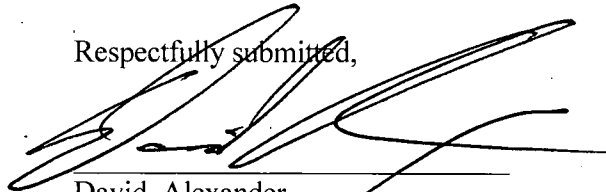
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Eric Lamont Owens states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Roger L. Couch, which was held on April 22, 2015, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Eric Lamont Owens.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of November, 2015.

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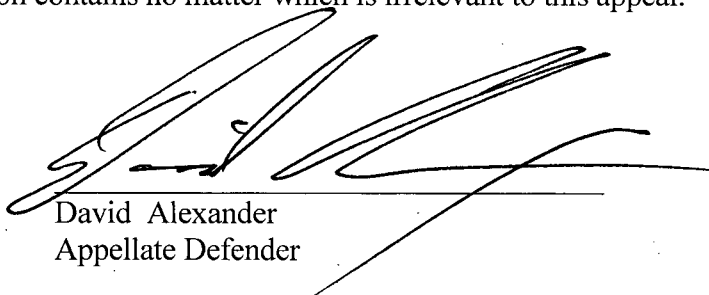
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Transcript.

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

November 25, 2015.



David Alexander
Appellate Defender

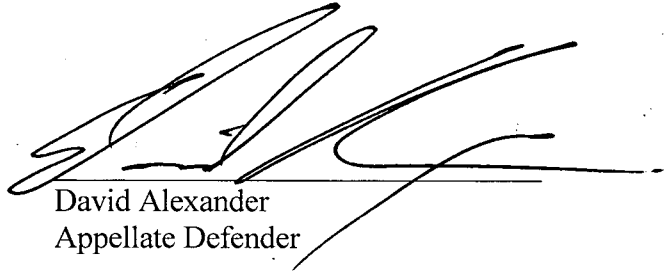
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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."

November 25, 2015.

A handwritten signature in black ink, appearing to read 'DAVID ALEXANDER', written over a horizontal line.

David Alexander
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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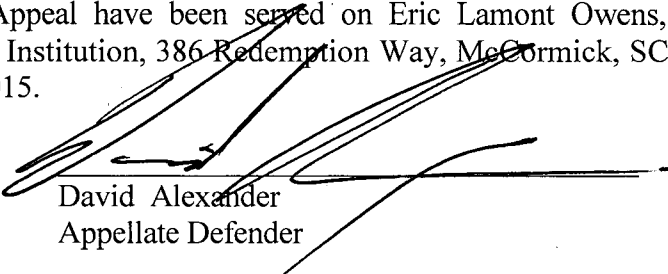
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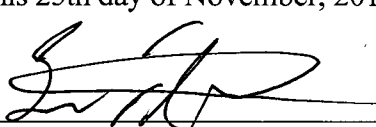
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders 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 Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Eric Lamont Owens, #252967 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 25th day of November, 2015.


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 25th day of November, 2015.

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