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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Darlington County

Eugene C. Griffith, Jr., Circuit Court Judge

ANTHONY EDWARDS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000892

JOHNSON PETITION FOR WRIT OF CERTIORARI

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ISSUE PRESENTED

Did the PCR court err by ruling petitioner was effectively represented where petitioner testified he did not want his jury instructed on voluntary manslaughter because he correctly reasoned there was no evidence of voluntary manslaughter in this murder or self-defense case, and petitioner was convicted of voluntary manslaughter in an apparent compromise verdict as he feared?

STATEMENT OF FACTS

This case involves a shooting at the Goldrush Tavern in Darlington County. It was undisputed that the decedent was removed from the club two or three times that evening for causing trouble. Clay Tedder Sr. was working at the Goldrush on the night of the shooting. App. 71, l. 13-72, l. 2. Tedder's job was to search people for weapons before they entered the club. App. 72, ll. 3-10.

Tedder remembered that a fight occurred on the dance floor that evening. The decedent, Roosevelt Patterson, was involved. App. 73, ll. 9-25.

The men causing the trouble on the dance floor were pushed back into the kitchen. Petitioner, who was a friend of the owner of the club, pulled out a pistol in an apparent effort to calm everyone down. Instead of calming down, the decedent apparently became angrier because petitioner pulled a gun. App. p. 74, l. 3 - 76, l. 20.

After the decedent was thrown out of the club for the second or third time that night, Tedder remembered that the decedent pushed the door to the club open again, and this time the door hit the bouncer. "[W]hen he [the decedent] hit it, that is when Anthony [petitioner] shot him in the left side. Roosevelt [the decedent] turned to run . . . that is when he got shot in the left side or back, I think. App. 75, l. 23 - 76, l. 10.

Petitioner's main allegation of ineffective assistance of counsel was that his attorney requested a jury instruction on voluntary manslaughter. Petitioner repeatedly stated there was no evidence of voluntary manslaughter in this case. The shooting was either murder or it was in self-defense. Petitioner testified that he turned down an offer to plead guilty to voluntary manslaughter because there was no evidence this was a voluntary manslaughter case as defined by our state's law. App. 419; App. 426.

Another eyewitness, Harry Wilds Jr., testified after the fight on the dance floor the men were forced into the kitchen of the bar. Wilds remembered that several of the men were trying to hit him at the time. Wilds said he picked up a kitchen knife to defend himself, and he remembered petitioner "came in waving his gun. And he stuck the gun – I mean, he came in waving the gun, but he had the gun right here." Wilds remembered someone told him to put the knife down. However, Wilds said he was not going to put the knife down as long as petitioner was holding a gun. App. 103, l. 18 - 104, l. 23.

Wilds remembered that the decedent "charged and rushed Anthony to try and take the gun ..." App. 104, l. 23 - 105, l. 4. Petitioner did not shoot the decedent at that time. Wilds recalled that several of the men were able to get the decedent out of the kitchen, out of the club, and into the parking lot. Several of the men tried to get the decedent to sit in the car. Instead, the decedent broke away from these men, and he entered the club again.

Wilds remembered: "[A]s soon as he got to the door, I came behind him and I heard a shot . . . Roosevelt came running back to me and said `I got hit.' And I said,` you got hit?' And that is when he said he was burning." App. 106, l. 17 - 109, l. 14. Wilds said "it was a matter of seconds" after the decedent entered the club -- after being ejected -- that he was shot. App. 110, ll. 3 - 22.

Patrick Smith remembered the fight at the bar that evening. The decedent was very angry. Smith also recalled seeing Wilds with a knife in the kitchen that evening. App. 155, l. 3 - 159, l. 8. Smith clearly remembered the decedent being thrown out of the club two or three times that night for fighting. App. 159, ll. 9-10.

On one return trip, Smith witnessed the decedent knocking all of the bottles and glasses off of the bar. App. 161, l. 19 - 162, l. 19. Smith said "the last time" the decedent entered the bar "it happened so fast that when he was entering I was like -- that is when I told you I heard the gunshot."

Smith did not remember exactly where petitioner was when the decedent was shot. App. 162, l. 20 - 163, l. 10.

The judge told the attorneys that he was going to charge murder, voluntary manslaughter, and self-defense. Defense counsel did not object. App. 283, l. 14 - 284, l. 5.

During his closing argument, the solicitor reminded the jury that the petitioner told the police that people were "instigating him" that evening. Petitioner said, "He blanked out" before the shooting, and the solicitor told the jury that petitioner washed his hands to get rid of the GSR after he shot the decedent. App. 300, l. 13 - 301, l. 18.

During deliberations, the jury asked to hear the videotape of petitioner's interview with the police again which was played for them. App. 349, l. 9 - 351, l. 7. The jury also asked to be recharged on murder and voluntary manslaughter. The court also complied with that request. App. 351, l. 17 - 357, l. 5.

The jury found petitioner guilty of voluntary manslaughter, and possession of a weapon during a violent crime. App. 358, l. 18 - 359, l. 20. Judge King sentenced petitioner to eighteen years imprisonment for voluntary manslaughter, and he imposed a concurrent five-year sentence for possession of a weapon during a violent crime. Petitioner was also sentenced to a three-year concurrent sentence for carrying a weapon into a premise where alcohol was sold. App. p. 382, l. 13 - 383, l. 8.

Petitioner's convictions were affirmed on direct appeal. Petitioner was represented by Appellate Defender Robert M. Pachak on appeal.[1]

[1] The order of dismissal incorrectly stated that undersigned counsel, Robert Dudek, represented petitioner on his direct appeal.

An application for post-conviction relief was filed on June 25, 2013. App. 386-391. Petitioner alleged that he was ineffectively represented. App. 388; 393-396. The state filed a return to the PCR application dated May 29, 2014. App. 397-403.

PCR hearing

An evidentiary hearing was convened on January 20, 2015 before the Honorable Eugene C. Griffith, Jr. Tristan Shaffer represented petitioner, and Joshua Thomas was the assistant attorney general. App. 404.

Defense counsel Rick Jones acknowledged that in petitioner's statement petitioner said he was not angry during the encounter with the decedent. Jones agreed with PCR counsel that petitioner was completely calm "except for the fact that he had a gun." App. 412, l. 12 - 413, l. 13. Jones maintained that while petitioner was not angry, "I know he was scared." App. 413, ll. 20 -22; 417, ll. 3 -22.

Petitioner testified that he turned down a twenty-year offer to plead guilty to voluntary manslaughter. Petitioner said the only issue in his case was whether the shooting was murder or it was in self-defense. Petitioner told the PCR judge that he had done substantial research, and that this was not a "voluntary manslaughter case at all." App. 419, l. 6 - 420, l. 22.

Petitioner testified that he was very calm that evening and that he had never made a statement or told anyone that he was afraid. App. 420, l. 9 - 421, l. 7. Petitioner said that there was no evidence in this case of a sufficient legal provocation, and that even if he was angry -- a "heat of passion alone" -- will not suffice. App. 420, l. 20 - 421 l. 17. Petitioner also said he was not acting under "uncontrollable impulse to do violence." App. 421, ll. 21 -23. Petitioner said: "[N]ever once in my life have I felt that I was guilty of voluntary manslaughter." App. 422, ll. 20-23. Petitioner remembered the decedent tried to grab his gun that evening, and "I pulled it back

because I had no intention of firing it." It was later when petitioner shot the decedent. App. 424, ll. 16 - 21.

The state recalled defense counsel Rick Jones at the end of the evidentiary hearing. Jones testified that he discussed requesting a voluntary manslaughter instruction with petitioner. Jones also said the state had offered a plea to voluntary manslaughter with a cap of twenty years, and Jones thought that was a "good offer." App. 427, l. 7 - 429, l. 23.

PCR counsel Shaffer amended the PCR application without objection to include an allegation that petitioner had been denied due process because he was convicted, and sentenced for the crime of voluntary manslaughter where there was no evidence of that crime. App. 431, l. 17-434, l. 11. The assistant attorney general argued that there was evidence of a heat of passion, and a sufficient legal provocation and that defense counsel Jones was not ineffective for requesting a voluntary manslaughter instruction. App. 433, ll. 2 -22.

Order of dismissal

An order of dismissal was filed on April 6, 2015. App. 437 - 444. This order stated that petitioner failed to meet his burden of proving trial counsel was ineffective for requesting a voluntary manslaughter instruction. App. 441.

The PCR judge wrote that "trial counsel testified he believed the evidence at trial supported the voluntary manslaughter instruction." The court cited State v. Starnes, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010), in support of its ruling that there was evidence of voluntary manslaughter in this case. The PCR court pointed to petitioner's statement to the police that he was "instigated," and that he "blanked out" before the shooting. While an extremely broad interpretation of this may lead to the conclusion petitioner was acting under the heat of passion, a sufficient legal provocation was still noticeably absent. The court also cited to Perry Wilds testimony that at one point that evening

the decedent had attempted to take petitioner's gun away. Again, petitioner did not shoot the decedent at that time. App. 103, l. 18- 106, l. 14; 441. Respectfully, neither citation to the record by the PCR court shows any evidence of voluntary manslaughter in this case.[2]

From this order, petitioner is seeking a writ of certiorari pursuant to Rule 243 of the SCACR.

[2] The PCR court also found that any allegation petitioner was denied due process as a result of the voluntary manslaughter instruction should have been raised on direct appeal. The court found that there was no due process violation in this case because there was evidence of voluntary manslaughter offered at trial. App. 442-443.

ARGUMENT

The PCR court erred by ruling petitioner was effectively represented where petitioner testified he did not want his jury instructed on voluntary manslaughter because he correctly reasoned that there was no evidence of voluntary manslaughter in this murder or self-defense case, and petitioner was convicted of voluntary manslaughter in an apparent compromise verdict as he feared.

Discussion

The law to be charged must be determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). A request to charge a lesser-included offense is properly refused when there was no evidence that the defendant committed the lesser rather than the greater offense. Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991).; State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000).

Voluntary manslaughter is the intentional and unlawful killing of a human being in a sudden heat of passion upon a sufficient legal provocation. State v. Niles, 412 S.C. 515, 772 S.E.2d 877 (2015). Here, there is no evidence of a sufficient legal provocation even if this record can be construed to supply a "sudden heat of passion." Petitioner testified he calmly shot the decedent in self-defense. There is simply no evidence of voluntary manslaughter in this case because there was no evidence of a sufficient legal provocation.

The evidence showed that the decedent entered the bar a second or third time after being thrown out a couple – or several – times earlier. Petitioner shot him when he re-entered the last time. The record revealed that the decedent was shot rather quickly after re-entering the bar. There was no evidence of a sufficient legal provocation that would reduce the shooting from murder to voluntary manslaughter. Even the cites to the record in the order of dismissal do not show there was

any evidence of a sufficient legal provocation. Thus, the shooting was either murder or it was in self-defense.

The evidence regarding whether a jury instruction on voluntary manslaughter was discussed with petitioner was conflicting. Petitioner testified he did not want a voluntary manslaughter instruction because it invited a compromise verdict. Conversely, defense counsel said he discussed the lesser-included offense of voluntary manslaughter with petitioner, and that petitioner agreed the jury should have that verdict option.

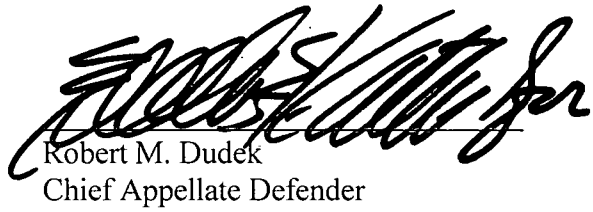
Regardless, there was no evidence of voluntary manslaughter in this case, and defense counsel should not have requested that instruction. The jury undoubtedly compromised in finding petitioner guilty of voluntary manslaughter since there was no evidence of that crime. While defense counsel apparently thought petitioner was fortunate not to be found guilty of murder – that was not the issue. The issue was, and remains: Was defense counsel ineffective for requesting a jury instruction on voluntary manslaughter where there was no evidence of that lesser-included offense? Any other manner of analyzing this case would respectfully be from a parochial point of view.

Had the jury been forced to elect between convicting petitioner of murder or finding him not guilty by reason of self-defense there is a reasonable likelihood the outcome of this case would have been different. It is clear the decedent was the aggressor that evening since he was thrown out the bar at least two times, and possibly three times. The decedent burst through the door in dramatic fashion forcing the fatal encounter in this case. Defense counsel was ineffective for requesting a voluntary manslaughter instruction where there was no evidence of voluntary manslaughter, and the jury reached that compromise verdict to petitioner's detriment. See Strickland v. Washington, 466 U.S. 668 (1984).

CONCLUSION

By reason of the foregoing argument, the petition for writ of certiorari should be granted to allow full briefing on this issue.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of December, 2015.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO DARLINGTON COUNTY
EUGENE C. GRIFFITH, JR., CIRCUIT COURT JUDGE

ANTHONY EDWARDS,

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STATE OF SOUTH CAROLINA,

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APPELLATE CASE NO. 2015-000892

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Anthony Edwards states:

1. He is the Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.

2. He has reviewed the record of petitioner's post-conviction relief action which was held on January 20, 2015. In his opinion seeking certiorari from the order of dismissal is without merit.

3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Anthony Edwards.

Respectfully submitted,

Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR PETITIONER

This 14th day of December, 2015

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CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Jessica Kinard, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Anthony Edwards, #295387, at Lee Correctional Institution, this 14th day of December, 2015.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 14th day
of December, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.