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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODERICK GERMAINE WYNN,

APPELLANT

APPELLATE CASE NO. 2014-001887

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by denying Appellant's motion for a new trial where there was no evidence to support the jury's verdict of voluntary manslaughter?

STATEMENT OF THE CASE

A Spartanburg County Grand Jury indicted Appellant at the January 27, 2014 term of General Sessions for the offense of murder. R. 237 – R. 238. His case was called to trial on August 27, 2014 before the Honorable R. Keith Kelly, and a jury. R. 1. Assistant Solicitor Derrick Bulsa represented the state, and Mary Stuart Lyall represented Appellant. R. 1.

On August 28, 2014, the jury acquitted Petitioner of murder, but found him guilty of the lesser included offense of voluntary manslaughter. R. 215, l. 20 – 216, l. 6. Judge Kelly sentenced Appellant to twenty years imprisonment. R. 235, ll. 19-24.

This appeal follows.

STATEMENT OF FACTS

On the afternoon of August 14, 2013, Appellant was involved in a physical altercation with Curtis Goldsmith in the parking lot of the Money Tree Check Cashing Service in Spartanburg. The altercation began as a verbal argument when Appellant approached Goldsmith and asked him about money Goldsmith owed Appellant. None of the state witnesses saw how the physical fight began.

Freddie Young, who was living at a motel near the Money Tree, testified he overheard a conversation shortly before the altercation began between a female named Megan and a male who he believed to be Appellant. He did not see either person because he was on the other side of a wooden fence, but he heard their voices. Young claimed the female told the male to "leave the situation alone" and the male responded that "he was going to take care of business." R. 24, l. 17 – 27, l. 7.

Shortly thereafter, Young retrieved his bicycle and rode down a "corridor" to the Money Tree parking lot. When he entered the parking lot, Young saw Appellant and Goldsmith arguing and fighting. The first punch he saw came from Appellant, but because he rode up during the middle of the fight, Young did not "know if the guy [Goldsmith] throwed a punch first." R. 27, ll. 8-12; R. 29, l. 11 – 31, l. 19.

During the middle of the physical fight, Young rode his bicycle closer to the men and asked "what was going on." Appellant allegedly told Young that Goldsmith owed him money. R. 31, l. 20 – 32, l. 1. The men continued to fight and argue. Young opined that Appellant had the advantage over Goldsmith and explained that both men were eventually fighting on the ground. When the two finally stood up, they continued to argue until Goldsmith started "throwing punches." When Goldsmith continued to "throw punches,"

Appellant "grabbed him by the legs and got him back down on the ground." Young explained that when Goldsmith fell to the ground, he hit his head on a trash dumpster. R. 32, l. 2 – 35, l. 21. After Goldsmith hit his head, he got up and walked back towards his car. While walking to his car, Goldsmith turned around and said something to Appellant. Young claimed Appellant punched Goldsmith one last time and then Goldsmith finally got into his car. Young then rode away on his bicycle. R. 38, ll. 1-18.

Joyce Brewton testified that she saw Goldsmith and Appellant arguing by the dumpster when she went into the Money Tree that afternoon. When she came back outside, she saw the men physically fighting. She saw Goldsmith punch Appellant and Appellant punch him back. R. 87, l. 11 – 89, l. 17. She maintained that she never saw either man on the ground. R. 89, ll. 16-17. As Brewton was leaving the parking lot, she said she watched Goldsmith walk back to his car, get inside, and sort of "slump down" in the seat. R. 89, l. 19 – 90, l. 11. Brewton testified that Appellant and a female were standing over Goldsmith as he "was slumped over in the car" and that Appellant kept saying, "I knocked him out. He all right. He all right." R. 91, ll. 10-21.

Matthew Teamer, who was driving through the Money Tree parking lot that afternoon, testified that he saw Appellant and Goldsmith arguing, but he could not hear what they were saying because his windows were rolled up. He said he saw Goldsmith hit Appellant first and then both men fell to the ground and were "scuffling." The men continued to fight until eventually Appellant walked off with his book bag and Goldsmith walked towards his car. R. 135, l. 19 – 137, l. 24.

Marion Bridges, who was at the Money Tree with Joyce Brewton, testified that he was waiting in the car with his granddaughter while Brewton was in the store. His

granddaughter pointed out that two men were arguing behind them. Bridges looked back and claimed he saw Goldsmith jump out of his car and "slam on Roger [Appellant]." He said Goldsmith took the first swing at Appellant and then the two "scuffled a little bit." They were punching each other and wrestling. Bridges never saw either man on the ground. He explained that after the fight ended Goldsmith got back into his car and it looked like he was injured because he was slumped over. R. 150, l. 11 – 153, l. 9.

After the fight ended, Appellant ran down the street seeking help and ran into Kerri Blanchard who was walking up the sidewalk towards the Money Tree. Blanchard testified that Appellant was upset and told her "that Curtis [Goldsmith] had swung at him" and that he hit Goldsmith back and Goldsmith "wasn't moving." R. 60, ll. 5-18; R. 66, l. 22 – 67, l. 5. Appellant and Blanchard walked back to the Money Tree together. When they got to the parking lot, Goldsmith was slumped over in the driver's seat of his car with the door open and the engine running. Blanchard explained that Goldsmith "was still breathing, but he wasn't breathing normally" and "his heart was beating extremely fast." R. 60, l. 19 – 61, l. 13. Appellant asked her to call 911. Blanchard told the 911 operator "[t]hat something had happened at Money Tree. I believed there was a fight and that the ambulance needed to come." After Appellant ensured 911 had been called and that Goldsmith would get the medical attention he needed, he left the scene. R. 62, ll. 2-19.

When EMS arrived at the scene, they found Goldsmith unconscious. R. 7, ll. 11-20. He was "slumped over" in the driver's seat of his car and had vomited. R. 7, l. 21 – 8, l. 18. The paramedics could not find a pulse and despite efforts were never able to resuscitate him. R. 8, l. 19 – 9, l. 22. Goldsmith was declared dead at the hospital upon arrival. R. 9, ll. 23-25.

Law enforcement arrested Appellant four days later and charged him with murder. R. 107, ll. 5-8.

Dr. David Wren, the pathologist who conducted the autopsy, testified that Goldsmith died of blunt force trauma to the head that was caused by Goldsmith either falling into or being struck by a flat object. R. 119, ll. 3-25. The blunt force trauma caused internal hemorrhaging or bleeding to the brain which led to Goldsmith's death. However, Goldsmith did not suffer a skull fracture. Wren maintained that it does not require a lot of force to cause an injury like Goldsmith's. He explained, "It's just some people are more susceptible than others." R. 122, l. 23 – 123, l. 8. Wren opined that Goldsmith's injuries were not caused by "a blow by a fist" and again were likely caused by Goldsmith being "thrown up against something or he fell and hit something." R. 123, ll. 9-17.

The court charged the jury on murder, the lesser included offenses of voluntary and involuntary manslaughter, self-defense, and mutual combat. R. 204, l. 12 – 210, l. 21. Thirteen minutes into its deliberations, the jury asked the court for written definitions of voluntary and involuntary manslaughter. R. 213, l. 22 – 214, l. 24. It reached a verdict about an hour and a half later and found Appellant guilty of voluntary manslaughter. R. 214, l. 25 – 216, l. 6.

ARGUMENT

The court erred by denying Appellant's motion for a new trial where there was no evidence to support the jury's verdict of voluntary manslaughter.

Relevant Facts

After the jury returned its verdict finding Appellant guilty of voluntary manslaughter, defense counsel made a motion for a new trial arguing there was insufficient evidence to support the jury's verdict. She argued there was no evidence presented that Appellant acted in the sudden heat of passion or upon sufficient legal provocation and thus there was no evidence of voluntary manslaughter. R. 217, l. 19 – 218, l. 18.

The assistant solicitor argued in response that there was evidence of both sufficient legal provocation and sudden heat of passion. He stated, "[T]he Defense case hinged upon the victim inflicting the first blow, which the jury could easily see as provocation. The Defendant went up to the victim upset about some money. So he clearly could have become enraged as a result of the blow by the victim. So the charge is sufficient." R. 218, l. 20 – 219, l. 1.

The court ultimately denied the motion finding "there is ample evidence . . . to support the jury's decision." R. 183, ll. 2-5.

Discussion

The court erred by denying Appellant's motion for a new trial where there was no evidence to support the jury's verdict of voluntary manslaughter. Specifically, there was no evidence Appellant acted in the sudden heat of passion or upon sufficient legal provocation, both necessary elements of voluntary manslaughter.

"In considering a new trial motion based on insufficiency of the evidence, the trial court is concerned with the existence of evidence rather than its weight. The weight of the evidence is a question for the jury. Where there is any evidence supporting the jury's verdict, the court commits no error in denying the motion." State v. Smith, 363 S.C. 111, 115, 609 S.E.2d 528, 530 (Ct. App. 2005) (citing State v. Pauling, 264 S.C. 275, 278, 214 S.E.2d 326, 327 (1975)) (internal citations omitted).

"Voluntary manslaughter is the unlawful killing of a human being in the sudden heat of passion upon sufficient legal provocation. Both heat of passion and sufficient legal provocation must be present at the time of the killing. The provocation must be such as to render the mind of an ordinary person incapable of cool reflection and produce an uncontrollable impulse to do violence." State v. Cooley, 342 S.C. 63, 67, 536 S.E.2d 666, 668 (2000) (internal citations omitted).

"A defendant is not entitled to a voluntary manslaughter charge merely because he was in a heat of passion." State v. Starnes, 388 S.C. 590, 596-97, 698 S.E.2d 604, 608 (2010) (citing State v. Wharton, 381 S.C. 209, 215, 672 S.E.2d 786, 788 (2009)). "Conversely, a defendant is not entitled to voluntary manslaughter merely because he was legally provoked." Starnes, 388 S.C. at 597, 698 S.E.2d at 608 (citing State v. Pittman, 373 S.C. 527, 576, 647 S.E.2d 144, 170 (2007)).

There was no evidence presented that Appellant was overcome by a sudden heat of passion as would produce an "uncontrollable impulse to do violence." The only evidence presented by the state was Young's testimony that Appellant told him Goldsmith owed him money and that was why they were arguing. It was unclear why the physical altercation

began or who started it. However, several witnesses testified that this was a normal fist fight between two middle aged men.

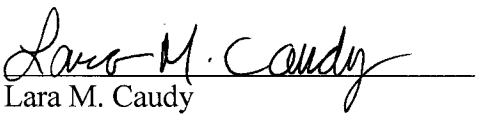
Moreover, there was no evidence presented that Goldsmith had legally provoked Appellant. While there was some conflicting testimony that Goldsmith threw the first punch, this was not evidence to establish sufficient legal provocation.

Because there was no evidence to support the jury's verdict convicting Appellant of voluntary manslaughter, this Court should reverse his conviction and sentence and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of July, 2015.

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 27, 2015

Lara M. Caudy

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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 Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of July, 2015.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of July, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.