

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JAN 12 2016

SC Court of Appeals

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES L. SINGLETON,

APPELLANT

APPELLATE CASE NO. 2015-001152

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in charging the jury that malice might be inferred from the use of a deadly weapon with respect to the attempted murder of James Gage charge against appellant because this charge violated Belcher¹ in that there was evidence of self-defense in existence based on the facts of the case that excused and justified appellant's actions.

¹ State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009).

STATEMENT OF THE CASE

Appellant James Lamont Singleton was convicted of first degree burglary, kidnapping, assault and battery of a high and aggravated nature,² first degree assault and battery,³ and possession of a weapon during the commission of a violent crime during the May 2015 term of the Dorchester County General Sessions Court before Judge Maité Murphy. Appellant was sentenced to an aggregate forty-year prison term. John Loy represented appellant at trial, and Assistant Solicitors Don Sorenson and Sheila Mims appeared on behalf of the state.

Appellant appealed his convictions and sentences. This brief follows.

² Appellant was indicted for the attempted murder of Melinda Yates, but found guilty of assault and battery of a high and aggravated nature.

³ Appellant was indicted for the attempted murder of James Gage, but found guilty of first degree assault and battery.

ARGUMENT

The trial judge erred in charging the jury that malice might be inferred from the use of a deadly weapon with respect to the attempted murder of James Gage charge against appellant because this charge violated Belcher⁴ in that there was evidence of self-defense in existence based on that facts of the case that excused and justified appellants.

At trial, Melinda Yates testified that on May 23, 2013, she was living in a house in Gadsden Acres with her husband, James Gage, and nephew, Ryan Yates. Neither Gage nor Ryan Yates testified at trial. Melinda Yates explained that at some point during that night, a perpetrator, later identified as appellant, kicked open the front door, entered, grabbed her, put a gun to her head, and asked her to surrender her cell phone. Meanwhile, James Gage, who escaped and ran outside, yelled to appellant to release her. Yates stated that when appellant raised his hand, which held a gun, to shoot Gage during the melee, she grabbed appellant's hand, and then she and appellant struggled over the gun. Yates stated that she managed to run out to the back of the house where James Gage was waiting for her. Yates added that she realized then that she had been shot in her leg at some point during the incident and was transported to a hospital nearby for medical assistance shortly thereafter. App. 87, line 13 – p. 95, line 16; R. 119, lines 18-22.

Several K-9 dogs brought to the crime scene tracked appellant's location in a barn close by where he was subsequently arrested. R. 130, line 2 – p. 144, line 20; R. 169, lines 5– 14.

The trial judge charged the jury on the law of self-defense (R. 432, l. 1 – p. 435, l. 2) because there was evidence in the record revealing that James Gage was in possession

⁴ State v. Belcher 385 S.C. 597, 685 S.E.2d 802 (2009).

of a gun and fired shots at appellant at the crime scene, and that appellant fired back at Gage in self-defense. R. 119, lines 10 – 12; R. 121, lines 12 – p. 122, line 9.

Excerpts from appellant's statements describing the exchange of gunfire between Gage and him follow:

"I was just getting back from a walk, and I got a call saying there was weed inside the house, so....I walked through the woods and found the house. As I came out - - came out, a car left the driveway, so I thought" - - he has - - "the house was empty. I went up to the front door and attempted to kick it in. It didn't open. I heard footsteps by the door, so I kicked it in again and it opened. I saw one shadow running to the first room and a blur run into the kitchen. I ran into the first room, asked the girl, 'where's the weed at?' She said, 'out back.' Then I said, 'where's the boyfriend?' She said, 'out back.' So I grabbed her hair and put her in front of me and poked her head out back first and instructed her to call his name. She yelled it, and I heard another door open from out towards the side. I closed the back door and turned around. Then her boyfriend poked his head out and fired two shots at me. I dropped to the ground for cover. I shot around back, and his girlfriend grabbed the gun. I hit her with the gun and tried to fire again. The next two rounds never went off, but he ran anyway. I hit her with the pistol again and ran after but instead for the first - - sorry, but instead for the fact my gun was jammed I ran out front. As I crossed the street, he fired two shots at me. I made it further down the street, and he fired three more shots at me. I ran towards a ditch. Heard him coming, so I kept moving and ran through the dark woods. R. 245, l. 3 – p. 246, l. 19.

Also, the judge charged the jury on the concept of malice regarding the indictment alleging the charge of the attempted murder of James Gage as follows:

Attempted murder...In order to prove this crime the State must prove the defendant attempted to kill another person with malice aforethought, either express or implied. Malice is hatred, ill will, or hostility towards another person. It is an intentional doing of a wrongful act without just cause of excuse and with the intent to inflict an injury under circumstances that the law will infer evil intent. ...Malice aforethought may be express or inferred.

Express malice is shown when a person speaks words which express hatred or ill will for another or when a person prepared beforehand to do the act which was later accomplished. ...

Inferred malice may also arise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used a deadly weapon depends on the facts and circumstances of each case.

If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be considered by you, the jury, along with the other evidence in this case, and you may give it the weight that you decide it should receive. App. 426, l. 14 – p. 428, l. 5.

In State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), the Court handed down a clear break from an historical instruction that the use of a deadly weapon implied malice and held that a jury charge that instructs the jury that malice maybe inferred from the use of a deadly weapon is no longer good law where evidence is presented that would reduce, mitigate, excuse or justify the homicide. The Belcher Court held also that because the crime of assault and battery with intent to kill requires malice, this new rule would apply to that offense as well. The Court looked to the word “intent” as part of its analysis as follows:

[F]or example, a homicide occurs by the use of a deadly weapon under circumstances warranting a self-defense instruction. The killing would be intentional, yet under our currently sanctioned charge, the jury would be permitted to find malice merely because “if one intentionally kills another with a deadly weapon, the implication of malice may arise.” *Elmore*, 279 S.C. at 421, 308 S.E.2d at 784. That highlights the “half-truth” nature of the charge.

One appellate court has described this jury charge as “half-truth.” Glenn v. State, 68 Md. App. 379, 511 A.2d 1110, 1126 (1986). In discussing its meaning behind this observation, *Glenn* notes that malice includes the absence of

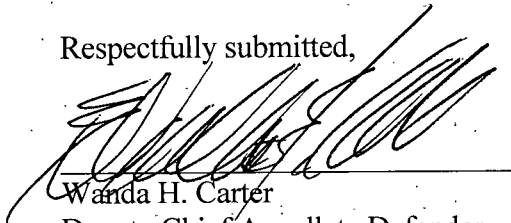
justification, excuse and mitigation. *Glenn*, 511 A.2d at 1122. When malice is viewed in light of these component parts, it becomes clear that inferring malice from the use of a deadly weapon is indeed only a "half-truth." The absence of justification, excuse or mitigation cannot be inferred from the use of a deadly weapon standing alone. Other facts and evidence (or the absence of other facts and evidence) are required for the fulfillment of these component parts.

In the case at bar, petitioner received a self-defense charge because Gage fired gunshots at him and appellant responded by firing gunshots back at Gage. Since the trial judge is required to charge the current and correct law in the case, (see State v. Zeigler, 364 S.C. 94, 610 S.E.2d 859 Ct. App. 2005), the improper malice charge given in violation of Belcher in this case constituted error which deprived appellant of due process of law via the Fourteenth Amendment to the United States Constitution.

CONCLUSION

Based on the foregoing argument, appellant's conviction on the James Gage indictment should be reversed and his case remanded to the lower court for a new trial on the same.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of January, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES L. SINGLETON,

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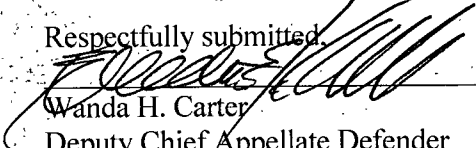
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James L. Singleton states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Maite Murphy, which was held on May 14, 2015, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for James L. Singleton.

Respectfully submitted,


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of January, 2016.

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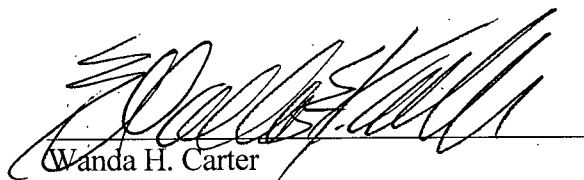
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript

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

January 12, 2016


Wanda H. Carter
Deputy Chief Appellate Defender

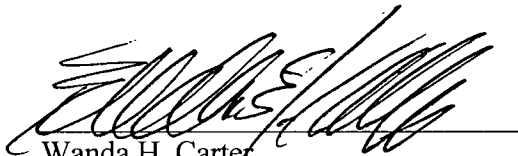
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PO Box 11589
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(803) 734-1343

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."

January 12, 2016



Wanda H. Carter
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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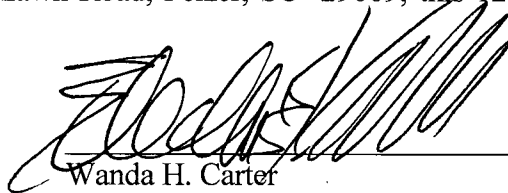
V.

JAMES L. SINGLETON,

APPELLANT

CERTIFICATE OF SERVICE

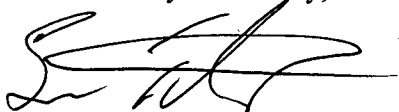
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on James L. Singleton, #364011, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 12th day of January, 2016.


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of January, 2016.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.