

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

ORIGINAL

CS

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JULIAN DEANDRE BATTLE,

APPELLANT

APPELLATE CASE NO. 2011-203746

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial court erred by failing to charge involuntary manslaughter because appellant testified that he struggled with the decedent over the weapon?

2.

Whether the trial court erred by charging the jury that it should consider evidence of flight in determining appellant's guilt?

STATEMENT OF THE CASE

On June 22, 2010, Julian De'Andre Battle ("Battle") was indicted for murder and a related weapons charge. On September 12 – 14, 2011, Battle was tried in Greenville County before the Honorable C. Victor Pyle and a jury. R. 443. Daniel Eller represented Battle. R. 443. Howard Steinberg represented the State. R. 443. Judge Pyle declared a mistrial because the jurors could not reach a unanimous decision. R. 443, 458, ll. 10 – 25.

On November 17 – 19, 2011, Battle was tried again before Judge Pyle. R. 1. The same attorneys tried the case. R. 1. The jury convicted Battle of murder and the weapons charge. R. 437, ll. 16 – 24. Judge Pyle sentenced Battle to life imprisonment for murder and five years' imprisonment on the weapons charge. R. 442, ll. 11 – 17. On November 22, 2011, Battle filed a Notice of Appeal. This appeal follows.

ARGUMENT

1.

The trial court erred by failing to charge involuntary manslaughter because appellant testified that he struggled with the decedent over the weapon.

Relevant Facts

On Christmas Eve 2009, Rafael Dodd (“Dodd”) was killed after intervening in an argument between his cousin and her boyfriend. R. 99, ll. 17 – 18; R. 102, ll. 18 – 25. Dodd’s cousin was Mikeya Shumate (“Shumate”). R. 99, ll. 17 – 18. Shumate was dating Dupri Owens (“Owens”). R. 100, ll. 12 – 14 Battle and Owens are cousins. R. 315, ll. 2 – 3. Shumate, Owens, Battle and another woman, Shameka Wells (“Wells”) had been at Wells’ apartment and were returning after a trip to Shumate’s relatives’ house because the girls wanted to buy marijuana. R. 101, ll. 16 – 24; R. 315, ll. 17 - 24. Dodd and another of his cousins, Jamaal Stewart (“Stewart”) had been with the other four at Shumate’s relatives’ house and returned with them to Wells’ apartment. R. 101, l. 21 – 102, l. 5. Dodd and Battle had never met before this evening. R. 113, ll. 12 – 21.

Shumate and Owens began arguing outside of Wells’ apartment. R. 102, ll. 3 – 25. Owens was upset that Dodd and Stewart were joining them. R. 102, ll. 18 – 23. Battle remained outside with Owens and Shumate while the rest of the group went inside. R. 102, ll. 3 – 5. Battle tried to calm Owens down and tried to convince him to leave. R. 321, ll. 15 – 20.

Stewart came outside and began “cussing out” Owens. R. 321, ll. 21 – 25. Stewart, Owens, and Shumate’s argument became intense and Battle thought Owens and Stewart

were going to fight. R. 322, ll. 11 – 16. Battle continued to try to persuade Owens to leave. R. 322, ll. 13 – 16. Owens had the keys to Battle's car. R. 322, ll. 16 – 17.

At this point, Dodd came outside. R. 322, ll. 16 – 17. Dodd went straight to Battle and, as Battle testified, "He asked me who the hell was I, you know, where are we from and who are we supposed to [be]. He was telling me he was from Tennessee and he could kill me and my cousin and get away with it." R. 325, ll. 1 – 4. Battle described Dodd as "Very hostile, upset, mad." R. 325, ll. 5 – 7. Dodd also told Battle that he "must be the man with all the money." R. 325, ll. 17 – 20. Battle thought this meant Dodd intended to rob him. R. 325, l. 24 – 326, l. 7. Unknown to Battle, Dodd had a concealed weapons permit, was wearing a holster, and had a gun. R. 220, ll. 17 – 20; R. 232 ll. 19 – 22; R. 1957, l. 22 – 196, l. 1.

Dodd got into Battle's face and began pushing Battle. R. 326, ll. 8 – 15. Battle "told him to keep his hands off of me." R. 326, ll. 13 – 14. Dodd then pulled out a gun. R. 326, ll. 16 – 17. Battle described the ensuing struggle:

Q. When Mr. Dodd pulled out the gun, what did you do?

A. I grabbed his right hand and I twisted his other hand.

Q. Why did you grab his right hand?

A. Because that's the hand that he had his gun in.

Q. Why were you trying to grab the gun?

A. I was trying to get it away from me. I was trying to get it away from his face and it was pointed towards me and my cousin.

Q. What happened after you tried to grab the gun?

A. I twisted and the gun went off.

Q. Did you intend to pull the trigger to that gun.

A. No, I did.¹

Q. Did you intend for that gun to go off?

A. No, I didn't.

Q. Did you intend to shoot Mr. Dodd?

A. No, I didn't.

Q. After the gun went off, what happened next?

A. I would like to go to before the gun actually went off. When I twisted the gun, Mr. Dodd was pulling back trying to take the gun back. He was trying to pull his arm back and that's when the gun actually went off so I wasn't sure if his hand or my hand or his finger or my finger actually pulled the trigger. I know I did not intend to do it.

Q. Were you all wrestling over this gun?

A. Yes, we was.

R. 326, l. 18 – 327, l. 20. Dodd fell over a railing to the ground and the gun fell with him.

R. 327, l. 21 – 328, l. 7. While Battle and Owens were fleeing the scene, Wells testified Dodd picked up the gun and aimed it at Owens. R. 44, ll. 7 – 23. Dodd died from his wound before he could fire. R. 14, ll. 12 – 16.

Prior to closing arguments, Battle requested that the trial court charge the jury on involuntary manslaughter. R. 372, l. 3 – 374, l. 6. Battle's attorney argued there was "ample evidence that there was a struggle over the gun." R. 373, ll. 24 – 25. He further stated, "All the other testimony in evidence is that there was a struggle over that weapon and it's clear that there was a struggle and therefore he's entitled to a charge on involuntary." R. 374, ll. 3 – 6. Judge Pyle denied Battle's request. R. 374, ll. 7 – 8. After the charge, Battle

renewed his request that Judge Pyle charge involuntary manslaughter, which was denied. R. 429, l. 23 – 472, l. 9. During deliberations, the jury asked to be charged again on murder, voluntary manslaughter, accident, and self-defense. R. 431, l. 2 – 432, l. 8.

Discussion

Battle's testimony concerning the struggle over the weapon required the trial judge to charge involuntary manslaughter. Evidence of a struggle over a weapon between a defendant and victim supports submission of an involuntary manslaughter charge. Tisdale v. State, 378 S.C. 122, 125, 662 S.E.2d 410, 412 (2008); Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991).

The law to be charged is determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Reversible error is committed if the trial court fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Moreover, when determining whether the evidence requires a charge on a lesser included offense, the court views the facts in the light most favorable to the defendant. See Knoten, 347 S.C. at 302, 555 S.E.2d at 394 (requiring the trial court to view facts in the light most favorable to a defendant when determining whether to charge involuntary manslaughter).

¹ Battle's answer almost certainly was "No, I didn't," as is apparent from Battle's subsequent testimony. The trial transcript contains numerous typographical errors.

“Importantly, our courts have long emphasized that to warrant a court’s eliminating the offense of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter.” State v. Brayboy, 387 S.C. 174, 180, 691 S.E.2d 482, 486 (Ct. App. 2010); see also State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000); State v. Burriss, 334 S.C. 256, 265, 513 S.E.2d 104, 109 (1999). Thus, a request to charge a lesser-included offense is properly refused only when there is no evidence that the defendant committed the lesser rather than the greater offense. Casey, 305 S.C. at 447, 409 S.E.2d at 392.

Involuntary manslaughter is the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. State v. Crosby, 355 S.C. 47, 51-2, 584 S.E.2d 110, 112 (2003); Burriss, 334 S.C. 256, 265, 513 S.E.2d 104, 109 (1999).

State v. Light, 378 S.C. 641, 648, 664 S.E.2d 465, 468 (2008) is particularly instructive. In Light, the defendant gave inconsistent versions of the victim’s death, but repeatedly maintained that the gun unintentionally discharged after a struggle. Despite expert testimony contradicting the defendant’s story, the Supreme Court ruled that defendant’s testimony, by itself, was sufficient to require an involuntary manslaughter charge. Id. at 648-49, 664 S.E.2d at 469. The Court stated, “[T]he fact petitioner and [the victim] were struggling over the weapon is sufficient evidence to support an involuntary manslaughter charge to the jury. Id.

Just as in Light, Battle testified that he and Dodd struggled over the gun. Therefore, Battle was entitled to an involuntary manslaughter charge. Undoubtedly, the State will point to evidence in the record that Dodd's gun was not the weapon that killed him. R. 243, ll. 12 – 24. The State attempted to prove that Battle must have had his own gun, but none of the witnesses saw any gun other than Dodd's. R. 40, ll. 15 – 16 (Wells); R. 83, ll. 6 – 7 (Stewart); R. 123, ll. 8 – 10 (Shumate); R. 164, l. 14 – 165, l. 22 (Owens). Such evidence is irrelevant to the question of whether to charge a lesser-included offense. An involuntary manslaughter charge must be given if there is any evidence supporting it. Casey, 305 S.C. at 447, 409 S.E.2d at 392. Battle's testimony satisfies this test and the trial judge erred in not letting the jury decide this issue.

Furthermore, in Light, the court charged the jury on murder, voluntary manslaughter, and accident. Id. at 646, 664 S.E.2d at 468. The charges in Battle's case are identical, with the addition of self-defense.² The murder, voluntary manslaughter, accident, and self-defense charges given by the trial court did not cure its refusal to charge involuntary manslaughter. This failure constitutes reversible error and requires this Court to grant Battle a new trial.

2.

The trial court erred by charging the jury that it should consider evidence of flight in determining appellant's guilt.

Relevant Facts

The State presented evidence that Battle fled from the scene, which Battle admitted. The State also presented evidence that after being contacted by the police and told there was

a warrant for his arrest, Battle initially told them he would turn himself in, but did not immediately do so. R. 181, l. 5 – 182, l. 14. In the first trial, Judge Pyle did not charge the jury concerning any inference to be drawn from a defendant's flight. R. 444, l. 21 – 456, l.

8. In the second trial, Judge Pyle added the following to his charge:

I charge you, ladies and gentlemen, that voluntary flight of a person either there or soon after the commission of a crime, is a circumstance not sufficient in itself to establish guilt but is a circumstance that you the jury may consider in connection with all the other evidence in determining the guilt or innocence of a person.

R. 422, ll. 16 – 22. Battle's attorney objected after Judge Pyle completed his charge, stating:

Your Honor, first I would object to the term voluntary. If you're only going to charge on manslaughter, there's no reason to confuse the jury. **Secondly, I believe your charge did say they're not supposed to consider that as guilt but it is something they can consider as far as flight evidence.** And third, Your Honor, I would just renew our prior objection request to include involuntary manslaughter as a charge to the jury.

R. 429, l. 23 – 430, l. 6 (emphasis added). Judge Pyle immediately overruled Battle's objection, stating, "I will decline any further charges." R. 430, ll. 7 – 8.

Discussion

The trial judge's charge on flight constitutes reversible error. Since 1980, the law of South Carolina has been that charging the jury on flight is inappropriate. State v. Grant, 275 S.C. 404, 408, 272 S.E.2d 169, 171 (1980). "The charge on flight oftentimes has the potential for creating more problems than solutions." Id. "[T]he 'law of flight' in a judge's charge places undue emphasis upon that part of circumstantial evidence and it should not be charged hereafter." Id. As Judge Pyle's charge on flight directly contravenes Grant, it constitutes error.

² Light also held that self-defense should have been charged. Id. at 651, 664 S.E.2d at 470.

In this close case where there was evidence of self-defense, accident, and manslaughter, the charge on flight was not harmless. The solicitor repeatedly argued that Battle was guilty merely because he fled. The solicitor told the jury, "Mr. Battle admits to police and the old saying is a guilty man runs when no man pursues him. Mr. Battle is not innocent. He flees, he runs, he goes and he hides yet he still says he's not guilty in this case." R. 409, ll. 13 – 17. The solicitor also argued, "He is a flight from justice. I hope nobody in this room believes that he was really wanting to turn himself in at these various places and he just didn't get around to it. He was a flight from justice, a flight from the consequences of his actions." R. 410, ll. 3 – 7.

While the law allows the solicitor to make these arguments, it does not allow the trial judge to emphasize them to the jury. Judge Pyle's charge on flight amounted to a comment on the evidence and unfairly legitimized the inferences drawn by the solicitor in his closing argument. This error prejudiced Battle and requires reversal. The Court should use this opportunity to reaffirm the holding in Grant as a reminder that flight still should not be charged in this State.

CONCLUSION

For the foregoing reasons, the Court should reverse Battle's convictions and grant him 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

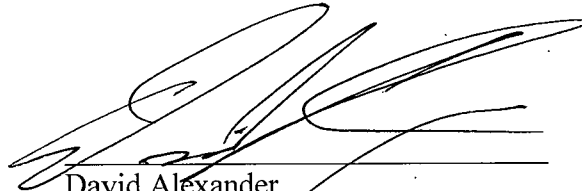
ATTORNEY FOR APPELLANT

This 19th day of August, 2013.

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 19, 2013

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

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THE STATE,

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APPELLATE CASE NO. 2011-203746

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 Alphonso J. Simon, Jr., Esquire, at Kembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of August, 2013.


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of August, 2013.



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