

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH DANTE SATTERWHITE,

APPELLANT

APPELLATE CASE NO. 2013-001058

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

In this murder trial, did the trial judge err in refusing to instruct the jury with the law on voluntary manslaughter when, at the time of the fatal shooting, the Appellant determined that his girlfriend was romantically involved with his father such that the killing of the girlfriend was done in the sudden heat of passion upon sufficient legal provocation?

STATEMENT OF THE CASE

In July of 2012, the Cherokee County Grand Jury indicted Satterwhite for murder and possession of a firearm during the commission of a violent crime, indictment #12-GS-11-736. On May 14, 2013, Satterwhite proceeded to jury trial before the Honorable J. Derham Cole. Don Thompson represented Satterwhite at trial and Barry Barnette prosecuted the case. The jury returned verdicts of guilty and Judge Cole sentenced Satterwhite to life in prison. A timely notice of intent to appeal was served on May 16, 2013. This appeal follows.

ARGUMENT

In this murder trial, the trial judge erred in refusing to instruct the jury with the law on voluntary manslaughter when, at the time of the fatal shooting, the Appellant determined that his girlfriend was romantically involved with his father such that the killing of the girlfriend was done in the sudden heat of passion upon sufficient legal provocation.

The jury found Appellant guilty of fatally shooting his girlfriend, Allene "Punkin" Ellis in her home. At trial Appellant testified that earlier on the day of the shooting he and Punkin had argued about her seeing somebody else. (R. pp. 173-174). Appellant had become suspicious that Punkin and Appellant's father, Wesley Satterwhite, were romantically involved. (R. p. 179, line 6 – p. 180, line 1). Appellant testified:

Now that was something that was significant to me because one time before I asked her about – about my daddy. See, my daddy he had been down here way before I've been down here. And it became an issue when I – when I met Punkin and I actually started dating her, I brought her around to the – the house one time. And I knew something wasn't right. And the first time I asked my daddy just – just in casual, "Okay, Daddy, do you know Punkin?" And he was like, "Ah Boy," but you got to know my daddy and our relationship to understand what – what that "ah , boy" meant.

(R. p. 179, lines 6-14).

Punkin's daughter, Yasmine Ellis, testified that on the day of the shooting Appellant and her mom drove to Varsity Square, where Yasmine was working. According to Yasmine, her mom came inside Varsity Square and left through a backdoor, driving away in Yasmine's red Honda Accord and leaving the Appellant behind in her Tahoe. (R. pp. 104-106). Yasmine testified that her mom seemed aggravated and scared. (R. p. 104, lines 23-24).

In a phone conversation later Appellant asked Punkin, "Okay. So what's – what's the business between you and my daddy just straight up? Tell me – tell me what it is; just let me know what it is." (R. p. 180, lines 10-12). Appellant testified that Punkin told him,

“Oh Babe, it ain’t nothing like that, Babe. It ain’t nothing like that.” (R. p. 180, lines 13-14). Appellant then testified that Punkin told him, “Okay. Well, I might go over to your daddy’s house and let him tell you himself.” (R. p. 180, lines 14-15).

Yasmine testified that her mom picked her up from work about 9:00 PM. (R. p. 106, line 23 – p. 107, line 1). When they arrived at their home they noticed that the Tahoe was parked in the backyard. (R. p. 107, lines 9-18). According to Yasmine, upon seeing the Tahoe, her mother did not want to go inside the house and instead they went to Appellant’s father’s house. (R. p. 107, lines 19-24). Eventually Appellant’s father and stepmother returned to the house with Yasmine and her mother. (R. p. 108, line 22 – p. 109, lines 1-16). Yasmine testified that her mom asked Appellant’s father to come with them because “he was the only person that could calm Joseph [Appellant] down.” (R. p. 108, line 25 – p. 109, line 1).

Appellant testified that his father called him and told him, “Well your girl’s over here and she seems upset.” (R. p. 180, lines 23-24). After the phone call with his father Appellant received a phone call from Punkin and they continued to argue. (R. p. 181, lines 12-15). Appellant testified, “It’s still escalating. And I’m like, ‘Why are you going over here talking to my daddy like that? Somebody’s lying.’ I’m like, ‘Man, you all – you all starting to play with my mind now.’ That’s – that’s – that’s where I’m at now.” (R. p. 181, lines 16-18).

Appellant testified that he was at Punkin’s house when Punkin, Yasmine, his father and stepmother arrived at the house. (R. pp. 183-184). According to Appellant, an altercation ensued between him and his father. Appellant testified:

Now, me and my daddy, we are out here and now – by now, I’m telling you, I’m irate. I’m – I’m – I’m angry now because now I’m asking my daddy, I’m like. ‘So,

what's up? You been lying. You up here talking about you ain't messing with her, but she's coming to your house to come get you. Why?

She ain't never come to your house to come get you. She ain't never came to your house to come get you. So why would you say now and you're –you're over here?" And now the altercation is between me and my daddy.

(R. p. 185, lines 3-9). Appellant's father testified at trial and denied having any face to face conversation with his son at the house the night of the shooting. (R. p. 136, lines 16-25).

According to Appellant, during the course of the argument with his father he picked up a gun and shot three times in the ground, the third shot hitting Punkin as she tripped over a chair. (R. pp. 187-190). Appellant testified, "Now, at this point, that's when I seen the gun right there. I ain't going to lie. I seen the gun. The gun was right there on the bedpost. Now I pick the gun up; yes, I did. And, when I picked the gun up, at first in my mind I'm like, 'Okay. They see me with the gun, so somebody is going to tell me the truth now. Some body has got to tell the truth. Now I'm – I'm angry and I got a gun in my hand, so somebody is going to tell the truth.'" (R. p. 187, lines 8-15).

As to the third shot, Appellant testified, "The third shot was when she actually started tripping. She had tripped on the actual thing, on the chair that's right there by – by the door. That's what had actually – that's what made me freeze because I seen her tripping, but at the same time, I was shooting the gun at the same time." (R. p. 190, lines 1-4).

In his written statement to police Appellant stated:

After our initial conversation, she called me back from her daughter's phone. I proceeded by her – by her residence and parked her Tahoe behind the house to wait on her to get home. I saw her ride by the house several times. I went in the residence and waited roughly twenty (20) to thirty (30) minutes before she showed back up. When she showed up, my dad and stepmom were with her along with Punkie's daughter.

After several minutes I accessed a storage room and entered the living room. I heard several doors slamming so I assumed everyone was leaving. I stepped out the front

door and didn't see Punkie's car so I thought she had left. I, then, went back into the house and saw a gun laying on the bed footboard inside the living room. I also saw Punkin about the same time coming from the enclosed garage portion of the house. I picked up the gun and fired two shots to the side of her. At that point, she tripped over a chair as I fired the third shot. The last shot must have been the shot that struck her.

I then jumped off the front porch and ran left toward West Buford Street. I threw the gun in a wooded area beside Punkie's house. I ran to my apartment on Overbrook Drive.

(R. p. 225, line 7 – p. 226, lines 1-5).

Appellant requested a charge on voluntary manslaughter. (R. p. 217, lines 7-22).

The judge noted, "Well that statute has been interpreted as being the killing – the unlawful killing of another in the sudden heat of passion based upon sufficient legal provocation. I've heard no evidence here that would establish a sufficient legal provocation. And the law is clear, if there is not sufficient legal provocation, an unlawful killing is murder even in the heat of passion." (R. p. 217, line 23 – p. 218, lines 1-3). The judge denied the request for an instruction on voluntary manslaughter finding no evidence of a sufficient legal provocation. (R. p. 218, lines 11-13). The judge erred.

In determining whether the evidence required a charge on voluntary manslaughter, the appellate court views the facts in a light most favorable to the defendant. State v. Gadsden, 314 S.C. 229, 442 S.E.2d 594 (1994). Viewing the facts in the light most favorable to the defendant, at the time of the shooting Appellant had just concluded that his girlfriend Punkin and his father were in an adulterous relationship.¹ Such a discovery should be considered a sufficient legal provocation warranting a charge on voluntary manslaughter.

¹ While Appellant and Punkin were not married, Appellant's father was married to Appellant's stepmom.

Voluntary manslaughter is the unlawful killing of a human being in the sudden heat of passion upon sufficient legal provocation. State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000). Both heat of passion and sufficient legal provocation must be present at the time of the killing. Id. 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. See id.

Adultery can serve as sufficient legal provocation. State v. Herring, 118 S.C. 386, 110 S.E. 668 (1922). The fact that Appellant and Punkin were not married and the fact that Appellant only believed that Punkin and his father were in an adulterous relationship, rather than finding them in a “guilty embrace,” should not preclude an instruction on voluntary manslaughter. See State v. Martin, 216 S.C. 129, 57 S.E.2d 55 (1949). In State v. Cooley, 342 S.C. 63, 68, 536 S.E.2d 666, 668 (2000) the South Carolina Supreme Court wrote:

In general, South Carolina has allowed marital infidelity to support a charge of marital voluntary manslaughter only when the killer finds the other spouse and paramour in a guilty embrace or flagrantly suggestive situation. See State v. Herring, 118 S.C. 386, 110 S.E. 668 (1922); but see State v. Martin, 216 S.C. 129, 57 S.E.2d 55 (1949) (finding evidence of the husband's belief that the deceased had repeatedly and violently raped his wife and was then taunting them supported a voluntary manslaughter charge). The killing must also happen so soon after the discovery of the affair that the spouse does not have time to coolly reflect on the situation. See Gadsden, 314 S.C. at 233, 442 S.E.2d at 597.

A verbal confession of adultery alone would be insufficient to warrant a voluntary manslaughter charge. See State v. Byrd, 323 S.C. 319, 322, 474 S.E.2d 430, 432 (1996)(“Where death is caused by the use of a deadly weapon, words alone, however opprobrious, are not sufficient to constitute a legal provocation.”). In the present case, however, there was no verbal confession of adultery. Instead, Appellant was led to believe, by the words and actions of Punkin, that she was having an adulterous affair with his father. Her final act of bringing the father back to the house coupled with Appellant’s

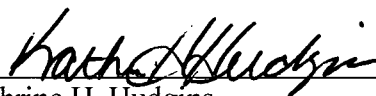
belief in the affair constituted sufficient legal provocation warranting a voluntary manslaughter charge. The facts of the present case are more analogous to the facts in Martin requiring a charge on voluntary manslaughter.

“It may be concluded, therefore, that ‘the sudden heat [of] passion, upon sufficient legal provocation,’ which mitigates a felonious killing to manslaughter, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an ‘uncontrollable impulse to do violence.’ ” State v. Davis, 50 S.C. 405, 423-424, 27 S.E. 905, 911 (1897). Appellant’s belief that his girlfriend and his father were having an adulterous affair coupled with her bringing the father back to the house rendered Appellant incapable of cool reflection and produced in Appellant an uncontrollable impulse to do violence. The judge erred in refusing to charge the jury with voluntary manslaughter. The error requires reversal.

CONCLUSION

Based on the above argument, Appellant's conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of May, 2014.

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MAY 28 2014

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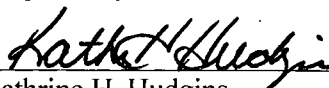
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joseph Dante Satterwhite states:

1. She is 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 J. Derham Cole, which was held on May 15, 2013, 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 Joseph Dante Satterwhite.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

This 28th day of May, 2014.

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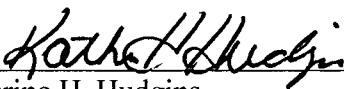
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment and sentencing sheets;
- (2) May 14, 15, 2013, trial transcript;
- (3) May 6, 2013, attempted guilty plea transcript;
- (4) State's #7 – waiver of rights;
- (5) State's #8 – written statement;
- (6) State's #9 – Facebook page;
- (7) Court's #2 – Facebook posting;
- (8) Court's #3 – Notice and Motion in Limine;
- (9) Court's #4 – N.C. convictions;
- (10) Court's #5 – Jury note.

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

May 28th, 2014


Kathrine H. Hudgins
Appellate Defender

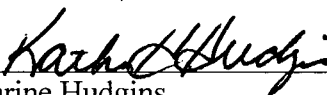
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Attorney for Appellant

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."

May 28th, 2014.


Kathrine Hudgins
Appellate Defender

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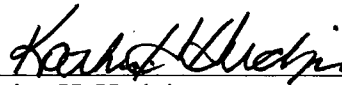
JOSEPH DANTE SATTERWHITE,

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APPELLATE CASE NO. 2013-001058

CERTIFICATE OF SERVICE

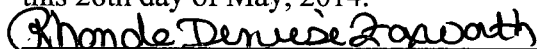
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Joseph Dante Satterwhite, #355341 at Perry Correctional Institution, 430 Oaklawn Road Pelzer, SC 29669, this 6th day of May, 2014.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of May, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 17, 2021