STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

Honorable Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY RAYNARD RANDALL,

APPELLANT

APPELLATE CASE NO 2018-001998

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to allow Captain Chris Smith of the Marion Police Department to testify that he knew Demetrick White had a reputation as a violent person in the community since appellant's self-defense case was that White was the aggressor in the fatal incident, and Captain's Smith opinion as to White's reputation for violence was therefore admissible pursuant to Rule 405 (a), SCRE?

STATEMENT OF THE CASE

Appellant was indicted at the July 26, 2018 term of the Marion County Grand Jury for the offenses of murder, attempted murder, pointing and presenting a firearm, and possession of a weapon during a violent crime. R. p. 311. His case was called to trial on November 5, 2018, before the Honorable Thomas A. Russo, and a jury on the murder and weapons counts. William Vickery Meetze and Franklin Chandler represented appellant. Fitzlee McEachin was the solicitor. R. 1.

On November 7, 2018, the jury found appellant not guilty of murder. However, the jury found appellant guilty of the lesser-included offense of voluntary manslaughter, possession of a weapon during a violent crime, and unlawful possession of a handgun. R. 289, ll. 6 – 18.

a Judge Russo sentenced appellant to thirty years for voluntary manslaughter, and he imposed a consecutive five-year term for possession of a weapon during a violent crime. Appellant was given a sentence of time served on the unlawful carrying of a pistol count. R. 308, l. 24 – 309, l. 12.

This appeal follows.

STANDARD OF REVIEW

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) ("quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

ARGUMENT

The court erred by refusing to allow Captain Chris Smith of the Marion Police Department to testify that he knew Demetrick White had a reputation as a violent person in the community since appellant's self-defense case was that White was the aggressor in the fatal incident, and Captain's Smith opinion as to White's reputation for violence was therefore admissible pursuant to Rule 405 (a), SCRE

Relevant Facts

Alemetta Hope was dating appellant on January 20, 2018. R. 55, l. 21 – 56, l. 14. She had been working all day in Dillon, and she got back to her home on Henry Street in Marion between 6:00 and 6:30 p.m. R. 56, l. 12 – 57, l. 9.

Appellant came by Hope's house, and she said appellant told her "I'm going to chill." Hope said that she wanted to "hang out" instead, a "a minor argument" ensued, and appellant left. R. 58, ll. 11 – 20. Hope left shortly thereafter because she "wanted to catch the liquor store open," and she was able to get to the liquor store before 7:00 p.m. when it closed. R. 60, ll. 6 – 24. Hope then went out with some of her friends, and she got back home about 11:00 p.m. that evening. R. 61, ll. 8 – 18.

Hope related that appellant called her, and they began arguing on the telephone. Appellant then showed up at her door, and "[w]e was basically arguing back and forth through the door about, you know, the other female." Hope refused to let appellant inside her house, and she called 911. The police arrived in "less than three minutes." R. 63, ll. 3 – 21. Hope said law enforcement officers "had a few words with him. The next thing I know, they was handcuffing him." R. 64, ll. 2 – 5.

Marion police officer, Eric Poston, responded to the January 20, 2018 shooting at the Tobacco House at about 7:00 p.m. that night. R. 69, l. 5 – 72, l. 15. Poston located three .380 shell casings at the scene. R. 72, ll. 10 – 21. Poston was shown a surveillance tape from the parking lot of the Tobacco House, and he identified appellant as the man on the videotape in a red hat.[1] R. 91, l. 23 – 94, l. 13.

Poston also responded to dispatch to Hope's house on Henry Street when she called about appellant "banging on her door." When he arrived, appellant had already been detained. R. 94, l. 14 – 95, l. 25. When the police responded to Hope's house, they located a .380-caliber firearm stuffed inside a cement statue ornament in Hope's front yard.[2] R. 97, l. 7 – 99, l. 25. The state would later offer evidence that this .380 caliber firearm fired the shell casings found in the Tobacco House videotape. R. 209, l. 6 – 210, l. 13.

Khadijah Roberts was twenty-five years old at the time of the Tobacco House incident. R. 105, ll. 17 – 24. Roberts remembered arriving at the Tobacco House between 6:00 and 6:30 that evening. Her friend worked at the liquor store that was connected to the Tobacco House. Her friend had her car stolen earlier in the day. She was crying and upset, and Roberts was trying to "calm her down." R. 106, l. 9 – 107, l. 23.

Roberts knew appellant, and she also saw him at the Tobacco House that night. "We were just laughing and joking about something" outside the store. R. 108, l. 4 – 109, l. 22. Roberts identified appellant on the surveillance camera as "rapping" or dancing and singing

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[1] While the videotape of the Tobacco House parking lot at the time of the shooting was admitted into evidence, and it is before this Court for viewing as State's Exhibit #3, it is very difficult to follow in "real time."

[2] The judge ruled that appellant did not have standing to move to suppress the firearm found hidden in Hope's front yard where it was found in plain view because appellant had no expectation of privacy there.

while some music was playing outside the store. R. 111, ll. 18 – 23. White, whom the defense strongly maintained was the aggressor, was known as "Meatball" in the community. Roberts remembered Meatball walked over to the car where appellant was standing or seated, and she heard Meatball asking another man what kind of "junk" Anthony [appellant] was talking about. "[A]nthony was, like, `he wasn't talking no junk. He don't know what he was talking about.'" R. 115, ll. 14 – 19.

The decedent, Dashamel Drayton, was trying to defuse the tense situation. Roberts recalled that appellant got out of the car in the parking lot and then she heard gunshots. R. 116, l. 2 – 120, l. 23. Roberts testified that Meatball was the aggressor that evening, and the decedent was "backing up Meatball" in an attempt to calm the atmosphere. However, she remembered seeing Meatball with his hand extended toward appellant immediately before she heard gunshots. R. 124, l. 5 – 125, l. 15.

Another witness, Rickita Buxton, also was at the Tobacco House that evening. She confirmed that the decedent attempted to get Meatball to calm down, and to keep Meatball from confronting appellant. Buxton saw appellant pull a gun, and she bolted from the area. R. 134, l. 16 – 141, l. 18. Buxton remembered hearing gunshots. She saw the decedent get shot, and she saw Meatball running away. R. 142, l. 17 – 144, l. 9. The decedent was shot in the stomach, and Buxton helped get the decedent to Marion Hospital where he tragically died. R. 144, l. 22 – 145, l. 12.

The pathologist, Dr. Angelina Philips, testified she performed an autopsy on the decedent's body on January 22, 2018. The decedent died of a "gunshot wound to the chest." R. 154 ll. 1 – 23.

Captain Chris Smith testified that he had been employed with the Marion Police Department for a little over eighteen years. He was captain over investigations for that police department. R. 182, ll. 5 – 10. Smith helped retrieve evidence from the Tobacco House parking lot on the night of the shooting. R. 183, l. 19 – 186, l. 24.

Cross-examination of Captain Smith

On cross-examination, defense counsel Meetze had Captain Smith acknowledge he knew Demetrick White, "Meatball." R. 187, ll. 4 – 5. When counsel Meetze asked Captain Smith if he had personal knowledge of Meatball's reputation for violence, the solicitor objected. The judge removed the jury from the courtroom. R. 187, ll. 6 – 16.

Solicitor McEachin then argued that Captain Smith's answer to this question would be improper reputation evidence pursuant to Rule 405, SCRE. He claimed appellant was trying to "backdoor" inadmissible evidence. Defense counsel Meetze pointed out that Meatball was the aggressor that evening, and he was merely eliciting from Captain Smith his opinion as to Meatball's bad reputation for having a propensity for violence. R. 188, l. 1 – 189, l. 5.

The solicitor then asserted that, even if this opinion was admissible under Rule 405, SCRE -- which it was -- that it should still be excluded under Rule 403, SCRE, because its probative value was substantially outweighed by its unduly prejudicial effect. The solicitor claimed he did not know if the defense was pursuing self-defense at that time. R. 191, l. 7 – 192, l. 10.

The judge then ruled that regardless of Captain Smith's opinion as to Meatball's reputation for violence that it would not be admissible without testimony that appellant was aware of that reputation. Consequently, the judge ruled this opinion testimony pursuant to Rule

405 (a), SCRE, was inadmissible unless appellant testified because there was no evidence "that Mr. Randall knew of that reputation." R. 191, l. 7 – 192, l. 10.

The judge later charged the jury on murder, voluntary manslaughter, and that self-defense was a complete defense. R. 267, l. 16 – 277, l. 14. As stated, the jury convicted appellant of voluntary manslaughter.

Discussion

In State v. Amburgey, 206 S.C. 426, 34 S.E.2d 779 (1945), the Supreme Court noted that the jury was given the option of murder, manslaughter, or self-defense before convicting the defendant, as here, of voluntary manslaughter. The defense in that case properly presented evidence from a witness, Cothran, that he knew the general reputation of the deceased with respect to violence and turbulence was bad. The issue then became whether the solicitor opened the door to testimony of specific instances of violence committed by the decedent.

As to specific acts of violence, Court noted that "the rule has long been established in this state that evidence of other instances of violence on the part of the deceased are not admissible unless they were directed against the defendant, or, if directed against others, were so closely connected in time or occasion with the homicide as reasonably to indicate the state of mind of the deceased at the time of the homicide, or to probodily harm." State v. Amburgey, 206 S.C. 426, 429, 34 S.E.2d 779, 780 (1945); See, also, State v. Day, 341 S.C. 410, 419, 535 S.E.2d 431, 436 (2000).

Here, the defense only desired to have Captain Smith testify that he knew that Meatball had a bad general reputation with respect to violence and turbulence in the community he had policed for eighteen years.

Rule 405 (a), SCRE, states, "In all cases in which evidence of character or a trait of a person is admissible, proof may be made by testimony as to the reputation or by testimony in the form of an opinion." Defense counsel correctly argued this evidence was relevant because Meatball was said to be the aggressor, and this was a self-defense case. State v. Amburgey, 206 S.C. 426, 429, 34 S.E.2d 779, 780 (1945)

The judge incorrectly ruled the general reputation for violence opinion of Captain Smith as to Meatball was inadmissible under Rule 405 (a), SCRE, because there was no evidence appellant knew of Meatball's bad reputation for violence. However, that reasoning -- while applicable to specific instances of violence pursuant to Rule 405 (b), SCRE – was not relevant as to general reputation for violence opinion testimony under Rule 405 (a), SCRE.

The judge's ruling also impermissibly shifted the burden to appellant by mandating that in order for the jury to be allowed Captain Smith's opinion that Meatball had a bad reputation for being a violent man that appellant had to take the stand and testify he was aware of Meatball's bad reputation for violence in the community. That was fundamentally unfair when that was not required by Rule 405 (a), SCRE, and appellant had the Constitutional right to remain silent and not to testify. State v. Cockerham, 294 S.C. 380, 365 S.E.2d 22 (1988). Rock v. Arkansas, 483 U.S. 44, 52 (1987).

Captain Smith had been a member of the Marion County Police Department for almost twenty years. He was well qualified to know Meatball's reputation for violence in the Marion community. Cf. State v. Groome, 274 S.C. 189, 262 S.E.2d 31 (1980). Appellant in this case merely wanted to elicit the admissible opinion from Captain Smith that Meatball had a bad

general reputation for violence in the community. [3] The defense was not seeking to introduce specific acts of violence committed by Meatball, and the judge's ruling was therefore erroneous. See State v. Thrailkill, 71 S.C. 136, 50 S.E. 551, 553 (1905); State v. Hiers, 107 S.C. 411, 93 S.E. 124 (1917).

The error was not harmless in this case. The defense case was that Meatball attacked appellant despite the decedent's efforts to stop Meatball. Appellant, fearing great bodily harm or death, shot at Meatball and accidentally hit the decedent. Nonetheless, appellant was acting in self-defense, and therefore the doctrine of transferred intent regarding the undesired harm to the decedent would seemingly apply since appellant's use of force was justified. See McAninch and Fairey, The Criminal Law of South Carolina, (3d ed. 1996) *Unintended Victim* at 17-19.

The surveillance tape of the Tobacco House parking lot is on file with this Court, and it is difficult to follow in "real time." The excluded evidence that Meatball had a bad reputation in the Marion community for being a man of a violent disposition cannot be discounted in this self-defense case given the grainy surveillance tape. Appellant should be granted a new trial.

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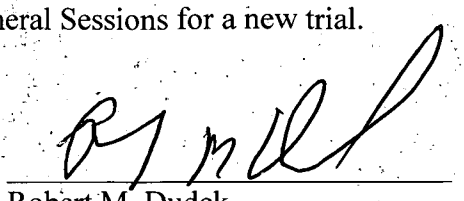
[3] Rule 405, SCRE is the same as the law in South Carolina prior to the Rules of Evidence being adopted in 1995. See State v. Amburgey, 206 S.C. 426, 429, 34 S.E.2d 779, 780 (1945); Notes following Rule 405, SCRE.

CONCLUSION

By reason of the foregoing argument, appellant's convictions should be reversed, and this case remanded to the Marion County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of November, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

Honorable Thomas A. Russo, Circuit Court Judge

THE STATE,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Anthony Raynard Randall states:

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

2. He has reviewed the record of appellant's trial before Judge Thomas A. Russo, which was held on November 5 - 7, 2018, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He 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, He asks the Court to relieve him as counsel for Anthony Raynard Randall.

Respectfully Submitted,

Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 8th day of November, 2019.

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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:
(2) Entire trial transcript
(3) State's exhibit 3 (Tobacco House videotape)
(4) State's exhibits 9-10 (Autopsy photographs).

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

November 8, 2019

Robert M. Dudek
Chief 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."

November 8, 2019.

Robert M. Dudek
Chief Appellate Defender

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CERTIFICATE OF SERVICE

The undersigned 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 William M. Blitch, 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 have been served on Anthony Raynard Randall, 362053, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 7th day of November, 2019.

Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 8th day of November, 2019.

(L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.