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DEC 20 2019
SC Court of Appeals

State v Burdette
(Published)

Filed: July 31, 2019

Case No #
2018-000770

Poss of a Weapon During
#2016A1010201706

Attempted Murder
#2016A1010201705

We hold the trial court's erroneous inferred malice instruction was not harmless beyond a reasonable doubt. We reverse Burdette's convictions and remand for a new trial on the charges of voluntary manslaughter and possession of a weapon during the commission of a violent crime. Because Burdette was acquitted of murder, he cannot be retried for murder.

of course, our ruling does not prohibit a trial court from citing outside the presence of jury the proposition that malice may be inferred from the use of a deadly weapon - for example when ruling on a defendant's motion for directed verdict on the ground the state failed to prove the element of * 504 malice, a trial court may take into account the fact that the deed was done with a deadly weapon.

As of 14th day of November, 2018. I receive my (Anders Brief). Stating that there are no merits and 1-



June 14, 2016

To Whom It May Concern;

I am writing this letter in reference to Mr. Derrick Porter, inmate # 741893, DOB: 10/19/1987.

Mr. Porter has recently suffered a severe traumatic brain injury to the degree that he is not able to perform activities of daily living by himself nor does he appear cognizant of his surroundings. He currently is being treated at MUSC where he is in 4 point restraints because of his combativeness and confusion leading to him trying to pull out his tubes, IV's, etc. He currently has a tracheostomy tube, indwelling Foley catheter and a feeding tube in place.

Based on his injuries and his current status, it is estimated that it will be a minimum of 1-5 years before it is likely that we will be able to see significant clinical response and that he would be able to participate in his own defense or in normal daily interpersonal interactions. He will continue to need significant medical intervention including his feeding tube and Foley catheter as well as maintaining his airway. His medical requirements are beyond the ability of us to provide in the infirmary setting at the SACDC.

He will likely need transfer to a long-term rehabilitation facility, though there is no guarantee that he will actually recover beyond his current status. Such a facility would be able to perform regular progress reports, so that it would be evident were he to start making progress to the degree that he would be able to participate in his own defense and communicate effectively.

For these reasons, I respectfully request consideration of deferring his current charges so that he may undergo a monitored rehabilitation program until such time as he is able to function adequately in social situations at which time the charges could be reinstated.

Respectfully submitted,

Barry Weissglass, M.D. M.P.H.

Board Certified in Family Medicine

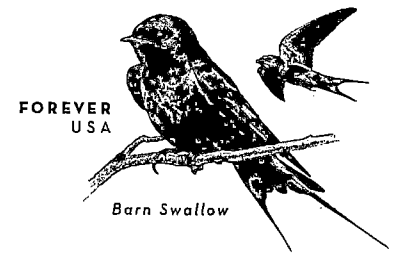
Board Certified in Occupational Medicine by the American Board of Preventive Medicine

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