STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TONY DEQUAN MANAGO, JR.,

APPELLANT.

APPELLATE CASE NO. 2019-000580

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to charge voluntary manslaughter as a lesser-included offense of murder?

STATEMENT OF THE CASE

On January 19, 2016, a Darlington County grand jury indicted appellant Tony Dequan Manago, Jr. for murder and a weapons charge. R. 238. On March 11, 2019, a hearing was held before the Honorable Paul M. Burch regarding the defendant's refusal to come out of his cell and attend court proceedings. R. 228. On March 25, 2019, appellant was tried in absentia before the Honorable Roger E. Henderson and a jury. R. 1. Kernard Redmond and Monty Bell represented the State. R. 1. Tonya Copeland Little represented appellant. R. 1. The jury convicted appellant. R. 210, ll. 7 – 23. Judge Henderson had appellant brought from his cell and sentenced him to five years' imprisonment on the weapons charge and life imprisonment for murder. R. 213, l. 12 – 214, l. 4. R. 225, ll. 13 – 25. This appeal follows.

STANDARD OF REVIEW

"The law to be charged to the jury is determined by the evidence presented at trial." State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "The trial court is required to charge a jury on a lesser-included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense." State v. Sams, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014). "The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law." State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166-67 (2007). "In determining whether the evidence requires a charge on a lesser-included offense, the [appellate court] must view the facts in the light most favorable to the defendant." Sams, 410 S.C. at 308, 764 S.E.2d at 513. "The charge request is properly rejected when there is no evidence tending to show the defendant was guilty of the lesser offense." Id.

ARGUMENT

The trial court erred in refusing to charge voluntary manslaughter as a lesser-included offense of murder.

The State presented two witnesses who were at the scene when Dominique Cooper was shot: Kim Head and Halique "Boss" Davenport. Davenport was charged in connection with the shooting. R. 130, ll. 8 – 14. Davenport and Laquan Hicks went to Head's home on July 13, 2015, where Hicks and Cooper got into a disagreement. R. 130, l. 11 – 131, l. 4. According to Head, Hicks and Cooper each believed the other had taken something from them. R. 64, l. 16 – 65, l. 6. Hicks and Davenport left without violence. R. 130, l. 22 – 131, l. 9.

Hicks and Davenport went back to Davenport's house where Marquise Hawkins, Kahseem Davenport, and appellant Tony Managó were present. R. 131, l. 9 – 132, l. 23. Hicks then got a call telling him to come pick up his items, including some clothing. R. 133, ll. 1 – 15. Head and Cooper had gone to their friend Brandi Wingfield's house, so the men left Davenport's and drove there. R. 133, ll. 16 – 23. R. 66, ll. 2 – 15. Davenport drove his Ford Taurus and everybody but appellant rode with him. R. 135, ll. 16 – 25.

At some point past midnight, Head heard a knock on Wingfield's front door, which could not be opened, and she and Cooper went out the side door. R. 66, l. 20 – 67, l. 18. She saw Hicks and Davenport. R. 67, ll. 10 – 24. Cooper and Hicks began talking. R. 68, ll. 7 – 14. Head then saw the other men, including appellant, come around the house. R. 68, ll. 15 – 18. According to Head, appellant had his face covered with a bandana, but she recognized him. R. 69, ll. 1 – 5. R. 73, ll. 3 – 18. Appellant was the only member of the group with his face concealed. R. 68, l. 19 – 69, l. 2.

Head claimed that when she saw appellant's face covered, she "knew that this wasn't good." R. 69, ll. 13 – 21. She told appellant "to leave, not to do this." R. 69, ll. 13 – 21. She saw a gun in appellant's hand. R. 69, ll. 13 – 21. Cooper pushed Head out of the way and appellant "started shoot'in." R. 69, ll. 13 – 21. The other men ran and appellant "just walked out the yard." R. 70, l. 16 – 71, l. 16. Someone called 911, but Cooper died from exsanguination caused by a gunshot wound to the leg. R. 71, ll. 17 – 23. R. 120, ll. 14 – 24. Cooper was shot four times. R. 119, ll. 12 – 16.

Davenport did not see who shot Cooper. R. 136, ll. 18 – 21. He never saw appellant with a gun or a mask. R. 136, l. 22 – 137, l. 10. Davenport heard the shots and the men all ran to the car. R. 136, ll. 11 – 21. Contradicting Head's testimony that appellant "just walked out the yard," Davenport said appellant got into the car with them. R. 136, ll. 11 – 17. Further undercutting Head's version, Davenport also said appellant had a cut on his hand and blood spots in Davenport's car matched appellant's DNA. R. 137, ll. 13 – 24. R. 165, l. 18 – 166, l. 5. Head also claimed that she did not know of any weapons or ammunition in the house, but the police found loose ammunition on a coffee table in front of the sofa. R. 84, ll. 5 – 7. R. 91, ll. 6 – 19.

The State failed to call six witnesses who were present at the scene that night. The State did not call Kahseem Davenport or Laquan Hicks as witnesses. R. 2 – 3. Nor did the State call Brandi Wingfield, Head's son, or his two friends as witnesses. R. 2 – 3. R. 61, ll. 14 – 17. No weapon was ever recovered. R. 93, ll. 8 – 13.

After the State rested, appellant requested a charge on voluntary manslaughter. R. 172, ll. 17 – 18. The State claimed it opposed the charge because of the result in Cook v. State, 415 S.C. 551, 784 S.E.2d 665 (2015). R. 172, l. 19 – 173, l. 14. The solicitor told the judge he feared for "a bunch of trouble down the road" if the jury convicted appellant of voluntary

manslaughter because in Cook, the finding that voluntary manslaughter was not supported by the evidence also resulted in a complete acquittal on all charges, including the murder charge. R. 172, l. 19 – 173, l. 14. The trial judge agreed and refused to charge the lesser-included offense. R. 173, ll. 15 – 19. Appellant renewed his request after the court charged the jury. R. 204, ll. 4 – 6.

The trial judge committed a legal error in accepting the State's incorrect argument concerning Cook. In Cook, it was **the State**, not the defendant, who requested the voluntary manslaughter charge. Cook at 555-56, 784 S.E.2d at 667. The trial court charged voluntary manslaughter "over Cook's objection." Id. The Supreme Court found no evidentiary support for the State's manslaughter compromise request, which resulted in a directed verdict on all charges because the jury acquitted on murder and convicted on manslaughter. Id. at 559-60, 784 S.E.2d at 669. The Cook Court stated, "This is a cautionary tale **for solicitors** as to the pitfalls of **requesting** a potential "compromise" charge which is unsupported by the evidence." Id. *quoting* State v. Cooley, 342 S.C. 63, 70, 536 S.E.2d 666, 670 (2000) (emphasis added).

The result in Cook could not happen in this case because it was **appellant**, not the State, who requested the voluntary manslaughter charge. Appellant could not complain on appeal that no evidence supported a voluntary manslaughter verdict when appellant asked for the charge at trial. The solicitor's argument caused the trial court to use the wrong legal analysis.

Appellant's request for the charge was supported by the evidence of an argument that night. "Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993). "Where death is caused by use of a deadly weapon, words alone, however opprobrious, are not sufficient to constitute a legal provocation." Id. "Rather, when death is

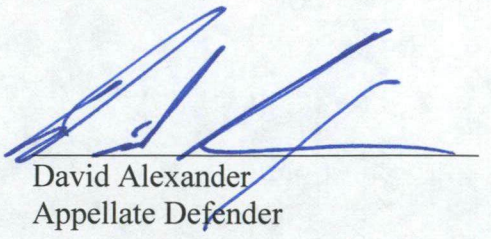
caused by the use of a deadly weapon, the opprobrious words must be accompanied by the appearance of an assault—by some overt, threatening act—which could have produced the heat of passion." Id.

Here, there was substantial evidence of a heated argument. Cooper and Hicks got into a heated argument earlier in the evening at Head's house. Head testified that there was bad blood between Cooper and appellant, including a physical altercation a few years prior to the shooting. R. 74, l. 10 – 75, l. 10. The men were not "friendly." R. 75, ll. 8 – 10. Head's description of a premeditated, masked assault was of dubious value because she testified incorrectly about appellant walking away from the scene and about the ammunition in the house.

Appellant was involved in an argument between Cooper and his friends and could have reasonably expected an attack, especially considering that the ammunition found in the house creates the strong possibility that Cooper was armed. In the light most favorable to appellant, this credible attack, combined with a heated argument, could provide the sudden heat of passion and legal provocation necessary to support a charge of voluntary manslaughter. This Court should reverse and remand for a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and remand for a new trial.



This 24th day of January, 2020.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tony Dequan Manago states:

1. He is 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 Roger E. Henderson, which was held on March 25 - 27, 2019, 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 Tony Dequan Manago.

Respectfully Submitted,

This 24th day of January, 2020.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

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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) Trial Transcript dated March 25-27, 2019
(2) Court's Exhibit No. 1
(3) True-billed indictments
(4) Sentencing Sheets

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

January 24, 2020

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
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PO Box 11589
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(803) 734-1330

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 24, 2020.

David Alexander
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 have been served upon Melody J. Brown, 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 Tony Dequan Manago, 358066, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 24th day of January, 2020.

David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of January, 2020.

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