

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2018-001572

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LANCE ANTONIO BREWTON,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial judge properly refused to instruct the jury on the offense of involuntary manslaughter and the defense of accident because, even viewing the evidence in the light most favorable to the defense, Appellant's illegal behavior was the proximate cause of the shooting. (Appellant's Issues I and II)
- II. The trial judge properly refused to allow Appellant to testify he believed Victim's mother used witchcraft to cause him to "hear voices" because such testimony was based on hearsay, the defense conceded the "voices" were not a factor in the shooting or the basis for any defense, and Appellant later testified it was possession of drugs which actually caused him to flee from police.
- III. Any error in the admission of Appellant's 1999 robbery conviction was harmless given the overwhelming evidence of Appellant's guilt.

STATEMENT OF THE CASE

In October 2017, a Spartanburg County grand jury indicted Appellant for murder, possession of a weapon during the commission of a violent crime, failure to stop for a blue light (first offense), driving under suspension, and escape. On August 20, 2018, Appellant proceeded to a jury trial before the Honorable J. Derham Cole. Clay T. Allen, Esquire, and Monier Murid Abusaft, Esquire, represented Appellant; Solicitor Barry J. Barnette, Esquire, and Assistant Solicitor Jennifer E. Wells, Esquire, represented the State. Before the jury was sworn, Appellant pled guilty to failure to stop for a blue light, driving under suspension, and escape and was sentenced to respective sentences of three years' incarceration, thirty days' incarceration, and four years' incarceration. After a trial, the jury found Appellant guilty of murder and possession of a weapon charges. The trial judge sentenced Appellant to a sentence of life without parole on the murder charge, and found the mandatory five-year sentence for the possession of a weapon charge inapplicable given the sentence for murder.

Appellant timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

On August 13, 2018, a motions hearing was held on Appellant's case. The state moved, in limine, to prevent the defense from presenting any evidence pertaining to Appellant's alleged mental illness. The State presented a mental evaluation performed on Appellant in relation to a federal charge Appellant incurred nine days prior to the charged crime. The evaluation, performed after the incident, found Appellant competent to stand trial and lacking any mental illness. Thus, the State argued Appellant's unsupported claims regarding potential mental illness were not relevant and highly prejudicial. (Tr.p.18, line 4–Tr.p.19, line 9; Court's Exhibit 1)

In response, trial counsel noted it was not the defense's argument that the "voices" took away Appellant's legal responsibility for any actions Appellant took that day, particularly Appellant shooting Victim. The defense sought to introduce the evidence of the "voices" as context for "many of [Appellant's] actions that day" so that he may present a full defense to the jury. Trial counsel believed presentation of such evidence was particularly important to counter the State's presentation of evidence of Appellant's flight from law enforcement after the shooting. Trial counsel proposed the trial judge charge the jury that insanity was not an issue in the case to correct the confusion that may have resulted from presenting such evidence to a jury. (Tr.p.19, line 10–Tr.p.21, line 8)

The trial judge, confused by trial counsel's request, confirmed: (1) the defense was not challenging Appellant's competency to stand trial; (2) the defense was not challenging Appellant's criminal responsibility for his actions; (3) trial counsel was not arguing Appellant suffered from any mental condition or defect which would prevent him from conforming his conduct to the requirements of law; (4) trial counsel was not advancing a defense of guilty but mentally ill or suffering from some type of insanity. Trial counsel attempted to clarify his

position, asserting the mental evaluation possessed by the State indicated Appellant's mental state at the time of the crime may have been caused by drug use, but "it d[id] not contradict [Appellant's claim] that he was hearing voices that day" and such "voices," while not a legal justification, were an explanation contradicting the State's claim that Appellant's guilt could be inferred from his flight from the scene of the crime. Trial counsel also informed the trial judge Appellant would most likely plead guilty to escape and leaving the scene of a crime before trial. (Tr.p.21, line 9–Tr.p.27, line 1; Tr.p.27, line 19–Tr.p.29, line 9)

The State noted it did not intend to introduce the mental evaluation into evidence at trial; it submitted the report to establish Appellant's competency and criminal responsibility so that the trial could begin. Trial counsel had not obtained any mental evaluations of Appellant or anything demonstrating an actual mental illness. Further, the State noted that the voices were caused by Appellant's voluntary intoxication from drugs and as such were not a defense to his crimes and would be confusing to a jury if presented to them. (Tr.p.27, lines 2–14; Tr.p.29, line 10–Tr.p.30, line 4)

The trial judge informed the parties that he was not inclined to admit the evidence of Appellant's voices because, due to the defense's admissions that such evidence was not used to challenge Appellant's culpability, they were not relevant to the case. Further, such evidence would be misleading to a jury because it would lead jurors to infer Appellant suffered from ongoing "mental illness or some kind of defective condition," although there was no evidence or assertion by the defense of such. However, the trial judge informed the parties it could proffer the evidence during trial and he would make a final ruling on the motion at that time. (Tr.p.30, lines 5–22)

Trial counsel also made a motion to determine whether the State intended to introduce Appellant's prior criminal record into evidence. The State informed the Court it planned to introduce several past convictions of Appellant through either Rule 404(b), SCRE, or Rule 609, SCRE. First, it sought to introduce Appellant's federal charge for possession of a weapon by a felon, to which Appellant pled guilty in early 2018. Notably, this was the charge earned by Appellant nine days prior to Victim's murder. The State also sought to introduce prior strong-arm robbery convictions from 1999 and 2008. The State planned to introduce evidence of these offenses to refute any assertions by Appellant that his killing of Victim was an accident. In response, trial counsel made a motion to exclude any prior convictions considered remote (older than ten years). The parties agreed to perform more research on the issues and revisit them during the trial. (Tr.p.33, line 19–Tr.p.46, line 11)

At the beginning of trial, before the jury was sworn, Appellant pled guilty to escape, driving under suspension, and failure to stop for a blue light. During his plea, Appellant acknowledged he understood the charges against him and that he did not have a defense to any of those charges. During its presentation of the facts, the State again submitted the mental evaluation performed on Appellant, which established he was competent and free of any mental illnesses. Again, Appellant acknowledged this evidence and did not challenge its veracity. The trial judge accepted his pleas and sentenced him accordingly. (Tr.p.60, line 1–Tr.p.81, line 16)

Kevin Schuerman was the eyewitness to the shooting. Schuerman was friends with Victim's family and was particularly close with Victim. He arrived at Victim's house on the day of the shooting and found Appellant, who he knew as Victim's on-again-off-again boyfriend, standing outside and talking on the phone. Schuerman noted Appellant appeared "erratic" and "on edge." Schuerman left Appellant outside and entered the home to speak with Victim.

Eventually, the pair, along with Appellant, decided to make a trip to a nearby gas station for refreshments. The three entered into the only vehicle at the house, Victim's mother's black Honda Civic, with Victim getting into the driver's seat of her vehicle, Schuerman taking the front passenger seat, and Appellant taking the seat behind Schuerman. Before the group could leave, Appellant requested to be let out of the vehicle, at which point he went to the driver's side of the car and told Victim he wished to drive, causing an argument between the two. Schuerman was looking away from the couple, trying to avoid involvement in the argument when he heard a gunshot. Schuerman at first believed he was shot and quickly exited the vehicle and ran behind Victim's garage. After Schuerman discovered he was unharmed, he looked back to the vehicle to see Appellant pulling Victim out of the car. After watching Appellant enter the vehicle and drive away, Schuerman ran to Victim, called 9-1-1, and tried to manage her bleeding with a towel. When officers began arriving at the scene, Schuerman informed officers that both Appellant and Victim had possibly been under the effects of drugs at the time of the shooting, likely methamphetamine or heroin. While speaking with officers, Schuerman noticed Victim's mother's car drive by the house, and informed officers of such. As they tried to stop the vehicle, Schuerman saw it go off the road and cut through the yards of nearby homes in an effort to escape the situation. (Tr.p.175, line 13–Tr.p.206, line 24)

Officer Christian Stewart with the South Carolina Highway Patrol found Appellant driving the black Civic a short distance from Victim's house and initiated a traffic stop by turning on his blue lights. Officer Stewart pursued Appellant as he drove through yards and refused to stop for nearly an hour in time and approximately twenty-three miles in distance. During the chase, Appellant drove at speeds as high as eighty to ninety miles per hour. The pursuit ended when Appellant collided with a vehicle in the driveway of a home at 126 Darby

Place in Greenville County, later identified as Appellant's house. (Tr.p.208, line 1–Tr.p.217, line 12)

Officer Michael Nix of the Spartanburg Sheriff's Office collected the physical evidence associated with the shooting, including the bullet, Victim's clothing, Appellant's gun, a shell casing from a fired bullet found in the car, and fingerprints from the vehicle. Investigator Lathier Graham performed a gunshot residue kit on Victim while she was at the hospital. Officer Michael Callison of the Greenville County Sheriff's Office recovered drugs from Appellant when he was finally apprehended. (Tr.p.217, line 20–Tr.p.271, line 11)

Thomas Darnell, a forensic analyst with SLED, matched Appellant's fingerprints to those found on the magazine of the gun. SLED Analyst Jennifer Nates found gunshot residue, created by the act of firing a gun, on samples collect from Appellant's and Victim's hands, noting that because residue was found on both individuals a gun was likely discharged within the small space of the vehicle. SLED Agent Chad Smith, a firearms expert, testified Appellant's gun, which had a trigger guard, required the application of five-and-a-half pounds of force¹ to the trigger in order to override the internal safety mechanism of the gun and fire a bullet; something "catching the trigger" or brushing against it was not only unlikely given the trigger guard but would be unlikely to create the force required to override the gun's internal safety. Further, to load a bullet into the chamber of the gun required "pull[ing] back the slide" (cocking the weapon) beforehand, where the bullet would wait until the appropriate force is applied to the trigger. After performing several tests on the weapon, Agent Smith concluded the recovered bullet and spent shell casing both came from Appellant's gun. Dr. John David Wren performed

¹ To illustrate the amount of force in five-and-a-half pounds of pressure, Agent Smith noted that a gallon of milk is eight pounds, so it took half a gallon worth of force, applied to the trigger, to cause the weapon to fire. (Tr.p.310, lines 16–22)

Victim's autopsy, and found the bullet entered at a downward angle, traveled through her body and exited it approximately nine-and-half inches below the entrance wound, causing the internal bleeding which ultimately killed her. (Tr.p.272, line 20–Tr.p.350, line 15)

At the conclusion of the State's case-in-chief, Appellant decided to testify in his own defense. The parties decided to proffer Appellant's testimony regarding his "belief" that Victim's mother used witchcraft on him. Appellant claimed he believed Victim's mother practiced Witchcraft, although she denied it, because the mother's friend "Aaron" was put under such a spell which caused him to hear voices in his head. Appellant also claimed he believed he had been affected by such magic "off and on" for "eight or ten months," and that Victim confirmed her mother was "familiar" with such magic. Appellant alleged he was hearing voices in his head the day of the shooting which told him his "family was being murdered." Appellant claimed the voices were the reason for many of his actions that day: getting into the backseat of the vehicle, leaving the scene of the crime, but they were not a factor in him shooting Victim. After Appellant shot Victim and attempted pursuit of a specific cement truck he thought would bury his family, he returned to the scene of the shooting and saw officers. At this point, Appellant did not stop for officers because he possessed drugs on his person. Appellant also claimed that his mind was racing after police starting following him, either from "witchcraft," lack of sleep, or his use of narcotics. However, Appellant later clarified the "voices" did not play any part in his refusal to stop for police once they began pursuit. (Tr.p.357, line 16–Tr.p.368, line 18)

After Appellant proffered his testimony, the State explained its numerous objections to the trial judge. First, Appellant's proffered testimony included numerous instances of hearsay. Second, Appellant's "voices" were caused by his heavy drug use, and no medical evidence

provided any indication that Appellant suffered from any mental illness or psychosis. Third, such evidence is not relevant because Appellant failed to argue the “voices” played any part in the crimes for which he stood trial; murder and possession of a weapon during the commission of a violent crime. Confusingly, trial counsel claimed the testimony proffered by Appellant was not the same testimony he would provide to the jury; Appellant would not include any of the proffered hearsay. Trial counsel maintained that Appellant’s testimony was proper because it was an “alternative reason” for why he left the scene and rebutted the State’s evidence of Appellant’s flight and the inference the jury was permitted to draw from it. (Tr.p.368, line 24–Tr.p.372, line 1)

After hearing the parties’ arguments, the trial judge determined Appellant was not permitted to testify he believed he was under the influence of witchcraft or that he heard voices which caused him to leave the scene based on the dangers of unfair prejudice to the State and the great risk of confusing the jury. The trial judge based his ruling on the following: (1) the parties agreed prior to trial that Appellant was not asserting any defense related to mental disability or illness; (2) testimony related to witchcraft and “voices” would be confusing to a jury because it would lead to a “reasonable inference” in jurors’ minds that Appellant suffers from some type of mental illness or defect even though it was not asserted by the defense; (3) Appellant had already pled guilty to failing to stop for a blue light and admitted full responsibility for it without claiming any defense; (4) Appellant testified his escape from police was related to use and possession of narcotics; (5) Appellant’s testimony regarding witchcraft was based largely upon hearsay. However, the trial judge ruled Appellant could testify he was fearful and felt he needed to leave the scene of the crime based on his instincts or “something within him.” (Tr.p.372, line 2–Tr.p.374, line 9)

Following the trial judge's ruling and his explanation to Appellant of his right to testify, the trial judge revisited the admissibility of Appellant's 1999 and 2008 convictions. The trial judge informed the parties he believed both convictions were admissible; the later conviction and sentence occurred within ten years of the charged crime, and the earlier conviction was part of a "continuous course of conduct" with the latter, meaning neither were "remote" under the rules. Further, even if they were remote, the probative value of the convictions substantially outweighed the danger of unfair prejudice. Trial counsel again argued that the earlier conviction was too remote and that the probative value of the convictions did not outweigh the danger of unfair prejudice because there was limited value to attacking Appellant's credibility. The State, noting trial counsel's concerns, offered to refer to the two crimes as "crimes of dishonesty" instead of common-law robbery. The trial judge agreed to the change in terminology, and trial counsel failed to object to it. The parties also discussed how the State could question Appellant regarding his ability to carry a firearm and agreed the State could ask Appellant whether he understood, at the time of the shooting, "he was not lawfully able to possess a firearm."

(Tr.p.379, line 24—Tr.p.383, line 24)

During his trial testimony, Appellant admitted he was using drugs on the day of the shooting. After Schuerman arrived at Victim's home, it was Appellant who suggested that the three of them go to the gas station. After the three got into Victim's car, Victim began applying makeup. Appellant, impatient, asked Victim if he could drive. When Victim did not respond, Appellant exited the vehicle. Appellant realized his gun had fallen out of his pocket and onto the backseat, so he picked it up and walked to the driver's side door. Appellant reached the driver's side door, but Victim had still not provided Appellant with permission to drive the vehicle. Appellant reached into the car to "grab the keys" from Victim, but she resisted and pushed his

hand back, at which time the gun went off. After he left, Appellant refused to stop for police because he had drugs on his person and was scared he was going to be shot. In fact, his fear of being shot was why he fled all the way to his house, so that his family could witness the arrest. (Tr.p.385, line 10–Tr.p.396, line 18)

As to why Appellant was carrying a gun that day, he claimed he possessed a gun because he was both a drug dealer and a drug addict and needed to protect himself. However, Appellant was well aware that it was illegal for him to possess a gun. Finally, at the end of his direct examination and before the State could do so, trial counsel asked Appellant whether he had been convicted of two crimes of dishonesty in his past, both of which Appellant acknowledged. (Tr.p.391, line 14–Tr.p.392, line 7; Tr.p.396, line 19–Tr.p.397, line 4)

On cross-examination, Appellant admitted to having an argument over who would drive, but not an “angry argument.” Further, when he reached for Victim’s keys, he was holding the gun not at his side, but in the middle of his body, aimed towards Victim when he went for the keys. When asked how he obtained the illegal gun, Appellant stated he purchased it from his friend “Curtis,” but that he did not know Curtis’s last name or where he lived. On the subject of drug use, Appellant admitted to using drugs the day of and in the days leading to the shooting, specifically “meth and heroin.” In fact, Appellant had been on a drug “binge” and had been unable to sleep for over three days at the time of the shooting. (Tr.p.397, line 14–Tr.p.413, line 7)

After the defense rested its case, the trial judge asked the parties for proposed jury charges. Trial counsel requested charges on accident and involuntary manslaughter. The State objected to both, noting Appellant’s possession of a weapon was an unlawful act which prevented Appellant from requesting and receiving both charges. Trial counsel noted that

improper possession of a firearm sometimes forecloses charges on involuntary manslaughter and accident, but for such to occur the unlawful possession of the gun must be the proximate cause of the homicide. When questioned by the trial judge whether Appellant was exercising due care when holding the gun, trial counsel conceded that “at some point anybody with a gun that goes off and hits another person is not exercising the care that they should have.” (Tr.p.420, line 6–Tr.p.425, line 23)

The trial judge denied trial counsel’s request for the charges, finding it was undisputed Appellant unlawfully possessed the gun, that he wielded the gun “in the absence of the exercise of reasonable and due care,” and Appellant’s attempt to take control of Victim’s vehicle, itself another unlawful act, while holding a loaded firearm was an activity which “naturally tends to results in death or . . . great bodily injury.” (Tr.p.425, line 24–Tr.p.427, line 16)

STANDARD OF REVIEW

“In criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous.” State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). “The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion. Id. “An abuse of discretion occurs when a trial court’s decision is unsupported by the evidence or controlled by an error of law.” Id.

ARGUMENT

I.

The trial judge properly refused to instruct the jury on the offense of involuntary manslaughter and the defense of accident because, even viewing the evidence in the light most favorable to the defense, Appellant's illegal behavior was the proximate cause of the shooting. (Appellant's Issues I and II)

Appellant argues the trial judge erred in refusing to instruct the jury on involuntary manslaughter and accident because there was evidence that Appellant unintentionally shot Victim. The State disagrees with this allegation of error. Appellant's illegal possession of a gun, the proximate cause of Victim's death, rendered both charges entirely inappropriate in the instant case.

In reviewing a trial judge's jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). An appellate court will not reverse a trial judge's decision regarding a jury charge absent an abuse of discretion. State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006). "A trial judge is required to charge the jury on a lesser-included offense if there is evidence from which it could be inferred the lesser, rather than the greater, offense was committed." State v. Green, 397 S.C. 268, 289, 724 S.E.2d 664, 674 (2012). "The mere contention that the jury might accept the State's evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tends to show the defendant was guilty only of the lesser offense." State v. Geiger, 370 S.C. 600, 608, 635 S.E.2d 669, 674 (Ct. App. 2006).

Under South Carolina, "murder" is "the killing of any person with malice aforethought, either express or implied. S.C. Code Ann. § 16-3-10 (2015). "Malice aforethought" encompasses four separate mental states, involving both general intent and specific intent: (1) the intent to kill, (2) the intent to inflict grievous bodily harm, (3) extremely reckless indifference to

the value of human life, or (4) the intent to commit a dangerous felony. State v. Smith, 425 S.C. 20, 29, 819 S.E.2d 187, 191 (Ct. App. 2018); see also Black's Law Dictionary (11th ed. 2019);

Involuntary manslaughter is defined as the unintentional killing of another while engaged in either: (1) an unlawful act, not a felony or naturally tending to cause death or great bodily injury, or (2) a lawful act committed with a reckless disregard for the safety of others. See, e.g. State v. Sams, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014). As this Court has noted, "the essence of involuntary manslaughter is the involuntary nature of the killing." State v. Gibson, 390 S.C.347, 357, 701 S.E.2d 766, 771 (Ct. App. 2010). "To warrant a jury charge on involuntary manslaughter, there must be some evidence the killing was unintentional." State v. Murray, 404 S.C. 300, 303, 744 S.E.2d 607, 609 (Ct. App. 2013).

For a homicide to be excused on the basis of accident, "it must be shown the killing was unintentional, the defendant was acting lawfully, and due care was exercised in the handling of the weapon." State v. Burriss, 334 S.C. 256, 259, 513 S.E.2d 104, 106 (1999). Notably, a person may be legally prohibited from possessing a firearm but may be found to be acting "lawfully" for the purposes of the defense of accident if that person properly armed himself at the time of the shooting, but the victim was shot by accident through the unintentional discharge of the gun. See State v. Goodson, 312 S.C. 278, 281, 440 S.E.2d 370, 372 (1994). However, when a defendant's unlawful possession of a weapon is the proximate cause of the difficulty, and not "merely incidental" to the lawful act of arming oneself in self-defense, a defendant is still prohibited from claiming either self-defense or accident at trial. See id.

Involuntary Manslaughter

Here, Appellant's testimony did, in fact, support the idea that he unintentionally shot Victim. However, Appellant's actions do not fall under either definition of involuntary

manslaughter. Appellant was engaged in two felonies at the time the shooting occurred: he was attempting to carjack² Victim while illegally possessing a firearm. The felony statuses of these actions, by definition, exclude the option of an involuntary manslaughter charge; no further analysis is necessary.

Appellant's self-described actions do, however, satisfy the definition of murder. Appellant tried to seize control of the vehicle by reaching into it, all the while holding a loaded gun in his hand, one without an external safety mechanism, and allowing it to point in the direction of Victim. Such actions can only be described as demonstrating an "extremely reckless indifference to human life." See Smith, 425 S.C. at 29, 819 S.E.2d at 191.

Proximate Cause

Further, Appellant is prohibited from both involuntary manslaughter and accident charges because his unlawful behavior was the proximate cause of Victim's death. In his brief, Appellant misinterprets the issue as one involving "proximate cause" and many of South Carolina's recent cases interpreting the propriety of self-defense and accident charges. See, e.g., State v. Williams, 427 S.C. 246, 830 S.E.2d 904 (2019) (noting the defendant's unlawful possession of a firearm excluded him from a charge of self-defense because the unlawful firearm was the proximate cause of the violent situation which led to the defendant's use of the weapon). However, such cases are entirely inapplicable to the instant case. First there was no claim of self-defense by Appellant, which is required for him to convert his possession of a weapon from unlawful to lawful. See State v. Burriss, 334 S.C. 256, 264, 513 S.E.2d 104, 109 (1999) ("[A]

² Appellant's actions, as described by him, constituted carjacking under South Carolina Law. Pursuant to S.C. Code Ann. § 16-3-1075(B), "A person is guilty of the felony of carjacking who takes, or attempts to take, a motor vehicle from another person by force and violence or by intimidation while the person is operating the vehicle or while the person is in the vehicle.

person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting.”).

Further, even when viewing the facts in the light most favorable to Appellant, Appellant’s felonious actions are the proximate cause of Victim’s death; if he had not unlawfully possessed a gun and/or he had not attempted to seize control of Victim’s vehicle while holding it, he would not have “accidentally” shot her. See State v. Goodson, 312 S.C. 278, 281, 440 S.E.2d 370, 372 (1994) (finding defendant was not entitled to an accident charge because he was not acting lawfully at the time his gun discharged and killed his victim).

II.

The trial judge properly refused to allow Appellant to testify he believed Victim’s mother used witchcraft to cause him to “hear voices” because such testimony was based on hearsay, the defense conceded the “voices” were not a factor in the shooting or the basis for any defense, and Appellant later testified it was possession of drugs which actually caused him to flee from police.

Appellant argues the trial judge erred in prohibiting him from testifying that Victim’s mother put him under a “spell” and caused him to “hear voices” which caused him to flee the scene after the shooting. Appellant’s argument is meritless. The trial judge properly refused admission of the challenged testimony on the grounds of relevance, dangers of unfair prejudice and confusing the jury, and hearsay.

“The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion.” State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” State v. Jennings, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011).

“Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears.” State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCRE (defining relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence”). If a piece of evidence could assist the jury in arriving at the truth of an issue, it is relevant and should be admitted during trial. State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986). However, even relevant evidence may be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Rule 403, SCRE.

In South Carolina, hearsay is inadmissible "except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE. Our rules of evidence define hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE.

Relevance

Appellant’s claim of hearing “voices” and experiencing witchcraft are not relevant to his charged crimes. Appellant testified neither witchcraft nor the voices had anything to do with the shooting or his unlawful possession of a weapon that day. Further, Appellant conceded the witchcraft and voices had nothing to do with his decision to flee from police once they began pursuit; Appellant’s decision to run from police was based on his possession of drugs. Because

the alleged witchcraft played no part in his charged crimes, it was simply not relevant at trial.

See Rule 401, SCRE.

Prejudice, Confusion, Waste of Time

Even if the proffered testimony was relevant, any remote value from that evidence was substantially outweighed by the dangers of its admission. First, the probative value of the proffered statements is almost non-existent; Appellant claimed he heard voices and was under the influence of witchcraft, but a psychiatric evaluation performed on him stated he did not suffer from any mental illness. The trial judge's skepticism was further justified when, during his trial testimony, Appellant admitted he had not only been using drugs at the time of the shooting but also had been awake for approximately seventy-two hours. The combination of sleep-deprivation and narcotics use is a much more likely explanation for Appellant's thoughts and perceptions than witchcraft or other mystical sources.

Further, the admission of the proffered testimony would have likely confused the jury. Appellant sought to introduce evidence of delusions and his belief in witchcraft to the jury as explanations for his actions, yet did not dispute his sanity or mental capacity at the time the shooting occurred. It would be unnecessarily confusing to the jury to hear unsupported evidence that Appellant was hearing voices at the time of the shooting, but a split-second later they caused him to leave the scene of the crime.

Accordingly, the trial judge properly found admitting Appellant's proffered testimony regarding witchcraft and "voices" had little probative value and a substantial likelihood of negatively impacting the trial.

Hearsay

As noted above, a large portion of Appellant's testimony is also inadmissible hearsay, a finding with which trial counsel agreed; Appellant's belief that he was under the influence of witchcraft performed by Victim's mother was based almost entirely on conversations with Victim and her family. Trial counsel also failed to cite any exceptions to the hearsay rule which would apply to any of the hearsay statements. Accordingly, the trial judge properly excluded Appellant's proffered testimony on this basis. See Rule 802, SCRE.

III.

Any error in the admission of Appellant's 1999 robbery conviction was harmless given the overwhelming evidence of Appellant's guilt.

Appellant argues the trial judge erred in allowing the State to impeach Appellant with his 1999 conviction for strong arm robbery³ because it was too remote in time and the trial judge failed to conduct the requisite Colf⁴ analysis. The State agrees the trial judge's Colf analysis was incomplete and required an on-the-record analysis of the probative value of the conviction. However, any error in the admission of the conviction was necessarily harmless given the only possible conclusion which could be drawn from the evidence was that Appellant was guilty of the charged offenses.

"Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial." State v. Sherard, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion

³ Appellant, both at trial and on appeal, did not challenge the admission of the 2008 conviction nor did he challenge the classification of both the 1999 and 2008 as crimes of dishonesty. Accordingly, both issues are not preserved for Appellate review. See State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) ("If a party fails to properly object, the party is procedurally barred from raising the issue on appeal.").

⁴ State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000)

can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

Pursuant to Rule 609(a)(1), SCRE, prior convictions punishable by more than one year’s imprisonment “shall be admitted” for impeaching the credibility of a defendant who testifies if “the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused.” Rule 609(a)(2), SCRE, allows impeachment with any crime involving dishonesty or a false statement, regardless of the punishment and without the requirement of the trial court finding the probative value of admitting the evidence outweighed its prejudicial effect to the accused.

However, Rule 609(b), SCRE requires further analysis for “remote” convictions, which it defines as those in which ten years has elapsed from either the date of the conviction or the defendant’s release from confinement, whichever date is later. In such situations, the court is required to determine whether the probative value of the remote conviction substantially outweighs the prejudicial effect of admitting it. To make such a determination, the court should look at the specific facts and circumstances of the conviction. South Carolina courts have approved the five-factor analysis generally employed by the federal courts for weighing the probative value for impeachment of prior convictions against the prejudice to the accused. Colf at 627, 525 S.E.2d at 248. Factors which should be considered by a court include: (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness’s subsequent history; (3) the similarity between the past crime and the charged crime; (4) the importance of the defendant’s testimony; and (5) the centrality of the credibility issue. Colf at 627, 525 S.E.2d at 248. However, these five factors are not exclusive, and trial courts should exercise their discretion based on the facts and circumstances of a particular case. Id. Further,

the specific facts and findings utilized by the trial court supporting its decision should be articulated in the record. Id. at 629, 525 S.E.2d at 249.

Any alleged error in the admission of Appellant's 1999 robbery conviction is harmless given the overwhelming evidence presented by the State. Notably, neither party disputed Appellant shot Victim. Further, as noted throughout this brief, Appellant's actions, even if his testimony was believed by the jury, constitute murder. Appellant, at a minimum, unlawfully possessed a firearm which shot Victim while he was trying to seize control of her vehicle. Notably, the loaded gun, which possessed no external safety, was aimed at her while he reached into the car. At the time Victim was shot, Appellant was committing multiple felonies which directly led to Victim's death. Appellant's actions can only be defined as murder. Accordingly, any error in admitting in admitting the 1999 robbery conviction must necessarily be harmless. See id. at 5, 377 S.E.2d at 584.

CONCLUSION


For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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February 7, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2018-001572

RECEIVED
FEB 07 2020
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LANCE ANTONIO BREWTON,

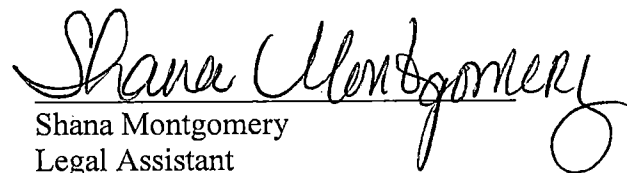
APPELLANT.

PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

Adam Sinclair Ruffin, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served this 7th day of February, 2020.



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ALAN WILSON
ATTORNEY GENERAL

February 7, 2020

Adam Sinclair Ruffin, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

RE: State v. Lance Antonio Brewton – Appellate Case No. 2018-001572

Dear Mr. Ruffin:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

William F. Schumacher
Assistant Attorney General
Bar Number 100231

WFS/ssm
Enclosures

cc: Honorable Jenny A. Kitchings
(original and one enclosed)
Victim Advocacy Division

RECEIVED

FEB 07 2020

SC Court of Appeals