

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**Jun 25 2020**

**SC Court of Appeals**

Appeal from Florence County

Honorable William H. Seals, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DIONDRAE EMANUEL JACKSON,

APPELLANT.

APPELLATE CASE NO. 2019-000937

ANDERS BRIEF OF APPELLANT

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**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW .....3

ARGUMENT

The trial court erred in charging voluntary manslaughter at  
the State’s urging and over the objection of appellant where  
the reason given by the trial judge could not serve as  
sufficient legal provocation.....4

CONCLUSION.....11

PETITION TO BE RELIEVED AS COUNSEL .....12

**TABLE OF AUTHORITIES**

**Cases**

Cook v. State, 415 S.C. 551, 784 S.E.2d 665 (2015)..... 10

State v. Byrd, 323 S.C. 319, 474 S.E.2d 430 (1996) ..... 9

State v. Cooley, 342 S.C. 63, 536 S.E.2d 666 (2000)..... 9

State v. Hernandez, 386 S.C. 655, 690 S.E.2d 582 (Ct. App. 2010) ..... 10

State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010).....3

State v. Walker, 324 S.C. 257, 478 S.E.2d 280 (1996)..... 9

**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in charging voluntary manslaughter at the State's urging and over the objection of appellant where the reason given by the trial judge could not serve as sufficient legal provocation?

## **STATEMENT OF THE CASE**

Appellant Diondrae Emanuel Jackson was indicted by a Florence County grand jury for murder and attempted murder and on April 15, 2019, he was tried before the Honorable William H. Seals and a jury. R. 1. Todd Tucker represented the State and William “Josh” Edgeworth represented appellant. R. 1. The jury acquitted appellant of murder and attempted murder, but convicted appellant of voluntary manslaughter. R. 546, l. 16 – 547, l. 14. Judge Seals sentenced appellant to twenty-eight years’ imprisonment. R. 553, l. 7 – 9. This appeal follows.

### **STANDARD OF REVIEW**

“To warrant the court eliminating the charge of manslaughter, there must be no evidence whatsoever tending to reduce the crime from murder to manslaughter. If there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed, the defendant is entitled to such charge.” State v. Starnes, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010) (internal citation omitted).

## ARGUMENT

The trial court erred in charging voluntary manslaughter at the State's urging and over the objection of appellant where the reason given by the trial judge could not serve as sufficient legal provocation.

The shooting in this case occurred in the early morning hours of May 6, 2018, at the Downbeat Club in a rural part of Florence County. R. 113, l. 24 – 114, l. 12. R. 430, l. 9 – 18. Appellant Diondrae Jackson testified that he fired a gun in self-defense when one of a group of Bloods gang members drew a pistol on him. R. 441, l. 20 – 443, l. 6. The gang member with the gun was the decedent Malcolm Spates. R. 441, l. 20 – 443, l. 6. Spates fired at appellant. R. 441, l. 20 – 443, l. 6. Spates dropped the gun after he was shot and when Ronald Oliver, another gang member, reached for it, appellant shot him, as well. R. 441, l. 20 – 443, l. 6.

The State charged appellant with Spates' murder and attempted murder for the shooting of Oliver. The jury acquitted appellant of attempted murder and murder, but convicted him of voluntary manslaughter for the shooting of Spates. R. 546, l. 17 – 547, l. 3. The trial judge only charged the jury on voluntary manslaughter at the State's request and over appellant's objection. R. 482, l. 22 – 485, l. 7.

The day of the shooting, appellant was driving to a friend's house when he saw another friend, Latesha Newton. R. 424, l. 6 – 17. Appellant and Newton talked for a while and Newton eventually invited appellant to come with her and her friends to a club. R. 424, l. 18 – 426, l. 23. Newton drove her car, a black Dodge Charger, and they picked up her friends, Everett Frierson, Ernestine Mack, and Lawanda Johnson. R. 144, l. 3 – 145, l. 20.

Newton had her .9mm firearm in the glove box of her car. R. 146, l. 20 – 147, l. 8. Lawanda Johnson also had a gun in the car, but she had given it to her fiancé, Frierson. R. 187,

l. 15 – 188, l. 2. R. 223, l. 12 – 224, l. 15. Johnson’s gun eventually made it into the center console. R. 223, l. 12 – 224, l. 15.

Frierson said he asked Johnson if they could take the gun to the club “for self-defense purposes because of everything that has been going on on the news about shootings happening at nightclubs.” R. 223, l. 12 – 224, l. 15. Frierson claimed to know about other shootings at the Downbeat Club, which was corroborated by the lead investigator for the police. R. 246, l. 7 – 12. R. 399, l. 1 – 11. Johnson denied taking the gun because of a fear of violence, but admitted that they always took a gun to the Downbeat Club because “that’s just what we do.” R. 204, l. 24 – 205, l. 14. The bartender denied knowing of any instances of violence and also denied that the Downbeat Club was a haven for the Bloods. R. 253, l. 19 – 256, l. 13.

Most of the witnesses, including appellant, agreed that appellant got into a disagreement at the club over a pool game. Newton was not sure what happened, but heard quarters being thrown at appellant. R. 151, l. 1 – 152, l. 1. Johnson saw appellant get into an argument with a man wearing a red shirt. R. 190, l. 1 – 15. Mack said she saw appellant have some words at the pool table. R. 217, l. 12 – 17.

Frierson said appellant played a game of pool with his cousin. R. 226, l. 22 – 227, l. 5. Appellant lost the game and went to the bar to get more quarters. R. 227, l. 6 – 230, l. 6. Appellant placed his quarters on the table, left, and returned to find a man named Maurice Hickson playing pool. R. 227, l. 6 – 230, l. 6. Appellant objected to Hickson cutting in line and Frierson described Hickson as “apologetic.” R. 227, l. 6 – 230, l. 6. Appellant was very angry and another man in a red shirt came over to try to make change. R. 227, l. 6 – 230, l. 6. The men continued to offer the quarters to appellant, but he refused to take them and remained angry. R. 227, l. 6 – 230, l. 6. Hickson then told appellant “F you” and threw the quarters at appellant. R.

227, l. 6 – 230, l. 6. Newton separated the men and took appellant outside. R. 227, l. 6 – 230, l. 6. Frierson told the police he was afraid because of threats made after the shooting and asked them for protection. R. 245, l. 1 – 16.

Appellant agreed that he played one game of pool and lost, then went to the bar to get change to play another game. R. 434, l. 4 – 437, l. 14. When he got back, someone else's quarters were on the table. R. 434, l. 4 – 437, l. 14. They waited on the owner of the quarters to return, but he did not show up, so appellant began playing. R. 434, l. 4 – 437, l. 14. Once they began playing, a man wearing a red hat, red shirt, and red pants showed up, pushed the balls around on the pool table, and accused appellant of using his "MF'ing quarters." R. 434, l. 4 – 437, l. 14.

Appellant later learned this man in all red was Spates. R. 434, l. 4 – 437, l. 14. Appellant offered to get Spates change and another person walked up to calm the situation, but Spates was "mooshing" appellant in his chest. R. 434, l. 4 – 437, l. 14. Spates flicked a quarter into appellant's face. R. 434, l. 4 – 437, l. 14. At this point, Newton took appellant outside. R. 434, l. 4 – 437, l. 14.

Before entering the club, Newton encouraged appellant to take her gun for protection. R. 429, l. 10 – 431, l. 22. When appellant left the club after the altercation over the pool game, he went back to the car with Newton and smoked a cigarette. R. 436, l. 17 – 439, l. 24. Appellant saw a man wearing a black hoodie watching him. R. 436, l. 17 – 439, l. 24. Appellant tried to convince Newton to leave, but she wanted to stay. R. 436, l. 17 – 439, l. 24. The club's bouncer came out to check on appellant and appellant told him, "I'm good." R. 436, l. 17 – 439, l. 24.

Appellant went back into the club because he did not feel safe in the parking lot. R. 456, l. 6 – 457, l. 24. Despite withering cross-examination by the solicitor, appellant explained that

outside the club he could have been killed and nobody would know, but inside the club he felt at least people could see him. R. 456, l. 6 – 457, l. 24. Appellant could not leave because he did not know anyone to give him a ride and he could not just walk because he had no idea where he was. R. 456, l. 6 – 457, l. 24.

Once back in the club, Newton said she was watching appellant's facial expressions and could see him becoming upset. R. 155, l. 2 – 17. She decided to try to get appellant to leave and took him by the arm. R. 155, l. 13 – 157, l. 10. Appellant then pushed Newton out of the way and started shooting. R. 155, l. 13 – 157, l. 10. Appellant fired in the direction of the pool table. R. 155, l. 13 – 157, l. 10. Newton and the rest of their group claimed not to see anyone else with a gun. R. 158, l. 4 – 11. R. 190, l. 19 – 22. R. 214, l. 21 – 23. R. 233, l. 2 – 5. Frierson said he had “never seen a man” have a look on his face like appellant before the shooting, describing it as a “dark stare.” R. 232, l. 3 – 17. Frierson saw the group of men in the back of the club making gang signs at appellant. R. 232, l. 3 – 234, l. 11.

Appellant testified that he was in the bar watching “about eight” guys make gang signs at him and he was scared. R. 440, l. 5 – 441, l. 3. Appellant then saw the man in the black hoodie from the parking lot enter and hand a pistol to Spates. R. 441, l. 21 – 443, l. 6. Spates then drew the gun and appellant pushed Newton out of the way. R. 441, l. 21 – 443, l. 6. Appellant fired and Spates fired. R. 441, l. 21 – 443, l. 6. Spates dropped the gun and ran for the bathroom. R. 441, l. 21 – 443, l. 6. Oliver reached for the gun and appellant shot Oliver in the hip. R. 441, l. 21 – 443, l. 6. Then, like everyone else in the club, appellant ran to the parking lot. R. 441, l. 21 – 443, l. 6.

Oliver denied being a member of the Bloods and had a prior conviction for accessory after the fact to a felony. R. 262, l. 4 – 25. Oliver said he had no idea about an earlier argument

about a pool game and that he was walking out of the bathroom when the shooting began. R. 270, l. 21 – 25. R. 266, l. 13 – 24. Oliver heard gunshots and saw appellant’s hand in the air, so he ran back into the bathroom with several other people. R. 266, l. 13 – 24. Appellant first fired through the door, then kicked it in and continued to fire. R. 266, l. 13 – 24. Oliver said he was shot in the bathroom. R. 266, l. 13 – 24. According to the police, the bathroom was “pretty small.” R. 139, l. 2 – 9. More than three other people were in the bathroom with Oliver. R. 274, l. 18 – 276, l. 5. Frierson said appellant was “unloading the clip.” R. 234, l. 1 – 8. Oliver was the only person in the bathroom who was shot and the police only found three shell casings. R. 274, l. 18 – 276, l. 5. R. 319, l. 8 – 320, l. 10.

The group got into Newton’s car and left the scene. R. 443, l. 7 – 23. A police officer responding to the call turned around after seeing Newton’s car and when he activated his blue lights, appellant threw the gun out of the window. R. 443, l. 7 – 23. The police never recovered the gun. R. 386, l. 18 – 387, l. 3. The toxicology report from Spates’ autopsy revealed his blood alcohol level was 0.185. R. 360, l. 19 – 361, l. 2.

The police denied taking a gun from Spates, but evidence forms indicated the opposite. R. 311, l. 16 – 313, l. 16. R. 373, l. 9 – 374, l. 25. The lead investigator claimed the forms were in error and the only gun recovered was Lawanda Johnson’s gun from the Charger. R. 373, l. 9 – 374, l. 25. The lead investigator maintained the forms showing a gun, 11 bullets, specific brands of ammunition, and a black suede holster recovered from Spates were all inaccurate. R. 392, l. 3 – 394, l. 25.

After the State rested, the solicitor asked whether the court intended to charge voluntary manslaughter. R. 413, l. 11 – 414, l. 15. The solicitor said “there’s enough evidence to support a voluntary manslaughter lesser-included.” R. 413, l. 11 – 414, l. 15. Defense counsel argued he

did not “see the facts that way at this time, but the solicitor, citing Frierson’s testimony about the gang signs said it could be a “re-provocation.” R. 413, l. 11 – 414, l. 15.

After appellant testified and the defense rested, the court returned to the question of whether to charge voluntary manslaughter. R. 482, l. 22 – 485, l. 8. Appellant argued that the elements of voluntary manslaughter were not shown by the evidence and objected to the charge. R. 482, l. 22 – 485, l. 8. The trial judge disagreed and said that the gang signs were “overt signs of provocation made to the defendant.” R. 482, l. 22 – 485, l. 8. The jury acquitted appellant of charges related to Oliver and the murder charge related to Spates, but convicted appellant of voluntary manslaughter.

The court erred in charging voluntary manslaughter because the gang signs could not suffice as legal provocation. “Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation.” State v. Walker, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996). “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.” State v. Cooley, 342 S.C. 63, 67, 536 S.E.2d 666, 668 (2000).

“Where death is caused by the use of a deadly weapon, words alone, however opprobrious, are not sufficient to constitute a legal provocation.” State v. Byrd, 323 S.C. 319, 322, 474 S.E.2d 430, 432 (1996). Here, the gang signs were legally the same as opprobrious words and did not constitute the overt act necessary to demonstrate legal provocation. The earlier argument which included a physical assault and quarters being thrown in appellant’s face also could not constitute sufficient legal provocation because appellant’s time spent outside was a “cooling off period” during which the sudden heat of passion had subsided. “However, even when a person's passion is sufficiently aroused by a legally adequate provocation, if at the time

of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would be murder and not manslaughter.” State v. Hernandez, 386 S.C. 655, 661, 690 S.E.2d 582, 585 (Ct. App. 2010) (internal quotations omitted).

This case was either self-defense or murder. Because no evidence supported the giving of a voluntary manslaughter instruction and appellant has been acquitted of murder, appellant’s conviction must be reversed and he cannot be retried. See Cook v. State, 415 S.C. 551, 556–57, 784 S.E.2d 665, 668 (2015).

**CONCLUSION**

For the foregoing reasons, appellant's conviction must be reversed.

This 25th day of June, 2020.

s/David Alexander

Appellate Defender

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA  
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PETITION TO BE RELIEVED AS COUNSEL  
\_\_\_\_\_

Counsel for Diondrae Emanuel Jackson 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 William H. Seals, which was held on May 23, 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 Diondrae Emanuel Jackson.

This 25th day of June, 2020.

Respectfully Submitted,

s/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**

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

- (1) Trial Transcript dated April 15-18, 2019
- (2) Court's Exhibit No. 2 (Jury Note)
- (3) State's Exhibit Nos. 2 and 3 and Defendant's Exhibit Nos. 2 and 3 (to be transported)
- (4) Indictments
- (5) Sentence Sheets

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

June 25, 2020

s/David Alexander  
Appellate Defender

South Carolina Commission on Indigent  
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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.”

June 25, 2020.

s/David Alexander  
Appellate Defender

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