THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
Aug 31 2020
S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions
Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2018-000393

THE STATE,

RESPONDENT,

v.

JAMES ALFONZA BIGGS, III,

PETITIONER.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

CAROLINE SCRANTOM
Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-3188

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

PETITIONER'S QUESTIONS PRESENTED

I. Did the trial court err and violate Petitioner's right to due process by not granting his motion for a directed verdict when the State did not offer substantial evidence which reasonably tended to prove his guilt, and where the evidence only raised a mere suspicion that he murdered the two victims?

II. Did the trial court err by refusing to charge the jury with voluntary manslaughter instruction?

RESPONDENT'S COUNTER-QUESTION PRESENTED

I. Did the trial court err in finding the State presented substantial circumstantial evidence sufficient to overcome Petitioner's motion for a directed verdict where witnesses placed Petitioner, and no one else, at the scene before, during, and after the shooting?

II. Did the trial court abuse its discretion in refusing to instruct the jury on voluntary manslaughter where no evidence showed that Petitioner shot the victims in the sudden heat of passion upon sufficient legal provocation?

STATEMENT OF THE CASE

In 2016, the Dorchester County Grand Jury indicted Petitioner James Alfonza Biggs, III, for the November 30, 2015 murders of Jamal Armstrong and Tyrell Myles. (App. 23, lines 6-21).

Biggs proceeded to trial before the Honorable Diane S. Goodstein on February 20, 2018. (App. 10). The State presented evidence establishing the victims visited Biggs to buy marijuana. (App. 133, lines 16-24; App. 153, lines 1-16; App. 368, line 23 – 370, line 4). Biggs shot them while they sat in his car. (App. 109, line 23 – 110, line 4; App. 117, lines 1-16; App. 185, line 16 – 188, line 22). A witness familiar with Biggs heard gunshots and saw Biggs leave the scene. (App. 189, line 11 – 192, line 25). Biggs left behind his car and his cell phone. (App. 343, line 5 – 355, line 25).

A jury convicted Biggs on each count. (App. 55, lines 1-8). Judge Goodstein sentenced Biggs to concurrent terms of life without the possibility of parole. (App. 528, lines 8-16). He served a timely notice of appeal.

After briefing and without oral argument, the Court of Appeals affirmed Biggs's convictions and sentence in an unpublished, per curiam opinion. *State v. Biggs*, Op. No. 2020-UP-169 (Ct. App. June 3, 2020). (App. 574-76). A petition for rehearing followed and was denied on July 16, 2020. (App. 593).

Biggs timely petitioned for a writ of certiorari, to which Respondent makes the instant return.

ARGUMENT

I. The State presented substantial circumstantial evidence sufficient to overcome the defense's motion for a directed verdict where witnesses placed Petitioner, and no one else, at the scene before, during, and after the shooting.

Biggs seeks review of the trial court's denial of his motion for directed verdict. The Court of Appeals found "the State produced substantial circumstantial evidence of Biggs's guilt to warrant submission of the case to the jury. . . . Specifically, the State produced witnesses who testified they saw Biggs's car at the scene of the murder and saw Biggs flee the scene after the witnesses heard gunshots." (App. 575).

"On appeal from the denial of a motion for directed verdict, this Court must view the evidence in a light most favorable to the State." *State v. Burdette*, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999). If the record contains "substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." *State v. Cherry*, 361 S.C. 588, 593–94, 606 S.E.2d 475, 478 (2004). "When the state relies exclusively on circumstantial evidence and a motion for directed verdict is made, the circuit court is concerned with the existence or nonexistence of evidence, not with its weight." *State v. Cherry*, 361 S.C. at 594, 606 S.E.2d at 478. The appellate court should only reverse "if there is no evidence to support the trial court's ruling." *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

Biggs posits the State's case against him amounted to no more than a mere suspicion of guilt because the State could only establish that the victims attempted to communicate with Biggs just prior to their deaths. *See State v. Bostick*, 392 S.C 134, 141-42, 708 S.E.2d 774, 778 (2011) (directed verdict warranted where the State did not establish defendant's presence at the scene of the crime or control over area where victim's items had been burned). However, the

record shows that while the State's case was circumstantial, "all of the circumstances [were] consistent with each other, and when taken together, point[ed] conclusively to the guilt of the accused beyond a reasonable doubt." *State v. Logan*, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013); *see also State v. Rogers*, 405 S.C. 554, 563, 748 S.E.2d 265, 270 (Ct. App. 2013) ("Circumstantial evidence . . . is proof of a chain of facts and circumstances from which the existence of a separate fact may be inferred."). The State presented a series of witnesses placing Biggs at his car before and after the gunshots. The victims were found unarmed in Biggs's car, with Biggs's cell phone between them.

The victims' significant others, Jazzmin Williamson and Tiffany Bowens, each testified that the victims went to go buy marijuana in Greenhurst. (App. 128, line 20 – 125, line 1; App. 151, line 5 – 152, line 19). Williamson testified the victims were going to buy it from Biggs, because she and her boyfriend had bought some from Biggs the day before. (App. 133, line 16 – 134, line 1). Bowens testified that she did not see either victim with a gun that day, that her husband did not own a gun, and that she had never seen the other victim with a gun. (App. 154, line 25 – 155, line 8).

Brandon Stancil, who knew Biggs, testified that Biggs's Pontiac Grand Am was parked at the scene in Greenhurst minutes before he heard gunshots and went outside, where he saw two gunshot wound victims in the Grand Am. (App. 104, line 12 – 108, line 14; App. 109, line 23 – 117, line 16).

Another witness who knew Biggs, Hunter Eadie, testified that he went to Biggs to buy marijuana on November 30, 2015. He met Biggs, got in Biggs's Pontiac Grand Am, bought some marijuana, and left. (App. 169, lines 3-24). He texted with Biggs to set up the purchase and met him on Larson Drive in Greenhurst. (App. 170, line 6 – 171, line 24). Eadie did not see or

interact with anyone other than Biggs. (App. 174, lines 1-5). This occurred between 5:30 and 6:30 PM. (App. 174, lines 6-8).

Brandon Woodall also knew Biggs, and testified that Biggs sometimes stayed with his mother on Larson Street in Greenhurst. (App. 179, lines 9-24). Woodall would buy marijuana from Biggs, who drove a white Pontiac. (App. 180, lines 1-21). Woodall went to meet Biggs on Larson Street around 5:45 PM on November 30. (App. 181, line 9 – 185, line 11). Woodall pulled up, saw Biggs on the phone and handed him some money for marijuana. As Woodall spoke to his girlfriend, Emily Robbins, who was in the car with him, he "heard noises and the screaming and yelling and . . . gunshots." (App. 185, lines 16-24). He saw Biggs outside of the car before he heard fighting, screams for help, and gunshots. (App. 187, line 19 – 188, line 22). He got scared and left. (App. 185, line 25). As Woodall pulled away, Biggs was the only person he saw. Biggs was moving away from the Gran Am. (Att. 189, line 11 – 190, line 2). Afterwards, Woodard received a cryptic call from Biggs and another caller he could not identify saying, "you don't' know anything, you don't know anything," and "that one of the people got shot and said they seen a gold Honda." (App. 190, line 16 – 191, line 4).

Woodall's girlfriend, Emily Robbins, testified that Biggs and Woodall were good friends. She also knew Biggs to drive a white Pontiac. (App. 201, line 13 – 203, line 9). Like Woodhall, she saw Biggs on Larson Street in Greenhurst on November 30. (App. 203, line 10 – 204, line 20). When Biggs came up to them, another car came up and stopped behind where they had pulled up. (App. 206, line 12 – 207 line 1). Woodall pulled up their car and they "waited for a minute." (App. 208, line 2-4). At this time, Robbins saw "what looked like a flash of someone running past" her towards Biggs's car. (App. 208, lines 4-6). As she talked with Woodall, she heard somebody scream "a couple of times like someone fighting, then the emergency flashers"

came on in Biggs's car. (App. 208, lines 7-13). She heard gunshots. (App. 210, lines 1-6). She witnessed Biggs "run towards the street," and she and Woodhall drove away. (App. 210, lines 10-16).

Another witness, Alexander Coutu, testified that he heard yelling and gunshots from the backyard of his house around dusk on November 30, 2015. He lived about one block over from Larson Street and drove over there to investigate, calling 911. (App. 224, line 10 – 225, line 13).

Finally, Detective Adam Smith testified that the phone taken from between the victims in the Grand Am belonged to Biggs and contained text messages between Biggs and the victims. (App. 352, line 19 – 366, line 18). "The one message that [the Detective] was able to extract was the one [Biggs] sent to [victim] Tyrell Miles on November 30th, 2015, about 5:46 PM, and the message was "[---] Lisa Drive." (App. 368, line 23 – 369, line 1). That address was about fifty yards, "if that," from the Larson Street address associated with Biggs. (App. 370, lines 2-4). Biggs also received four phone calls from one of the victims between 5:43 and 5:58 PM. (App. 364, lines 2-10). Biggs's phone records also showed that he had exchanged phone calls with Hunter Eadie beginning at 5:08 PM that day, and text messages with Brandon Woodall and Emily Robbins earlier that day. (App. 360, line 22 – 362, line 20).

The State offered substantial circumstantial evidence that Biggs was present at the scene before, during, and after the shooting, and that he was involved with the victims once they arrived there. Witnesses who knew Biggs and purchased marijuana from him saw him there. Only minutes earlier, Hunter Eadie had followed Biggs's instructions to get inside his Grand Am to purchase marijuana. Brandon Woodall and Emily Robbins saw Biggs outside of his car, heard a fight and then gunshots, and then saw Biggs flee the scene without explanation. The victims were shot in Biggs's Grand Am, and officers recovered Biggs's phone from there as well. More,

the State presented demonstrated that Biggs texted or called not only one of the victims, but the other witnesses who arrived at the same address to buy marijuana from Biggs that evening. The evidence presented in this case amounts to proof of a chain of facts and circumstances from which one can infer Biggs's guilt beyond a reasonable doubt. Biggs was not entitled to a directed verdict.

II. The trial court did not abuse its discretion in refusing to instruct the jury on voluntary manslaughter because the evidence presented failed to demonstrate that Petitioner shot the victims in the sudden heat of passion upon sufficient legal provocation.

Petitioner also seeks review of the Court of Appeals' finding that Biggs was not entitled to a jury instruction on voluntary manslaughter because "the evidence adduced at trial did not establish Biggs acted in the sudden heat of passion under sufficient legal provocation." (App. 575). The trial court reasoned:

> With regards to voluntary manslaughter, of course, the elements of voluntary manslaughter are that a charge on voluntary manslaughter is not appropriate where there is no evidence that the Defendant shot the victims in the heat of passion upon sufficient legal provocation. Of course, the definition of voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation and there is simply is no evidence to support that charge. I would note that even in your argument your statement was no one knows why he was scared.

(App. 512, lines 1-12).[1]

"The law to be charged must be determined from the evidence presented at trial," viewed

[1] This is the only portion of the trial record reflecting Biggs's argument in support of a voluntary manslaughter charge. While the record insinuates that an off the record charge conference occurred, it fails to show counsel's argument in support of the charge request. *See State v. Harrison*, 343 S.C. 165, 539 S.E.2d 71, (Ct. App. 2000) (numerical references made by appellant during his post charge objection "reveal either a charge conference took place or defense counsel presented the judge with various numbered charge requests prior to the judge's instruction to the jury."); *but see Gilchrist v. State*, 364 S.C. 173, 178, 612 S.E.2d 702, 705 (2005) ("When given the opportunity, counsel must articulate a reason for the requested charge."); *Medlock v. One 1985 Jeep Cherokee*, 322 S.C. 127, 470 S.E.2d 373 (1996) (The appellant has the burden of presenting a record sufficient to allow the appellate court to make a decision).

"in a light most favorable to the defendant." *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). When there is "no evidence whatsoever tending to reduce the crime from murder to manslaughter," the court should not charge the lesser offense. *State v. Gibson*, 390 S.C. 347, 355–56, 701 S.E.2d 766, 770–71 (Ct. App. 2010).

"Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. Heat of passion alone will not suffice to reduce murder to voluntary manslaughter. Both heat of passion and sufficient legal provocation must be present at the time of the killing." *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000) (internal citations omitted). Sudden heat of passion means that which "would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." *Id.* at 101–02, 525 S.E.2d at 513 (quoting *State v. Byrd*, 323 S.C. 319, 474 S.E.2d 430 (1996)). "An overt, threatening act or a physical encounter may constitute sufficient legal provocation," but it "must include more than 'mere words' or a display of a willingness to fight." *State v. Hernandez*, 386 S.C. 655, 661, 690 S.E.2d 582, 585 (Ct. App. 2010) (internal quotations omitted).

It would appear from the record that the lack of evidence to support either element of voluntary manslaughter sustains the trial court's refusal to instruct the jury as requested. The evidence Biggs cites in support of his charge request does not conform with voluntary manslaughter. While a few witnesses testified that they heard screaming prior to the shooting, nobody directly witnessed an altercation. Instead, witnesses heard cries for help. (*See* App. 185, lines 16-24; App. 187, line 19 – 188, line 22; App. 208, lines 7-13; App. 224, lines 8-10). Biggs mentions that that law enforcement investigated the possibility that the shooting resulted from a

robbery attempt, but Detective Smith testified that he could not corroborate this initial theory. (App. 377, lines 3-15; App. 398, lines 20-24). Moreover, evidence presented at trial contradicted the theory that an armed robbery may have given cause for Biggs to react with gunfire. Tiffany Bowens testified that neither victim possessed a firearm, and the responding officer, Jeff Scott, testified that no firearms were found at the scene or on either of the victims. (App. 154, line 25 – 155, line 5; App. 258, lines 1-4).

Further, Biggs's contention that the screaming heard by at least three witnesses supports a finding that Biggs acted out of fear proves particularly inconsistent with the charge requested. "Voluntary manslaughter, by definition, requires a criminal intent to do harm to another." *State v. Niles*, 412 S.C. 515, 523, 772 S.E.2d 877, 881 (2015) (quoting *State v. Childers*, 373 S.C. 367, 375–76, 645 S.E.2d 233, 237 (2007)). If Biggs fired at the victims out of fear, his actions insinuate a lack of criminal intent, and renders self-defense the more appropriate charge request. *State v. Cole*, 338 S.C. at 102, 525 S.E.2d at 513 (appellant's testimony that he fired to scare men away "appears designed to support a charge of self defense, not heat of passion"); *see State v. Starnes*, 388 S.C. 590, 599, 698 S.E.2d 605, 609 (2010) (voluntary manslaughter charge not proper where record devoid of evidence appellant upon incontrollable impulse to do violence, as lesser charge would "impermissibly blend the elements of voluntary manslaughter and self-defense"). "Neither the exercise of a legal right nor a victim's attempts to resist or defend himself from crime constitute sufficient legal provocation." *State v. Hernandez*, 386 S.C. at 661, 690 S.E.2d at 585.

Instead, Biggs's use of a firearm during a drug deal and the State's ballistics analysis support a finding that Biggs acted with malice. *See* S.C. Code Ann § 16-3-50 (defining manslaughter as "the unlawful killing of another without malice, express or implied."); *State v.*

Blassingame, 271 S.C. 44, 46, 244 S.E.2d 528, 529 (1978) ("Voluntary manslaughter, of course, is an offense which does involve intent on the part of the perpetrator but lacks the element of malice."). The evidence presented at trial supports a finding that Biggs was the only party who possessed a weapon at the time of the murder.[2] Agent Chad Smith, a firearms expert with SLED, testified that the same firearm was responsible for firing each of the seven spent cartridge casings recovered from the interior of the Grand Am. (App. 296, lines 3-20; *see* App. 250, lines 6-10). Law enforcement did not locate any firearms with the victims. (App. 258, lines 1-4). Additionally, the State's forensic pathologist, Dr. Nicholas Batalis, testified that one victim sustained three separate gunshot wounds: two to his back, and one to the backside of his head. (App. 428, lines 16-22). Dr. Batalis testified that the second victim sustained five separate gunshot wounds: one to the center of the back of his head, one to the right side of his face, one to the right side of his jaw, one to his right shoulder, and one to the left side of his chest. (App. 432, line 13 – 440, line 13). The quantity of rounds, along with the fact that nearly all rounds impacted the victims from the back, reflects that malice existed as Biggs fired.

With evidence of malice, but not that Biggs acted upon some incontrollable impulse to do violence, or upon some other evidence of a sudden heat of passion, or in response to sufficient legal provocation, the trial court correctly refused Biggs's request to charge voluntary manslaughter.

---

[2] This Court has previously indicated that possession of a weapon while dealing drugs is inherently malicious. *State v. Whitesides*, 397 S.C. 313, 725 S.E.2d 487 (2012). In that case, this Court concluded that "[a] nexus may be established by showing that the firearm furthered, advanced, or helped in the commission of the crime. A nexus between possession of a firearm and drug trafficking would exist if the firearm is accessible to the trafficker and thereby provides defense against anyone who may attempt to rob the trafficker of his drugs or drug profits." *Id.* at 319, 725 S.E.2d at 490 (2012) (internal quotations omitted). Federal authorities share a similar position, long-finding that individuals who bring a firearm to a drug deal are criminally culpable under 18 U.S.C. § 924(c).

CONCLUSION

For the foregoing reasons, the State requests this Court deny Biggs's petition for a writ of certiorari.

Respectfully Submitted,

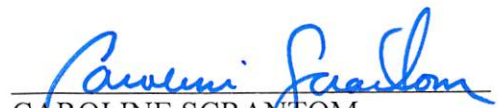
ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

CAROLINE SCRANTOM
Assistant Attorney General
S.C. Bar No. 101357

P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305



CAROLINE SCRANTOM
ATTORNEYS FOR RESPONDENTS

August 31, 2020
Columbia, South Carolina