STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LEANDRA LAMONT BRIGHT,

APPELLANT

APPELLATE CASE NO. 2019-001960

INITIAL BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

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Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in failing to instruct the jury on voluntary manslaughter where (1) the undisputed evidence showed that Appellant and the deceased were in a heated argument immediately prior to the shooting, (2) there was additional evidence that the deceased pulled a gun and aimed it at Appellant immediately prior to Appellant shooting, and (3) Appellant expressed that he was in fear when the deceased drew his weapon?

STATEMENT OF THE CASE

On December 13, 2016, a Charleston County grand jury indicted Appellant for murder (2016-GS-10-6523) and possession of a weapon during the commission of a violent crime (2016-GS-10-6524). R. *(indictments). The state, represented by David Osborne and Shannon N. Elliott, called the case for trial before the Honorable R. Markley Dennis and a jury on November 12-14, 2019. Tr. 1. Michael Nelson and Kevin G. Hales represented Appellant. Tr. 1.

During its deliberations, the jury asked for the elements of self-defense. Tr. 557, ll. 3-6; R. *(Court's Exhibit #1). The judge responded by providing them with a written copy of his entire charge. Tr. 557, l. 3- Tr. 558, l. 2; R. *(Court's Exhibit #1). The jury found Appellant guilty as charged. Tr. 558, l. 22 – Tr. 559, l. 6. Judge Dennis sentenced Appellant to thirty years imprisonment for murder and five years for the weapon. Tr. 583, l. 25 -Tr. 584, l. 7; R. *(sentence sheets). He ordered the sentences to be served concurrently. Tr. 584, l. 8; R. *(sentence sheets).

On November 21, 2019, Appellant served his notice of appeal. This brief follows.

STANDARD OF REVIEW

"In criminal cases, appellate courts sit to review only errors of law." State v. Sams, 410 S.C. 303, 307, 764 S.E.2d 511, 513 (2014); see also State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006); State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). "An appellate court will not reverse the trial [court]'s decision absent an abuse of discretion." State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007). "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." Id. at 570, 647 S.E.2d at 166–67.

"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." Sams, 410 S.C. at 308, 764 S.E.2d at 513; see also State v. Drafts, 288 S.C. 30, 340 S.E.2d 784 (1986); Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); State v. Gourdine, 322 S.C. 396, 472 S.E.2d 241 (1996). "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." Pittman, 373 S.C. at 570, 647 S.E.2d at 167. "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 (citing State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000)). "The charge request is properly rejected when there is no evidence tending to show the defendant was guilty of the lesser offense." Id. (citing State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996); State v. Cooney, 320 S.C. 107, 463 S.E.2d 597 (1995); State v. Gadsden, 314 S.C. 229, 442 S.E.2d 594 (1994)).

ARGUMENT

The trial judge erred in failing to instruct the jury on voluntary manslaughter where (1) the undisputed evidence showed that Appellant and the deceased were in a heated argument immediately prior to the shooting, (2) there was additional evidence that the deceased pulled a gun and aimed it at Appellant immediately prior to Appellant shooting, and (3) Appellant expressed that he was in fear when the deceased drew his weapon.

Relevant facts

Appellant and Arthur Lee Meyers, the deceased, were friends. Tr. 430, ll. 14-23. On March 30, 2016, Appellant invited Meyers to the Budget Inn Bar. Tr. 430, l. 24 – Tr. 431, l. 4; Tr. 431, ll. 16-22; see also Tr. 283, ll. 16-17 (Gage Frank testifying to dropping Appellant off at a bar). Appellant and Meyers left the bar together and went to a corner store. Tr. 432, ll. 4-10. While at the store, Appellant sold crack to two men. Tr. 433, ll. 16-21. When Meyers saw Appellant talking to the two men, he became agitated. Tr. 434, ll. 21-23. Meyers "had like a personal beef with them." Tr. 434, ll. 23-24. Appellant and Meyers exchanged words regarding Appellant's interactions with the two men. Tr. 435, ll. 6-7. Appellant called his friend, Gage Frank, to pick him up. Tr. 435, ll. 7-8; see also Tr. 285, ll. 12-14 (Frank testifying to picking Appellant up from a store).

While driving to a neighborhood where Appellant and Frank were going to hang out with some friends and pick up something, they saw Meyers on the side of the road. Tr. 436, ll. 2-4. Meyers flagged them down. Tr. 436, ll. 4-5; see also Tr. 292, ll. 8-11 (Frank testifying to Meyers waving at them). Appellant and Frank stopped. Tr. 436, ll. 5-6. Meyers addressed Appellant about the men at the store. Tr. 437, ll. 23-24. Appellant had Frank, who was still in his car, move the car down the road so that someone could enter a driveway. Tr. 439, ll. 4-11.

Appellant and Meyers then borrowed a lighter from Frank so the two could smoke. Tr. 439, ll. 14-24; see also Tr. 293, ll. 20-24 (Frank testifying to Meyers borrowing his lighter). Around this time, Meyers also borrowed Appellant's phone. Tr. 476, ll. 12-14; see also Tr. 293, ll. 8-19 (Frank testifying to Meyers using Appellant's phone). While Appellant and Meyers were walking back toward Meyers' car, two men appeared. Tr. 441, ll. 13-23; see also Tr. 294, ll. 13-20). The men wanted to buy crack from Meyers. Tr. 442, ll. 1-6. Meyers went to his SUV, looking for the crack to sell. Tr. 442, ll. 7-17. While Meyers was looking for the drugs and moving his SUV, Appellant sold crack to the two men. Tr. 443, l. 12 – Tr. 444, l. 9. Meyers confronted the two men about buying drugs from Appellant instead of him. Tr. 444, ll. 23-25. Meyers was angry. Tr. 445, ll. 1-2. Meyers then confronted Appellant about "[c]utting in on his money." Tr. 445, ll. 7-14; see also Tr. 298, ll. 16-18 (Frank testifying that Appellant and Meyers were talking initially, but their exchange turned into a heated argument). The two men left. Tr. 445, ll. 20-21.

Marissa Gadsden, who lived nearby, heard "a lot of argument outside" shortly after midnight. Tr. 73, ll. 13-16. Despite the darkness outside, Gadsden saw "maybe two individuals standing outside talking to each other." Tr. 76, ll. 11-16; Tr. 90, ll. 13-21. Later, she clarified the two were arguing. Tr. 76, ll. 17-19.

Although the two had been arguing for some time, Meyers refused to talk anymore and ominously warned he would "show" Appellant. Tr. 448, ll. 10-17. Meyers then walked to his SUV. Tr. 448, ll. 19-22. Appellant followed Meyers. Tr. 449, ll. 24-25. Meyers got into the SUV and closed the door. Tr. 450, ll. 3-5. Appellant saw Meyers grab a weapon that was between the driver's seat and armrest. Tr. 450, ll. 15-18. Scared, Appellant reached in the car and grabbed Meyers' hand and gun. Tr. 451, ll. 17-24; Tr. 462, ll. 15-20. Meyers "yank[ed]

back and pushe[d] for the door to get out." Tr. 452, ll. 11-12. Appellant pulled his gun, fired several shots, and ran. Tr. 452, ll. 12-15. Appellant got into Frank's car. Tr. 453, ll. 16-21. Appellant and Frank left. Tr. 454, ll. 2-5.

Frank corroborated much of Appellant's testimony. Frank saw Appellant reach into the SUV, "some flashes" and "heard a shot." Tr. 300, ll. 5-9; Tr. 303, ll. 9-10. Appellant then ran toward Frank. Tr. 300, ll. 5-9; Tr. 303, ll. 10-12. As Appellant was running, the guy in the SUV got out and started shooting at Appellant. Tr. 300, ll. 9-10; Tr. 303, ll. 12-15. Appellant got into Frank's car, and the two drove off. Tr. 300, ll. 11-23.

Further, Gadsden made clear, Appellant and Meyers engaged in explosive arguing for twenty or twenty-five minutes. Tr. 78, ll. 10-17. She corroborated Appellant that Meyers got into his SUV. Tr. 79, ll. 8-9. She further corroborated that Appellant walked to Meyers' SUV. Tr. Tr. 79, ll. 13-16. Gadsden claimed that Appellant fired three or four shots into the SUV. Tr. 79, ll. 13-16. She further explained that Meyers fired back at Appellant as Appellant was running toward Frank. Tr. 79, l. 20 – Tr. 80, l. 1.

Appellant and Frank went to the apartment complex where Frank lived. Tr. 454, l. 25 – Tr. 455, l. 1. Appellant went to the apartment where his friend Akeel lived. Tr. 455, ll. 19-20. He handed the gun wrapped in his sweatshirt to Akeel. Tr. 455, ll. 20-24. Frank then took Appellant to his home in Summerville. Tr. 456, ll. 9-11.

Meyers got back into the SUV and drove away. Tr. 81, l. 25 – Tr. 82, l. 6. Gadsden called the police. Tr. 82, ll. 20-24. While on the phone with the 911 operator, Gadsden heard a loud crash. Tr. 82, l. 25 – Tr. 83, l. 8.

Not far from Gadsden's home, the police found a dark-colored SUV that had crashed into a building with the deceased lying on the ground nearby. Tr. 108, l. 18 – Tr. 109, l. 11; Tr. 353,

ll. 10-17 (lead investigator stated the driver was inside the SUV). Inside the SUV, the police found a revolver. Tr. 122, ll. 16-18. Within the revolver, five spent rounds were recovered. Tr. 123, ll. 18-19. In the center console, the police collected "suspected marijuana, a digital scale, and $300 in U.S. currency." Tr. 125, ll. 4-9. Live rounds were found in the SUV as well. Tr. 134, ll. 6-10. When the coroner arrived, the police identified the driver of the SUV as Meyers. Tr. 354, l. 19 – Tr. 355, l. 1.

Meyers suffered three gunshot wounds. Tr. 401, ll. 8-9. One wound was to the left armpit. Tr. 401, ll. 14-15. The bullet only partially exited, allowing the pathologist to collect the remaining part. Tr. 401, ll. 16-19. The second wound was a graze across his nose. Tr. 401, ll. 23-24. The final wound was to the left side of the head. Tr. 402, ll. 2-3. The bullet exited through the right side of the neck. Tr. 402, ll. 3-4. According to the pathologist, the bullet penetrated the carotid artery, which caused death. Tr. 402, ll. 8-12; Tr. 411, ll. 8-14. The pathologist found stippling near the gunshot wound to the left side of the deceased's face. Tr. 408, ll. 13-14. Thus, she opined it was a close-range gunshot wound. Tr. 408, ll. 17-19.

During the charge conference, defense counsel requested an instruction on the lesser-included offense of voluntary manslaughter. Tr. 493, ll. 4-11. The state argued that voluntary manslaughter was not a lesser-included offense of murder because there were "separate elements." Tr. 494, ll. 23-24. The trial judge indicated that for voluntary manslaughter there must be evidence of sufficient legal provocation and heat of passion. Tr. 493, l. 25 – Tr. 494, l. 1. He agreed that "if he had pulled a gun in the middle of an argument and fired it," then voluntary manslaughter would apply. Tr. 494, ll. 2-3. The judge indicated there was no evidence that anyone was "out of control." Tr. 494, ll. 6-7. The judge acknowledged there were voluntary manslaughter cases "where there's been an altercation and then a sudden shooting,"

but he indicated there was no evidence that Appellant was angry. Tr. 494, ll. 20-22. In short, the judge refused to charge voluntary manslaughter. Tr. 497, ll. 23-24.

Discussion

A jury charge to a lesser-included offense is required when the evidence warrants such an instruction. State v. Geiger, 370 S.C. 600, 606, 635 S.E.2d 669, 673 (Ct. App. 2006. South Carolina law mandates a jury instruction on a lesser-included offense when there is any evidence from which it could be inferred that the lesser, rather than the greater, offense was committed. State v. Watson, 349 S.C. 372, 375, 563 S.E.2d 336, 337 (2002); see also State v. Gourdine, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996). In other words, the evidence must allow "a rational inference" that the defendant committed the lesser offense. Geiger, 370 S.C. at 607, 635 S.E.2d at 673. In determining whether such a rational inference exists the court must examine the totality of evidence. Id. As this Court explained in State v. Patterson, 337 S.C. 215, 233, 522 S.E.2d 845, 854 (Ct. App. 1999), "[i]n order to justify a charge of a lesser included offense, the evidence must be capable of sustaining either the greater or the lesser offense, depending on the jury's view of the facts." A trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence. Frasier v. State, 306 S.C. 158, 162, 410 S.E.2d 572, 574 (1991) (citing State v. Lee, 298 S.C. 362, 364, 380 S.E.2d 834, 835 (1989)).

An appellate court views the evidence in the light most favorable to the defendant in determining whether the evidence required a charge of voluntary manslaughter. State v. Gadsden, 314 S.C. 229, 442 S.E.2d 594 (1994). Only when the record contained no evidence to support voluntary manslaughter should the trial court decline to charge the jury concerning the lesser-included offense. State v. Cooley, 342 S.C. 63, 67-68, 536 S.E.2d 666, 668-669 (2000). "To warrant the court in eliminating the offense of manslaughter it should very clearly appear

that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." State v. Wharton, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009); see also Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991) (emphasis in original) (holding that in murder cases, trial courts should charge manslaughter unless "there is no evidence whatsoever tending to reduce the crime from murder to manslaughter").

Manslaughter is defined by Section 16-3-50 of the South Carolina Code as "the unlawful killing of another without malice, express or implied." S.C. Code Ann § 16-3-50. Voluntary manslaughter is the unlawful killing of another in sudden heat of passion upon sufficient legal provocation. State v. Kornahrens, 290 S.C. 281, 350 S.E.2d 180 (1986). The South Carolina Supreme Court made it clear that both of these elements must be present in order to warrant a voluntary manslaughter charge. See State v. Starnes, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010). Thus, "[w]hether a voluntary manslaughter charge is warranted turns on the facts." Starnes, 388 S.C. at 597, 698 S.E.2d at 608; see also, State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001) ("The law to be charged must be determined from the evidence presented at trial.").

Quoting a trial judge's jury instruction, the Supreme Court explained voluntary manslaughter as follows:

> The law recognizes the frailties of human nature, and appreciates the fact that there may be occasions in one's life when he may lose control of himself temporarily, be swept off his feet, to act upon the spur of the moment rather from premeditation or design. And, if under those circumstances one slays his fellow man, the law will not excuse him entirely, but will not visit upon him the extreme penalty it would have if the act had been accompanied by malice. … [T]he provocation which the law recognizes as being one sufficient to reduce the homicide from murder to manslaughter must be such as to involve some indignity to throw a man in sudden heat and passion. … So, also by way of illustration, if he should meet another on the street and that one should pull his nose, or spit in his face, and on the spur of the moment he should slay him, he would be guilty,

> not of murder, but of manslaughter. … [W]ords, however opprobrious, could never be sufficient to reduce a homicide from murder to manslaughter.

State v. Cleland, 148 S.C. 86, 86, 145 S.E. 628, 629 (1928) overruled on other grounds by State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009).

"Sudden heat of passion upon sufficient legal provocation" mitigating felonious killing to manslaughter "must be such as 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." State v. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) (citing State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993)) (quotations omitted).

"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." Cooley, 342 S.C. at 67, 536 S.E.2d at 668. "A legal provocation is some act which, either alone or in connection with words or circumstances is calculated to throw one into a passion." State v. Gadsden, 314 S.C. 229, 232, 442 S.E.2d 594, 596 (1994). "[I]n order to constitute 'sudden heat of passion upon sufficient legal provocation,' the fear must be the result of sufficient legal provocation and cause the defendant to lose control and create an uncontrollable impulse to do violence." State v. Starnes, 388 S.C. 590, 598, 698 S.E.2d 604, 609 (2010). "[A]n overt, threatening act or a physical encounter may constitute sufficient legal provocation." Pittman, 373 S.C. 527, 573, 647 S.E.2d 144, 168 (2007) (citing State v. Gardner, 219 S.C. 97, 105, 64 S.E.2d 130, 134 (1951)). However, evidence of a struggle during an armed robbery is not sufficient legal provocation. State v. Tyson, 283 S.C. 375, 379, 323 S.E.2d 770, 772 (1984); see also State v. Shuler, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001).

"[F]ear resulting from an attack can constitute a basis for voluntary manslaughter." Starnes, 388 S.C. at 598, 698 S.E.2d at 609. While fear of an attack, by itself, is not enough to satisfy the heat of passion element, Starnes reaffirmed "the principle that a person's fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion." Id. One's mind may be rendered incapable of cool reflection by "exasperation, rage, anger, sudden resentment, or terror." State v. Franklin, 310 S.C. 122, 125, 425 S.E.2d 758, 760 (Ct. App. 1992).

The South Carolina Supreme Court reversed a murder conviction and remanded for a new trial where a trial judge refused to charge the jury on voluntary manslaughter where the evidence required such an instruction. State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993). Lowry and the deceased were "arguing and 'bumped chests'" during an altercation near a grocery store. Id. at 398, 434 S.E.2d at 273. Lowry aimed his pistol at the deceased and pulled the trigger; however, the pistol was not loaded. Id. Lowry's friend broke up the fight, and the deceased entered the grocery store. Id. Lowry then loaded his pistol, fired a single shot, and entered the grocery store as well. Id. The men "began arguing and shouting at each other again." Id.

The state's witnesses claimed the deceased told Lowry he was unarmed and refused to "take it outside" as Lowry suggested. Id. The deceased also spread his arms away from his body purportedly to show he was unarmed. Id. However, Lowry's witnesses claimed the deceased denigrated Lowry by saying, "You think you are a big man because you got a gun." Id. Then, the deceased "moved toward Lowry in a menacing fashion with his arms and hands outstretched toward Lowry as if to grab him." Id. All witnesses agreed that after the deceased raised his

arms, Lowry shot him in the chest. Id. The witnesses agreed that after the deceased fell, Lowry cursed him and shot him in the head. Id.

The Court held the trial judge erred by refusing to instruct the jury regarding voluntary manslaughter. Id. at 399, 434 S.E.2d at 274. The Court explained there was "testimony which, if believed, tend[ed] to show that the decedent and Lowry were in a heated argument and that the decedent was about to initiate a physical encounter when the shooting occurred." Id. Because it did not "very clearly appear that there [was] no evidence whatsoever tending to reduce the crime from murder to manslaughter," the judge erred in failing to so instruct the jury. Id.

The Supreme Court concluded a trial judge correctly instructed a jury on voluntary manslaughter where "there [was] evidence in the record which [tended] to show [Wiggins] acted in sudden heat of passion upon sufficient legal provocation" because it was undisputed Wiggins was in a "heated argument" with the deceased and the deceased's sister and the deceased "physically threatened him." State v. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 496 (1998).

Like the evidence in State v. Gilliam, 296 S.C. 395, 373 S.E.2d 596 (1988), the evidence at Appellant's trial supported a charge of voluntary manslaughter. Believing that his former girlfriend's lover wanted to see him, Gilliam went to the lover's place of business. Gilliam, 296 S.C. at 396, 373 S.E.2d at 597. The two men argued and the lover "made threatening statements" to Gilliam. Id. Gilliam claimed the lover "took a gun from his pocket and shot at" Gilliam. Id. Gilliam then shot back at the lover, killing him. Id. After confirming that self-defense and voluntary manslaughter are not mutually exclusive, the Court held that "the jury may fail to find all the elements of self-defense but could find sufficient legal provocation and heat of passion to conclude the defendant was guilty of voluntary manslaughter." Id. at 397, 373 S.E.2d at 597. According to the Court, Gilliam's "testimony that the victim threatened him and

then fired at him would support a finding of sufficient legal provocation and heat of passion." Id.

The South Carolina Supreme Court held a defendant was entitled to a jury instruction on voluntary manslaughter based upon one of the defendant's statements to law enforcement indicating the decedent had cut the defendant prior to the defendant striking the final blow. State v. Knoten, 347 S.C. 296, 305-306, 555 S.E.2d 391, 396 (2001). In the second statement, Knoten told police that the decedent cut him, then chased Knoten out of the apartment. Id. at 305, 555 S.E.2d at 396. Outside, Knoten went to his car and got a metal pipe. Id. Thereafter, Knoten reentered the apartment and killed the decedent after she cut him again. Id. The Court explained that if the jury were to believe the facts presented in Knoten's second statement, then the jury could conclude Knoten and the decedent were in a heated encounter and the decedent had twice cut him with a knife when he struck her with a pipe; thus, "it follow[ed] that a charge on voluntary manslaughter was required." Id. at 306, 555 S.E.2d at 396.

The undisputed evidence showed Appellant and Meyers engaged in a heated argument on the side of the street. Further, the undisputed evidence showed the heated argument escalated in intensity. Tr. 77, ll. 18-24; Tr. 100, ll. 3-4; Tr. 298, ll. 16-24. By all accounts the argument last between twenty and thirty minutes. Tr. 78, ll. 10-17; Tr. 300, ll. 1-4. Appellant indicated the argument between the two got "loud" and "angry." Tr. 446, ll. 16-23. Meyers then made an ominous threat that he was "going to show" Appellant. Tr. 448, ll. 16-17. When Meyers pulled his revolver, Appellant was "nervous" and scared. Tr. 451, ll. 9-18; Tr. 462, ll. 15-23. Unsuccessful in his attempt to wrest the revolver from Meyers and seeing Meyers draw back with the gun, Appellant grabbed his own gun and fired at Meyers. Tr. 452, ll. 10-23. Although the state was making its argument in support of a finding malice, in its closing, the state argued

Appellant was "so angry" at Meyers that he "pulled the trigger again and again and again." Tr. 509. Ll. 23-25. Further, the state relied upon an eyewitness who testified that she heard a heated argument between the two men that "went on for over thirty minutes and was so loud she could hear it from inside her house." Tr. 518, ll. 2-5. Thus, the state's own theory of the facts supported an instruction on voluntary manslaughter.

The evidence presented supported a jury instruction for voluntary manslaughter. Lowry, 315 S.C. at 399, 434 S.E.2d at 274 (explaining that "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"); Gilliam, 296 S.C. at 397, 373 S.E.2d at 597 (finding evidence to support a charge of voluntary manslaughter where the defendant' testified that the victim threatened him and then fired at him because this testimony supported a finding of sufficient legal provocation and heat of passion); State v. Johnson, 333 S.C. 62, 66, 508 S.E.2d 29, 31 (1998) ("Here, Johnson and the victim had 'had words' and were engaged in a fight at the time the shooting occurred. … [I]t is patent Johnson was entitled to a voluntary manslaughter charge"). The evidence showed Appellant and Meyers engaged in a heated exchange immediately prior to the shooting. The evidence showed Meyers pulled a gun on Appellant prior to Appellant pulling his own gun. Thus, the evidence that Appellant acted in the sudden heat of passion based on sufficient legal provocation. The trial judge erred by failing to instruct the jury on the lesser-included offense of voluntary manslaughter.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

s/*Susan B. Hackett*

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of September, 2020.

RECEIVED
Sep 03 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
R. Markley Dennis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LEANDRA LAMONT BRIGHT,

APPELLANT

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 Nov. 12-14, 2019 pages: 1, 61-103, 106-173, 178-211; 213-231, 250-260, 262-275, 277-328, 349-383, 388-413, 429-491, 493-497, 503-559, 583-584;
(2) Court's Exhibit #1 (jury note);
(3) True-billed indictments; and
(4) Sentence sheets.

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

September 3, 2020.

s/*Susan B. Hackett*
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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R. Markley Dennis, Circuit Court Judge

THE STATE,

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LEANDRA LAMONT BRIGHT,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is mbrown@scag.gov; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Leandra Lamont Bright, #317023, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 3rd day of September, 2020.

s/*Susan B. Hackett*
Susan B. Hackett
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Wanda H. Carter, Deputy Chief Appellate Defender

September 3, 2020

Melody J. Brown, Esquire
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

Re: The State v. Leandra Lamont Bright

Dear Ms. Brown:

Enclosed is a copy of the Initial Brief of Appellant and Designation of Matter in the above entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

s/*Susan B. Hackett*

Susan B. Hackett
Appellate Defender

SBH/sh

Enclosure

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

September 3, 2020

Mr. Leandra Lamont Bright, #317023
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your appeal

Dear Mr. Bright:

Enclosed please find a copy of the Initial Brief of Appellant in your case, which I have filed with the South Carolina Court of Appeals.

Please contact me if you have any questions.

Sincerely,

s/*Susan B. Hackett*

Susan B. Hackett
Appellate Defender

SBH/sh

Enclosure