STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

Respondent,

v.

LEANDRA L. BRIGHT,

Appellant

Appellate Case No. 2019-001960.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUE ON APPEAL

I. 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?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES ON APPEAL

I. Did the trial court err when it denied Appellant's request to charge voluntary manslaughter where Appellant maintained he and the victim were talking back and forth, where the victim decided to walk away from Appellant and sat in his vehicle, and where Appellant thereafter followed the victim, re-engaged with him, and then claimed self-defense?

STATEMENT OF THE CASE

The Charleston County Grand Jury indicted Appellant Leandra L. Bright for the March 30, 2016 murder of Arthur Lee Myers and for possession of a weapon during the commission of a violent crime. (R. pp. 469-70). Attorneys Kevin Hales and Michael Nelson represented Appellant on the charges. (R. p. 1). Assistant Ninth Circuit Solicitors Shannon Elliott and David Osborne prosecuted the case. (R. p. 1).

From November 12 to 14, 2019, the Honorable R. Markley Dennis, Jr. presided over Appellant's jury trial. (R. p. 1). The jury convicted Appellant of each charge. (R. p. 447, line 22 – p. 448, line 6). Judge Dennis sentenced Appellant to thirty years for murder and to a concurrent five years on the weapons charge, each with credit for time served. (R. p. 454, line 25 – p. 455, line 13).

By and through trial counsel, Appellant served his notice of appeal on November 21, 2019. (R. pp. 467-68).

STATEMENT OF FACTS

In the early morning hours of March 30, 2016, Appellant Leandra Bright shot Arthur Lee Myers after Myers admonished Bright for serving crack cocaine on two pairs of individuals on Myers's turf. (R. p. 366, line 3 – p. 380, line 21).

Eyewitness Perspective and Officer Response

Marissa Gadsden lived across the street from where the shooting occurred. (R. p. 29, lines 20-25). Gadsden stayed up late that night to do school work and tidy up her house. (R. p. 26, line 4 – p. 27, line 12). After midnight, she "heard a lot of argument outside." (R. p. 27, lines 15-16). She "peeked through the window" and "saw a lot of cars outside" at what she thought was some type of party. (R. p. 27, lines 17-25).

Gadsden look out of the window again around 1:00 a.m. and saw that many of the cars had departed. (R. p. 28, lines 3-14). Two cars remained. (R. p. 28, line 17). She recognized both cars as Buicks, with one being a dark-colored SUV, and the other a champagne Park Avenue sedan. (R. p. 28, line 19 – p. 29, line 17). Gadsden described her post and the window as fifty to sixty feet away. (R. p. 34, lines 2-9).

Gadsden kept tidying up her house until "it seemed like the argument got louder." (R. p. 30, lines 21-24). "[I]t sounded like they were arguing about a lighter." (R. p. 30, line 25 – p. 31, line 1). The argument became loud enough to wake her son. (R. p. 31, lines 20-24).

Looking back out the window, Gadsden saw two men engaged in the argument. The one in the SUV wore a white t-shirt and "maybe a white beard." (R. p. 31, line 3). The other, the one Gadsden associated with the sedan, wore "maybe a red hood or an orange hooded . . . sweatshirt." (R. p. 31, lines 4-5). There may have been a third person sitting inside the Buick, but Gadsden was not sure. (R. p. 31, lines 8-12). The argument "went on for about maybe twenty or

thirty minutes. " (R. p. 32, lines 2-3).

The next thing Gadsden knew, "the argument just kind of exploded, and it got worse. And this went on for maybe about twenty, twenty-five minutes." (R. p. 32, lines 10-13). Then, Gadsden "saw the guy from the SUV just walk away" and heard him tell the other guy: "I am not going to argue with you anymore." (R. p. 32, lines 15-17). This man walked over to his SUV, where Gadsden saw him lean into the open driver's door "as if he was to get into the vehicle." (R. p. 32, line 21 – p. 33, line 7). Once the man was seated at the wheel of his SUV, the man in the red sweatshirt walked up to the SUV. (R. p. 33, lines 8-12).

Gadsden went to pull herself away from her window when "someone pull[ed] out a gun and fired three or four shots." (R. p. 32, lines 18-20). Gadsden saw the man in the red sweatshirt fire first. He shot into the driver's side of the SUV. (R. p. 33, lines 14-16; R. p. 43, line 1). Gadsden continued watching as the man "in the black SUV retaliated the shots" at the man in the red sweatshirt, who ran back to the sedan. (R. p. 33, line 19 – p. 34, line 1). Gadsden could see that the man who returned fire "was covered in blood" when he got back in his SUV. (R. p. 34, lines 12-15). Clutching his neck, the man in the SUV drove away. (R. p. 36, lines 2-6). The Buick sedan drove off too. (R. p. 43, line 12). Gadsden called 911. (R. p. 36, lines 20-24).

An officer handling another nearby incident "heard two separate volleys of shots." (R. p. 118, lines 6-22). It "was three shots, a slight pause, and then another volley of about five shots." (R. p. 118, lines 22-24). His body cam captured the noise. (R. p. 119, line 14 – p. 120, line 22). His body cam also captured a gold Buick driving by his location. (R. p. 124, lines 11-17).

While on the line with 911, Gadsden heard a crash that "sounded like a wrecking ball." (R. p. 37, lines 2-4). The SUV crashed into a building around the corner from where the shooting occurred. (R. p. 61, lines 1-11). Officers arrived at the crash site to find a man "slumped over in

the driver's side. He was suffering from multiple gunshot wounds." (R. p. 123, lines 8-12).

The victim sustained three separate gunshot wounds in addition to injuries from the crash. (R. p. 311, lines 3-7). One of the gunshots traveled downward and severed the victim's carotid artery. (R. p. 312, lines 2-12). This fatal shot was fired at close-range, or a distance of not more than one yard. (R. p. 318, line 13 – p. 319, line 11). One of the gunshots traveled upward through the victim's left armpit and embedded in his collarbone. (R. p. 311, lines 12-22). Another gunshot grazed the victim's nose. (R. p. 311, lines 23-24).

From the scene of the shooting, officers recovered three fired shell casings and a white Samsung cell phone. (R. p. 65, lines 3-18; R. p. 67, line 25 – p. 68, line 6). Someone had fired several gunshots into the driver's side window of the SUV, with one traveling through the seat and lodging in the vehicle's center frame. (R. p. 78, line 18 – p. 79, line 25). The SUV had both front windows rolled down. (R. p. 86, lines 14-16). Officers recovered a revolver containing five fired shell casings from the SUV. (R. p. 74, line 25 – p. 75, line 5). Officers also located another cell phone with victim. (R. p. 73, lines 21-23).

Before the shooting, Yolanda Wilder went to her mom's house to pick up her children. (R. p. 150, lines 21-23). Her mom lived in the same area where the shooting would occur. (R. p. 150, lines 10-17). When Wilder went to park her car at her mom's, she saw people she knew: Little A, Webb, and "the white guy" who lived in the apartment catty-corner to her own. (R. p. 151, line 2 – p. 152, line 16). Wilder identified Appellant as Webb. (R. p. 154, lines 15-20).

Wilder saw Little A and Appellant on top of the hill at that time. (R. p. 153, lines 12-14). They were standing outside of Little A's car and they "were just talking." (R. p. 153, lines 20-22; R. p. 155, line 6). She saw "the white boy" sitting in his gold Buick. (R. p. 152, lines 3-20). She recalled that Appellant was in a red shirt and Little A was in a dark shirt. (R. p. 154, lines 7-11).

Wilder did not speak to any of these men. (R. p. 153, lines 21-25). She did not know how long they were out there. (R. p. 155, lines 8-10).

After Wilder picked up her children and went home, she got a phone call with some news about Little A. (R. p. 157, lines 2-19). She responded by getting in her car and going "to be nosey." (R. p. 157, lines 20-22). When she went out to her car, she almost walked into Appellant. (R. p. 158, lines 2-3). She saw him getting out of the car that the white guy had parked. (R. p. 158, lines 3-8). Wilder commented, "somebody just said Little A got shot," but neither man responded to her. (R. p. 158, lines 10-14).

Wilder contacted law enforcement. (R. p. 164, lines 8-10). After speaking to Wilder, law enforcement went to her apartment complex and located a gold Buick sedan. (R. p. 165, line 6 – p. 166, line 12). Officers also contacted the Buick's known owner, Gage Frank, who agreed to come to the station for questioning. (R. p. 166, lines 21-25).

Perspective of Gage Frank, the Getaway Driver

Frank and Appellant were friends. (R. p. 207, lines 5-13). They worked together, and Appellant often stayed at Frank's apartment. (R. p. 208, lines 10-22). The night of the murder, Appellant asked Frank "to take him to the bar." (R. p. 210, lines 5-10). Frank dropped him off around 9 or 10 p.m. and went back home. (R. p. 211, lines 8-19). Later that night, Frank responded to Appellant's call to pick him up at a corner store. (R. p. 212, lines 4-16). Frank saw Appellant with a group of people at the corner store "talking like they were getting ready to split ways." (R. p. 213, lines 13-16). Appellant got in the car with Frank and directed Frank to take him to another place to "pick something up and then [they] were going to go home." (R. p. 215, line 9 – p. 217, line 19). Appellant was wearing a red hoodie. (R. p. 220, lines 7).

When they arrived at Appellant's destination, Appellant "got out of the car to talk to [a]

guy" who waved at them from a field. (R. p. 219, lines 9-11). Frank sat in the car. (R. p. 219, lines 12-13). Frank saw Appellant hand his cell phone to the other guy to use. (R. p. 220, lines 10-19). Frank saw two other people approach Appellant up on the hill, but "the other guy sent them [ ] away" after "five to ten minutes." (R. p. 221, lines 16-20; R. p. 222, lines 7-24).

Frank noticed a dark SUV parked in the same vicinity. (R. p. 219, line 24 – p. 220, line 5). Frank matched the person Appellant was speaking with in the field with the dark SUV, because that person moved the SUV up to a different parking spot. (R. p. 223, lines 9-19). After the SUV moved up, Appellant flagged Frank to move his car up to a different location in front of the SUV. (R. p. 219, lines 13-18; R. p. 223, line 14; R. p. 224, lines 2-10). Then, the driver of the "SUV brought his car around and parked his a little bit further up . . . in front of" Frank again, parking it "at least two or three car-lengths" in front of Frank's new parking place. (R. p. 225, lines 1-10).

Frank recalled Appellant and the guy with the SUV were talking, but then started "arguing more than talking." (R. p. 225, lines 14-18). Frank could not hear their argument because he was sitting in his car with the windows rolled up and was distracted by his cell phone. (R. p. 225, lines 19-21). Frank could hear Appellant say "something about being played or something," and he was "pretty sure it was along the lines of his phone," because he never saw the other guy return Appellant's phone. (R. p. 225, line 21 – p. 226, line 18). This argument occurred between Frank's car "and the edge of the SUV." (R. p. 226, lines 22-25). It lasted "upwards of like thirty minutes." (R. p. 227, lines 2-4).

As they argued, Appellant and the man in the SUV "were going back and forth from [ ] the driver's side door" to "behind the SUV." (R. p. 228, lines 8-10). At some point during the argument the man sat in his SUV and closed the driver's door. (R. p. 228, lines 11-23). Frank

believed the man in the SUV "turned his back and [ ] hurried to the car out of [ ] frustration." (R. p. 229, lines 6-21). Appellant followed the man to the driver-side door of the SUV. (R. p. 229, lines 22-25).

Frank saw Appellant "reach into the window like he was going to grab something, and [Frank] saw some flashes and [ ] heard a shot." (R. p. 230, lines 9-10). Then Appellant "snatched" out of the SUV and ran to Frank's car. (R. p. 230, lines 11-12). "And as he was running back to the car towards [Frank], the guy opened his door or something and stood out of the [SUV] and started shooting." (R. p. 227, lines 8-10; R. p. 230, lines 11-15). Frank saw gunshots flash and ducked, and Appellant ran to Frank's car and jumped in, sliding down in the gravel on the way. (R. p. 227, lines 11-17; R. p. 230, lines 16-18).

Frank only saw the man from the SUV shooting. (R. p. 252, lines 7-10). He did not know when exactly during the course of events he began hearing the gunshots. (R. p. 246, lines 1-5). Frank threw his car in reverse and then pulled out of the area, as did the SUV. (R. p. 300, lines 18-25). Appellant told Frank the gun was hot and that they had "to get rid of it and get out of [t]here." (R. p. 252, lines 22-23).

Perspective of Appellant, Admittedly First to Fire

Appellant was friendly with the victim, known as Little A. (R. p. 325, lines 13-23; R. p. 331, lines 7-13). Appellant first saw Little A at the bar on the night of the shooting. (R. p. 326, lines 2-6). Appellant called him there. (R. p. 257, lines 17-22). Appellant and Little A left together and went to the corner store. (R. p. 327, lines 4-10). As Appellant stood outside the corner store, two guys approached and Appellant "served them some crack outside." (R. p. 328, lines 13-24). Little A was inside the corner store when Appellant made the sale. (R. p. 329, lines 7-8). Little A walked out to see Appellant giving his phone number to the buyers "for future

business." (R. p. 329, lines 10-17). Little A got angry with Appellant. (R. p. 329, line 23 – p. 330, line 4). Appellant "exchanged a couple of words" with Little A and called Frank for a ride. (R. p. 330, lines 6-13).

When Frank turned onto the street at the next location, "Little A was on the side of the road [ ] in the field" and gestured at Appellant. (R. p. 331, lines 3-5). Appellant described this field as an empty lot at the corner of two streets. (R. p. 332, lines 12-13). Appellant got out of the car and went over to Little A. (R. p. 331, lines 20-25). Little A "brought up the incident by the store" and Appellant continued to talk to him about it. (R. p. 332, line 23 – p. 333, line 8). They "didn't argue about it." (R. p. 333, line 9). Appellant said they were "just out there talking." (R. p. 333, lines 9-10). Frank stayed inside the car "on the opposite side of the street." (R. p. 333, lines 21-22). Frank moved the car as Appellant and Little A continued talking. (R. p. 335, lines 1-10). "[I]t was a cordial conversation at that time." (R. p. 335, line 13). Also at some point, Appellant lent Little A his cell phone, but Little A returned it. (R. p. 371, lines 12-23).

Appellant and Little A walked and talked until two more guys arrived. (R. p. 441, lines 1-15). "One was a smoker and one was a potential smoker." (R. p. 336, line 17). They came over to buy from Little A. (R. p. 337, lines 2-6). Little A did not have anything on him to sell and he went and moved his car. (R. p. 337, lines 8-14). According to Appellant, the two buyers did not want to wait, so Appellant sold them crack. (R. p. 338, line 14 – p. 339, line 9). Little A walked back and flagged the buyers, and "got into a confrontation with them about buying crack from [Appellant] and not from him." (R. p. 339, lines 11-25). The buyers left after five to ten minutes of "going back and forth with him about first come, first served." (R. p. 340, lines 4-6). Then Little A accused Appellant of "[c]utting in on his money." (R. p. 340, lines 8-16).

Appellant flagged Frank to move the car again as Appellant continued talking to Little A.

(R. p. 340, line 23 – p. 341, line 12). Appellant and Little A walked near "the side of the road where the cars were parked." (R. p. 341, lines 11-13). Appellant talked to Little A for "twenty, twenty-five minutes." (R. p. 341, lines 14-15). Appellant described the conversation as "a little back-and-forth talking over each other about the situation, what just happened at the stop sign with the two dudes about the crack." (R. p. 341, line 17 – p. 342, line 1). The sale Appellant made at the corner store also came back up. (R. p. 342, lines 2-7). They "kept going back and forth." (R. p. 343, lines 11-12). Appellant testified about these twenty to twenty-five minutes: "It never – it didn't get to feud – well, we were still back – just talking over each other." (R. p. 376, lines 9-20).

When they reached an impasse, Little A told Appellant he was not talking anymore, said he was "going to show" Appellant, and walked to his SUV. (R. p. 343, lines 12-25). Little A never said anything about a gun. (R. p. 377, lines 7-16). Appellant "hesitated," wondering whether he "should walk to Gage's [Frank's] car or just see what the hell he is going – where he – got to show about what he [was] going to get." (R. p. 344, lines 4-7 and 24). Appellant looked over at Little A at his driver's door then "followed him to the car," armed. (R. p. 344, lines 19-25; R. p. 378, lines 7-10).

Appellant saw Little A sitting in the driver's seat of his SUV with the door pressed shut but not latched. (R. p. 345, lines 4-14). Looking in Little A's car window, Appellant asked "him what he was going to show" Appellant and, at that time, saw Little A "grabbing a weapon [down] between the driver's seat and the armrest." (R. p. 345, lines 16-18). Appellant saw a revolver, got nervous, and reached in and grabbed Little A's "hand and the gun." (R. p. 346, lines 10-24). Appellant knew Little A to carry a firearm but did not see him with one at any earlier point that night. (R. p. 347, line 24 – p. 348, line 4). When Little A "yanked back and

drew back with the weapon and pushed the door coming towards" Appellant, Appellant drew his weapon, shot, and ran to Frank's car. (R. p. 378, line 11 – p. 348, line 21; R. p. 380, lines 2-18). Little A "wasn't able to point it at [Appellant] because [Appellant] grabbed it" and "held it down . . . between the driver's seat and the armrest." (R. p. 379, lines 14-20).

Appellant drove off with Frank and delivered the gun and his red sweatshirt to his buddy Akeel "to put away." (R. p. 349, line 14 – p. 351, line 8; R. p. 385, line 18). The next day, Appellant spoke with Frank and Akeel and encouraged them to link the two people Appellant sold crack to in the field with the shooting. (R. p. 354, line 8 – p. 355, line 24).

Appellant testified at trial that he shot Little A in self-defense. (R. p. 356, lines 6-20). However, in an interview with law enforcement conducted prior to arrest, Appellant stated he was talking to the victim, and then tried "to play . . . hero" when the two other men began arguing with the victim, pulled a gun, and pushed them. (R. p. 290, line 16 – p. 291, line 2; State's Ex. 170, Clip 4). Appellant told the investigators that he ran, heard shots, and fell to the ground. (R. p. 291, lines 3-4).

Getting Rid of the Gun

Within days of the murder, Derrick Givens, a confidential informant who knew Appellant through a mutual friend, came across the gun. (R. p. 129, lines 2-15; R. p. 132, lines 1-24). Givens' buddy Keel came over to Givens' house with Appellant, who Givens referred to as Webb. (R. p. 131, lines 20-24; R. p. 133, lines 6-8). "Keel had the gun on him" and asked Givens to hold it for him. (R. p. 133, lines 8-10). Keel told Givens the gun was hot. (R. p. 138, lines 24-25). Givens considered his status as a probationer, and as a confidential informant, and told Keel he could not hold the gun for him, but he could help him find a place to put it. (R. p. 133, lines 11-16). Keel asked Givens if he had something "to wrap it up in." (R. p. 134, lines 9-11). Givens

"got him a bag and shirt." (R. p. 134, lines 12-13). They put the pistol, a Ruger, in a Ziploc bag. (R. p. 138, lines 6-21). Givens had seen Appellant with this gun before. (R. p. 139, lines 14-21).

Givens got in the car with Appellant and Keel and directed them over to "some abandoned houses." (R. p. 134, lines 16-19). Appellant and Keel got out of the car and Givens watched Keel put the gun in the crawl space under one of the houses. (R. p. 134, lines 20-21; R. p. 137, lines 1-4). They got back in the car and took Givens back to his house. (R. p. 137, lines 4-5). Givens went to law enforcement two or three days later and directed them to the Ruger. (R. p. 140, lines 20-21; R. p. 141, lines 12-16). Givens waited a day or so to see if Appellant and Keel reclaimed the gun or tried to re-enlist Givens's help in relocating it. (R. p. 140, line 22 – p. 141, line 8). Law enforcement recovered the gun from the crawl space. (R. p. 176, lien 12 – p. 177, line 25). The .9 mm Ruger was consistent with having fired the bullet retrieved from the victim's neck and with that retrieved from the front passenger seat of the victim's SUV. (R. p. 184, lines 11-22; R. p. 187, line 17 – p. 189, line 2).

STANDARD OF REVIEW

"An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). "It is error for the trial court to refuse to give a requested instruction which states a sound principle of law when that principle applies to the case at hand, and the principle is not otherwise included in the charge." *Id.* at 390, 529 S.E.2d at 539. "The law to be charged must be determined from the evidence presented at trial." *State v. Brayboy*, 387 S.C. 174, 179, 691 S.E.2d 482, 485 (Ct. App. 2010). When the jury could infer from the evidence presented at trial that the defendant committed a lesser offense, the trial court must charge the lesser included offense to the jury. *State v. Rivera*, 389 S.C. 399, 404, 699 S.E.2d 157, 159 (2010).

"In determining whether the evidence requires a charge on a lesser included offense, the court views the facts in a light most favorable to the defendant." *State v. Brayboy*, 387 S.C. at 180, 691 S.E.2d at 485. A charge is properly refused only when "there is no evidence that the defendant committed the lesser offense rather than the greater offense." *Id.* "The requesting party must have been prejudiced by the trial court's failure to give the instruction in order to warrant reversal on appeal." *State v. Williams*, 367 S.C. 192, 195-96, 624 S.E.2d 443, 445 (Ct. App. 2005).

ARGUMENT

The court properly denied Appellant's request to charge voluntary manslaughter where Appellant maintained he and the victim were talking back and forth, where the victim decided to walk away from Appellant and sat in his vehicle, and where Appellant thereafter followed the victim, re-engaged with him, and then claimed self-defense.

Citing "ample testimony that there was a forty-five minute argument that" preceded the shooting, Appellant requested a jury instruction on voluntary manslaughter. (R. p. 387, lines 9-

21). The court denied this request to charge because the record did not support it. (R. p. 389, lines 1-3). The court noted "there was nothing" in the record, "other than the fact that they had . . . some" argument, and Appellant did not "even describe it as an argument." (R. p. 388, lines 3-7). In other words, the court found no evidence of sufficient provocation and heat of passion. (R. p. 387, line 25 – p. 388, line 3). The court distinguished this case from "some cases with voluntary manslaughter where there's been an altercation and then a sudden shooting" because Appellant "said he wasn't angry," and because "he didn't have any fight with" the victim. (R. p. 388, line 18 – p. 389, line 3; *see* R. p. 390, line 4 – p. 391, line 16). For example, no one "pulled a gun in the middle of an argument and fired it." (R. p. 388, lines 2-3). Instead, Appellant "described it as [they] were just talking above each other, there wasn't anybody out of control." (R. p. 388, lines 6-7). "[I]t was all the victim that was upset." (R. p. 388, lines 24-25).

The court properly declined the request to charge. 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). "In determining whether the act which caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing." *State v. Smith*, 391 S.C. 408, 413, 706 S.E.2d 12, 15 (2011).

The *Smith* court found that the trial court properly refused to charge voluntary manslaughter because the record was devoid "of any evidence of heat of passion. According to Smith, he was not enraged, incapable of 'cool reflection,' or acting 'under an uncontrollable impulse to do violence'" at the time of the killing, which occurred during a struggle. *Id.* As to the sufficient legal provocation requirement, the court "recognize[d] an overt, threatening act or physical encounter *may* constitute sufficient legal provocation," but found Smith's claim that he met sufficient legal provocation when the victim "approached Smith with a 'real serious demeanor'. . . and grabbed Smith" was "dubious at best." *Id.* at 412-13, 706 S.E.2d at 14-15. "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).

Appellant's rendition of events, like Smith's, did not suggest he acted in the sudden heat of passion or upon sufficient legal provocation. 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." *State v. Cole*, 338 S.C. at 101-02, 525 S.E.2d at 513 (quoting *State v. Byrd*, 323 S.C. 319, 474 S.E.2d 430 (1996)). Fear itself is not enough to prove the defendant acted in the sudden heat of passion: "to warrant a voluntary manslaughter charge, the defendant's fear must manifest itself in an uncontrollable impulse to do violence." *State v. Starnes*, 388 S.C. 590, 599, 698 S.E.2d 605, 609 (2010) (with no evidence Starnes acted purely out of fear or under an incontrollable impulse to do violence, a lesser charge would "impermissibly blend the elements of voluntary manslaughter and self-defense"). But Appellant twice testified he

"hesitated" prior to following the victim to the vehicle where the shooting took place. (R. p. 344, lines 4-25). This indicates Appellant took time to make a deliberate decision and thus engaged in a period of cool reflection. *State v. Cook*, 415 S.C. 551, 557, 784 S.E.2d 665, 668 (2015) ("The fact that Cook was trying to walk away from the conflict does not suggest Cook was incapable of cooling off. . . Further, at no point during Cook's statement does he indicate he lacked control over his actions."); *compare State v. Oates*, 421 S.C. 1, 27-29, 803 S.E.2d 911, 925-26 (Ct. App. 2017) ("The jury could have reasonably inferred from all of this testimony that when Appellant shot Victim six times, he was incapable of cool reflection and was acting under an uncontrollable impulse to do violence.").

As the trial court pointed out, Appellant did not describe the encounter as any type of altercation, but rather a verbal disagreement, during which time no one lost control. Two eye witnesses and Appellant each testified there was a prior argument, but no altercation. Appellant's buddy Gage Frank testified they "were talking pretty much the whole time," and began "arguing more than talking" at some point. (R. p. 225, lines 14-18). Looking on from her home across the street, Marissa Gadsden heard an argument escalate, heard the victim tell Appellant he was "not going to argue with [Appellant] anymore," saw the victim walk to his SUV, and saw Appellant approach the SUV only after the victim had retreated and situated himself in the driver's seat. (R. p. 32, line 10 – p. 33, line 12). In Appellant's own words, there was no "feud," they were just "talking over each other." (R. p. 376, lines 18-20). Also according to Appellant, the victim "walked off" from the argument when he indicated to Appellant he had nothing else to say, other than that he would "show" Appellant. (R. p. 343, lines 11-20). This is the stage at which Appellant, who was armed, "hesitated" before deciding to re-engage. (R. p. 344, line 4 – p. 378, line 10). When a defendant admits that he had enough time to make a conscious decision about

his next move after a victim walks away, his testimony indicates "cool reflection" rather than "an uncontrollable impulse to do violence," and "appears designed to support a charge of self-defense, not heat of passion." *State v. Cole*, 338 S.C. at 102, 525 S.E.2d at 513 (citing *State v. Walker*, 324 S.C. 257, 478 S.E.2d 280 (1996)).

Furthermore, evidence that an appellant re-engages with a victim after a victim has withdrawn from even a physical altercation does not "constitute sufficient legal provocation for voluntary manslaughter." *Id.* This record suggests nothing more than a "display of a willingness to fight," which is again insufficient to warrant the requested instruction. *State v. Hernandez*, 386 S.C. at 661, 690 S.E.2d at 585. Once at the vehicle, Appellant testified that the victim put his hand on a weapon down between the seat and the center console, eventually yanking it back and going to open his car door into Appellant. At this point, Appellant testified, he "shot a few times when [he] ran off." (R. p. 345, line 1 – p. 347, line 25). It thus appears from the record that Appellant only fired at the victim in an escape attempt, which also does not suffice as "evidence that appellant was provoked by the victim at the time of the killing." *State v. Cooney*, 320 S.C. 107, 113, 463 S.E.2d 597, 600 (1995).

It would appear from the record that the lack of evidence that Appellant acted in the sudden heat of passion *and* upon sufficient legal provocation sustains the trial court's refusal to instruct the jury as requested. There must be evidence of both "at the time of the killing." *State v. Smith*, 391 S.C. at 413, 706 S.E.2d at 15. On these facts, Appellant can in no way satisfy the sudden heat of passion requirement, distinguishing this case from those upon which Appellant relies. For example, in *State v. Knoten*, the court found the jury should have been instructed on voluntary manslaughter because Knoten claimed the victim cut him with a knife, and he was "chased from the apartment by the knife-wielding victim. It was a cold November evening and

he was naked. He opened the trunk of his car with the trunk latch and retrieved the pipe. He then reentered the apartment" where the victim "cut him again, and he responded to the attack by hitting her with the pipe." 347 S.C. 296, 307, 555 S.E.2d 391, 397 (2001). With "no evidence that a significant period of time elapsed between the alleged knife attack and Appellant's striking the fatal blows," the *Knoten* court found "no evidence that, as a matter of law, Appellant had sufficient time to cool." *Id.* However, the record in our Appellant's case does not include testimony indicating he was provoked by a string of effectuated threats, and his testimony that he hesitated to follow the victim again contravenes any contention he acted without the opportunity for cool reflection.

In *State v. Lowry*, the court found that voluntary manslaughter should have been charged because the victim, in a coinciding fashion, taunted the defendant and then menacingly moved towards him with arms outstretched as if to grab him. 315 S.C. 396, 398-88, 434 S.E.2d 272, 273-74 (1993). In *State v. Wiggins*, the court similarly found the instruction appropriate where a heated argument coincided with varying accounts of the victim threatening Appellant and getting out of the car, at which time Appellant opened fire. 330 S.C. 538, 542-44, 500 S.E.2d 489, 491-92 (1998). Our Appellant, however, did not react to coinciding verbal threats and physical advances. Our Appellant decided to follow the victim to his vehicle after the victim made a vague statement he would "show" him and then appeared to retreat. And unlike *State v. Gilliam*, 296 S.C. 395, 396, 373 S.E.2d 596, 597 (1988), our Appellant approached the victim and fired first rather than firing in response to being argued with, threatened, and then fired at by the victim.

More, Appellant's contention that he fearfully fired at the victim after the victim yanked a firearm from between the seat and center console and began to open his car door 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 Appellant fired at the victim out of fear, his actions insinuate a lack of criminal intent, rendering 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"). "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; *see State v. Cook*, 415 S.C. at 557, 784 S.E.2d at 668 (ability to walk away from conflict and use of soft speech suggesting "Cook shot Victim either with malice or in self-defense").

Instead, Appellant's use of a firearm during a verbal argument from which the victim had retreated overwhelmingly supports a finding that Appellant acted with malice aforethought. *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."). With evidence of malice, but not that Appellant acted upon some incontrollable impulse to do violence, or upon some other evidence of a sudden heat of passion paired with a response to sufficient legal provocation, the trial court correctly refused the request to charge voluntary manslaughter.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should affirm the Appellant's conviction for murder and possession of a weapon during the commission of a violent crime.

Respectfully submitted,

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Allendale County
The Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2019-001960

THE STATE,

Respondent,

v.

LEANDRA L. BRIGHT,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 6th day of January, 2021.

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