STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERMAINE DEMARCUS GRIER,

APPELLANT.

APPELLATE CASE NO. 2021-000444

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court improperly denied appellant's request to charge the jury on the verdict of not guilty by reason of insanity?

STATEMENT OF THE CASE

A Lancaster County jury indicted appellant Jermaine Demarcus Grier for murder, attempted murder, first-degree burglary, and a weapons charge. R. ___. On April 12, 2021, appellant was tried before the Honorable Brian M. Gibbons and a jury. Tr. 1. Lisa Collins and Nichole Bonine represented the State. Tr. 1. Kay Boulware and William Frick represented appellant. Tr. 1. The jury convicted appellant. Tr. 749, l. 9 – 18. Judge Gibbons imposed consecutive sentences totaling 100 years' imprisonment. Tr. 754, l. 2 – 20. This appeal follows.

STANDARD OF REVIEW

A trial court must charge the jury on NGRI when there is any evidence in the record to support the charge. See State v. Hartfield, 300 S.C. 469, 473, 388 S.E.2d 802, 804 (1990)

ARGUMENT

The trial court improperly denied appellant's request to charge the jury on the verdict of not guilty by reason of insanity.

At the State's urging, the trial judge improperly weighed the evidence and refused to charge the jury on not guilty by reason of insanity (NGRI). Like all jury charges, a trial court must charge the jury on NGRI when there is any evidence in the record to support the charge. See State v. Hartfield, 300 S.C. 469, 473, 388 S.E.2d 802, 804 (1990) (reversing for failure to allow presentation of an insanity defense where some evidence showed defendant was insane). While the evidence of appellant's insanity in this trial certainly conflicted, appellant was entitled to have a jury weigh the evidence and consider an NGRI verdict.

The crimes in this case had no motive. Appellant was charged with the murder of his brother-in-law, the attempted murder of a cousin at a different residence, and burglary at the house of his cousin's neighbor when she fled from appellant. The shootings happened eight days after appellant got out of prison. Tr. 140, l. 1 – 16.

The Shootings

Appellant had been over to his sister, Angela Hood's ("Angela") house several times in the days he got out of prison. Tr. 204, l. 10 – 19. Angela had no concerns about her brother's behavior in the days leading up to the shooting. Tr. 204, l. 18 – 22. Appellant was close with his brother-in-law, James Hood ("Hood"), and they had a "tight bond." Tr. 199, l. 6 – 19. Tr. 191, l. 4 – 7.

Hood suffered a severe stroke and was paralyzed from the waist down. Tr. 189, l. 7 – 11. Hood was confined to a wheelchair and a hospital bed. Tr. 199, l. 15 – 22. On the evening of

June 10, 2014, Angela went to the grocery store and had no concerns about leaving Hood with appellant. Tr. 190, l. 4 – 191, l. 7. Tr. 201, l. 7 – 14.

Javy Crosby, along with James Hood's sons, Tavarrus Harris, and LaJameion Hood, returned to Angela's house after playing basketball that evening and found James Hood laying on the ground in his bedroom. Tr. 206, l. 18 – 207, l. 25. Hood was undressed, not breathing, and the men saw blood. Tr. 208, l. 19 - 209, l. 5. Appellant was in the room and Crosby later saw him holding a gun. Tr. 209, l. 14 – 24. Tavarrus Harris unsuccessfully tried to wrestle the gun out of appellant's hand. Tr. 210, l. 4 – 25. The men ran out of the house. Tr. 211, l. 1 – 4.

When the police arrived, the men told them appellant was still inside the house. Tr. 215, l. 2 – 15. The police surrounded the house and ultimately entered. Tr. 266, l. 18 – 267, l. 18. They found only Hood's dead body. Tr. 267, l. 19 – 21. When paramedics entered, Hood was dead, lying on the floor, wearing only a diaper with a gunshot wound to his back. Tr. 220, l. 18 – 223, l. 7.

While the police were at Hood's house, they heard over the radio about another shooting approximately two streets away. Tr. 313, l. 1 – 24. This equally bizarre shooting occurred at the house of appellant's cousin, Shareika McIlwain ("McIlwain"). Tr. 346, l. 19 – 347, l. 10. The last time McIlwain had not seen appellant since she was in the sixth grade. Tr. 365, l. 22 – 366, l. 10. McIlwain had never had an argument or disagreement with appellant. Tr. 366, l. 11 – 13.

McIlwain came home from the grocery store and saw appellant in her yard talking to a man. Tr. 348, l. 1 – 21. Appellant forced his way inside by putting a foot in the door and then the man told appellant to come inside. Tr. 348, l. 21 – 349, l. 1. McIlwain noticed a gun in appellant's back pocket. Tr. 350, l. 6 – 14. She began texting her friends who were at the house to tell them about the gun. Tr. 350, l. 6 – 14.

McIlwain then saw appellant "playing with the gun" like he was "counting the bullets." Tr. 351, l. 20 – 23. She yelled to her friends, "Whoever's riding with me, let's go." Tr. 352, l. 12 – 16. Appellant then tapped her on the shoulder, said, "What's up Shareika?" and McIlwain then saw a light. Tr. 352, l. 17 – 353, l. 16. She touched her neck and saw blood. Tr. 352, l. 17 – 353, l. 16. She ran from the house. Tr. 352, l. 17 – 353, l. 16. Appellant chased her and ripped her shirt off in her driveway. Tr. 354, l. 18 – 24.

McIlwain ran across the street to the porch of the house of Roger Lowery ("Lowery"), a neighbor she knew only by sight. Tr. 354, l. 1 – 11. Once on the porch, appellant jumped on her and they fought. Tr. 354, l. 18 – 355, l. 4. She knocked on the door for help. Tr. 355, l. 2 – 7.

Lowery was awakened by his wife who told him a man and woman were on their front porch and the woman was screaming for help. Tr. 397, l. 1 – 6. After looking out the door, Lowery went back to his bedroom and got his gun. Tr. 397, l. 1 – 6. He came back to the porch and saw appellant beating McIlwain with his fists. Tr. 397, l. 17 – 21.

Lowery went on the porch and told appellant to leave. Tr. 398, l. 3 – 19. Appellant continued beating McIlwain as Lowery told him several more times to leave. Tr. 398, l. 3 – 399, l. 2. Appellant told Lowery he would kill him, too. Tr. 399, l. 1 – 2.

Lowery drew his gun and pointed it at appellant. Tr. 399, l. 3 – 21. McIlwain escaped from appellant and Lowery's wife got her inside. Tr. 399, l. 3 – 21. Appellant then hit Lowery and tried to take his gun. Tr. 399, l. 3 – 21. The fight carried both men inside Lowery's house. Tr. 399, l. 3 – 21. Appellant lunged at Lowery and Lowery shot him once in the abdomen. Tr. 400, l. 1 – 12.

Appellant fell back on to Lowery's front porch and after a few minutes in the fetal position, ran off. Tr. 400, l. 13 – 18. Inexplicably, about three minutes later, appellant returned

to Lowery's house where he had just been shot and tried to grab the door handle. Tr. 400, l. 21 – 401, l. 5. Appellant then collapsed and was still on the front porch when the police arrived and took appellant into custody. Tr. 400, l. 13 – 409, l. 5. Lowery had never seen appellant before in his life. Tr. 410, l. 3 – 16.

Lay Evidence of Appellant's Insanity

None of the witnesses testified that anything provoked appellant. McIlwain said appellant asked for a cigarette, asked a few people their names, but they were not really talking with him. Tr. 369, l. 10 – 17. She described appellant as looking "scary like something had been bothering him. His eyes looked real big. It was just a scary look." Tr. 369, l. 21 – 24. Another woman who was at McIlwain's house said nothing led up to the shooting and that it appeared to happen for no reason. Tr. 380, l. 9 – 24. Appellant was only inside McIlwain's house for about 3-6 minutes before the shooting happened. Tr. 370, l. 7 – 14.

At the Hood home, before Angela left, she saw appellant staring at the spinning washing machine. Tr. 192, l. 9 – 193, l. 9. Appellant said, "They better leave me alone." Tr. 192, l. 9 – 193, l. 9. Angela asked her brother who was messing with him and what he saw. Tr. 192, l. 9 – 193, l. 9. Appellant responded, "They better leave me alone. They think I'm playing with them." Tr. 192, l. 9 – 193, l. 9. Angela told her friend that she thought her brother was "carrying on just to get a laugh." Tr. 192, l. 9 – 193, l. 9. The friend asked appellant what was wrong and he replied, "Like I said, they better leave me alone." Tr. 192, l. 9 – 193, l. 9. Angela, looking at her brother's behavior in the courtroom, further explained:

> And come to find out all of this time my brother is sick because that's not my brother over there now. He laughing and going on. I wonder do he know it's me. And, I mean, my mama dies over a broken heart because we thought my brother was—man, we ain't know my brother was sick. Oh boy.

Tr. 192, l. 9 – 193, l. 9. The trial judge warned appellant about his behavior in the courtroom and ultimately removed appellant after an outburst during the testimony of the State's reply witness. Tr. 343, l. 25 – 344, l. 8. Tr. 663, l. 7 – 667, l. 11.

The EMT who treated appellant for his gunshot wound described him as angry and upset. Tr. 465, l. 7 – 14. Appellant was clicking his teeth. Tr. 465, l. 7 – 14. The EMT guessed that appellant was "under the influence of something." Tr. 465, l. 7 – 14. The EMT cut appellant's clothing off of him and left it at the scene. Tr. 461, l. 3 – 7. Even though the shooting was in June and it was hot, appellant was wearing thermal underwear. Tr. 468, l. 8 – 24.

Appellant's recorded video statement, taken just after he got out of the hospital for his gunshot wound, was entered into evidence by the defense. Defendant's Ex. 1. Appellant appears confused in the video. Defendant's Ex. 1. Appellant said he did not know anything in his statement to the police. Defendant's Ex. 1.

Despite the concerns of his attorneys, appellant took the stand because, as he put it, he wanted to speak his mind. Tr. 630, l. 7 – 635, l. 20. Appellant's testimony was mostly incomprehensible. Tr. 635, l. 10 – 657, l. 17. He began by doubting his name was really Jermaine Grier, a notion that he continued on cross-examination. Tr. 635, l. 12 – 20. Tr. 643, l. 6 – 644, l. 17. He denied that Angela was his sister or that he had ever been at her house. Tr. 636, l. 3 – 637, l. 24. He denied ever seeing Javy Crosby. Tr. 636, l. 3 – 637, l. 24. When asked if he had been at McIlwain or Lowery's house, appellant first said, "Been there, don't even want to speak on it." Tr. 639, l. 14 – 16. He explained "that shit supposed to erased shit, that's all I can say. That shits dead." Tr. 639, l. 18 – 22.

Appellant then denied ever being on Lowery's porch. Tr. 639, l. 23 – 640, l. 13. He said the pictures of him on the porch looked like him, but were not him. Tr. 640, l. 9 – 16. Appellant

then denied knowing or ever seeing McIlwain. Tr. 640, l. 14 – 20. On cross, appellant repeatedly claimed the pictures were not him and said, "They don't have no DNA." Tr. 645, l. 14 – 646, l. 18. He denied James Hood was his brother. Tr. 647, l. 10 – 17. He denied having a gun or knowing what guns look like. Tr. 649, l. 24 – 650, l. 1. He denied being shot, even when the solicitor had him lift up his shirt to see the scar. Tr. 651, l. 7 – 21.

Expert Testimony Regarding Appellant's Mental State

Appellant called Dr. Donna Maddox as his expert witness.[1] Tr. 107, l. 9 – 22. Dr. Maddox testified that appellant suffered from Intermittent Explosive Disorder ("IED"). Tr. 113, l. 19 – 23. This illness describes people who have a history of aggressive, unprovoked behavior. Tr. 114, l. 1 – 17. Doctors in the Department of Corrections diagnosed appellant with IED and Dr. Maddox agreed with their assessment. Tr. 114, l. 4 – 115, l. 2. These doctors placed appellant on Tegretol, an anti-seizure medication that can stabilize aggression. Tr. 116, l. 1 – 117, l. 6. Dr. Maddox surmised that even though appellant went to a mental health appointment after he was released from prison, he did not see a psychiatrist and therefore was likely off his medication when the shootings happened. Tr. 120, l. 10 – 121, l. 16. She also noted that appellant was on an antidepressant called Desipramine.[2] Tr. 121, l. 9 – 16. Dr. Maddox agreed that appellant had a history of malingering and feigning symptoms, but said he did not malinger when she interviewed him. Tr. 115, l. 8 – 15.

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[1] Dr. Maddox was the first witness in the trial, taken out of order to accommodate a scheduling conflict. Tr. 107, l. 10 – 20.

[2] An interesting aside in this case is that a pharmacist was on appellant's jury and asked to speak to the Court. Tr. 279, l. 20 – 286, l. 19. The pharmacist told the judge that he thought Dr. Maddox's opinion was incomplete and wanted more information about the drugs appellant was taking because Tegretol and Desipramine can make people "psychotic" when taken together. Tr. 279, l. 20 – 286, l. 19. The pharmacist said "you can take two doses of it and you would be off the chain." Tr. 279, l. 20 – 286, l. 19. This information was not introduced during appellant's case and defense counsel's cross of Dr. Frierson on the issue was not fruitful. Tr. 684, l. 1 – 685, l. 18.

Dr. Maddox did not opine that appellant was insane at the time of the shootings. Tr. 125, l. 17 – 127, l. 3. She stated appellant was mentally ill, but knew right from wrong. Tr. 126, l. 5 – 127, l. 3. Dr. Maddox said because of evidence that appellant had on dishwashing gloves and was possibly trying to clean up the scene at the Hood's house and that he fled, she had to base her opinion on those facts, especially given that appellant had no memory of the shootings. Tr. 126, l. 5 – 127, l. 3.

Even though the jury had already heard Dr. Maddox's testimony before it presented its case, the State waited until after appellant's bizarre testimony to call Dr. Richard Frierson as a reply witness. Tr. 658, l. 5 – 7. Dr. Frierson testified that appellant was malingering and faking memory problems. Tr. 658, l. 7 – 669, l. 13. Dr. Frierson also disagreed that appellant suffered from IED and said appellant had antisocial personality disorder. Tr. 672, l. 3 – 674, l. 11. Dr. Frierson opined that appellant knew right from wrong and also was not guilty but mentally ill. Tr. 677, l. 4 – 13.

The Trial Court's Refusal to Charge NGRI

Appellant requested that judge charge the defense of not guilty by reason of insanity ("NGRI"). Tr. 613, l. 5 – 24. Citing State v. Senter, 396 S.C. 547, 722 S.E.2d 233 (Ct. App. 2011), appellant argued that when the defendant offers evidence of insanity, the weight of that evidence was "to be decided by the jury." Tr. 613, l. 5 – 24.

The solicitor argued, based on State v. Lewis, 328 S.C. 273, 494 S.E.2d 115 (1997), that appellant did not present sufficient evidence to obtain an NGRI charge. Tr. 614, l. 14 – 19. The solicitor initially claimed Lewis stood "clearly" for the proposition "that lay testimony in itself is not sufficient, or at least was not in that case." Tr. 614, l. 19 – 24. The solicitor then corrected herself and said lay testimony could be sufficient, but that Lewis and State v. Gardner, 219 S.C.

97, 64 S.E.2d 130 (1951), showed that simply not remembering the events did not provide evidence of insanity. Tr. 614, l. 22 – 620, l. 14. The remainder of the solicitor's argument recited the evidence against insanity and arguing that Angela Hood's testimony about appellant's interaction with the washing machine was insufficient because "after that he was fine." Tr. 620, l. 2 – 14.

The trial judge made a preliminary ruling before appellant's and Dr. Frierson's testimony that he would not charge NGRI. Tr. 622, l. 17 – 624, l. 9. After the close of the evidence, appellant again asked for NGRI and pointed out that Dr. Frierson agreed a symptom of psychosis could hallucinations and reminded the judge about Angela's testimony regarding the washing machine. Tr. 694, l. 12 – 22. The trial judge ruled he would not charge NGRI. Tr. 695, l. 4 – 696, l. 2. The court cited the testimony of both experts and, relying on one of the State's cases, said "as well as all the circumstances which have been shown to have existed, and considering the weight of the evidence in that one case that the State cited about determining the sufficiency of the evidence." Tr. 695, l. 4 – 696, l. 2. The court gave a GBMI charge. Tr. 695, l. 4 – 696, l. 2.

The Trial Court Erred in Refusing to Charge NGRI

The trial judge improperly weighed the evidence when he refused to charge NGRI. Because evidence in the record existed to support an NGRI charge, the jury should have been allowed to weigh the evidence, not the trial judge. In Hartfield, the Court stated that because the defendant presented evidence that could support brain damage and a mental illness, "he was entitled to present the defense of insanity or to attempt to obtain a verdict of guilty but mentally ill." Hartfield at 473, 388 S.E.2d at 804. This holding aligns with the body of jurisprudence that if "any evidence" exists to support a self-defense charge or lesser-included offense, the charge

should go to the jury. See e.g., State v. Light, 378 S.C. 641, 649-50, 664 S.E.2d 465, 469 (2008) ("If there is any evidence in the record from which it could reasonably be inferred that the defendant acted in self-defense, the defendant is entitled to instructions on the defense, and the trial judge's refusal to do so is reversible error").

Hartfield was cited approvingly by this Court in State v. Curry, 410 S.C. 46, 762 S.E.2d 721 (Ct. App. 2014). Curry dealt with the trial judge's refusal to give a GBMI charge. This Court found the trial judge relied too heavily on the testimony of one expert and failed to account for another expert's conclusion that the defendant suffered from mania "combined with other lay and expert testimony on Curry's antisocial conduct, odd mannerisms, and isolationist behavior. . . ." Curry at 54-55, 762 S.E.2d at 725-26. The Court concluded, "Because evidence was presented from which the jury could have concluded Curry was guilty but mentally ill . . . the circuit court's failure to include this jury charge amounted to reversible error." Id. The appellate analysis of GBMI and NGRI should not be different and the "any evidence" standard should apply.

NGRI is an affirmative defense. S.C. Code Ann. § 17-24-10(A). A defendant must show that "as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong." Id. Expert testimony is not required to survive a directed verdict, but some evidence must be presented. See State v. Milan-Hernandez, 287 S.C. 183, 336 S.E.2d 476 (1985).

The trial judge was encouraged to weigh the evidence regarding NGRI by the solicitor's incorrect interpretation of State v. Lewis. The defendant in Lewis killed his wife after they separated. Lewis at 275-77, 494 S.E.2d at 116. The defendant testified he lost weight, was suicidal, and saw both a psychiatrist and a "nerve specialist" before the shooting. Id. The

defendant ultimately killed his wife's lover and testified that he was "totally out of his mind" that day. Id. Like appellant's case, both the State and defense experts in Lewis opined that the defendant could distinguish right from wrong. Id.

The Lewis Court first stated that "A defendant may rely on lay testimony to establish insanity." Id. at 278-79, 494 S.E.2d at 117. The Court stated the applicable standard as "A requested charge on insanity is properly refused when there is no evidence tending to show the defendant was insane at the time of the crime charged." Id.

The Lewis Court then discussed the facts and found no evidence existed that the defendant did not know right from wrong. Id. The solicitor encouraged the trial judge to focus on Lewis's recitation of the evidence to apply a higher standard than "any evidence" in appellant's case. This interpretation and application of Lewis was error.

The defendant in Lewis had a clear motive: jealousy. He shot his wife's lover. No motive existed in appellant's case. Angela testified that appellant and James Hood had "a tight bond." Hood, a paraplegic wearing a diaper in a wheelchair, certainly posed no threat to appellant. Appellant had no motive for attacking McIlwain, who had not seen him in years. Appellant continued to chase McIlwain even after being confronted by and eventually shot by Lowery, returning to the scene and still trying to gain entrance to Lowery's house. The absolute lack of any motive is strong evidence of insanity.

Angela testified that before she left appellant with Hood, she saw him talking to the washing machine. The jury could have inferred from this fact that appellant was hallucinating and suffering from psychosis. The EMT who treated appellant's gunshot wound described appellant's angry behavior and strange clicking of his teeth. Appellant's nephews told the police that appellant "had been acting crazy since he got out of prison" and was confused at the time of

the offense. Tr. 159, l. 2 – 8. The jury also had the opportunity to observe appellant's strange behavior and nonsensical testimony.

The solicitor also stressed the language in Gardner that the defendant's testimony in that case that he did not remember killing his wife, "standing alone" was insufficient to establish insanity. Gardner at 106-07, 64 S.E.2d at 135. The defendant in Gardner killed his wife in a fit of passion. Id. Unlike in appellant's case, the crime in Gardner did not lack motive. Furthermore, a criminal defendant who experiences a true psychotic episode will likely not remember the crimes. A defendant's testimony as to lack of memory cannot, as a matter of law, rule out a defense of NGRI because it would exclude those defendants who are the most ill and who are most entitled to the defense.

While the evidence of insanity in this case conflicted, the trial judge erred in resolving the conflict himself by weighing the evidence. The existence of evidence showing appellant was insane should have been weighed by the jury. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and remand for a new trial.

s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of January, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

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JERMAINE DEMARCUS GRIER,

APPELLANT.

APPELLATE CASE NO. 2021-000444

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the 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), this 18th day of January, 2022.

s/David Alexander
Appellate Defender

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January 18, 2022

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Re: The State v. Jermaine Demarcus Grier

Dear Ms. Brown:

Enclosed please find 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/David Alexander
Appellate Defender

DAA/lmm

Enclosure