STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable William H. Seals, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAKKARI JAQUILLE DE'ANDRE BROWN,

APPELLANT.

APPELLATE CASE NO. 2021-000651

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in refusing to charge the jury on the lesser-included offense of involuntary manslaughter?

STATEMENT OF THE CASE

An Horry County grand jury indicted appellant for murder, possession of a weapon during the commission of a violent crime, use of a firearm while under the influence of alcohol, and unlawful consumption of alcohol while carrying a concealed weapon and on June 7, 2021, appellant was tried before the Honorable William Seals and a jury. R. 1. George DeBusk and Seth Oskin represented the State. R. 1. Eric Fox and Nicholas O'Neil represented appellant. R. 1. The jury convicted appellant. R. 512, l. 20 – 513, l. 12. Judge Seals sentenced appellant to concurrent terms totaling thirty-five years' imprisonment. R. 520, l. 17 – 521, l. 2. This appeal 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). "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." Id. at 308, 764 S.E.2d at 513. "The charge request is properly rejected when there is no evidence tending to show the defendant was guilty of the lesser offense." Id.

ARGUMENT

The trial judge erred in refusing to charge the jury on the lesser-included offense of involuntary manslaughter.

On Saturday night and into Sunday morning, October 7, 2018, the Myrtle Beach bar RipTydz showed a mixed-martial arts fight involving Conor McGregor. R. 134, l. 11 – 136, l. 13. After the fight on television ended, a fight began in RipTydz. R. 358, l. 15 – 359, l. 23. The fight involved appellant's boss, John Matthews. R. 354, l. 3 – 6. R. 359, l. 18 – 20. Appellant was part of a traveling telecommunications crew working in Myrtle Beach and Matthews was the foreman. R. 352, l. 1 – 354, l. 24. The fight ultimately led to the shooting death of Roger Ramos, an off-duty server at RipTydz. R. 293, l. 1 – 19. R. 205, l. 15 – 206, l. 5.

Appellant testified in his own defense. R. 351, l. 1 – 5. Appellant saw Matthews get involved in a shoving match. R. 359, l. 19 – 23. Appellant had nothing to do with that fight and it was "over and done," but then a second fight started. R. 360, l. 18 – 361, l. 17.

In the second fight, appellant saw Matthews "getting choked" with three or four people surrounding him. R. 362, l. 3 – 5. Appellant went to help Matthews and pushed a man wearing a pink shirt, who was Ramos. R. 362, l. 23 – 363, l. 13. Ramos had Matthews in a chokehold. R. 363, l. 14 – 17. Appellant's intent was to get Ramos off of his boss so they could leave. R. 364, l. 18 – 365, l. 5.

After appellant freed Matthews, a bottle came "zooming past" appellant's face. R. 365, l. 6 – 10. Appellant knew that bottles were extremely dangerous because he saw a friend incur a serious head injury from a thrown bottle. R. 372, l. 18 – 373, l. 7. Appellant was afraid and pulled out a pistol, but kept it pointed at the ground. R. 372, l. 18. R. 367, l. 8 – 11.

Ramos tried to charge appellant. R. 369, l. 1 – 5. Ramos backed up. R. 370, l. 14 – 19. Appellant turned to leave and Ramos punched him in the side of the face. R. 371, l. 9 – 21. Appellant was staggered and knocked off balance. R. 371, l. 20 – 25. Appellant then fired his gun. R. 372, l. 1 – 4. Appellant panicked and ran to his hotel across the street. R. 378, l. 2 – 7. He ultimately voluntarily surrendered to police in the hotel's parking lot. R. 384, l. 14 – 386, l. 25.

Appellant gave a statement to police twelve hours after the shooting that differed in an important respect from his trial testimony. R. 394, l. 5 – 8. Appellant agreed that during the recorded interview he told the police that he did not fire the gun at "anyone in particular" but only "to clear people away" from him. R. 397, l. 6 – 12. Appellant testified this statement was not true. R. 397, l. 9 – 14.

In appellant's interview, he said that the gun's firing was a "reflex" after he was hit and happened as quickly as a snap of his fingers. R. 419, l. 18 – 420, l. 4. State's Ex. 1. Appellant said the events of the evening were a "blur." R. 419, l. 18 – 420, l. 4. State's Ex. 1. Appellant is tearful and emotional throughout this interview. State's Ex. 1. He said he did not mean to hurt anyone. State's Ex. 1. Through tears, appellant said "it happened so quick." State's Ex. 1.

RipTydz' security cameras captured the fights and the shooting, although it is difficult to make out fine details on the videos. State's Ex. 4. At 1:10:41 AM on the bar's camera, appellant (wearing a burgundy shirt and hat) and Matthews (wearing a dark shirt and a hat) are forced through the bar. State's Ex. 4. Ramos, wearing a collared pink shirt, enters the scene once the shoving match between Matthews and other patrons becomes escalated. State's Ex. 4 (1:10:51 AM).

As Matthews is shoved to the end of the bar, Ramos follows and a scrum ensues. State's Ex. 4 (1:11:01 AM). Ramos pushes his way past appellant. State's Ex. 4 (1:11:02 AM). Appellant makes his way into the scrum. State's Ex. 4 (1:11:04 AM). Ramos can be seen clearly throwing a beer bottle at appellant. State's Ex. 4 (1:11:09 AM). Ramos then charges at appellant, but then quickly backs up. State's Ex. 4 (1:11:15 AM). Ramos then charges appellant again and is shot. State's Ex. 4 (1:11:20 AM). As appellant testified, everything happens quickly in the chaotic melee.

After the close of the evidence, defense counsel requested a charge on the lesser-included offense of involuntary manslaughter. R. 428, l. 22 – 429, l. 19. Appellant argued that based on appellant's recorded statement that the shooting happened by reflex, that the shooting was "basically, accidental." R. 428, l. 22 – 429, l. 19. Defense counsel acknowledged the statement was contradicted by appellant's trial testimony, but argued that evidence existed in the record to support the charge. R. 428, l. 22 – 429, l. 19. He distinguished pulling the trigger with intent from acting simply on reflex and argued it was a "lawful act done with reckless disregard for safety of others." R. 430, l. 2 – 431, l. 1.

The court did not give an involuntary manslaughter charge. R. 491, l. 12 – 507, l. 17. The court charged the jury on murder, voluntary manslaughter, mutual combat, and self-defense. R. 491, l. 12 – 507, l. 17.

The trial judge erred in refusing to charge involuntary manslaughter. The law to be charged is determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Reversible error is committed if the trial court fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Moreover, when determining whether the evidence requires a charge on a

lesser included offense, the court views the facts in the light most favorable to the defendant. See Knoten, 347 S.C. at 302, 555 S.E.2d at 394 (requiring the trial court to view facts in the light most favorable to a defendant when determining whether to charge involuntary manslaughter). "Importantly, our courts have long emphasized that to warrant a court's 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. Brayboy, 387 S.C. 174, 180, 691 S.E.2d 482, 486 (Ct. App. 2010); see also State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000); State v. Burriss, 334 S.C. 256, 265, 513 S.E.2d 104, 109 (1999). Thus, a request to charge a lesser-included offense is properly refused only when there is no evidence that the defendant committed the lesser rather than the greater offense. Casey, 305 S.C. at 447, 409 S.E.2d at 392.

Involuntary manslaughter is the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. State v. Crosby, 355 S.C. 47, 51-2, 584 S.E.2d 110, 112 (2003); Burriss, 334 S.C. 256, 265, 513 S.E.2d 104, 109 (1999). As defense counsel argued, under the facts as given in appellant's recorded statement, this case fits under the second definition. Appellant was arguably lawfully acting in self-defense, albeit recklessly, and Ramos' death was unintentional.

State v. Light, 378 S.C. 641, 648, 664 S.E.2d 465, 468 (2008) shows that differences in appellant's trial testimony and his statement do not foreclose giving the charge. In Light, the defendant gave inconsistent versions of the victim's death, but repeatedly maintained that the gun unintentionally discharged after a struggle. Despite expert testimony contradicting the defendant's

story, the Supreme Court ruled that defendant's testimony, by itself, was sufficient to require an involuntary manslaughter charge. Id. at 648-49, 664 S.E.2d at 469. The Court stated, "[T]he fact petitioner and [the victim] were struggling over the weapon is sufficient evidence to support an involuntary manslaughter charge to the jury. Id.

Just like in Light, appellant's statements about his "reflex" and not intending to shoot anyone satisfies the "any evidence" standard. The trial court should have viewed this evidence in the light most favorable to appellant and given the charge. The video from the bar supports appellant's description of the chaotic scene. 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 7th day of March, 2022.

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Honorable William H. Seals, Circuit Court Judge

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jakkari Jaquille De'Andre Brown states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge William H. Seals, which was held on June 7 - 10, 2021, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Jakkari Jaquille De'Andre Brown.

Respectfully Submitted,

s/David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of March, 2022.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) Trial Transcript
(2) State's Ex. 1, 3, 4 (to be transported)

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

s/David Alexander
Appellate Defender

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Division of Appellate Defense
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Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 7th day of March, 2022.

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Mar 07 2022
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

s/David Alexander
Appellate Defender

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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders 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); and on Jakkari Jaquille De'Andre Brown, #385481, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 7th day of March, 2022.

s/David Alexander
Appellate Defender

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