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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ELIJAH QUINLIN DIANTE GREEN,

APPELLANT

APPELLATE CASE NO. 2021-000888

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in excluding evidence that the decedent had methamphetamine in his blood where the decedent's state of mind at the time of the shooting was relevant to whether there was sufficient legal provocation to support a voluntary manslaughter charge?

STATEMENT OF THE CASE

Appellant was indicted by the Dorchester County Grand Jury for murder, attempted murder, burglary in the first degree, possession of a firearm during the commission of a violent crime, and ill treatment of animals. R. 853-864. Appellant was jointly tried with one of his co-defendants, Devonte Major, before the Honorable Diane S. Goodstein and a jury from July 9 – 16, 2021. Appellant was represented by Melisa Gay and Michael Coleman. The state was represented by David Osborne and Nicholas Young. R. 1.

The jury found Appellant guilty as charged on each count. R. 833, ll. 6 – 22. The judge sentenced Appellant to life imprisonment for murder and burglary, thirty-years-imprisonment for attempted murder, and five-years-imprisonment for both the weapons and ill treatment of animals charges. R. 849, l. 17 – 850, l. 8.

This appeal follows.

STANDARD OF REVIEW

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). “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.” Whitner, 399 S.C. at 557, 732 S.E.2d at 866.

STATEMENT OF FACTS

In the late evening of January 28, 2019 going into the early morning of January 29, 2019, Leta Boehler with the Summerville Police Department responded to a residence where a shooting had recently taken place. R. 220, l. 13 – 221, l. 21. Boehler was the first officer to arrive. She found Marcus Porter who was outside with a gunshot wound. Porter told Boehler that his friend and dog had also been shot and they were inside the residence. R. 221, l. 22 – 223, l. 11. Boehler was advised that four suspects were involved. R. 223, ll. 12 – 15.

Boehler entered the residence and found Mr. Weaver lying on his back with blood coming from his mouth and David Swibaker by his side tending to him. R. 223, l. 20 – 224, l. 9. Boehler attempted CPR on Weaver until EMS arrived to take over. After EMS arrived, Boehler checked the residence and did not find any suspects but did find a dog that was deceased. R. 224, ll. 10 – 24. Weaver died because of the gunshot wounds. R. 699, ll. 9 – 15.

Swibaker and Porter lived together at the residence where the shooting occurred and were friends with Weaver. R. 243, l. 24 – 244, l. 7. Swibaker admitted that Porter sold marijuana “on occasions” but denied ever personally seeing him sell drugs. R. 245, l. 18 – 246, l. 3. On the night of the shooting, Swibaker recalled that he was home with Porter, Weaver, and his dog. R. 247, ll. 18 – 25. Swibaker stated that he was in the kitchen “working on a nightstand” and Weaver was getting ready to leave their house and go home. Porter was sitting on a couch with the dog. R. 249, l. 15 – 251, l. 6.

According to Swibaker, as he and Weaver were standing in the kitchen, a group of individuals kicked in the door and came inside with guns drawn. Swibaker ran to the bathroom and hid in the shower. Swibaker saw the intruders dragging Porter down the hallway and Swibaker ran to his bedroom. Swibaker only recalled seeing two intruders at that time. R. 251,

ll. 14 – 24. He said that the intruders had masks on and that one of them shot his dog while he was running to the bathroom. R. 253, ll. 3 – 16.

Swibaker further claimed that when he was in his bedroom, one of the intruders hit him in the back of the head and told him to lie on the ground or they would “blow [his] brains out.” R. 254, ll. 20 – 25. Then Swibaker said he heard one of the intruders say that “if we don’t tell them where the stuff is, then they’re going to start lighting motherf—ers up.” R. 255, ll. 3 – 5.

The intruders then pulled Porter back into the living room and Swibaker heard a shot “[a]nd then ... a bunch more shots.” Then, the intruders left the residence. R. 256, ll. 2 – 9. Swibaker said he attempted CPR on Weaver until the police arrived. R. 256, l. 23 – 257, l. 4. After the shooting was over, Swibaker saw a news story indicating that four suspects had been arrested for the shooting. Swibaker claimed that he recognized one of the suspects as Appellant based on his eyes. R. 261, l. 1 – 262, l. 2. Swibaker identified Appellant in court as one of the intruders. R. 277, l. 22 – 278, l. 9.

Porter also testified on behalf of the state. Porter admitted that he had a number of pending charges, including trafficking meth and distribution of meth. R. 283, l. 9 – 284, l. 24. Porter also admitted that he had entered into a signed agreement with the solicitor that his testimony against Appellant could not be used against him in any of his drug charges, but that protection would not extend to statements that Porter was involved in “a homicide or other acts of extreme violence.” R. 286, l. 3 – 287, l. 16.

Porter alleged that four individuals broke into his house armed with handguns and demanding marijuana. He said that Appellant was the first person to enter, and his co-defendant Devonte Major was second. R. 296, l. 5 – 297, l. 4. Porter said that Weaver was trying to “diffuse” the situation by telling the intruders that he could get them marijuana. R. 297, ll. 5 –

13. Weaver got closer and closer to the intruders while they were telling him to stand back and then one of them shot Weaver. Porter was also shot one time. Porter claimed that Appellant was the shooter. R. 299, l. 23 – 300, l. 10; R. 304, ll. 2 – 13.

Joshua Scarborough with the Summerville Police Department responded to the shooting and while he was on the way he observed a vehicle leaving the area without a license plate with four black males inside. R. 346, l. 11 – 347, l. 21. The vehicle was a black Honda CR-V and Scarborough recalled that all the individuals inside had their eyes wide open and “looked like they saw a ghost.” R. 351, ll. 1 – 13.

Scarborough and several other officers engaged in a pursuit with the CR-V which proceeded down Highway 17 into Colleton County. R. 354, l. 15 – 355, l. 5. The officers initiated their blue lights in an attempt to stop the vehicle, but it continued to speed up. R. 377, ll. 1 – 9. During the pursuit, officers observed items being thrown out of the CR-V which were later recovered and found to be different items of clothing and Weaver’s wallet. R. 381, ll. 15 – 24.

Ultimately, officers were able to stop the CR-V using spike strips. R. 382, ll. 1 – 11. The driver was identified as Polo Salazar and the front passenger was identified as Muanah Fortune.¹ The rear driver’s side occupant was identified as Major, and the rear passenger side occupant was identified as Appellant. R. 383, ll. 6 – 11.

The officers did not find any handguns in the vehicle and did not see any handguns thrown out of the vehicle. Officers did however locate four handguns near the roadway at a portion of the pursuit where the officers had lost visibility of the CR-V. R. 394, ll. 4 – 16. The handguns that were found by the officers on the side of the highway were a Taurus 24/7-G2 9-

¹ Salazar and Fortune were tried together before Appellant and Major’s trial. Salazar and Fortune were both convicted.

millimeter handgun with a magazine, a Smith and Wesson, Model 10.5, .38 revolver that was loaded, a Jimenez Arms .380, and a Springfield XD 9-millimeter. R. 427, ll. 5 – 25. Officers also recovered a pocketknife from the CR-V that had Weaver's DNA on it. R. 643, l. 15 – 644, l. 10.

The Taurus was fully loaded with one round in the chamber. R. 429, l. 18 – 430, l. 3. The Smith and Wesson revolver had three spent casings and three live rounds. R. 430, ll. 5 – 11. The Jimenez had a live round in the chamber and thirteen live rounds in the magazine. R. 430, ll. 17 – 23. Finally, the Springfield had one live round in the chamber and eight live rounds in the magazine. The Springfield had a magazine capacity of sixteen. R. 431, ll. 7 – 19. Law enforcement was unable to obtain fingerprints from any of the guns. R. 432, ll. 1 – 6.

Seven of the spent shell casings found at the residence where the shooting took place were determined to have been fired by the Springfield firearm. R. 607, ll. 15 – 25.

ARGUMENT

The trial judge erred in excluding evidence that the decedent had methamphetamine in his blood because the decedent's state of mind at the time of the shooting was relevant to whether there was sufficient legal provocation to support a voluntary manslaughter charge.

Relevant Facts

Prior to the state calling the forensic pathologist to the stand, the solicitor moved to exclude evidence that the decedent, Weaver, had methamphetamine in his system. The solicitor argued that there had been no testimony “to indicate that this is a self-defense case which I guess might somehow bring meth into the equation.” R. 669, ll. 13 – 24. Defense counsel argued Weaver’s state of mind was relevant to the question of whether Appellant should get a voluntary manslaughter instruction. R. 670, l. 10 – 671, l. 22. Specifically, counsel pointed out that there was evidence in the record that the dog “did its job” and essentially attacked the alleged intruders and Weaver appeared to have a knife at the time he was shot. This evidence potentially showed that Weaver was armed and caused the conflict which led to his death which could warrant a voluntary manslaughter instruction. Counsel argued that the methamphetamine in Weaver’s system was relevant to the possibility that Weaver had erratic behavior. R. 670, l. 10 – 671, l. 22.

Counsel continued that the state of mind and the intent of the alleged victims and defendants was relevant as to how and why the shooting occurred. The state introduced the knife into evidence which was found in the CR-V which raised the question as to whether the knife had been wielded by Weaver against them. R. 672, l. 18 – 673, l. 12.

The solicitor responded by arguing that Weaver was shot seven times while lying on the ground and that there was no evidence in the record that Weaver was “crazy or that he was

fueled by meth.” The solicitor said that the methamphetamine evidence could possibly become relevant if evidence was presented that Weaver did pull a knife on the alleged intruders. R. 674, ll. 3 – 13. The trial judge granted the state’s motion to exclude evidence of the presence of methamphetamine in Weaver’s system. R. 681, ll. 3 – 14.

Discussion

“‘Relevant evidence’ means evidence having *any* tendency to make the existence of *any* fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE (emphasis added). Under Rule 403, SCRE, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” “Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis.” State v. Spears, 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013).

The trial judge erred in excluding the relevant evidence that Weaver was high on methamphetamine at the time the shooting occurred. This fact was relevant to Weaver’s state of mind and as to whether he might have provoked the attack which would have justified a voluntary manslaughter instruction. The solicitor’s argument that there was no evidence that Weaver was on methamphetamine was only true because the trial judge erroneously excluded the evidence that Weaver did in fact have methamphetamine in his blood.

In State v. Washington, 424 S.C. 374, 404, 818 S.E.2d 459, 474-475 (Ct. App. 2018), this Court found that the trial court did not abuse its discretion in excluding evidence that the decedent had a blood alcohol level of .235. In Washington, the appellant argued that the decedent’s blood alcohol level was probative as to whether the decedent had initiated the fight which ultimately resulted in the appellant killing the decedent. Id. Washington maintained that

the decedent's high blood alcohol level would have caused the decedent to have "a tendency toward overreaction to a perceived affront, and aggressive or violent behavior." Id.

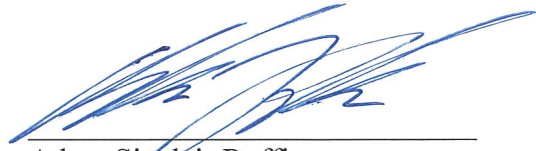
However, the Washington Court found that there was no evidence in the record that the decedent was the aggressor or that his high blood alcohol level would have caused him to be aggressive or violent. In fact, in her proffered testimony, the forensic pathologist said that she could not say whether the decedent's blood alcohol level would have caused him to be aggressive. Id. at 406-407, 818 S.E.2d at 476.

In State v. Dickerson, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011), the Supreme Court found that the trial court had not abused its discretion in excluding the results from a "preliminary urine analysis" test done on the victim in a murder case which allegedly showed the victim had used cocaine two days prior to being killed. Significantly, the pathologist testified in her proffered testimony that this particular test was unreliable, and no confirmatory testing was done on the victim. Id. The Dickerson Court agreed with the trial court's conclusion that this evidence was inadmissible due to the unreliable nature of the test. Id.

Unlike in Dickerson, in this case there was no dispute regarding the reliability of the toxicology screen done on Weaver. The toxicology results were relevant in showing that Weaver was under the influence of methamphetamine at the time of the fatal shooting which may have had a significant impact on his state of mind and his actions. Coupled with the evidence that a pocketknife was found with Weaver's DNA on it, the methamphetamine evidence should have entitled Appellant to an instruction on voluntary manslaughter. The trial judge erred in excluding this very important evidence. Appellant's convictions should be reversed.

CONCLUSION

By reason of the foregoing argument, Appellant's convictions should be reversed, and this case remanded to the Dorchester County Court of General Sessions for a new trial.



Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of March, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

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ELIJAH QUINLIN DIANTE GREEN,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Elijah Quinlin Diante Green 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 Diane Schafer Goodstein, which was held on July 12 - 16, 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 Elijah Quinlin Diante Green.

Respectfully Submitted,

Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of March, 2022.

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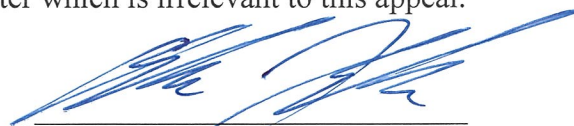
APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire trial transcript.

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



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March 7, 2022

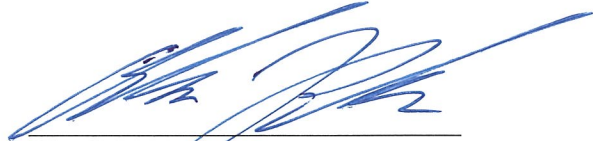
CERTIFICATE OF COUNSEL

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."

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