STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONNIELLE K. MATTHEWS,

APPELLANT.

APPELLATE CASE NO. 2021-000677

FINAL BRIEF OF APPELLANT

LARA M. CAUDY
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

Did the trial judge err by charging the jury on the lesser included offense of voluntary manslaughter when there was no evidence Appellant stabbed the decedent, her husband, in the sudden heat of passion, rather the evidence showed Appellant either acted with malice or in self-defense, and where Appellant was prejudiced because the jury compromised and found her guilty of voluntary manslaughter?

STATEMENT OF THE CASE

A Horry County grand jury indicted Appellant on November 13, 2017 for the offense of murder. R. 1068-1069. A pretrial hearing on several motions *in limine* was held on July 28, 2020 before the Honorable Steven H. John. Assistant Solicitors Martin Spratlin and Seth Oskin represented the state. Ralph J. Wilson, Sr. represented Appellant. Appellant's case was called to trial on June 14, 2021 before Judge John, and a jury. R. 1. Assistant Solicitors Martin Spratlin and Seth Oskin represented the state. R. 1. Ralph J. Wilson, Sr. represented Appellant. R. 1.

On June 18, 2021, the jury acquitted Appellant of murder, but found her guilty of the lesser included offense of voluntary manslaughter. R. 1045, ll. 5-16. After a hearing on June 22, 2021, Judge John found Appellant presented credible evidence pursuant to S.C. Code Ann. § 16-25-90 "of a history of domestic violence . . . suffered at the hands of" the decedent, her husband. R. 1064, l. 15 – 1065, l. 19. This finding makes Appellant eligible for parole after serving one-fourth of her sentence. See S.C. Code Ann. § 16-25-90. Appellant was subsequently sentenced to thirty years imprisonment. R. 1065, ll. 20-25.

This appeal follows.

STATEMENT OF FACTS

Appellant and the decedent, Dennis Green, met in Myrtle Beach in June 2011. R. 660, ll. 6-11. Appellant, who is from Baltimore, was staying with her grandmother in Orangeburg for the summer. R. 658, ll. 4-23. While there, she traveled to Myrtle Beach. Appellant met Green at a strip club. They exchanged numbers that night, went out to breakfast the following morning, and, more or less, "were together ever since." R. 659, l. 17 – 660, l. 18. After Appellant returned to Orangeburg, she visited Green in Myrtle Beach on weekends that summer until she returned to Baltimore at the end of July 2011. R. 660, l. 20 – 661, l. 5. In October 2011, Appellant moved to Little River, in Horry County, where Green lived. Appellant and Green rented a condo together and got engaged in December 2011. R. 661, l. 1 – 662, l. 14.

Green became physically abusive toward Appellant starting around January 2012. R. 662, l. 16 – 663, l. 24. The first time Appellant recalled Green being abusive was when Green "slapped" her because they ran "out of peaches." On the second occasion, Appellant remembered Green struck her and they "tussled" because Appellant was not ready to go out to celebrate her birthday when Green returned home. R. 662, l. 16 – 663, l. 6. The abuse continued until Green's death in July 2017.

In February 2012, Green introduced Appellant to the mother of his children, Alethia Price. R. 664, l. 2 – 665, l. 24. Appellant and Alethia got along well and the three began a sexual relationship. Appellant, Green, Alethia, and their children moved into an apartment together in Longs shortly thereafter. R. 668, l. 11 – 669, l. 19. This living arrangement and intimate relationship lasted about a month. R. 546, ll. 2-4; R. 670, ll. 16-22. Alethia and the children eventually moved out because Green became jealous of the relationship between Appellant and Alethia and arguments ensued. According to Alethia, Appellant was also jealous of the

relationship between Green and Alethia. She claimed, "Both of them were jealous if I got too close [to] the other one." R. 546, l. 25 – 547, l. 10. Green was also abusive. Appellant testified, "You never knew what might set him off and he would slap you, punch you, throw you, something." Alethia "got tired of it" and left. R. 671, ll. 1-25.

Around April 2012, Appellant's sister, Demetria Matthews, came from Baltimore to live with Appellant and Green. Demetria stayed with the couple for six to eight months. R. 674, ll. 4-12; R. 868, l. 12 – 869, l. 4. While Demetria was there, the couple went out "drinking" more. R. 674, ll. 13-19. Appellant quickly learned that Green was "an angry drunk." R. 674, ll. 17-19. The "beatings" continued during this time. They often occurred in the car on the way home after the couple had been out drinking or once the couple returned home. R. 674, ll. 13-23. Green was rarely physically abusive in front of others. R. 674, l. 22 – 675, l. 3.

Demetria described one night when she went to a bar with Appellant, Green, and one of Green's friends. R. 870, ll. 14-16. Green was agitated at the bar because "he was ready to leave" but Appellant and Demetria wanted to stay longer. R. 870, ll. 16-19. The group eventually left the bar and got into the car. R. 870, ll. 19-20. Appellant was in the driver's seat, Green was in the front passenger seat, and Demetria and Green's friend were in the backseat. R. 870, ll. 21-23. Demetria testified that Green "punched her [Appellant] in the face while she was driving" "because she [Appellant] talked back to him." R. 870, ll. 23-25. Demetria and Green's friend had to intervene. R. 870, l. 25 – 871, l. 3. Demetria described several other occasions in which she witnessed Green strike or beat Appellant. R. 871, l. 6 – 872, l. 3. Demetria eventually returned to Baltimore after Green became physically aggressive toward her. Specifically, on the way home from a friend's house one night, Green stopped the car, pulled Demetria out of the backseat, and

punched her because he was angry she had previously intervened in a separate altercation that night. R. 872, l. 11 – 873, l. 24.

Appellant left Green on several occasions because of the abuse. The first time she left was in January 2013. R. 679, l. 16 – 680, l. 7. Appellant moved back to Baltimore and lived with her family for approximately eight months. R. 680, ll. 8-13. Around August 2013, Appellant returned to Myrtle Beach to vacation with her family. She "wound up telling Dennis [Green] that [they] were coming down." R. 680, ll. 15-25. Green picked Appellant up from a hotel and she spent a couple of days with him. R. 680, l. 25 – 681, l. 5. She was supposed to return to Baltimore with her family at the end of the week. R. 682, ll. 2-12. However, on the second night she was there, Green punched Appellant in the mouth while they were drinking and, because of the visible injury to her face, Appellant hid from her father. When her family could not find her at the end of the week, they returned to Baltimore without her. R. 682, ll. 2-24.

Appellant left Green again sometime in 2014. R. 683, ll. 3-9. She returned to Baltimore for several months. R. 683, ll. 10-21. While she was away, Green moved from Horry County to Covington, Georgia. R. 683, l. 22 – 684, l. 7. Green eventually picked Appellant up from Baltimore and she moved to Georgia with him. R. 683, l. 22 – 684, l. 7. The couple lived in an apartment in Covington from 2014 until Green's death in July 2017. R. 686, ll. 2-7.

While Appellant and Green were living in Georgia, Green worked for a landscaping company called Pro Cutters. R. 686, ll. 16-22. He worked Monday through Thursday. R. 687, ll. 2-5. Every Thursday night, Green would drive back to Little River to see his children and family. He would stay in South Carolina until Sunday night. R. 687, ll. 2-12. Appellant never traveled with Green to Little River. She opted to remain in Georgia with their dogs. R. 687, ll. 13-16. Appellant did not like coming to Little River because Green tended to be more abusive while the

couple was there. R. 694, ll. 10-23. She "would have to worry about him getting mad and punching [her] in the face." R. 694, ll. 10-15.

Appellant stayed with Green despite the abuse because he was the "sole provider for [her] entire existence." R. 691, ll. 1-7. Green refused to allow Appellant to work. R. 688, l. 23 – 689, l. 4. He paid all the bills. "He paid for everything." R. 689, ll. 5-17. "It got to a point" where Appellant "was totally and completely dependent on him." R. 691, ll. 1-7. Appellant also stayed with Green because she loved him. R. 689, ll. 22-25. They "were happy." R. 689, ll. 22-25. "[I]n [her] mind . . . the good outweighed the bad." R. 689, l. 22 – 690, l. 1.

During the first week of July 2017, Appellant's mother traveled from Baltimore to Myrtle Beach to celebrate the Fourth of July. R. 693, ll. 13-15. Green was also in Myrtle Beach at the time. He had traveled to Little River the Thursday before as usual. R. 695, ll. 1-8. He planned to stay the week because his son's birthday was Wednesday, July 5. R. 693, ll. 16-19. Appellant did not plan to come to Myrtle Beach. R. 694, ll. 1-8. However, on Monday, July 3, her mother asked her to come up. Green likewise "started calling" and told Appellant she "might as well come on" since her mother was in town. Appellant "let the two of them talk [her] into coming to the beach." R. 693, ll. 19-25. She drove up on the night of the third. R. 695, ll. 11-12.

While she was in Myrtle Beach, Appellant and Green stayed at the condo her mother had rented. R. 697, ll. 1-23. They celebrated the Fourth of July and Green's youngest son's birthday with family. See R. 698, l. 22 - 703, l. 25. On the night of July 6, 2017, Green wanted Appellant to meet another woman he was seeing, Antoinette Vereen. R. 708, ll. 14-21. Appellant learned about Antoinette sometime between March and May 2017. R. 708, l. 22 – 709, l. 2. Green saw other women throughout the entirety of his relationship with Appellant. It was "normal." R. 710, l. 4 – 711, l. 6. The couple occasionally "brought other women into their marriage." R. 323, l. 22

– 324, l. 3; R. 344, ll. 22-25; R. 379, l. 21 – 380, l. 5. Green was "excited" about Appellant and Antoinette meeting that night. R. 712, ll. 7-11.

"The agreement was that [they] weren't going to be out long" because Appellant was tired. She had watched Green's children all day. R. 714, ll. 1-4. Green drove. They picked up Antoinette at her house around half past midnight on the morning of July 7, 2017. R. 349, ll. 18-21. As Antoinette was walking to the car, Green and Appellant "talked about her legs." She had long legs. R. 715, ll. 2-7. Appellant got out of the car, which only had two doors, to allow Antoinette to get inside. Antoinette was about to climb into the backseat, but Appellant told her she did not want her to get into the backseat "with them legs." Appellant got into the backseat and Antoinette got in the front seat. R. 715, ll. 7-11. Dennis drove them to Ricky's Dockside, a bar in Little River. R. 322, l. 18 – 323, l. 8; R. 348, ll. 5-8; R. 716, ll. 20-25.

When they arrived at Ricky's Dockside, Appellant and Antoinette sat at the bar. Green got them all drinks. Green was back and forth between the bar and the pool tables while Appellant and Antoinette talked at the bar. Green wanted the women to "to get to know each other." R. 717, ll. 3-21. They stayed at Ricky's Dockside for about forty-five minutes to an hour. R. 718, l. 22 – 719, l. 1. Each of them had about two drinks. R. 718, ll. 12-21.

After Ricky's Dockside, they went to Thee DollHouse, a strip club in North Myrtle Beach. R. 350, ll. 1-5; R. 376, l. 24 – 377, l. 1. Green drove, Antoinette sat in the front passenger seat, and Appellant sat in the backseat. R. 719, ll. 22-23. They stayed at Thee DollHouse for about an hour and a half to two hours. R. 351, ll. 2-5; R. 722, ll. 4-9. They each had at least two to three drinks there. R. 721, l. 24 – 722, l. 3. Antoinette claimed Appellant "c[a]me on to [her]" while they were at Thee DollHouse and tried to kiss her while the women were in the bathroom. R. 351, l. 12 – 352, l. 1. While Antoinette was "open" to having a three person relationship with Appellant and

Green, she was "uncomfortable" when Appellant tried to kiss her because they had just met. R. 352, ll. 2-16; R. 370, l. 1 – 371, l. 8. However, the women were "laughing and talking and flirting" the "whole night." R. 725, ll. 9-12.

They eventually left Thee DollHouse around 4:00 am and went to Denny's, a diner in North Myrtle Beach. R. 352, l. 20 – 353, l. 5. Appellant reminded Green that he "promised" her they would not be "out all night." This agitated Green. R. 722, ll. 10-19. When they arrived at Denny's, Appellant and Antoinette went straight to the bathroom. R. 355, ll. 2-12; R. 723, ll. 6-22. Antoinette had told Appellant about her nipple piercings while they were at Thee DollHouse and Appellant wanted to see them. R. 372, ll. 18-20; R. 722, l. 25 – 723, l. 15. The women were in the bathroom for so long (twelve minutes) that Green "came and knocked on the door." R. 355, ll. 10-17; R. 373, ll. 15-18; R. 723, l. 23 – 724, l. 4. When they finally came out, Green asked them what "the F" they were doing and what took so long. R. 357, ll. 1-4.

The group stayed at Denny's for about forty-five minutes. R. 177, ll. 17-19. The waitress who served the three testified Appellant and Antoinette seemed to "still [be] having a good time." R. 832, l. 19 – 833, l. 1. However, Green "seemed tired and a little bit aggravated." R. 833, ll. 2-5. He appeared "ready to leave." R. 833, ll. 2-5. Antoinette confirmed that "by a certain point" Green "was ready to go." R. 359, ll. 2-4. The waitress did not notice any "tension" among the group nor did she hear any of them raise their voice or be disrespectful. R. 833, ll. 9-17. She had no reason to believe there was any "animosity or hostility going on." R. 834, ll. 2-11. Antoinette likewise stated there was no "arguing or hostility" at the table. R. 358, ll. 22-24.

Appellant recalled that while they were sitting at the table, Green "said something about me [Appellant] being disrespectful." R. 726, ll. 16-18. In response, Appellant told Green "you're acting like a B-I-T-C-H, and he called me one, and I said your mom is one, and he said, your dad

is one." R. 726, ll. 18-20. Appellant explained, "[W]hat I said to him is something that I say all the time whenever he says that to me, I say your mother, . . . but he's never made that remark about my dad." R. 726, ll. 20-23. Taken aback, Appellant called her father and gave the phone to Green. Green "just . . . mumbled . . . something and then slid the phone back across the table." R. 726, l. 25 – 727, l. 3. Appellant then quickly texted her father an explanation as to why she called. She told him Green was "showing out" because commenting about her father was "not something he would have normally done or said." Appellant thought Green was acting different because Antoinette was around.[1] R. 727, ll. 5-12.

When they left Denny's, Appellant got into the back seat of the car where she had been sitting all night. Antoinette sat in the front passenger seat and Green drove. R. 731, ll. 3-14. Appellant denied hitting Green when they first got into the car. R. 731, ll. 15-24. She testified, "I would not hit him because he would hit me back." She elaborated, "I would never swing on him first. Like I just wouldn't. Because I would get beat up. . . . Or dragged or whatever he felt like he was gonna do." R. 731, l. 25 – 732, l. 9. Conversely, during the state's presentation of evidence, Antoinette claimed that when they first got into the car in the Denny's parking lot, Appellant hit Green on "the side of his face" with a "closed fist." R. 362, ll. 2-17. Antoinette further claimed Appellant told Green "you shouldn't have married me; you should've married her [Antoinette]." R. 362, ll. 18-22.

Green drove Antoinette straight home. R. 362, ll. 3-20. On the way to her house, the group was listing to music. Antoinette was singing. R. 732, l. 25 – 733, l. 12. When Antoinette got out

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[1] The state admitted the content of the text message during its case in chief. Appellant allegedly texted her father at 5:06 am on July 7, 2017. It read, "He's showing off for somebody else. I told him he ain't no man and called him a bitch. He says my daddy is a bitch. So I called you so he could say it to you himself. He hangs up the phone. The next time I bring this muthafucker to Baltimore [you] better beat his ass." R. 514, ll. 8-21.

of the car at her house, she "lift[ed] the seat up" and asked Appellant "if she wanted to get in the front seat." R. 363, l. 19 – 364, l. 2; R. 732, ll. 13-20. Appellant told her no. R. 364, ll. 1-7; R. 732, ll. 16-20. Antoinette "shrugged her shoulders and put the seat back and said bye and closed the door." R. 732, ll. 23-24. At trial, Appellant explained that at the time she was sitting with her back up against the window on the passenger side and her legs across the backseat. Her feet were behind the driver's seat. R. 732, ll. 20-22; R. 733, l. 22 – 734, l. 6.

After they dropped Antoinette off, Green "started fussing and calling [Appellant] names." Appellant was "like, yeah, yeah, whatever." R. 734, ll. 13-17. Appellant then reached for her "auxiliary cord" that was plugged into the radio at the front of the car. She explained that her auxiliary cord was "a white cord that goes from the radio to your phone and you play music from your phone, and it plays through the radio in the car." R. 734, l. 13 – 735, l. 11. As Appellant was reaching for the cord, Green, who knew Appellant "was about to turn the music on and turn it up loud, like to ignore him," grabbed Appellant's arm, hit the brake, and pulled her into the front of the car. R. 735, ll. 12-25. When Green hit the brakes, Appellant "flew forward" and hit her head on the glove compartment. R. 736, ll. 3-7. Appellant was "pretty much down on the floor." R. 735, ll. 17-18. Her head and shoulders were down on the floorboard of the front passenger seat while her legs and feet were across the center console between the driver's seat and the front passenger seat. R. 736, ll. 3-11.

Green stopped the car in the middle of the road not that far from Antoinette's house. R. 736, ll. 19-23. After pulling her forward, Green began hitting Appellant on "any part of [her] body that was available to be hit," including her head, shoulders, and legs. R. 736, ll. 13-18. Appellant was trying to get up. She used her right arm, which was "down on the floor underneath [her] body," to try to push herself back up. R. 737, ll. 5-9. Every time Appellant would push herself

up, Green would hit her on the head and everything "would . . . be black." R. 737, ll. 5-11. She repeatedly asked Green to stop, but he never stopped. R. 738, ll. 17-24.

Appellant could not remember how long this went on. R. 737, ll. 11-12. She was "reaching" and "swinging" with her left arm. R. 737, ll. 9-13. Green continued to hit her. R. 740, ll. 3-9. Eventually, she located a knife in the cupholder of the center console. R. 737, ll. 12-14. She grabbed it with her left hand and "swung" it toward Green "like get off me, stop hitting me." R. 737, ll. 12-15; R. 740, ll. 3-9. Appellant knew of no other way to stop Green from beating her. R. 738, l. 25 – 739, l. 25. She was trapped in the car with him and had nowhere to go. She was afraid for her "safety" and "well-being." R. 739, ll. 14-16.

Green continued to hit Appellant. After a while, he realized he had been stabbed and stopped. R. 740, ll. 3-10. Appellant was able to regain her "balance" and "get up in the front." R. 740, ll. 10-11. Surprised, Green said "baby, I can't believe you stabbed me." R. 740, ll. 11-12. Appellant was crying and told Green she was sorry, that she had told him to stop hitting her. Green also apologized and tried to calm Appellant down, who began to panic when she saw the blood. R. 740, ll. 12-23. Green took the knife from Appellant and told her she "needed to take him to the hospital." R. 740, l. 16 – 741, l. 7. The knife was never recovered. The last time Appellant saw it was when Green took it out of her hand. R. 747, ll. 2-6.

Somehow, although Appellant could not remember how, Appellant and Green switched seats and Appellant drove Green to the hospital. R. 741, l. 11 – 742, l. 1. The two "talked all the way to the hospital" and came up with a "plan" of what "to tell the police." R. 743, ll. 11-18. The plan was for Appellant to tell the police that Green "stopped at a store" and Appellant did not know what happened. R. 743, ll. 19-22. Green came up with this story because "he didn't want [Appellant] to get in trouble." R. 743, ll. 23-25.

Appellant did as Green instructed. She told officers at Seacoast Medical Center and later at Grand Strand Medical Center after Green was transferred, that Green stopped at a gas station in North Myrtle Beach to purchase cigarettes and when he returned to the car he said he had been stabbed and asked her to take him to the hospital. R. 408, l. 10 – 414, l. 5; R. 444, l. 24 – 445, l. 2; State's Exhibit No. 1 (DVD Martin Bodycam); State's Exhibit No. 14 (DVD Beaudoin Bodycam); State's Exhibit No. 23 (Voluntary Statement); State's Exhibit No. 33 (DVD Franklin Bodycam). Appellant did not think Green was going to die. They "had a whole conversation on the way to the hospital" and Green "kept saying he was okay." R. 744, ll. 11-14. A nurse at Grand Strand later told Appellant that Green was stable. R. 745, ll. 12-17.

Around midday, a detective told Appellant she should leave the hospital and "get some rest" since she had been up all night. R. 610, ll. 17-25; R. 625, l. 17 – 626, l. 8. Appellant returned to the condo her mother had rented. While she was there, an officer arrived and told her Green had passed. R. 626, ll. 9-17. He ultimately died from two stab wounds to the right chest, which caused massive blood loss. R. 593, ll. 1-2; R. 594, ll. 3-17; R. 595, ll. 2-19.

After being informed of Green's death, Appellant left Myrtle Beach with her mother, who was scheduled to leave that day, and, with permission from law enforcement, traveled to Orangeburg, where her grandmother lived. R. 626, l. 18 – 627, l. 2. The next day, July 8, 2017, Detectives Gregory Lent and Jack Johnson, with the Horry County Police Department, traveled to Orangeburg to interview Appellant. R. 616, l. 24 – 617, l. 2. They already had a warrant for her arrest. R. 627, ll. 4-6. The detectives picked Appellant up from her grandmother's house and took her to the Orangeburg County Sheriff's Office to be interviewed. R. 627, ll. 7-20. They did not tell her they already had a warrant. R. 627, ll. 7-12.

During her interview with Johnson and Lent, Appellant was very emotional and did not provide a lot of details. State's Exhibit No. 89 (DVD Matthews Interview). She frequently stated, "I don't know." State's Exhibit No. 89 (DVD Matthews Interview). She told Lent that Green stopped in the middle of the road. It was dark. Green hit her. State's Exhibit No. 89 (DVD Matthews Interview). She ultimately struck him with the knife. State's Exhibit No. 89 (DVD Matthews Interview).

Appellant presented the testimony of Whitney Danso, a clinical psychologist. R. 784, ll. 6-13. Danso was qualified as an expert in clinical psychology without objection. R. 787, l. 24 – 788, l. 3. She determined Appellant met the diagnostic criteria for posttraumatic dress disorder (PTSD). R. 791, ll. 19-24. It was apparent that Appellant "had been a victim of domestic violence." R. 793, ll. 2-3. Green "slowly developed control over different aspects of [Appellant's] life." R. 793, ll. 20-22. Appellant and Green's relationship was characterized by "escalating violence." R. 794, ll. 9-17. Over time, Green "became increasingly more violent" toward Appellant. For example, "blows started being directed to her head versus . . . being slapped or smacked." R. 794, ll. 10-13. Appellant feared Green. R. 799, ll. 17-19.

Appellant also presented the testimony of Christopher Robinson, who was qualified as an expert in crime scene reconstruction without objection. R. 844, l. 20 – 845, l. 1. Robinson reviewed all of the evidence in the case, including the police reports, the autopsy report, Appellant's interviews with law enforcement, and photographs from the "crime scene" and autopsy. R. 846, l. 17 – 847, l. 9. He also listened to Appellant's testimony before the jury. R. 851, ll. 10-11. Based on all the evidence, Robinson concluded that a "serious struggle" occurred inside the car. R. 850, ll. 10-24. "A vast majority" of Appellant's fingernails were broken off and found scattered throughout the car, mostly in the front. R. 850, l. 10 – 851, l. 21. A shoeprint was found on the

back seat of the car "as if someone were pushing off of the seat with their foot." R. 853, ll. 21-24. Green had bruises on the knuckles of his right hand. R. 847, ll. 15-22. Appellant had "scratches and abrasions" on the left side of her face. R. 848, ll. 1-3. Appellant also had bruises on the palm of her left hand. R. 848, ll. 9-12. Robinson maintained that in order to cause such bruising, Appellant must have gripped an object "extremely tight, like she was holding it for dear life." R. 849, ll. 14-20. Lastly, Robinson testified that Green's wounds were not very deep. R. 852, l. 23 – 853, l. 16. The wounds "were shallow in the sense" that not even half the blade entered Green's body. R. 856, ll. 6-10. Robinson described the wounds as "jab wounds . . . like stop, get off me, just like little poke wounds, if you will." R. 853, ll. 16-20. Robinson concluded that Appellant's account of what occurred was "forensically plausible." R. 856, ll. 1-5. None of the physical evidence was inconsistent with her account of what occurred. R. 856, ll. 15-21.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Niles, 412 S.C. 515, 521, 772 S.E.2d 877, 880 (2015) (citing State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). "Thus, this Court is bound by the trial court's factual findings unless the appellant can demonstrate that the trial court's conclusions either lack evidentiary support or are controlled by an error of law." Id. (citing State v. Laney, 367 S.C. 639, 644, 627 S.E.2d 726, 729 (2006)).

"The trial court must determine the law to be charged based on the evidence at trial." State v. Smith, 363 S.C. 111, 115, 609 S.E.2d 528, 530 (Ct. App. 2005) (citing State v. Crosby, 355 S.C. 47, 51, 584 S.E.2d 110, 112 (2003)). "When the record contains no evidence to support it, a voluntary manslaughter jury charge should not be given." Id. (citing State v. Cooley, 342 S.C. 63, 67-68, 536 S.E.2d 666, 668-669 (2000)).

ARGUMENT

The trial judge erred by charging the jury on the lesser included offense of voluntary manslaughter when there was no evidence Appellant stabbed the decedent, her husband, in the sudden heat of passion, rather the evidence showed Appellant either acted with malice or in self-defense, and where Appellant was prejudiced because the jury compromised and found her guilty of voluntary manslaughter.

Relevant Facts

During the charge conference, the state requested the trial judge charge the jury on the lesser included offense of voluntary manslaughter. R. 956, l. 24 – 957, l. 1. The assistant solicitor asserted there was evidence the decedent was "flirting" and "with another woman that night." R. 957, ll. 1-3. Such evidence the solicitor contended "is a provocation that could make a person be so overcome with rage and jealousy that they basically acted on impulse as required in . . . State v. Sims, 426 S.C. 115."[2] R. 956, l. 24 – 957, l. 7.

Defense counsel objected to the charge. He argued there was no evidence of sudden heat of passion or of "a sufficient legal provocation to reduce the charge from murder to manslaughter." R. 957, ll. 14-18.

The judge immediately granted the state's request. He determined there was "evidence in the record that it could've occurred based on the heat of passion and sufficient legal provocation." R. 957, l. 23 – 958, l. 2.

Defense counsel took exception to the judge's ruling. R. 958, ll. 19-25. Also citing to State v. Sims, 426 S.C. 115, 825 S.E.2d 731 (Ct. App. 2019), counsel again asserted that there was no evidence of sudden heat of passion or sufficient legal provocation to support the charge. R. 959, l.

[2] State v. Sims, 426 S.C. 115, 825 S.E.2d 731 (Ct. App. 2019).

4 – 960, l. 12. He argued, "I don't see the evidence of sudden heat of passion. There has been no testimony about that and I know that the state is trying to find some way to . . . show that there was some sudden heat and anger and passion. Not one single witness said, oh, she was all angry and literally ready to stab him. Nobody said that . . . oh , she was just out of control . . . I just don't see the sudden heat and passion, and I don't see the sufficient legal provocation . . ." R. 959, l. 25 – 960, l. 12.

In response, the assistant solicitor argued, "I would just add that the legal provocation in this case is probably the most classic, lawful example of voluntary manslaughter. Seeing your spouse involved with another person, seeing your spouse romantic with another person, having that or seeing your lover, whether it was the man [Green] or the woman [Antoinette] that she was upset about, seeing your lover involved with another person. And the heat of passion, we believe, can be shown based upon the testimony about the jealous rage that was discussed by the . . . crime scene expert of the defense." R. 960, l. 17 – 961, l. 1. The solicitor further maintained that Appellant's "last statement to Detective Lynch[3] [sic] was, I don't know how I stabbed him, I just stabbed him. That was the equivalent of that last statement. That is in and of itself showing that she was acting under the uncontrollable impulse, which *Sims* talks about, and for that reason, Your Honor, I believe voluntary manslaughter is appropriate to charge." R. 961, ll. 8-15.

Correctly, defense counsel emphasized, "Your Honor, saying that you don't know what happened is not the same as sudden heat and passion. It is not the same thing in any sense of the word." R. 961, ll. 16-18. Lastly, counsel argued, "The solicitor can't have it both ways. On the one hand they're saying, okay, she just stabbed him for no reason. But then at the same time say,

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[3] The solicitor likely meant Detective Gregory Lent as Appellant did not give any statements to Detective William Lynch. See R. 505, l. 4 – 540, l. 6; R. 608, l. 17 – 643, l. 22.

well, yeah, but we want to hedge our bet so we'll say, well maybe if she didn't do it because she was just mad at him, and she just stabbed him for no reason, then maybe she did it because she was - - she was in a sudden heat and passion. There is nothing in this record that says that." R. 961, l. 23 – 962, l. 5.

The judge stood by his earlier ruling. He found there was evidence to support the charge, asserting, "Again, you go back to the statement testified and what the defendant said at . . . the Dockside. Then, you combine that with her text message to her father; how she acted at that time; testimony she hit the defendant [sic]; testimony that the knife grabbing; plausible explanation; self-defense or jealous rage . . . the defendant testified that the victim hit her. Well, the jury could believe it's not self-defense, her actions after she got hit. So, all that indicates, along with all the other evidence, photographs, testimony of all the parties, and taking it all into consideration, indicates that the jury could believe sudden heat of passion based on sufficient legal provocation." R. 962, ll. 7-21.

The following morning, before closing arguments, the trial judge provided additional reasoning in support of his decision to charge voluntary manslaughter. He indicated that he was "referring to all of the evidence in the case" when he decided to charge voluntary manslaughter. R. 969, l. 21 – 970, l. 1. Without specifying how the evidence supported a charge on the lesser included offense, the judge cited to Antoinette's testimony that Appellant allegedly struck the decedent in the car immediately after they left Denny's and said "you should have married her and not me" as well as Appellant's refusal to get into the front seat after Green dropped Antoinette off at her house that morning. R. 970, ll. 1-12.

After the judge charged the jury, Appellant renewed her objection to the instruction on voluntary manslaughter. R. 1040, ll. 3-7. After deliberating for nearly five hours, the jury acquitted

Appellant of murder, but found her guilty of the lesser included offense of voluntary manslaughter. R. 1042, l. 9 – 1045, l. 16.

Discussion

The trial judge erred by charging the jury on the lesser included offense of voluntary manslaughter because there was no evidence Appellant stabbed Green in the sudden heat of passion, rather the evidence showed Appellant either acted with malice or in self-defense. Appellant was prejudiced because the jury ultimately compromised and found her guilty of this lesser included offense.

"Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." State v. Starnes, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010) (citing State v. Wharton, 381 S.C. 209, 214, 672 S.E.2d. 786, 788 (2009)). "Both heat of passion and sufficient legal provocation must be present at the time of the killing." State v. Sims, 426 S.C. 115, 131, 825 S.E.2d 731, 739 (Ct. App. 2019) (quoting State v. Sams, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014)). "A defendant is not entitled to a voluntary manslaughter charge merely because he was in a heat of passion." Starnes, 388 S.C. at 596-597, 698 S.E.2d at 608. "Conversely, a defendant is not entitled to voluntary manslaughter merely because he was legally provoked." Id.

In Starnes, our Supreme Court clarified the law regarding how a defendant's fear following an attack or threatening act relates to voluntary manslaughter. 388 S.C. at 597-599, 698 S.E.2d at 608-609; See Sims, 426 S.C. at 132, 825 S.E.2d at 740. The Court stated:

> We also have held that fear resulting from an attack can constitute a basis for voluntary manslaughter. See State v. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) ("[F]ear can constitute a basis for voluntary manslaughter."). Yet the presence of fear does not end the inquiry regarding the propriety of a voluntary manslaughter instruction. We have consistently held that **sudden heat of passion upon sufficient legal provocation is defined as an act or event that "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.*"** Pittman, 373 S.C. at 572, 647 S.E.2d at 167.[4] While the act or event "need not dethrone the reason entirely, or shut out knowledge and volition," **it must cause a person to lose control.** Id.
>
> We reaffirm 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. However, **the mere fact that a person is afraid is not sufficient, by itself, to entitle a defendant to a voluntary manslaughter charge. Consistent with our law on voluntary manslaughter, in 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.*** Succinctly stated, to warrant a voluntary manslaughter charge, the defendant's fear must manifest itself in an uncontrollable impulse to do violence.
>
> **A person may act in a deliberate, controlled manner, notwithstanding the fact that he is afraid or in fear.** Conversely, a person can be acting under an uncontrollable impulse to do violence and be incapable of cool reflection as a result of fear. The latter situation constitutes sudden heat of passion, but the former does not. Evidence that fear caused a person to kill another person in a sudden heat of passion will mitigate a homicide from murder to manslaughter—it will not justify it. This is the distinction between voluntary manslaughter and self-defense.

Id. (emphasis added).

"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) (citing State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 566 (1969)).

In Cook v. State, 415 S.C. 551, 555, 784 S.E.2d 665, 667 (2015), Cook objected to the state's request for a voluntary manslaughter instruction. The trial judge relied on the following facts in determining that a charge on voluntary manslaughter was supported by the evidence: (1)

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[4] State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007).

the defendant was in fear, (2) he shot the decedent twice, and (3) he stated "before I knew it, I fired a shot." Id. at 557, 784 S.E.2d at 668. However, our Supreme Court held Cook's actions did not suggest he was acting in the sudden heat of passion. Id. at 559, 784 S.E.2d at 669. The Court explained, "We do not believe the fact that Cook shot Victim twice or his statement 'before I knew it, I fired a shot' is evidence that Cook's fear manifested in an uncontrollable impulse to do violence." Id. at 558, 784 S.E.2d at 668. The Court further stated:

> Here, Cook stated he tried to walk away from Victim, but Victim kept cutting him off. The fact that Cook was trying to walk away from the conflict does not suggest Cook was incapable of cooling off. In addition, Bridges testified that Cook and Victim were talking softly and that he could hardly tell they were arguing. This too does not suggest that Cook was acting under an uncontrollable impulse to do violence as surely if one was so enraged to kill, one would not be talking softly with the victim right before the act. Further, at no point during Cook's statement does he indicate he lacked control over his actions. Accordingly, we believe the facts of this case suggest Cook shot Victim either with malice or in self-defense.

Id. at 557, 784 S.E.2d at 668.

Likewise, the Supreme Court concluded there was no evidence of sudden heat of passion in Starnes and, therefore, upheld the trial court's refusal to charge the jury on voluntary manslaughter. Starnes, 388 S.C. at 599-600, 698 S.E.2d at 609. Starnes and the two decedents, Bill and Jared, were engaged in a drug purchase with a fourth individual, Jody, at Starnes' home when Jared "pulled a gun on" Jody. Id. at 595, 698 S.E.2d at 607. Starnes testified Jared's action "scared" him, and he went into his bedroom to retrieve his gun. Id. at 595, 698 S.E.2d at 607. As Starnes exited his bedroom, "Bill said 'whoa' and was pointing a gun at him." Id. at 595, 698 S.E.2d at 607. Starnes then shot Bill and Jared. Id. On appeal, the Court acknowledged the evidence of Starnes' fear, but concluded there was no evidence Starnes was "out of control as a result of his fear or was acting under an uncontrollable impulse to do violence." Id. at 599, 698 S.E.2d at 609. The Court also held the evidence showed Starnes

"deliberately and intentionally shot Jared and Bill and that he either shot the men with malice aforethought or in self-defense." Id.

Similarly, in State v. Sims, this Court held there was no evidence Sims shot her husband, David, in the sudden heat of passion, and, therefore, agreed with Sims that the trial court erred by charging the jury on voluntary manslaughter. 426 S.C. at 137, 825 S.E.2d at 742. Sims testified that "she was in the bathroom alone when David entered with pliers and a knife and began calling her a liar." Id. Sims said David then "got physical with her over control of her phone." Id. David then began threatening her and taunting her with the knife. Out of fear, Sims grabbed a gun she had placed in the bathroom vanity. Id. "Even though she was afraid, Sims said she held the gun by her side and asked David to stop what he was doing, indicating she did not want to use the gun." Id. "Sims also told police she grabbed the gun hoping to 'scare' David so he would stop his threatening behavior, adding that she had never meant to shoot him." Id. at 138, 825 S.E.2d at 743. "According to Sims, David became even angrier, continuing to threaten her as she tried to back out of the bathroom." Id. "As she tried to back out, Sims testified that David lunged at her and 'my hand went up and I shot, and I shot out of reaction. I didn't think, nor did I ever want to do that, but it was a reaction because I was scared.'" Id. It was undisputed that Sims only shot David once. Id. "After shooting David, Sims immediately began administering CPR and called 911." Id.

Like the defendants in Starnes and Cook, this Court held "the only evidence in the record [was] that Sims deliberately and intentionally shot David and that she either shot him with malice aforethought or in self-defense." Id. Accordingly, the Court held the trial court erred by charging the jury on the lesser included offense of voluntary manslaughter because there was no evidence to support the charge.

Likewise, there was no evidence in this case that Appellant killed Green in the sudden heat of passion. Appellant testified that after they dropped Antoinette off, Green "started fussing" and calling her names. In an effort to ignore Green, Appellant reached for her auxiliary cord so she could play music from her phone. As Appellant was reaching up front, Green grabbed her arm, hit the brakes, and pulled her into the front of the car. When Green hit the brakes, Appellant "flew forward" and hit her head on the glove compartment. Appellant was "pretty much down on the floor." Her head and shoulders were down on the floorboard of the front passenger seat while her legs and feet were across the center console between the driver's seat and the front passenger seat. After pulling her forward, Green began hitting Appellant on her head, shoulders, and legs. Appellant tried to push herself up using her right arm. However, every time Appellant would push herself up, Green would hit her on the head. Appellant repeatedly asked Green to stop, but he never stopped. Appellant began "reaching" and "swinging" with her left arm while Green continued to hit her. Eventually, she located a knife in the cupholder of the center console. She grabbed the knife with her left hand and "swung" it toward Green "like get off me, stop hitting me." See State v. Niles, 412 S.C. 515, 523, 772 S.E.2d 877, 881 (2015) ("Because Niles . . . lacked the intent to harm the victim, we cannot see how a voluntary manslaughter charge would have been appropriate under these facts.").

Appellant knew of no other way to stop Green from beating her. She was trapped in the car with him and had nowhere to go. While acknowledging that she stabbed Green out of fear, Appellant never indicated that she lost control or was overcome with an uncontrollable impulse to do violence. See Starnes, 388 S.C. at 599, 698 S.E.2d at 609 ("A person may act in a deliberate, controlled manner, notwithstanding the fact that he is afraid or in fear."); Id. at 598, 698 S.E.2d at 609 ("[T]he fear must . . . cause the defendant to lose control and create an uncontrollable impulse

to do violence."); Cook, 415 S.C. at 557, 784 S.E.2d at 668 ("[A]t no point during Cook's statement does he indicate he lacked control over his actions. Accordingly, we believe the facts of this case suggest Cook shot Victim either with malice or in self-defense.").

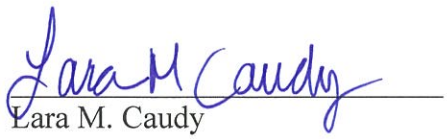
After stabbing Green, Appellant cried and told Green she was sorry, that she had told him to stop hitting her. Appellant immediately drove Green to the emergency room, speeding along the way, and helped him inside. See State v. Oates, 421 S.C. 1, 28, 803 S.E.2d 911, 926 (Ct. App. 2017) (finding "Appellant's behavior and words immediately after the shooting were relevant to his state of mind immediately before and during the shooting"). Accordingly, the only evidence in the record is that Appellant deliberately and intentionally stabbed Green and that she either stabbed him with malice or in self-defense. Charging voluntary manslaughter was error as there was no evidence Appellant was overcome with an uncontrollable impulse to do violence.

Respectfully, because there was no evidence Appellant stabbed Green in the sudden heat of passion, this Court should hold the trial judge erred by charging the jury on voluntary manslaughter, reverse Appellant's conviction and sentence, and remand for a new trial.

CONCLUSION

Appellant respectfully requests this Court reverse her conviction and sentence and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of June, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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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Lara M. Caudy
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589