

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CACR09-730

RUTH ANN LAGOY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** FEBRUARY 9, 2011

APPEAL FROM THE STONE COUNTY  
CIRCUIT COURT  
[NO. CR2008-2]

HONORABLE JOHN DAN KEMP, JUDGE

AFFIRMED; MOTION TO WITHDRAW  
GRANTED

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**ROBIN F. WYNNE, Judge**

Ruth Ann Lagoy appeals from her conviction on a charge of first-degree battery. Appellant was sentenced to ninety-six months' imprisonment, followed by sixty months' suspended imposition of sentence. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(k) (2010), counsel for appellant has filed a motion to withdraw, in which he argues that there would be no merit to an appeal in the case. A motion of this type must be accompanied by an abstract and brief listing and discussing all rulings adverse to appellant and explaining why there would be no merit to an appeal. Ark. Sup. Ct. R. 4-3(k). In an opinion delivered on June 23, 2010, this court ordered that the case be rebriefed due to deficiencies in the abstract. *Lagoy v. State*, 2010 Ark. App. 509. Counsel for appellant has now complied with the requirements of Rule 4-3(k). We hold that there would

be no merit to an appeal in this case and grant the motion to withdraw.

The only rulings adverse to appellant at trial were the rulings by the trial court denying appellant's motions for a directed verdict. At the conclusion of the State's evidence and again at the close of all of the evidence, appellant moved for a directed verdict, arguing that the State failed to prove that her actions were not justified. Both motions were denied by the trial court.

At trial, the victim, Donald Daum, testified that on December 31, 2007, he was walking to his mailbox, which is a mile walk round-trip. Daum had his dog and a camcorder with him. Daum testified that, as he was returning from the mailbox, he saw appellant's son coming toward him with a shotgun over his shoulder. As the two approached each other, Daum asked appellant's son how he was doing, to which he replied, "Not good." Daum stated that the boy wanted the camcorder, which Daum refused to give him. Then, according to Daum, the boy shot his dog twice, then pointed the gun at his belly and pulled the trigger, but the gun did not fire. The boy began hitting Daum with the shotgun while holding it by the barrel. Daum fell down and sustained a cut over his left eye. Daum testified that appellant approached during the fight, leveled a gun at him and fired, stating "Today is the day you'll die." The bullet struck Daum on the top of his head; he felt a "sting" as it struck him. Daum stated that he then got up and started back in the direction of his house.

Dennis Simons, an investigator with the Arkansas State Police, interviewed appellant, and a copy of the interview was played for the jury. In the interview, appellant states that she

was speaking with a friend outside of her home on the day of the incident when she heard shotgun blasts. Appellant, who was armed with a pistol, walked toward the sounds and saw Daum struggling with her son on the ground with the shotgun between them. Appellant gave the shotgun to her younger son, and told him to take it and call the sheriff. Daum got up and asked appellant, “What are you going to do about it now?” To which appellant replied, “Back off Don, somebody is going to get hurt.” Daum then stated, “I don’t think you got it in you” and started coming at appellant, at which point she pulled her gun and shot him. Daum was not armed when appellant shot him. After appellant shot him, Daum took a few steps back, turned, and walked toward his house.

The victim testified at trial that appellant shot him in the head without provocation, causing him injury. Although appellant stated in her taped statement that she shot the victim after he fought with her son and approached her in a threatening manner, the question of whether appellant’s actions were justified was one of fact for the jury. See *Humphrey v. State*, 332 Ark. 398, 966 S.W.2d 213 (1998). The record reveals that the jury was given an instruction on justification and appellant did not object to the instruction. As the issue of justification was one of fact for the jury, and the jury was properly instructed on the matter, an appeal on this issue would be without merit.

Appellant did provide the clerk’s office with her points for reversal. However, her points consist solely of a restatement of the evidence along with her contention that the State failed to prove that she committed the offense for which she was convicted. Her arguments do not reveal any meritorious issues for appeal. The judgment of the trial court is affirmed and

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counsel's motion to withdraw is granted.

Affirmed; motion to withdraw granted.

GRUBER and ABRAMSON, JJ., agree.