

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

Knox R. McMahon, Circuit Court Judge

Op. No. 2013-UP-152 (S.C. Ct. App. filed Apr. 10, 2013)

The State of South Carolina, Respondent,

v.

Andrew E. Torrence, Jr., Petitioner.

REPLY SUPPORTING CERTIORARI

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ARGUMENTS

At this stage, the question presented is a gateway question: should this Court grant certiorari? Should this Court offer Mr. Torrence the opportunity to argue that intentionally shooting a firearm ought not always preclude an involuntary manslaughter charge, or, should this Court reject that argument without further discussion? Mr. Torrence's view is probably predictable—he believes the Court should issue the writ and consider the argument. To support this view, Mr. Torrence has argued that South Carolina law has been somewhat inconsistent on this point, that North Carolina has rejected the State's argument, and that the State's argument potentially leads to absurd results.

The State disagrees, and it offers three reasons to support that disagreement. First, the State says Mr. Torrence's argument is not preserved for review. Second, the State says there is no inconsistency in South Carolina law. Third, the State says that its view is the better view. In the State's opinion, intentionally firing a weapon should always preclude an involuntary manslaughter charge.

Certiorari is a matter for the court's discretion, but in exercising its discretion, this Court should not be persuaded by the State's arguments. The first argument relies on an incorrect summary of the record. The second argument relies on an incorrect description of South Carolina jurisprudence. The third argument—whether the State's approach is the correct approach—goes to the ultimate issue in the case. This Court is certainly not bound to follow North Carolina's approach, but it ought to say something that North Carolina has rejected the State's argument as "invalid." *State v. Brewer*, 386 S.E.2d 569, 583 (N.C. 1989). This ought to cast some doubt on the claim that the State's view is obviously better.

All intentional acts are not created equal. Everyone ought to agree that there is a meaningful difference between deliberately raising a firearm and shooting at someone for the purpose of killing them and a decision to shoot that is made in an instant, based on a reaction to unusual circumstances, and occurs the moment before a struggle for the weapon begins. If a jury could find that the shooter did not intend to inflict serious injury or death—if the shooting lacks malice but shows reckless conduct that is criminally “stupid”—the jury, not the judge, should decide whether involuntary manslaughter is appropriate.

A. Contrary to the State’s Suggestion, the Record Reflects That Mr. Torrence Presented His Argument to the Trial Court.

The State’s preservation argument relies on an inaccurate description of the record. The State says that Mr. Torrence’s argument to the trial court was based on proximate cause. Specifically, the State says Mr. Torrence argued that the jury’s request to consider involuntary manslaughter meant that the jury felt the shooting did not proximately cause Mr. Chaplin’s death. See (Return, p. 6).

The record is reasonably clear. The relevant dialogue appears on page 621, from line 6 to line 20. During this exchange, Mr. Torrence’s lawyer suggested that the meaning of the jury’s note was that although the jury felt this shooting *was* the proximate cause of Mr. Chaplin’s death, the jury also believed this was not a case of *voluntary* manslaughter, which was the lowest crime available under the jury instructions. This dialogue is not ambiguous. The State’s interpretation takes that which is fairly lucid and renders it incomprehensible.

There are several different ways to phrase the argument Mr. Torrence’s lawyer was making. One way would be to say that *if* the jury determined that the shooting was the

proximate cause of Mr. Chaplin's death, and *if* the jury determined that Mr. Torrence shared the fault for creating these circumstances, Mr. Torrence was suggesting that the jury was boxed-in. Having disqualified self-defense, the jury would be inclined to find Mr. Torrence guilty of *some* crime, but the only options available under the court's instructions were murder and voluntary manslaughter. The note, according to Mr. Torrence's view, was at least some evidence that the jury was experiencing this sentiment and was concerned about the remaining offenses that were available. Voluntary manslaughter is an intentional killing. See *State v. Smith*, 391 S.C. 408, 412-13, 706 S.E.2d 12, 14-15 (2011). The jury may have believed that the last-minute decision to fire was more a reaction than a deliberate decision.

Mr. Torrence's theory of this case was consistent at trial. He argued that this shooting was based on fear and instinct, that he brought the gun only as a show of force, and that he shot only at the last moment, as a struggle for the gun was beginning or about to begin. See (App.pp.55, 61-62) (Mr. Torrence's reply brief, arguing this point and citing to the trial transcript). This is the same argument he has made throughout this appeal, and this either encompasses involuntary manslaughter or it does not. The trial judge thought it did not, because he responded to this argument by saying that he would not charge involuntary manslaughter. See (R.p.512, line 18 - p.513, line 5). There is no procedural bar to the Court's review of this issue. It was raised to the trial court, and the trial court rejected it.

B. Contrary to the State's Suggestion, South Carolina Law Is Not Completely Consistent with Respect to the Question Presented.

Mr. Torrence's petition attempted to give a fair description of South Carolina's current and past approaches to this aspect of involuntary manslaughter. As the State's return

correctly observes, see (Return, p.10), several South Carolina cases suggest that when a defendant admits firing a gun, an involuntary manslaughter charge is not appropriate. These cases include *State v. Pickens*, *State v. Gibson*, and *Douglas v. State*. All of these cases were cited in Mr. Torrence's petition. (Petition, p.5).

Here is the problem: the root of this principle is unsound. South Carolina courts have justified this principle by saying that "the act" must be unintentional. This comes from *State v. Morris*, a Court of Appeals decision that sheds no light on the meaning of the phrase "the act" must be unintentional. See 307 S.C. 480, 483, 415 S.E.2d 819, 821 (Ct. App. 1991).

This cannot mean that the act of pulling the trigger must be unintentional, because two sentences before this statement, the *Morris* decision cites a case in which the defendant admitted pulling the trigger and was convicted of involuntary manslaughter. See *Id.* at 483, 415 S.E.2d at 821 (citing *State v. Quick*, 168 S.C. 76, 167 S.E. 19 (1932)). Here again, it is hard to see room for ambiguity. This is an accurate description of what *Morris* says, and it is an accurate description of what *Quick* did.

The *Quick* decision is not an outlier. This Court's decision in *State v. McLaughlin* involved a defendant who admitted pulling the trigger and was convicted of involuntary manslaughter. See 208 S.C. 462, 38 S.E.2d 492 (1946). This Court overruled *McLaughlin* in *State v. Pickens*, but that overruling took as a given the idea that a defendant who admits shooting a gun cannot claim involuntary manslaughter. See *Pickens*, 320 S.C. 528, 531-32, 466 S.E.2d 364, 366 (1996) (citing *Morris* and *State v. Bozeman*).¹

¹Like *Morris*, the *Bozeman* decision reasons that intentionally firing a weapon precludes an involuntary manslaughter charge. 307 S.C. 172, 414 S.E.2d 144 (1992). No authority is cited for this proposition. The principal reason given to support this holding is that firing a

This is circular reasoning. This principle that “the act must be unintentional” has been used over and over with no regard for whether it is ever *possible*, under the circumstances of the individual case in question, to intentionally fire a gun yet still meet the definition of involuntary manslaughter.

But more to the point, not only has the *Quick* decision *not* been overruled, it was favorably cited by the same decision—*Morris*—that allegedly overruled it. Mr. Torrence’s argument is obviously out of step with the tenor South Carolina’s recent decisions, but it should be equally clear that *Quick* offers it some support and that this modern trend in the law has a questionable origin. The court does not generally give a favorable citation to a case that it is overruling, and because *Quick* is a Supreme Court decision, the *Morris* court lacked the authority overrule it.

C. Contrary to the State’s Suggestion, a Rule That Always Disqualifies Involuntary Manslaughter When Someone Admits Firing a Gun Is Absurd and Leads to Absurd Results.

Everyone ought to agree on part of Mr. Torrence’s argument. Involuntary manslaughter cannot be disqualified in every case where someone admits firing a gun. Consider the hypothetical of two people who are taking turns shooting at a street sign—an unlawful act—and a ricochet causes the bullet to unexpectedly (but foreseeably) change direction, strike the shooter’s companion, and kill him.

Under those facts, there is no tenable claim of self-defense, murder, or voluntary manslaughter. The only options are to excuse the killing as an accident or convict the

gun is a dangerous act. That is obviously true, but it does not follow that involuntary manslaughter should *always* be disqualified whenever someone admits firing a gun.

shooter of involuntary manslaughter for the reckless use of a dangerous instrumentality. It seems unfair for a rule to summarily bar all criminal liability for this killing, but disqualifying involuntary manslaughter for all intentional shootings does precisely that.

Consider also the circumstances that were present in *State v. Causer*, a case where a group of boys were hunting, one boy admitted pointing a gun at another, and the gun was accidentally fired. 87 S.C. 516, 70 S.E. 161 (1911). *Causer* is instructive in that it illustrates the problem of using the “dangerousness of the activity” as the test. Just as a reasonable person might say that firing a gun is a dangerous activity, so too might a reasonable person say that pointing a gun at someone else—which is usually unlawful—is a dangerous activity. Saying that something is “dangerous” is a platitude. Used in isolation, it tells us nothing about why the rule should include one case but exclude the other.

This is an area where categorical exclusions cannot apply. The context of each case is crucial. Involuntary manslaughter was designed to encompass unintentional killings that lack malice, but should have some criminal liability. It was designed to cover unintentional killings that are “criminally stupid.”

Whether this is an option in an individual case should depend on the facts of the individual case. There are shootings that are deliberate, intentional, and made with the purpose of inflicting harm (murder, voluntary manslaughter, or self-defense), and there are also decisions to shoot that are instinctive, reflexive, and made as a reaction during a brief window presenting extreme and unusual circumstances. Everyone ought to agree that as to the latter category, involuntary manslaughter is not so obviously disqualified. This is why the North Carolina courts have rejected the inflexible argument that the State proposes.

If a reasonable jury could find that Andrew Torrence shot Zach Chaplin as a reaction—a defensive instinct as Chaplin charged Torrence and dove for his gun—there is no lucid justification for barring an involuntary manslaughter charge. Under certain circumstances, it is possible to intentionally fire a weapon—even to intentionally fire a weapon at another person—without the purpose and intent of harming or killing them. To hold otherwise is to usurp the jury’s role of deciding foreseeability and reasonableness, and it puts someone like Mr. Torrence in the awkward position of having to wait to shoot until a physical struggle for the gun begins, or else decide to surrender the gun to his charging attacker. A jury might reject involuntary manslaughter and find Mr. Torrence guilty of a more serious crime, but the jury should have the option.

CONCLUSION

When the facts are viewed in the light most favorable to Mr. Torrence, this is dangerously close to a “struggle for the gun” case. The only reason it has not been argued that way is that Mr. Torrence has always admitted that he pulled the trigger. This is not saying much. Guns do not shoot themselves.

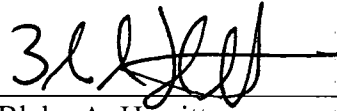
All intentional acts are not created equal. There is a difference between deliberately shooting a gun at somebody, perhaps even for the specific purpose of injuring or killing them, and firing a gun without such intent. This was the underlying rationale of the conviction in *State v. Quick*, and *Quick* has never been overruled. Mr. Torrence may have intentionally pulled the trigger, but that does not mean that his actions were not also reckless.

Because there is a conflict in authority, and because the question is fairly debatable, Mr. Torrence respectfully submits that the question presented is a question worth

considering. He therefore requests that this Court exercise its discretion to grant certiorari and review his conviction.

August 8, 2013

Respectfully submitted,



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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served
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