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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

Opinion No. 6123

THE STATE,

RESPONDENT,

V.

QUAYSHAUN XZANDER CLARK,

APPELLANT

APPELLATE CASE NO. 2022-000962

PETITION FOR REHEARING

On September 24, 2025, this Court issued an opinion in the above referenced matter concerning the propriety of charging the jury on the lesser included offenses of involuntary and voluntary manslaughter in connection with the above referenced matter. Pursuant to Rule 221(a), SCACR, Quayshaun Xzander Clark requests that this Court grant rehearing on both issues based upon the arguments and facts set forth below. Appellant respectfully asserts that this Court's opinion misapprehends both the facts and the law that would support both charges under the facts presented to the jury.

As to Involuntary Manslaughter.

As to the Court's ruling that the Record lacks any evidentiary support for a jury charge on involuntary manslaughter, appellant concedes that his *initial* shots fired were voluntary and in self-defense, which this Court's Opinion properly ruled removes involuntary as an appropriate charge for the initial discharge of appellant's firearm, *unless* such discharge was deemed reckless. This Court's Opinion failed to address whether, in returning fire in the manner presented here (firing multiple rounds towards his assailant and at a home with potential bystanders and occupants in danger) constituted such reckless conduct that involuntary manslaughter would apply since appellant was lawfully engaged in self-defense but did so in a reckless manner. See R. 1389. This is a version of the imperfect self-defense argument that has not been acknowledged to date in South Carolina but logically flows from the definition of involuntary manslaughter. *See* State v. Scott, 414 S.C. 482, 779 S.E.2d 529 (2015). In contrast to Scott, where there was no evidence that Scott acted with reckless disregard for the safety of others, in the present case the solicitor argued at length on the reckless nature of appellant's actions in his argument to the jury that self-defense would not apply:

> Number two and three, would a man of ordinary prudence, firmness and courage act in this way? You know, you heard the testimony of that Secret Service agent, Agent Beeler, early in the case last week. He has guarded presidents and vice presidents for over twenty years. Multiple, multiple presidents during his work for the Secret Service. And even when guarding a president in imminent danger, you identify your target, you take cover, you don't spray fifteen rounds in a confined neighborhood where he knows that homes are directly in the vicinity of his target. He's firing at and into that dwelling intentionally and willingly because he wants to hit anybody over there.

R. p. 1280, ll. 4 – 16.

For self-defense to apply, all four elements must be present. *See* State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010) ("It is an axiomatic principle of law that the defense has not been established if any one element is disproven."). The jury was thus able to reject self-defense based solely on its belief that appellant was reckless in the discharge of his firearm and in the way he engaged his assailants. It logically follows that involuntary manslaughter should have been charged since the jury could have believed all the elements of self-defense were present except that the response was reckless. As this Court noted in its Opinion in this case, involuntary manslaughter applies when one acts lawfully but with a reckless disregard for the safety of others. As there is evidence in the Record supporting that very theory, as opposed to the record before our Supreme Court in Scott, the charge was appropriate and should have been given. It is fundamentally unfair to allow the jury to reject self-defense on the ground that some of the shots appellant fired were reckless and, in the same breath, prevent the jury from considering that reckless conduct may justify a verdict of involuntary manslaughter as opposed to murder.

Moreover, even if this Court rejects that evidence supporting a finding of recklessness in the intentional discharge of a firearm in self-defense falls within the scope of involuntary manslaughter, the Record also contains evidence that some of the shots fired by appellant were reflexive and unintentional. Appellant described his emotional and physical state during the shootout:

> Q. Okay. Can you describe a little bit how you felt in that moment, please?
>
> A. It was more like I kind of -- I was scared and lost, my train of thought, almost like everything around me just kind of -- I don't know. Like it was Like just kind of like a blur.
>
> Q. Okay. So a blur. Did your hands tense up?

A. Yeah.

R. 1177, ll. 3 – 10. The Record contains appellant's testimony that he tensed and lost focus on the events, further supporting that at least some of the rounds he fired were involuntary. Again, the state during closing argument focused the jury on the fact that it did not matter which shot struck the victim, the first or the last, when pushing the jury to find malice aforethought:

> I submit there is sufficient evidence in this case knowing that he's armed, knowing that this is a planned shootout, that if he had only fired one bullet and that bullet enters that home and takes 's life, that is malice aforethought, but it's not one bullet or two or three or four or five. It's fifteen. Over and over and over again he has the intent and the mindset to fire that gun and he knows where he's firing it.
>
> Malice can also include conduct showing a total disregard for human life. There can be no greater manifestation of malice in the form of total disregard for human life than this. Twenty homes at Rocky Lane. Twenty homes less than a football field apart is Lot 7 from where he is. Fifteen rounds go out. A total disregard for human life and the safety of those moms, those children, those families in their own homes where they should have been. All those other things you can also consider as evidence of malice; that he fled the scene, that he concealed evidence, but it goes back to this.

R. p. 1291, l. 16 – 1292, l. 10. The jury was specifically told that it did not matter which of the numerous rounds appellant fired was the fatal one, as his malice traveled with each bullet. The same logic applies when at least some of the rounds are fired without intent to fire the weapon, due to involuntary tension on the trigger or losing conscious thought of one's actions. The jury was entitled to consider that at some point in the chaotic shootout, appellant lost control and at least some of the shots fired were involuntary in nature. As there is some evidence in the Record that factually supports that conclusion, this Court's Opinion failed to address the impact of appellant's switch from voluntarily pulling the trigger when the shootout started to his

involuntary actions that resulted from the stress of the moment. Appellant described his reaction to the chaotic and stressful scene:

> Q. Okay. And while you're shooting at him, are you scared?
>
> A. Yeah, very.
>
> Q. Have you ever been shot at before?
>
> A. No, ma'am.
>
> Q. Have you ever been trained in what you're supposed to do if someone shoots at you?
>
> A. No, ma'am.

R. 1176, ll. 18 – 25.

As our Supreme Court warned in State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003), the fact that evidence in the Record would contradict or not support an involuntary action does not negate that evidence and the jury charge should be given based upon the presence of the evidence, not the weight provided by the reviewing court or the trial judge, when the record is reviewed as a whole:

> In our view, the only evidence which appears to directly support the Court of Appeals' ruling is Crosby's statement to police in which he stated he closed his eyes and pulled the trigger. However, this ignores the fact that Crosby immediately added that he didn't even know he had pulled the trigger. The effect of the Court of Appeals' holding is that if there is any evidence a shooting was intentional, all evidence from which any other inference is may be drawn is negated. This is not the law of this state. *State v. Hill*, 315 S.C. 260, 433 S.E.2d 848 (1993) (charge must be given if there is any evidence to support it; trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence). We hold Crosby was entitled to a jury charge on the law of involuntary manslaughter.

Crosby, 355 S.C. at 53, 584 S.E.2d at 112–13.

This case mirrors Crosby in that there is at least some evidence in the Record that some of the shots fired by appellant were involuntary, and this Court's Opinion has taken pieces of contrary testimony to negate the impact of that evidence rather than look for its existence. This Court should reconsider its Opinion and find that the trial court erred in failing to charge involuntary manslaughter.

As to Voluntary Manslaughter.

This Court's opinion seems to accept appellant's testimony that he was actively engaged in lawful self-defense when he initially fired his weapon as excluding a charge based upon acting with sudden heat of passion upon sufficient legal provocation. This holding focuses solely on the testimony of appellant, which this Court's Opinion apparently deems as the only evidence available to the jury to find that he was acting under sudden heat of passion upon sufficient legal provocation. However, the evidence before the jury was that someone other than appellant fired the initial shots, and that the scene was tense and chaotic. R. 609, l. 1 – 610, l. 22. That multiple firearms were involved. R. 609, l. 1 – 610, l. 22; 1389. Numerous people, both as bystanders and participants, were involved. R. 609, l. 1 – 610, l. 22; 1175, l. 3 – 1176 l. 25; 1389. Appellant claimed he fired what he thought may have been 10 to 12 times in the direction of his assailants until the weapon was empty. R. 1177, ll. 12-23. The Record actually shows fifteen rounds were fired by appellant's weapon. R. 985. Even after he ran out of ammunition in his gun, appellant still heard shooting. R. 1178, l. 1 - 1179, l. 15; 1216, ll. 1-3. Appellant's frantic behavior and the manner in which he discharged his firearm support a finding of sudden heat of passion. Even after leaving the scene, appellant had to drive around to calm down and regain his composure. R. 1179-80.

The jury was free to believe some or all of appellant's testimony. The jury was free to believe, for example, that he was initially entitled to act in self-defense since there is no dispute that he did not fire first. However, the jury was likewise free to reject appellant's testimony that he continued to fire multiple rounds towards occupied dwellings as the shootout grew out of control solely to engage a visible assailant. The jury was free to find that appellant's conduct was reckless and moved into sudden heat of passion upon sufficient legal provocation in this chaotic setting.

In Cook v. State, 415 S.C. 551, 784 S.E.2d 665 (2015), our Supreme Court found a lack of evidence of heat of passion based upon Cook's attempt to walk away, the lack of direct confrontation with victim before the fatal shots were fired, and the controlled manner of the shooting itself, with only two shots being fired failed to support any conclusion that Cook lacked control over his actions.

By contrast, here appellant fired numerous rounds at generic shapes in the dark and towards residences with numerous bystanders around. R. 1175, l. 3 – 1176, l. 25; 1389. Appellant either came out of a trailer already armed for combat just before the shooting started[1] or armed himself in response to the gunshots being fired in his direction. R. 1174, l. 5 – 1175, l. 25. The jury could have believed either scenario. If the jury believed appellant only armed himself in response to the initial shots, they certainly could have found his resulting actions in firing multiple rounds at his assailants was prompted by his fear and, while reckless, were the result of sudden heat of passion based upon an uncontrollable impulse to do violence rather than malice aforethought.

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[1] This was the state's theory supported by the testimony of Nokia Tolen. R. 695, ll. 6 – 24.

The present case is much closer to the facts this Court reviewed in State v. Payne, 434 S.C. 121, 862 S.E.2d 81 (Ct. App. 2021). In Payne, the victim and defendant had a verbal altercation and exchanged physical blows, with the victim eventually firing a weapon and then turning and fleeing. Payne returned fire, shooting at the fleeing victim and continuing to fire as victim was running away. Id., 434 S.C.at 156–57, 862 S.E.2d at 99. This Court held that the record, when viewed as whole, required the voluntary manslaughter charge. Much like in Payne, the record, when viewed as a whole, contains facts which required the trial court to charge voluntary manslaughter. This Court's Opinion, respectfully, pulls portions of appellant's testimony that he engaged only in self-defense and ignores the other evidence in the record, including appellant's statements about fear, lack of training, and having never been involved in a shooting before. This is contrary to the guidance of the Supreme Court which expressly requires that the evidence be reviewed as a whole, not merely the isolated statements of one witness, even if it is the appellant. *See* State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003).

This Court's opinion also notes that, even if sudden heat of passion existed, voluntary manslaughter would not apply since the sufficient legal provocation did not come from the victim. Respectfully, this holding is an error of law. As this Court opinion notes, the question of transferred intent in this context is unsettled in South Carolina. *See* State v. Wharton, 381 S.C. 209, 215, 672 S.E.2d 786, 789 (2009) ("[T]he applicability of the doctrine of transferred intent to voluntary manslaughter cases where the defendant kills an unintended victim upon sufficient legal provocation committed by a third party remains an unsettled question in South Carolina."); *see also* State v. Brooks, 428 S.C. 618, 627, 837 S.E.2d 236, 240 (Ct. App. 2019) (acknowledging the unsettled nature of this legal issue since Wharton). This unsettled question was affirmed by our Supreme Court in Jamison v. State, 410 S.C. 456, 471, 765 S.E.2d 123, 131

(2014) ("The transferability of intent in a self-defense claim has not been recognized in South Carolina, *and Respondent does not ask this Court to recognize it now.*") (emphasis added). Unlike Jamison, appellant respectfully requests that this Court recognize that transferred intent applies to all homicide cases since the *mens rea* element of the crime is formed at the moment of the action, not when the victim is impacted.

Logically, transferred intent imparts criminal liability based upon the *mens rea* of the defendant at the moment of the action. As our Supreme Court has noted:

> The defendant's mental state, or *mens rea*, whatever it may be at the time he allegedly commits a criminal act, is contained within the defendant's brain when he commits the act. That mental state never leaves the defendant's brain; it is not "transferred" from the defendant's brain to another person or place. A more apt description might be that the mental state is like a spotlight emanating from its source—the defendant's mind—to its target—the intended victim.

State v. Fennell, 340 S.C. 266, 271, 531 S.E.2d 512, 515 (2000).

Here, there was evidence before the jury that appellant's mental state was an uncontrolled impulse to do violence upon sufficient legal provocation when he fired the fatal round. That the provocation was from a source other than the victim does not alter or change appellant's mental state. If his malice aforethought, if present, was formed the moment the trigger was pulled and followed the bullet to strike the unintended victim, as the law dictates it must, then the same applies to his lack of malice aforethought if the trigger was pulled under sudden heat of passion.

In Fennell, our Supreme Court noted that a "person who, acting with malice, unleashes a deadly force in an attempt to kill or injure an intended victim should anticipate that the law will require him to answer fully for his deeds when that force kills or injures an unintended victim."

Id., 340 S.C. at 276, 531 S.E.2d at 517. This applies the general rule that attached criminal responsibility based upon the *mens rea* existing when the action is performed regardless of the criminal act impacting the intended target or an unintended target.

Courts have extended this rule to cover all classes of criminal homicide as the mental state formed when that action occurs dictates the offense, not whether the intended victim was struck down or if the fatal action mistakenly hits an unintended victim.

> The fact that the homicidal act is directed against or intended to effect the death of one other than the person killed does not relieve the killer of criminal responsibility. Such a homicide partakes of the quality of the original act, so that the guilt of the perpetrator of the crime is exactly what it would have been had the blow fallen upon the intended victim instead of the bystander. *Under this rule, the fact that the bystander is killed instead of the victim becomes immaterial, and the only question at issue is what would have been the degree of guilt if the result intended had been accomplished.* The intent is transferred to the person whose death has been caused, or as sometimes expressed, the malice or intent follows the bullet. *The result is that the killer, according to the attendant circumstances, will be held guilty of murder, manslaughter, or excusable or justifiable homicide.*

40 Am. Jur. 2d Homicide § 10 (emphasis added).

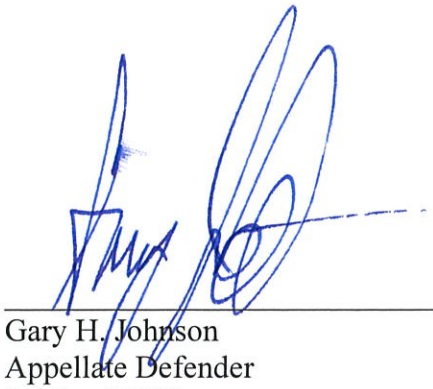
The logical approach applies transferred intent so that the criminal act takes the form of whatever crime would have been committed had the action struck the intended victim.

> If, as to the intended victim, the homicide would have constituted murder, the defendant is guilty of murder as to the bystander who was the actual victim. *Similarly, if the homicide would have constituted voluntary manslaughter as to the intended victim, the defendant is guilty of voluntary manslaughter as to the bystander who was the actual victim*; and if the homicide, as to the intended victim, would have been justifiable, as in self-defense, the defendant is deemed the author of a justifiable homicide as to the bystander, at least in the absence of criminal negligence.

§ 21:8. Transferred intent, 2 Wharton's Criminal Law § 21:8 (16th ed.) (emphasis added). This Court should reconsider its Opinion and find that the trial court erred in failing to charge voluntary manslaughter.

CONCLUSION

For the reasons stated above, appellant petitions for rehearing pursuant to Rule 221(a) SCACR, and requests this Court reconsider its opinion of September 24, 2025, and grant appellant a new trial with proper instruction to the jury on both voluntary and involuntary manslaughter as lesser included offenses.



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ATTORNEY FOR APPELLANT

This 9th day of October 2025.

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STATE OF SOUTH CAROLINA

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Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

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QUAYSHAUN XZANDER CLARK,

APPELLANT

APPELLATE CASE NO. 2022-000962

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon J. Anthony Mabry, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Quayshaun Xzander Clark, #388384, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 9th day of October, 2025.

Gary H. Johnson
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ATTORNEY FOR APPELLANT

Bast, Daniel

From: Bast, Daniel
Sent: Thursday, October 9, 2025 2:38 PM
To: AMabry@scag.gov
Cc: Johnson, Gary; ddalessio@scag.gov
Subject: 2022-000962 - The State v. Quayshaun Xzander Clark
Attachments: 2022-000962 - The State v. Quayshaun Xzander Clark - Petition for Rehearing.pdf

Good afternoon,

Attached is a copy of the Petition for Rehearing in the above referenced case which will be filed today, October 9, 2025, with the Court of Appeals.

All the best,

Daniel Bast
Administrative Assistant
South Carolina Commission on Indigent Defense
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(803) 734-1330