RECEIVED
Dec 19 2025
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Lexington County
Honorable Debra R. McCaslin, Circuit Court Judge

Opinion No. 6123 (S.C. Ct. App. Filed September 24, 2025)

Lower Court Case No.

THE STATE,

RESPONDENT,

V.

QUAYSHAUN XZANDER CLARK,

PETITIONER

APPELLATE CASE NO. 2022-000962

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

GARY H. JOHNSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on November 19, 2025.

QUESTIONS PRESENTED

I. Whether the Court of Appeals erred in upholding the trial court's refusal to charge involuntary manslaughter despite evidence being presented to the jury that petitioner was reckless in the discharge of his firearm in self-defense which caused the death of an innocent bystander and when the record contained evidence from which the jury could have found the fatal shot was fired by petitioner reflexively and without intent?

II. Whether the Court of Appeals erred in rejecting transferred intent for voluntary manslaughter when the fatal shot kills an innocent bystander who was not the source of the provocation and improperly shifted the burden on petitioner to establish entitlement to voluntary manslaughter as a lesser included offense rather than looking for any evidence in the record that supported the charge?

STATEMENT OF THE CASE

Procedural history.

Petitioner Quayshaun Xzander Clark was indicted by the Lexington County Grand Jury on June 13, 2022, for murder, discharging a firearm into a dwelling, and possession of a weapon during commission of a violent crime. R. 20, l. 24—R. 21, l. 10; R. 1396-1401. His case proceeded to a jury trial before the Honorable Debra R. McCaslin beginning June 27, 2022. R. 1. The jury found Petitioner guilty on all three counts. R. 1362, ll. 8-22. The trial court sentenced him to concurrent terms of incarceration as follows: 48 years for murder; ten (10) years for discharging a firearm into a dwelling; and five (5) years for possession of a weapon during commission of a violent crime. R. 1383, ll. 12-23.

On appeal before the South Carolina Court of Appeals, petitioner argued Judge McCaslin erred in failing to charge both voluntary and involuntary manslaughter as lesser included offenses. The Court of Appeals heard oral argument on the issues on April 10, 2025, and issued a published opinion finding no error in refusing the requested charges. *See* State v. Clark, 446 S.C. 640, 922 S.E.2d 239 (Ct. App. 2025), reh'g denied (Nov. 19, 2025). Notably, as to voluntary manslaughter the Court of Appeals found that "because it is undisputed that Victim was an innocent bystander *who was not the source of the provocation*, we hold Clark was not entitled to a voluntary manslaughter instruction." Id., 446 S.C. at 655, 922 S.E.2d at 247. As to involuntary manslaughter, the Court of Appeals focused solely on petitioner's admission that he fired his gun at "a specific target—the man or group of people he saw shooting at him from the direction of Lots 15 and 16—and for a specific reason—because he was trying to stop the gunshots." Id., 446 S.C. at 648, 922 S.E.2d at 243. However, this narrow focus ignored evidence from which the jury could have found petitioner was acting lawfully (engaging in self-defense) in a reckless

manner (firing a high-powered rifle towards an occupied dwelling and striking an killing an innocent bystander hiding within that dwelling). It also ignored petitioner's acknowledgement that some of the rounds fired were reflexive in nature and not made voluntarily.

A petition for rehearing was filed concerning the application of the law of both voluntary and involuntary manslaughter and was denied by the Court of Appeals by written order dated Nov. 19, 2025. This petition for certiorari review follows as both holdings from the Court of Appeals fundamentally misapply the law concerning voluntary and involuntary manslaughter as well as the basis for charging lesser included offenses by shifting the burden on the accused rather than reviewing the record for any evidentiary support justifying charging the lesser included offenses. In addition, it provides this Court with the opportunity to clarify the law concerning voluntary manslaughter when the shots fired in sudden heat of passion upon sufficient legal provocation miss an intended target and strike an innocent bystander.

Relevant facts.

Petitioner Quayshaun Clark was at a party on the afternoon of June 6, 2021, at Lot 7 of the Rocky Lane mobile home park. R. 493, ll. 14-20; R. 1163, ll. 13-20; R. 1165, ll. 6-25. Petitioner possessed several firearms[1] in a bag located in the trunk of his car, and he eventually moved the bag to the interior of the car while speakers for the car were worked on. R. 1168, ll. 10-24; R. 1170, ll.2-25; R. 1198, ll. 1-7.

[1] Petitioner acknowledged he owned three (3) legal firearms: an AR pistol chambered in .300 blackout (kept in the trunk); an AK pistol chambered in 7.62 x 39mm (also kept in the trunk bag); and an FN 509 chambered in 9mm (kept in the glovebox). R. 1168, l. 11–R. 1169, l. 16.

Petitioner's estranged cousin Donald "DJ" Jackson (DJ) [2] had gotten in an argument with two men, De Alewine and Var Pugh (Pugh), earlier the same afternoon. According to at least one witness (Nokia "Nitro" Tolen (Nitro)), DJ and his antagonists were going to meet again at Rocky Lane. R. 683, l. 5–R. 685, l. 8. Although uninvited to the birthday party by the people living at Lot 7, Nitro drove DJ and Kay Norris (Kay) to Lot 7 at approximately 10:00pm. R. 725, l. 3—R. 726, l. 22.

When Nitro, DJ, and Kay arrived at Rocky Lane, Pugh's car was seen near the area of Lots 15 and 16. A graduation party was also being held across from Lot 7 between Lots 15 and 16. R. 686, l. 5–R. 687, l. 15; R. 692, ll. 11-16 (State's Ex. #178, photograph). Petitioner was still at his car at the Lot 7 birthday celebration. DJ texted once and repeatedly tried to call Petitioner earlier in the night. R. 1089, l. 4–R. 1093, l. 4. When petitioner finally accepted a call from DJ, it lasted 55 seconds, with petitioner indicated he simply put his phone down because DJ was yelling. According to Petitioner, DJ was "just hollering at me, and I ain't gonna hear it." R. 1091, ll. 15-17; R. 1172, l. 4–R. 1173, l. 20. The state's view of the evidence, supported in part by the testimony of Nitro, was that petitioner was an active participant on DJ's side. R. 695, ll. 15-19. Several witnesses claimed the first shot of the evening was fired by Hugo from DJ's group in front of Lot 7. R. 607, l. 22–R. 608, l. 2; R. 613, ll. 16-25.

After this first shot was fired, numerous shots were fired between people near Lot 7 towards Lots 15 and 16 and vice versa. R. 609, l. 1 – 610, l. 22; 1175, l. 3 – 1176 l. 25; 1389. Petitioner was unaware that anyone from DJ's group fired the first shot until after the incident. R. 1214, ll. 2-6. In fact, according to petitioner, he first heard gunshots coming from somewhere in front of his vehicle. R. 1174, ll. 3-25; R. 1197, ll. 14-22. Petitioner, in response to seeing

---

[2] DJ is a cousin to several people at Lot 7, including Petitioner. However, due to his prior altercation with his own family, DJ was avoided. R. 1172, l. 4—R. 1173, l. 4.

someone firing a weapon towards him, armed himself in self-defense. R. 1175, ll. 5-15. Although petitioner heard gunshots from everywhere, when he looked up, he saw a black male possibly with dreadlocks coming at him from across the street and shooting a handgun at him.[3] R. 1175, l. 18–R. 1176, l. 9; R. 1179, ll. 8-12; R. 1202, l. 24—R. 1203, l. 2. Petitioner was "very scared." He had never been shot at before, or trained what to do in such a situation. R. 1176, ll. 18-25. According to petitioner, during the gunfight he tensed up, "was scared and lost, [his] train of thought, almost like everything around [him] just kind of.... Like just kind of like a blur." R. 1177, ll. 3-10. Petitioner fired what he thought may have been 10 to 12 times from his AK pistol[4] at the assailant until it was empty because he "really wanted him to stop shooting at us." R. 1177, ll. 12-23. Petitioner further indicated he did not want to injure anyone, and that he was afraid. R. 1183, ll. 1-4; R. 1213, l. 15—R. 1214, l. 1. Even after he ran out of ammunition in his gun, he still heard shooting. R. 1178, l. 1—R. 1179, l. 15; R. 1216, ll. 1-3.

Empty shell casings from several firearms were located throughout the scene near all three lots.[5] R. 781, l. 3–R. 786, l. 24; R. 855, l. 2–R. 859, l. 17; R 875, l. 6–R. 877, l. 11; R. 983, l. 25–R. 999, l. 15; R. 1390; R. 1387; R. 1388. Tragically, a Minor inside the kitchen of the

---

[3] Petitioner indicated that even though it was dark, he saw the muzzle flash coming out of the assailant's handgun. R. 1214, l. 22–R. 1215, l. 1. No testimony was provided whether this handgun was a semi-automatic pistol or a revolver.

[4] Petitioner acknowledged at trial that all 15 shell casings of 7.62 x 39mm at the scene were fired by his weapon. R. 1201, ll. 14-22.

[5] Additionally, at least one person present that night was known to carry a .22 revolver. When asked by the State "if a revolver was used by a participant in this gunfire exchange, would you expect to have a casing?" the SLED firearms analyst opined, "No, I would not expect any cartridge cases from revolvers." R. 693, ll. 20-22; R. 1000, l. 23–R. 1001, l. 2. The same was likewise confirmed by the Lexington County CSI sergeant. R. 914, ll. 22-25. Further, bullet holes were found in at least four vehicles at the scene. The jury was told the scene was "consistent with a reckless shootout." R. 1157, l. 25—R. 1158, l. 4.

trailer on Lot 15 was struck once in the head by a 7.62 x 39mm projectile, and was pronounced dead at the scene. R. 504, ll. 6-12; R. 517, ll. 11-15; R. 834, ll. 5-10; R. 842, ll. 19-22; R. 998, l. 18–R. 999, l. 15. The fatal projectile passed through the trailer, into the back of the refrigerator, exited the front of the appliance, and struck Minor. R. 1041, l. 9–R. 1045, l. 1; State's Ex. #126, (photographs); State's Ex. #46, (photograph).

ARGUMENT

I. The Court of Appeals erred in upholding the trial court's refusal to charge involuntary manslaughter despite evidence being presented to the jury that petitioner was reckless in the discharge of his firearm in self-defense which caused the death of an innocent bystander and when the record contained evidence from which the jury could have found the fatal shot was fired by petitioner reflexively and without intent.

A. The Court of Appeals erred in finding shots fired in asserted self-defense but fired with reckless abandon did not create a jury issue on the issue of involuntary manslaughter.

Involuntary manslaughter is the unintentional killing of another without malice, but (1) while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. State v. Crosby, 355 S.C. 47, 51-2, 584 S.E.2d 110, 112 (2003); State v. Light, 378 S.C. 641, 648, 664 S.E.2d 465, 468 (2008).

The decision of the Court of Appeals affirming the denial of a jury charge on involuntary manslaughter stems from the point that petitioner's *initial* shots fired were voluntary and in self-defense. However, the Court of Appeals failed to address the evidence presented during trial that any such discharge could have been deemed reckless by the jury. The Court of Appeals failed to address whether, in returning fire in the manner presented here (firing multiple rounds towards his assailant and at a home that put bystanders and occupants in danger) constituted such reckless conduct that involuntary manslaughter would apply since petitioner was lawfully engaged in self-defense but did so in a reckless manner. This is a corollary claim to the imperfect self-defense application 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); State v. Sams, 410 S.C. 303, 315, 764 S.E.2d 511, 517 (2014).

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 petitioner'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. 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."). In this case, the jury was presented evidence to reject self-defense based *solely on its belief that petitioner was reckless in the discharge of his firearm and in the way he engaged his assailants*. R. 1291, l. 16 – 1292, l. 10. There was testimony from a former agent with the Secret Service regarding the reckless way petitioner fired his weapon. R. 671, ll. 9 – 20; 1280, ll. 4 – 16. 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 to being shot at was reckless.

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 petitioner lawfully armed himself and fired in self-defense (as testified to by petitioner and argued before the jury) and that petitioner fired his weapon in a reckless disregard for the safety of others (as argued by the state),

a charge on involuntary was appropriate and should have been given. It is fundamentally unfair to allow the jury to reject self-defense on the ground that some (or all) of the shots petitioner fired were reckless to void self-defense and, in the same breath, prevent the jury from considering that same reckless conduct may justify a verdict of involuntary manslaughter as opposed to murder. Essentially, in presenting evidence that petitioner's response to a "chaotic shootout" was reckless, the state was able to attack self-defense without fear that the jury would use that very argument as a distinction between murder and involuntary manslaughter. The facts of this case, as contrasted with the facts presented to this Court in Scott, will allow this Court to address an unsettled question of law in South Carolina: does a person who attempts to lawfully engage in self-defense but does so in a reckless and headless manner causing the death of an innocent bystander create a jury question whether or not the resulting death was an unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others, rather than murder? In its decision in this matter, the Court of Appeals has answered this question in the negative, creating an illogical application of transferred intent so that malice follows the bullet when fired, but a lack of malice would not. This Court should grant certiorari to review this holding and provide clear guidance to courts in South Carolina on this matter of law.

B. There is evidence in the record the fatal shot was fired by reflex and without intent.

Moreover, even if this Court rejects a finding that the reckless 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 petitioner were reflexive and unintentional. Petitioner 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 petitioner'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 petitioner 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, petitioner 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, the Court of Appeals failed to address the impact of petitioner's switch from voluntarily pulling the trigger when the shootout started to his involuntary actions that resulted from the stress of the moment. Petitioner 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 this 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 petitioner were involuntary.

The decision of the Court of Appeals on the validity of involuntary manslaughter to the facts presented to the jury contains two significant errors of law. The case presented to the jury below centered on the justification and manner of petitioner's discharge of his firearm. This discharge was either in self-defense in response to unexpected gunshots from several assailants or was the intentional engagement in a gunfight with malice aforethought. The jury was given leave to reject self-defense based purely on the state's argument that the discharge was reckless. Since there was testimony and evidence supporting both the reckless discharge and that petitioner attempted to engage in self-defense, involuntary manslaughter should have been charged as petitioner would have been acting lawfully in self-defense but in a reckless manner. Alternatively, the trial court and Court of Appeals erred in finding no support in the record for an involuntary discharge of the weapon when petitioner testified about tensing up and firing in a blur as the chaotic gunfight unfolded, creating evidence in the Record from which the jury could have found the death of the innocent bystander was the result of an unintentional discharge of the weapon.

II. The Court of Appeals erred in rejecting transferred intent for voluntary manslaughter when the fatal shot kills an innocent bystander who was not the source of the provocation and improperly shifted the burden on petitioner to establish entitlement to voluntary manslaughter as a lesser included offense rather than looking for any evidence in the record that supported the charge.

Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. State v. Pittman, 373 S.C. 527, 572, 647 S.E.2d 144, 167 (2007).

> The sudden heat of passion, upon sufficient legal provocation, while it need not dethrone reason entirely, or shut out knowledge and volition, 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. To warrant the court in eliminating the offense of manslaughter it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter.

State v. Wharton, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009) (internal citations omitted).

The Court of Appeals held that since petitioner "failed to prove that he acted under the sudden heat of passion such that he was overcome by an uncontrollable urge to do violence, we affirm the trial court's refusal to give the voluntary manslaughter instruction." State v. Clark, 446 S.C. 640, 652, 922 S.E.2d 239, 245 (Ct. App. 2025), reh'g denied (Nov. 19, 2025). This holding improperly shifted the burden of proof onto petitioner to establish entitlement to a charge on a lesser included offense rather than review the record for any evidentiary support for the charge. In addition, the Court of Appeals ruled that since any such provocation must come from the victim of the shooting, also precluding a charge of self-defense. The Court of Appeals erred on both rationales for rejecting voluntary manslaughter.

A. The record before the jury supported charging the jury that petitioner responded to a chaotic situation involving numerous combatants in a sudden heat of passion.

The Court of Appeals improperly shifted the burden of proof onto petitioner to establish entitlement to voluntary manslaughter by focusing solely on petitioner's testimony. However, the

evidence before the jury was that someone other than petitioner 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. Petitioner 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 shows fifteen rounds were fired by petitioner's weapon, supporting that petitioner fired impulsively and under the pressure and passions of the moment rather than because of cool reflection. R. 985. Even after he ran out of ammunition in his gun, petitioner still heard shooting. R. 1178, l. 1 - 1179, l. 15; 1216, ll. 1-3. Petitioner's frantic behavior and the way he discharged his firearm support a finding of sudden heat of passion. Even after leaving the scene, petitioner had to drive around to calm down and regain his composure. R. 1179-80.

The jury was free to believe some or all this testimony. The jury was free to believe, for example, that petitioner was initially entitled to act in self-defense since there is no dispute that he did not fire the first shot. However, the jury was likewise free to reject petitioner'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 petitioner'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), this 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 petitioner fired numerous rounds at generic shapes in the dark and towards a residence with numerous bystanders in the line of fire. R. 1175, l. 3 – 1176, l. 25; 1389. Petitioner either came out of a trailer already armed for combat just before the shooting started[6] 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 petitioner 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. Moreover, it is undisputed that the first shot was fired by someone other than petitioner. The jury was free to reject petitioner's claims that he armed himself in self-defense in response to an attacker shooting at him and instead believed that in response to the chaotic gunfight the followed the initial shot, that petitioner voluntarily participated with sudden heat of passion upon sufficient legal provocation (gunshots being fired toward his location).

The present case is much closer to the facts the Court of Appeals 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. There, the Court of Appeals properly held that the record, when viewed as whole, required the voluntary

---

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

manslaughter charge. Much like in Payne, the record, when viewed as a whole, contains facts which required the trial court to charge voluntary manslaughter. However, unlike the approach it took in Payne, here the Court of Appeals changed focus from any evidentiary support to petitioner's failure "to prove that he acted under the sudden heat of passion such that he was overcome by an uncontrollable urge to do violence." Clark, 446 S.C. at 652, 922 S.E.2d at 245. This shift in focus from Payne, respectfully, is contrary to the guidance from this 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 petitioner. *See* State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003).

B. The Court of Appeals erred in finding that the sufficient legal provocation must come from the ultimate victim of the fatal shot, creating an illogical application of transferred intent in South Carolina.

As an additional basis to reject voluntary manslaughter, the Court of Appeals improperly held as a matter of law in South Carolina that the sufficient legal provocation must come from the ultimate victim who was killed. Respectfully, this holding is an error of law. The question of transferred intent in this context was an unsettled area of law in South Carolina *prior to the decision of the Court of Appeals*. *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). The unsettled nature of this question was affirmed this 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, petitioner 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 this 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 petitioner'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 petitioner'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, this 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 generally 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 reverse the holding of the Court of Appeals that illogically applies transferred intent for malice aforethought but rejects transferred intent for a lesser level of mental culpability.

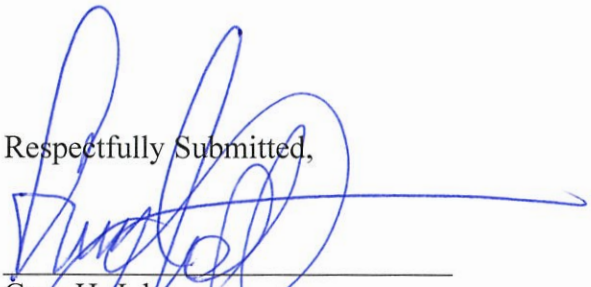
The Court of Appeals erred in improperly shifting the burden of proof onto petitioner to establish entitlement to a charge on a lesser included offense rather than review the record for

any evidentiary support for the charge. In addition, the Court of Appeals improperly applied an illogical rule regarding transferred intent that allows malice to follow a bullet regardless of who it strikes but denying the same applies if the bullet was fired with a less culpable mental state. ruled that since any such provocation must come from the victim of the shooting, also precluding a charge of self-defense. The Corut of Appeals erred on both rationales for rejecting voluntary manslaughter. This Court should grant certiorari to answer the question left unanswered in State v. Wharton, 381 S.C. 209, 672 S.E.2d 786 (2009) and improperly answered by the Court of Appeals here.

CONCLUSION

The decision by the South Carolina Court of Appeals improperly applied the law of transferred intent of voluntary manslaughter when the ultimate victim was an innocent bystander *who was not the source of the provocation.* In addition, the decision improperly rejected application of involuntary manslaughter in a setting where the evidence presented supported that petitioner was acting lawfully (engaging in self-defense) but in a reckless manner (firing a high-powered rifle towards an occupied dwelling and striking an killing an innocent bystander hiding within that dwelling). As both issues present unsettled areas of law in South Carolina, this Court should grant review, particularly to address the application of transferred intent of voluntary manslaughter when the provocation for violence comes from a source other than the ultimate victim and whether or not involuntary manslaughter may exists when a defendant lawfully acts in self-defense but does so with reckless disregard for the safety of others and kills an innocent bystander.

Respectfully Submitted,



Gary H. Johnson
Appellate Defender
SC Bar #8898

ATTORNEY FOR PETITIONER

This 19th day of December 2025.