STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUAYSHAUN XZANDER CLARK,

APPELLANT

APPELLATE CASE NO. 2022-000962

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

I. Whether the trial court reversibly erred by failing to charge involuntary manslaughter as a lesser-included offense where direct evidence indicated Appellant fired his gun without malice and in self-defense, but missed the target and inadvertently struck a bystander inside the mobile home behind the assailant?

II. Whether the trial court reversibly erred by failing to charge voluntary manslaughter as a lesser-included offense under the doctrine of transferred intent where direct evidence indicated Appellant was being shot at when, under the sudden heat of passion, he obtained his own firearm and returned fire to stop the threat to himself and other family members present?

STATEMENT OF THE CASE

Appellant 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. Anna M. Williams and Robert "Theo" Williams represented Appellant, while the State was represented by L. Suzanne Mayes and Rhonda W. Patterson. R. 1.

The jury found Appellant 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.

STANDARD OF REVIEW

"The law to be charged to the jury is determined by the evidence presented at trial." State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "The trial court is required to charge a jury on a lesser-included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense." State v. Sams, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014); see also State v. Drafts, 288 S.C. 30, 340 S.E.2d 784 (1986); State v. Gourdine, 322 S.C. 396, 472 S.E.2d 241 (1996). "An appellate court will not reverse the trial [court]'s decision absent an abuse of discretion." State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Id. at 570, 647 S.E.2d at 166–67. "The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law." Id. at 570, 647 S.E.2d at 167. "In determining whether the evidence requires a charge on a lesser-included offense, the [appellate court] must view the facts in the light most favorable to the defendant." Sams, 410 S.C. at 308, 764 S.E.2d at 513 (citing State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000)). "A trial court should refuse to charge a lesser-included offense only where there is no evidence the defendant committed the lesser rather than the greater offense." State v. Crosby, 355 S.C. 47, 51, 584 S.E.2d 110, 112 (2003).

STATEMENT OF THE FACTS

Appellant Quayshaun Clark went to the birthday party of his cousin, Shawanda "Wanda" Lites (Wanda) the afternoon of June 6, 2021, at Lot 7 of the Rocky Lane mobile home park just outside the town limits of Batesburg, South Carolina. R. 493, ll. 14-20; R. 1163, ll. 13-20; R. 1165, ll. 6-25. He drove over in his Mercury grand marquis, and enjoyed the afternoon with ten to twenty other friends and family members. R. 1166, ll. 3-24. At some point, he even tried to play music from the speakers recently installed in his trunk; however, after the speaker system failed, he and his cousin Nashua "Nash" Smith (Nash) attempted to fix the problem. R. 1167, l. 5–R. 1168, l. 8. While he possessed several firearms[1] in a bag located in the trunk of his car, he eventually moved the bag to the interior of the car while the speakers were worked on. R. 1168, ll. 10-24; R. 1170, ll.2-25; R. 1198, ll. 1-7.

Unbeknownst to Appellant, his estranged[2] cousin Donald "DJ" Jackson (DJ) had gotten in an argument with two men, De Alewine and Var Pugh (Pugh), at Hartley's convenience store in Batesburg the same afternoon. The matter between those parties at first ended when DJ left with his friend Nokia "Nitro" Tolen (Nitro) to DJ's home, and De Alewine also left with Pugh. R. 680, l. 1—R. 682, l. 16. However, De Alewine and Pugh drove over to DJ's home and had yet another argument. According to Nitro, they were going to meet again at Rocky Lane. R. 683, l. 5–R. 685, l. 8. In the meantime, Kashia "Kay" Norris (Kay) was already at DJ's. Moreover,

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1 Appellant acknowledged he owned three (3) firearms: an AR pistol chambered in .300 blackout (kept in the trunk bag); 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). One witness who saw the AK pistol earlier in the day described it as looking "like the AK off of Fortnite." R. 629, ll. 6-7. Appellant explained that all three firearms were kept in his car because he has a young daughter living in his house and did not want her to have access to them. R. 1168, l. 11–R. 1169, l. 16.

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

Nitro also asked DeCarlos "Hugo" Chatman to go to Lot 7 at Rocky Lane as well. R. 692, l. 6-10. Although uninvited to the birthday party by the people living at Lot 7, Nitro drove DJ and 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). Nitro parked by the porch of Lot 7. R. 730, ll. 3-20; R. 693, ll. 8-10; R. 694, ll. 5-7.

Appellant was still at his car at the Lot 7 birthday celebration. DJ texted once and repeatedly tried to call Appellant earlier in the night. R. 1089, l. 4–R. 1093, l. 4. When he finally got through on a 55 second call, Appellant indicated he simply put his phone down because DJ was yelling. According to Appellant, 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.

According to Appellant's testimony, things began to change later in the night when it was getting dark. Everybody was getting louder, but he brushed it off because he was at a birthday party. Then, while sitting in his car,[3] he heard gunshots coming from somewhere in front of the vehicle.[4] R. 1174, ll. 3-25; R. 1197, ll. 14-22. He ducked down, got out of the car while shots were still being fired, and ran to the back of the vehicle. He ran to the side of the trailer, and then back to his car to get one of his guns. R. 1175, ll. 5-15. Although he heard gunshots from

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[3] Testifying as a State's witness, Nitro claimed he saw Appellant coming out of the trailer of Lot 7 behind DJ with a gun shortly before he heard shooting. R. 695, ll. 15-19. Nitro also acknowledged on cross examination he was "a lot intoxicated" the night of the incident, and even had an "Ultra beer" when speaking with police. R. 707, l. 18—R. 708, l. 3.

[4] Other testimony indicated the first shots fired that night came from Hugo standing near the gravel road by Lot 7. R. 607, l. 22–R. 608, l. 2; R. 613, ll. 16-25. Appellant was unaware of this fact until after the incident. R. 1214, ll. 2-6.

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.[5] R. 1175, l. 18–R. 1176, l. 9; R. 1179, ll. 8-12; R. 1202, l. 24—R. 1203, l. 2. Appellant was "very scared." He had never been shot at before, or trained what to do in such a situation. R. 1176, ll. 18-25. Both he and his family members were on Lot 7. According to Appellant, 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. Appellant fired what he thought may have been 10 to 12 times from his AK pistol[6] at the assailant until it was empty because he "really wanted him to stop shooting at us." R. 1177, ll. 12-23. Appellant 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; Appellant ran back behind his car again. He tried to run to the side of the trailer, but heard more shots coming from that side, and again ran back to his car. R. 1178, l. 1—R. 1179, l. 15; R. 1216, ll. 1-3.

After the shooting stopped, Appellant heard cars leaving the area. He got back into his car, threw his AK pistol into the backseat, and left with Nash to the home of Marvin Lites, Appellant's Uncle. R. 1178, ll. 5-13. Appellant spoke with Wanda on his phone, and she picked up him and Nash in her vehicle. They drove around together while Appellant tried to calm himself. R. 1179, l. 13—R. 1279, l. 9. Appellant ultimately ended up at the home of Nash's

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[5] Appellant 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 the handgun was a semi-automatic pistol or a revolver. However, no shell casings were found in the area it was purportedly shot.

[6] Appellant later acknowledged at trial that all 15 shell casings of 7.62 x 39mm at the scene were his. R. 1201, ll. 14-22.

girlfriend in Gilbert, South Carolina, where he was arrested on June 11, 2021. R. 1180, ll. 12-23; R. 1063, l. 22–R. 1064, l. 7.

911 was first called by 10:35pm after the shooting was over on June 9, 2021. R. 484, ll. 20-25. Officers and volunteer EMS/firefighters arrived first, followed by Lexington County Sheriff's deputies at approximately 10:51pm. R. 496, l. 14–R. 497, l. 8; R. 501, l. 2–R. 502, l. 2. The scene was chaotic and a large crowd from the neighborhood had gathered with numerous people inside the crime scene tape. R. 502, ll. 11-16; R. 528, ll. 1-20; R. 1060, ll. 8-25; R. 1134, l. 12–R. 1135, l. 10. Lots 15, 16, and 7, as well as the area in between, were all processed for evidence by law enforcement. Empty shell casings from several firearms were located throughout the scene near all three lots.[7] 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 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).

At the end of Appellant's trial, the State acknowledged that the shooter at Lot 15 was "using Lot 15 as a barricade," and Appellant kept shooting into it. R. 1288, ll. 10-12. As such, the State also made clear to the jury that it was proceeding under the theory of transferred intent:

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[7] 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, more bullet holes were found in at least four vehicles at the scene. The witness agreed it would be "consistent with a reckless shootout." R. 1157, l. 25—R. 1158, l. 4.

> Under the law it does not matter that he had the intention to kill others and ends up killing [Minor]. That's called transferred intent and under the law if you commit a murder and you're shooting at A, but your bullet ends up killing an innocent bystander, person B, you are responsible under the law for the murder of person B....

R. 1292, ll. 18-24. In response to Counsel's closing argument that Minor was accidentally shot, the State ended it's reply by asserting, "that shooter took that child's life, that shooter fired the bullet that snuffed her out, and for that he doesn't walk away." R. 1316, ll. 15-17. The trial court instructed the jury on self-defense without objection. R. 1333, l. 20–R. 1335, l. 25.

After the jury was charged, trial counsel (Counsel) objected to the court's refusal to instruct the jury on involuntary manslaughter and voluntary manslaughter.[8] R. 1341, l. 24–R. 1345, l. 4; R. 1391-1395. Specifically, Counsel asserted the second prong of involuntary manslaughter was warranted because Appellant was acting lawfully in self-defense, but essentially with reckless disregard for the safety of others in his handling and shooting of his firearm. R. 1340, l. 24—R. 1342, l. 18. Counsel also argued voluntary manslaughter was appropriate due to the overt threat of gunshots fired at Appellant and Appellant's response of shooting back while under the heat of passion. Counsel further asserted that transferred intent applied to murder and manslaughter. R. 1342, l. 19—R. 1344, l. 25.

The State argued no evidence supported the charge of involuntary manslaughter by asserting that "at no point did the defendant testify that he accidentally discharged the gun, at no point did the defendant testify that he was engaged in a struggle with anyone else and that the gun went off." R. 1345, ll. 8-25. The State acknowledged unsettled law in South Carolina regarding whether transferred intent applies to voluntary manslaughter. However, the State

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[8] A jury charge conference was held, but objections were withheld until after closing arguments and instructions given by the trial court. R. 1268, ll. 2-3; R. 1317, l. 6—R. 1319, l. 6.

nonetheless argued that "there was not sufficient evidence on the record to support a voluntary manslaughter charge regardless of the transferred intent issue." R. 1346, l. 20—R. 1347, l. 7.

The trial court ruled that it "didn't hear any evidence supporting an involuntary charge. In fact, just the opposite. . . . There was not any testimony about any accident or it wasn't intentional or none of that, so the Court declined the charge of involuntary manslaughter." R. 1347, ll. 8-14. The trial court likewise rejected Counsel's arguments for voluntary manslaughter:

> I read the Childers, the Wharton and also the Williams case that was supplied by the defendant, and the law as it stands today in this State is our Court has not applied the doctrine of transferred intent to voluntary manslaughter. This Court does not believe the evidence even supports a voluntary manslaughter in this case, nor was there any overt act by the victim to indicate any provocation by the victim.
>
> There's—again, I have to turn back to the defendant arming himself. As a matter of fact, he goes to the back of his car, to the back of the trailer, he goes back to the car, arms himself. There was no testimony or evidence that I heard about a heat of passion or uncontrollable impulse to do violence, so I declined to charge the voluntary manslaughter.

R. 1347, l. 15—R. 1348, l. 5. Appellant was ultimately found guilty on all counts, and sentenced to an overall term of incarceration of 48 years.

This appeal follows.

ARGUMENT

I. The trial court reversibly erred by failing to charge involuntary manslaughter as a lesser-included offense where direct evidence indicated Appellant fired his gun without malice and in self-defense, but missed the target and inadvertently struck a bystander inside the mobile home behind the assailant.

The trial court also reversibly erred by refusing to charge the jury with involuntary manslaughter where evidence existed in the record supporting the instruction. The law to be charged is determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Reversible error is committed if the trial court fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Moreover, when determining whether the evidence requires a charge on a lesser included offense, the court views the facts in the light most favorable to the defendant. See Knoten, 347 S.C. at 302, 555 S.E.2d at 394 (providing a court must view the facts in the light most favorable to a defendant when determining if evidence required a charge on the lesser included offense of involuntary manslaughter).

"Importantly, our courts have long emphasized that to warrant a court's 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. Brayboy, 387 S.C. 174, 180, 691 S.E.2d 482, 486 (Ct. App. 2010); see also State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000); State v. Burriss, 334 S.C. 256, 265, 513 S.E.2d 104, 109 (1999); Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991).[9] Thus, a request to charge a lesser-included offense

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[9] Although some prior State v. Gandy, 283 S.C. 571, 574, 324 S.E.2d 65, 67 (1984) upheld the denial of an involuntary manslaughter charge where the defendant's act of self-defense and intent to kill another and thus negated the lesser charge for killing the victim, that case and its reasoning has been abrogated by later South Carolina case law confirming that self-defense and involuntary manslaughter jury instructions are not mutually exclusive. See, e.g., State v. Mekler, 379 S.C. 12, 16, 664 S.E.2d 477, 479 (2008) ("Finally, a self-defense charge and an involuntary manslaughter

is properly refused only when there is no evidence that the defendant committed the lesser rather than the greater offense. Casey, 305 S.C. at 447, 409 S.E.2d at 392.

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); see also State v. Light, 378 S.C. 641, 648, 664 S.E.2d 465, 468 (2008); Burriss, 334 S.C. 256, 265, 513 S.E.2d 104, 109 (1999).

In the case at bar, evidence is present in the record supporting the charge of involuntary manslaughter. First, direct evidence was present in the record indicating Appellant did not intend to kill either Minor *or* the assailant shooting at him. Specifically, Appellant testified that 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. He acknowledged firing what he thought may have been 10 to 12 times from his AK pistol at the assailant until it was empty

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charge are not mutually exclusive, as long as there is any evidence to support both charges."); see also Crosby, 355 S.C. at 53, 584 at 112 ("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.") (emphasis in original); Light, 378 S.C. 641 at 650, S.E.2d at 470 (distinguishing State v. Pickens, 320 S.C. 528, 466 S.E.2d 364 (1996) by holding it is a question for the jury to decide "[w]hen there is a factual issue as to whether the shooting was committed intentionally in self-defense or was committed unintentionally, then the defendant is entitled to both charges as there is "any evidence" to support each charge."). Further, Appellant asserts that, to the extent that Pickens remains applicable where a firearm is discharged under the lawful act of self-defense, yet in a manner exhibiting reckless disregard for the safety of others, the evidence presented under the "any evidence" standard has met the elements of involuntary manslaughter—including the statutory definition of criminal negligence as "the reckless disregard for the safety of others." S.C. Code Ann. § 16-3-60 (Westlaw, West current through 2023). Thus, the matter must be strictly for the jury to decide regardless of whether the firearm was intentionally or unintentionally fired since the question of whether the conduct was "reckless" or rose to the level of "malice" was inherently a factual issue lying in the province of the jury rather than a matter of law.

because he "really wanted him to stop shooting at us." R. 1177, ll. 12-23. Appellant 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. Thus, a factual issue for the jury existed under the any evidence standard as to whether the shooting itself was committed intentionally or unintentionally. See Light, 378 S.C. 641 at 650, S.E.2d at 470. Accordingly, evidence exists in the record showing Appellant harbored no malice in his heart at the time he responded to the assailant shooting at him.

Second, based upon Appellant's testimony, he was lawfully engaged in self-defense when he fired the AK pistol in an act of self-defense, and the trial court charged the jury regarding the law of self-defense without objection from the State.[10] Moreover, Appellant lawfully purchased and possessed the AK pistol in question. Additionally, the evidence taken in the light most favorable to the defense indicates Appellant did not unlawfully present or brandish his weapon toward his assailant either. Regardless, even if Appellant's possession of the firearm was unlawful, "[a] person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting." Crosby, 355 S.C. at 52, 584 S.E.2d at 112; see also Light, 378 S.C. at 649, n.6, 664 S.E.2d at 469, n.6; Burriss, 334 S.C. at 265, n.10, 513 S.E.2d at 109, n.10.

Thus, while engaged in the lawful act of self-defense, Appellant fired his AK pistol in a manner that the jury could reasonably infer was a reckless disregard for the safety of others.

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10 Testimony of Appellant readily indicated that he was being assaulted by a man coming toward him from across the street while shooting a handgun at him. Appellant reasonably feared for his life, as would a person of ordinary prudence and courage. Moreover, evidence was also present that Appellant had no duty to retreat; due to his status an invited guest at Wanda's birthday party at Lot 7, Appellant was in a place where he had a right to be. Furthermore, Appellant was being shot at by one assailant and heard shots from all around. Thus, Appellant is not required to expose himself to greater danger simply to retreat. R. 1175, l. 18–R. 1176, l. 9; R. 1179, ll. 8-12; R. 1202, l. 24—R. 1203, l. 2. Rather, under the law of self-defense, Appellant was allowed to act upon appearances, and meet force with force to defend himself.

Appellant testified that his hands tensed up, he was a blur, and shots toward the assailant hit the ground around him; however, it appears he missed every shot. R. 1176, ll. 14-17. Such reckless handling and operation of his AK pistol is likewise in accordance with Appellant's admitted lack of training. As a result, the magazine of fifteen rounds was emptied toward the assailant without apparently considering what was behind the assailant. Indeed, based upon the adduced evidence at trial that the 7.62 x 39mm ammunition here penetrated the wall of Lot 15, then passed through an entire refrigerator before coming out and fatally striking Minor, it could reasonably be considered reckless disregard for the safety of others for the AK pistol to have been fired in the environment of the Rocky Lane trailer park—regardless of whether he hit or missed the assailant, the bullet still could have passed through and gone to other unintended places. Succinctly stated, while harboring no malice towards anyone, Appellant's actions taken in self-defense to stop a deadly threat to himself and others, while lawful toward the assailant, inadvertently created a situation of reckless disregard for the safety of others.

Moreover, the State's own arguments highlight of how Appellant's firing his AK pistol was done in reckless disregard for the safety of others. As the State acknowledged in its closing argument, a shooter at Lot 15 was "using Lot 15 as a barricade," and Appellant kept shooting into it. R. 1288, ll. 10-12. In other words, the State's own theory indicates that Appellant fired his entire magazine toward a person that was using the trailer at Lot 15 as a barricade, and missed. Further, its own witness who processed bullet holes from vehicles at the incident location supports the notion that what occurred was a "reckless shootout." R. 1157, l. 25—R. 1158, l. 4. Thus, when taken as a whole and in the light most favorable to Appellant, evidence exists in the record tending to support the lesser-included offense of involuntary manslaughter.

Finally, Appellant was prejudiced by the trial court's failure to give an involuntary manslaughter jury instruction. Succinctly stated, Appellant was denied the opportunity to have the jury consider a lesser-included offense when deliberating his case. See, e.g., Hill, 315 S.C. at 262, 433 S.E.2d at 849 (stating reversible error is committed if the trial court fails to give a requested charge on an issue raised by the evidence). We know the jury specifically examined Appellant's testimony—which included facts supporting involuntary manslaughter—because they specifically asked to hear it during their deliberations. R. 1358, l. 4—R. 1361, l. 6. Importantly, whether Appellant's allegedly reckless conduct amounted to malice, or simply an element of involuntary manslaughter, was a factual question for the jury to decide, not the trial court. Yet by refusing to instruct the jury on involuntary manslaughter, the trial court essentially permitted the State to argue such reckless conduct amounted to malice, while Appellant was denied the right and ability to argue Appellant's inadvertent shooting of Minor was unintended, without malice, yet occurred due to his reckless disregard for the safety of others while he was engaged in the lawful activity of self-defense. In other words, if the jury believed Appellant was responsible for Minor's death, the only means they were permitted to hold him accountable for such conduct was murder—a situation the State maximized in its final words to the jury: "that shooter took that child's life, that shooter fired the bullet that snuffed her out, and for that he doesn't walk away." R.1316, ll. 15-17. Accordingly, Appellant was prejudiced by the trial court's reversible erred of refusing to charge the jury with the lesser-included offense of involuntary manslaughter.

II. The trial court reversibly erred by failing to charge voluntary manslaughter as a lesser-included offense under the doctrine of transferred intent where direct evidence indicated Appellant was being shot at when, under the sudden heat of passion, he obtained his own firearm and returned fire to stop the threat to himself and other family members present.

The trial court erred in refusing to charge manslaughter. "In determining whether voluntary manslaughter should be charged as a lesser offense of murder, the court must view the evidence in the light most favorable to the defendant." State v. Cottrell, 376 S.C. 260, 262, 657 S.E.2d 451, 452 (2008) (holding that voluntary manslaughter should have been charged as a lesser-included offense to murder). Thus, a request to charge voluntary manslaughter "is properly rejected only where there is no evidence whatsoever of the lesser offense." Id. (internal quotations omitted). Additionally, "[b]oth self-defense and the lesser included offense of voluntary manslaughter should be submitted to the jury if supported by the evidence. The rationale for this rule is that the jury may fail to find all the elements for self-defense but could find sufficient legal provocation and heat of passion to conclude the defendant was guilty of voluntary manslaughter." State v. Gilliam, 296 S.C. 395, 396-97, 373 S.E.2d 596, 597 (1988).

Manslaughter is defined by Section 16-3-50 of the South Carolina Code as "the unlawful killing of another without malice, express or implied." S.C. Code Ann § 16-3-50 (Westlaw, current through 2023). The offense is further defined by common law as "the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." Cottrell, 376 S.C. at 262, 657 S.E.2d at 452. "Sudden heat of passion upon sufficient legal provocation" mitigating felonious killing to manslaughter "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." State v. Wiggins, 330 S.C.

538, 549, 500 S.E.2d 489, 495 (1998) (citing State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993) (quotations omitted).

In the present case, the trial court refused to charge voluntary manslaughter because it did not believe any evidence in the record supported the charge, and that South Carolina courts have not applied the doctrine of transferred intent to voluntary manslaughter. R. 1347, l. 15—R. 1348, l. 5. However, contrary to the trial court's ruling, when viewed as a whole the record contains evidence supporting the charge of voluntary manslaughter as a lesser-included offense of murder. First, direct evidence was present in the record indicating Appellant did not intend to kill either Minor or the assailant shooting at him. Specifically, Appellant testified that he fired what he thought may have been 10 to 12 times from his AK pistol at the assailant until it was empty because he "really wanted him to stop shooting at us." R. 1177, ll. 12-23. Appellant 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. As such, evidence existed in the record indicating Appellant's conduct of lawfully shooting his AK pistol in self-defense was not done with malice.

Second, the record also contains evidence that when Appellant returned fire in self-defense, it was under the sudden heat of passion and in response to sufficient legal provocation. Specifically, Appellant testified that he was sitting in his car when he suddenly heard shots coming from near the front of his car. After getting out of his car and hearing more shots, he frantically ran to the rear of the car, then to the nearby side of the trailer, and then back to his car where he obtained his AK pistol. When he looked up to the street, he saw an assailant coming toward him firing a handgun. Such circumstances readily constitute overt acts of sufficient legal provocation that 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." Wiggins, 330 S.C. at 549, 500 S.E.2d at 495.

Moreover, Appellant's testimony likewise indicates the assailant's overt act of shooting at him indeed overcame his capability of cool reflection and caused him to act in an uncontrollable impulse to do violence: he testified that 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. He did not even remember how many shots he fired or where exactly each of his shots hit. Rather, his testimony, coupled with the forensic evidence in the case, indicate a panicked and uncontrolled response by Appellant of shooting his entire magazine in the direction of his assailant in an effort to stop the assailant from shooting at him. As previously indicated, Appellant did not initially know exactly how many shots he fired, or where each of his shots hit when he fired back in his scared, blurred state of mind. See, e.g., State v. Starnes, 388 S.C. 590, 599, 698 S.E.2d 604, 609 (2010) ("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."). As such, evidence was present in the record that Appellant acted under the sudden heat of passion in response to an overt act amounting to sufficient legal provocation. Accordingly, the trial court erred in refusing to charge the jury with voluntary manslaughter.

The trial court's reluctance to instruct the jury on the lesser-included offense of voluntary manslaughter simply because some ambiguity exists regarding application of the doctrine of transferred intent in such circumstances was likewise erroneous.[11] 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

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[11] Unlike State v. Williams, 439 S.C. 620, 889 S.E.2d 562 (2023), the issue was indeed raised before the trial court in Appellant's case and is preserved for review.

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.").

In State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000), the Court readily indicates the doctrine of transferred intent may indeed apply to murder or manslaughter cases:

> This Court in several cases has held that a defendant *may be found guilty of murder or manslaughter in a case of bad or mistaken aim under the doctrine of transferred intent.* In the classic case, the defendant *intends to kill or seriously injure* one person, but misses that person and mistakenly kills another. Although the defendant did not act with malice toward the unintended victim, the defendant's criminal intent to kill the intended victim (i.e., his mental state of malice) is transferred to the unintended victim. "*If* there was malice in [defendant's] heart, he was guilty of the crime charged, it matters not whether he killed his intended victim or a third person through mistake."

Id. 340 S.C. at 272, 531 S.E.2d at 515 (quoting State v. Heyward, 197 S.C. 371, 377, 15 S.E.2d 669, 672 (1941). Under the Fennell Court's rationale, if the defendant harbored malice in his heart when fired with intention to kill an intended victim but missed, then the same malice and intent to kill follows the bullet that strikes the unintended victim. Thus, the bullet striking an unintended victim would carry no malice or intent to kill if the defendant harbored no malice or intent to kill when firing towards the intended target.

What is more, the rationale Fennell highlights the fact that the source of malice or intent (or lack thereof) in the mind of the defendant toward the unintended victim makes no difference in the analysis of transferred intent; rather, what matters is whether the defendant harbored malice or intent towards the original intended target. Id. In the words of the Fennell Court, "The defendant's *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. . . . 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." Id. 340 S.C. at 271, 531 S.E.2d at 515. If the defendant harbored malice toward the intended victim, but missed and struck an unintended victim, then the doctrine of transferred intent applies regardless of how or why the defendant harbored malice toward the intended victim. Accordingly, traditional common law aspects of voluntary manslaughter, such as the intended victim being the source of sufficient legal provocation causing the defendant's reason to be overcome in the sudden heat of passion,[12] are likewise transferred when the defendant fires at the target that provoked him. This is so because the "spotlight" of *mens rea* is on the defendant's mental state emanating toward the intended victim. To hold otherwise would essentially elevate voluntary manslaughter to a specific intent crime, whereas murder and involuntary manslaughter would remain general intent offenses.

Yet, the Fennell Court's observation that that "a defendant may be found guilty of murder or manslaughter in a case of bad or mistaken aim under the doctrine of transferred intent" is also in accord with South Carolina law regarding the application of transferred intent to "general intent" offenses. As the Court in State v. Williams, 427 S.C. 148, 829 S.E.2d 702 (2019) confirmed, "It is well-settled in South Carolina that the doctrine of transferred intent applies to general-intent crimes." Id. 427 S.C. at 157, 829 S.E.2d at 707; see also State v. Smith, 430 S.C. 226, 234 n9, 845 S.E.2d 495, 499 n9 (2020) (acknowledging the applicability of the doctrine of transferred intent to general intent offenses). "General intent" is defined as the state of mind required for the commission of certain common law crimes not requiring specific intent" and it "usually takes the form of recklessness ... or negligence." State v. Kinard, 373 S.C. 500, 504, 646 S.E.2d 168, 169 (Ct. App. 2007) (internal quotations omitted), overruled in part by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019). As previously stated, voluntary manslaughter is

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12 See, e.g., Harris v. State, 354 S.C. 382, 387, 581 S.E.2d 154, 156 (2003) (citing State v. Locklair, 341 S.C. 352, 362-63, 535 S.E.2d 420, 425 (2000).

statutorily defined as "the unlawful killing of another without malice, express or implied." S.C. Code Ann § 16-3-50 (Westlaw, current through 2023). The heightened *mens rea* for murder is noticeably absent. Rather, "[v]oluntary manslaughter, of course, is an offense which does involve intent on the part of the perpetrator but lacks the element of malice." State v. Blassingame, 271 S.C. 44, 46, 244 S.E.2d 528, 529 (1978). No specific intent is included in this definition; by eliminating the requirement of malice the definition has even an even less specific *mens rea* than general intent offense of murder. Further, the common law requirements that the killing occur under the sudden heat of passion "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," likewise indicate that voluntary manslaughter is a general intent offense not requiring a specif9ic intent to kill. Wiggins, 330 S.C. at 549, 500 S.E.2d at 495 (citing Lowry, 315 S.C. at 399, 434 S.E.2d at 274 (quotations omitted)).[13] Thus, transferred intent likewise applies to the general intent offense of voluntary manslaughter.

Accordingly, the trial court erred by failing to provide the lesser-included jury instruction to the jury. As previously discussed, facts were present in the record supporting the required elements, and the doctrine of transferred intent applied.

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[13] This understanding is shared with other jurisdictions as well. See, e.g., Pethtel v. State, 177 So. 3d 631, 635 (Fla. Dist. Ct. App. 2015) ("Voluntary manslaughter, on the other hand, carries a much broader ambit of intent. To be guilty of this kind of manslaughter, a defendant need not actually intend to kill or injure a victim."); State v. Ceretti, 871 N.W.2d 88, 94 (Iowa 2015) ("specific intent to kill is not an essential element of voluntary manslaughter.") (listing additional jurisdictions reaching the same result); Bruce v. State, 2015 WY 46, 66, 346 P.3d 909, 929 (Wyo. 2015) ("voluntary manslaughter is a general intent crime that does not require a deliberate intent to kill.").

Appellant was also prejudiced by the court's refusal to charge voluntary manslaughter. Appellant was denied the opportunity to have the jury consider a lesser-included offense when deliberating his case. As the State emphasized in its closing, "that shooter took that child's life, that shooter fired the bullet that snuffed her out, and for that he doesn't walk away." R. 1316, ll. 15-17. Yet, Appellant was denied the right and ability to even argue to the jury that it should consider the lesser-included offense of voluntary manslaughter, even though evidence in the record supported the charge. Thus, Appellant was prejudiced by the trial court's refusal to charge voluntary manslaughter. See, e.g., Hill, 315 S.C. at 262, 433 S.E.2d at 849.

CONCLUSION

For the foregoing reasons, Appellant Quayshaun Xzander Clark respectfully requests reversal of his convictions, and remand for a new trial.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of May, 2024.

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."

May 17, 2024.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

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 Final Brief of Appellant 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), this 17th day of May, 2024.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT