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SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Florence County
The Honorable D. Craig Brown, Circuit Court Judge

Appellate Case No. 2023-000694

THE STATE,

Respondent,

vs.

MASON CHRISTOPHER YARBOROUGH,

Appellant.

PETITION FOR REHEARING

On January 14, 2026, this court reversed the murder conviction of Mason Christopher Yarborough and remanded the case for a new trial. *See State v. Yarborough*, Op. No. 2026-UP-003 (S.C. Ct. App. filed Jan. 14, 2026).¹ The Court found that the jury should have been instructed on involuntary manslaughter because “there was some evidence, albeit disputed evidence, that the shooting was unintentional and occurred during a struggle over a firearm.” *Id.*

Pursuant to Rule 221(a), SCACR, the State respectfully petitions for rehearing because it appears that this Court overlooked the lack of evidence that Yarborough acted with reckless disregard for the safety of others, as required for an involuntary manslaughter instruction under the second involuntary manslaughter scenario.

¹ The Court graciously provided an extension of the deadline for the petition for rehearing so that counsel could attend to a family matter out of state.

As this Court noted, involuntary manslaughter instructions are required “when there is any evidence showing an unintentional killing without malice while the defendant was either: (1) engaged in an ‘unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) . . . acting lawfully with reckless disregard of the safety of others.’” *Id.* (quoting *State v. Burriss*, 334 S.C. 256, 264–65, 513 S.E.2d 104, 109 (1999) (alteration in opinion)). The first scenario is not implicated in this case; either Mason Yarborough was lawfully armed in self-defense, meaning that he was not acting unlawfully, or he was unlawfully pointing and presenting a firearm, which amounts to a felony. *See* S.C. Code Ann. § 16-23-410 (West) (providing that “present[ing] or point[ing] at another person a loaded or unloaded firearm” is a felony).

So this case falls under the second scenario. Aside from the killing being unintentional and without malice, there are two independent elements under that scenario. First, there must be evidence that a defendant was acting lawfully. Second, there must be evidence that those actions were undertaken “with reckless disregard of the safety of others.” *Id.*; *see also Wigington v. State*, 413 S.C. 578, 588, 776 S.E.2d 407, 412 (Ct. App. 2015) (“Our appellate courts have held that evidence of a struggle over a gun supports an instruction on involuntary manslaughter when the evidence shows the defendant was lawfully armed in self-defense at the time of the shooting *and* the defendant recklessly handled the loaded gun.” (emphasis added)).

Respectfully, even under his version of the shooting of his father, Mason Yarborough cannot satisfy both elements at the same time. Either Yarborough was not acting in self-defense—which the State maintains is the case, and in which event his conduct was unlawful—or he was arming himself in self-defense. In the latter case, though, there is no evidence that he was reckless with the firearm.

Wigington, cited by this Court in its opinion, is extremely similar to Yarborough’s case, and it did result in a reversed conviction—but that doesn’t mean *Wigington* argues for the same result here. *See Wigington, supra*. In that case, this Court—considering a PCR appeal—found that defense counsel was ineffective for failing to pursue an involuntary manslaughter charge when the gun went off while a father was struggling with his son. *See id.* at 581–82, 776 S.E.2d at 408–09. The *Wigington* Court, while noting that the father testified that he had engaged the safety, found there was some evidence that the father “may have been recklessly handling the loaded gun at the time of his son’s death.” *See id.* at 588–89, 776 S.E.2d at 412. The court framed the dividing line between accident and involuntary manslaughter this way: “The distinction between involuntary manslaughter’s second definition and accident is essentially the manner in which the defendant handles the weapon.” *Id.* at 588, 776 S.E.2d at 412.

Respectfully, this Court’s decision does not specify what Mason Yarborough did that was reckless. *See id.* at 587, 776 S.E.2d at 411 (“Recklessness is a state of mind in which the actor is aware of his or her conduct, yet consciously disregards a risk which his or her conduct is creating.” (quoting *State v. Pittman*, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2008))). Certainly, our courts have often found that a struggle over a firearm entitles the defendant to a self-defense charge. But jury instructions must be tailored to the evidence presented in each case. *See id.* at 586, 776 S.E.2d at 411 (“The law to be charged to the jury is determined by the evidence presented at trial.” (quoting *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993))). And without an example of how Yarborough was reckless, an involuntary manslaughter instruction was not required here.

Recognizing that this Court’s ruling did not address the other issues in Yarborough’s appeal pursuant to *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591,

598 (1999), the State would rely on its previous briefing and argument and respectfully ask this Court to consider those issues as well.

CONCLUSION

For the above reasons, the State petitions for rehearing pursuant to Rule 221(a), SCACR, and requests this Court grant rehearing and reinstate Yarborough's conviction for murder.

Respectfully Submitted,

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February 9, 2026.

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PROOF OF SERVICE

I, R. Brandon Larrabee, counsel for the Respondent, hereby certify that pursuant to Rule 262(c)(3), SCACR, and the Supreme Court order of April 24, 2024, the Petition for Rehearing has been forwarded to Appellant's counsel, Kathrine Hudgins, Esq., via email today, February 9, 2026 to Khudgins@sccid.sc.gov, and to her assistant at cstock@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 9th day of February, 2026.

s/ R. Brandon Larrabee _____

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