RECEIVED
Mar 09 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable R. Kirk Griffin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CAMRIN JAY SMITH,

APPELLANT

APPELLATE CASE NO. 2025-001288

INITIAL BRIEF OF APPELLANT

LARA M. CAUDY
Senior Appellate Defender

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

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.. i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE...2

STATEMENT OF FACTS 3

ARGUMENT

1.

The trial court erred by refusing to instruct the jury on the lesser included offense of involuntary manslaughter when there was evidence to support the charge. 7

2.

The trial court abused its discretion by excluding evidence that Appellant was initially charged with involuntary manslaughter, not murder, pursuant to Rule 403, SCRE, where the evidence was relevant to and probative of the integrity of the investigation and whether Appellant acted with malice, was not misleading or confusing to the jury, and was not unfairly prejudicial to the state, and where exclusion of the evidence violated Appellant's constitutional rights to present a complete defense and cross-examine the witnesses against him. 14

CONCLUSION...21

TABLE OF AUTHORITIES

Cases

California v. Green, 399 U.S. 149 (1970) 20

Crane v. Kentucky, 476 U.S. 683 (1986) 19

Douglas v. State, 332 S.C. 67, 504 S.E.2d 307 (1998) 13

Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991) 9

In re Spencer R., 387 S.C. 517, 692 S.E.2d 569 (Ct. App. 2010) 7, 9, 10, 11

State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006) 16

State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991) 20

State v. Burgess, 391 S.C. 15, 703 S.E.2d 512 (Ct. App. 2010) 19

State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999) 9

State v. Byrd, 323 S.C. 319, 474 S.E.2d 430 (1996) 8

State v. Cabrera-Pena, 361 S.C. 372, 605 S.E.2d 522 (2004) 9, 10

State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001) 19

State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000) 8

State v. Collins, 409 S.C. 524, 763 S.E.2d 22 (2014) 16, 17

State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003) 8

State v. Gibson, 390 S.C. 347, 701 S.E.2d 766 (Ct. App. 2010) 13

State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998) 18

State v. Graham, 314 S.C. 383, 444 S.E.2d 525 (1994) 20

State v. Gray, 408 S.C. 601, 759 S.E.2d 160 (Ct. App. 2014) 18

State v. Hill, 315 S.C. 260, 433 S.E.2d 848 (1993) 9

State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989) 9

State v. Lee, 399 S.C. 521, 732 S.E.2d 225 (Ct. App. 2012) 18

State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008) 20

State v. McGee, 408 S.C. 278, 758 S.E.2d 730 (Ct. App. 2014)........ 17

State v. Orozco, 392 S.C. 212, 708 S.E.2d 227 (Ct. App. 2011)........ 19

State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020)........ 17

State v. Phillips, 430 S.C. 319, 844 S.E.2d 651 (2020)........ 18

State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)........ 9

State v. Reese, 370 S.C. 31, 633 S.E.2d 898 (2006)........ passim

State v. Sams, 410 S.C. 303, 764 S.E.2d 511 (2014)........ 9

State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986)........ 20

State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996)........ 9

State v. Williams, 427 S.C. 148, 829 S.E.2d 702 (2019)........ 8

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001)........ 18

State v. Wise, 359 S.C. 14, 596 S.E.2d 475 (2004)........ 17

Sullivan v. State, 407 S.C. 241, 754 S.E.2d 885 (Ct. App. 2014)........ 13

United States v. Bonds, 12 F.3d 540 (6th Cir. 1993)........ 18

United States v. Mohr, 318 F.3d 613 (4th Cir. 2003)........ 19

Statutes

S.C. Code Ann. § 16-23-230........ 3

S.C. Code Ann. § 16-23-410........ 8, 9, 10

S.C. Code Ann. § 16-3-60........ 9

S.C. Code Ann. § 16-23-210(d)........ 3

S.C. Code Ann. § 17-2-60........ 19

Rules

Rule 401, SCRE........ 17

Rule 402, SCRE........ 14, 17

Rule 403, SCRE........ passim

STATEMENT OF ISSUES ON APPEAL

1.

Did the trial court err by refusing to instruct the jury on the lesser included offense of involuntary manslaughter when there was evidence to support the charge?

2.

Did the trial court abuse its discretion by excluding evidence that Appellant was initially charged with involuntary manslaughter, not murder, pursuant to Rule 403, SCRE, where the evidence was relevant to and probative of the integrity of the investigation and whether Appellant acted with malice, was not misleading or confusing to the jury, and was not unfairly prejudicial to the state, and where exclusion of the evidence violated Appellant's constitutional rights to present a complete defense and cross-examine the witnesses against him?

STATEMENT OF THE CASE

A Laurens County grand jury indicted Appellant on November 22, 2024, for two counts of murder, possession of a weapon during the commission of a violent crime, and unlawful possession of a sawed off rifle. R. * (Indictments). His case was called to trial on June 9, 2025, before the Honorable Kirk Griffin, and a jury. Tr. 1. Assistant Solicitors Elizabeth Finch, Mary-Madison Driggers, and Cameron Cleveland represented the state. Madison Johnston and Jake Erwin represented Appellant. Tr. 1.

On June 13, 2025, the jury found Appellant guilty as indicted. Tr. 536, ll. 12-21. He was sentenced to forty-five years for murder, five years for possession of a weapon during the commission of a violent crime, and ten years for unlawful possession of a sawed off rifle. Tr. 544, l. 22 – 545, l. 3.

This appeal follows.

STATEMENT OF FACTS

Appellant and Grace Ables, the decedent, began dating in 2016 while the two were in high school. Tr. 460, ll. 13-21. They dated for nearly seven years and were engaged at the time of Grace's death on November 25, 2023. Tr. 462, ll. 4-8. Grace's sister, Crystal Ables, described Appellant and Grace's relationship as "happy." She acknowledged that the two had arguments, but such arguments were "natural in any relationship." Tr. 379, ll. 9-21.

After graduating high school, Appellant and Grace lived together, often with roommates. However, at some point in 2022, their then roommate moved out of the two bedroom home they shared because Appellant and Grace "were trying to conceive a baby" and they needed the second bedroom for the nursery. Tr. 372, l. 9 – 374, l. 13. At the time of Grace's death, she was twenty-eight weeks pregnant with a baby girl the couple planned to name Scarlet.[1] Tr. 236, ll. 6-9; Tr. 361, ll. 4-14.

Appellant had a hobby of collecting and shooting firearms. He began handling firearms around 2018 when he was nineteen years old. Tr. 300, ll. 9-14. On November 25, 2023, the day Grace died, Appellant's father came over to the couple's home to shoot firearms with Appellant. Appellant owned nine firearms at the time.[2] He and his father "shot for a couple hours" until his father left around 4:30 or 5:00 pm. After his father left, Appellant "gathered up all [his] guns"

[1] Grace's obstetrician-gynecologist testified that ultrasounds completed when Grace was twenty and twenty-four weeks pregnant showed the baby had normal anatomy and was "growing appropriately." Tr. 234, l. 8 – 235, l. 5. At twenty-eight weeks gestation, the baby was viable, meaning she "would have been able to survive outside of the womb." Tr. 236, l. 25 – 239, l. 13. While the pathologist did not conduct an autopsy on the unborn baby, she testified that the "fetus did not appear to be abnormally developed" and she did not see any injuries or "other findings that would explain its death apart from the gunshot wound to its mother." Tr. 437, ll. 2-25.

[2] One of these firearms was a rifle with a nine inch barrel. Pursuant to S.C. Code Ann. § 16-23-230, it is unlawful to possess a "sawed off rifle" which is defined as a rifle with a barrel less than sixteen inches in length. See S.C. Code Ann. § 16-23-210(d).

and brought them into the house. It took him about three trips to carry everything inside. Appellant placed the smaller firearms and accessories on the kitchen counter and his two larger rifle cases on the floor behind the couch in the living room. Tr. 456, l. 18 – 457, l. 7.

When Appellant came inside, Grace was in the living room watching television. She put on a movie the couple had planned to watch. While watching the movie, Appellant cleaned and inspected his firearms. When the movie ended, Grace asked Appellant if he wanted anything to eat. Appellant told her no at the time. About twenty minutes later, Appellant called Grace over to the couch where he was sitting and told her he was hungry. Grace said she would make him a "TV dinner." About five to ten minutes later, Grace told Appellant his food was ready. Appellant got up from the couch and walked into the kitchen. Grace asked Appellant what kind of sauce he wanted and Appellant told her "Arby's sauce." Grace then said "something . . . sexually provocative." Appellant turned around and picked up one of the guns that was on the kitchen counter. He raised the gun to his chest, pointed it at Grace, and pulled the trigger. Appellant mistakenly believed the gun was unloaded and "stupidly, did not look at the gun" before pulling the trigger. Tr. 457, l. 8 – 458, l. 7.

During his testimony, Appellant explained that he and Grace "both had a darker sense of humor." At some point, Grace had asked Appellant "about using a gun during sex." Appellant told her no, "that it was not something [he] could do during sex." However, ever since then, it became a "joke" between the two to point guns at each other. Appellant explained that Grace "was turned on by it." Tr. 461, l. 9 – 462, l. 3. When Appellant pointed the gun at Grace that night, it was not meant as a threat. He did it to make her happy after she said something sexually provocative to him. Tr. 463, ll. 11-17.

Appellant shot Grace with a Bersa .380. He had only had this firearm for about six months. It was not a gun he regularly carried. Rather, he usually kept this gun in his truck. The Bersa .380 was one of the firearms Appellant shot with his father that day. While Appellant and Grace were watching the movie, Appellant inspected and cleaned this firearm. He unloaded the firearm by "dropping the magazine" and checking to see if there was a round in the chamber. After making sure the gun "looked decent," Appellant put it back together. He also loaded the magazine with eight cartridges. However, Appellant did not recall putting the magazine back into the gun or "racking it." When Appellant picked the gun up to joke around with Grace, he did not think the magazine was in the firearm and did not confirm its absence before pulling the trigger. He mistakenly believed the gun was unloaded. Tr. 472, l. 4 – 475, l. 18.

After Appellant pulled the trigger, he "heard the gun go off." It took a few seconds for Appellant to process what happened. Appellant saw Grace's face change from "a happy smile to a face in pain and shock." Grace "let out a scream" and fell to the floor. Appellant immediately dropped to the floor with her. Grace had previously passed out, but Appellant knew it was different this time. He ran to the living room and grabbed his phone. He then returned to Grace and started CPR. However, he quickly realized that he did not know what he was doing. "Out of instinct," Appellant called his father. He told his father that he "accidentally shot Grace." Appellant's father told him to call 911. Appellant hung up, but then fumbled his phone. He recalled that he could not figure out how to get the keypad to appear on his phone. He finally called 911 and told the dispatcher that he accidentally shot his wife. See State's Exhibit No. 2 (911 Call). Appellant tried to answer all of the dispatcher's questions, but it was not long into the call that he looked at Grace and "realized that she was gone." Tr. 458, l. 8 – 459, l. 21.

During the call, the dispatcher asked Appellant where the gun was located and Appellant told her it was next to him. The dispatcher told Appellant to move the gun to a different room so Appellant carried his firearms to the back bedroom. Tr. 459, l. 22 – 460, l. 3; See State's Exhibit No. 2 (911 Call).

Appellant fully cooperated with law enforcement and gave a recorded statement and written statement to the police. Appellant's testimony at trial was consistent with his statement to police. He told investigators that he and Grace "have this thing where they mess with each other" by pointing guns at each other. Appellant said that after Grace asked him what kind of sauce he wanted, he got up and saw the gun on the counter. He picked it up and pointed it at her and pulled the trigger. However, Appellant "thought the magazine had dropped," meaning that the magazine was no longer in the weapon and that it was unloaded. Appellant explained that at the time he shot Grace, she was in the kitchen between him and the refrigerator. See Tr. 284, l. 4 – 287, l. 3; Tr. 300, ll. 2-8.

Within hours of the shooting, Appellant was charged with involuntary manslaughter. However, weeks later, Appellant was ultimately charged with murder after investigators interviewed individuals who were familiar with Appellant and Grace.[3] These individuals, with the exception of one, maintained Appellant "exhibited good firearm safety." Tr. 330, ll. 3-14. Some of these individuals testified at trial.

---

[3] The trial court granted the state's pretrial motion to exclude evidence that Appellant was originally charged with involuntary manslaughter over Appellant's objection.

ARGUMENT

1.

The trial court erred by refusing to instruct the jury on the lesser included offense of involuntary manslaughter when there was evidence to support the charge.

Relevant Facts

During the charge conference, Appellant requested the trial court instruct the jury on the lesser included offense of involuntary manslaughter as to both counts of murder. Tr. 486, l. 21 – 487, l. 10.

The assistant solicitor objected to the charge. She maintained that there was no evidence to support either of the definitions of involuntary manslaughter established by our case law. She argued Appellant was "pointing and presenting" a firearm and pulled the trigger, which is an unlawful act that is both a felony and naturally tends to cause death or great bodily harm. She asserted, "Pointing a gun at someone and pulling the trigger is unlawful in any instance that I can think of, other than self-defense." She also argued that "whether the defendant intended to harm the victim is irrelevant." The solicitor cited numerous cases in support of her argument. Tr. 487, l. 12 – 490, l. 24.

Defense counsel emphasized that the standard to obtain a jury instruction is whether there is any evidence to support the charge and that the court is not concerned with the weight of the evidence. She argued the solicitor had "a misunderstanding of the pointing and presenting law in South Carolina." Citing In re Spencer R., 387 S.C. 517, 692 S.E.2d 569 (Ct. App. 2010) and South Carolina Requests to Charge by Ralph King Anderson, Jr., counsel argued "there is a threatening manner requirement" for pointing and presenting. She emphasized, "We are not a strict liability pointing and presenting state despite what the State may feel." Because there was

no evidence that Appellant pointed and presented a firearm in a threatening manner, counsel concluded Appellant was entitled to a jury instruction on involuntary manslaughter. Tr. 491, l. 1 – 493, l. 7.

The trial court found there was no evidence to support a charge on involuntary manslaughter and, accordingly, refused to instruct the jury on this lesser included offense. The court ruled there was no evidence to support the first definition of involuntary manslaughter because "pointing and presenting a firearm at someone is a felony, and pointing a gun at someone . . . would naturally tend to cause death or great bodily harm if a gun were fired." The court also ruled there was no evidence to support the second definition because pursuant to S.C. Code Ann. § 16-23-410, pointing a firearm, whether loaded or unloaded, at another person, is unlawful. The court noted that while there are exceptions to this law when one is acting in self-defense or for theatrical productions, neither exception applied in this case. The court cited State v. Reese, 370 S.C. 31, 633 S.E.2d 898 (2006), in support of its ruling. Tr. 497, l. 25 – 500, l. 13.

Defense counsel noted his objection to the court's ruling and briefly stated that this case is "factually distinct from the Reese case that you are relying on." Tr. 500, l. 15 – 501, l. 22.

Standard of Review

"The law to be charged must be determined from the evidence presented at trial." State v. Crosby, 355 S.C. 47, 51, 584 S.E.2d 110, 112 (2003) (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." Id. "In determining whether the evidence requires a charge on a lesser included offense, we view the facts in the light most favorable to the defendant." State v. Williams, 427 S.C. 148, 156, 829 S.E.2d 702, 706 (2019) (citing State v. Byrd, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996)).

"A trial court commits reversible error if it 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) (citing Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991) and State v. Lee, 298 S.C. 362, 380 S.E.2d 834 (1989)).

Discussion

The trial court erred by refusing to instruct the jury on the lesser included offense of involuntary manslaughter when there was evidence to support the charge.

"If there is any evidence warranting a charge on involuntary manslaughter, then the charge must be given." State v. Reese, 370 S.C. 31, 36, 633 S.E.2d 898, 900 (2006) (citing State v. Cabrera-Pena, 361 S.C. 372, 605 S.E.2d 522 (2004) and State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999)). "Involuntary manslaughter is the killing of another without malice and unintentionally while engaged in either: (1) an unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) a lawful act with reckless disregard for the safety of others." Id. (citing State v. Cabrera-Pena, 361 S.C. 372, 605 S.E.2d 522 and State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996)); See also S.C. Code Ann. § 16-3-60 (stating a person charged with involuntary manslaughter may be convicted only upon a showing of criminal negligence "defined as the reckless disregard of the safety of others"). "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." State v. Sams, 410 S.C. 303, 317, 764 S.E.2d 511, 518 (2014) (Pleicones, J., dissenting) (quoting State v. Pittman, 373 S.C. 527, 571, 647 S.E.2d 144, 167 (2007)) (internal quotation marks omitted).

"It is unlawful for a person to present or point at another person a loaded or unloaded firearm." S.C. Code Ann. § 16-23-410; See Reese, 370 S.C. at 36, 633 S.E.2d at 900. In In re

Spencer R., 387 S.C. 517, 520, 692 S.E.2d 569, 571 (Ct. App. 2010), this Court noted, "Neither the South Carolina Code nor South Carolina case law squarely define the phrase 'to present.'" "However, our supreme court has previously determined what actions amount to presenting a firearm." Id. "In State v. Reese, the supreme court held Reese was not entitled to an involuntary manslaughter instruction because he 'presented a firearm' when he took out a gun and waved it in the victim's face." Id. (citing Reese, 370 S.C. at 36, 633 S.E.2d at 900-01). "Likewise, in State v. Cabrera-Pena, the court found the defendant's conduct in showing the victim his pistol as a means of intimidation and forcing her to walk towards a pickup truck constituted a felony of either pointing or presenting a firearm or kidnapping, and thereby precluded an involuntary manslaughter charge." Id. at 520-21, 692 S.E.2d at 571 (citing Cabrera-Pena, 361 S.C. at 381, 605 S.E.2d at 526-27).

In In re Spencer R., this Court concluded that the "implication from the court's discussion in Reese and Cabrera-Pena is that either 'waving' or 'showing' a gun at someone in a direct, actively aggressive, and threatening manner constitutes presenting a firearm." 387 S.C. at 521, 692 S.E.2d at 572. After considering the various definitions of the "infinitive 'to present'" and "similar statutes criminalizing the presenting of a firearm" in other jurisdictions, this Court defined the phrase "to present" in § 16-23-410 as "to offer to view in a threatening manner, or to show in a threatening manner." Id. at 521-23, 692 S.E.2d at 572.

Spencer R. was convicted of pointing and presenting a firearm at Angela B., Brett C., and Mrs. L., Angela B.'s mother. This Court held there was a "lack of evidence establishing Spencer R. intended to present a firearm at Brett C. and Mrs. L." because "no testimony proved Spencer R. intended to specifically threaten Brett C. and Mrs. L. when Spencer R. was sitting on his property, and Mrs. L. admitted Spencer R. did not even turn toward her or see her when she

initially observed Spencer R. holding his assault rifle." Id. at 523, 692 S.E.2d at 573. However, the Court held there was sufficient evidence in the record to support Spencer R.'s conviction as to Angela B. because the evidence demonstrated Spencer R. "deliberately intended to show his rifle at Angela B. in a threatening manner." Id. at 523-24, 692 S.E.2d at 573.

Based on this Court's holding in In re Spencer R., Appellant was not pointing and presenting a firearm as the state argued at trial and as the trial court found. Appellant testified that he did not point and present the firearm at Grace to threaten her. Rather, he did it to make her "happy" based on the ongoing joke the two shared. Tr. 463, ll. 14-17. Appellant maintained that Grace was sexually "turned on by it" and "wanted" Appellant to engage in such conduct. Tr. 461, ll. 9-19. Appellant also testified that he did not intend to hurt Grace or Scarlet, their unborn baby, that night. Tr. 463, ll. 18-20. His testimony was corroborated by his statement to his father that he "accidentally shot Grace" and his statement to the 911 dispatcher that he "accidentally shot his wife." Appellant further testified that his actions were "dumb and careless" and that he "stupidly assumed" the firearm was unloaded when he pointed it at Grace and pulled the trigger. Tr. 463, ll. 3-25.

As defense counsel argued at trial, this case is easily distinguishable from Reese. 370 S.C. 31, 633 S.E.2d 898. In Reese, the defendant called his estranged wife, Teresa, fifty-one times while she was out with friends. Id. at 34, 633 S.E.2d at 899-900. He then showed up at her parents' house where she was living at the time and waited for Teresa to return. Id. When Teresa arrived home around 2:00 am, she and Reese briefly talked outside while standing on the sidewalk in front of her parents' home. Id. at 35, 633 S.E.2d at 900. When Teresa's mother went outside to check on Teresa a few minutes later, she found her lying on the sidewalk. Id. There was blood running down the side of her ear. Id. "Reese admitted to shooting Teresa.

However, he stated that he did not go to her house to kill her. According to Reese, he was upset and crying while talking to Teresa. He pulled the gun out and told Teresa he was going to kill himself. When Teresa tried to talk him out of killing himself, Reese was 'moving the gun back and forth as a reaction.' Reese stated he did not know why the gun went off because he thought both of the gun's safeties were on." Id. Our Supreme Court held Reese was not entitled to an involuntary manslaughter charge because "there is no doubt that Reese was *presenting* a firearm when he took the gun out and began waving it around. Therefore, Reese was pointing and presenting a firearm, a felony, which would preclude an involuntary manslaughter charge." Id. at 36, 633 S.E.2d at 901 (emphasize in original).

Significantly, in Reese, the defendant was waving what he knew was a loaded gun in his estranged wife's face in a threatening manner after he showed up uninvited at her parents' house in the middle of the night. However, in this case, Appellant was engaging in an ongoing joke with his fiancée, with whom in was in a committed and loving relationship, after she made a sexually provocative comment to him in the kitchen of their shared home. Appellant testified that such conduct made Grace happy. Moreover, Appellant mistakenly believed the firearm was unloaded.

Based on the above evidence, Appellant was entitled to a jury instruction on involuntary manslaughter. The evidence demonstrated that Appellant killed Grace without malice and unintentionally while engaged in a lawful act with reckless disregard for the safety of others. Again, Appellant was not acting unlawfully because his actions did not constitute pointing and presenting a firearm as argued above. The killing was without malice and unintentional because Appellant did not intend to harm Grace or the unborn baby. Appellant's act of discharging the firearm was also unintentional because Appellant mistakenly believed the firearm was unloaded.

One cannot intend to fire a gun he believes is unloaded. However, Appellant acted "with a reckless disregard for the safety of others" because he did not confirm the firearm was unloaded before pointing it at Grace and pulling the trigger.

Citing Sullivan v. State, 407 S.C. 241, 754 S.E.2d 885 (Ct. App. 2014), the assistant solicitor argued that "whether the defendant was engaged in a lawful activity is of no consequence if he intentionally fired the gun." However, this principle does not apply to the facts of this case because while Appellant admitted he intentionally pulled the trigger, he mistakenly believed the firearm was unloaded. One cannot fire an unloaded gun. One cannot intend to fire a gun he believes is unloaded. Therefore, Appellant did *not* intentionally fire the gun as the solicitor claimed. See Sullivan, 407 S.C. at 245, 754 S.E.2d at 887 ("When the victim was killed by a gunshot, and no evidence is presented showing the defendant fired the gun unintentionally, the defendant is not entitled to a charge of involuntary manslaughter.").

Because there was evidence that Appellant was acting lawfully and unintentionally fired the gun, he was entitled to a jury instruction on involuntary manslaughter. See Douglas v. State, 332 S.C. 67, 74, 504 S.E.2d 307, 310 (1998) (stating "involuntary manslaughter is at its core an unintentional killing"); State v. Gibson, 390 S.C. 347, 357, 701 S.E.2d 766, 771 (Ct. App. 2010) (stating "the essence of involuntary manslaughter is the involuntary nature of the killing").

Respectfully, this Court should hold the trial court erred by refusing to instruct the jury on involuntary manslaughter when there was evidence to support the charge, reverse Appellant's convictions, and remand for a new trial.

2.

<u>The trial court abused its discretion by excluding evidence that Appellant was initially charged with involuntary manslaughter, not murder, pursuant to Rule 403, SCRE, where the evidence was relevant to and probative of the integrity of the investigation and whether Appellant acted with malice, was not misleading or confusing to the jury, and was not unfairly prejudicial to the state, and where exclusion of the evidence violated Appellant's constitutional rights to present a complete defense and cross-examine the witnesses against him.</u>

Relevant Facts

The assistant solicitor moved pretrial to exclude any evidence that Appellant was originally charged with involuntary manslaughter. She explained that Appellant was initially arrested for involuntary manslaughter "before a full investigation had been conducted." She said law enforcement believed involuntary manslaughter "was the appropriate charge" based on the "face" of the involuntary manslaughter statute and what investigators "knew at the time." However, after further investigation, law enforcement "upgraded" the charges to murder. The solicitor argued that evidence of Appellant's original arrest for involuntary manslaughter was not relevant pursuant to Rule 402, SCRE, and should be further excluded pursuant to Rule 403, SCRE, because "it would unnecessarily confuse the jury." She asserted that if the evidence was admitted "the jury could start to think about something that . . . may or may not even be charged." Tr. 112, l. 20 – 114, l. 3.

Defense counsel stated that this is "not a situation where they mistakenly got this involuntary manslaughter warrant." She asserted that law enforcement obtained a warrant for involuntary manslaughter "after investigating that night" and "after interviewing [Appellant] for almost two hours." Counsel argued evidence that Appellant was originally charged with

involuntary manslaughter was relevant and probative because it "goes to bias in the investigation" and "the integrity of the investigation" and tends to establish "reasonable doubt." She contended that evidence Appellant was originally arrested for involuntary manslaughter would not be misleading or confusing to the jury because "that's how the case went. That's the linear nature of this case." Tr. 114, l. 5 – 115, l. 11.

Defense counsel further argued that Appellant's right to a fair trial and due process under the Fifth, Sixth, and Fourteenth Amendments "is not outweighed by any juror confusion that the State may assert." She maintained that Appellant should be allowed to cross-examine and impeach certain witnesses with evidence that Appellant was originally charged with involuntary manslaughter. Tr. 114, l. 5 – 115, l. 11.

The assistant solicitor countered that involuntary manslaughter was not the "appropriate charge" which is "why the State is moving forward for murder." She repeated that the evidence is "not relevant information for the jury to consider." Tr. 115, l. 13 – 116, l. 4.

The trial court found the evidence was inadmissible pursuant to Rule 403, SCRE. It reasoned that "the mention of the involuntary manslaughter would confuse the issues, would be misleading to the jury." It also determined that "the prejudicial effect is not substantially outweighed by the probative value." However, the court stated that "a door may be opened" for the admissibility of the evidence "depending on how officers testify." Tr. 116, l. 5 – 117, l. 21.

During defense counsel's opening statement, she stated, "Now, South Carolina, generally speaking, we - - we divide unlawful killing into two groups: murder and manslaughter. The only difference between those two is, is there malice, or is there not?" Tr. 143, ll. 4-9. She asserted Appellant made a mistake when he shot Grace and did not act with malice. Tr. 142, l. 20 – 144, l. 1. During the first break in testimony, the assistant solicitor objected to defense counsel's

opening statement. She argued counsel "specifically referenced manslaughter, which Your Honor instructed yesterday must not be brought out." The trial court indicated that it only ruled that evidence that Appellant was originally charged with involuntary manslaughter was not admissible. It found that nothing in defense counsel's opening statement was "outside of the scope of my ruling yesterday." Tr, 171, l. 16 – 172, l. 10.

Finally, during the cross-examination of Investigator Steven Sweat, defense counsel asked Sweat whether Appellant was arrested on November 26, 2023. Sweat answered, "Yes." Counsel then asked Sweat whether Appellant was charged with murder on December 19, 2023. However, the solicitor objected to this question and, outside the presence of the jury, argued the question would elicit testimony the trial court had already ruled was inadmissible. Defense counsel argued he was entitled to cross-examine Sweat about the charges and that the evidence "absolutely goes to reasonable doubt." He asserted the state was "hiding information from the jury" and the jury should know that Appellant was originally charged with involuntary manslaughter. The trial court ruled that defense counsel could question Sweat about why he believed the killing was murder and not accidental, but that he could not elicit testimony about the actual charges. Tr. 339, l. 19 – 345, l. 22.

Standard of Review

"In criminal cases, the appellate court sits to review errors of law only." State v. Collins, 409 S.C. 524, 529-530, 763 S.E.2d 22, 25 (2014) (quoting State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)) (internal quotation marks omitted). "This Court is bound by the trial court's factual findings unless they are clearly erroneous." Id. at 530, 763 S.E.2d at 25 (quoting Baccus, 367 S.C. at 48, 625 S.E.2d at 220) (internal quotation marks omitted). "The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its

ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." Id. (quoting State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004)) (internal quotation marks omitted). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id. (quoting Wise, 359 S.C. at 21, 596 S.E.2d at 478) (internal quotation marks omitted).

Discussion

The trial court abused its discretion by excluding evidence that Appellant was initially charged with involuntary manslaughter, not murder, pursuant to Rule 403, SCRE, where the evidence was relevant to and probative of the integrity of the investigation and whether Appellant acted with malice, was not misleading or confusing to the jury, and was not unfairly prejudicial to the state, and where exclusion of the evidence violated Appellant's constitutional rights to present a complete defense and cross-examine the witnesses against him.

"All relevant evidence is admissible, except as otherwise provided by . . . these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible." Rule 402, SCRE. "Evidence is relevant if it has 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" State v. Perry, 430 S.C. 24, 29, 842 S.E.2d 654, 656 (2020) (quoting Rule 401, SCRE).

Rule 403, SCRE, provides that even if evidence is relevant, it "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . . ." State v. McGee, 408 S.C. 278, 288, 758 S.E.2d 730, 736 (Ct. App. 2014) (quoting Rule 403, SCRE). Unfair prejudice pursuant to Rule 403 "is the tendency of the evidence to suggest a decision based on something other than the legitimate probative

force of the evidence." State v. Phillips, 430 S.C. 319, 328, 844 S.E.2d 651, 656 (2020) (citing State v. Gray, 408 S.C. 601, 616, 759 S.E.2d 160, 168 (Ct. App. 2014))

The starting point for analyzing evidence under Rule 403 is determining the probative value of the evidence offered. "Probative means tending to prove or disprove." State v. Gray, 408 S.C. 601, 609, 759 S.E.2d 160, 165 (Ct. App. 2014) (quoting Black's Law Dictionary 1323 (9th ed.2009) (internal quotation marks omitted). "Probative value is the measure of the importance of that tendency to the outcome of a case. It is the weight that a piece of relevant evidence will carry in helping the trier of fact decide the issues." Id. at 610, 759 S.E.2d at 165. The probative value of evidence is directly related to how important that evidence is in assisting the jury in rendering a verdict. Id. Thus, when analyzing the probative value of evidence, the court must consider the importance of the evidence as it relates to the issues presented in the case. State v. Lee, 399 S.C. 521, 528, 732 S.E.2d 225, 228 (Ct. App. 2012).

After determining the probative value of the evidence, the court must next evaluate the danger of unfair prejudice presented by the evidence. State v. Wilson, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001). "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting United States v. Bonds, 12 F.3d 540, 567 (6th Cir. 1993)) (internal quotation marks omitted). "Rule 403 only requires suppression of evidence that results in unfair prejudice – prejudice that damages an opponent for reasons other than its probative value, for instance, an appeal to emotion." United States v. Mohr, 318 F.3d 613, 619-620 (4th Cir. 2003); See also State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011); State v. Cheeseboro, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001).

Evidence that Appellant was originally charged with involuntary manslaughter after law enforcement investigated the night of the shooting and interviewed Appellant was relevant to and probative of the integrity of the investigation and whether Appellant acted with malice. The fact that the original arresting officer believed the evidence supported a charge of involuntary manslaughter was significant to show that Appellant acted without malice and was not guilty of murder. The evidence was also not confusing or misleading to the jury. It merely informed the jury of the linear progression of the investigation and called into question the reliability of that investigation. Moreover, the evidence was not unfairly prejudicial to the state. It did not suggest a decision on an improper basis. Accordingly, the trial court abused its discretion by excluding evidence that Appellant was originally charged with involuntary manslaughter on November 26, 2023, and not charged with murder until December 19, 2023, after Investigator Sweat's investigation.

Furthermore, the trial court's exclusion of this evidence violated Appellant's constitutional rights to present a complete defense and cross-examine the witnesses against him. "The United States Constitution guarantees a criminal defendant the right 'to present a complete defense.'" State v. Burgess, 391 S.C. 15, 21, 703 S.E.2d 512, 515 (Ct. App. 2010) (quoting Crane v. Kentucky, 476 U.S. 683, 690 (1986)). "This right is also guaranteed by our State constitution: 'Any person charged with an offense shall enjoy the right ... to be fully heard in his defense....'" Burgess, 391 S.C. at 21-22, 703 S.E.2d 512, 515-516 (quoting S.C. Const. art. I, § 14 (2009)); See S.C. Code Ann. § 17-2-60 (2003) ("Every person accused shall, at his trial, be allowed ... to produce witnesses and proofs in his favor...."); State v. Lyles, 379 S.C. 328, 341, 665 S.E.2d 201, 208 (Ct. App. 2008).

"The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence." State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994) (quoting State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 402 (1986)) (internal quotation marks omitted). "Specifically included in a defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination of adverse witnesses." Id. (citing State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991)). Cross-examination has been called "the greatest legal engine ever invented for the discovery of truth." California v. Green, 399 U.S. 149, 158 (1970) (internal citation and quotation marks omitted).

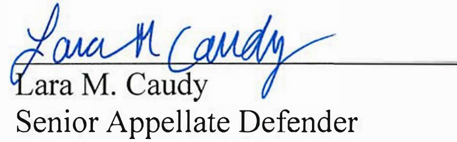
The trial court's exclusion of evidence that Appellant was originally charged with involuntary manslaughter on November 26, 2023, and not charged with murder until December 19, 2023, after Investigator Sweat's investigation, violated Appellant's constitutional rights to present a complete defense and cross-examine the witnesses against him. Appellant was unable to properly cross-examine Investigator Sweat about his investigation and ultimate decision to charge Appellant with murder.

Respectfully, this Court should hold the trial court abused its discretion, reverse Appellant's convictions, and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of March, 2026.

RECEIVED
Mar 09 2026
SC Court of Appeals