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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Honorable R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2025-001288

THE STATE,RESPONDENT

v.

CAMRIN JAY SMITH,APPELLANT.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I.

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?

II.

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

During their November 2024 term, a Laurens County grand jury indicted Appellant Camrin Jay Smith with two counts of murder (2024-GS-30-1582, -1583), possession of a weapon during the commission of a violent crime (2024-GS-30-1581), and one count of unlawful possession of a machine gun or sawed-off shotgun or rifle (2024-GS-30-1580) relating to the shooting death of Grace Abels and her unborn child inside the couple's shared residence. (R. pp. 399–410). Appellant proceeded to a jury trial before the Honorable R. Kirk Griffin, Circuit Court Judge from June 9–13, 2025. Appellant was represented by Madison E. Johnston, Esq. and Jake Erwin, Esq. while Assistant Solicitors Elizabeth Finch, Mary-Madison Driggers, and Cameron Cleveland prosecuted the case. (R. p. 1). At the end of trial, the jury found Appellant guilty as indicted. (R. p. 396). Judge Griffin sentenced Appellant to a term of 45 years imprisonment for the murder charges, ten years for the unlawful possession of a sawed-off rifle charge, and five years for the other weapons possession charge, all running concurrently. (R. pp. 397–398).

This appeal now follows.

STATEMENT OF FACTS

On the evening of November 25, 2023, Appellant shot and killed his fiancé Grace Abels and their unborn child in the kitchen of their shared residence. Appellant never contested identity. Instead, he claimed the shooting was a mistake—based on his testimony and statements to law enforcement that he and Grace were playing a game involving pointing guns at each other, and Appellant pulled the trigger of his gun mistakenly believing it was not loaded.

The case started with Appellant placing a 911 call at 8:36 PM stating that he had accidentally shot his wife in the chest with a .380 handgun about two minutes prior to placing the call. (R. p. 23; State’s Ex. 2 (911 Call)). First responders arrived a couple of minutes later and found Grace already dead on the floor of the residence’s kitchen area, noting a pale/bluish appearance on her face and lips, in addition to her body and extremities being cold to the touch. (R. pp. 50–54, 71, 83–85, 98–99, 147–148). A friend of Grace would later testify that she was texting her that evening on Snapchat and last received a message from Grace at 8:20 PM. (R. pp. 256–258). Appellant was waiting for responders inside the home and was temporarily detained by law enforcement after they arrived. Officers noted that Appellant appeared emotionless and withdrawn—in contrast to his demeanor on the 911 call—but was otherwise cooperative. (R. pp. 51–53, 55, 59–62, 66–67, 148–149).

Officers recovered the .380 handgun in question, a Bersa Thunder specifically, in Appellant’s bedroom.¹ The gun was recovered with the hammer cocked, six cartridges in the magazine, and a cartridge in the chamber. Seven total cartridges were recovered—the gun could carry eight total assuming there was not already one in the chamber. (R. p. 285). Additional loose

¹ The 911 operator had instructed Appellant to remove the weapon from the immediate scene. (*See* R. pp. 321–322; State’s Ex. 2).

.380 ammunition was recovered from the handgun's case. (R. pp. 63–64, 72–78, 128). Appellant was removed from the residence and placed in a patrol vehicle.

After being Mirandized, Appellant explained to investigators that he was being “dumb” and that it was a “joke” to point the weapon “at her.” Appellant also stated that he knew he was not supposed to point the gun. (R. pp. 66–67, 86–89, 148–151). Later that evening, investigators interviewed Appellant back at the sheriff's office.² In the interview, after signing a written waiver of rights, Appellant explained that he was shooting guns earlier that day with his father. After his father left around 4:00 or 5:00 PM, Appellant brought his guns into the house and began cleaning them. Appellant indicated that he cleaned “everything.” Regarding the Bersa .380, Appellant clarified that he did not fully clean it; instead he only took it apart, “inspected” it, and then put it back together. (R. pp. 156, 172–173). After cleaning, Appellant stated he sat down and started watching TV, and Grace began making food. After “45 minutes,” Grace asked Appellant what kind of sauce he wanted, whereupon Appellant got up and picked up the gun sitting on the counter. The investigator testified that Appellant then began explaining “this thing where . . . they mess with each other and pointing . . . it at each other.” Appellant then stated he pointed the gun at Grace and pulled the trigger. When asked about the gun's magazine, Appellant explained that he thought the magazine “had dropped.” (R. pp. 122–123). Another investigator explained:

The very last thing that he was telling us is that he didn't remember racking the firearm. He . . . indicates that he loaded this firearm, but he didn't remember racking it. When he picked the firearm up, he said that he told himself, “Mag drop,” which is the removal of the magazine, but he never actually checked to see if it was removed or not.

² Respondent notes that the interview was audio and video recorded, but, as is apparent from reviewing the exhibit itself and the discussion of the interview from the trial, the audio recording was of very poor quality, and it was/is difficult to follow. (See R. pp. 154–155, 170–172; State's Ex. 83 (Interview)). As such, Respondent mostly relies on the testimony regarding the interview.

(R. p. 172, ll. 2–8) (emphasis added).³

After shooting Grace, Appellant stated it took him about two minutes to get his phone to call his father, who then told him to call 911. While on the phone with 911, Appellant explained he attempted CPR on Grace and gave mouth-to-mouth. (R. p. 158). Appellant elaborated that he was by the kitchen counter and Grace was between him and the refrigerator. (R. pp. 158–159). Investigators confirmed that Appellant placed the call to his father at 8:34 PM, which connected at 8:35 PM and the call lasted 28 seconds. The 911 call was placed at 8:36:47 PM. (R. pp. 58, 162, 195–196, 206–207).⁴

Appellant memorialized his interview in a written statement to law enforcement. After the interview, Appellant was placed under arrest. (R. pp. 160–161).

Another investigator noted the following about Appellant’s demeanor during the interview:

I call it “statuting.” [sic] As he was talking to investigators, he moved . . . very little. His voice didn’t . . . inflection didn’t change much. It was very different from what I heard in the [911 call. His hands overall remained either crossed or slightly open. However, he was also handcuffed in front. Same thing with his feet. They remained crossed or right beside each other. And I know there were times that I took note of . . . for 40 minutes, he stayed in a very relatively similar position at the beginning, and then again for about another . . . let’s see, 25 minutes or so with the most significant movements being that he crossed his ankles and moved his . . . hold his hands back and forth while he was at the table.

(R. p. 184, ll. 8–20).

At the autopsy, the forensic pathologist, Dr. Claire Rose identified a single gunshot wound to Grace’s chest and recovered a single projectile lodged in Grace’s thoracic spine. (R. pp. 141–142, 297–305). Dr. Rose opined that the bullet traveled from Grace’s left breast through her heart

³ As noted *supra* in note 2, the actual interview—especially Appellant’s conversation—is difficult to hear. However, with the audio turned up, it is possible to make out some of the pertinent discussion regarding this topic on State’s Ex. 83 from 30:00 to 35:00.

⁴ While not explicitly apparent from the testimony, the solicitor surmised in argument that Appellant waited 79 seconds before placing the call to 911 after hanging up with his father.

before lodging itself in her thoracic spine. (R. p. 316). Dr. Rose testified that Grace was shot from an intermediate range with a maximum distance of two to three feet and a minimum distance of six inches based on Dr. Rose's observation of unburnt gunpowder particles on Grace's clothing, additional unburnt particles around the wound, and gunpowder stippling around the wound. (R. pp. 309–315). Dr. Rose testified that Grace's unborn child was well-developed and noted no abnormalities. (R. pp. 307–309). Grace's OB-GYN, Dr. Todd Lance, testified similarly that the unborn child was approximately 28 weeks along with no abnormalities and would have been viable outside of the womb. (R. pp. 106–113).

SLED's firearm examiner, Michelle Eichenmiller, testified in detail to the various safety features of the Bersa Thunder .380 handgun. Specifically, Eichenmiller noted that the gun has (1) a thumb safety, (2) a hammer de-cocking function apart of the thumb safety, *and* (3) a magazine safety. Regarding the magazine safety, she explained that if the gun had no magazine in it, the gun would not fire when the trigger was pulled, and in fact, the trigger would essentially feel weightless to the user. Eichenmiller emphasized that the gun would not fire in this condition even if there was a cartridge in the chamber. (R. pp. 285–286). The thumb safety was similar to other handguns in that it could easily be actuated by the thumb or other finger while holding the gun and the absence of such protection or safety would be indicated by a red dot meaning the safety was off and the gun could be fired. Eichenmiller explained that the thumb safety also acted as a hammer "decocker," meaning that when the safety was actuated, the hammer would go "back up" if it was down (or cocked) in the firing position. (R. pp. 284–285).

Regarding the hammer, Eichenmiller explained that the Bersa Thunder had both single and double action functionality with an external hammer—meaning the gun could be fired double action with the hammer up with a longer and stronger trigger pull or in single action with the

hammer down (or cocked) with a corresponding lighter and shorter trigger pull. Since the gun had an external hammer, Eichenmiller opined that it would be apparent whether the gun was in single action or double action mode based on whether the hammer was visually up or down. Similarly, from a mechanical perspective, it would be physically apparent whether the gun was in single action or double action based on the weight of the trigger pull. Again, in double action, the trigger would be heavy while in single action the trigger would be lighter. It would also be apparent whether the gun had a magazine in the gun based on the presence or absence of trigger resistance *entirely*. The “decocker” / thumb safety would transition the gun from a single action (hammer down or cocked) state to a double action (hammer up) state. (R. pp. 287–290). The State’s theory was thus that Appellant would have or should have known about the weapon being loaded based on the various safety features just described. (*See* R. pp. 368–380 (Closing Argument)).

Relatedly, multiple witnesses testified in detail to Appellant’s seeming familiarity with guns generally and, more importantly, gun safety. Investigators testified that Appellant explained in his interview that he had been regularly using guns since around 2018—which was about six years prior to the shooting. Appellant described the nine guns he owned and the various amounts and states of the ammunition he kept for those guns. Notably, regarding the .380 in question, he explained that he owned both hollow point ammunition and regular target ammunition, and that he would switch from hollow points to target ammunition for regular shooting and then switch back to hollow points when he was done. He further indicated to investigators that he did not feel like he was a beginner. He admitted to owning a 7-inch AR-15. (R. pp. 172–175, 202).

One former roommate, a friend of Appellant and Grace, testified that he was personally familiar with Appellant’s guns and safety practices—specifically emphasizing that Appellant would always exhibit general safety practices such as making sure the gun was empty when

showing it. He did not recall ever seeing Appellant exhibit unsafe practices and even characterized Appellant as exercising a “high level of care.” (R. pp. 225–228). Another former roommate and friend of Grace testified similarly, noting that Appellant showed all his guns to him and that when he handed him a handgun one time, he checked to make sure the gun was clear before handing it over. (R. pp. 238–242). Grace’s best friend, who also lived together with Appellant and Grace at one point, testified that she shot guns together twice with Grace and Appellant, and that Appellant instructed her on rules of firearm safety. She also testified that Appellant prohibited her and Grace from shooting a certain gun after it malfunctioned. (R. pp. 247–249). Another friend testified that Appellant showed him the gun he carried at a party and cleared the gun after pulling it out of his waistband, but before handing it to the friend. He described Appellant’s familiarity with the gun and general safety practices as “second nature.” (R. pp. 260–262). Finally, two witnesses characterized Appellant and Grace’s relationship as “rocky” and one of Grace’s friends testified that Appellant was “controlling.” (R. pp. 238–239, 246–247).

Appellant testified in his own defense, summarizing his account of the incident as follows:

We woke up and it was a normal routine. Let the dogs out, just eat something, and kind of went on through the morning kind of getting ready, because I knew my dad was coming over to . . . shoot guns with me. I . . . don’t recall the time he got there, but I know that we shot for a couple of hours, and he left around 4:30 to 5:00.

And from there, . . . I gathered up all my guns, brought them in the house. Took about three trips to get everything inside. Brought everything into the living room, and pretty much set all the smaller stuff on the counter. And my two bigger rifle cases behind the couch are in the vicinity of the living room. I got everything in, and I sat down with Grace.

She was watching something on the TV, and she put on . . . it was either a show or a movie that we . . . had already planned to watch. And between the incident and the time of us watching TV, I was getting up and cleaning the guns. And then I cleaned one, go back, sit down, clean another. I think I cleaned three guns in that time. One of them being the .380 Bersa.

The movie was over and . . . she got up, asked me if I wanted anything to eat, and at the time, I told her no. About another 15, 20 minutes went by. I was sitting on the couch, and I called her over to the couch and I told her that I was hungry. She asked me what I wanted and I told her whatever was easiest for her to make, and she said that she would just make me a TV dinner.

And I was sitting on the couch for about another five, 10 minutes and she told me my food was ready. And I got up, walked into the kitchen and . . . she had asked me what kind of sauce I wanted and I told her Arby's sauce. *And there was something said, it was sexually provocative, but I do not recall what . . . was said.* And it was about that time that I kind of . . . turned around and picked up the gun and, stupidly, did not look at the gun. *And this was in response to the sexual thing she said. And I raised it to my chest and pointed at her and I pulled the trigger.*

(R. p. 318, ln. 20—R. p. 320, ln. 7) (emphasis added).

Regarding the “joke” between Appellant and Grace of pointing guns at each other, Appellant explained:

I don't remember when it first started as a joke. And I know that at some point, . . . she had asked me about using a gun during sex, and I told her that it was not something that I could do . . . during sex. But from there, it kind of became a joke between us because she started with me doing it. And when I first did it, . . . she was turned on by it. And so, it was something that we did to each other just because . . . that one thing that she wanted.

(R. p. 323, ll. 11–19).

Appellant further emphasized he did not believe the gun was loaded. He also elaborated on why he pointed the gun at Grace and why he pulled the trigger without checking the gun:

A. It was just something that we did, and with the current . . . I guess, interaction between us, that was . . . you know, one of the times that we would do it.

Q. But Camrin, why wouldn't you check to see if it's unloaded?

A. *I don't know why I didn't check.*

Q. Well, did you check to see if it was racked?

A. *I did not.*

Q. Why not? Do you want . . . you got to answer out loud for the jury?

A. *I don't remember.*

Q. And did you check to see if the safety was on?

A. *I did not.*

Q. Why not.

A. *I don't remember.*

Q. Well Camrin, did you not notice the magazine was in it?

A. *I didn't.*

Q. Why not?

A. *I don't know.*

Q. Is it because you didn't care or did you stupidly assume?

A. *I stupidly assumed.*

(R. p. 324, ln. 9—R. p. 325, ln. 10) (emphasis added). Appellant also acknowledged the rule of firearm safety regarding not pointing a gun at something not meant to be killed or destroyed. (R. p. 326).

On cross-examination, Appellant did not recall inconsistencies from his prior statements to law enforcement, namely: (1) why he previously stated that 45 minutes went by while he was waiting on Grace to make him his TV dinner rather than the 10 to 15 minutes he just testified to, (2) that he previously stated he saw the magazine was dropped on the gun before picking it up, and (3) that he previously stated he thought the safety was on. Moreover, Appellant was adamant that he did not remember racking the slide of the gun or putting the magazine in the gun despite admitting he fully loaded the magazine and put the gun back together after cleaning it. Appellant mostly acknowledged the safety functionalities of the Bersa Thunder .380 as previously testified to by Eichenmiller—yet specifically disclaimed knowing how hard the trigger pull would be based

on whether the magazine was out or whether the gun was in single or double action. Appellant also denied feeling the pinky extension on the magazine when he picked up the gun. (R. pp. 329–341). Finally, Appellant acknowledged telling investigators that he had put the gun back together only 30 minutes prior to the shooting. (R. pp. 343–344).

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” *State v. Johnson*, 413 S.C. 458, 776 S.E.2d 367, 371 (2015). “An appellate court will not reverse the trial judge’s decision regarding a jury charge absent an abuse of discretion.” *Cook v. State*, 415 S.C. 551, 556, 784 S.E.2d 665, 667 (2015). “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.” *State v. Brooks*, 428 S.C. 618, 625, 837 S.E.2d 236, 239 (Ct. App. 2019) (quoting *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166-67 (2007)).

“The admission or exclusion of evidence is a matter within the trial court’s sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a ‘manifest abuse of discretion accompanied by probable prejudice.’” *State v. Commander*, 396 S.C. 254, 262–63, 721 S.E.2d 413, 417 (2011) (quoting *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 848 (2006)). “A trial judge’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances.” *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). “The trial judge retains discretion to impose reasonable limits on the scope of cross-examination.” *State v. Mizzell*, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002) (citing *State v. Sherard*, 303 S.C. 172, 399 S.E.2d 595 (1991)).

ARGUMENT

I. The trial court did not abuse its discretion in refusing to instruct the jury on the lesser included offense of involuntary manslaughter where no evidence supported the charge—rather, it only supported murder.

Appellant argues the trial court erred by refusing to instruct the jury on the lesser included offense of involuntary manslaughter. Specifically, he argues the charge was warranted where Appellant testified that he did not intend to shoot Grace when he pulled the trigger and that he did not point and present a firearm, meaning he was not engaging in an unlawful act at the time of Grace's death—though he appears to concede such conduct was reckless. Respondent contends that the trial court properly rejected the charge where no evidence supported an inference that Appellant was only guilty of involuntary manslaughter and involuntary manslaughter was otherwise off the table as a matter of law because Appellant's own testimony demonstrates he unlawfully pointed a firearm at Grace and intentionally pulled the trigger. The only appropriate charge in this case was murder. This Court should affirm.

A. Relevant Facts

Following the close of testimony, at the charge conference, Appellant requested an instruction on involuntary manslaughter. (R. p. 346). Citing the two prongs of involuntary manslaughter, the solicitor objected to the instruction, specifically arguing that Appellant could not meet the first prong since he pointed and presented a firearm (a felony) and pointing a gun and pulling the trigger was an act that “does certainly tend to cause death or great bodily injury.” As to the second prong, the solicitor argued that Appellant was engaging in the unlawful activity of pointing and presenting a firearm, noting that such an action is unlawful in almost all instances other than self-defense, which was not applicable here. (R. pp. 347–348). The solicitor also pushed back against Appellant's argument that his intent to make Grace happy by pointing the gun (or to

engage in the mutual “joke” between the two of them) at her precluded a finding of unlawful activity. In support of this refutation, the solicitor cited case law stating that involuntary manslaughter is precluded if the defendant intentionally fired the gun. (R. pp. 348–350). Appellant, apparently conceding that the first prong of voluntary manslaughter would be inapplicable, argued that under the second prong, Appellant did not point and/or present a firearm because he did not do so “in a threatening manner”—based on Appellant’s contention that pointing a gun at Grace was a “joke” the two shared between each other. (R. pp. 351–352). The trial court took the matter under advisement yet noted that its decision would hinge on whether Appellant was acting lawfully. (R. pp. 253–354). The next day, the trial court gave its ruling as follows:

With regard to whether a lesser-included offense of involuntary manslaughter would be charged as a lesser-included offense of the indicted charge of murder, I and my law clerk reviewed the case law submitted by both sides. And in reviewing those issues . . . and I believe as I stated yesterday, the law in South Carolina is, if there’s any evidence of a lesser-included offense, that it should be charged. And so, that’s the standard from a starting-off point.

So what we’re dealing with in this case is involuntary manslaughter. And it is a lesser-included offense of murder. It is defined as the unintentional killing of another without malice, while engaged in either the commission of some unlawful act, not amounting to a felony, and not naturally tending to cause death or great bodily harm, or . . . the doing of a lawful act with a reckless disregard for the safety of others.

The first prong of involuntary manslaughter, the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily injury. I don’t think that applies because pointing or representing [sic] a firearm at someone is a felony, and pointing a gun at someone, I believe, would naturally . . . tend to cause death or great bodily harm if a gun were fired. *So the focus is on the second part, the doing of a lawful act with a . . . reckless disregard for the safety of others.*

And this decision hinges on whether, in this particular case, the pointing of the firearm, it was a lawful act. In South Carolina, Section 16-23-410 . . . provides, “*It’s unlawful for a person to present or point at another person, a loaded or unloaded firearm.*”

And there are exceptions for theatrical productions and the like and self-defense. No question that self-defense isn't an issue in this case. There's no evidence whatsoever in this record that the Defendant was acting in self-defense. So that leads to the analysis of whether pointing and presenting in this case was a lawful act or not. There's no evidence in the record that this is a theatrical performance or the like. There is a reference to using the firearm in a game or a joking manner. *I think it would be a stretch for me to conclude that that would put this in the realm of a . . . theatrical production or the like. . . .*

So in as far as the case law, I'm relying on the case of . . . State v. Reese, 370 S.C. 31, 633 S.E.2d 898. It is . . . not directly on all fronts with the facts. This is a case where the defendant had presented a weapon to his spouse. He was talking about perhaps committing suicide.

The court found that by pointing or presenting the weapon at his spouse, the court found that that was an unlawful act that precluded the charging of involuntary manslaughter as . . . a lesser-included offense. So . . . based on the holding in State v. Reese, I don't think there's evidence in this case that warrants an involuntary manslaughter charge as a lesser-included offense.

(R. p. 358, ln. 2—R. p. 360, ln. 9) (emphasis added).

B. Discussion

In South Carolina, the law is clear that a lesser-included offense need not be charged to the jury if there is no evidence supporting an inference that the defendant is guilty of only the lesser-included offense. *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (“[T]he trial court is required to charge only the current and correct law of South Carolina.”) (citations omitted); *State v. Shank*, 447 S.C. 564, 570–71, 929 S.E.2d 403, 406–407 (2026) (“‘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.’ . . . In other words, to ‘justify charging the lesser crime, the evidence presented *must allow a rational inference the defendant was guilty only of the lesser offense.*’ . . . A requested charge is ‘properly rejected *when there is no evidence tending to show the defendant was guilty of the lesser offense.*’”) (quoting *State v. Sams*,

410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014); *State v. Geiger*, 370 S.C. 600, 607, 635 S.E.2d 669, 673 (Ct. App. 2006)) (emphasis added).

In *Shank*, decided earlier this year, in reversing a contrary decision of the Court of Appeals, the Supreme Court found that no evidence supported a rational inference that Shank only committed the lesser offense of third-degree assault and battery rather than assault and battery of a high and aggravated nature (ABHAN) when he reversed a car with an open passenger door back towards an officer who was in-between his driver's door and the rest of his patrol vehicle—whereupon the open passenger door of Shank's vehicle collided with the open driver's door of the officer's patrol vehicle and caused the officer to fall down and suffer minor injury. 447 S.C. at 572–73, 920 S.E.2d at 408. Notably, the court found that the parties agreed on the following critical facts: “Shank was aware of the officer's presence, his passenger-side door was open, and he reversed the vehicle . . . toward the officer while attempting to flee. That conduct caused the open passenger-side door of the vehicle to strike the officer's door with enough force to knock the officer to the ground.” *Id.* at 571, 920 S.E.2d at 407. Under the ABHAN statute, the State was required to prove that Shank unlawfully injured the officer by “means likely to produce death or great bodily injury.” *Id.* at 570–71, 920 S.E.2d at 406–407 (citing S.C. Code Ann. § 16-3-600(B)(1)). On the other hand, in order to get the charge, the defense was required to show that the evidence presented could have supported a reasonable inference that Shank was only guilty of third-degree assault and battery, which simply requires unlawful injury of another. *Id.* (citing S.C. Code Ann. § 16-3-600(E)(1)).

The court found that no evidence supported a rational inference that Shank was *only guilty of third-degree assault and battery* based on their finding that the vehicle in that case “used in that manner, constitute[d] a means likely to produce death or great bodily injury. . . . The risk here was

not theoretical. Had the officer not fallen in the narrow gap between the vehicles, he could have been crushed by his door or run over by Shank's vehicle." *Id.* at 571–573, 920 S.E.2d at 407–408. The court rejected Shank's argument that he did not intend to strike the officer, noting that "ABHAN is a general-intent crime" and the State was not required to prove that Shank intended to cause great bodily injury, only that he committed the act tending or likely to cause great bodily injury with the requisite general-intent mental state. *Id.* at 572, 902 S.E.2d at 408 (citations omitted).

In this case, even in the light most favorable to him, Appellant can point to no evidence supporting an inference that he is only guilty of the lesser-included offense of involuntary manslaughter rather than murder. Furthermore, unlike in *Shank*, Appellant's conduct plainly fails to fit under the elements of involuntary manslaughter. In this state, involuntary manslaughter is defined "as the unintentional killing of another without malice while engaged in either (1) the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm, or (2) the doing of a lawful act with a reckless disregard for the safety of others." *Sams*, 410 S.C. at 309, 764 S.E.2d at 514 (citing *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996); S.C. Code Ann. § 16-3-60 (2003)). Murder is the unlawful killing of another with malice aforethought. *State v. Owens*, 433 S.C. 482, 483–84, 860 S.E.2d 357, 358 (2021) (citations omitted). On appeal, Appellant appears to maintain his concession that his conduct could never fit under subsection (1) of involuntary manslaughter given that pointing and/or presenting a gun at someone (a felony) and pulling the trigger is an act tending to cause great bodily injury or death. Instead, he contends that his conduct fit under subsection (2) by arguing that him pointing a gun at Grace was not a violation of S.C. Code Ann. § 16-23-410. Specifically, he argues he did not "present" a gun in violation of the statute.

Regardless, Appellant’s exhaustive discussion of the definition of “to present” has no bearing on the outcome of this analysis as the statute is clearly disjunctive, not conjunctive: “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 (emphasis added); *cf. State v. Burton*, 356 S.C. 259, 264, 589 S.E.2d 6, 8 (2003) (defining elements of statute as “(1) pointing *or* presenting; (2) a loaded or unloaded firearm; (3) at another.”) (emphasis added).⁵ By Appellant’s own admission, and even assuming he genuinely believed the gun was unloaded, he pointed the gun at Grace and thereby engaged in an unlawful act at the time of Grace’s shooting and death—and was therefore not engaged in “the doing of a lawful act with a reckless disregard for the safety of others.” *Sams, supra*. The question of whether he “present[ed]” the firearm at Grace is simply irrelevant. *See State v. Brannon*, 379 S.C. 487, 496, 666 S.E.2d 272, 276 (Ct. App. 2008), *aff’d*, 388 S.C. 498, 697 S.E.2d 593 (2010) (“When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.”); *id.* at 497, 666 S.E.2d at 277 (“Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.”) (citations omitted); *cf. State v. Heyward*, 432 S.C. 296, 317–18, 852 S.E.2d 452, 463 (Ct. App. 2020), *aff’d as modified*, 441 S.C. 484, 895 S.E.2d 658 (2023) (noting that it would produce absurd result that would defeat plain legislative intent of § 16-23-410 to require proof that firearm was operational).

Quite tellingly then, nowhere in his brief does Appellant address the fact that he admitted to picking up and pointing the gun at Grace. Instead, he turns the statute on its face by phrasing or

⁵ Notably, the trial court, in its citation of *Reese*, appeared to implicitly reject this conjunctive framing by using the statute’s clear disjunctive “or.”

discussing it in conjunctive terms—i.e. that Appellant must have pointed *and* presented the firearm at Grace in order for him to be culpable under the statute. (See Brief of Appellant at 10–11).⁶ Citing *Reese*, the trial court correctly found that these statutory arguments lacked merit. Moreover, the court’s decision would be further supported by *Shank*.

Similarly, Appellant’s argument that his intent to make Grace happy by pointing a gun at her defeated unlawful conduct under this statute or that the shooting was otherwise unintentional/accidental lacks merit. The caselaw clearly provides that one who intentionally fires a weapon is not entitled to an instruction on involuntary manslaughter. *Sullivan v. State*, 407 S.C. 241, 245, 754 S.E.2d 885, 887 (Ct. App. 2014) (citing *Douglas v. State*, 332 S.C. 67, 74–75, 504 S.E.2d 307, 310–11 (1998); *State v. Pickens*, 320 S.C. 528, 531–32, 466 S.E.2d 364, 366–67 (1996); *State v. Cooney*, 320 S.C. 107, 112, 463 S.E.2d 597, 600 (1995); *State v. Gibson*, 390 S.C. 347, 357–58, 701 S.E.2d 766, 771–72 (Ct. App. 2010); *State v. Morris*, 307 S.C. 480, 484, 415 S.E.2d 819, 821–22 (Ct. App. 1991)); cf. *Bozeman v. State*, 307 S.C. 172, 414 S.E.2d 144 (1992) (stating the mere fact that the murder defendant had not aimed the pistol prior to firing it did not support a charge on the lesser-included offense of involuntary manslaughter, as firing a gun naturally intends to cause death or bodily harm, and it also does not fall into the second category of involuntary manslaughter because the defendant was not engaged in a lawful act; however, evidence that the victim swung a knife at the defendant immediately prior to the shooting supported a self-defense charge).

The mere fact that Appellant claims he did not know the gun was loaded should not defeat this notion where he admitted to intentionally pulling the trigger—especially when such a claim is

⁶ Notably, Appellant appears to abandon the argument made at trial that the statute has a “threatening manner requirement” for both presenting and/or pointing a firearm. (See R. pp. 351–352). Moreso, it appears Appellant attempts to conflate the two disjunctives.

assessed against the uncontroverted testimony regarding the various safety features of the Bersa Thunder .380 and Appellant's experience with guns and safe gun practices. *Cf. Shank*, 447 S.C. at 572, 902 S.E.2d at 408; *Sullivan, supra*. In this case, the trial court properly exercised its discretion in refusing to support a charge of involuntary manslaughter that was wholly unsupported by the facts in this case. Rather, the facts only supported the conclusion that Appellant was guilty of murder.

This Court should affirm.

II. The trial court did not abuse its discretion in excluding evidence that Appellant was originally charged with involuntary manslaughter where such evidence was irrelevant to the issues at trial and would otherwise confuse or mislead the jury, and where such limitations on evidence did not violate Appellant's constitutional rights

Appellant argues that the trial court abused its discretion by excluding evidence that Appellant was initially charged with involuntary manslaughter, not murder, pursuant to Rule 403, SCRE. He also argues this error was a violation of his constitutional rights to present a complete defense and to cross-examine witnesses against him. Respondent contends that such a fact was irrelevant, otherwise inadmissible under Rule 403, and the exclusion of such could not have affected Appellant's constitutional rights. Even assuming error, such error would undoubtedly be harmless given Appellant's own admission that he intentionally picked up a gun, intentionally pointed it at his pregnant fiancé, and intentionally pulled the trigger. This Court should affirm.

A. Relevant Facts

Following jury selection, the State moved to exclude "any mention of . . . the Defendant being charged with involuntary manslaughter before the charges were upgraded to murder[.]" noting that Appellant was originally charged as such before the investigation was fully complete. On the law, the solicitor argued that this original charging decision was not relevant and thus excludable under Rule 402; and otherwise excludable under Rule 403 on the basis that such information would confuse the jurors. The solicitor also noted that the issue of involuntary manslaughter would be better addressed at the charging conference following the close of evidence, where the issue of the charge could be assessed on its merits. (R. pp. 3–4).

Appellant agreed generally on saving the charging issue for later, but argued that eliciting the fact that Appellant was originally charged with involuntary manslaughter was important for highlighting deficiencies in the investigation. Appellant further argued that eliciting such facts was

important for preserving his trial and due process rights under the constitution. In reply, the solicitor again focused on the fact that the original charging decision is not relevant for the charges being tried at that point and getting into what Appellant was originally charged with would mislead the jury. (R. pp. 4–5). The trial court gave its ruling as follows:

I think this issue turns on 403, and really it's always viewed . . . in the light of unfair prejudice to the Defendant, but I don't think that's what the law says. Unfair prejudice can . . . come about I mean, the State can be prejudiced as well . . . It is unfair and distinguished from legitimate impact of evidence, as in the outcome of the case. Unfair prejudice does not mean damage to a Defendant's case that results from legitimate probative force of the evidence rather than prejudiced evidence, which tends to suggest a decision on an improper basis. All evidence is meant to be prejudicial, it's only unfair prejudice, which must be scrutinized under the 403.

So . . . we've got a situation where I'm assuming these involuntary manslaughter warrants were drawn up *based upon the Defendant's own admission that he shot her, and it was an accident*. I can only assume that further investigation led law enforcement to present either to withdraw those warrants and serve warrants for murder, or to directly indict the case for murder.

You know, it's not lost on me that court doesn't have jurisdiction over a case until the grand jury passes upon the indictment. *So I think under 403, the mention of the involuntary manslaughter would confuse the issues, would be misleading to the jury*. And at least preliminarily, I'm going to grant the State's motion to limit any mention that those warrants were dismissed. Now, there . . . I guess, could be some situations where a door may be opened depending on how officers testify or . . . if we get to the point in the case where lesser included . . . are to be considered. Perhaps . . . it doesn't preclude any mention of involuntary manslaughter. *But I think, at least at the outset before any evidence has been presented the fact that these warrants were . . . drawn and . . . then either withdrawn or upgraded based upon further investigation. I . . . think that would be confusing, and I would limit that introduction under rule 403.*

And if the case unfolds and the evidence takes us another way, it may . . . become relevant at some point, but I don't think . . . I think the prejudicial effect is not substantially outweighed by the probative value. So I will grant the State's motion with regard to the dismissal of the involuntary manslaughter warrants.

(R. p. 6, ln. 5—R. p. 7, ln. 21) (emphasis added).

Later, during the cross-examination of one of the State's investigators, counsel asked whether Appellant was arrested on November 26, 2023. He also asked whether Appellant was

charged with murder on December 19, 2023. The solicitor asked to approach, and the jury was excused. Back on the record, the solicitor objected to the question, arguing that it would elicit the excluded fact that Appellant was originally charged with involuntary manslaughter. (R. pp. 211–213).

Appellant countered that the door was opened at that point and that the investigator was obligated to give the jury the truth regarding the investigation at that point, and that such information went to reasonable doubt. The trial court ruled as follows:

Well, I think the focus is on the wrong issue. The focus is that the word “accident” has been used a lot. Accidental shooting. Accident . . . accident . . . accident. I think you are within your rights to ask now you believed or that it had been presented to law enforcement that this was an accident. I think you could ask him, “What led you to believe that this was murder and not accidental?” I think that’s a fair question, but in terms of arrest, . . . there’s a different standard to arrest somebody for something versus what we’re here today to get to. Whether this was a murder beyond a reasonable doubt, or perhaps involuntary manslaughter. I think that’s obviously where this is headed.

But . . . you know, *charges get changed all the time*. You know, for example, if somebody is arrested for a DUI, gets in . . . an accident with somebody and a person in the opposite car has no obvious visible injuries that would rise to the level of great bodily injury. But then they go get checked out at the hospital, the person is seen, the defendant is arrested for straight DUI. And then later on it’s determined, “Oh. Well, they had a ruptured spleen,” which is great bodily injury. *Then obviously that charge should be upgraded. And it’s not due to any nefarious conduct of the officers. It’s due to the evidence led to something else.*

I don’t know if they’ve reached the standard for proving malice, but that’s what we’re here for. I think the question you need to ask is . . . what they knew factually versus . . . at the time versus what was ascertained as the investigation progressed. . . . I think the focus is on the wrong area. So if you want to ask him about officers had been advised, or had been referred to as an accident . . . you know, that’s the issue.

(R. p. 214, ln. 3—R. p. 215, ln. 8) (emphasis added). Thus, the trial court declined to revisit its ruling excluding the fact that Appellant was originally charged with involuntary manslaughter.

B. Discussion

“Relevant evidence” is defined as evidence “having 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.” Rule 401, SCRE. “Under Rule 401, evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy.” *State v. Pagan*, 357 S.C. 132, 142, 591 S.E.2d 646, 651 (Ct. App. 2004) (citations omitted). Irrelevant evidence is inadmissible pursuant to Rule 402, and relevant evidence is further subject to Rule 403 which allows the trial court to exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading of the jury, or other reasons.

What Appellant was originally charged with is ultimately irrelevant because the investigation produced uncontested facts making involuntary manslaughter a wholly inappropriate charge, not to mention it being a charge totally unsupported by law as argued *supra*. The trial court properly recognized this in its analogy to someone being charged with a lesser “DUI” before officers later find out a person has serious injuries, whereupon the DUI charge is upgraded to reflect the new information or new evidence. Allowing inquiry into the fact that Appellant was originally charged with involuntary manslaughter does not help the jury decide the ultimate issue at trial—whether Appellant was guilty of murder, since the facts wholly failed to support the charge of involuntary manslaughter. In this way, not only was this evidence irrelevant, but offering it before the jury would needlessly confuse the issues at trial or otherwise mislead the jury. Thus, even if relevant, the trial court properly exercised its discretion in excluding the evidence under Rule 403. Appellant can show no abuse of discretion in this regard. Moreover, allowing such needless inquiry potentially draws too closely on the law’s protection of prosecutorial discretion.

See, e.g., State v. Dawkins, 297 S.C. 386, 389, 377 S.E.2d 298, 300 (1989) (“[A]n initial decision by the prosecutor should not freeze future conduct, because the initial charges filed by a prosecutor may not reflect the extent to which an individual is legitimately subject to prosecution.”); *State v. Langford*, 400 S.C. 421, 435 n.6, 735 S.E.2d 471, 479 n.6 (2012) (noting that a prosecutor “has discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain.”). Thus, as a matter of the rules of evidence and public policy, the trial court properly excluded this evidence.

As to Appellant’s constitutional claims, the constitutional right to present a complete defense and to cross-examine witnesses is not limitless. *State v. Cottrell*, 421 S.C. 622, 639, 809 S.E.2d 423, 433 (2017) (“The right to present a complete defense is violated by the exclusion of defense evidence pursuant to a state rule of evidence *only in rare circumstances.*”) (emphasis added, citation omitted); *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000) (“The right to a meaningful cross-examination of an adverse witness is included in the defendant’s Sixth Amendment right to confront his accusers. . . . This does not mean, however, that trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination.”) (citations omitted). As continually reinforced by the United States Supreme Court, “state and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials.” *United States v. Scheffer*, 523 U.S. 303, 308 (1998); *see also Crane v. Kentucky*, 476 U.S. 683, 689–690 (1986); *Marshall v. Lonberger*, 459 U.S. 422, 438, n. 6 (1983); *Chambers v. Mississippi*, 410 U.S. 284, 302–303 (1973); *Spencer v. Texas*, 385 U.S. 554, 564, (1967) (all cited by *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006)). Even relevant evidence is subject to reasonable restrictions. *Scheffer*, 523 U.S. at 308 (citing *Taylor v. Illinois*, 484 U.S. 400, 410 (1988); *Rock v. Arkansas*, 483 U.S. 44, 55 (1987); *Chambers*, 410 U.S. at 295). Rules of

evidence “do not abridge an accused’s right to present a defense so long as they are not ‘arbitrary’ or ‘disproportionate to the purposes they are designed to serve.’” *Id.* (quoting *Rock*, 483 U.S. at 56). The federal right to present a complete defense is treated the same as a matter of state constitutional law. *See State v. Burgess*, 391 S.C. 15, 21–22, 703 S.E.2d 512, 515–16 (Ct. App. 2010).

As argued above, and noted in the standard of review, the trial court has broad discretion to apply and enforce the rules of evidence, including Rule 403; or in directing the scope of cross examination under Rule 611. Appellant’s briefing on these constitutional issues does little more than continue to contest the validity of the trial court’s evidentiary ruling. *See, e.g., State v. Rivera*, 402 S.C. 225, 245–46, 741 S.E.2d 694, 705 (2013) (“We emphasize Appellant does not challenge the legitimate purposes served by Rules 401, 402, or 403, SCRE. Nor does Appellant contend any of those evidentiary rules in and of themselves arbitrarily restrict his right to testify. Rather, Appellant claims the trial court arbitrarily misapplied those rules, and in committing that error of law, the trial court unconstitutionally prevented Appellant from testifying during his own trial.”). Appellant offers no argument on how Rule 403 “serve[s] no legitimate purpose” or how it is “disproportionate to the ends [it] [is] asserted to promote.” *Id.* at 245, 741 S.E.2d at 704–705 (quoting *Holmes*, 547 U.S. at 326). Furthermore, he cannot show that the trial court abused its discretion in limiting the scope of cross-examination. As such, he cannot show a violation of his fundamental right to present a complete defense or his right to cross-examine witnesses.

And because any error in this context would not be fundamental and therefore non-structural, this issue is subject to a harmless error inquiry. *Compare id.* at 246, 741 S.E.2d at 705 (“Most trial errors, even those which violate a defendant’s constitutional rights, are subject to harmless-error analysis.” (citing *Arizona v. Fulminante*, 499 U.S. 279, 306–307 (1991)) *with id.* at

247, 741 S.E.2d at 705–706 (“The Supreme Court has found ‘an error to be structural, and thus subject to automatic reversal only in a very limited class of cases.’”) (cleaned up, citations omitted); *accord State v. Collins*, 409 S.C. 524, 537–39, 763 S.E.2d 22, 29–30 (2014) (applying harmless error analysis to Rule 403 issue); *State v. Gillian*, 360 S.C. 433, 454–57, 602 S.E.2d 62, 73–75 (Ct. App. 2004), *aff’d as modified*, 373 S.C. 601, 646 S.E.2d 872 (2007) (finding Confrontation Clause error harmless).

Under the harmless error inquiry, preventing Appellant from eliciting the fact that he was originally charged with involuntary manslaughter would be harmless given his own admission that he intentionally picked up a gun, intentionally pointed it at Grace, and intentionally pulled the trigger—where such an admission precludes a finding that Appellant was innocent of murder *or* only guilty of the lesser-included offense of involuntary manslaughter. Rather, as argued above, such an admission, combined with the rest of the evidence in this case (especially regarding Appellant’s inconsistencies—i.e. his lack of credibility—and testimony regarding his safe gun practices), supports the conclusion that Appellant was only guilty of murder.

This Court should affirm.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

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