STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE, Respondent,

v.

WILLIE MARVIN WILLIAMS, Appellant.

Appellate Case No. 2013-001152

INITIAL BRIEF OF RESPONDENT AND DESIGNATION OF MATTER

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. In a case where both voluntary manslaughter and self-defense were charged to the jury, did the trial court err by excluding as hearsay a threat made by the alleged victim while holding a gun on the appellant?

II. Did the trial court err by failing to charge involuntary manslaughter because appellant testified that the gun went off during a struggle with one of the alleged victims?

STATEMENT OF THE CASE

During the early morning hours of July 10, 2010, Natasha Kerns was murdered by appellant Willie M. Williams ("Williams") with a handgun. (Tr. pp. 67-82, 660-61). Williams also shot Anthony B. Wilson just a few moments later. (Tr. p. 295, ll. 1-8, 660-61). Williams also endangered the life of the deceased victim's minor children. (Tr. p. 660-61). All of the crimes occurred in Greenville County. Later that same day, Williams was arrested near Gray Court, in Laurens County. (Tr. p. 156, ll. 8-21; p. 157, ll. 15-19). On April 23, 2013, the Greenville County grand jury indicted Williams for murder, attempted murder, possession of a weapon during the commission of a violent crime, and unlawful conduct towards a child. (*Indictment numbers 2013-GS-23-3238, -3239, -3240*). (Tr. pp. 1, 8-9). Williams was represented on the charges by Richard Warder and Townes Jones, Esquires. The State was represented by Assistant Solicitor Judy Munson. (Tr. p. 1). Williams proceeded to a jury trial on May 13-14, 2013 before Circuit Court Judge Deadra L. Jefferson. (Tr. p. 1). At the trial's conclusion, the jury found Williams guilty as charged. (Tr. p. 660-61). Judge Jefferson sentenced Williams to life imprisonment for the murder, thirty (30) years for attempted murder, ten (10) years for the unlawful neglect of a child, and five (5) years for the gun charge, suspended to time served (1,041 days). All sentences were ordered to run concurrently. (Tr. pp. 677-78).[1] This appeal followed.

[1] At sentencing, Williams's prior record was provided to Judge Jefferson. Williams was convicted in 1990 of arson and sentenced to ten (10) years suspended to three (3) years and three (3) years probation to follow. Williams was also convicted in 1989 of malicious injury to personal property. (Tr. p. 666).

RESPONDENT'S STATEMENT OF THE FACTS

Natasha Kerns ("*Natasha*"), the deceased victim, was an aspiring singer who had appeared on the television show *American Idol*. She was estranged from her husband, appellant Willie Marvin Williams ("Williams") at the time of her death. Several months before the murder, *Natasha* had met Anthony B. Wilson ("*Anthony*"), her new boyfriend, at a night club in Charlotte, N.C. On July 8, 2010, *Anthony* drove down from Charlotte, and spent the night at *Natasha's* residence. That night was the first occasion *Anthony* had spent the night at *Natasha's* residence in Greenville, S.C. *Anthony* parked his vehicle in front of *Natasha's* residence in the driveway. The following night, July 9, 2010, *Anthony*, *Natasha*, and her children went out to eat in *Natasha's* car and returned to *Natasha's* home. *Natasha* parked her car behind her home. (Tr. pp. 67-82, 285-87, 300-01, 505, 669).

Natasha lived in the "Idlewild" subdivision in a ranch style home. *Natasha* was afraid of her estranged husband appellant Williams. Prior to her murder, there had been two (2) domestic incidents at her residence involving Williams including one (1) in which the police were called, and Williams moved out of *Natasha's* home and into his own residence in Gray Court. Williams appeared at *Natasha's* residence again on June 25, 2010. At the time of *Natasha's* murder, she had just filed for a restraining order from Williams and for child support. Williams had been served with the papers. Williams was upset about having to pay child support, and Williams was due in Greenville County Family Court on these matters the week following Natasha's murder [July 13, 2000]. At the time of her death, *Natasha* had also barricaded her front door with her living room furniture. The back door was equipped with a burglar alarm. (State's Ex. 54, Tr. 67-82, 109, 307-14, 340, 513, 554-58, 564, 574).

Defendant's movements the night of murder

Appellant Williams picked up Cynthia Booker, a date, and her aunt on the night of July 9, 2010 and drove them to a "biker clubhouse" in Greenville in his black Chrysler 300. (Tr. p. 250, ll. 5-19; Tr. p. 518, ll. 3-25). They stayed from approximately 1:30 AM to 3:45 AM when Williams suddenly left without Ms. Booker or her aunt. (Tr. p. 250, ll. 23-25; p. 253, ll. 8-14; Tr. p. 524, ll. 10-17). Ms. Booker testified Williams left the parking lot of the club hurriedly peeling his tires. As a result, she and her aunt had to find another ride home. Williams left the biker club, changed clothes at another location, and then drove to *Natasha's* home. (Tr. pp. 525, 526, ll. 10-18). Williams had been drinking alcohol before arriving at *Natasha's* residence. (Tr. p. 569, ll. 15-25). There, at *Natasha's* home, Williams found *Anthony*'s car parked outside *Natasha's* residence in the driveway. (Tr. p. 526).

What the victims saw and heard

After midnight, July 10, 2010, during the early morning hours before her murder, *Natasha* was in her home with *Anthony*. (Tr. p. 286, ll. 1-21; p. 287, ll. 24-24; p. 285, l. 1). After returning from going out to eat, *Natasha* and *Anthony* interacted with the children and talked and then went to bed. (Tr. p. 288). The two (2) were lying in bed in *Natasha's* room. Also in the home were the victim's two (2) small children, a son "*J*" (age 9) and his baby sister (age 2). (Tr. p. 86, ll. 22-23; p. 88, ll. 21-25; p. 89, ll. 8-9). "*J*" had his own bedroom where he slept, and his baby sister slept in her crib in *Natasha*'s bedroom.

At trial, "*J*" testified that he knew something was wrong that morning when he "heard the first fire" [gunshot]. (Tr. p. 90, ll. 1-10). After hearing the shot, *J.* woke up, cut on the lights, cut

them off, then looked out the window and saw a Chrysler 300 [Williams' car] parked outside the house. (Tr. p. 90, ll. 14-23; p. 91, ll. 1-14). *J.* was able to identify this car as *his sister's dad's* car.[2] (Tr. p. 91, lines 17-18).

Anthony testified at trial about the moments before the murder when Williams showed up at *Natasha's* home. *Anthony* testified *Natasha's* son, *J.*, was in his bed; and, around 3:00 AM, he [*Anthony*], *Natasha* and her daughter went to bed in *Natasha's* bedroom. Later on, *Anthony* was awakened by dogs barking and "some ruckus going on around the outside of the house." (Tr. p. 288, ll. 5-6, 19-25; p. 289, l. 25; p. 290, ll. 1-3). *Anthony* testified that when he woke *Natasha* about the noise, she grabbed her gun from under the bed and went towards the front of her home. *Anthony* took *Natasha's* daughter towards her son *J.*'s bedroom. (Tr. p. 290, ll. 21-25; p. 291, ll. 1-3).

Natasha called 911 on her cell-phone. *Natasha* tells the operator there is someone outside her home, that her dogs are barking, and that she has her pistol for her own protection. Natasha also tells the operator that she and her husband are going through a divorce and an order of protection is pending. She then tells the operator that Williams is on her front porch. On the 911 tape, one can hear *Natasha* telling Williams to get away from her home. Then one can immediately hear a loud bang [the gunshot], and then *Natasha* dropped her cell-phone, and one can hear her collapse to the floor of her living room in front of a picture window where her body was later found by police. (State's Ex. 1 [911 call], Tr. pp. 67-82, 540). Williams shot *Natasha* through the front living room window. (Tr. pp. 108-09, 120-22, State's Ex. 7, 8, 10, 11, & 26).

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[2] *J.*'s biological father had no involvement in the case or the trial. (Tr. p. 87, ll. 12-21). Williams is the biological father of *J*'s half-sister, the baby girl.

Anthony testified that before the first shot was fired, he heard *Natasha* near the front door say something about "get away from my property, get away from my house." (Tr. p. 291, ll. 23-25). Then Anthony heard "banging on the outside" and *Natasha* shouting. Right after that, "it went like straight silent." (Tr. p. 292, l. 25; p. 293, ll. 1-2).

Natasha's cell-phone remained on after she collapsed to the floor dead from the gunshot wound. (State's Ex. 1 [911 tape], 67-82, 540). Appellant Williams kicked or forced out an entire lower front pane of a window in a garage converted into a den. This window pane did not break, but came completely dislodged from the window, where police later found it propped against the inside den wall. (State's Ex. 29, 30, Tr. pp. 109, 339, 391). Williams then entered the home through this opening in the window armed with his handgun. (Tr. pp. 294-95, State's Ex. 1, 911 tape).

Anthony testified after it got quiet, a male entered the room *Anthony* was in [*J*'s room where *Anthony* had carried the baby girl and placed her in *J's* bunk-bed], and the male [Williams] fired three (3) shots.[3] *Anthony* tripped over a video-game system on the floor right before Williams fired the shots, and *Anthony* was "pretty close to the weapon when it fired. (Tr. p. 295). "The first one—I guess the first one hit me, or whatever. That took me to the ground." (Tr. p. 295, ll. 1-8). *Anthony* eventually went unconscious. *Anthony* eventually regained consciousness as a result of *J.* shaking him. *Anthony* found a towel and wrapped it around his head. Then he made his way down the hallway, and "I see her [*Natasha*] laying on the floor by the [front living room] window on her back. I went over there to check her pulse. Before I could even make an exit out of the house and everything, the sheriff was coming in through the back

[3] *Anthony* is actually mistaken about the number of shots Williams fired in *J. 's* bedroom. On the 911 tape, one can hear Williams fire four (4) shots in rapid succession. (State's Ex. 1, 911 tape).

door." (Tr. p. 297, ll. 1-15). *Anthony* had suffered a grazing gunshot wound to the head. (Tr. pp. 118, 126, 174, 187-89, 298-200, State's Ex. 44 & 45). He was later told he had "powder burns and stuff like that on my face and over my clothing." (Tr. p. 295).

J. testified at trial that after he heard the first shot and saw Williams' car outside, he left his room crawling down the hallway and found his mom lying on the living room floor. (Tr. p. 92, ll. 4-6, 527, ll. 7-12). *J.* stated he saw Williams standing over his mom shooting her. (Tr. p. 92, ll. 15-25).[4] When asked how many shots did he hear, *J.* responded "[n]ine or four, one of those two." (Tr. p. 93, ll. 11-12). *J.* testified Williams left "[a]fter he ran out of bullets." (Tr. p. 101, ll. 1-3). *J.* explained that he knew Williams ran out of bullets because "he faced it at me" and "he shot it. He shot it at me. And then he ran out of bullets. You know how a gun says—when the bullet goes out of bullets, and then it says pssh [phonetic] and it's out of bullets. And then he left." (Tr. p. 104, ll. 9-17). *J.* testified Williams left out of the window in the den.

After committing the crimes, Williams left the residence, got into his Chrysler 300, and drove back to his home in Laurens County. Williams parked the Chrysler 300 in his garage, pushed a lawn mower behind the car, and then closed the garage door. (Tr. pp. 561, 192, 576-77).

Police Investigation

The police arrived around 5:00 AM after the 911 call which was placed around 4:50 AM by the deceased before she was shot. (Tr. pp. 67-82; Tr. p. 107, ll. 12-18). Upon arrival, Deputy Laura Campbell of the Greenville County Sheriff's Office, along with two (2) other deputies,

[4] *J* is obviously confused as he was 9 years old at the time and witnessed his mother's death and the shooting of *Anthony*. *Natasha* was found dead on her back in front of the living room window of her home. She had only one (1) gunshot wound; however, her shirt was covered in blood. In *J's* bedroom at the other end of the house, police found at least three (3) bullet holes, including in *J's* bunk bed. *Anthony* collapsed in *J. 's* bedroom after he was shot.

approached and entered the home through the kicked out window frame. (Tr. p. 109, l. 25; p. 110, ll. 1-15). Deputy Campbell described a "young boy in a pair of boxer shorts holding a very young girl that looked to be less than two (2) in a pair of pink-footed pajamas." (Tr. p. 110, ll. 22-25; p. 111, ll. 1-2). "The little boy was holding his sister. They were both screaming hysterically, staring at their mother on the floor. Both were crying, screaming, Help us, and He killed my mommy." (Tr. p. 117, ll. 20-25; p. 118, l. 1). Deputy Campbell testified there was also an adult black male in the living room [*Anthony*] that appeared to be injured with a towel around his head soaked in blood. (Tr. p. 118, ll. 4-7). As Deputy Campbell got the children out of the house, through the same window frame hole, the little boy spontaneously stated: "Willie Marvin killed my mom." (Tr. p. 118, ll. 14-19). Williams full name is *Willie Marvin* Williams. (Tr. p. 1)

Police found *Natasha* lying on her back in the living room of her home with a gunshot wound to her head. Her cell-phone was nearby. Police also found a bullet hole in the living room front window between where the curtains opened. *Natasha* was lying below these curtains with her feet toward the window near the far right of the front window if one is standing in the living room of the home looking out. (Tr. pp. 108-09, 120-22, State's Ex. 7, 8, 10, 11, & 26).

In the den, which was a converted garage, and is at the far right of the home if standing inside the residence, police found a bottom four (4) square window pane that had been forced out and into the den, and then placed upright against a wall behind a couch. This window faces the driveway of the residence. The glass in the window pane was not broken. The frame had been forced out and into the den by someone outside the home. The hole made by the missing four-square pane was large enough for one (1) person to crawl through and enter the home. (Tr. pp. 109, 110, 120, ll. 14-16, State's Ex. 6, 9, 10).

At the other end of the ranch style home from the den, at the end of a hallway, to the right, in *J.*'s bedroom, police found several bullet holes. One (1) bullet hole was in the child's bunk-bed, and two (2) were in the ceiling. A fired bullet was collected from a wall. Also found on the carpet of this room was blood where *Anthony* had collapsed. No shell casings were found inside or outside the home, i.e. Williams either picked up the casings or was using a revolver. (State's Ex. 32-42, Tr. pp. 95. 392-401). The murder weapon was not found either.

When crime scene specialists entered the residence, they entered by breaking in the back sliding glass door to the home. When they opened this door, an audible, loud, piercing, screeching burglar alarm went off. (Tr. pp. 182-84). No alarm was triggered when Williams entered earlier through the front garage/den window. Williams had formerly lived at the residence before he and *Natasha's* separation.

After interviewing *Anthony* and "*J.*", investigators determined Williams had committed the crime. Police also interviewed members of Williams' family.[5] Police determined Williams was a resident of Gray Court, in Laurens County. (Tr. pp. 118, 323-25, 315-17, 331-33, 337, 360-64).

Sometime that morning, the Greenville County Sheriff's Office requested assistance from Laurens County police in searching for the suspect vehicle in reference to this case. (Tr. p. 154, ll. 7-16, 20-24). Deputy Joshua Garrison of the Laurens County Sheriff's Office observed

[5] Two (2) of Williams' family members and one (1) friend were called as witnesses at trial by the State. They were anything but cooperative and what little testimony they gave was obtained with much difficulty. A friend of Williams denied he related an incriminating statement to police regarding what Williams told him. His testimony was impeached by several officers who interviewed him. Williams' sister first denied that she told police Williams had been served with legal papers shortly before the murder and that Williams was angry about the possibility of having to pay child support; however, after questioning by the Court *in camera* and continued examination by the Solicitor she admitted to the same. (Tr. pp. 190-94, 229-243, 273-75, 334-37, 307-14).

Williams driving a champagne Chevy Tahoe, just after noon on July 10th. Williams had switched vehicles. (Tr. p. 155, ll. 1-6, 16-20).[6]

Deputy Garrison activated his blue lights to initiate a stop of Williams' vehicle; however, Williams "sped off at a high rate of speed." (Tr. p. 156, ll. 15-19). Garrison chased Williams for approximately twenty-six (26) miles at speeds in excess of one hundred and ten (110) miles per hour. (Tr. p. 156, ll. 20-21). The car chase ended when Deputy Garrison disabled Williams' vehicle by ramming it with his patrol car. Williams was found inside the vehicle with a "knife sticking out of his chest." (Tr. p. 157, ll. 6-10, 15-19; p. 158, ll. 2-4). Williams had tried to kill himself. The knife was removed from William' chest, and he was apprehended. (Tr. p. 158, ll. 14-17). Williams was airlifted to the hospital. (Tr. p. 327, ll. 15-21).

Autopsy and forensics

An autopsy was performed on *Natasha's* body on July 12, 2010 by Dr. Michael Ward, Chief Medical Examiner for Greenville County. (Tr. p. 258, ll. 23-25; p. 261, ll. 17-18). The autopsy showed *Natasha* suffered a gunshot wound to her face, which entered just inside of the victim's right eye, i.e. she was shot between the eyes. Further, the wound was surrounded by irregularly-sized superficial scratches described as intermediate target defect. This occurs when the bullet passes through another object before it strikes the person. This was consistent with the fact the front window to *Natasha's* residence had a bullet hole in it. *Natasha* also suffered superficial scratches on the inside portion of her eyes which means "her eyes were open when

[6] Officer Greg Hawkins with the Greenville County Sheriff's Office warrants division testified he went to Laurens to Williams' home to find out if any of the five (5) vehicles that Williams had registered in his name were there. Officer Hawkins discovered a Chrysler 300 in Williams' garage when he arrived. The garage was closed and a riding lawn mower was parked behind the Chrysler 300, i.e. Williams hid the car in his garage and attempted to make it look like he had not been anywhere in the Chrysler. (Tr. p. 320, ll. 1-10, 360-61, 576-77).

the bullet impacted her face." (Tr. p. 262, ll. 18-25; p. 263, ll. 1-12). Dr. Ward testified at trial *Natasha* would have dropped virtually immediately after the gunshot wound. (Tr. p. 264, ll. 3-11). The manner of death was homicide because Natasha "..died as a result of a gunshot wound to the head." (Tr. p. 268, ll. 15-25).

Forensic examination determined *Natasha* was killed with a .38/9mm caliber bullet. She *was not* shot with her own handgun, which was found next to her body. When police searched Williams' residence in Gray Court, they found a box of five (5) federal .38 caliber bullets. These bullets were consistent in caliber and design with the fired bullet from the autopsy and the bullet recovered from the wall of *J*'s room.[7] The .38 pistol that went with the .38 caliber bullets was never recovered. It was not in Williams' residence in Gray Court, and it was not in his car when he was arrested after the long police chase. (Tr. pp. 341, 360-64, 404-17).

[7] The transcript mistakenly states a disassembled bullet found at Williams' home is "to assist with" caliber and design as State's Exhibits Nos. 43 and 48. bullet specimens. (See Tr. p. ll. 4-6). This is clearly a typographical error. Based on the questioning before and after this typographical error, it is clear the firearm and toolmark expert testified a bullet found at Williams' home was disassemble by him and "is consistent with" *not* "to assist with" State's Ex. 43 and 48, the bullet from the deceased victim and the bullet recovered from *J's* bedroom wall. **(Tr. pp. 416-17).**

ARGUMENT I.

Judge Jefferson did not err in excluding the evidence of what someone allegedly said because it was not relevant; and, if offered for the truth of the matter asserted was hearsay and prejudicial to one of the victims' character; further, Williams was not prejudiced by the exclusion of what someone said because it was not a threat and cannot be considered a threat.

What Occurred Below

During the trial, Williams testified that he arrived at the victim's home after 4:30 AM, which was after he left a motorcycle club and bar. (Tr. p. 526, lines 7-8, 10-18). While dark, Williams attempted to open the front door was unable to get into the house. He then began to knock. (Tr. p. 529, lines 10-25). Williams stated he saw someone inside the home move an inside curtain; and, he looked in but could not see anyone. He denied that he heard Natasha yell: "get off my porch; get away from my house[.]" even though this is on the 911 tape. Williams testified he was walking off of the porch when he heard something in the grass next to the house and turned towards the noise. Williams testified that he saw a guy, "an individual approaching me. And they pulled out a weapon and pointed it at me and said--." (Tr. p. 530, lines 6-14). Defense counsel interrupted Williams and then asked him again what did the man say. At this point in the trial, a hearsay objection was raised by the State; the jury was excused, and Williams was allowed to finish his testimony regarding what was said to him *as a proffer*. (Tr. p. 530, lines 18-23).

Williams testified outside the jury that the man who approached him [*Anthony*] stated: "I, finally, get to meet the man whose money I've been spending." (Tr. p. 531, ll. 17-18). Nothing else was said by the man. Judge Jefferson ruled:

> He can testify that a gun was pointed at him. But the words that were spoken are not really relevant to state of mind. I thought he was going to say - - originally,

> he was going to say something about - - I thought it was something that was provocation. And I'm not hearing that.

(Tr. p. 532, ll. 3-8). Defense counsel responded:

> Well, you know, in Willie's mind, it kind of could have been - - I mean, he would have to testify to it.

The Court responded:

> Well, words, no matter how – don't justify self-defense. It would have to be something that is life threatening. You just taunting me is not enough for self-defense. And that would be in the nature of a taunt, if I were to take it in the light most favorable as you're advancing.

Counsel responded: "Yes, Your Honor. (Tr. p. 534, ln. 18).

To which the Court responded: "But I don't think it falls within the exception." (Tr. p. 532, ll. 19-20). To which counsel responded:

> He's, also, testifying that the declarant had a gun pointed at him.

(Tr. p. 532). To which the Court responded:

> Well he can testify to that. But the words do not rise to the level of provocation. So that would be excluded. But he can testify that someone pointed a gun at him.

(Tr. p. 532, ln. 23 – 533, ln. 1).

Once the jury returned, Williams testified that the man approached him, said something, and pointed a weapon that appeared to be a handgun at Williams. Williams testified he then engaged in a defensive maneuver in self-defense to protect himself, which resulted in the gun going off in *Anthony*'s hand outside the house. (Tr. p. 535, 17-24; p. 536, line 1). Williams testified he and the man then fell through a window to the home, and then struggled throughout the house, until the gun fired three (3) times **in *J.'s* bedroom** striking *Anthony.* Williams testified he did not have control of the gun only Anthony's arms and wrists. (Tr. pp. 576, ll. 4-11).

Standard of Review

Whether evidence is relevant in a criminal case is an issue within the trial judge's discretion. State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996). A trial judge's determination of admissibility of evidence will not be disturbed absent a showing of an abuse of discretion that has resulted in prejudice to the complaining party. State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989). Great deference is given to a trial judge's decision regarding the comparative probative value and prejudicial effect of evidence, with the judgment of the trial judge only being reversed in exceptional circumstances. State v. McLeod, 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004); State v. Horton, 359 S.C. 555, 598 S.E.2d 279 (Ct. App. 2004); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 S.E.2d 785 (Ct. App. 2003).

The Lack of Merit of this Issue

Williams repeatedly refers throughout his brief [including in his statement of issue on appeal] to the alleged statement of the person who approached Williams [*Anthony*] as *a threat* in order to justify reversal of his convictions and sentences. (See BOA). The plain fact of the matter is the statement is not a threat. And, Williams repeated characterizations of the statement in his brief as a threat will never make it so.

The only thing Williams testified at trial was the man said: "I, finally, get to meet the man whose money I have been spending." As Judge Jefferson properly ruled, **it was not a threat** and did not constitute legal provocation.

Further, Williams did not testify *in camera* or before the jury that the statement or the statement combined with the gun being pointed at him caused him to fly into a rage, to lose control or volition, or created an uncontrollable impulse to do violence. State v. Starnes, 388

S.C. 590, 698 S.E.2d 604 (2010). Williams merely testified he acted in self-defense employing a defensive maneuver he had received in prior training. (Tr. pp. 535-39, 576, ll. 4-11).

Because of what the alleged statement of the man was, as testified to by Williams, the statement was irrelevant to Williams' state of mind. Rule 402, SCRE ("Evidence that is not relevant is not admissible."). Because the statement was not a threat and was irrelevant to Williams' state of mind, it could only be offered for the truth of the matter asserted, which was an attempt to disparage the male victim, *Anthony*, as a free-loader, i.e. an attack on the male victim's character. *See* State v. Lyles, 379 S.C. 328, 665 S.E.2d 201 (Ct. App. 2008)(holding character evidence of the victim and witness offered by the defendant in murder case was irrelevant and could only unfairly impugn the character of the victim or witness and its prejudice outweighed any probative value). Therefore, the prejudice of the offered statement here outweighed any probative value of the statement. Id.; Rule 403, SCRCP. Judge Jefferson did not err in excluding the statement as irrelevant.

Furthermore, even assuming *arguendo*, error in the exclusion of this statement, it was harmless. In fact, Williams was better off without the statement because it was not a threat. Without the statement, the jury could only infer, if it believed Williams' testimony, that the man with the gun approached Williams threateningly, said something that was threatening but which the jury could not hear because it was hearsay, and Williams acted accordingly. If the statement had been admitted, the jury would have heard there was no threat at all: "I, finally, get to meet the man whose money I have been spending." With the statement, if the jury believed Williams, it would easily have determined he *overreacted* in acting in self-defense, and *was not* acting under the heat of passion upon adequate legal provocation. Furthermore, Williams did not testify that he flew into a rage or the statement caused an uncontrollable impulse to do violence or kill.

Starnes. Williams testified he merely acted in self-defense. Even if the trial court erred, Williams has failed to show any resulting prejudice. State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989)(a trial judge's determination of the admissibility of evidence will not be disturbed absent a showing of an abuse of discretion that has resulted in prejudice to the complaining party); State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000)(To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or lack thereof). As a result, this appellate ground has no merit and must be dismissed.

ARGUMENT II.

This issue is not preserved for appellate review because Williams waived and abandoned any request to instruct on involuntary manslaughter and acquiesced to Judge Jefferson not charging involuntary manslaughter; further, Judge Jefferson did not err in declining to instruct on involuntary manslaughter on this record; and, even if the failure to instruct on involuntary manslaughter was error, it was harmless.

What occurred below

At the close of the defense' case, but before the State's reply, Judge Jefferson asked for any requests to charge but informed counsel there would be a charge conference. Judge Jefferson also indicated preliminarily what she planned to charge given the testimony and evidence which had been presented thus far in the trial, which included murder and probably self-defense. The State did not have any additional requests. Williams also requested that Judge Jefferson instruct the jury on the lesser included offense of voluntary manslaughter, the defense of accident, the lesser included offense of involuntary manslaughter, and requested that the Court not instruct on the inference of malice from a deadly weapon. The State objected to the requests to instruct on voluntary manslaughter, accident, and involuntary manslaughter. Judge Jefferson stated she would have to consider the requests overnight. (Tr. pp. 579-84).

The following day, after the State concluded its reply or rebuttal testimony and evidence, and motions for a directed verdict were made and denied, Judge Jefferson held a charge conference. She informed the parties she would instruct the jury on murder, voluntary manslaughter, self-defense, mutual combat, and accident. She informed the parties she would not instruct the jury on involuntary manslaughter as the record was void of any evidence supporting that instruction. (Tr. p. 600-01). The State objected to the instruction on voluntary manslaughter and accident. (Tr. pp. 600-01). When asked if he had any objections to the

Court's decision regarding jury instructions, Williams did not object to Judge Jefferson's decision regarding jury charges, specifically stating: "No objection to your decision about your charges." (Tr. p. 603, ll. 15-16). Nor did Williams object to the forms of the verdict which *did not* include a verdict of guilty of involuntary manslaughter. (Tr. p. 607). At this point, Williams did request a jury charge *on premeditation*, regarding *murder*, which Judge Jefferson declined, and Williams *excepted* to the failure to charge premeditation only. (603-06).

The Lack of Preservation of this Issue

Williams argues on appeal that Judge Jefferson erred in not instructing the jury on the lesser included offense of involuntary manslaughter. However, he did not argue this below, but **waived** and **abandoned** this issue and **acquiesced** to Judge Jefferson's decision not to instruct on involuntary manslaughter. This ground is not preserved for appellate review.

While Williams initially requested the Court instruct the jury on several different legal matters, including voluntary manslaughter, self-defense, accident, and involuntary manslaughter, when Judge Jefferson returned the following day after considering the requests overnight and informed counsel and Williams she would instruct the jury on voluntary manslaughter, self-defense, and accident, but would not be instructing the jury on involuntary manslaughter, Williams raised no objection and in fact **waived** and **abandoned** this issue**, and acquiesced** to the Court's decision on this issue stating **it had no objection to the Court's decision regarding jury instructions**. (Tr. pp. 600-06). The trial transcript is illuminating:

Court: Are there any exceptions to the instruction as proposed from the State?

[Whereupon the State objected to voluntary manslaughter and accident]

Court: Anything from the Defense?

Mr. Jones: Your Honor, just a question to gain knowledge. No exception to your decision about charges. [Counsel then discusses whether the Court will instruct *pre-meditation* as it relates to murder and voluntary manslaughter and the Court stated it would not charge premeditation based on South Carolina law].

Mr. Jones. Thank you, Your Honor.

(Tr. pp. 602-03). (See also 604-06). Williams only objection to the jury instructions was the failure to charge premeditation to prove murder. (Tr. pp. 602-06). Further, when the Court allowed counsel for both sides to view the forms of the verdict, which did not include a verdict for guilty of involuntary manslaughter, there was no objection by the Defendant.

The Court: Are there any exceptions to the form of the verdict from the State?

Ms. Munson: No, ma'am.

The Court: Forms of the verdict. ... From the Defense?

Mr. Jones: No. Your Honor.

(Tr. p. 607, ll. 4-10). After the charge was read to the jury, there were no additional exceptions. (Tr. p. 651, ll. 12-18). During the deliberations, when the jury requested to be re-instructed on the difference between murder and voluntary manslaughter and the trial court did so, there was no objection to the failure to instruct the jury previously or at that time on involuntary manslaughter. (Tr. pp. 655-58). After the jury returned the verdicts of guilty, there were no post-trial motions or objections at all. (Tr. pp. 666).

As a result, this issue is not preserved for appellate review. State v. Rios, 388 S.C. 335, 696 S.E.2d 608 (Ct. App. 2010)(defendant waived appellate issue of request for involuntary manslaughter instruction because he acquiesced and an issue conceded in the trial court cannot be argued on appeal); *See e.g.* State v. Jackson, 364 S.C. 329, 336 613 S.E.2d 374, 377 (2005)(appellant waived any issue when he acquiesced); State v. Benton, 338 S.C. 151, 526

S.E.2d 228 (2000)(an issue is not preserved for appellate review if it has been conceded in the trial court); *Cf.* State v. Mitchell, 330 S.C. 189, 195, 498 S.E.2d 642, 645 (1998)(when appellant acquiesces to the trial court's limitation of cross-examination, he cannot complain on appeal); Ex Parte McMillan, 319 S.C. 331, 461 S.E.2d 43, 45 (1995)(a party cannot acquiesce to an issue at trial and then complain on appeal); TNS Mills, Inc. v. South Carolina Dep't of Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998)(issue conceded in the trial court cannot be argued on appeal); Hollins v. Wal-Mart Stores, Inc., 381 S.C. 245, 251, 672 S.E.2d 805, 808 (Ct. App. 2008). *See also J. Hoefer Toal, et. al,* Appellate Practice in South Carolina, 2nd ed., S.C. Bar, 2002, p. 58.

Williams also failed to make a contemporaneous objection to the jury charges. Rios, 388 S.C. at 342, 696 S.E.2d 608, *referencing* State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005)(holding a contemporaneous objection must be made to preserve an issue for appellate review). In Rios, this Court specifically held;

> Rios did not object at any point to the trial court's decision not to charge involuntary manslaughter and self-defense. Even after the trial court specifically asked if there were any objections to the charges given, Rios responded, "None." By failing to contemporaneously object to the jury charges, Rios has waived his right to allege error on appeal. Thus we affirm the trial court's decision not to charge the jury on involuntary manslaughter and self-defense.

Rios, 388 S.C. at 342, 696 S.E.2d at 612. As a result, this appellate ground was waived and abandoned and is not preserved for appellate review and must be dismissed. Rule 20(a), SCRCrimP; *J. Hoefer Toal, et. al,* Appellate Practice in South Carolina, 2nd Ed., p. 71 ("Further, notwithstanding any request for legal instructions, the parties must be given the opportunity to object to the giving or failure to give an instruction before the jury retires, but out of the hearing of the jury. Any objection must state distinctly the matter objected to and the grounds for

objection. Failure to object in accordance with this rule will constitute waiver of objection. Rule 20(b), SCRCRimP.").

The Lack of Merit of this Issue

Standard of Review

The conduct of a criminal trial is left largely to the discretion of the trial judge, and this Court will not interfere unless the rights of the petitioner were prejudiced. State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982). Therefore, this Court reviews errors of law only and is bound by the trial court's factual determinations unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In criminal cases, the appellate court sits to review errors of law only. Id. A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007). If the instructions given to the jury afford the proper test for determining the issues, the failure to give one side's requested instructions is not prejudicial. State v. Hughey, 339 S. C. 439, 452, 529 S.E.2, 721, 728 (2000).

Jury Charges

"The law to be charged must be determined from the evidence presented at trial." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000). In determining whether the evidence requires a charge of manslaughter, the Court views the facts in the light most favorable to the defendant. State v. Byrd, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996). For a court to refuse to charge a jury on manslaughter, there must be no evidence in the record tending to reduce the crime from murder to manslaughter. State v. Dickey, 380 S.C. 384, 669 S.E.2d 917 (Ct. App. 2008). However, "[a]n instruction should not be given unless it is justified by the evidence." State v. Moultrie, 273 S.C. 532, 534, 257 S.E.2d 730, 731 (1979). "Only the law applicable to

the case should be charged to the jury." State v. Blurton, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002). "If a jury instruction is provided that does not fit the facts of the case, it may confuse the jury." Id. Furthermore, a trial judge must be cautious in charging a lesser included offense. If a trial judge improperly charges the jury on a lesser included offense that is not supported by the facts, and the jury returns a verdict of guilty on the lesser included offense, then upon reversal of the conviction of the lesser included offense, the Double Jeopardy clause prevents retrial of the defendant on the greater offense. *See* Price v. Georgia, 398 U.S. 323 (1970); Gill v. State, 346 S.C. 209, 552 S.E.2d 26 (2001)(discussing fact that prosecution on retrial of greater offense than that for which defendant was convicted would constitute a violation of the Double Jeopardy Clause); Bozeman v. State, 307 S.C. 172, 414 S.E.2d 144 (1992)(finding trial counsel ineffective for falsely informing defendant he could be convicted of murder on retrial if he appealed and succeeded in vacating his manslaughter conviction). This Court will not reverse the trial court's ruling regarding jury instructions unless the trial court abused its discretion. State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005). When the record contains no evidence to support a lesser included offense, a charge on the lesser included offense should not be given. *See* State v. Smith, 363 S.C. 111, 609 S.E.2d 528 (Ct. App. 2005), *referencing* State v. Cooley, 342 S.C. 63, 67-68, 536 S.E.2d 666, 668-69 (2000).

Analysis

At trial, there were two (2) versions of what occurred. The State's version was Williams stalked the victim Natasha; shot her between the eyes when she peered out the window, then broke into the victim's home and shot *Anthony* and endangered the life of the deceased victim's children. Williams' version was *Anthony* came out of the house with a gun, and Williams used a defensive move he had been trained to use resulting in *Anthony* firing the weapon and

accidentally striking the deceased victim inside the residence. In the State's version of how the crime occurred, Williams had the gun and shot the victim intentionally with it. In Williams' version of what occurred, *Anthony* always had the gun, and *Anthony* fired the gun outside the residence. As a result, Williams was not entitled to a charge of involuntary manslaughter.

While self-defense and involuntary manslaughter are not mutually exclusive, as Judge Jefferson correctly found, the facts of this case did not entitle Williams to an instruction on involuntary manslaughter. According to the State's evidence, Williams was guilty of murder. According to Williams's version of events, he was entitled to an acquittal under the theory of self-defense or possibly accident. However, under neither version of events was Williams entitled to an instruction on involuntary manslaughter.

These facts would not entitle Williams to an instruction on involuntary manslaughter under South Carolina law. State v. Wharton, 381 S.C. 209, 672 S.E.2d 786 (2009); State v. Reese, 370 S.C. 31, 36, 633 S.E.2d 898, 900-01 (2006), *overruled on other grounds by* State v. Belcher, 385 S.C. 597, 685 S.E2d 802 (2009); State v. Cabrera-Pena, 361 S.C. 372, 381, 605 S.E.2d 522, 526-27 (2004)(finding defendant is not entitled to a charge on involuntary manslaughter where no evidence exists to support the charge). Under South Carolina law, 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. State v. Smith, 391 S.C. 408, 706 S.E.2d 12 (2011); State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996). There is nothing in the record which would have entitled Williams to an instruction on involuntary manslaughter because he does not fit in either of these two (2) categories.

Williams was not entitled to an involuntary manslaughter instruction under the State's case

First, under the State's version, Williams intentionally shot the victim between the eyes with the gun he had in his possession when the victim peered out her living room window. State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)(defendant not entitled to involuntary manslaughter instruction where after altercation with his grandfather he obtained shotgun, returned to grandparents room and intentionally shot them); Cabrera-Pena, 361 S.C. at 381, 605 S.E.2d at 526 (involuntary manslaughter instruction not warranted where accused was "engaged in unlawful, felonious and harmful conduct" at the time of incident);[8] State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994)(court did not err in refusing to instruct involuntary manslaughter **where defendant wielded knife in an intentional manner, because the intentional use of a dangerous instrumentality does not support the allegation of mere criminal negligence**); Bozeman v. State, 307 S.C. 172, 177, 414 S.E.2d 144, 147 (1992)(no evidence of mere criminal negligence in use of a dangerous instrumentality because the defendant intentionally fired his weapon);[9] Gibson v. State, 390 S.C. 347, 701 S.E.2d 766 (Ct. App. 2010)("the essence of involuntary manslaughter is the involuntary nature of the killing" and because co-defendant admitted he voluntarily and intentionally fired his gun, court properly denied the instruction on

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[8]*See also* State v. Cooney, 320 S.C. 107, 112, 463 S.E.2d 597, 600 (1995)(no error in refusal to charge involuntary manslaughter when the defendant intentionally fired his gun); Harris v. State, 354 S.C. 382, 581 S.E.2d 154 (2003)(defendant was not entitled to involuntary manslaughter instruction where he intentionally fired gun); State v. Craig, 267 S.C. 262, 269, 227 S.E.2d 306, 310 (1976) (involuntary manslaughter charge not warranted where defendant intentionally fired his shotgun); Douglas v. State, 332 S.C. 67, 74, 504 S.E.2d 307, 310 (1998)(involuntary manslaughter charge not warranted where defendant admitted he intentionally fired gun into a crowd in self-defense).

[9]Under South Carolina law, a deadly weapon is generally defined as any article, instrument, or substance which is likely to produce death or great bodily harm. State v. Davis, 374 S.C. 581, 649 S.E.2d 132 (Ct. App. 2007), *referencing* State v. Bennett, 328 S.C. 251, 262, 493 S.E.2d 845, 850-51 (1997). A gun is obviously a deadly weapon or dangerous instrumentality.

involuntary manslaughter to accomplice); State v. Pickens, 320 S.C. 528, 466 S.E.2d 364 (1996)(where defendant admitted he intentionally shot his gun, contending he was acting recklessly but lawfully in self-defense, involuntary manslaughter charge was not warranted); State v. Morris, 307 S.C. 480, 483-84, 415 S.E.2d 819, 821-22 (Ct. App. 1991)(noting under involuntary manslaughter, the act must be unintentional and defendant intentionally shot his gun); State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008)(finding defendant had lawfully armed himself in self-defense and was entitled to instruction on involuntary manslaughter where there was evidence the gun *unintentionally* discharged); State v. Brayboy, 387 S.C. 174, 181-82, 691 S.E.2d 482, 486 (Ct. App. 2010)(holding although unlawful to point and present a firearm, when defendant lawfully armed himself in self-defense his failure to immediately disarm himself when the threat subsided did not amount to unlawful pointing and presenting a firearm and evidence suggesting gun *accidentally* discharged was sufficient to warrant instruction on involuntary manslaughter). *See also* State v. Tyler, 348 S.C. 526, 560 S.E.2d 888 (2002)("An unintentional killing resulting from an unlawful assault and battery, **not of a character of itself to cause death**, is involuntary manslaughter...") *quoting* State v. Chatman, 336 S.C. 149, 152-53, 519 S.E.2d 100, 101 (1999), *citing* 40 C.J.S. *Homicide* Section 40 (1991), *other citations omitted* (emphasis added).[10] State v. Davis, 374 S.C. 581, 649 S.E.2d 132 (Ct. App. 2007)(defendant was not entitled to a jury instruction on involuntary manslaughter where striking someone in the head with a 5 pound sledgehammer would naturally tend to cause death or great bodily injury *and* there was no evidence defendant handled sledgehammer with reckless disregard for the

[10]*See also* Smith v. Padula, 444 F.Supp. 531 (D.S.C. 2006)(habeas corpus petitioner failed to show S.C. Supreme Court unreasonably applied United States Supreme Court precedent in reversing PCR Court's grant of relief on ineffective assistance of counsel for failing to preserve trial judge's refusal to charge involuntary manslaughter where S.C. Supreme Court determined Petitioner was not entitled to involuntary manslaughter instruction under S.C. law).

safety of others but *intentionally struck the victim on the head* with the weapon). Under the State's version of what occurred, Williams was not entitled to an instruction on involuntary manslaughter.

Williams was not entitled to an instruction on involuntary manslaughter under his version

"To constitute involuntary manslaughter, there must be a finding of criminal negligence, statutorily defined as a reckless disregard of the safety of others. S.C. Code Ann. § 16-3-60 (1985)." Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991); Brayboy, (*Quoting* State v. Wharton, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009)); State v. Crosby, 355 S.C. 47, 52, 584 S.E.2d 110, 112 (2003). "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." Brayboy, 387 S.C. at 180, 691 S.E.2d at 486. (*Quoting* Pittman, 373 S.C. at 571, 647 S.E.2d at 167).

At trial, Williams testified when the individual outside the home [*Anthony*] approached him with a gun and said something, he acted in self-defense, by performing a defensive maneuver which resulted in the gun in the third-person's [*Anthony's*] hand going off, i.e. *Anthony* fired his gun through the window and accidentally struck Natasha between the eyes killing her. (Tr. pp. 535-38, **576, ll. 4-10**). While evidence of a struggle over a weapon between a defendant and victim supports submission of an involuntary manslaughter charge,[11] Williams did not testify he had his hands on the gun, or that he and the third person [Anthony] were struggling over the weapon when it discharged outside the home. (Tr. pp. 535-38, **576**). He testified he employed a defensive maneuver he had learned in self-defense training, and the gun went off in *Anthony's* hand while Williams employed the defensive maneuver. As a result,

[11] State v. Brayboy, 387 S.C. 174, 180, 691 S.E.2d 482, 486 (2010). (*See* Tisdale v. State, 378 S.C. 122, 125, 662 S.E.2d 410, 412 (2008); Casey, 305 S.C. at 447, 409 S.E.2d at 392.)

Judge Jefferson did not err in declining to charge involuntary manslaughter and charging self-defense and accident. State v. Scott, 408 S.C. 21, 757 S.E.2d 533 (Ct. App. 2014)(trial court did not err in not charging involuntary manslaughter where under the defendant's version of the facts he unintentionally caused the victim's death when he lawfully but alleged recklessly performed a martial arts move in self-defense, because there was no basis to conclude the defendant acted recklessly in defending himself because the circumstances he alleged to be reckless were the same circumstances that justified his use of force), *cited approvingly in* State v. Sams, ___ S.C. ___, 764 S.E.2d 511, 516 (2014). In Scott, the appellant alleged the martial arts maneuver caused the victim to stab herself with her own knife. Here, appellant alleged below his defensive maneuver caused *Anthony* to fire his own weapon and kill Natasha. As a result, there is no merit to this argument. Id.[12]

Williams argues that State v. Burris, 334 S.C. 256, 513 S.E.2d 104 (1999) is similar to the facts of this case. Williams is wrong. In Burris, the defendant pulled his own gun out of his pocket and fired two (2) shots in the ground, and then claimed he fell down, and as he was getting up off the ground his gun, which he was holding, went off accidentally killing the victim. Id. Williams also argues Light and Battle are similar to this case. Again, he is wrong. As just stated, in Light, there was evidence the defendant and the victim struggled over the firearm,

[12] *See also* State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008)(finding defendant was entitled to an instruction on involuntary manslaughter where there was evidence in the record that there was a *struggle over the weapon* including defendant testified he took the gun away from the victim and he fell backward and it discharged; jury could have found the defendant handled the gun recklessly); State v. Battle, 408 S.C. 109, 757 S.E.2d 737 (Ct. App. 2014)(finding defendant was entitled to an instruction on involuntary manslaughter where there was evidence in the record that there was a *struggle over the weapon* including appellant telling an investigator he grabbed the victim's gun, turned it around, they struggled and the gun went off, and appellant dropped the gun; a friend of appellant testified appellant told him after victim pointed the gun at him he grabbed the victim's gun, turned it around, and it went off; and, appellant testified at trial that in struggling over the weapon he may have touched the trigger).

including Light obtaining possession of the firearm and as he fell backward it went off. In Battle, again there was evidence of a struggle over the gun, as Battle told in investigator that after the victim pointed the gun in his face, he grabbed the victim's gun and turned it back towards the victim; he and the victim struggled and the gun went off; Battle didn't know whether he pulled the trigger or not, but Battle then dropped the gun. Id. at 115. A cousin of Battle also testified Battle told him that after the victim pulled the gun out, Battle turned the gun around and that was it. Id. at 114. Further, Battle testified at trial that in struggling over the gun, his finger may have touched the trigger. Id. As a result, this Court found there was evidence in the record there was a struggle over the weapon, and as a result, Battle was entitled to an instruction on involuntary manslaughter. Id. at 119-21.

What Williams is actually seeking to do is to assert imperfect self-defense as a means of reducing murder to involuntary manslaughter, i.e. the jury could have determined he acted recklessly while in self-defense; and, as a result, he alleges he was entitled to an involuntary manslaughter instruction. The South Carolina Supreme Court recently pointed out this is not the law in South Carolina, and the appellant's argument was tantamount to imperfect self-defense, which South Carolina has not recognized, and has no application to involuntary manslaughter. State v. Sams, *supra*, *referencing* State v. Finley, 277 S.C. 548, 551, 290 S.E.2d 808, 809 (1982)(imperfect self-defense is not the law in South Carolina), *and citing* Douglas v. State, 332 S.C. 67, 75 n. 4, 504 S.E.2d 307, 311 n. 4 (1998)(imperfect self-defense has no application to involuntary manslaughter). In addition, the Court held the most Williams would be entitled to receive, even if South Carolina were to recognize imperfect self-defense, was an instruction on voluntary manslaughter, which Petitioner received at trial, not involuntary manslaughter. Id., *citing* Roy Moreland, The Law of Homicide 93 (1952); 40 C.J.S. *Homicide* Section 110 (2006),

also referencing State v. Falkner, 301 Md. 482, 483 A.2d 759 (1984). In fact, in Sams, the Court cited approvingly this Court' opinion in Scott, *supra*:

> Similarly the Court of Appeals recently considered a defendant's assertion that "the trial court erred by not charging involuntary manslaughter because under his version of the facts, he unintentionally caused [the victim's] death when he lawfully but recklessly performed a martial arts move in self-defense." *State v. Scott*, 408 S.C. 21, 22, 757 S.E.2d 533, 534 (Ct. App. 2014). The Court of Appeals found "no basis to conclude Scott acted recklessly in defending himself because the circumstances Scott alleges to be reckless are the same circumstances that justified his use of force." Id.

Sams, *supra*. As a result, this appellate ground has no merit and must be dismissed.

Harmless Error

Even assuming *arguendo* Williams was somehow entitled to an involuntary manslaughter instruction, the failure to do so was harmless under the particular facts of this case. State v. Middleton, 407 S.C. 312, 755 S.E.2d 432 (2014)(finding harmless error analysis is appropriate for the failure to charge a lesser included offense); State v. Battle, 408 S.C. 109, 757 S.E.2d 737 (Ct. App. 2014)(same).[13] The failure to charge involuntary manslaughter in this case was harmless where William's version of events was so preposterous and non-credible and the evidence of guilt was so overwhelming that the jury would not have accepted Williams' version and convicted him of involuntary manslaughter. State v. Bryant, 369 S.C. 511, 633 S.E.2d 152 (2006). "When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" Middleton, *supra*, *quoting* State v. Kerr, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218

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[13] This Court has previously held the refusal to charge the jury with a requested instruction is subject to harmless error analysis. State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), *affirmed* 387 S.C. 310 (2010); State v. Jeffries, 316 S.C. 13,21, 446 S.E.2d 427, 431 (1994)(harmless error analysis is appropriate where the error complained of is a "trial error" rather than a "structural defect" in the trial mechanism itself).*See also* Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41, *Toal, C.J. concurring. Contra* Light; Lee.

(Ct. App. 1998). "In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered." Id., *citation omitted.* "Thus, whether or not the error was harmless is a fact intensive inquiry." Id. A fact intensive inquiry shows Judge Jefferson's not charging involuntary manslaughter did not contribute to the verdict.

It was undisputed at trial the victim and her husband, appellant Williams, were separated and there had been two (2) prior domestic incidents at the home resulting in Williams moving out and returning to his home in Gray Court. The victim had subsequently filed for a restraining order and for child support, and Williams had been served with the papers and was due in court the following week on the same. Testimony at trial established Williams was upset about having to pay child support. It was also undisputed at trial that the victim was afraid of Williams and had barricaded her front door with her living room furniture.

Williams, who was on a date the night of the victim's murder, tried to call the victim several times, and she would not answer the phone. Williams' date testified Williams left the nightclub they were at around 3:45 a.m. hurriedly "peeling" his tires and abandoning her and her aunt. As a result, she and her aunt had to obtain a ride home from the club.

While dark, Williams drove to the victim's residence arriving at approximately 4:45 a.m. and claimed at trial that he was going by the victim's home to check on the victim and the children and possibly stay the night, or pick up his daughter. This testimony is not credible given his admission at trial that the victim was afraid of him and had filed for a restraining order on him. There, at the victim's residence, Williams found his estranged wife's new boyfriend's car parked in the driveway of the residence.

The victim's boyfriend, *Anthony*, who was sleeping beside the victim, testified he was awakened by noises outside the house. He awakened the victim, who immediately obtained her semi-automatic pistol from under the bed, and approached the barricaded front door. *Anthony* did not leave the home, but because of what was going on took the victim's infant daughter to the victim's young son's bedroom to lay her in the bed with her brother. *Anthony* could not have left the home, as Williams later claimed, through the rear door because it was armed with a burglar alarm. *Anthony* could not have exited the front door of the home because it was barricaded with furniture. Further, Williams admitted *Anthony* did not come out the front door.

The State introduced the 911 call of the incident. On the 911 tape, the victim can be heard telling the 911 operator there is someone on her front porch. She also tells the operator she had filed for a restraining order from her husband Williams *and* she is going through a divorce. She then tells the operator Williams is on her front porch. The victim can be heard yelling at Williams to get off her front porch and away from her house. The gunshot that killed the victim can then be heard on the 911 tape. Williams claimed at trial that he never heard the victim yell at him when he knocked on the front door. The physical evidence shows Williams shot the victim through the front living room window as she was peeking through the curtains. Her eyes were open when she was shot. She was shot between the eyes.

The victim immediately fell to the floor dead, with her phone lying beside her. The hole made by the vacant window pane was large enough for Williams to crawl through, which he did. Viewing the photographs of this hole, it is hard to fathom two (2) grown men fell through this window as Williams claimed at trial. Further, the glass in the window was not broken, as the police found the window frame and glass intact and leaning against an inside wall behind a

couch. Williams did not attempt to enter the residence through the back door, which contained the loud screeching alarm, or the front door, which was barricaded, but through the window pane hole he created.

Anthony testified he laid the victim's daughter in the bunk bed with *J.*; and, when he turned, Williams entered the room and fired at least three (3) shots. On the 911 tape, one can hear Williams fire four (4) shots in rapid succession. *Anthony* was struck by one (1) of the shots knocking him unconscious. He did not regain consciousness until *J.* was shaking him on the floor telling him to wake up.

J. testified he was awakened after he heard the first shot, and he saw Williams' car outside. He left his room crawling down the hallway and found his mom lying on the living room floor. *J.* stated he saw Williams standing over his mom shooting her. When asked how many shots did he hear, *J.* responded "[n]ine or four, one of those two." *J.* testified Williams left "[a]fter he ran out of bullets." *J.* explained that he knew Williams ran out of bullets because "he faced it at me" and "he shot it. He shot it at me. And then he ran out of bullets. You know how a gun says—when the bullet goes out of bullets, and then it says pssh [phonetic] and it's out of bullets. And then he left." *J.* testified Williams left out of the window in the den. (Tr. pp. 92-104).

When the first police responders arrived, they found the garage/den window pane missing and entered the home through the same window hole finding *J.* holding his baby sister in the living room. *J.* eventually told police outside the home that "Willie Marvin" killed my momma. Appellant's name is *Willie Marvin* Williams. Also in the living room police found *Anthony* with a blood soaked towel around his head. He had a grazing gunshot wound to the head.

Crime scene specialists found the doors to the residence locked, and had to break in the back door to enter the residence. Upon breaking in the back door, a screeching, piercing, burglar alarm went off. Inside the residence, police found the victim's body in front of the living room picture window with her feet toward this window with a gunshot wound to the inside of her right eye. Police also found a bullet hole in the front living room window where the victim had been peering out between the curtains before being shot. Police also found three (3) bullet holes in *J.*'s bedroom, including one (1) in the bunk-bed where the children had been sleeping before Williams shot *Anthony*. Police recovered a fired bullet from that bedroom wall. Police also found blood on the carpet consistent with *Anthony's* testimony that after he was shot he collapsed on *J.*'s bedroom floor.

Police found no fired shell casings in the home, meaning Williams either picked up his brass or used a revolver to commit the crime. Police did not find the murder weapon in the victim's home either. Williams took the gun with him when he fled the crime scene.

The autopsy of the victim determined she was not killed with her own gun, a semi-automatic. She was killed with a .38/9mm bullet. This bullet was consistent with the bullet found in the wall in *J.*'s bedroom. A box of .38 caliber bullets was found in Williams' home in Gray Court after he was arrested. These were consistent with the two (2) bullets found at the crime scene, i.e. the one (1) in the wall and the one (1) removed from *Natasha's* head.

While Williams testified at trial that both victims were shot while he was acting in self-defense, and that he came the residence to check on *Natasha* and the children, Williams did not stay at the scene and call 911 or the police. He did not stay at the home to care for the minor

children. He claimed he fled out the back of the home. He fled from the crime scene in his Chrysler 300.

Upon returning to Gray Court, Williams hid the Chrysler 300, the vehicle which he used to commit the crimes, in his garage, pushing a lawn mower behind it, and closing the garage door. Williams then changed vehicles into a Chevy Tahoe.

During this time, Williams spoke to a friend, and related to a friend something that was so incriminating that the friend would not include it in his written statement to police.

Williams was eventually spotted by police in the Tahoe, and fled from them when they attempted to apprehend him for the crimes in Greenville County. Williams led police on a 26 mile high speed chase, at times exceeding 110 m.p.h., in which he refused to stop and only stopped when his vehicle was rammed and disabled. It was then, rather than being apprehended for the crimes in Greenville, Williams attempted to take his own life by stabbing himself in the chest.

In addition to murder, the jury was charged on voluntary manslaughter, self-defense, and accident, and rejected all of the same finding Williams guilty of murder. It is clear the jury found Williams' preposterous story of how the events occurred not credible.

It is easy to see why. Williams' version of events was simply incredible and beyond belief. Admittedly, after legal papers for a restraining order and child support had been filed against him, and knowing that his wife was afraid of him, he drove to his estranged wife's home at approximately 4:45 a.m, and while dark, with the dogs barking, he attempted to open the front door without even knocking. (Tr. p. 563). His claim that he did not hear the victim yelling for

him to leave is also not credible as her statements are reflected on the 911 tape, and *Anthony* heard them in another part of the house. (Tr. p. 566, State's Ex. 1, [911 tape]). And, his claim that he fought with a man in front of the house and, as a result, the victim who he was angry with was coincidentally shot between the eyes strains credulity. Further, his claim that he and *Anthony* both fell through a small window in the garage / den area ending up in the house without breaking any glass is beyond belief. Further, it is incomprehensible to believe that he and Anthony struggled throughout the entire length of the house ending up in *J.*'s bedroom. Furthermore, his claim that he was at the home to check on the children is belied by the fact that after the shooting, he claims he never saw the children, and he did not remain at the scene to see about their welfare, but fled in the car he came in. Finally, the fact that he would engage in a 26 mile high speed chase with police, when as he claimed at trial, he did nothing wrong, is beyond belief.

Furthermore, Williams' own admissions at trial thoroughly incriminated him. He admitted that on the night of the murder he had attempted to call the deceased victim two (2) times before going to her home, and she would not answer his calls. **(Tr. pp. 526, 574).** He admitted he had been drinking alcohol on the night of his estranged wife's murder before he went to her home. **(Tr. p. 569).** He admitted he left his date at a night club at approximately 3:30 a.m, and changed clothes at another location before going to his estranged wife's residence. **(Tr. pp. 523-25).** He admitted he went to his wife's residence at approximately 4:45 a.m., while still dark, after she had already served him with papers seeking a restraining order, and he was due in Court three (3) days later on the requested restraining order and child support. **(Tr. pp. 563-64, 526-27, 562).** He admitted his wife was afraid of him. **(Tr. p. 554).** He admitted there had been two (2) prior domestic incidents at *Natasha's* residence before he moved out including

one where he confronted her with a weapon [a gun] and another in which the police were called to the home. **(Tr. pp. 555-58, 509).** He admitted he and *Natasha* had two (2) weapons, before he moved out of the home. **(Tr. p. 509, ll. 7-12).**[14] He admitted he appeared at Natasha's residence again on June 25, 2014, fifteen (15) days before her murder. **(Tr. p. 558).** He admitted he went to Natasha's residence the night of the murder in his Chrysler 300. **(Tr. p. 562).** He admitted that on the night of the murder when he arrived at *Natasha's* home, a car was parked in the driveway with North Carolina license plates [*Natasha's* new boyfriend's car]. **(Tr. pp. 526-27).** He admitted he approached her home in the dark and attempted to open the door without knocking or talking to *Natasha* first. **(Tr. pp. 563, 529).** He then admitted he began knocking on the door. **(Tr. p. 529).** He admitted he saw someone peering through the front window curtains with the lights off. **(Tr. p. 566, 530).** He admitted Natasha was shot shortly after he saw someone peering through the front curtains. **(Tr. p. 535-40).** He admitted he entered her home through a knocked out window. **(Tr. p. 537).** He admitted he had received military training in how to enter and clear houses when someone is inside. **(Tr. pp. 559, 477).** He admitted he ended up in *J.*'s room where *Anthony* was shot. **(Tr. p. 539).** He admitted after *Anthony* was shot, he went to the living room and checked *Natasha's* body and determined she was dead. **(Tr. p. 540).** He admitted he did not call 911. **(Tr. p. 541).** He admitted he did not remain at the residence but fled the scene in the Chrysler 300. **(Tr. pp. 541-43).** He admitted upon returning to his home in Gray Court he placed the Chrysler 300 in his garage, pushed the lawn mower behind the car, and closed the garage door. **(Tr. pp. 570-73, 576-77).** He admitted he then changed vehicles into the Chevy Tahoe. **(Tr. p. 570-71).** He admitted when police began

[14] After the murder, police only found one (1) weapon after entering the residence. It was Natasha's weapon lying next to her body.

following him he engaged in a 26 mile chase in which he refused to stop, even with tires flattened, until he was rammed by a police car. **(Tr. pp. 548-50, 552-53).** And, he admitted he attempted to kill himself with a knife taken from his glove box as police were approaching the car to arrest him. **(Tr. p. 550).**

Further, he never testified he had his hands on the alleged weapon that *Anthony* allegedly pointed at him. He alleged he employed a defensive maneuver he had been trained to use in self-defense, and the maneuver caused *Anthony* to fire the weapon.

Given the evidence *in this particular case*, and *considering the entire record*, the failure to charge involuntary manslaughter was harmless beyond a reasonable doubt. Middleton (failure to charge lesser included offense was harmless after a fact specific inquiry); *see* Battle (failure to charge lesser included offense was not harmless after a fact specific inquiry).

Further, the failure to charge involuntary manslaughter **could have had no effect on the guilty verdicts for attempted murder and unlawful conduct toward a child.**

CONCLUSION

For the above stated reasons, Williams's convictions and sentences should be affirmed and this appeal dismissed.

Respectfully submitted,

By: _____

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December 19, 2014

CERTIFICATE OF SERVICE

I, Anthony Mabry, hereby certify that I have served the ***Initial Brief of Respondent and Designation of Matter*** in the foregoing action by depositing copies in the United States Mail to David Alexander, Esquire, 1330 Lady Street, Suite 401, Columbia, SC 29201 this 19th day of December, 2014.

ANTHONY MABRY
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ATTORNEY GENERAL

December 19, 2014

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

Re: *The State v. Willie M. Williams*
Appellate Case No. 2013-001152

Dear Ms. Kitchings:

Enclosed for filing in your office is the original Initial Brief of Respondent, Designation of Matter and Certificate of Service in the above-captioned matter.

Thank you for your assistance in this matter.

Sincerely,

Anthony Mabry
Assistant Attorney General

AM/dmd
Enclosures
cc: David Alexander, Esq. (w/two copies of encls.)