

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

THE STATE,

V.

ANTONIO SCOTT,

RESPONDENT, SEP 18 2015

S.C. Supreme Court

APPELLANT

APPELLATE CASE NO. 2014-001124

Appeal from Jasper County

Carmen T. Mullen, Circuit Court Judge

Opinion No. 5199

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Antonio Scott respectfully petitions the Court for a rehearing of its Opinion No. 27571 issued on September 9, 2015 based upon the following points overlooked or misapprehended by the Court.

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“Simply put, Scott has not presented any evidence that he acted with reckless disregard for the safety of others.”

Appellant was arguing with a sickly, older, heavysset woman with a small, metal weapon. Appellant was young and spry. He was **not trained** in martial arts, but his dad “**taught [him] some stuff.**”¹ Rather than leaving the room or keeping a safe distance from the woman, he chose to physically engage her and attempt a haphazard defensive move. It might not have been a reasonable decision. *See, e.g., State v. Hendrix*, 270 S.C. 653, 660, 244 S.E.2d 503, 507 (1978) (decision to fire shot in self-defense was reasonable because defendant was sixty-five and decedent was twenty years younger and drunk); *State v. Harvey*, 110 S.C. 274, 274, 96 S.E.399, 400 (1918) (decision to fire shot in self-defense might not have been reasonable because evidence allowed inference that defendant “was near enough to catch the arm of the deceased, and thus prevent the killing, or to strike the deceased with the butt of the pistol, and in this way avoid the necessity of taking life.”).

¹ R. 102, line 24—R. 103, line 1.

“Scott attempts to argue that he was also entitled to an involuntary manslaughter instruction because the jury could have inferred that he acted recklessly in self-defense. We recently rejected this argument in *State v. Sams* We found that argument ‘tantamount to imperfect self-defense,’ which is a doctrine that ‘South Carolina has not expressly adopted.’”

The Court is not reading *State v. Sams* correctly.

Sams's argument is tantamount to imperfect self-defense. See 40 C.J.S. *Homicide* § 110 (2006) (“Under the ‘imperfect self-defense’ doctrine, the crime is reduced from murder to **voluntary** manslaughter where a defendant had a genuine but unreasonable fear of imminent peril from the victim, and [intentionally] killed the victim [. . .].” . . . [T]he concept simply presents an issue of mitigating circumstances that may reduce murder to **voluntary** manslaughter. . . .”

State v. Sams, 410 S.C. 303, 315, 764 S.E.2d 511, 517 (2014).

This is a *State v. Light* case. The **involuntary** manslaughter charge was due, in addition to the self-defense charge, because evidence supported the finding that Scott did mean to cause the woman to stab herself. See, e.g., *State v. Crosby*, 355 S.C. 47, 584 S.E.2d 110 (2003) (evidence that defendant reacted to explosive situation and did not realize how he had hurt the decedent supports involuntary charge); *State v. Chatman*, 336 S.C. 149, 519 S.E.2d 100 (1999) (evidence that defendant’s actions were not a typical cause of death supports involuntary charge).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ben John Tripp", written over a horizontal line.

Benjamin John Tripp
Appellate Defender

This 18th day of September, 2015.

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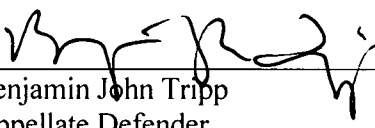
ANTONIO SCOTT,

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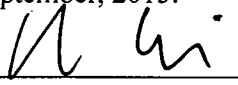
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon J. Anthony Mabry, Esquire, this 18th day of September, 2015.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 18th day
of September, 2015.


_____(L.S.)
Notary Public for South Carolina

My Commission Expires: May 12, 2025.