



The Supreme Court of South Carolina

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29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
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December 16, 2015

The Honorable Margaret Bostick
PO Box 248
Ridgeland SC 29936-0248

REMITTITUR

Re: The State v. Antonio Scott
Lower Court Case No. 2010GS2700192
Appellate Case No. 2014-001124

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.



Very truly yours,

Daniel E. Shearouse
DS

CLERK

Cc: Benjamin John Tripp, Esquire
J. Anthony Mabry, Esquire
Isaac McDuffie Stone, III, Esquire
John Benjamin Aplin, Esquire

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Antonio Scott, Petitioner.

Appellate Case No. 2014-001124

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Jasper County
Carmen T. Mullen, Circuit Court Judge

Opinion No. 27571
Heard June 3, 2015 – Filed September 9, 2015

AFFIRMED

Appellate Defender Benjamin John Tripp, of Columbia,
for Petitioner.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Donald J. Zelenka, and Assistant
Attorney General Anthony Mabry, all of Columbia, and
Solicitor Isaac McDuffie Stone, III, of Bluffton, for
Respondent.

CHIEF JUSTICE TOAL: Petitioner Antonio Scott was convicted of murder. On appeal, Scott argues that the court of appeals erred in finding that the evidence did not support a jury instruction on involuntary manslaughter, and thus, in upholding the trial court's failure to charge involuntary manslaughter. *State v. Scott*, 408 S.C. 21, 757 S.E.2d 533 (Ct. App. 2014). We affirm.

FACTS/PROCEDURAL BACKGROUND

On March 19, 2011, Cynthia Nelson called the police and reported that Scott tried to break into her apartment. Scott was allegedly resentful of Cynthia's disapproval of Scott's relationship with her daughter, Akera. Scott departed Cynthia's apartment before the police arrived.

The following day, Scott attended a wake for his cousin in Ridgeland, South Carolina. At the wake, Scott told several people that he used a knife to threaten Cynthia's life the previous night. Scott stated that he was going to kill Cynthia the next time he saw her.

Later that day, Akera and Cynthia arrived at Scott's sister's apartment in Ridgeland to drop off Akera and Scott's child. Akera took the child into the apartment while Cynthia waited outside. When Akera walked inside, Scott stood with a knife in his hand and asked her, "Is this how you wanna [sic] do things?" and "You gonna [sic] let your mom come between us?" A short time later, Cynthia walked in and told Scott, "I'm tired of you beating on my daughter."¹ Cynthia and Scott then engaged in a physical altercation, during which Cynthia was stabbed in the neck.

Scott's sister called 911, and Scott initially attempted to apply pressure to Cynthia's wound. However, Scott fled when the police arrived, and the officers were unsuccessful in their attempts to locate Scott in the apartment complex. Cynthia later died from the wound.

Eventually, Scott contacted a detective in the Ridgeland Police Department and surrendered himself. Investigator Daniel Litchfield interviewed Scott at the police station. Scott told Investigator Litchfield that he engaged in a verbal altercation with Cynthia, during which Cynthia pulled "something shiny and silver out of her pocket" and stepped towards Scott. Scott stated that he then executed a

¹ At the time of the altercation, Scott was on probation for criminal domestic violence, second offense, and Akera was the victim.

"martial arts move, pushing her elbow up, [and] causing her to stab herself in the throat." Investigator Litchfield interviewed several other people in connection with the case and was not able to locate anyone who could corroborate Scott's story.²

Scott was indicted and tried for murder. At trial, Scott did not testify and rested without presenting any evidence. After excusing the jury, the trial judge indicated that she would instruct the jury on murder, voluntary manslaughter, and self-defense. However, the trial judge denied Scott's request to charge involuntary manslaughter.

Scott's counsel candidly admitted that he desired the involuntary manslaughter charge so as to avoid a compromise verdict of voluntary manslaughter. At no point during the charge conference did Scott's counsel ever specifically articulate what evidence supported an involuntary manslaughter charge, instead reiterating his fears of a compromise verdict.

After closing arguments, the trial court charged the jury on the law. The jury deliberated for a short time and found Scott guilty of murder. During sentencing, the State informed the trial court that Scott had a very extensive criminal history and was on probation for criminal domestic violence. The trial court noted Scott's history of violent crime and sentenced him to thirty years' imprisonment.

Scott appealed, contending that the trial court erred by failing to charge involuntary manslaughter. The court of appeals affirmed, *Scott*, 408 S.C. at 27, 757 S.E.2d at 536, and we granted Scott's petition for a writ of certiorari to review the court of appeals' decision.

STANDARD OF REVIEW

"In criminal cases, this Court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown." *State v. Laney*, 367 S.C. 639, 643, 627 S.E.2d 726, 729 (2006) (citing *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001)). "An abuse of discretion occurs when

² The closest any eyewitness came to corroborating Scott's story was Scott's sister. She testified that she was present when the altercation occurred, and did not see a knife before or after the struggle. Rather, she stated that she saw Scott strike Cynthia, saw Cynthia fall to the couch, and saw blood pouring down the front of Cynthia's body. Scott's sister did not describe Scott making a martial arts move.

the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.* at 643–44, 627 S.E.2d at 729 (citing *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000)). "The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law." *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 167 (2007) (citing *Clark v. Cantrell*, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000)).

ANALYSIS

Scott contends the court of appeals erred in determining there was no evidence to support a charge of involuntary manslaughter. We disagree.

"The law to be charged to the jury is determined by the evidence presented at trial." *State v. Sams*, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014) (quoting *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993)). "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." *Id.* (citations omitted). In determining whether the evidence requires a charge on a lesser-included offense, courts view the facts in the light most favorable to the defendant. *Id.* (citing *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 512–13 (2000)).

Involuntary manslaughter is a lesser-included offense of murder, and "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." *Id.* at 309, 764 S.E.2d at 514 (citation omitted). Involuntary manslaughter requires a showing of criminal negligence, which "is defined as the reckless disregard of the safety of others." S.C. Code Ann. § 16-3-60 (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." *State v. Brayboy*, 387 S.C. 174, 180, 691 S.E.2d 482, 485 (Ct. App. 2010) (quoting *Pittman*, 373 S.C. at 571, 647 S.E.2d at 167).

Here, Scott asserts that his conduct falls under the second definition of involuntary manslaughter, claiming the evidence demonstrates that he unintentionally killed Cynthia while executing a martial arts move, and therefore that he must have recklessly disregarded the safety of others. However, the only evidence presented at trial that supports Scott's version of the facts is Investigator Litchfield's testimony that Scott told him Cynthia charged at him with a "shiny []

silver" object, at which point he executed a "martial arts move, pushing her elbow up, [and] causing her to stab herself in the throat." Scott did not testify, nor did he offer any evidence that he was criminally negligent in executing the martial arts move. To the contrary, Investigator Litchfield testified that Scott's father had a black belt in martial arts, and that he trained Scott. Thus, the only testimony regarding Scott's martial arts background suggests that his actions were anything but reckless, and that he intentionally caused Cynthia's death.

We acknowledge that under Scott's version of the facts, the evidence supported a self-defense instruction, which he received. However, on appeal, 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.³ We recently rejected this argument in *State v. Sams*, wherein the defendant "argue[d] that he acted lawfully in self-defense, but that he perhaps acted excessively and recklessly in doing so." 410 S.C. at 314, 764 S.E.2d at 517. We found that argument "tantamount to imperfect self-defense," which is a doctrine that "South Carolina has not expressly adopted." *Id.* at 315, 764 S.E.2d at 517 (citations omitted). Moreover, we noted that "even if this Court were to accept the doctrine of imperfect self-defense, it is of no consequence to [the defendant's] proceeding as it would, at most, entitle him to an instruction on voluntary manslaughter, which he already received."⁴ *Id.* at 316, 764 S.E.2d at 517 (citations omitted).

Simply put, Scott has not presented any evidence that he acted with reckless disregard for the safety of others. As the trial court noted, if the jury accepted Scott's version of the facts as true, he would be entitled to acquittal because the killing would have been justified. *See Robinson v. State*, 308 S.C. 74, 79, 417 S.E.2d 88, 91 (1992) ("Self-defense is a complete defense; if established, a jury must find that the defendant is not guilty." (citing *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984) (per curiam))). Thus, we hold that the evidence did not warrant an involuntary manslaughter charge. *See State v. Smith*, 315 S.C. 547, 549, 446 S.E.2d 411, 413–14 (1994) ("The trial court may and should refuse to charge on a lesser-included offense where there is no evidence that the defendant

³ *See State v. Light*, 378 S.C. 641, 650, 664 S.E.2d 465, 470 (2008) ("[A] self-defense charge and an involuntary manslaughter charge are not mutually exclusive, as long as there is any evidence to support both charges." (citations omitted)).

⁴ Scott also received a jury instruction on voluntary manslaughter.

committed the lesser rather than the greater offense." (citation omitted)).

CONCLUSION

For the foregoing reasons, we affirm the court of appeals' decision.

AFFIRMED.

BEATTY, HEARN, JJ., and Acting Justice Alison Renee Lee, concur.
PLEICONES, J., dissenting in a separate opinion.

JUSTICE PLEICONES: I respectfully dissent and would reverse the decision of the Court of Appeals because I find, viewing the evidence in the light most favorable to petitioner, that there is "evidence from which it could be inferred that [he] committed" involuntary manslaughter. *State v. Sams*, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014). Unlike the majority, I would not require that a defendant testify or present evidence that he acted in a criminally negligent manner in order to obtain such a charge but rather would review the evidence, including that presented by the State, to determine whether a charge was warranted. Here, there is evidence from which a jury could find that petitioner acted intentionally in moving to deflect the perceived threat, but with reckless disregard of the possible consequences. That petitioner is an experienced martial arts practitioner goes to his intent when acting and to the skill with which he executed the move, not to his reasoned consideration of the possibility that the consequence could be that the victim would stab herself in the neck.

I would reverse the decision of the Court of Appeals and order a new trial.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Antonio Scott, Appellant.

Appellate Case No. 2011-205448

Appeal From Jasper County
Carmen T. Mullen, Circuit Court Judge

Opinion No. 5199
Heard January 8, 2014 – Filed February 19, 2014

AFFIRMED

Appellate Defender Benjamin John Tripp, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, and
Assistant Attorney General J. Anthony Mabry, all of
Columbia; and Solicitor Isaac McDuffie Stone, III, of
Bluffton, for Respondent.

FEW, C.J.: A jury convicted Antonio Scott for the murder of Cynthia Nelson. Scott asserts the trial court erred by not charging involuntary manslaughter because under his version of the facts, he unintentionally caused Nelson's death when he lawfully but recklessly performed a martial arts move in self-defense. We find 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. We affirm.

I. Facts and Procedural History

On March 20, 2011, first responders from Jasper County Fire and Rescue arrived at the home of Scott's sister to investigate a "possible stabbing." They found Nelson "slumped over" on the couch with "a significant amount of blood on her clothing, emanating from her neck." Upon inspecting the wound, one of the first responders concluded "an object or some type of weapon was . . . put into [the left side of] her neck." Paramedics transported Nelson to Coastal Carolina Medical Center, where she later died due to blood loss.

The State indicted Scott for murder. At trial, the State's witnesses established the events leading up to Nelson's death. Nelson and her daughter Akera—who has a child with Scott—drove to Scott's sister's apartment to drop off the child. Nelson remained in the car while Akera took the child inside. When Akera walked in, she and Scott began arguing. "A minute later," Nelson walked into the apartment and began yelling at Scott.

Under the State's version of events, Scott had a knife in his hand when Akera walked in, and during the argument with Nelson, he stabbed Nelson in the neck with the knife. Scott's statement to police, however, described a different version of events.¹ Investigator Daniel Litchfield testified to what Scott told the police:

[Scott] had an altercation, a verbal argument, with Cynthia Nelson. During this argument, he stated that Cynthia Nelson pulled something shiny and silver out of her pocket, went towards him, and he stepped to the side and did a -- for lack of a better term, a martial arts move, pushing her elbow up, causing her to stab herself in the throat.

Dr. Lee Tormos, a forensic pathologist, performed Nelson's autopsy and testified to his findings. Initially, Dr. Tormos stated Nelson's stab wound was not "the result of an accident" and was "consistent with someone having a knife in their hand [and] striking someone." He further testified he had never "seen a wound like this that was self-inflicted," and stated, "It is not possible that this could be a self-

¹ Scott did not testify at trial.

inflicted wound." On cross-examination, however, Scott's attorney demonstrated a martial arts move similar to what Scott allegedly performed and asked Dr. Tormos whether this move could cause a person holding a knife to stab herself in the neck. Dr. Tormos admitted the stabbing "could have been an accident," and acknowledged "[i]t is very possible" Nelson's wounds were caused by a self-inflicted stab wound.

Scott requested the trial court charge self-defense and involuntary manslaughter. The court agreed to charge self-defense but expressed concerns with charging involuntary manslaughter. The court explained, "I honestly think that it has to be either murder or voluntary manslaughter or self-defense" because "I don't see how . . . under any of the circumstances he could be criminally negligent" in defending himself. Scott argued the martial arts move could be considered negligent, to which the court responded, "[t]hat would be purely self-defense," and "[Scott] should be acquitted" and not "convicted of involuntary manslaughter." The State agreed with the court's position, arguing a person cannot "act in self-defense in a criminally negligent way, because it is an intentional act."

The court instructed the jury on murder, voluntary manslaughter, and self-defense. The jury found Scott guilty of murder, and the court sentenced him to thirty years in prison.

II. Involuntary Manslaughter

Involuntary manslaughter is defined as the unintentional killing of another without malice while engaged in (1) an unlawful activity not naturally tending to cause death or great bodily harm or (2) a lawful activity with reckless disregard for the safety of others. *State v. Smith*, 391 S.C. 408, 414, 706 S.E.2d 12, 15 (2011). Scott argues the trial court erred by not charging involuntary manslaughter because there was evidence he unintentionally caused Nelson's death while engaged in the lawful activity of self-defense with reckless disregard for her safety.² We find no basis to conclude Scott acted recklessly because if he was justified in defending himself with the martial arts move, there is no ground on which to find he did so

² Scott asserts only that his conduct falls under the second definition of involuntary manslaughter. Thus, we do not address whether Scott was engaged in "an unlawful activity not naturally tending to cause death or great bodily harm" for the purposes of determining whether he was entitled to an involuntary manslaughter charge. *See id.* (addressing only the second definition of involuntary manslaughter when the defendant did not seek a charge under the first definition).

recklessly. *See State v. Gibson*, 390 S.C. 347, 355-56, 701 S.E.2d 766, 770 (Ct. App. 2010) ("The evidence presented at trial determines the law to be charged . . .").

Scott premises his argument—that performing the martial arts move was reckless—on his belief that the "shiny and silver" object Nelson pulled from her pocket was a knife. He argues he exceeded the amount of justifiable force because the combination of his action and the presence of the knife created a danger to Nelson that could support a jury finding that he consciously disregarded the risk his conduct created. *See State v. Brayboy*, 387 S.C. 174, 180, 691 S.E.2d 482, 485 (Ct. App. 2010) ("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." (citation omitted)). The argument is counterintuitive. If Nelson approached Scott in a manner that gave him a reasonable fear of imminent bodily harm, but she had no knife, Scott would be entitled to use a reasonable amount of force to defend himself. *See generally State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011) (providing a person may use reasonable force in defending himself when he "believed he was in imminent danger" and "a reasonable prudent man . . . would have entertained the same belief" (citation omitted)). However, under Scott's version of the facts, in which Nelson approached Scott with a knife, the degree of force Scott was entitled to use increased, not decreased, based on the heightened threat posed by the knife. *See Douglas v. State*, 332 S.C. 67, 72, 504 S.E.2d 307, 309 (1998) (stating the law allows a defendant "the right to use as much force as required for his complete protection from loss of life or serious bodily harm" (citation omitted)). Thus, the circumstance Scott relies on to argue he recklessly exceeded justifiable force—Nelson's possession of a knife—actually justifies the use of more force. This is the basis on which the trial court refused to charge involuntary manslaughter, and we agree with the trial court's reasoning.

III. *State v. Light*

Scott cites *State v. Light*, 378 S.C. 641, 651, 664 S.E.2d 465, 470 (2008), to support his argument. We find *Light* is inapplicable to this case because the supreme court's ruling in *Light* depended on the existence of evidence showing the defendant acted unintentionally. From that evidence, the court found the jury could infer the defendant acted recklessly. *Id.* Here, there is no evidence Scott acted unintentionally. Therefore, Scott's argument that we may find evidence of recklessness based on the reasoning of *Light* is misplaced.

In *Light*, the victim pulled a gun on the defendant. 378 S.C. at 645-46, 664 S.E.2d at 467. When the defendant "jerked the weapon out of [the victim's] hand, . . . it fired." 378 S.C. at 646, 664 S.E.2d at 467. The defendant admitted he had possession of the gun "when it went off," 378 S.C. at 644, 664 S.E.2d at 466, but claimed "it was not intentional[]." 378 S.C. at 646, 664 S.E.2d at 467. The supreme court found there was evidence that the defendant "recklessly handled the gun because . . . it fired almost immediately after he took possession of it." 378 S.C. at 648, 664 S.E.2d at 469.

The *Light* court's discussion of *State v. Pickens*, 320 S.C. 528, 466 S.E.2d 364 (1996), indicates the *Light* court relied on evidence that the defendant unintentionally fired the gun to find the defendant's conduct was reckless. In *Pickens*, the court held the defendant was not entitled to a charge of involuntary manslaughter when he "admit[ted] he intentionally shot his gun, but that he did so while acting lawfully but recklessly in defending himself." *Light*, 378 S.C. at 650, 664 S.E.2d at 470. The *Light* court clarified its holding in *Pickens*, stating,

[A] self-defense charge and an involuntary manslaughter charge are not mutually exclusive, as long as there is any evidence to support both charges. When there is a factual issue as to whether the shooting was committed intentionally in self-defense or was committed unintentionally, then the defendant is entitled to both charges as there is "any evidence" to support each charge.

378 S.C. at 650-51, 664 S.E.2d at 470 (internal citations omitted).

The evidence in *Light* that distinguished the case from *Pickens* was evidence that the defendant did not intentionally fire the gun.³ *Light*, 378 S.C. at 648, 664 S.E.2d at 468-69. Thus, the *Light* court held an involuntary manslaughter charge was warranted because there was a factual issue as to whether the defendant fired the gun intentionally in self-defense, or unintentionally in the course of a struggle. 378 S.C. at 651, 664 S.E.2d at 470. Here, there is no evidence Scott acted unintentionally. Therefore, we find *Light* is inapplicable.

³ See also *State v. Burriss*, 334 S.C. 256, 265 n.10, 513 S.E.2d 104, 109 n.10 (1999) ("*Pickens* may be distinguished from this case because there we based our decision on the fact [the] defendant admitted he shot intentionally. Here, Appellant claimed the shooting was not intentional." (internal citation omitted)).

IV. Conclusion

We find the trial court correctly refused to charge involuntary manslaughter. The decision of the trial court is **AFFIRMED**.

KONDUROS, J., concurs.

PIEPER, J., dissenting.

I respectfully dissent and would find the evidence in the record warrants an involuntary manslaughter charge. *See State v. Wharton*, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009) ("If there is any evidence warranting a charge on involuntary manslaughter, then the charge must be given."). Accordingly, I would find the trial court erred by failing to charge involuntary manslaughter, and I would reverse and remand for a new trial.