STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIE M. WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2013-001152

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

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?

2.

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

On April 23, 2013, a Greenville County grand jury indicted appellant for murder, attempted murder, unlawful conduct towards a child, and a related weapons charge. R. 482. On May 13, 2013, appellant was tried before the Honorable Deadra L. Jefferson and a jury. R. 1. Judith M. Munson represented the State. R. 1. Richard H. Warder and W. Townes Jones, IV represented appellant. R. 1. The jury convicted appellant on all charges. R. 463, ll. 6 – 22. Judge Jefferson sentenced appellant to concurrent terms of life imprisonment for murder, thirty years' imprisonment for attempted murder, ten years' imprisonment for unlawful conduct towards a child, and five years' imprisonment on the weapons charge suspended to time served. R. 480, l. 8 – 481, l. 2. After timely service and filing of a notice of appeal, this appeal follows.

STATEMENT OF FACTS

The Family Background

Appellant Willie Marvin Williams ("Williams") was forty-seven years old at the time of trial. R. 279, ll. 2 – 3. He graduated from high school in Laurens and joined the National Guard. R. 279, ll. 10 – 24. He was employed for many years as a machinist, working in a textile mill, and working in an automobile plant. R. 281, ll. 6 – 282, l. 23. In 2005, Williams went to work for Kellogg Brown & Root in Iraq. R. 283, ll. 16 – 284, l. 8. Williams did several stints in Iraq and endured shelling and indirect fire. R. 289, l. 1 – 296, l. 15.

Just before getting the job in Iraq, Williams met Natasha Kerns ("Kerns"). R. 283, ll. 1 – 3. They began dating. R. 283, ll. 6 – 15. They continued their relationship during Williams' employment in Iraq. R. 285, l. 20 – 286, l. 21. While Williams was home between Iraq contracts, Kerns became pregnant. R. 287, ll. 6 – 11. Williams maintained his own residence, but moved in with Kerns and began supporting her financially. R. 287, ll. 12 – 19. Kerns already had a son ("Son") and then gave birth to Williams' daughter ("Daughter"). R. 287, l. 20 – 289, l. 6. Because of the excellent pay, Williams signed another one-year contract for Iraq. R. 289, ll. 7 – 24. In 2009, during a trip home, Williams and Kerns married. R. 295, ll. 8 – 15. Williams went back to Iraq. R. 295, ll. 21 – 23.

When he got back to Iraq, Williams "started having problems with all the bombing, and shelling, and the killing, and stuff." R. 296, ll. 6 – 15. His employer moved him to another military camp, but by this point Williams developed problems due to the constant stress and difficulty sleeping. R. 296, ll. 16 – 297, l. 24. He eventually resigned to return home to his family. R. 296, ll. 16 – 297, l. 24. His employer told him he was welcome to

return once he got better. R. 297, ll. 16 – 21. Williams returned to Greenville in February 2010. R. 297, ll. 22 – 24.

Williams had trouble adjusting to life back in Greenville. R. 306, l. 22 – 311, l. 1. He had trouble sleeping, nightmares, and flashbacks. R. 306, l. 22 – 311, l. 1. Complicating matters, his wife was pursuing a nascent performing career and would go to clubs and sing at open mic events until 3:00 AM. R. 311, l. 15 – 312, l. 2. In May 2010, Kerns returned home late one night and Williams thought someone was trying to break into their house. R. 312, ll. 1 – 12. He took a firearm from their closet and went to the door. R. 312, ll. 1 – 12. When Kerns entered, the sight of Williams with a gun frightened her and, as a result, the couple soon grew distant. R. 312, ll. 13 – 24. Later in May 2010, the couple got into an argument which resulted in Kerns calling 911, pulling a knife on Williams, and ultimately throwing his belongings in the front yard. R. 358, l. 12 – 361, l. 2. Williams moved back to his house in Laurens County. R. 313, ll. 2 – 4.

The Shooting

In the wee hours of Saturday morning July 10, 2010, Kerns died from a gunshot wound. Son and another man, Anthony Wilson ("Wilson") testified for the State and gave very different versions about the shooting. Son's story was physically impossible based on the forensic evidence. R. 44, l. 16 – 45, l. 18. R. 149, l. 15 – 150, l. 19. Both Son and Wilson's stories differed dramatically from Williams' testimony, who did not deny that he was at the scene, but said that he was attacked by an armed Wilson and that Wilson's gun went off during the ensuing struggle. R. 333, l. 12 – 342, l. 20.

Son was the second witness to testify. R. 31, ll. 7 – 15. He was twelve years old at the time of trial. R. 31, ll. 22 – 23. According to Son, Wilson was his mother's

"bodyguard." R. 33, ll. 21 – 25. He had never seen Wilson before the night of the shooting. R. 34, ll. 3 – 5. Son was asleep in his room when he was awakened by a gunshot. R. 35, ll. 2 – 15. He turned on the lights. R. 35, ll. 18 – 23. The "bodyguard" told him to turn them off. R. 36, ll. 1 – 3. He looked out the window and saw Williams' car. R. 36, ll. 4 – 19.

Son crawled out of his room and down the hall. R. 36, ll. 19 – 23. He saw his mother on the ground and Williams standing over her firing. R. 37, ll. 15 – 25. Son watched Williams fire "four or five" shots into Kerns. R. 45, ll. 6 – 9. He saw Williams shoot Kerns in the right shoulder and in the center of her chest. R. 45, ll. 6 – 18. Williams left "[a]fter he ran out of bullets" and jumped out a window. R. 46, l. 1 – 47, l. 2.

Son's version of the shooting could not have happened. The State's pathologist, Dr. Michael Ward ("Ward") testified that Kerns died from a single gunshot wound to the head. R. 149, l. 15 – 150, l. 23. He found superficial scratches around the gunshot wound "meaning that the bullet passed through something else before it struck Ms. Kerns in the face." R. 150, ll. 1 – 10. Dr. Ward testified that "Examination of the chest and abdomen revealed no relevant findings as to her death." R. 150, ll. 14 – 15.

The State played a 911 recording from the night of the incident. R. 24, ll. 7 – 14. State's Ex. 1. Kerns called 911. State's Ex. 1. She tells the operator that she and her husband were going through a divorce, that an order of protection was in progress, and that Williams was not supposed to be around her house. State's Ex. 1. The operator asks if she has seen Williams. State's Ex. 1. Kerns says she heard a noise. State's Ex. 1. Kerns tells the operator she has a .380 firearm with her. State's Ex. 1. After some silence, Kerns whispers, "There is somebody out there." State's Ex. 1. She then says Williams is on her front porch. State's Ex. 1. After another period of silence, someone yells and there is a loud

crash or bang. State's Ex. 1. The operator tries to get Kerns to answer, but she does not. State's Ex. 1. During the intervals when the operator is not speaking, indistinct noises can be heard in the background. State's Ex. 1. Four loud bangs follow another quiet period. State's Ex. 1. The remainder of the recording has long periods of quiet, the operator saying "Ma'am? Hello?" and more indistinct background noises. State's Ex. 1.

"Bodyguard" Wilson met Kerns at a night club in Charlotte. R. 166, ll. 1 – 11. Wilson was thirty-six years old at the time of trial (eleven years younger than Williams[1]). R. 166, ll. 5 – 6. Wilson and Kerns began talking on the phone. R. 166, ll. 12 – 15. Wilson came to visit Kerns in Greenville on a Thursday night. R. 166, ll. 16 – 24. On Friday night, Wilson and Kerns "were out with the kids." R. 167, l. 23 – 168, l. 1. They returned to Kerns' house at approximately 12:00-1:00 AM. R. 168, ll. 5 – 6. Despite the lateness of the hour, Wilson claimed he and Kerns continued to play with the kids until eventually Son went to his room. R. 168, ll. 12 – 21. Daughter, who was approximately two years old, supposedly fell asleep in the bed beside Wilson and Kerns at approximately 3:00 AM. R. 168, ll. 19 – 25.

Wilson claimed he was awakened by a dog barking and "some ruckus going on around outside of the house." R. 169, l. 23 – 170, l. 10. He awakened Kerns. R. 170, ll. 11 – 19. Kerns "immediately hopped up. She grabbed her weapon and ran toward the front." R. 170, ll. 20 – 23. Wilson took Daughter to Son's room. R. 171, ll. 1 – 3.

[1] Williams testified that he and Kerns had "a difference in ages. So I was older than her." R. 287, ll. 2 -3.

Wilson claimed he could hear Kerns talking and heard her "say something about get away from my property, get away from my house." R. 171, ll. 18 – 25. Still in Son's room, he saw the "silhouette of a human being come down the hallway" that he knew was not Kerns. R. 172, ll. 11 – 22. The person "came into the kids room." R. 173, ll. 10 – 20. Wilson tripped over a video game then heard gunshots. R. 175, ll. 2 – 8. He believed the first shot hit him. R. 175, ll. 2 – 8. He claimed it knocked him unconscious. R. 175, ll. 2 – 13.

The EMT said Wilson "had a superficial laceration noted to the right side of his head." R. 98, ll. 15 – 20. Wilson also complained to the EMT that "he was kicked in the chest." R. 98, ll. 21 – 22. At trial, Wilson never mentioned anything about being kicked in the chest.

The Defendant's Testimony

Williams testified that Wilson attacked him outside of Kerns' house. R. 332, l. 10 – 342, l. 20. Earlier that evening, Williams traveled to Greenville for a date that ended when the woman abandoned him to hang out with her aunt and cousins. R. 326, ll. 18 – 23. Williams went to another club by himself and left at approximately 4:15 AM. R. 328, l. 4 – 329, l. 8. He called Kerns' cell phone and house phone. R. 329, ll. 9 – 14. Williams was supposed to pick up Daughter in a few hours. R. 327, ll. 4 – 6. He decided that instead of driving fifty miles home only to turn right around and return to Greenville, he would go to Kerns' house. R. 329, ll. 15 – 18.

When Williams got to Kerns' house he saw an unfamiliar vehicle with North Carolina plates. R. 329, ll. 21 – 25. He did not see Kerns' car. R. 329, ll. 21 – 25. He parked and went to the front door. R. 330, l. 25 – 333, l. 2. He knocked. R. 332, l. 18 –

333, l. 2. The dogs barked. R. 332, l. 18 – 333, l. 5. As Williams turned to leave the porch, he saw the curtain move. R. 333, ll. 5 – 14. He turned back to "peep in through the window." R. 333, ll. 5 – 14.

Williams then heard a noise behind him. R. 333, ll. 9 – 11. He turned and saw a man who turned out to be Wilson pointing a handgun at him. R. 333, ll. 12 – 14. R. 338, l. 25 – 339, l. 1. R. 368, ll. 12 – 18. Wilson told Williams, "I, finally, get to meet the man whose money I've been spending."[2] R. 334, l. 17 – 18. Williams then demonstrated for the jury how he and Wilson struggled over the gun. R. 339, ll. 13 – 25. During the struggle, Williams said, "Then the gun went off, pow." R. 339, ll. 13 – 25.

After the gun "went off," the men continued to wrestle and both crashed through a window into the house. R. 340, ll. 1 – 17. The fight continued through the house and to the door of Son's bedroom. R. 340, l. 18 – 342, l. 6. Williams described another struggle over the gun and said "that's when the gun went off, pow, pow, pow."[3] R. 342, ll. 8 – 16. Wilson went to the floor and did not move. R. 342, ll. 15 – 20. Williams did not see Son or Daughter. R. 342, l. 21 – 343, l. 5. He then saw Kerns and "blood everywhere." R. 343, ll. 6 – 13. When Williams found Kerns had no pulse, he began crying and had "an anxiety attack." R. 343, ll. 2 – 13.

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[2] Judge Jefferson did not allow the jury to hear what Wilson said to Williams. The State objected that Wilson's statement was hearsay. The trial judge sustained the objection over argument from defense counsel. R. 333, l. 12 – 336, l. 1. This ruling is Williams' first issue on appeal.

[3] Williams' second issue on appeal is the trial judge's refusal to charge involuntary manslaughter. R. 403, l. 24 – 404, l. 1.

Williams "flipped out." R. 343, ll. 14 – 25. He saw "911" on the face of Kerns' cell phone. R. 343, ll. 22 – 25. He left. R. 343, ll. 22 – 25. Williams drove around for hours. R. 345, l. 5 – 351, l. 11. Williams eventually led the police on a high-speed chase that ended when a police cruiser struck Williams' car "to spin him out of control." R. 78, l. 3 – 81, l. 19. When the officers approached the car, they found Williams with a knife sticking out of his chest. R. 81, l. 24 – 82, l. 4. Williams testified that he tried to kill himself because he "decided [he] didn't want to live any more." R. 353, ll. 11 – 21. After four hours of deliberation and a question on the difference between murder and voluntary manslaughter, the jury convicted Williams. R. 456, ll. 4 – 5. R. 458, ll. 4 – 6. R. 462, ll. 1 – 3.

ARGUMENT

1.

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

The trial court erred in excluding Wilson's threat as hearsay. Williams described the crucial moments before the shooting:

> A. And so I turned to walk off the porch. I see the curtain move. And once I see the curtain move, I stopped to turn facing the house in the window to kind of peep in through the curtain, peep in through the window. As I did that, I heard – it was in the grass – it was on the grass there, maybe hit the concrete. I hear some noise.
>
> And so I turned. When I turned, I see a guy, an individual[4] approaching me. And they pulled out a weapon and pointed it at me and said–

[4] Williams later identified the man with the gun as Wilson. R. 368, ll. 12 – 18.

Q. Hold on a minute. Hold on a minute. Let me – go ahead. What was said? Go ahead. I'm sorry. Tell the jury what was said.

MS. MUNSON: Objection, hearsay.

R. 333, ll. 6 – 17. The trial court then excused the jury. R. 333, l. 24 – 334, l. 2.

Defense counsel then proffered Williams' testimony. Wilson told Williams, "I, finally, get to meet the man whose money I've been spending." R. 334, ll. 17 – 18. Defense counsel then told the court he planned to question Williams about his reaction. The following colloquy occurred:

THE COURT: 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.

MR. JONES: Well, you know, in Willie's mind, it kind of could have been – I mean, he would have to testify to it.

THE COURT: 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 it.

MR. JONES: Yes, Your Honor.

THE COURT: But I don't think it falls within the exception.

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

THE COURT: 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.

Get the jury back in.

R. 335, l. 3 – 336, l. 2. Judge Jefferson allowed no further argument.

The trial judge erred in excluding this statement for multiple reasons. The State objected solely on the ground of hearsay, but Wilson's statement does not meet the definition of hearsay. To be hearsay, the statement must be offered into evidence for the truth of the matter asserted. SCRE 801(c). "If the out-of-court statement is being offered for a purpose other than proving the truth of the matter asserted, it is not hearsay." 29 Am. Jur. 2d Evidence § 671. "In other words, an out-of-court statement is not hearsay unless the party offering the statement is attempting to prove the statement is true." Id. Wilson's statement was not offered to prove that he was finally getting to meet Williams or that Wilson was spending Williams' money. It was offered to prove that Wilson was threatening—or, even as the trial judge minimized it—taunting Williams. "Words offered to prove the effect on the hearer are admissible when they are offered to show their effect on one whose conduct is at issue." 29 Am. Jur. 2d Evidence § 676. Even if the trial judge recognized it correctly as a taunt, the statement simply cannot qualify as hearsay because if it was a taunt, it was not offered for the truth of the matter asserted.

Defendants' threats are almost always admitted and in a self-defense case, since the roles are reversed, the victim's threats are also properly admitted. These kinds of statements made by alleged victims are routinely admitted into evidence in manslaughter and self-defense cases admitted without controversy. See State v. Santiago, 370 S.C. 153, 157-58, 634 S.E.2d 23, 26 (Ct. App. 2006) (decedent told defendant to "stay the f-away from my daughter" and "don't be f-ing stupid" in a self-defense case); State v. Locklair, 341 S.C. 352, 361-62, 535 S.E.2d 420, 424-25 (2000) (admitting multiple statements of the victim in a manslaughter case); State v. Wiggins, 330 S.C. 538, 543-44, 500 S.E.2d 489, 492 (1998)

(victim told defendant "Yeah, we've got problems" then pulled out a pistol in a self-defense case); State v. Lowry, 315 S.C. 396, 398, 434 S.E.2d 272, 273 (1993) (decedent told defendant "You think you are a big man because you got a gun."); State v. Gardner, 219 S.C. 97, 64 S.E.2d 130 (1951) (wife told husband she would "put him in the penitentiary" in a manslaughter case).

Even if Wilson's threat somehow could be hearsay, it would fall under one of several exceptions. Wilson's threat would be an excited utterance. SCRE 803(2). Holding a gun on someone qualifies the declarant as "under the stress of excitement caused by the event." SCRE 803(2). Wilson's threat would be a "statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health). SCRE 803(3). Wilson's threat shows his motive and intent to harm Williams and explains Williams' actions in response to that statement.

Wilson's threat is also admissible as *res gestae*. It was part of the fabric of the event. In State v. Dickerson, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000), evidence of the defendant's drug use was admissible under the theory of *res gestae*, citing State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 371 (1996):

> Here...the temporal proximity of the cocaine use to the robbery and murder is so close that one cannot deny that the cocaine use was so much a part of the "environment" of the crime that omitting the evidence of it would unnecessarily fragmentize the State's case...The use of the cocaine here was inextricably intertwined with the robbery and murder. Under these circumstances, such evidence was properly admitted as part of the res gestae of the crime.

In this case, excising Wilson's threat which was inextricably intertwined with the fight and the shooting violated the principle of *res gestae* and prevented the jury from hearing the full nature of the events of the shooting.

Williams' inability to tell the jury that Wilson threatened him prejudiced his self-defense and voluntary manslaughter theories. Williams received both of these jury charges and Wilson's threat was highly probative on both issues. Wilson's statement was relevant to whether Williams was without fault in bringing on the difficulty, whether he reasonably believed he was in imminent danger of losing his life, and whether he had a way to avoid the difficulty. State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). Without hearing Wilson's threat, the jury simply knew that Wilson stood there holding a gun on Williams and said nothing. Without hearing Wilson's threat, they could have believed that Williams' actions were unreasonable. Knowing that Wilson taunted and threatened Williams makes Williams' subsequent actions more reasonable.

Keeping Wilson's threat from the jury prejudiced Williams' case for voluntary manslaughter. In order to reduce the crime from murder to voluntary manslaughter, Williams must have acted under a sudden heat of passion upon sufficient legal provocation. State v. Niles, 400 S.C. 527, 534, 735 S.E.2d 240, 243 (Ct. App. 2012). An overt, threatening act can generate the sudden heat of passion and constitute legal provocation. Gardner at 105, 64 S.E.2d at 134-35. Knowing of the threat and taunt (combined with pointing a gun) would have further mitigated the alleged crime from murder to manslaughter. The jury asked for the difference between murder and manslaughter and deliberated for over four hours. R. 456, ll. 4 – 5. R. 458, ll. 4 – 6. R. 462, ll. 1 – 3. Failure

to allow the statement prejudiced Williams' ability to fully present his defense and this Court should reverse.

2.

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

Williams' testimony about the struggle over the weapon required the trial judge to charge involuntary manslaughter. Defense counsel asked for an involuntary manslaughter charge "based on Willie Williams' testimony." R. 384, ll. 19 – 22. Judge Jefferson took the matter under advisement overnight. R. 385, ll. 2 – 4. The next day, Judge Jefferson ruled, "I'm not instructing, however, involuntary manslaughter as the record is void of any evidence supporting that instruction." R. 403, l. 24 – 404, l. 1.

A defendant's testimony that he struggled over the weapon supports a charge of involuntary manslaughter. State v. Battle, ___ S.C. ___, ___ S.E.2d ___ 2014 WL 1614741, Shearouse Adv. Sheet No. 16 (Ct. App. Apr. 23, 2014). Tisdale v. State, 378 S.C. 122, 125, 662 S.E.2d 410, 412 (2008); Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991).

The law to be charged is determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Reversible error is committed if the trial court fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Moreover, when determining whether the evidence requires a charge on a lesser included offense, the court views the facts in the light most favorable to the defendant. See Knoten, 347 S.C. at 302, 555 S.E.2d at 394 (requiring the trial court to view facts in the light most favorable to a

defendant when determining whether to charge involuntary manslaughter).

"Importantly, our courts have long emphasized that to warrant a court's eliminating the offense of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." State v. Brayboy, 387 S.C. 174, 180, 691 S.E.2d 482, 486 (Ct. App. 2010); see also State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000); State v. Burriss, 334 S.C. 256, 265, 513 S.E.2d 104, 109 (1999). Thus, a request to charge a lesser-included offense is properly refused only when there is no evidence that the defendant committed the lesser rather than the greater offense. Casey, 305 S.C. at 447, 409 S.E.2d at 392.

Involuntary manslaughter is the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. State v. Crosby, 355 S.C. 47, 51-2, 584 S.E.2d 110, 112 (2003); Burriss, 334 S.C. 256, 265, 513 S.E.2d 104, 109 (1999).

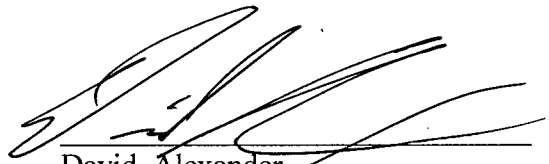
State v. Light, 378 S.C. 641, 648, 664 S.E.2d 465, 468 (2008) is particularly instructive. In Light, the defendant gave inconsistent versions of the victim's death, but repeatedly maintained that the gun unintentionally discharged after a struggle. Despite expert testimony contradicting the defendant's story, the Supreme Court ruled that defendant's testimony, by itself, was sufficient to require an involuntary manslaughter charge. Id. at 648-49, 664 S.E.2d at 469. The Court stated, "[T]he fact petitioner and [the victim] were struggling over the weapon is sufficient evidence to support an involuntary manslaughter charge to the jury. Id.

Burriss is similar to the facts of this case. As an attacker advanced on the defendant, the defendant reached for his gun and "it went off," killing another man who had earlier participated in the attack. Burriss at 258-59, 513 S.E.2d at 105-06. Also similar is Battle, in which the defendant and the decedent struggled over a gun and it fired. Williams testified that "the gun went off" during his struggle with Wilson. R. 339, ll. 13 – 25. R. 342, ll. 5 – 14. At no point did Williams testify that he intentionally pulled the trigger. The State admitted that Williams took no intentional action. The solicitor stated, "He didn't take any intentional action at all. He was attacked, and everything was Wilson's fault." R. 405, ll. 18 – 19. Viewing the evidence in the light most favorable to Williams, the judge erred in refusing to charge involuntary manslaughter and the case should be reversed.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and the case remanded for a new trial.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of January, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 26th, 2015

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APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Anthony Mabry, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 26th day of January, 2015.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 26th day of January, 2015.

_____ (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.