STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2016-001385

THE STATE, ...RESPONDENT,

v.

HEATHER ELIZABETH SIMS,.....APPELLANT.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court properly charged the jury on voluntary manslaughter because evidence was presented at trial indicating Appellant killed Victim in a sudden heat of passion upon sufficient legal provocation.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

The State's Case

At trial, the State focused a large portion of its case unraveling Appellant's varying narratives of the shooting. As early as her 9-1-1 call, Appellant would give differing, often contradictory descriptions of the events surrounding Victim's death. She initially told the 9-1-1 operator she and Victim got into an argument, then he "had a wrench in his hand and he **tried** to stab [Appellant] but [she] shot him." When the dispatcher asked Appellant what she used to shoot Victim, she again stated she grabbed a "nine millimeter" from a drawer and shot him because "he was coming at [her]." Throughout the call, Victim made additional, often inconsistent statements about the attack, including: (1) Victim went after her with both a knife and wrench in his hands; (2) he stabbed her before she shot him; (3) Appellant had not initially noticed it, but Victim "barely got [her]" with the knife before she shot him; (4) Victim slapped her; (5) she "didn't mean" to shoot Victim; and (6) the knife was "laying [on] the floor where . . . [Victim] dropped it." (State's Exhibit 4).

Ronnie Causey, Appellant's father, arrived while Appellant was on the phone with the 9-1-1 operator. He noted the knife was **in** Victim's hand. Both Appellant and Causey told the operator Appellant was performing CPR on Victim. The operator warned both of them to not touch the knife; which Causey repeated to Appellant a couple additional times. Causey also told Heather to stop wiping up blood. The call ended when the first officers arrived at the scene. (State's Exhibit 4).

Appellant also gave varying descriptions of the attack in her hospital interview performed hours after the shooting. Her most notable claims were: (1) she grabbed the gun because Victim was in her face and she felt threatened; (2) when she grabbed the gun, Appellant did not know

whether she actually needed it because she felt only "a little threatened"; (2) Victim walked toward her with the knife only after seeing her grab the gun; (3) Victim started swinging the knife after seeing her grab the gun; (4) Appellant fired the fatal shot without knowing whether Victim had actually "hit her"; (5) she did feel Appellant stab her, and shot him afterwards; (6) she grabbed the gun after Victim cut her arm while swinging the knife **or** the pliers; (7) Victim instigated the situation when he held the knife in her face and called her names; (8) Victim was holding a knife and Appellant's phone in her hands; (9) Appellant grabbed the gun only after Victim went after her with the knife; (10) Victim threatened to "knock the teeth" out of Appellant; (11) Appellant could, and should, have left the home; and (12) Appellant could not have escaped, because Victim was fast and she feared she would get stabbed in the back if she turned her back. (State's Exhibit 2; Defendant's Exhibit 37).

Allyson Brown, a friend and employee of Appellant's, testified Appellant described the attack to her within days of the event and included a demonstration of the event in the same bathroom she shot Victim. She recounted Appellant claimed the physical confrontation with Victim occurred when he attempted to take her cell phone. Appellant also told Brown: (1) Victim put his arms around her trying to get her phone; (2) Victim bit Appellant's finger to force her to drop the phone; (3) Appellant dropped the cell phone and it slid across the floor; (4) when Victim walked over to the phone to retrieve it, Appellant realized she had been cut and retrieved the gun from the bathroom drawer; (5) Victim turned around and realized Appellant was armed; (6) Appellant asked Victim what he was "going to do" with the knife, to which he replied he was not "going to do anything"; (7) Victim asked Appellant what she was "going to do" with the gun, to which she only replied, "I want you to stop what you are doing right now"; and (8) Victim

lunged at her with a knife in his hands, at which point Appellant shot him. (Tr.Vol.III.p.348, line 17–p.356, line 5).

Dr. Werner Spitz, an expert in forensic pathology, reviewed Appellant's case and testified: (1) Appellant was at least two feet away from Victim when she shot him; and (2) Appellant's injuries were self-inflicted, and he determined such based on the presence of a "hesitation mark,"[1] along with the location and superficial nature of Appellant's wounds. (Tr.Vol.III.p.22, line 7–p.40, line 7).

Additionally, the State presented evidence Victim was not holding the knife at the time of the shooting. Officers Pete Cestare and Jill Domogauer testified the knife in Victim's hands was "upside down," with the blade pointing "up" towards Victim. Additionally, the hand holding the knife was covered in Victim's blood, which likely came from him grabbing his wound after the shooting. Predictably, the side of the knife handle resting in the hand was covered in Victim's blood. However, the side of the handle facing up was not. According to SLED agent Teresa Sutton, an expert in blood stain pattern analysis, the "clean" side of the handle should have been covered in blood had Victim held the knife in his hands from the time of the attack to the moment he lost consciousness. Given the orientation of the knife, Officer Sutton concluded Victim was likely not holding the knife at the time he touched his chest wound. (Tr.Vol.II.p.51, line 15–p.52, line 17; p.85, line 8–p.91, line 13; p.269, line 21–p.273, line 12; Tr.Vol.III.p.120, line 22–p.142, line 22).

Appellant's Case

[1] As explained by Dr. Spitz, a "hesitation mark" is a self-inflicted cut or scratch common in suicide victims and other self-harm scenarios. When a person attempts to cut herself, such efforts conflict with her natural aversion to injury. As a result, the first cut is relatively minor. Dr. Spitz explained hesitation marks are critical evidence in suicide investigations. (Tr.Vol.III.p.30, line 21–p.34, line 10; p.39, line 12–p.40, line 7).

Appellant testified she and Victim had experienced marital difficulties for the last year of their marriage. She claimed their arguments included yelling and threats of violence, including an altercation the year before the shooting during which Appellant and Victim hit each other. The fight ended with both parties placing calls for help: Appellant called 9-1-1 and Victim called Causey. During the last few weeks of their marriage, she and Victim sought marriage counseling in an attempt to rebuild their relationship. (Tr.Vol.V.p.66, line 12 –p.73, line 1; p.76, line 21– p.78, line 18).

Appellant explained Victim was in a foul mood on the day of the shooting, arguing with her throughout the day. The fighting escalated when Appellant was in the bathroom and Victim entered to fix a toilet chain. Victim, still angry from their earlier arguments, initiated another altercation. He accused Appellant of avoiding appointments with their marriage counselor, accusing Appellant of wanting to separate and claiming he did not want "to be married to a damn liar." Appellant grabbed her phone to prove scheduling conflicts with a counseling appointment, at which time Victim and Appellant fought for physical control of the phone. Victim won control over the phone, and began yelling at her and calling her names. While holding both the phone and a knife, Victim threatened to "knock the teeth" out of Appellant's head. Scared, Appellant backed away from Victim and grabbed the gun stashed in the bathroom drawer. She claimed the presence of the gun only further enraged Victim, who made additional threats and then lunged at her. Appellant "shot [Victim] out of a reaction." She claimed she "didn't think, nor did [she] ever want to do that, but it was a reaction because [she] was scared." After shooting Victim, she called 9-1-1 and began CPR. She admitted to wiping up some of the blood, but claimed it was a reflex and she failed to appreciate the consequences of such action. She also conceded she may have picked up the knife and placed it back into Victim's hand, and that she

removed his cell phone from his pocket, attempted to use it, and moved it out of the bathroom. (Tr.Vol.V.p.86, line 25–p.101, line 6).

Trial counsel also sought to introduce evidence the toilet chain in Appellant's bathroom was, in fact, in need of repair around the time of shooting to further support his theory of the case. The State acknowledged that officers, on a trip to Appellant's home days after crime, noticed the toilet chain was in need of repair. The parties stipulated the toilet was in need of repair and such stipulation was presented to the jury. (Tr.Vol.IV.p.183, line 19–p.191, line 10; Tr.Vol.V.p.200, line 15–p.204, line 19; p.257, line 11–258, line 4; p.272, lines 13–21).

Voluntary Manslaughter Charge

At the close of the State's case, trial counsel made a motion for directed verdict claiming the State failed to provide evidence of malice aforethought. The trial judge denied the motion, believing the evidence, viewed in the light most favorable to the State, supported murder. At the close of Appellant's case, trial counsel renewed his motion for a directed verdict on the murder charge. He argued the State failed to charge Appellant with voluntary manslaughter and involuntary manslaughter and claimed the State failed to present any evidence of malice aforethought. Again, the trial judge denied the motion. (Tr.Vol.III.p.410, line 14–p.424, line 5; Tr.Vol.V.p.198, line 13–p.200, line 9).

Shortly thereafter, the trial judge initiated a discussion on proposed jury charges and the parties argued the propriety of charging voluntary and involuntary manslaughter. The State argued involuntary manslaughter should not be charged because it believed no evidence was presented "that would suggest this was in any form or fashion accidental." Trial counsel claimed he could not find evidence in the record supporting the lesser-included charges, but stated "[he]

under[stood] [the trial judge's] ruling." (Tr.Vol.V.p.209, line 7–p.210, line 4; p.260, line 13–p.261, line 25; p.263, lines 7–23; p.351, lines 5–16).

The trial judge found the charges were proper, claiming there was evidence at trial supporting both. After both parties presented their closing statements, trial counsel again requested the trial judge to abstain from charging voluntary manslaughter and involuntary manslaughter. The State disagreed, arguing there was evidence in the record supporting both charges. The trial judge charged murder, voluntary manslaughter, involuntary manslaughter, and self-defense. (Tr.Vol.V.p.262, lines 1–19; p.351, lines 5–21; p.353, line 2–p.373, line 20).

After the jury found Appellant guilty of voluntary manslaughter, trial counsel filed a motion for a new trial, arguing there was insufficient evidence supporting the verdict. He argued the evidence presented at trial supported self-defense but not manslaughter because there was no evidence of sudden heat of passion. He claimed evidence of her fear was not enough, noting fear "does not end the inquiry because the fact that someone was afraid does not necessarily constitute evidence that they lost control and succumbed to an uncontrollable impulse to do violence." He argued the State focused its case on the theory that she planned the murder and acted with malice aforethought, and therefore the jury was forced to either find her innocent or guilty of murder. He emphasized Appellant testified she shot the gun out of reaction because she was scared. (Mot.Tr.p.3, line 18–p.24, line 4).

The State disagreed with trial counsel's analysis. The State admitted its dominant theory of the case was murder, but there was evidence in the record justifying the manslaughter charge and thus the charge was proper. It pointed out Appellant testified to a heated argument with Victim throughout the day of and immediately before the shooting. It noted Appellant admitted in several of her statements that she grabbed the gun before Appellant lunged at her with the

knife and Appellant's actions immediately after the shooting, including her 9-1-1 call and attempts to perform CPR were evidence she acted in a heat of passion and immediately regretted her decision to shoot Victim. (Mot.Tr.p.26, line 16–p.34, line 1; p.45, line 21–p.46, line 14).

The trial judge denied the motion for a new trial. (June 28, 2016 Order).

ARGUMENT

The trial court properly charged the jury on voluntary manslaughter because evidence was presented at trial indicating Appellant killed Victim in a sudden heat of passion upon sufficient legal provocation.

Appellant argues the trial judge erred in charging voluntary manslaughter because it was not supported by the evidence in the record. The State disagrees. Both the State and Appellant presented evidence, including Appellant's own statements, indicating Appellant's actions constituted voluntary manslaughter.

"The law to be charged must be determined from the evidence presented at trial." State v. Brayboy, 387 S.C. 174, 179, 691 S.E.2d 482, 485 (Ct. App. 2010) (citing State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001)). "A trial judge must charge a lesser included offense if there is any evidence from which the jury could infer the defendant committed the lesser rather than the greater offense." State v. White, 361 S.C. 407, 605 S.E.2d 540 (2004). A trial court commits reversible error if it 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).

Voluntary manslaughter is a lesser-included offense of murder. State v. Sams, 410 S.C. 303, 764 S.E.2d 511 (2014). "It has long been the law in this State that 'to warrant the court in eliminating the offense of manslaughter it should very clearly appear that there is no evidence whatever tending to reduce the crime from murder to manslaughter.'" Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991) (quoting State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 565 (1969)).

Voluntary manslaughter is the unlawful killing of a human being in a sudden heat of passion upon sufficient legal provocation. See State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000). Both heat of passion and sufficient legal provocation must be present at the time of

the killing. Id. "The sudden heat of passion, upon sufficient legal provocation, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." State v. Wharton, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009). Whether a defendant's actions constituted a sudden heat of passion is an appropriate question for the trial court. State v. Niles, 412 S.C. 515, 522, 772 S.E.2d 877, 880 (2015). An overt, threatening act or a physical encounter may constitute sufficient legal provocation. State v. Pittman, 373 S.C. 527, 573, 647 S.E.2d 144, 168 (2007) (citing State v. Gardner, 219 S.C. 97, 105, 64 S.E.2d 130, 134 (1951)).

To establish self-defense in South Carolina, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, the defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the same belief and that the circumstances were such that would warrant a person of ordinary prudence, firmness, and courage to strike the deadly blow to save himself from serious bodily harm or the loss of his life; and, (4) the defendant had no other probable means of avoiding the danger. State v. Bryant, 336 S.C. 340, 344-45, 520 S.E.2d 319, 321-22 (1999); see also State v. Slater, 373 S.C. 66, 70; 644 S.E.2d 50, 52 (2007); State v. Goodson, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994).

The question of when to charge voluntary manslaughter as a lesser-included charge of murder has repeatedly been considered by South Carolina courts. In State v. Lowry, 315 S.C. 396, 434 S.E.2d 272 (1993), the defendant was convicted of murder for shooting an unarmed

man in a grocery store. Leading up to the shooting: (1) the defendant and the victim got into an argument outside a grocery store; (2) the two men "bumped chests"; (3) the defendant aimed a pistol at victim and pulled the trigger, but the pistol was unloaded; (4) shortly after the fight was broken up, the defendant loaded a clip of ammunition into his pistol, fired a single shot into a nearby sign, and followed the victim into the grocery store; (5) the two men again started arguing and shouting; (6) the victim moved toward defendant in a "menacing fashion" with his arms and hands outstretched "as if to grab him"; and (7) the defendant shot victim in the chest, and after victim fell he cursed him and shot him a second time in the head. The trial judge instructed the jury on murder and self-defense, but declined to charge voluntary manslaughter.

The Supreme Court of South Carolina found the trial court erred in failing to charge voluntary manslaughter because, in murder cases, a trial court should provide the charge unless it "very clearly appear[s] there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." The court noted the voluntary manslaughter charge was required because evidence was presented showing defendant and victim were in a heated argument and the victim was about to initiated a physical altercation when the shooting occurred. Moreover, the court noted the failure to charge voluntary manslaughter was not harmless because even though the jury rejected the defendant's self-defense claim and found defendant guilty of murder, "the jury could have discerned, consistent with the evidence, that there was sufficient legal provocation and heat of passion to find [defendant] guilty of voluntary manslaughter."

The court found similar error in State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001). In Knoten, the defendant provided police with three inconsistent versions of his role in the death of a mother and three-year-old daughter. In his first signed statement to police, he recalled stopping by the victims' home but blacked out during his drive home and woke up next to a boat

ramp without memory of killing either victim. In his second signed statement, he had consensual sex with his adult victim. Afterwards, she became agitated, armed herself with a knife, and threatened him. She cut him on the leg and chased him out of her apartment. Defendant, nude, retrieved a steel bar from the trunk of his car. When he reentered the apartment, the adult victim cut him again and he retaliated by hitting her over the head with the metal bar. He disposed of the body at the boat ramp and left the child there, alive. In his third and final written statement, defendant admitted to raping the adult victim and pushing the child victim into the river. Id. at 301, 555 S.E.2d at 394.

The court found the trial judge erred in failing to charge voluntary manslaughter as to the adult victim because such charge was supported by evidence provided in Appellant's second signed statement. The court noted the unprovoked knife attack, which included several physical injuries and a nude chase into the cold November evening, constituted sufficient legal provocation warranting the charge. Moreover, the court determined Knoten's recantation of the second statement was irrelevant to the analysis because charges are based on the entirety of evidence in the record and all three signed statements were introduced at trial.

Evidence Supporting Voluntary Manslaughter

Appellant claims voluntary manslaughter was improperly charged because the State's theory of the case was murder, and as a result the State failed to present the theory, and evidence supporting, voluntary manslaughter. Without a doubt, the State focused heavily on its theory that Appellant's actions constituted murder. However, such focus is compatible with voluntary manslaughter. Voluntary manslaughter is considered a lesser-included offense of murder, and does not require a separate indictment, because of the close relationship between the two offenses. See Sams, 410 S.C. at 309, 764 S.E.2d at 514; also State v. Causer, 87 S.C. 516, 70

S.E. 161 (1911) ("The charge of murder . . . necessarily involves both voluntary and involuntary manslaughter).

Both the State and Appellant provided significant evidence Appellant acted in a sudden heat of passion when she shot Victim. The undisputed evidence showed Victim and Appellant's marriage was deteriorating; they were constantly fighting and attending marriage counseling. According to Appellant's trial testimony and various pretrial statements, Victim was agitated the day of the attack and started their final, explosive argument. He hurled insults at Appellant and threatened to leave her, claiming he did not want "to be married to a damn liar." Similar to Lowry, Appellant and Victim's heated argument escalated into a dangerous, physical altercation at which point Appellant feared for her wellbeing. Appellant testified she shot Victim instinctively, out of fear. Based on Appellant's trial testimony and her statements to the various witnesses, she shot Victim out of fear, anger, or some combination thereof. Thus, evidence at trial demonstrated Appellant acted in a sudden heat of passion when she shot Victim. See State v. Starnes, 388 S.C. 590, 598–99, 698 S.E.2d 609 (2010) (stating a defendant's fear resulting from an attack may merit a jury charge on voluntary manslaughter provided the fear was the result of sufficient legal provocation, caused the defendant to lose control, and "created an uncontrollable impulse to do violence"); Lowry, 315 S.C. at 399, 434 S.E.2d at 274 (stating opprobrious words, accompanied by the appearance of an assault by some over, threatening act, can produce a sudden heat of passion justifying a voluntary manslaughter charge). Moreover, Appellant's assertion that a physical struggle erupted over control of the phone and her claims that Victim lunged at her with the knife both support the jury finding Appellant shot Victim upon sufficient legal provocation. See Pittman, 373 S.C. at 573, 647 S.E.2d at 168 (stating an overt, threatening act or a physical encounter may constitute sufficient legal provocation).

Given the numerous statements showing Appellant acted in the heat of passion upon sufficient legal provocation, the trial judge properly charged the jury on voluntary manslaughter. See State v. Mekler, 379 S.C. 12, 16–17, 664 S.E.2d 477, 479 (finding a trial judge erred in failing to charge a jury on both self-defense and involuntary manslaughter because there was evidence supporting both charges and it was the jury's duty to weigh the evidence and determine how the crime occurred).

Appellant contends her testimony and various statements support self-defense, not voluntary manslaughter. However, several of her statements contradict this assertion and support her conviction. For example, if the jurors believed Brown's testimony that Victim and Appellant were arguing and wrestling over the phone Victim was not attempting to maim or kill Appellant. When the phone fell and rolled across the floor, he disengaged from the struggle and picked it up. Appellant drew the gun, and Victim, acting in his own self-defense, lunged at Appellant. Thus, under this scenario, the jury could have concluded Appellant was not acting in self-defense because she caused the shooting and thus was not without fault in causing the shooting to occur. Alternatively, the jury may have believed the intense fight occurred but found, based on evidence including Appellant's conflicting statements, Victim was not armed with a knife at the time of the attack. In such a scenario, Appellant could not claim self-defense because she was not in, nor did she have a reasonable apprehension of, death or serious bodily injury.

Without question, there was some evidence which, viewed in the light most favorable to Appellant, indicated she acted in self-defense. As a result, the trial judge charged the jury on self-defense. Similarly, the trial judge instructed the jury on voluntary manslaughter because there was evidence in the record justifying that charge. Accordingly, the trial judge did not err in charging voluntary manslaughter. See State v. Mekler, 379 S.C. 12, 16–17, 664 S.E.2d 477, 479

(finding a trial judge erred in failing to charge a jury on both self-defense and involuntary manslaughter because there was evidence supporting both charges and it was the jury's duty to weigh the evidence and determine how the crime occurred).

Finally, Appellant implies the State's failure to argue in support of the charge until the post-trial hearing shows the State did not support the charge. However, such argument was never necessary. The trial judge preemptively acknowledged the propriety of the charge before the State had the opportunity to raise the issue. Similarly, the trial judge preemptively acknowledged trial counsel's objections to the lesser-included charges. Neither party exhaustively argued the propriety of the charges before they were given to the jury because, based on the trial judge's comments, it was unnecessary. The trial judge noted the voluntary manslaughter charge was supported by Appellant's testimony and never waivered from his position. The State was given the opportunity to challenge the proposed jury instructions, and elected not to do so because it understood the evidence presented at trial, including the testimony of witnesses such as Brown, supported the charge.

Moreover, Appellant's implication that the State needed to argue "if not murder than manslaughter" is impractical: such and argument would only confuse the jury and lead Appellant to argue this same thing on appeal—that this was another one of the cautionary tales where the State wanted a "compromise verdict" because it felt its case was weak so it hedged its bets. Focusing on voluntary manslaughter would have been similarly impracticable because such a decision would have precluded the jury from considering a murder conviction despite the evidence supporting such. By arguing murder, the State allowed the jury to evaluate the evidence supporting that charge and the lesser-included offenses. The State's decision to focus on murder was not only the most practical approach, but also supported by the treatment of

murder and its lesser-included charges under South Carolina law. See Causer, 87 S.C. 516, 70 S.E. 161 (1911) ("The charge of murder . . . necessarily involves both voluntary and involuntary manslaughter).

Accordingly, the trial judge properly charged the jury on voluntary manslaughter.

Involuntary Manslaughter

Near the end of her brief, Appellant claims the "haphazard inclusion of an involuntary manslaughter charge" prevents retrial on that charge and that the charge was not supported by the evidence at trial. Appellant's assertion ignores South Carolina precedent. In State v. Cooley, 342 S.C. 63, 536 S.E.2d 666 (2000), the Supreme Court of South Carolina found the trial judge erred in granting defendant's request to charge voluntary manslaughter in a murder trial because it was not supported by the evidence presented. It further ruled the defendant could not be retried on the murder charge because conviction of the voluntary manslaughter charge was an implicit acquittal of murder and thus retrial on murder would violate the constitutional prohibition against double jeopardy. However, the court found Cooley could be retried on involuntary manslaughter because the charge was supported by some evidence at trial, and the voluntary manslaughter conviction was not an acquittal of that charge.

Here, like in Cooley, even if the Court were to find voluntary manslaughter was improperly charged, the appropriate remedy would be retrial on involuntary manslaughter. During both the 9-1-1 call and her trial testimony, Appellant claimed she did not mean to shoot Victim. In State v. Crosby, 355 S.C. 47, 53, 584 S.E.2d 110, 112 (2003) the Supreme Court of South Carolina found similar statements justified an involuntary manslaughter charge. In that case, the defendant made a statement to police immediately following a shooting in which he claimed, "[he] closed [his] eyes and pulled the trigger" and "[he] didn't even know [he] pulled

the trigger." The court concluded these statements were evidence indicating the shooting was unintentional, supporting the involuntary manslaughter charge.

Accordingly, should this Court determine the trial judge erred in instructing voluntary manslaughter, the proper remedy would be to remand for a new trial on involuntary manslaughter.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

May 12, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2016-001385

THE STATE,

Respondent,

vs.

HEATHER ELIZABETH SIMS,

Appellant.

PROOF OF SERVICE

I, Keely Carter, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

Blake A. Hewitt, Esquire
Bluestein Nichols Thompson & Delgado
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Columbia, South Carolina 29202

I further certify that all parties required by Rule to be served have been served.
This 12th day of May, 2017.

KEELY CARTER
Legal Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

ALAN WILSON
ATTORNEY GENERAL

May 12, 2017

Blake A. Hewitt, Esquire
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RE: State v. Heather Elizabeth Sims – Appellate Case No. 2016-001385

Dear Mr. Hewitt:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

William F. Schumacher
Assistant Attorney General
Bar Number 100231

WFS/kc
Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services