

The Supreme Court of South Carolina

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May 30, 2018

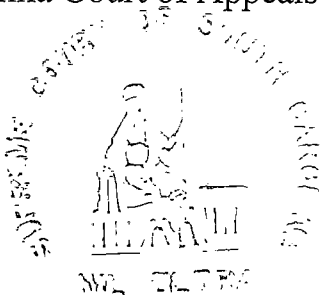
The Honorable Jeanette W. McBride
P.O. Box 2766
Columbia, SC 29202-2766

REMITTITUR

Re: The State v. James K. Bethel, Jr.
Lower Court Case No. 2012-GS-40-04975
Appellate Case No. 2017-000096

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,

CLERK

cc: David Alexander, Esquire
Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire
Alphonso Simon, Jr., Esquire
Daniel Edward Johnson, Esquire
Melody Jane Brown, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The State, Respondent,

v.

James Kevin Bethel, Jr., Petitioner.

Appellate Case No. 2017-000096

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Richland County
Deadra L. Jefferson, Circuit Court Judge

Memorandum Opinion No. 2018-MO-022
Heard May 23, 2018 – Filed May 30, 2018

DISMISSED AS IMPROVIDENTLY GRANTED

Appellate Defender David Alexander, of Columbia, for
Petitioner.

Attorney General Alan McCrory Wilson, Deputy Attorney
General Donald J. Zelenka, Senior Assistant Attorney
General Melody Jane Brown, Assistant Attorney General
Alphonso Simon, Jr., and Solicitor Daniel Edward
Johnson, all of Columbia, for Respondent.

PER CURIAM: We issued a writ of certiorari to review the decision of the court of appeals in *State v. Bethel*, Op. No. 2016-UP-473 (S.C. Ct. App. filed Nov. 9, 2016). We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED.

KITTREDGE, Acting Chief Justice, HEARN, FEW, JAMES, JJ., and Acting Justice James E. Lockemy, concur.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The State, Respondent,

v.

James Kevin Bethel, Jr., Appellant.

Appellate Case No. 2013-002478

Appeal From Richland County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2016-UP-473
Submitted October 1, 2016 – Filed November 9, 2016

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, Assistant
Attorney General Alphonso Simon, Jr., and Solicitor
Daniel Edward Johnson, all of Columbia, for
Respondent.

PER CURIAM: James Kevin Bethel, Jr. appeals his convictions of murder and attempted murder, arguing the trial court erred by (1) refusing to instruct the jury on involuntary manslaughter and (2) admitting testimony that a witness observed Bethel and his associates making gang signs. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. The trial court did not err in refusing to instruct the jury on involuntary manslaughter. *See State v. Stanko*, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013) ("[An appellate court] will not reverse a trial court's decision regarding a jury instruction absent an abuse of discretion."); *State v. Lemire*, 406 S.C. 558, 565, 753 S.E.2d 247, 251 (Ct. App. 2013) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." (quoting *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000))); *State v. Brown*, 362 S.C. 258, 261-62, 607 S.E.2d 93, 95 (Ct. App. 2004) ("The law to be charged to the jury is determined by the evidence presented at trial." (quoting *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993))); *State v. Crosby*, 355 S.C. 47, 51, 584 S.E.2d 110, 112 (2003) ("A trial court should refuse to charge a lesser-included offense . . . where there is no evidence the defendant committed the lesser rather than the greater offense."); *State v. Brayboy*, 387 S.C. 174, 180, 691 S.E.2d 482, 485 (Ct. App. 2010) ("Involuntary manslaughter is (1) 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. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) ("[A] person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting." (emphasis added)); *State v. Gibson*, 390 S.C. 347, 357, 701 S.E.2d 766, 771 (Ct. App. 2010) ("[F]or the purposes of involuntary manslaughter, the inquiries associated with whether or not to instruct on the defense of self-defense are not applicable.").

2. Any error by the trial court in admitting the testimony regarding gang signs was harmless. *See State v. Bryant*, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result."); *State v. Thompson*, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003) ("Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed.");

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."); *Bryant*, 369 S.C. at 518, 633 S.E.2d at 156 ("Thus, an insubstantial error not affecting the result of the trial is harmless where a defendant's guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.").

AFFIRMED.

WILLIAMS, THOMAS, and GEATHERS, JJ., concur.