ORIGINAL

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Newberry County

The Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

Respondent,

v.

CLIFTON CURTIS BOOZER,

Appellant.

Appellate Case No. 2018-001542

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

Did the trial judge err in failing to instruct the jury on the lesser-included offense of involuntary manslaughter where the evidence indicated Appellant choked the deceased only after the deceased brandished a knife and threatened Appellant, the two struggled over the knife, and Appellant believed the deceased was trying to get a second knife?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

Whether the circuit court erred in declining to charge involuntary manslaughter where the jury heard no evidence that the killing was either unintentional or committed with reckless disregard for the safety of others.

STATEMENT OF THE CASE

In July 2017, the Newberry County Grand Jury indicted petitioner for the murder of Ms. Clatie Stribble. (R. 660-661-00290). The case proceeded to trial before the Honorable Frank R. Addy on August 6, 2018. (R. 1). Deputy Solicitor Dale Scott and Assistant Solicitor Taylor Daniel represented the State. (R. 1). Attorney Charles Verner represented appellant. (R. 1). After a week-long trial, the jury found appellant guilty as charged. (R. 649, l. 4). The court sentenced appellant to life in prison. (R. 659, l. 17).

This timely appeal follows.

STATEMENT OF FACTS

Murder of Clatie Stribble

Appellant and Ms. Clatie Stribble (victim) were involved in a long-term, "on-again, off-again" relationship. (R. 414, l. 16; 427, l. 13; 451, l. 4). By all accounts, their relationship was "toxic." (R. 414, l. 14; 427, l. 16). For example, on March 27, 2017, the two got into a heated argument in front of friends at a social gathering. According to one friend, appellant stated that if he ever saw the victim with someone else, he would shoot them both. (R. 453, l. 1-2). Appellant also threatened to "slit [the victim's] throat and beat the blood out of her." (R. 453, l. 2-4). In the days leading up to her murder, the victim separately told three of her close friends that she was living in fear of appellant. (R. 417, l. 13; 419, l. 18; 436, l. 4-7; 455, l. 4-9).

On May 3, 2017 at 8:26 am, the Newberry County Sheriff's Office received a 911 call from appellant. He reported that he had just killed his girlfriend. (R. 22, l. 23; 31, l. 18-20). Within minutes, the police arrived at the victim's house. (R. 32, l. 9-10). Appellant walked out of the front door and was immediately arrested. (R. 33, l. 12-19). As he was being placed in handcuffs, appellant stated "things went too far." (R. 34, l. 23). Appellant's boots were stained with blood, but he had no visible injuries and did not complain of any pain.[1] (R. 40, l. 1-17; 51, l. 21-24).

Law enforcement quickly discovered that the frame to the victim's front door had been damaged, indicative of a forced entry. (R. 55, l. 16-17; 365, l. 13-21; 366, l. 9). When officers entered the home, they also observed signs of a struggle. For example, a pink, ladies tank-top was lying on the ground. (R. 54, l. 22-23). One of its straps had been torn. (R. 54, l. 25). In the master bedroom, there were blood stains on the wall, on a comforter, and throughout the room.

[1] On cross examination, the lead detective conceded that appellant may have had a small abrasion on one of his fingers. (R. 44, l. 7-8).

(R. 62 l. 1-11; 65, l. 1). The curtains had also been ripped off the wall. (R. 60, l. 15-17). On the TV, someone had carved the words "Cliff was here."[2] (R. 65, 16-25). Law enforcement found the victim's dead body lying between the bed and the wall. (R. 59, l. 14-15).

Later that afternoon, appellant notified law enforcement that he wanted to give his side of the story. (R. 340, l. 11). The lead detective obliged and recorded an interview. (R. 348, l. 11-16; 349, l. 1; St. Ex. 60). According to appellant, he arrived at the victim's house around 8 am,[3] after the victim's children had left for school. The two discussed "working it out" and went into the bedroom to have sex. Afterward, appellant asked the victim a question that triggered her personality to change. An argument ensued, and the victim grabbed a steak knife off the dresser. She approached appellant and started swinging the knife. Appellant believed she was serious because "she was using force with it." (St. Ex. 60).

The two struggled over the knife and fell onto a couch in the bedroom. As the two fell on the couch, the victim was stabbed "in her chest area." The victim got up, and upon seeing blood, panicked. According to appellant, the victim fell down to the floor and "I ended up choking her."

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[2] The victim lived with her three minor daughters. (R. 469, l. 10-12). One of her daughters testified that she had never seen those words on the TV before. (R. 485, l. 13).

[3] In contrast to appellant's statement, a cab driver testified that she picked appellant up in Newberry between 4 and 5 am and drove him to the victim's house in Prosperity. (R. 230, l. 17-23; 234, l. 3-23). Appellant's cell phone records also indicate his phone accessed a tower near the victim's home in Prosperity at 5:45 am. (R. 329, l. 3-20; 330, l. 2-5). The State introduced evidence suggesting appellant was waiting outside the home before the children left for school. For example, a tire in the backyard had been moved and placed underneath the master bedroom window. (R. 66, l. 6-23). Near the tire, law enforcement also found a cigarette butt with appellant's DNA on it. (R. 180, l. 20-22; 376, l. 16-24). One of the victim's daughters also testified that she heard a loud noise outside the home between 5:30 and 5:45 am. (R. 475, l. 19-25). The victim's daughters left the house to catch the school bus at approximately 6:45 am and did not see appellant that morning. (R. 476-480; 504-510).

Appellant explained that "she was looking for another knife—something else in the room. I was trying to stop her, to calm her down." (St. Ex. 60).

When asked how he strangled the victim, appellant replied that he used two hands. (St. Ex. 60). As he explained to the detective how he choked the victim, appellant demonstrated "with two hands." (R. 357, l. 10-12). In other words, appellant made clear that he did not hold the victim "around the arm as in a chokehold or headlock." (R. 358, l. 12-14). When the detective later asked how the victim died, appellant replied, "it was when I was choking her...around the neck...right there on the side of the bed." (St. Ex. 60).

At various points during the interview, the detective also asked where he could find the knife, the victim's cell phone, and the bed sheets.[4] Appellant responded that the knife should still be in the master bedroom.[5] Regarding the bed sheets, appellant replied "I got rid of the sheets." When asked where he put them, appellant stated "I don't really want to answer that question right now." (St. Ex. 60). Finally, appellant told the detective that he did not know where the victim's cell phone was. Appellant speculated that the victim might have hidden it to prevent him from looking at its contents.[6] (St. Ex. 60).

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[4] The sheets from the victim's bed were missing. (R. 69, l. 14-17). One of the victim's daughters testified that sheets were on her mother's bed when she left to go to school that morning. (R. 476, l. 10).

[5] Law enforcement recovered two knives at the crime scene. A knife with a blue handle was found lying in the front yard. (R. 67, l. 12-20). A second knife, described as "silver in color," was also found in the backyard. (R. 68, l. 19-24; 175, l. 13-15). In his interview, appellant stated the victim picked up a steak knife with a black handle. (St. Ex. 60).

[6] Several witnesses testified that the victim had her cell phone in the house on the morning she was murdered. (R. 430, l. 13-20; 504, l. 22-25). Additionally, law enforcement recovered a cell phone charger in the victim's bedroom. (R. 61, l. 17-18). Despite searching the house and canvassing the surrounding area, law enforcement never located the victim's cell phone. (R. 363, l. 11).

An autopsy found that the victim's cause of death was asphyxiation due to strangulation. (R. 281, l. 15-17; 282, l. 10). The forensic pathologist assessed that bruising along the victim's neck indicated someone used their hands to strangle her, as opposed to a rope or chord. (R. 294, l. 21-25; 295, l. 1-10). The pathologist further believed that although the victim would have been rendered unconscious within seconds, it would have taken several minutes of continued pressure on the neck to kill her. (R. 284, l. 1-18).

Additionally, the victim had two stab wounds: one on the right side of her neck and another on the left side of her chest. (R. 274, l. 1-12). According to the pathologist, the stab wound to the neck contributed to the victim's death, but by itself was only "potentially fatal." (R. 282, l. 2-3). The pathologist noted the presence of petachiae, or red pinpoint abrasions, on the victim's face. (R. 276, l. 7-10). The petachiae arose from pressure on the victim's neck, which stopped blood flow from the brain to the heart. (R. 276, l. 10-17). Because the blood had nowhere else to go, capillaries in the victim's face ruptured. (R 276, 10-17). Had either of the stab wounds been fatal, the petachiae would not have appeared on the victim's face.[7] (R. 282, l. 15-25; 283, l. 1-4).

Appellant's Trial

At trial, appellant's attorney asked for and received jury charges on self-defense and the lesser-included offense of voluntary manslaughter. Additionally, he asked the court to charge involuntary manslaughter as a lesser-included offense. In addressing the request, the circuit court asked counsel which of the two categories of involuntary manslaughter applied. (R. 543, l. 7-10). Counsel replied that the jury could find that appellant was acting lawfully in self-defense, but used

[7] The autopsy also revealed that the victim sustained other injuries, including blunt force injuries to the jaw, lip, and leg; abrasions on the neck, lip, and under the nose; and two superficial cuts. (R. 268, l. 1-9; 269, l. 6-24; 270, l. 21-23; 271, l. 14; 275, l. 4-22).

a reckless amount of force to restrain the victim.[8] (R. 543, l. 11-25). The circuit court denied appellant's request, citing this Court's decision in State v. Scott, 408 S.C.21, 757 S.E.2d 533 (Ct. App. 2014). The court reasoned that there was no factual basis to conclude appellant acted recklessly because had he been acting in self-defense, he would have been entitled to choke the victim to death. (R. 546, l. 13-18).

After deliberating for almost an hour and a half, the jury found appellant guilty of murder. (R. 647, l. 11-12; 648, l. 12-18; 649, l. 1-4). At sentencing, the solicitor noted that appellant had two prior convictions for criminal domestic violence, one of which involved the victim in this case. (R. 650, l. 24-25; 651, l. 1). Appellant apologized to the victim's family and asked the court to give him a "life sentence because it was terrible. It should have never happened." (R. 656, l. 21-22; 657, l. 3-4). The court sentenced appellant to life in prison, noting "[i]t's one thing to momentarily act on impulse in a fraction of a second and pull the trigger and somebody wind up dead. It's a different matter entirely to basically strangle the life out of someone over the course of three to four minutes." (R. 659, l. 2-6, 15-18).

[8] Appellant failed to argue that the other category of involuntary manslaughter applied, i.e., that appellant was engaged in an unlawful act not tending to cause death or great bodily injury. (R. 543-548). Therefore, as argued below, this ground is not preserved for appellate review. See e.g. State v. Sams, 410 S.C. 303, 310, 764 S.E.2d 511, 514-15 (2014).

STANDARD OF REVIEW

"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 circuit court must "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.

Appellate review of a circuit court's decision not to charge a requested lesser-included offense is *de novo*. State v. Gilmore, 396 S.C. 72, 77, 719 S.E.2d 688, 690 (Ct. App. 2011). In assessing whether the evidence warrants a lesser-included offense, an appellate court "must view the facts in the light most favorable to the defendant." Sams, 410 S.C. at 308, 764 S.E.2d at 513. "The charge request is properly rejected when there is no evidence tending to show the defendant was guilty of the lesser offense." Id.

ARGUMENT

THE CIRCUIT COURT'S REFUSAL TO CHARGE INVOLUNTARY MANSLAUGHTER AS A LESSER-INCLUDED OFFENSE OF MURDER SHOULD BE AFFIRMED BECAUSE THE JURY HEARD NO EVIDENCE TO SUPPORT THE CHARGE.

A. There Was No Evidence That The Killing Was Unintentional.

Involuntary manslaughter is defined as the *unintentional* killing of another while engaged in either: (1) an unlawful act, not a felony or naturally tending to cause death or great bodily injury, or (2) a lawful act committed with a reckless disregard for the safety of others. E.g. State v. Sams, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014)(emphasis added). As this Court has noted, "the essence of involuntary manslaughter is the involuntary nature of the killing." State v. Gibson, 390 S.C.347, 357, 701 S.E.2d 766, 771 (Ct. App. 2010). "To warrant a jury charge on involuntary manslaughter, there must be some evidence the killing was unintentional." State v. Murray, 404 S.C. 300, 303, 744 S.E.2d 607, 609 (Ct. App. 2013).

The circuit court's ruling should be upheld because the jury heard no evidence that appellant killed the victim unintentionally.[9] The forensic pathologist testified that the victim's cause of death was asphyxiation due to strangulation. (R. 281, l. 15-17; 283, l. 2-3). According to the pathologist, although the victim would have passed out within seconds, it would have taken

[9] Although the jury heard evidence that the victim was unintentionally stabbed, the stab wound did not kill the victim. The forensic pathologist testified that the cause of death was asphyxiation due to strangulation. (R. 289, l. 15-17). Although the stab wound would have been "potentially fatal" by itself, the pathologist testified that "strangulation is what killed her." (R. 282, l. 2-3; 283, l. 3-4). According to the pathologist, had the victim bled to death from the stab wound, the petachiae would not have appeared on her face. (R. 282, l. 15-25; 283, l. 1). Appellant also conceded in his interview that the victim died "when I was choking her...around the neck." (St. Ex 60). Because the stab wound did not kill the victim, it should not be considered in assessing whether the killing was unintentional. State v. Murray, 404 S.C. 300, 744 S.E.2d 607 (Ct. App. 2013)(holding that the trial court properly declined to charge involuntary manslaughter where the defendant testified that he accidentally fired a weapon twice before intentionally firing a third round that hit the victim in the chest).

several minutes to strangle her to death. (R. 284, l. 2-15). Additionally, appellant admitted in his recorded interview that the victim's death occurred "when I was choking her ... around the neck." (St. Ex 60). During the interview, appellant stated he used two hands and even demonstrated choking the victim with two hands. (St. Ex. 60; R. 357, l. 10-14). The demonstration made clear that appellant did not have the victim restrained in some type of unconventional chokehold. (R. 358, l. 12-14).

Although appellant suggested that he was only trying to prevent the victim from getting another knife, his statement does not provide evidence to support an involuntary manslaughter charge. Whether appellant intended to kill the victim, or simply restrain her, is irrelevant in assessing whether he acted intentionally. See e.g. Sullivan v. State, 407 S.C. 241, 245, 754 S.E.2d 885, 887 (Ct. App. 2014)(holding that involuntary manslaughter did not apply when a defendant intentionally fired a weapon in an attempt to scare a victim). As such, the jury only heard evidence that appellant intentionally choked the victim.

The Supreme Court of South Carolina has twice considered whether involuntary manslaughter applies in the context of homicide by strangulation. In State v. Chatman, 336 S.C. 149, 519 S.E.2d 100 (1999), two men started arguing, fell to the ground, and fought for two or three minutes. While on the ground, the defendant had the victim in a "face-to-face chokehold" with his shoulder pressed into the victim's neck. In other words, the defendant "was not attempting to strangle [the victim] with his hands." Id. at 153, 519 S.E. 2d at 101-02. The defendant advised he would let go if the victim did. Ultimately, the victim let go, and the fight ended. By that point, the victim had died from asphyxiation due to manual strangulation. Id. at 151-52, 519 S.E.2d at 101.

The Supreme Court held that involuntary manslaughter applied because the case was "**not the traditional strangulation type situation. Appellant was not attempting to strangle [the victim] by placing his hands around [the victim's] neck.**" Id. at 153, 519 S.E.2d at 102 (emphasis added). Instead, the defendant's shoulder pressed into the victim's neck during the struggle, rendering the killing unintentional. Therefore, by implication, had the defendant choked the victim by placing "his hands around the neck" in a "traditional strangulation type situation," the killing would have been intentional, and involuntary manslaughter would not have applied.

Fifteen years later, the court considered a similar situation in State v. Sams, 410 S.C. 303, 764 S.E.2d 511 (2014). In Sams, a dispute between two men arose after a night of drinking. During the struggle, the defendant got on top of the victim, locked his arm around the victim's neck in a "chokehold," and refused to let go. Their girlfriends attempted to intervene, but could not get the defendant off the victim. One of them called the police, who arrived ten minutes later. The responding officer found both men lying face down on the floor, with the defendant on top of the victim. The defendant's arms were wrapped around the victim's neck in an "arm lock." Although the officer managed to get the defendant off the victim, it was too late. The victim had died from asphyxiation due to strangulation.

At trial, the defendant testified that he did not intend to kill the victim. Instead, he only meant to restrain the victim to protect himself during the fight. As such, he argued that there was sufficient evidence to charge the jury on involuntary manslaughter. After the trial court refused to charge involuntary manslaughter, the jury found the defendant guilty of voluntary manslaughter. The Supreme Court upheld the ruling, noting that the defendant's "bald assertion" that he meant no harm to the victim was not dispositive on whether to charge involuntary manslaughter. Rather, even if the defendant initially only intended to restrain the victim, the "prolonged and continued

hold on the victim's neck ... was **intentional** and the type of conduct that is highly likely to result in serious injury or death." Id. at 312, 764 S.E.2d at 515 (emphasis added).

These two cases illustrate that appellant's actions were intentional. Unlike the situation in Chatman, appellant admittedly had the victim in a "traditional" stranglehold. See Chatman, at 154, 519 S.E.2d at 102. Appellant used two hands and even demonstrated for the detective how he killed the victim. The detective relayed that demonstration to the jury, making clear that defendant did not inadvertently choke the victim while restraining her in an unconventional chokehold. (R. 358, l. 12-14). Furthermore, the pathologist testified that it would have taken several minutes of continued pressure to kill the victim. (R. 284, l. 1-18). Like the situation in Sams, the "prolonged and continued hold on the victim's neck" indicates this was an intentional act. Sams, 410 S.C. at 312, 764 S.E.2d at 515.

Appellant even concedes in his brief that "[h]is act was intentional." (App. Brief 10). Nevertheless, he argues that the circuit court erred because appellant's statement to police suggests that he "had no intent to kill the deceased." (App. Brief 10). Appellant's analysis conflicts with decades of settled case law holding that when an individual intentionally commits an act that kills someone, his subjective intent to harm is irrelevant.[10] This too, appellant acknowledges. (App. Brief 10)("Appellant respectfully submits these cases have been wrongly decided as the focus must be on the killing, not the conduct.").

[10] See e.g. State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994)("whether [the defendant] intended to harm [the victim] is irrelevant."); Sullivan, 407 S.C. at 245, 754 S.E.2d at 887 ("The fact that all three shots were fired downward in an attempt to scare [the victim] does not change the fact that the shots were fired intentionally."); Gibson, 390 S.C. 347, 701 S.E.2d 766 (holding that even if someone fires a gun "into the air," involuntary manslaughter should not be charged if the individual intentionally pulled the trigger).

In response, the State simply asks this Court to apply settled law to the facts of this case. Appellant's suggestion in the interview that he only meant to restrain the victim is simply irrelevant in determining whether he acted intentionally. The jury heard no evidence that appellant acted unintentionally. Thus, the circuit court properly denied his request to charge involuntary manslaughter.

B. Even Assuming Appellant Acted Unintentionally, There Was No Evidence Fitting Either Definition of Involuntary Manslaughter.

1. Unlawful Act, Not a Felony and Not Tending to Cause Death or Great Bodily Injury

As noted above, appellant failed to argue to the circuit court that the first definition involuntary manslaughter should be charged. (R. 543-548). Instead, he argued that the second definition applied—that appellant was engaged in a lawful act of self-defense but used a reckless amount of force. (R. 543, l. 11-25). Because appellant failed to argue the first definition of involuntary manslaughter, it is not preserved for appellate review. See e.g. Sams, 410 S.C at 310, 764 S.E.2d at 514-15 (holding that because the defendant only argued one type of involuntary manslaughter at trial, the second type was not preserved for appeal).

To the extent this argument is preserved for appeal, it lacks merit. The jury heard no evidence that appellant acted in a manner not tending to cause death or great bodily injury. As discussed above, the jury heard that appellant used two hands to choke the victim around the neck. He made clear to the detective that he did not use an unconventional headlock or chokehold that went awry. The pathologist additionally testified that although the victim would have passed out within seconds, it would have taken several minutes of continued pressure on the neck to kill her. The petachiae on the victim's face also revealed the severity of appellant's actions. According to the pathologist, the petachiae arose because appellant put so much pressure on the victim's neck

that blood could not flow from her brain to her heart. Because the blood had nowhere else to go, the capillaries in her face ruptured.

The Sams case is again instructive on this point. Perhaps stating the obvious, the court held that the "prolonged and continued hold on the victim's neck ... was intentional and the type of conduct that is highly likely to result in serious injury or death." Sams, 410 S.C. at 312, 764 S.E.2d at 515. The court noted the distinction between pinning the victim down on the ground and "maintaining a prolonged chokehold around someone's neck, which undeniably carries with it the risk of serious harm within moments." Id. The court also cited the medical testimony as additional evidence that the conduct was likely to cause serious injury or death, and hence not fitting within the framework of involuntary manslaughter. Id.

The same rationale applies here. It strains common sense to interpret appellant's prolonged, two-handed strangling of the victim as anything but likely to cause serious injury or death. The medical testimony from the pathologist also corroborates the inherent danger of appellant's actions. Accordingly, the first definition of involuntary manslaughter does not apply.

2. Lawful Act Committed With Reckless Disregard For the Safety of Others

The circuit court cited this Court's analysis in State v. Scott, 408 S.C. 21, 757 S.E.2d 533 (Ct. App. 2014) in denying appellant's argument that there was evidence fitting the second definition of involuntary manslaughter. In Scott, the defendant alleged that he got into a verbal argument with the grandmother of his child. The grandmother took a shiny object out of her pocket and came at the defendant. He sidestepped her and executed "a martial arts move, pushing her elbow up, causing her to stab herself in the throat." Id. at 23, 757 S.E.2d at 534. The defendant argued that involuntary manslaughter should have been charged because there was evidence he

was engaged in lawful activity—self-defense—with a reckless disregard for the grandmother's safety. Id. at 24, 757 S.E.2d at 535.

This Court disagreed. Specifically, the Court found "no basis to conclude [the defendant] 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 recklessly." Id. Although the defendant claimed he was acting recklessly in failing to identify the shiny object as a knife, the Court found the knife actually justified using *more* force, not less. Id. at 25, 757 S.E. 2d at 535.

The same rationale applies in this case. If appellant was justified in using force to prevent the victim from grabbing another knife, he would have been justified in using deadly force. Therefore, the circuit court correctly held there was no evidence for a jury to find appellant acted recklessly. As such, the circuit court's ruling should be affirmed.

CONCLUSION

This is a simple case. The jury heard no evidence that appellant unintentionally killed the victim while engaged in conduct fitting either definition of involuntary manslaughter. Because there was no evidence to support an involuntary manslaughter, the circuit court properly declined to charge it. As such, the circuit court's ruling should be affirmed on appeal.

Respectfully submitted,

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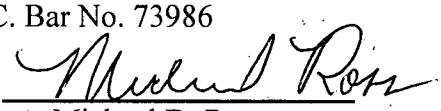
By: 
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CERTIFICATE OF COMPLIANCE

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

This 24th day of January, 2020.

Michael D. Ross
Assistant Attorney General

ATTORNEY FOR RESPONDENT