

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

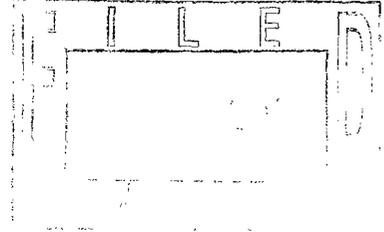
v.

Supreme Court No. 11-0394

Circuit Court No. 09-F-110  
(Fayette)

TYRONE R. CROUCH,

Petitioner.



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BRIEF OF PETITIONER

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Robert C. Catlett  
Deputy Public Defender  
W.Va. Bar No. 8522  
Office of the Public Defender  
Kanawha County  
Charleston, WV 25330  
(304) 348-2323  
rcatlett@wvdefender.com

Counsel for Petitioner

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## ASSIGNMENT OF ERROR

- I. The Trial Court Erred In Improperly Instructing The Jury As To The Elements Of A Lesser Included Offense By Instructing The Jury That For An Act To Be Involuntary Manslaughter That Act Must Have Been Lawful

## STATEMENT OF THE CASE

In short, this case is about the mental state of Tyrone Crouch. The basic facts are largely uncontested. On April 17, 2009, Tyrone Crouch, as part of an altercation struck Lloyd England in the face with a crowbar, with the blow being a contributing cause to England's death. The defense claimed that Crouch acted in self defense, while the state argued that this was a first degree murder. The jury, incorrectly instructed as to the elements of involuntary manslaughter, returned a verdict of voluntary manslaughter. Crouch was sentenced to a determinate term of ten years.

Tyrone Crouch was indicted by the September, 2009 term of the Fayette County Grand Jury for the offense of first degree murder. His trial began on November 17, 2009.

The facts at trial established Lloyd England was present at Tyrone Crouch's house as a guest. The toxicology report indicated that England had cocaine and alcohol in his system at the time. (App. Vol. 2 at 217). Crouch testified that he became concerned about England becoming aggressive and ordered England to leave, and England refused. (App. Vol. 3 at 62). As Crouch continued to order England to leave, England became more and more aggressive. (Id. at 63-4). England then rushed Crouch, and Crouch picked up a crowbar and blindly backhanded it in England's direction, catching him in the face. (Id. at 65-66). Crouch and his girlfriend then called 911 and attempted to render aid. (Id. at 66-67). England later died. According to the medical examiner the blow was not the main cause of death, the main cause of death was a brain hemorrhage caused by a spike in blood pressure that was likely caused by cocaine usage and the sudden stressful event. The damage caused by the crowbar was a contributing factor. (App. Vol. 2 at 215-217).

The main contested factual question centered around whether Lloyd England was brandishing a knife at the time of the killing. The defense presented evidence that England was known to have carried a knife similar to one found near England's body. (App. Vol. 2 at 178; App. Vol. 3 at 19-20, 31-32, 40). Crouch testified that he saw a knife when England charged him. (App. Vol. 3 at 65). The state put on testimony from the EMT response team that they saw no knife when first arriving at the scene and moving England into the ambulance, thus alleging that the knife was placed there after the fact. (App. Vol. 2 at 155, 163 and 200-204).

At the close of testimony, the trial court instructed the jury as to the various forms of homicide. As to involuntary manslaughter, the trial court instructed the jury that to convict for involuntary manslaughter that it must find "That the defendant... while engaged in a lawful act, unintentionally and with a reckless disregard for the safety of others, caused the death of Lloyd L. England." (App. Vol. 3. at 171).

The defense objected to this instruction. (Id. at 102). The defense proffered an instruction stating the jury, to convict the defendant of involuntary manslaughter that "[the defendant] did unintentionally cause the death of Lloyd England, which death was the proximate result of the negligence of the defendant, so gross, wanton and culpable as to show a reckless disregard for human life." (Id. at 101).

## SUMMARY OF ARGUMENT

Tyrone Crouch was wrongfully convicted of the voluntary manslaughter of Lloyd England because the trial court gave an incorrect involuntary manslaughter instruction. The trial court ruled that Crouch was entitled to an instruction on the lesser included offense of involuntary manslaughter, but left out the part of the instruction allowing for an involuntary manslaughter conviction where the act causing death was “unlawful.” The trial court instructed the jury that for an act to constitute involuntary manslaughter that act must have been “lawful.” This instruction misstates the elements of involuntary manslaughter and thus invalidates petitioner’s conviction as the jury could have deemed Crouch’s backhanded blind swing an unlawful but reckless act not intended to cause death. An instruction limiting involuntary manslaughter to “lawful” acts would likely cause a jury to convict Crouch for the greater offense of voluntary manslaughter.

## **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Petitioner requests oral argument as not all issues raised have been authoritatively decided and the decisional process would be significantly aided by oral argument. Petitioner requests a Rule 19 argument as this case presents error in an application of settled law. Petitioner suggests a memorandum decision is not appropriate in this case as a full opinion will give guidance to the lower courts as to the proper application of the law relevant to this case.

## ARGUMENT

### I. **The Trial Court Erred In Improperly Instructing The Jury As To The Elements Of A Lesser Included Offense By Instructing The Jury That For An Act To Be Involuntary Manslaughter That Act Must Have Been Lawful.**

Tyrone Crouch was entitled to a correct instruction for the lesser included offense of involuntary manslaughter. The trial court gave an instruction that misstated the elements of involuntary manslaughter, and this misstatement prejudiced Tyrone Crouch. As this “is a challenge to a trial court’s statement of a legal standard, this Court will exercise *de novo* review.” State v. Guthrie, 194 W.Va. 657, 671, 461 S.E.2d 163, 177 (1995).

“It is reversible error for a trial court to refuse to instruct a jury on lesser offenses charged in the indictment if there is any evidence in the record to prove such lesser offenses.” State v. Bell, 211 W.Va. 308, 311, 565 S.E.2d 430, 433 (2002). “[I]t is now beyond dispute that the defendant is entitled to an instruction on a lesser included offense if the evidence would permit a jury rationally to find him guilty of the lesser offense and acquit him of the greater.” Keeble v. United States, 412 U.S. 205, 208 (1973). Failure to instruct as to a lesser included offense “withdraws from the jury a measure of defense to which the defendant is entitled and constitutes reversible error.” United States v. Carter, 540 F.2d 753, 755 (4<sup>th</sup> Cir. 1976) (quoting Larson v. United States, 296 F.2d 80, 81 (10<sup>th</sup> Cir. 1961)); See also Vujosevic v. Rafferty, 844 F.2d 1023, 1027 (3<sup>rd</sup> Cir. 1988) (holding defendant has a due process right to a lesser included jury instruction when supported by the evidence). In this case, the trial court did instruct as to the lesser included offense of involuntary manslaughter, but failed to correctly instruct as to all of the elements.

The trial court gave an incorrect instruction for involuntary manslaughter. “[I]nvoluntary manslaughter is committed when a person, while engaged in an unlawful act, unintentionally

causes the death of another, or where a person engaged in a lawful act, unlawfully causes the death of another.” State v. Cobb, 166 W.Va. 65, 70, 272 S.E.2d 467, 471 (1980) (citing Syl. Pt. 7, State v. Barker, 128 W.Va. 744, 38 S.E.2d 346 (1946)). The trial court in this case instructed the jury incorrectly, instructing them that the act in question had to be lawful, instructing that for the defendant to be convicted of involuntary manslaughter they must find “[T]he defendant... while engaged in a lawful act, unintentionally and with a reckless disregard for the safety of others, caused the death of Lloyd L. England.” (App. Vol. 3 at 270-1).

The defendant, having objected to this formulation, offered a differing instruction: The defense proffered an instruction stating that to convict the jury must find “[the defendant] did unintentionally cause the death of Lloyd England, which death was the proximate result of the negligence of the defendant, so gross, wanton and culpable as to show a reckless disregard for human life.” (Id. at 101). This instruction is similar to that commonly used in negligent homicide cases and has been used in involuntary manslaughter cases. See Syl. Pt. 5, State v. Green, 220 W.Va. 300, 647 S.E.2d 736 (2007) (“[Underlying act must] evidence a reckless disregard for the safety of others, characterized by negligence so gross, wonton, and culpable as to show a reckless disregard for human life”); See also State v. Dinger, 218 W.Va. 225, 230, 624 S.E.2d 572, 577 (2005) (per curiam) (noting jury instructed that involuntary manslaughter was the “accidental causing of death of another person, although unintended, which death is the proximate result of negligence so gross, wonton, and culpable as to show a reckless disregard for human life”). The defendant’s proposed instruction, while different from the state’s, would have been legal. The state’s instruction as given is missing an element.

A defendant is entitled to an instruction as to all the essential elements of a crime. Syl Pt, State v. Miller, 184 W.Va. 367, 400 S.E.2d 611 (1990); see also generally State v. Davis, 220

W.Va. 590, 648 S.E.2d 354 (2007) (per curiam) (holding trial court's failure to instruct the jury that intent is an element of second degree murder plain error). Since the court's instruction failed to instruct the jury as to all elements of involuntary manslaughter, Tyrone Crouch was denied an instruction on a lesser included offense.

“Where a trial court gives, over objection, an instruction which incompletely states the law, and the defect is not corrected by a later instruction, the giving of such incomplete instruction constitutes reversible error where the omission involves an element of the crime.” Syl. Pt. 2, State v. England, 180 W.Va. 342, 376 S.E.2d 548 (1988) (quoting Syl. Pt., State v. Jeffers, 162 W.Va. 532, 251 S.E.2d 227 (1979) (per curiam)). In the present case, the instruction was clearly incomplete in that it left out the possibility that an unlawful act could be an element of involuntary manslaughter.

Also, the present case is one where proper instruction as to all lesser included offenses is extremely important. In this case, the primary issue for the jury was the mental state of Crouch, and where it fell on the continuum between first degree murder and justifiable homicide (self defense).

The difference between voluntary manslaughter and involuntary manslaughter is one of intent. See State v. Lawson, 128 W.Va. 136, 141-3, 36 S.E.2d 26, 29 (1945) (examining history of involuntary manslaughter). By instructing the jury that involuntary manslaughter must involve a lawful act, the trial court created a distinction with no support in law. A jury that concluded that Crouch's act was not intended to kill but was unlawful would be likely to move one notch up the continuum and convict of voluntary manslaughter rather than acquit. In this case, the jury could find that Crouch blindly swinging the crowbar was an unlawful act, and in doing so unintentionally struck England causing his death. As Crouch testified, “I didn't even know if he

was that close to me or not.” (App. Vol. 3 at 66). From this a jury could conclude that he wasn’t sure he would make contact, that it was a blind swing. Such a finding is involuntary manslaughter under the law, but given the instructions in this case a jury would be likely to convict of manslaughter.

As such, the errant instruction prejudiced Tyrone Crouch.

**CONCLUSION**

Petitioner requests this Court vacate his conviction and remand this case for a new trial.

Respectfully submitted,

**TYRONE R. CROUCH**  
By Counsel



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Robert C. Catlett  
Deputy Public Defender  
W.Va. Bar No. 8522  
Kanawha County Public Defender Office  
P.O. Box 2827  
Charleston, WV 25330  
(304) 348-2323  
rcatlett@wvdefender.com

Counsel For Petitioner

**CERTIFICATE OF SERVICE**

I, Robert C. Catlett, hereby certify that on the 11<sup>th</sup> day of May, 2011, I sent via United States Postal Service a copy of the foregoing Brief of Petitioner to Robert Goldberg, Assistant Attorney General, Appellate Division, P.O. Box 1789, Charleston, West Virginia 25326.



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Robert C. Catlett  
Deputy Public Defender