

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2024-KA-01314-COA

**ADRIAN BROWN A/K/A ADRIAN KENTRELL
BROWN**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	10/29/2024
TRIAL JUDGE:	HON. DEBRA W. BLACKWELL
COURT FROM WHICH APPEALED:	ADAMS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: JOSEPH SCOTT HEMLEBEN
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: ALEXANDRA LEBRON
DISTRICT ATTORNEY:	TIM COTTON
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 10/20/2026
MOTION FOR REHEARING FILED:	

EN BANC.

McCARTY, J., FOR THE COURT:

¶1. Late one dark night, three men were sitting in a car in Natchez. The trio was smoking marijuana together.

¶2. A car pulled up behind the parked car. A fourth man got out of it and approached the car. One of the trio would later describe him as “wearing a hoodie,” and “a beanie and some jeans.”

¶3. One of the men in the backseat pulled out a pistol and shot the man walking to the car. He then shot again. The victim died at the scene.

¶4. Police were called to the scene and the victim was identified as Tyreek Lewis. The

man who twice shot him was named Adrian Brown. He told the authorities he had shot Lewis, and that the victim was his friend. The authorities later determined the victim was also unarmed.

PROCEDURAL HISTORY

¶5. While the affidavit executed by a detective to pick Brown up explained he had killed the victim “(his friend) a human being, by culpable negligence,” the subsequent indictment omitted the word “culpable.” In relevant part, the indictment read:

ADRIAN BROWN

MANSLAUGHTER

late of the County aforesaid, in said County, on or about November 28, 2023, did willfully, unlawfully, and feloniously, without authority of law, kill Tyreek Lewis by negligently discharging a firearm which resulted in the death of Tyreek Lewis; and

contrary to the form of the statute in such cases made and provided, against the peace and dignity of the State of Mississippi.

OFFENSE: Manslaughter (§ 97-3-47)

(Emphasis in original).

¶6. Before trial, the State and the defendant entered into an Agreed Stipulation that the victim “died as a result of a single gunshot wound[] to the chest,” and that a Glock 9mm was used to shoot and kill the victim.

¶7. All three men who had been in the car testified. None testified they saw the victim with a gun. The testimony was uniform that Brown immediately shot before anyone saw a gun.

¶8. At least one of the witnesses who had been in the car, Demonte Walk, explained how everything happened very fast. He was asked by the district attorney:

Did anybody identify themselves? Was there any hollering? Did you hear any gunshots before the shots that came from inside the car outside the car?

To this compound question, Walk simply answered “No.” He believed Brown shooting his friend was a case of mistaken identity.

¶9. Indeed, so did the sole member of law enforcement who testified, Deputy Michelle Martin. Deputy Martin had responded to the shooting and interviewed those present. On cross, the deputy explained how Brown had been “very upset” when she interviewed him after the shooting. When asked by defense counsel “You don’t believe that he knew it [w]as Tyreek when he shot him?” The deputy responded “No, I don’t.” She explained that the two men had no history of animosity and were friends.

¶10. Brown himself took the stand. He testified he was nervous because he had been threatened recently. In his words:

[A]ll I know I hear somebody pull my [car]door. I see a black figure outside my door. As soon as they pulled it [the car handle], I jump. When I jumped, I let off a shot. When I let off the shot, glass flying in my eyes. I close my eyes. I am thinking that I’m hit when the shot first - - when the shot first fired, I’m thinking I am hit. I fall in the back seat, laid on top of - - eyes still closed. I sent another shot because I am thinking that when I seen a black figure.

¶11. Brown continued his narrative, telling the jury that “it’s not that you just shoot people” but that he “already had a lot going on.” He testified that the victim was his “friend,” and he had “stayed at his house.” However, he claimed that night that he was in fear for his life. Brown admitted he felt sadness for what he had done, and that he was “screaming [to] call

the police” at anyone who could hear when he realized he had shot his friend.

¶12. The jury was excused for its deliberation, but shortly returned with a verdict of guilty to the sole charge of manslaughter. The trial court denied Brown’s post-trial motion for a new trial. Brown was sentenced to serve 20 years in the custody of the Mississippi Department of Corrections. From this conviction and sentence, he timely appeals.

DISCUSSION

¶13. On appeal, Brown now raises four issues. First, whether the indictment was defective. Second, he contends an elements instruction constructively amended the indictment. Third, he argues his trial counsel was ineffective for failing to object to the indictment and the jury instruction. Fourth, he argues his conviction was against the weight of the evidence.

I. The missing word does not render the indictment defective.

¶14. In his Principal Brief, Brown argues that his “indictment alleged an act of simple negligence[,] which is not a crime.” He bases this argument on the point that the indictment never uses the word “culpable,” but only alleged that Brown “negligently discharg[ed] a firearm which resulted in the death of Tyreek Lewis.”

¶15. After extensive review of the subject, we determined that it appeared there had not been an indictment for “culpable negligence” that had omitted the word “culpable.” We asked the parties for supplemental briefing on three questions related to the indictment.

¶16. Appointed counsel for Brown responded that “[t]he omission of the word ‘culpable’ from a manslaughter indictment does not, in and of itself, mandate reversal.” However, defense counsel acknowledged that “Mississippi law has long recognized that indictments

need not employ technical or talismanic language so long as they allege conduct constituting the offense defined by statute.” Nonetheless, appointed counsel argued the indictment did not sufficiently allege the high level of negligence required for conviction.

¶17. In contrast, the State argued in part that “[t]he State knows of no other crime under Title 97 that the indictment, as written, could have charged other than culpable-negligence manslaughter.”

¶18. There are two general doctrines at tension in this case. The first, urged by Brown, is that a defective indictment is a violation of his constitutional rights and requires reversal. For “[t]he constitutional right of the accused, to demand the nature and cause of the accusation against him, cannot be waived or surrendered, and therefore, if the indictment do[es] not contain sufficient description of the offense to notify the accused of the nature and cause of the accusation, *it is a nullity*, and may be objected to at any time.” *Hathorne v. State*, 376 So. 3d 1209, 1215 (¶19) (Miss. 2023) (quotation marks omitted) (emphasis in original).

¶19. In *Hathorne*, our Supreme Court reviewed a petition for post-conviction relief which argued that the defendant was convicted of a crime which did not exist. *Id.* at 1212 (¶8). While he had been convicted of the possession of a controlled substance, he “argued his indictment was defective because it failed to charge a crime,” and the item he possessed, ethylone, “is not listed as a Schedule I controlled substance[.]” *Id.* A unanimous Court held that his indictment was void for failure to describe a crime listed in the statute, and that his claim could not be time-barred. *Id.* at 1215 (¶¶19-20).

¶20. The second doctrine, urged by the State, is that “[f]ormal and technical words are not necessary in an indictment, *if* the offense can be substantially described without them.” *Lepard v. State*, 394 So. 3d 1061, 1069 (¶32) (Miss. Ct. App. 2024) (emphasis added) (quoting MRCrP 14.1(a)(1)).

¶21. Mississippi cases as early as 1846 declined to adopt a requirement of hyper-specificity for indictments. *See Johnston v. State*, 15 Miss. 58, 63 (1846) (where the High Court of Errors and Appeals found that “the allegation in the indictment that the defendant ‘did play at cards for money,’ is sufficiently defined for any reasonable or legal purpose” even though the defendant objected it did not “set forth the name of the game at cards played”).

¶22. At the same time, the Court has long acknowledged that a sufficient indictment was not just some technical requirement, but rooted in our constitutional rights:

[I]n engrafting this provision upon its organic law, [the State] did not . . . proceed upon a principle of tenderness for those actually guilty of crime, but upon a more wise and humane principle, sanctioned by the experience of ages, that an innocent person may be unjustly accused of crime, and to afford him an ample opportunity when so accused to vindicate his innocence.

Norris v. State, 33 Miss. 373, 376 (1857).

¶23. In more recent years, we have explained that “[t]he purpose of an indictment is to inform the defendant with some measure of certainty as to the nature of the charges brought against him so that he may have a reasonable opportunity to prepare an effective defense.” *Hubbard v. State*, 269 So. 3d 368, 370 (¶7) (Miss. Ct. App. 2018). An indictment need only provide “a concise and clear statement of the elements of the crimes charged.” *Evans v. State*, 916 So. 2d 550, 551 (¶5) (Miss. Ct. App. 2005) (quoting *Williams v. State*, 445 So. 2d

798, 804 (Miss. 1984)).

¶24. And our Supreme Court has seen fit to codify longstanding common law into a rule which provides that:

The indictment upon which the defendant is to be tried shall be a plain, concise and definite written statement of the essential facts and elements constituting the offense charged and shall fully notify the defendant of the nature and cause of the accusation. **Formal and technical words are not necessary in an indictment**, if the offense can be substantially described without them.

MRCrP 14.1(a)(1) (emphasis added).

¶25. Brown’s indictment charged him with violating a specific section of the Code. The entirety of this law states that

Every other killing of a human being, by the act, procurement, or **culpable negligence of another**, and without authority of law, not provided for in this title, shall be manslaughter.

Miss. Code Ann. § 97-3-47 (Rev. 2020) (emphasis added). So the only way one can be convicted under this law is not by mere negligence, but by *culpable* negligence. Our Supreme Court has held that “[c]ulpable negligence is defined as negligence of a degree so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of human life.” *Sanders v. State*, 781 So. 2d 114, 119 (¶17) (Miss. 2001) (internal quotation marks omitted).

¶26. Unlike the situation in *Hathorne*, the Legislature has specifically addressed when the language in an indictment is sufficient under the manslaughter statute. “It shall be sufficient, in an indictment for manslaughter, to charge that the defendant did feloniously kill and slay the deceased, concluding in all cases as required by the Constitution of this state.” Miss.

Code Ann. § 99-7-37 (Rev. 2020).

¶27. In one manslaughter case sounding in culpable negligence, the Supreme Court declared an indictment “was sufficient” when it “was in the statutory form of manslaughter charging that the defendant ‘. . . did unlawfully and feloniously kill and slay one Spangler Gregson, a human being’” *Cutshall v. State*, 191 Miss. 764, 4 So. 2d 289, 291 (1941) (alteration in original); *see also Carroll v. State*, 183 Miss. 1, 183 So. 703, 704 (1938) (“This section covers all homicides, both statutory and common law, and under an indictment drawn in accordance therewith any facts that evidence murder or manslaughter may be introduced in evidence”).

¶28. More recently, we relied on this statute in another culpable negligence case to determine if the defendant had been properly alerted of the charges against her. *Brannan v. State*, 319 So. 3d 1119, 1136 (¶69) (Miss. Ct. App. 2020). The defendant had “argue[d] that her indictment ‘was vague, confusing, and charged [her] with a crime that does not exist’ because the heading identified the charge as ‘Misdemeanor Manslaughter.’” *Id.*

¶29. Key to our review was the precept that if an indictment generally tracks the statute, the instrument is sufficient. *Id.* at 1136-37 (¶72). The defendant in *Brannan* was charged with neglecting a prisoner under her care to the extent that the man died, and we found that when her “indictment tracked the language of the manslaughter statute and the maltreatment statute” that “it was sufficient to put Brannan on notice of the charges against her.” *Id.*; *see also Edwards v. State*, 755 So. 2d 443, 445-46 (¶7) (Miss. Ct. App. 1999) (“[T]he indictment in this case was uninformative as to what action or inaction on the part of these defendants

constituted the culpable negligence that proximately caused [the victim’s] death. . . . [H]owever, the statute regarding homicide indictments specifically permits a charge to be brought in this manner”).

¶30. Returning to the indictment at hand, we note that the charging instrument refers to the crime in bold and all-caps as “MANSLAUGHTER.” At the bottom, it lists the manslaughter statute by its Code number. It then describes that Brown “on or about November 28, 2023, did willfully, unlawfully, and feloniously, without authority of law, kill Tyreek Lewis by negligently discharging a firearm which resulted in the death of Tyreek Lewis[.]”

¶31. As in *Cutshall*, *Brannan*, and *Edwards*, the indictment in this case sufficiently tracked the manslaughter statute, Miss. Code Ann. § 97-3-47. While it omitted the word “culpable,” it did describe that Brown “unlawfully[] and feloniously” killed the victim. Per those cases, and the plain language of the statute, this is sufficient to put Brown on notice of the charges against him.

¶32. Furthermore, the indictment did more than was strictly required under that statute. The charging instrument specifically pointed to the manslaughter statute, and charged Brown with “negligence”—that he did “kill Tyreek Lewis by negligently discharging a firearm which resulted in the death of Tyreek Lewis.” While not strictly required under the statute, the indictment informed Brown that he was being charged by not just using a firearm, but that he negligently used it.

¶33. And under the manslaughter statute, the *sole* path for a conviction of manslaughter via a “negligent” act is through a charge of culpable negligence. As the purpose of the

indictment is to put Brown on notice of the charge arrayed against him, this document could not have misinformed him that he was only being charged with an act of simple negligence, as he now argues. For as the State points out, by specific reference to Title 97, there is no other type of negligence-based crime with which Brown could have been charged. The indictment pointed Brown to the exact statute, and *only* culpable negligence reaches the level of manslaughter. By including the chapter title and expressly charging Brown with manslaughter, the State placed him on sufficient notice of the charges arrayed against him.

¶34. As set out above, it is established both in the Rules of Criminal Procedure and amply covered in precedent that we do not require formal or technical words in an indictment. To find that an indictment not only has to name the *precise* type of negligence, as well as minutely describe it, goes far beyond what Rule, statute, and precedent require.¹

¶35. Last, the point of an indictment is to put the accused on notice of how the State is attempting to prosecute him. This indictment did that. Under the unique facts of this case, there was no evidence that Brown was surprised or ill-prepared to defend against the charge of manslaughter. He took the stand in his own defense and all four witnesses—the three men

¹ In the view of the separate opinion, “Our judiciary’s newer Mississippi Rules of Criminal Procedure provide a more explicit and stringent requirement that the indictment ‘shall’ include a concise and definite written statement not only of the essential facts, but also of the essential elements.” *See post*, at ¶55.

However, just last year, the Supreme Court declined to interpret the rule so strictly. The Court reviewed a challenge brought under the Rules of Criminal Procedure to whether an aggravated assault indictment was defective. *Miller v. State*, 422 So. 3d 961, 965 (¶16) (Miss. 2025). The indictment left out the word “recklessly,” but cited the correct statute. Despite the missing word, the Court unanimously found the indictment was not defective because it “sufficiently set forth the elements of aggravated assault.” *Id.* at 966 (¶19). Accordingly, the Court determined that the indictment “sufficiently put [the defendant] on notice of the charges against him.” *Id.* at 965 (¶17).

in the car and investigating deputy—all agreed the killing of Tyreek Lewis was a tragedy. Nonetheless, it was the killing of another person by an act “so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of human life.” Brown admitted he did not see the figure who approached the car that night around 11 p.m., but pointed a gun at him and shot him *without knowing his identity* and without a predicated act other than Brown thought that the unknown person attempted to open the car door.

¶36. We do not say this indictment was as precise as it could have been, because it was not. However, this lack of precision does not mean the indictment is automatically defective. Against the dual doctrines that a defendant must have a “sufficient description of the offense to notify the accused of the nature and cause of the accusation” while “[f]ormal and technical words are not necessary in an indictment, if the offense can be substantially described without them,” we find that Brown was sufficiently put on notice that he was being charged with culpable negligence manslaughter.

II. The indictment was not constructively amended.

¶37. Brown’s second and third arguments rest upon the predicate of his first—that the indictment was defective. Based upon that argument, he argues that when the jury was given an elements instruction which included the phrase “with culpable negligence,” then the indictment was constructively amended, depriving him of the opportunity to defend against it.

¶38. As set out above, we reject this premise. The indictment placed Brown on notice he was being charged with culpable negligence. It was therefore not defective. As a result, the

indictment was not constructively amended nor was there any act which occurred to his prejudice.

III. Brown's counsel was not ineffective.

¶39. Appointed counsel argues that Brown's trial counsel was ineffective because he "failed to challenge the defective indictment and failed to object to [the elements] instruction[.]" As set out above, the indictment was not defective, and the elements instruction did not constructively amend the indictment.

¶40. When an "indictment was not flawed in the manner asserted," then "simple logic demonstrates that the failure to protest the form of the indictment when no protest was warranted does not establish defective performance by defense counsel." *Capnord v. State*, 840 So. 2d 826, 828 (¶6) (Miss. Ct. App. 2003). Accordingly, we find no merit to this assertion.

IV. The conviction was not against the weight of the evidence.

¶41. Last, Brown argues that "[t]he weight of the evidence established that Brown was at worst careless," and that the State "did not prove that he acted wantonly or with a reckless disregard for the consequences of his actions as required for conviction."

¶42. "In determining whether a jury verdict is against the overwhelming weight of the evidence[,] the court must accept as true the evidence which supports the verdict and will reverse only when convinced that the circuit court has abused its discretion in failing to grant a new trial." *Pearson v. State*, 937 So. 2d 996, 999 (¶8) (Miss. Ct. App. 2006). A new trial will not be ordered unless "the verdict is so contrary to the overwhelming weight of the

evidence that, to allow it to stand, would be to sanction an unconscionable injustice.” *Jones v. State*, 390 So. 3d 498, 503 (¶20) (Miss. 2024) (quoting *Whitten v. Cox*, 799 So. 2d 1, 13 (¶26) (Miss. 2000)).

¶43. The evidence was largely undisputed that Brown was sitting in a car with two others smoking marijuana. When an unknown figure approached the car, his identity unknown, Brown pointed a loaded Glock 9mm with the safety off and shot twice.

¶44. Not quite a century ago, our Supreme Court concluded that:

It is hard to conceive of a clearer cut demonstration of what is termed “culpable negligence” than for a person to point, aim, and discharge a loaded pistol at another; and, where this negligence results in the death of the human being at whom the pistol is pointed, the crime of manslaughter is completely made out and established.

Robertson v. State, 153 Miss. 770, 121 So. 492, 493 (1928). For “[i]f the pointing of a loaded pistol at a human being is not culpable negligence, under the above definition, then it would be difficult for the mind of mortal man to conceive of stronger facts which would constitute such negligence.” *Id.*

¶45. We therefore find the jury’s verdict was not contrary to the overwhelming weight of the evidence.

CONCLUSION

¶46. The defendant’s indictment for manslaughter was not defective despite omitting the word “culpable” from its description of negligence. As a result, the indictment was not constructively amended when an elements instruction used the term culpable negligence, and trial counsel was not ineffective for failing to object to the charging instrument or the

instruction. Last, we find the verdict was not against the overwhelming weight of the evidence.

¶47. **AFFIRMED.**

BARNES, C.J., CARLTON AND WILSON, P.JJ., LAWRENCE, WEDDLE AND LASSITTER ST. PÉ, JJ., CONCUR. WESTBROOKS, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY McDONALD AND EMFINGER, JJ.

WESTBROOKS, J., DISSENTING:

¶48. I respectfully dissent. I would find that Brown’s indictment failed to allege all the essential elements of the crime of culpable negligence manslaughter. Mississippi Code Annotated section 97-3-47 (Rev. 2020) provides that “[e]very other killing of a human being, by the act, procurement, or culpable negligence of another, and without authority of law, not provided for in this title, shall be manslaughter.” Brown’s indictment charges:

THE GRAND JURORS of the State of Mississippi, taken from the body of the good and lawful citizens of Adams County in the State of Mississippi, duly elected, empaneled, sworn and charged as required by law to inquire in and for said County, in the name and by the authority of the State of Mississippi, upon their oath, present that:

ADRIAN BROWN

MANSLAUGHTER

late of the County aforesaid, in said County, on or about November 28, 2023, did willfully, unlawfully, and feloniously, without authority of law, kill Tyreek Lewis *by negligently discharging a firearm* which resulted in the death of Tyreek Lewis; and contrary to the form of the statute in such cases made and provided, against the peace and dignity of the State of Mississippi. OFFENSE: Manslaughter (§ 97-3-47)[.]

(Emphasis added). While the State was attempting to charge culpable negligence manslaughter, Brown argues that the charge that he killed Lewis “by negligently discharging

a firearm” is an allegation of an act of simple negligence, which is not a crime.

¶49. A defendant charged for a crime has a constitutional right to be informed of the nature and essence of the charges. *Brannan v. State*, 319 So. 3d 1119, 1137 (¶71) (Miss. Ct. App. 2020); see Miss. Const. art. 3, § 26. The primary purpose of an indictment is to notify a defendant of the charges against him so he may prepare an adequate defense. *Strickland v. State*, 417 So. 3d 189, 192 (¶9) (Miss. Ct. App. 2025) (citing *Evans v. State*, 916 So. 2d 550, 551 (¶5) (Miss. Ct. App. 2005)); see *Fulton v. State*, 146 So. 3d 975, 977 (¶6) (Miss. 2014) (quoting *Williams v. State*, 445 So. 2d 798, 804 (Miss. 1984)). In furtherance of this constitutional principle, Mississippi courts have long held that “an indictment based upon a statutory offense must charge all of the essential elements of the statutory crime and is void for failure to do so.” *Spears v. State*, 253 Miss. 108, 175 So. 2d 158, 161-62 (1965) (citing *Rogers v. State*, 198 Miss. 495, 22 So. 2d 550, 551 (1945)); see also *May v. State*, 209 Miss. 579, 47 So. 2d 887, 888 (1950); *Crosby v. State*, 191 Miss. 173, 2 So. 2d 813, 815 (1941). “[I]f the indictment do[es] not contain sufficient description of the offense to notify the accused of ‘the nature and cause of the accusation,’ it is a nullity.” *Hathorne v. State*, 376 So. 3d 1209, 1215 (¶3) (Miss. 2023) (emphasis omitted) (quoting *Buford v. State*, 146 Miss. 66, 111 So. 850, 856 (1927)).

¶50. “The statutory elements of culpable-negligence manslaughter are ‘an unlawful killing by the culpable negligence of another.’” *Edwards v. State*, 357 So. 3d 1120, 1127 (¶22) (Miss. Ct. App. 2022) (quoting *Wise v. State*, 263 So. 3d 668, 675 (¶30) (Miss. Ct. App. 2018)). The principles discussed in *Holloman v. State*, 656 So. 2d 1134, 1140 (Miss. 1995)

are grounded in precedent: “[t]he rule [is] that in order to give the term ‘culpable negligence’ in the statute its proper setting it should be construed to mean negligence of a higher degree than that which in civil cases is held to be gross negligence.” *Moore v. State*, 238 Miss. 103, 117 So. 2d 469, 471 (1960).

¶51. Therefore, to constitute “culpable” negligence under the criminal statute, the degree of negligence must be “so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of human life, and that this shall be so clearly evidenced as to place it beyond every reasonable doubt.” *Smith v. State*, 197 Miss. 802, 20 So. 2d 701, 705 (1945); *see also Goods v. State*, 428 So. 3d 325, 332 (¶30) (Miss. 2026); *Evans v. State*, 562 So. 2d 91, 94 (Miss. 1990). The conduct must reach “the level of culpable negligence which is the moral equivalent of criminal intent.” *Stever v. State*, 503 So. 2d 227, 230 (Miss. 1987). “Culpable negligence” provides for criminal liability in the absence of intent. “An intentional act that causes death cannot constitute culpable negligence.” *Smith v. State*, 171 So. 3d 542, 546 (¶10) (Miss. Ct. App. 2015) (quoting *Goff v. State*, 778 So. 2d 779, 782 (¶6) (Miss. Ct. App. 2000)).

¶52. “Formal and technical words are not necessary in an indictment, if the offense can be substantially described without them.” MRCrP 14.1(a). “If the offense charged is certainly and substantially described in *language equivalent in meaning* to the language of the statute, it is sufficient.” *State v. Snowden*, 164 Miss. 613, 145 So. 622, 622 (1933); *see also Madere v. State*, 794 So. 2d 200, 212 (¶33) (Miss. 2001); *Ousley v. State*, 154 Miss. 451, 122 So. 731, 732 (1929). Our appellate courts have upheld indictments charging “culpable negligence”

as effectively charging the essential element. For example, in *Hardy v. State*, 137 So. 3d 289, 301 (¶46) (Miss. 2014), the indictment sufficiently alleged that the defendant killed two named victims “by culpable negligence. . . by negligent operation of a boat.” *See also Dendy v. State*, 224 Miss. 208, 79 So. 2d 827, 829 (1955) (charging that the defendant slayed the victim “by the culpable negligence of the said defendant”); *Roberts v. State*, 379 So. 2d 514, 516 (Miss. 1979) (affirming grant of jury instruction defining “culpable negligence”); *Hudson v. State*, 45 So. 3d 1193, 1197-98 (¶18) (Miss. Ct. App. 2009) (indictment charging that the defendant killed the victim “by culpable negligence”).

¶53. Here, we find that Brown’s indictment fails to adequately charge the essential element of “culpable negligence,” particularly in light of the replacement of our former rules with the Mississippi Rules of Criminal Procedure, which now require a “definite written statement of the essential facts and elements constituting the offense charged[.]” Mississippi Rule of Criminal Procedure 14.1(a)(1) states:

Elements and Notice. The indictment upon which the defendant is to be tried *shall be a plain, concise and definite written statement of the essential facts and elements* constituting the offense charged and shall fully notify the defendant of the nature and cause of the accusation. Formal and technical words are not necessary in an indictment, if the offense can be substantially described without them.

(Emphasis added). This Rule took effect on July 1, 2017. The comment to Rule 14.1 states:

Rule 14.1(a) is based upon former Rule 7.06 of the Uniform Rules of Circuit and County Court. The rule *now* provides that, in addition to the essential facts constituting the offense charged, the indictment must also include the essential elements of the offense charged.

(Emphasis added). The Rule clearly provides a conjunctive relationship between the essential

facts and elements.

¶54. Brown’s indictment does not include a charge that the negligence was “culpable” or other language “substantially describing” a standard of negligence “so gross as to be tantamount to a wanton disregard of, or utter indifference to, the safety of human life” *Smith*, 20 So. 2d at 705; *see* MRCrP 14.1(a). The mere allegation of “negligently discharging a firearm” is insufficient to charge the “equivalent of criminal intent” as contemplated by the statute. *See Stever*, 503 So. 2d at 230. “Negligence” is not “language equivalent in meaning” to “culpable negligence.” *See Snowden*, 145 So. at 622. Culpable negligence is a felony, and negligence is no crime at all. The State points to Mississippi Code Annotated section 99-7-37(1) (Rev. 2020), which provides:

In an indictment for homicide it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused, but it shall be sufficient to charge in an indictment for murder, that the defendant did feloniously, willfully, and of his malice aforethought, kill and murder the deceased. It shall be sufficient, in an indictment for manslaughter, to charge that the defendant did feloniously kill and slay the deceased, concluding in all cases as required by the Constitution of this state.

While the indictment may have been sufficient had it actually tracked the statutory language, here it alleged “negligently discharging a firearm,” which fails to charge an essential element of the crime.

¶55. Our judiciary’s newer Mississippi Rules of Criminal Procedure provide a more explicit and stringent requirement that the indictment “shall” include a concise and definite written statement not only of the essential facts, but also of the essential elements. The continuing standard that “formal and technical words are not necessary in an indictment, if

the offense can be substantially described without them,” is subordinate to the Rule’s mandate. If a charge of “culpable negligence manslaughter” can be “substantially described” by alternatives to the word “culpable,” it certainly was not done here.

¶56. The majority directs attention to *Miller v. State*, 422 So. 3d 961, 965 (¶17) (Miss. 2025), in which the Mississippi Supreme Court upheld an indictment for aggravated assault that failed to include the word “recklessly.” But significantly, the indictment included the language that the defendant “manifest[ed] [an] extreme indifference to the value of human life” “by operating a motor vehicle at a high rate of speed while intoxicated and running into [victim] with said vehicle[.]” *Id.* Examining that language, the Court made a specific finding that “[t]his language is *substantially similar* to the statutory language in Section 97-3-7(2)(a)(i), which says that a person is ‘guilty of aggravated assault if he . . . attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life[.]’” *Id.* (emphasis added).

¶57. The Court’s opinion in *Miller* further discussed previous examples of aggravated assault as “analogous to our definition of culpable negligence in homicide cases[.]” *Id.* (quoting *Nelson v. State*, 361 So. 2d 343, 344 (Miss. 1978)). “Culpable negligence was defined as the ‘conscious and wanton or reckless disregard of the probabilities of fatal consequences to others as a result of the willful creation of an unreasonable risk thereof.’” *Id.* (quoting *Nelson*, 361 So. 2d at 344). This definition, which appears across multiple

cases,² is absent from Brown’s indictment, which lacks not only the word culpable, but also any substantially similar definition.³

¶58. Unlike in *Miller*, a parallel finding of “substantially similar” statutory language is simply not supported on review of the language of Brown’s indictment. Unlike the legal significance of the language of “manifesting an extreme indifference to the value of human life,” the allegation of “negligently discharging a firearm” does not track language substantially describing a crime. The majority outlines the facts under which Lewis was killed. I believe any and all circumstances surrounding any homicide are, by their very nature, horrific. But acknowledging the tragic circumstances of this case does not mitigate the fact that the charging document is legally insufficient and fails to satisfy the basic constitutional and legal requirements necessary to put Brown on notice of the offense with which he was being charged. Simply put, the circumstances of the death cannot cure an indictment that failed to sufficiently notify Brown that he was being charged with conduct amounting to something more than simple negligence.

¶59. Examined in the light of our constitution, precedent, and the now unambiguous requirements of the Mississippi Rules of Criminal Procedure, Brown’s indictment omits the

² See *Nelson*, 361 So. 2d at 344; *Smith v. State*, 197 Miss. 802, 817, 20 So. 2d 701, 705 (1945); *Harried v. State*, 773 So. 2d 966, 969 (¶6) (Miss. Ct. App. 2000).

³ Additionally, the State successfully moved to amend the indictment to include the word “recklessly.” *Miller*, 422 So. 3d at 963 (¶9). The Mississippi Supreme Court found that the amendment did not prejudice the defendant’s theory of defense because the indictment always included the language that the defendant acted with “an extreme indifference to the value of human life.” *Id.* at 967 (¶22). Here, the State did not move to amend Brown’s indictment. Further, constructive amendment of the indictment through jury instructions is impermissible. See *Vale v. State*, 243 So. 3d 205 (Miss. Ct. App. 2017).

allegation of an essential element of the crime of culpable negligence and should therefore be deemed void. The proper disposition should be to reverse and remand for further action of the grand jury. I therefore respectfully dissent.

McDONALD AND EMFINGER, JJ., JOIN THIS OPINION.