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Aug 08 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the South Carolina Supreme Court

Appeal from Chesterfield County
The Honorable Paul M. Burch, Circuit Court Judge

Appellate Case No. 2022-000996

James David Busby, Petitioner,

v.

The State of South Carolina, Respondent.

APPENDIX
VOLUME II OF II

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1 testified that the defendant told her that the victim pulled
2 a machete on him, and I could go back and find my notes. I
3 believe she testified that he told her it happened so fast.
4 That the victim had pulled a machete and that then he shot
5 him.

6 MR. REDMOND: I'm thinking about the *Cook* case, but
7 since that was in there, my recollection of Ms. Deese's
8 statement was that -- that he claims that the victim, Mr.
9 Short, came at him with a machete and, again, not that we're
10 adopting that as our theory, but based on testimony that at
11 least is in the record that -- and that he shot him, but then
12 he tells her, well, he didn't have to do it. He being the
13 defendant, he didn't have to kill Mickey.

14 I think if we do -- and I'll be honest with you. I am
15 not opposed to that being an instruction, quite frankly. I'm
16 just trying to maneuver my way through that *Cook* case and I
17 think since that is in the record -- and I don't have the
18 *Cook* case right in front of me. I'm trying to remember what
19 Chief Justice Beatty said in that opinion.

20 But based on that being in the record and if the jury
21 chooses to adopt what Ms. Deese has said and attribute the
22 truthfulness of that comment to the defendant and believe
23 that that is what happened, then I think that would sustain a
24 voluntary manslaughter instruction. Again, I apologize,
25 Judge. I'm maneuvering my way through that just based on

1 that Cook opinion, but so the State is not opposed to it.
2 I'm just trying to make sure the record is clear enough so
3 that depending on the outcome, not being presumptuous, that
4 we don't have to see it again or worse.

5 MS. COPELAND-LITTLE: Judge, for the record, I mean I
6 know I'm not a court reporter, but what I wrote down was
7 David said Mickey came at him with a machete. He didn't
8 think. He just reacted. It all happened so fast. And then
9 she did make a statement that David told her he didn't have
10 to shoot him.

11 THE COURT: Well, listening to that, that idea or motion
12 you're bringing before the Court now crossed my mind. Of
13 course, from the evidence as I understood it, there was no
14 machete recovered anywhere. There was a baseball bat.

15 MS. COPELAND-LITTLE: Yes, sir.

16 THE COURT: Of course, there could be an argument there
17 that in darkness a baseball bat -- and the one I saw
18 somewhere is about the size of a machete.

19 MS. COPELAND-LITTLE: Yes, sir.

20 THE COURT: What about it? What about that?

21 MR. REDMOND: And I thought about it and you hit it on
22 the head because in preparing for it, I thought about the
23 fact and listening to Ms. Deese as it relates to the
24 possibility that he could have -- I mean a jury can attribute
25 it.

1 Now, do we think that's what actually happened? No, but
2 because the evidence we think shows that it was inside the
3 vehicle, but -- that the shooting was inside the vehicle, but
4 that's the jury's purview is to find the facts based on what
5 evidence is in there and so they have evidence in there, I
6 believe, if they decided to go with voluntary manslaughter
7 that they could, not that the State believes that's what it
8 is. I'm thinking from the standpoint of what needs to be
9 instructed.

10 And even though he tells her that, again, it was
11 darkness, there's plenty of evidence about the fact that it
12 was dark outside. That has been a feature of the case and
13 part of the theme of the case and so --

14 THE COURT: I think we're on safe ground and probably
15 should do that based on the evidence. It allegedly was dark.
16 That baseball bat was found there that could in the darkness
17 have been construed to be a machete or whatever. And then
18 the fact Ms. Deese, if I remember correctly, did say that he
19 didn't have to kill him. I think -- I think you're entitled
20 to that, but not anything further than that.

21 MS. COPELAND-LITTLE: And -- and based on that, Your
22 Honor, I have a feeling what you're going to rule, but for
23 the same reasons I would ask that the Court give a charge on
24 self-defense.

25 THE COURT: What do you think about that? That's what

1 I've got a problem with.

2 MR. REDMOND: I don't -- I don't think that they're
3 entitled to self-defense based on the fact if you carry what
4 Ms. Deese says further, he says he didn't have to do that.
5 So on the one hand, if that statement -- if she had just said
6 he came at me with a machete and I fired, that might be one
7 thing, but she then testifies -- and if we're using her
8 testimony as the basis for that instruction, she then says he
9 says he didn't have to do it.

10 So I don't think that there's enough in there where the
11 defense is entitled to a self-defense instruction based on
12 what's in the record. I don't think that there's enough in
13 the record to justify the self-defense instruction, again,
14 since were using Ms. Deese's testimony as the standard on
15 this issue.

16 THE COURT: All right. I'll have to -- I'm going to
17 stand by my intuition on that. I'm going to let you -- I'm
18 going to give you the manslaughter, voluntary manslaughter,
19 but I don't think we've got enough to go with self-defense,
20 what little bit we've got there.

21 Anything else?

22 MS. COPELAND-LITTLE: No, sir.

23 THE COURT: All right. Well, I've got to revamp all
24 I've done here too. So let's go ahead and argue and then I
25 may have to take a little time myself to get that put

1 together to add all that in. Ready?

2 MS. JOHNSON-LEE: The State is ready.

3 THE COURT: Bring them on.

4 (WHEREUPON, the jury entered the courtroom.)

5 THE COURT: All right, counsel.

6 MS. JOHNSON-LEE: May it please the Court.

7 Ms. Copeland-Little.

8 CLOSING ARGUMENT ON BEHALF OF THE STATE

9 MS. JOHNSON-LEE: Ladies and gentlemen of the jury, at
10 the beginning of this trial, I told you that David Busby
11 stated to Nicole Deese -- Nicole Deese, "I killed Mickey."
12 And I told you that the State would be asking you, once we
13 got to the end of the trial, to find James David Busby guilty
14 of the murder and armed robbery of Farris Mickey Short.

15 You've heard and you've seen horrendous evidence during
16 this trial this week and now you've got a big question to
17 answer. Is he guilty or is he not guilty? Y'all are the
18 judge of the facts. You determine what to believe. You
19 determine what happened. You'll determine what happened by
20 what you believe. You take the law, however, as the judge
21 gives it, and the judge is going to go over all of the law,
22 but let's start with murder.

23 Murder is the intentional killing of another human being
24 with malice aforethought. Malice can be inferred by
25 somebody's behavior. Malice is evil intent. Every murder

1 involves malice. It involves a depraved heart.

2 Armed robbery is the felonious taking of another
3 person's property while armed with a deadly weapon or while
4 alleging you have a deadly weapon. Shooting a person in the
5 face with a shotgun clearly involves malice and it displays
6 an intent to kill. Obviously, it also satisfies the deadly
7 weapon requirement of the armed robbery statute.

8 Reasonable doubt is another charge the judge is going to
9 give you when he tells you what the law is. You must have a
10 belief that David Busby is guilty of murder to find him
11 guilty. You must have a belief, a firm belief, that he is
12 guilty of armed robbery to find him guilty of armed robbery.

13 And there is a third charge for the gun. If you believe
14 he had a gun during the commission of these crimes, which is
15 obvious from the fact that the victim was killed with a gun,
16 then you will find him guilty of that. Reasonable doubt
17 would be that you are firmly convinced of the person's guilt,
18 and the judge will explain all of that.

19 He's going to explain to you about accomplice liability,
20 which is the hand of one is the hand of all.

21 He's going to talk to you about involuntary -- excuse me
22 -- voluntary intoxication, meaning that if you're using drugs
23 and you commit a crime, you're still responsible for that
24 crime that you commit while you were under the influence of
25 those drugs. It's not an excuse.

1 He's going to instruct you on circumstantial evidence,
2 and I want to give you an example of what circumstantial
3 evidence is. A good example that's often used in court is
4 say it's the wintertime and you're going to bed. You look
5 outside the window before you go to sleep and there's no snow
6 on the ground, but when you wake up the next morning and you
7 go look out the window, the ground is covered with snow.

8 Well, you did not see it snow, but you see it on the
9 ground. So you can come to a conclusion that, yes, it snowed
10 sometime during the time you went to sleep and the time you
11 woke up. You didn't see it, but you can infer it happened,
12 and that is called circumstantial evidence.

13 Farris Mickey Short was murdered on or about June 18th,
14 2017. That's what the indictment says. When someone is
15 killed around midnight, it can be unclear as to whether the
16 actual incident occurred before midnight, in this case the
17 day before is Father's Day, June 18th, or after midnight, in
18 this case, Monday, June 19th.

19 The law allows for obvious reasons to assert in the
20 indictment that the date of the murder is on or about. Thus,
21 in this case the date of the indictment is June 18th, 2017,
22 although, based on the testimony and the records put in
23 during the trial, it appears the actual time is likely after
24 midnight. That's okay.

25 Mickey arrived at the home of his cousin, Clint

1 Gullledge, and his wife, Rachel, on Saturday night, June 17th,
2 as he often did. He brought with him on this night a .22
3 pistol that he had just purchased. Clint and Mickey went out
4 back and did some target shooting at a milk jug is what Clint
5 said. The next day, Father's Day, Mickey's daughter,
6 Heather, came and picked him up to take him to lunch for
7 Father's Day. They arrived back that afternoon after lunch.

8 Sometime that afternoon, Mickey left again, and Clint
9 and Rachel never saw him alive again. On the late evening of
10 June 18th, 2017, Farris Mickey Short and James David Busby,
11 the defendant, each drove their own pickup trucks to a field
12 on the top of a hill on Hurst Cemetery Road. That is the
13 dirt road that you've seen on the map, the Google map in
14 evidence, that veers off to the right from Wamble Hill Road,
15 not too far from Edwards Elementary School, not too far from
16 Highway 9 here in Chesterfield.

17 Again, during the daylight, as you can tell from the
18 photographs in evidence, during the daylight hours this is a
19 beautiful area. It's a top of a hill and you can see the
20 surrounding countryside. Very pretty. David Busby had
21 actually been to this very pretty area less than a month
22 before with Rachel and the other young lady that she
23 referenced to see the sunrise because it was so pretty from
24 that area.

25 That beautiful hill turned, as I said in the opening, to

1 bloodstained terror on the evening of June 18th going into
2 June 19th, 2017. Dwayne Moore and Bryan Rivers, who live
3 close by that area, testified as to the approximate times
4 they saw Mickey's red truck being in that field. And the
5 phone records that were put into evidence show that Mickey
6 didn't make any phone calls nor did he answer any phone calls
7 ever again a few minutes after midnight, which is when his
8 truck was in that field.

9 Mickey was found by Bryan on the ground beside his red
10 pickup truck, his belt completely out of his pants, his pants
11 pulled down a little bit, blood pooling on the ground, and
12 half of his face missing. And you've heard Bryan describe
13 it.

14 The inside of his truck was covered with blood, brain
15 matter, and human tissue from his head being shot with a
16 shotgun. And this photograph is in evidence and that is how
17 Bryan Rivers found him and that is how Grant Polson found him
18 on that fateful morning, June 19th, 2017.

19 One of his phones had been broken in half and thrown
20 into the back bed of his pickup truck with a spot of blood on
21 it. Now, Clint verified that Mickey would change phones
22 often, but he would use the same phone number. Clint only
23 knew one number. In the back of Mickey's truck were more
24 than one phone. These phones had blood on them, Mickey's
25 blood. You heard that from the DNA expert from the State Law

1 Enforcement Division.

2 Mickey had been shot inside the truck. Other than the
3 blood pooling onto the ground, all of the blood and brain
4 matter is spewed throughout the cab of the truck. Yet these
5 phones that were thrown into the bed of the truck had
6 Mickey's blood on them. Why? And at least one was broken in
7 half.

8 Why did the killer do this? Because he was most likely
9 looking for Mickey's telephone that actually had service on
10 it. He likely was going through the telephones trying to
11 find the one with service and tossing the others as he went
12 into the bed of the pickup truck and did so until he found
13 the one that actually had service.

14 And how do we know this? Because Agent Chris Johnson,
15 the expert from the State Law Enforcement Division, testified
16 that Mickey's phone, the one with service on it that has not
17 been recovered, pinged in the Pageland area around the same
18 time that David Busby's phone was pinging in the Pageland
19 area after the murder. He took his telephone that had
20 service.

21 As I said, Deputy Grant Polson and along with Stewart
22 Robinson were the first deputies to arrive at the scene after
23 Bryan Rivers called 9-1-1. The first things that Grant
24 Polson noticed, again the same as Bryan Rivers, were Mickey's
25 obviously deceased body, the pants appearing to have been

1 gone through, the pockets pulled out, blood throughout his
2 truck, and he also saw tire tracks, tire tracks that appear
3 to have been made by some sort of mud tires. The tracks
4 stood out to him so much so that when Stewart Robinson almost
5 stepped on one of them, he told him to watch out.

6 As we've addressed in the trial, Mickey used drugs. He
7 likely had drugs in his possession the night that he was
8 killed. Mickey shared drugs with his friends and shared
9 drugs with Nicole Deese. He may have even sold drugs. We
10 don't know.

11 There were no drugs on his person, near his person or in
12 that truck after he was murdered. There was no money on his
13 person, in that truck or at the scene after he was murdered.
14 The .22 gun he had just gotten the night before and had at
15 Clint's on Saturday night and that he took with him when he
16 left on Father's Day was not at the scene and has not been
17 located. Mickey's phone that was operational there, as we've
18 already discussed, and which was not known until Chris
19 Johnson pinged the actual cell phone number, was not there.

20 Mickey's wallet was not there. And we know that David
21 Busby had the driver's license, Social Security card, and the
22 debit card of Mickey's in his truck, and we know from his own
23 statement, that is on State's Exhibit 1 that you can watch
24 again if you want to, that he took Mickey's wallet and said
25 he tossed it in the bag into Lake Terry. And I don't believe

1 the wallet was recovered, but he said he tossed it in Lake
2 Terry and he went so far as to say he left some food stamp
3 cards inside the wallet with Mickey's name on it and said the
4 purpose was so that it could be identified as Mickey's, but
5 it was not at the scene.

6 Mickey had paid David Busby for a shotgun. Busby did
7 not give it to him. They had a dispute about that. You
8 heard from Clint and Rachel that Mickey was upset because he
9 paid money for a gun he had not yet received.

10 At one point, the defendant Busby claimed that he had
11 put the gun behind Clint's house, and Clint told you he
12 searched for it and it wasn't there. That's probably because
13 that was the shotgun that was used to kill Mickey.

14 You heard David Busby on the video say to the Sheriff's
15 Office that he had given Mickey the gun that afternoon and
16 even claimed to have sawed it down for Mickey and gave it to
17 him, but that gun was not in the truck and it has not been
18 found.

19 Mickey was shot in the face with a shotgun. David
20 Busby, after finally arriving back at Nicole Deese's house
21 after the murder, put a long gun onto the loveseat in her
22 house, which he later removed. He admitted that he took the
23 shotgun apart and buried it. The shotgun that was recovered
24 at the scene where he said it would be is in three pieces, as
25 you have seen in this trial and you can take back there into

1 the jury room and look at it.

2 There was a question by his attorney on cross-
3 examination as to whether it's operational. You'll recall
4 the firearms expert from the State Law Enforcement Division
5 said that they determined it could be put back together. It
6 needs some TLC. It has a lot of dirt on it, but it came out
7 of the ground where David Busby buried it. That's why it's
8 covered in dirt.

9 The location where he buried the gun is in the vicinity
10 of Nicole Deese's house. And isn't it ironic that he would
11 bury the shotgun but leave poor Mickey out there like garbage
12 tossed out in that field.

13 When the Sheriff's Office went to Nicole Deese's house
14 to talk to her, they saw a white truck parked in her yard,
15 and you've seen that in the photographs that are in evidence.
16 It was a white truck with distinctive mud tires. It's David
17 Busby's truck.

18 On June 21st, 2017, David Busby was picked up at Nicole
19 Deese's house. His truck was searched there and searched
20 again at the Sheriff's Office more fully with a search
21 warrant by the State Law Enforcement Division expert crime
22 scene analysts, and the tires were also examined.
23 Impressions were done of them, as impressions were taken at
24 the scene of the tracks there.

25 Inside David Busby's truck, the State Law Enforcement

1 Division crime scene analysts found in a boot -- and in the
2 pictures you'll see it appears to be a cowboy boot -- wrapped
3 in a black T-shirt are the victim's three cards, driver's
4 license, a Social Security card, and a debit card. Again,
5 inside David Busby's truck.

6 Also inside David Busby's truck is a pair of blue jeans
7 that had blood spatter on the bottom of the legs. The blood
8 on those jeans was determined by the expert analysts at the
9 State Law Enforcement Division, the serologist and the DNA
10 expert, it was blood and it was Mickey's blood.

11 You also heard the State Law Enforcement Division
12 serologist and DNA expert talk about a cutting. They had to
13 make a cutting of an area instead of testing each and every
14 single piece of what appeared to be blood. So they did a
15 cutting of one area from which they determined Mickey's blood
16 was located. They don't test all of the areas. But again,
17 you heard them say that blood belongs to Mickey Short.

18 You also heard the SLED serologist and DNA expert say
19 that the inside waistband of those jeans -- that's the part
20 that touches your body -- was scraped in order to check for
21 DNA. David Busby's DNA is the major contributor to the DNA
22 in those blue jeans. So those are David -- either David
23 Busby's blue jeans or blue jeans he was wearing and they've
24 got the victim's blood on them and they are in his truck two
25 to three days after the murder. David Busby had been wearing

1 those jeans. David Busby was there.

2 Kenneth Parker was not there. Cell phone records and
3 location data conclusively proved that Kenneth Parker had
4 been in Chesterfield County earlier, but that as the night
5 wore on, he was going away from Chesterfield County. At the
6 time of the murder, he was in Lancaster County.

7 Nicole Deese wasn't there. She was making calls from
8 her landline telephone, and the records from the phone
9 company prove that. She also was on Facebook Messenger on
10 her tablet communicating with Kenneth Parker throughout the
11 night.

12 Clint Gullledge wasn't at the scene. Clint Gullledge was
13 with his wife all night at their house. You heard him say
14 that Mickey would normally show up several times a week to
15 spend the night and, if he didn't show up, he would call.
16 You heard him say that he was anticipating Mickey to show
17 back up Father's Day night to spend the night again and, when
18 he didn't, he at least expected him to call the next morning.
19 He did not call.

20 A Maglite flashlight was found inside David Busby's
21 truck. This flashlight had blood on it. The State Law
22 Enforcement Division expert serologist and expert in DNA both
23 testified that that was, in fact, blood on that Maglite and
24 testified that that blood belongs to the victim, Mickey
25 Short. That flashlight, that Maglite with Mickey's blood,

1 was found in David Busby's truck two to three days after
2 Mickey was murdered.

3 In addition, those tire impressions that were taken of
4 the four tires on Mickey's [sic] truck and of the tracks at
5 the murder scene are consistent. The tires are consistent
6 with the tracks left behind by the killer's vehicle.

7 In David Busby's statements to law enforcement, he first
8 claimed that he didn't know anything about this murder. In
9 another statement, he admitted driving into the field and
10 parking next to Mickey's truck. The physical impressions --
11 the physical evidence, the tire impressions, show that at
12 least that statement from David Busby is correct. He was
13 there and, not only that, he drove his truck there.

14 Now, David Busby tried to soften his ties to the murder
15 by telling multiple stories about what happened. He told
16 elaborate lies. His story was always changing to law
17 enforcement. He claimed he didn't know anything about the
18 murder. He claimed Kenneth Parker murdered Mickey. He
19 claimed Clint Gulledge was involved in killing Mickey.

20 During his statements, however, he gave information only
21 the killer or somebody there would know. He described how
22 Mickey was shot in the face with a shotgun. He described how
23 Mickey was then pulled out of the truck onto the ground. He
24 described how Mickey's pockets had been gone through, and
25 these things are all bore out by the witness statements and

1 by the crime scene photographs that are in evidence.

2 David Busby described that murder scene very accurately
3 for someone who claimed that he remained inside his truck the
4 whole time. Not only was he there to kill Mickey, recall
5 where he said his truck was parked. Even if he had been
6 there and remained in his truck, he could not have seen what
7 he described because it would have been on the opposite side
8 of Mickey's truck from where he was parked and it was dark
9 outside.

10 He used his Maglite to scavenge around Mickey's body and
11 through Mickey's truck because it was dark out there and he
12 had to see to look for Mickey's phone and to find the phone
13 that actually had service on it, to find his wallet, to go
14 through his pockets, to scavenge for any drugs or any money
15 that might be there.

16 If you listen close to the video statement that he gave
17 law enforcement, on one of those statements at one point he
18 speculates that maybe Mickey used that .22 to defend himself
19 and got shot. James Busby knew what actually happened.
20 That's why he told Nicole Deese it shouldn't have happened.
21 He wasn't expecting Mickey to have that pistol in his
22 possession when he tried to rob him. Mickey had just got
23 that pistol the night before.

24 Now, the witnesses, including the crime scene experts,
25 explained how Mickey's body was lying next to the truck, shot

1 in the face, obviously by a shotgun and, of course, that was
2 bore out by the autopsy pathologist who removed 14 bullets
3 and a fragment from the left side of his head and neck.

4 Dawn Claycomb, whose expert opinion -- and she is a
5 crime scene analyst -- was that he was likely killed inside
6 the truck. There was so much blood and brain matter inside
7 the truck that you can see from the photographs that Mickey
8 had to be inside when his face was blasted away. His body,
9 in fact, had been pulled out of that truck onto the ground,
10 and you'll see the pool of blood where it appears that he had
11 been rolled over and you can determine that from the
12 photographs because you are the determiners of the facts.

13 His belt was taken off. His pants pulled inside out --
14 his pants pockets pulled inside out. The only possible
15 reason to pull that body out of the truck, to take the belt
16 off, to search through his pants, to search through his
17 pockets was in order to steal something off of his body or to
18 rob him. Now, David Busby did claim that Kenneth Parker took
19 Mickey's .22 pistol and money, but again, we know Kenneth
20 Parker wasn't there.

21 The officers verified that Mickey had no money, no
22 drugs, no gun on him or in the truck. And remember that
23 Mickey had actually called and asked Nicole earlier that
24 evening to go with him to re-up, which is a term to go buy
25 more drugs, but yet none were found in that truck or at that

1 scene.

2 And David Busby admitted to the Sheriff's Office that he
3 took Mickey's wallet. He says he had a pair of gloves and
4 other items. That he put all those things in a plastic bag
5 and threw it into Lake Terry. Divers from the Department of
6 Natural Resources recovered that bag and the wallet is not in
7 it, but it did contain a spent shotgun shell tucked inside
8 one of those gloves. And when they went down for the second
9 dive, there is also an unspent shotgun shell recovered at the
10 same location as the bag.

11 David Busby claimed that he threw that pipe wrench that
12 was recovered from the lake. He claimed he threw that into
13 the water to trick Kenneth Parker into thinking that he
14 disposed of the gun. We know that's not true because Kenneth
15 Parker wasn't there. He was in Lancaster County. How do we
16 know that that pipe wrench didn't come from Mickey's truck
17 and that's yet another lie? Everything that was recovered,
18 David Busby had and he either dumped it or he buried it.

19 Kenneth Parker was charged with murder and armed
20 robbery, same as David Busby. His charges were dismissed, as
21 I told you in opening argument and as you heard during the
22 trial, because the further investigation by the expert at the
23 State Law Enforcement Division determined from his phone
24 records, from his phone pings, as well as his archived
25 Facebook messages that were put into evidence, that he was

1 not in Chesterfield County at that time of the murder. He
2 was in Lancaster.

3 You heard from Kenneth how David Busby tried to
4 manipulate him into confessing to shooting Mickey when he was
5 in the county jail, just like he's tried to manipulate his
6 way out of being convicted for the murder and armed robbery
7 himself. David Busby caused an innocent man to sit in jail
8 for a crime he did not commit. So everything that he says is
9 automatically suspect about anyone else's involvement, and
10 you can listen to the video again if you need to. It's in
11 evidence.

12 Clint Gullede, the other person he tried to claim was
13 involved, is Mickey's cousin. Mickey spent the night there
14 often. He spent his last full night on earth at Clint's
15 house. He was expected to go back over there. As we've
16 already discussed, he had that .22 pistol and had done target
17 shooting with Clint the night before.

18 Clint and Mickey lived a stone's throw from where the
19 murder happened. Clint showed you on the map his dirt road
20 is very -- that he lived at that time, is very near Wamble --
21 very near Hurst Cemetery Lane that runs off of Wamble Hill
22 Road. When you stand at the first dirt road, as Rachel told
23 you, you can see the other dirt road just up ahead.

24 You heard Clint say that when Mickey didn't show back up
25 as he anticipated and when Mickey didn't call him, as he

1 would've expected the next morning, he tried to call Mickey.
2 Now, if he had known Mickey was dead, there would've been no
3 reason to try to call Mickey, but the phone records show that
4 Clint tried to call Mickey three different times. All three
5 of those are on the morning of June 19th, call one, call two,
6 call three. Clint is steady trying to get up with Mickey
7 because it was out of the ordinary for him if he didn't show
8 up to spend the night to at least not call. Clint didn't
9 kill his cousin.

10 As soon as Clint heard that Mickey was dead, he called
11 David Busby, who was at Nicole's house. He said he could
12 hear Nicole in the background almost freaking out and he said
13 he heard David Busby tell her to shut up. And if we look at
14 the phone records again, the phone records bear out and prove
15 that Clint was telling the truth. He called David Busby,
16 just like he said.

17 Nicole Deese and Mickey were close. He seemed to care
18 for her. Yes, he gave her drugs. They had a drug
19 relationship. She was very upfront about that. You saw
20 that. He even bought her a car. If she needed anything, she
21 could call him. She could count on him, and he called her
22 every day.

23 Nicole received a telephone call sometime late on
24 Father's Day from Mickey asking her to go with him to re-up,
25 again to go buy additional drugs. David Busby was at her

1 house and he told her no, say no, hang up. So she did what
2 David Busby told her to do. At some point after, David Busby
3 left Nicole's and he told her he was going to meet Mickey to
4 buy drugs. That's what David Busby told Nicole.

5 Now, sometime around this time, Kenneth Parker is in the
6 county meeting up with Mickey at his camper in the Mount
7 Croghan area. The location data that the State Law
8 Enforcement Division expert showed you, which is in evidence
9 and you'll have it back there, bears out that they were in
10 that area. As Kenneth was leaving, he said a white truck
11 pulled in past him as he was leaving Mickey's.

12 David Eddins in Ruby, he said that Mickey came to his
13 house and brought an electrical or a breaker box. Keep in
14 mind that Kenneth Parker also did electrical work and that's
15 what Mickey wanted to talk to him about was some electrical
16 work at the camper. David Eddins had previously done
17 electrical work at that camper. Mickey brought an electrical
18 box.

19 David Busby's white truck followed the victim, Mickey,
20 into the driveway in Ruby, South Carolina, of David Eddins.
21 When they -- when they left, one following the other, David
22 Eddins never saw Mickey alive again.

23 However, late, late in the evening -- and David Eddins
24 could only estimate on the time. He's estimating it's about
25 one-ish. If you recall his testimony, he said that David

1 came back by himself and asked if he'd seen Mick. He said to
2 tell Mickey he was going to his grandmother's and, of course,
3 we know that that was a lie. He went to Nicole's.

4 David Busby told David Eddins that he had lost Mickey
5 while he was following him, and that was the same story that
6 he had told Kenneth Parker. He told Kenneth Parker he lost
7 Mickey while he was following him when they talked later on.
8 However, the phone records show that David Busby never tried
9 to call Mickey after 12:09 a.m.

10 Nicole Deese. While all of this is going on, Nicole is
11 getting more and more upset as the evening wears on. David
12 Busby had left to go and buy drugs from Mickey, and you heard
13 her. It doesn't take too long to go buy some dope. It's
14 getting very, very late. David Busby hasn't returned and
15 Mickey never calls her. That's unusual. She expected a call
16 back from Mickey. She knew something was terribly, horribly
17 wrong. That was her instinct.

18 So she reached out to Kenneth Parker and the records
19 bore this out, the Facebook messages, the phone records. She
20 is the one who actually gave David Busby's number to Kenneth
21 Parker and she says call David Busby, call Mickey. Tell them
22 Nicole needs them. You heard part of that exchange that was
23 actually audio-recorded this morning. Tell them Nicole needs
24 you. These calls and records again prove Kenneth Parker was
25 not there. Nicole was not there.

1 Now, when David Busby did ultimately return to Nicole's
2 house, he was agitated. Now, she, of course, is very upset
3 by this time and begs to be told what happened. Sometime on
4 Monday, he told her, "I killed Mickey." He claimed that
5 Mickey had come at him with a machete and so he had -- so he
6 shot him. But he did make a comment about he didn't have to
7 do it. I didn't have to do it.

8 He also told Nicole about the smell, something about the
9 smell, the aftermath of blowing Mickey's face off, something
10 about the smell from that stood out to him and so he
11 commented on that to Nicole. He later told -- he also
12 brought a gun into Nicole's house, that long gun, which he
13 then later removed, and he told her at some point she didn't
14 have to worry. Nicole told you she lives within walking
15 distance of Lake Terry and is also in the vicinity of where
16 that gun was buried in the woods after David Busby broke it
17 down into three pieces.

18 And, you know, it's obvious that David Busby did tell
19 Nicole Deese something because when she was at the
20 Chesterfield County Sheriff's Office the first time, she
21 admitted she lied to them and claimed he was at her house all
22 night. And we know she lied because the phone records and
23 the phone location data show he was not there all night.

24 Let's look at the timeline. Starting at 8:22 p.m. on
25 June 18th, Mickey calls David Busby after several texts. It

1 says tests. It's texts from David Busby. And you're going
2 to get all those records back there if you want to examine
3 them back there in the jury room when you go back to
4 deliberate because all of that is in evidence. All of this
5 is an evidence.

6 8:45 p.m., Kenneth Parker calls Mickey after they
7 exchange texts.

8 9:10 p.m., David Busby calls Mickey three times up until
9 9:50, and the location data shows that Busby is in Pageland.

10 9:11 p.m., Mickey calls Kenneth Parker and he comes to
11 the Pageland, Mount Croghan area. Again, that backs up what
12 Kenneth told you.

13 9:50, Mickey and David Busby are near Mount Croghan,
14 bouncing off the same tower. And remember what Kenneth
15 Parker said. As he's leaving Mickey's trailer, his camper, a
16 white truck passes him coming in.

17 9:57 to 10:04, Kenneth Parker is in the Pageland area.

18 10:04 p.m., Kenneth Parker is leaving Pageland. Mickey
19 is around Mount Croghan.

20 10:41 to 10:50 p.m., Kenneth Parker is in the Jefferson
21 area.

22 11:02 p.m., Parker is west of Pageland, heading west
23 towards Lancaster. He never returns to Chesterfield County
24 before Mickey Short's body was found the next morning around
25 7:30-ish.

1 11:17 p.m., David Busby calls Mickey. He is -- David
2 Busby, he is near Ruby. The victim is near Mount Croghan.
3 They talk for about two minutes.

4 Now, at approximately 11:30, Short -- Mickey Short and
5 David Busby went to David Eddins' house in their respective
6 vehicles. That information came from David Eddins.

7 June 19th, 2017, 12:09 a.m., David Busby calls the
8 victim, Mickey Short. It bounces off the Ruby tower in the
9 vicinity of Hurst Cemetery Lane.

10 THE COURT: Solicitor?

11 MS. JOHNSON-LEE: Yes, Your Honor?

12 THE COURT: I apologize. I need to interrupt you just a
13 minute. We will resume.

14 Jurors, you may step back for a restroom break.

15 (WHEREUPON, the jury exited the courtroom.)

16 THE COURT: The Court will stand at ease.

17 (WHEREUPON, there was a break in the proceedings, after
18 which the proceedings resumed as follows.)

19 THE COURT: All right.

20 MS. JOHNSON-LEE: Thank you, Your Honor.

21 CLOSING ARGUMENT ON BEHALF OF THE STATE RESUMED

22 MS. JOHNSON-LEE: Starting on June 19th, 2017, 12:09
23 a.m., David Busby calls the victim, Mickey Short. It bounces
24 off the Ruby tower in the vicinity of Hurst Cemetery Lane.
25 That's the only time David Busby is mapped in that vicinity.

1 And keep in mind, Hurst Cemetery Lane is the location of the
2 murder.

3 Approximately 12:30, 21 minutes later, only David Busby
4 returns to David Eddins' house in Ruby. He claims he lost
5 Mickey while following him.

6 12:54 to 1:41, Nicole Deese and Kenneth Parker are on
7 Facebook Messenger. Nicole and Kenneth are trying to contact
8 Mickey Short and David Busby. They are both trying to call.
9 Again, the records will bear that out.

10 MS. COPELAND-LITTLE: Your Honor, I'm going to have to
11 object. Some of this assumes facts that are not in evidence.
12 These times do not reflect what was testified to in court.

13 MS. JOHNSON-LEE: These are in the archived messages
14 that are in evidence.

15 THE COURT: I'm going to overrule the objection. The
16 jury certainly has the authority to sort this out. Go ahead.

17 MS. JOHNSON-LEE: Thank you, Your Honor.

18 1:35 a.m. on Monday, the 19th, Kenneth Parker finally
19 reaches David Busby. He tells -- Busby tells him he lost
20 Mickey while following him. That's the same thing he told
21 David Eddins. Busby at that time is in the Jefferson area.

22 3:23 a.m., Mickey's phone is bouncing off tower 1785
23 near Pageland.

24 3:38 a.m., Mickey's phone is bouncing off tower 1894 in
25 the Jefferson area.

1 3:44 a.m., David Busby's phone is bouncing off tower
2 1785 near Pageland.

3 7:30 a.m., Mickey's body is found.

4 Between 8:24 a.m. and 1:00 p.m., Nicole is still trying
5 to call Mickey.

6 8:39 a.m., 9:07 a.m., and 11:09 a.m., Clint is calling
7 Mickey's phone.

8 11:31 a.m., Clint calls David Busby.

9 I want to thank Angie Thurman for all the technical
10 assistance she's been providing us this week.

11 Now, as prosecutors, Deputy Solicitor Redmond and I, we
12 represent the State of South Carolina. We are in a unique
13 role of speaking for the dead. We are asking you for
14 justice. Mickey did not deserve this. Mickey deserves
15 justice and that's what we are asking you for. That's all
16 we're asking you for is just justice. Thank you.

17 MS. COPELAND-LITTLE: May it please the Court.

18 THE COURT: Yes.

19 MS. COPELAND-LITTLE: Madam Solicitor.

20 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

21 MS. COPELAND-LITTLE: Ladies and gentlemen of the jury,
22 I just want to thank you for being here today and for your
23 service and I certainly appreciate what you're doing here for
24 our great county and state.

25 I want to start off just by touching on something. I

1 know you've heard objections on and off during the trial.
2 And when we object, we're not really just trying to interrupt
3 each other. We're trying to make sure that you get all of
4 the facts. And I want you to know and the judge is going to
5 tell you this that what Madam Solicitor, Ms. Lee, says and
6 what I say is not evidence. What we're trying to do is
7 summarize what we recall from the evidence.

8 So when you begin to deliberate, if I say something
9 happened at a certain time or she does, you are the ones who
10 are the finders of fact. So whatever you decide is what you
11 need to go with and certainly not anything that she or I say.

12 I would like to first talk to you a little bit about the
13 law, which is so important to me. I was an older student. I
14 didn't become a lawyer until I was about 40 years old. So I
15 have a great respect for it and a great respect for our
16 system.

17 In our law, there is a presumption of innocence.
18 Everybody who is charged with a crime is presumed innocent.
19 And even right now, my client is presumed innocent and that
20 presumption stays with him unless and until you have
21 deliberated, you have looked at all of the evidence, and you
22 among yourselves decide that the State, the State of South
23 Carolina, has proven beyond a reasonable doubt that my client
24 committed any of the crimes for which he is charged.

25 And first, I'm going to talk to you about the charge of

1 murder. Murder is defined as the unlawful killing of another
2 with malice aforethought. And in order to prove murder
3 beyond a reasonable doubt, they would have to prove that Mr.
4 Busby killed Mr. Short or assisted someone else in doing so
5 with malice aforethought.

6 There is also another type of manslaughter -- I'm sorry
7 -- of homicide and that is manslaughter, and the Court is
8 going to tell you about that too. Voluntary manslaughter is
9 a little bit different, and I'll let the judge -- he's the
10 judge of the law so he will explain it to you, but the way I
11 like to explain it is it's something that happens in the heat
12 of the moment and there's been some sort of provocation. So
13 I just want you to keep in mind that there are different
14 types of homicide.

15 The first thing I think that the State would have to
16 prove beyond a reasonable doubt would be that my client was
17 there when Mr. Short died, and I want to talk to you about
18 what time the evidence shows that Mr. Short died. If you
19 look -- if you think back, the only evidence that came from a
20 witness as to the time of the death came from an expert, and
21 that was Dr. Ross. She's a pathologist. She's trained. And
22 her autopsy report is in evidence. The State submitted that
23 and so you'll have that with you when you go back to
24 deliberate.

25 And if you look at that, it says that the victim died at

1 7:15 p.m. on -- let me make sure I tell you right. I don't
2 want to tell you wrong. 7:15 p.m. on June 18th, 2017. And
3 that is the only person who testified as to the time of death
4 and she is the doctor.

5 Now, she told you that she came up with that time by
6 information that she got from other people and so when you
7 take that autopsy report and you look at it, you're going to
8 see in it that there is a death certificate. And when you
9 look at that death certificate, it is going to say that the
10 coroner -- the coroner stated that Mr. Short died at 11:45
11 p.m. on June 18th, 2017.

12 So I want you to think about those two times because if
13 you believe either one of those times, then you have to call
14 into question these phone records that have all these
15 different times and that the State is trying to rely on to
16 say that my client killed Mr. Short. You'll recall that
17 there were two phones found at the crime scene. Well, then
18 at 3:44 the next morning, the victim's phone is pinging
19 somewhere else.

20 Now, if you -- you're going to also have the indictments
21 and you're going to see my client was not charged with
22 stealing a cell phone. He was not charged with stealing a
23 wallet. He's charged with stealing money and drugs and, if
24 you believe the testimony of Ms. Deese, when my client got
25 back, he didn't have any money or any drugs.

1 So those are all things that I want you to consider and
2 question. I really want you to question everything and I
3 have a lot of questions. I'm just going to go through and
4 tell you some of the things that I think are inconsistent or
5 that you need to think about or that I hope you'll think
6 about when you go back to the jury room.

7 And the judge is also going to instruct you about, you
8 know, whether or not if someone gives a consent whether or
9 not that consent is legal because everybody has rights. We
10 all have rights and law enforcement has a duty to make sure
11 that everybody knows their rights and that any consent that's
12 given is given voluntarily.

13 And one of the things you can -- you have a right to
14 look at is whether or not the defendant was intoxicated when
15 he made those statements. Now, I'm not trying to say that
16 being intoxicated is a defense to anything, but what I'm
17 saying is it's one factor you can consider when you consider
18 whether or not somebody does something voluntarily or makes a
19 statement voluntarily.

20 Now, the officers both -- I think three officers
21 actually testified that Mr. Busby didn't sound intoxicated,
22 that he sounded fine. He was speaking clearly. He wasn't
23 slurring his words. He wasn't rambling.

24 Now, you all were here. You saw the video and so I'm
25 going to let you make your own determination as to whether or

1 not it was obvious to you that my client was intoxicated.
2 That's your decision. If you -- if you think that he was
3 slurring or intoxicated, you can give that whatever weight
4 you want to, but remember the fact that law enforcement said
5 he was fine and if law enforcement is not truthful about some
6 things, that may make you wonder if they're being truthful
7 about other things.

8 Another thing about voluntariness, you heard the State's
9 expert say that she took my client's DNA swab while he was
10 handcuffed and she admitted that she did that before he even
11 signed any sort of consent.

12 I want to talk to you a little bit about DNA. I'm not a
13 scientist. Thank goodness we have those scientists here that
14 can explain it to us. We all probably know a little bit
15 about it, but we probably don't know a lot about it. But I
16 did want to talk to you about DNA and just bring a few points
17 to your attention.

18 If you will recall the evidence of what was discovered
19 at the scene where Mr. Short died, there was nothing. None
20 of my client's DNA was found at the scene of Mr. Short's
21 death. Also, there weren't any fingerprints of my client on
22 any of the items that were located there or on Mr. Short's
23 truck.

24 Then I want to talk to you about another thing and there
25 really hasn't been any testimony about this. So I just want

1 to bring to your attention the fact that there's no evidence
2 of this or that the State did not bring you any evidence
3 about this issue, and that is gunshot residue. Nobody
4 testified whether or not Mr. Short's hands were tested for
5 gunshot residue.

6 So you may find yourself wondering did he -- did Mr.
7 Short fire a shot, and there was testimony that he had a gun,
8 that he bought a gun that day. So, you know, did he? We
9 don't know because there was no testing done that we know of
10 or that was brought to you as evidence. Also along that
11 line, there was no evidence presented that gunshot residue
12 was in my client's truck or on the steering wheel or anything
13 like that or on any of his clothes.

14 Now, let's talk about clothes. You're going to have the
15 evidence back there with you and the exhibits, and you're
16 going to have a pair of jeans that were recovered from my
17 client's truck. And you'll get a chance to look at them and
18 I just want to call your attention to the fact that there are
19 a few small drops of blood on those jeans and it was
20 identified to belong to -- to be blood belonging to the
21 victim, Mr. Short.

22 Now, you also saw those photos and with a terrible,
23 terrible injury like that, you can decide for yourself
24 whether or not those few drops of blood would indicate that
25 those jeans were in close proximity when Mr. Short was

1 killed.

2 You -- also -- I would also like for you to take into
3 account the testimony from Mr. Baker, who testified that
4 about a week prior Mr. Short had an injury on his face, a
5 head wound that was bleeding from his head and face, and I
6 believe he said on his sleeve. And that my client, David
7 Busby, was the only one out of that crowd who ran, helped him
8 up, and escorted him back to where everybody else was.

9 Also, I want to remind you when you look through the
10 evidence that there was DNA on three different people on the
11 waistband of those pants, and I will leave that to you to
12 decide what that means because, you know, we just know that
13 there were DNA from three people on the pants and I don't
14 think that the -- obviously, she did say that my client's DNA
15 were on the pants and that the most part of the DNA belonged
16 to my client, but she also said that two other people's DNA
17 was on the waistband of those pants. So that's a question
18 that remains that you might want to think about.

19 Now, and also just one more thing about those pants. I
20 think -- I think it will be clear to you when you look at
21 them that they did not appear that they had been washed
22 anytime soon and you can use your own judgment. I mean
23 anytime recently and you can use your own judgment about
24 that.

25 I want to go back now and I'm going to bring up and talk

1 about the tire tracks, tire impressions. You did hear law
2 enforcement, State Law Enforcement Division SLED expert, say
3 that the tire impressions located at the scene could have
4 come from the tires on Mr. Busby's truck. Now, what I also
5 want you to remember is she also testified that those tires
6 were mass-produced and she also said she couldn't say if my
7 client's tires caused those impressions. She was unable to
8 say that.

9 Let's talk about -- going back to the -- to the time of
10 death, we had no eyewitness obviously that testified about
11 what time Mr. Short died other than the report that said 7:15
12 p.m., and you might want to ask yourself -- there was --
13 there was testimony that the truck was very loud. Also, we
14 know that Mr. Short was killed by a gunshot.

15 What I had a question about and what you may also
16 question is whether or not law enforcement asked the people
17 who live in the area whether or not they heard a loud truck
18 or heard a gunshot, which would certainly allow you to maybe
19 get a better idea of a time, but unfortunately, we don't --
20 we don't have that information. We don't know if they went
21 and canvassed the neighborhood or went to houses nearby. We
22 just don't know because they didn't bring you that
23 information.

24 Now, I want to talk about the weapon that was used to
25 kill Mr. Busby -- I mean -- I'm sorry -- Mr. Short. What --

1 what I want you to remember is there was a weapon discovered
2 and they said that it could be put together to make a
3 shotgun, but what she also said was she couldn't say that
4 that shotgun had anything to do with Mr. Short's death.

5 She just couldn't say. She couldn't say whether the
6 bullets recovered were the -- I'm sorry -- the shot recovered
7 from Mr. Short's body was ever fired from that gun.

8 In fact, we don't even know if the gun would fire
9 because there was no evidence that the gun was fired by State
10 Law Enforcement Division. I think she did say that she
11 thought it could be put together to make a working gun, but
12 there was no evidence that they actually did that, put it
13 back together and fired it. So we just don't know based on
14 the information that we've been presented.

15 I want to talk to you just briefly about armed robbery.
16 My client was charged with stealing money and drugs from the
17 victim. Again, he wasn't charged with stealing a phone. He
18 wasn't charged with stealing a wallet. And from the
19 testimony given after Mr. Short died, there's no evidence
20 that my client had any drugs or any money.

21 Now, let's go back. Just briefly, I want to touch on
22 the investigation. I personally have a great respect for law
23 enforcement. My husband was in the military. I think they
24 are heroes and I appreciate what they do, but they're not
25 infallible.

1 If you think back very early on, they focused on and
2 narrowed their attention to three different individuals,
3 which would have been my client, Ms. Deese, and Mr. Parker,
4 and I want you to ask yourself maybe if that was just a rush
5 to judgment because we don't know. Once they decided those
6 three people were suspects, there was no indication that they
7 continued to investigate whether or not any other people
8 could have been involved.

9 Talking about, again, the cell phone of the victim
10 pinging at 3:20 to 3:44 a.m. the following morning, my client
11 was never charged with stealing that cell phone, stealing a
12 cell phone and, again, two of Mr. Short's cell phones were
13 recovered at the scene.

14 Also, there is testimony and cell phones in the record
15 that state that Mr. Busby was continuing to call Mr. Short
16 after midnight and that after midnight he was still looking
17 for Mr. Short because he went back to Mr. Eddins' house and
18 asked him if Mr. Short was there or if he had come back
19 because my client said he couldn't find him or wasn't able to
20 reach him.

21 So if you believe that either Mr. Short was killed at
22 7:15 p.m. or 11:45 p.m., you might ask yourself, well, why
23 would Mr. Busby be continuing to search for him or try to
24 reach him if he was -- if he knew that he was already
25 deceased.

1 Lastly, what I want to talk to you about is the
2 testimony of Ms. Deese. She admitted that she lied to law
3 enforcement at least once and then she wasn't really able to
4 even remember how many times she was interviewed. I think
5 after someone -- after she was -- her memory was refreshed,
6 she admitted that she had been interviewed by the police at
7 least three times, but initially, she stated that she had
8 been interviewed twice and that she lied to law enforcement.

9 I don't think there's any dispute that she was high on
10 methamphetamine. There were calls and messages where she was
11 trying to locate Mr. Short, and you heard some of those today
12 and you might think -- yeah, I'll let you decide what you
13 think from when you listened to those. You've already heard
14 them, but whether or not those messages suggested a concern
15 for the victim or a concern for Ms. Deese, who was looking
16 for more drugs. I mean let's ask yourself was she just
17 trying to find more dope. Is that why she was trying to
18 contact Mr. Short?

19 Now, going back to the scene, I just want to bring to
20 your attention one more time Mr. Moore. He had testified
21 that there were kids out there all the time, indicating that,
22 you know, lots of other people use that area.

23 And I also want to talk to you about the fact that
24 there's been testimony that my client took them to some --
25 took law enforcement to some items that belonged to the

1 victim and also that he had in his truck some items that
2 belonged to the victim. And I just want to ask you to
3 consider and think about that because having property that
4 belongs to somebody is not proof of murder. It may be proof
5 of another crime, especially if those items were stolen, but
6 it certainly is not proof beyond a reasonable doubt of
7 murder.

8 And in the end, I want you to think closely. You're
9 going to be considering all of the evidence and you're going
10 to have a lot of questions. You're probably going to have
11 some questions yourself that I haven't even asked. I just
12 want to remind you about the burden of proof.

13 The State has the duty to bring you enough evidence so
14 that all of your questions that are reasonable and all of
15 your doubts that are reasonable are overcome and that you are
16 satisfied that you have enough information to make a
17 decision. So if there's something you would like to know,
18 well, wouldn't it be nice if we knew this, wouldn't it be
19 nice if we knew that, the person or persons who have to bring
20 that information to make that decision are the
21 representatives of the State of South Carolina.

22 And I'm going to ask you after you consider all the
23 evidence to find that they did not meet that burden and that
24 there are still reasonable doubts and you still have
25 unanswered questions that will lead you to find my client not

1 guilty of murder.

2 Thank you.

3 MS. JOHNSON-LEE: Just a brief reply.

4 THE COURT: Yes.

5 REBUTTAL CLOSING ARGUMENT ON BEHALF OF THE STATE

6 MS. JOHNSON-LEE: I'm not going to keep you long, but I
7 just wanted to ask you to look back to the testimony of the
8 pathologist when she was questioned about the time on that
9 report, the time of death. That was information that came
10 from the county coroner, who did not investigate the murder.
11 That was done by the Sheriff's Office.

12 And at that time of the autopsy, that was a day after
13 his body is found. At that time, they didn't have cell phone
14 data. They didn't have phone location data, also known as
15 pings, which a lot of things they didn't have at that time to
16 attempt to determine cause of death. So that's a best
17 guesstimate.

18 And I want to reiterate to you that the defendant
19 himself in one of his statements to law enforcement put
20 himself at the scene and he lied about who was involved. He
21 claimed that it was Clint. He claimed that it was Kenneth.
22 And of course, the evidence shows it was not either one of
23 them and he himself, David Busby, in his statement to law
24 enforcement never once said that Mickey fired a shot. He
25 never said that. He didn't tell Nicole that Mickey fired a

1 shot.

2 And he himself said that was the shotgun and he buried
3 that shotgun. He took law enforcement to that shotgun. That
4 is the murder weapon based on his own statements to law
5 enforcement and he himself put it in the context of a
6 robbery.

7 Recalling the statement that he gave, even though he was
8 lying about who it was, but he referenced it being Kenneth
9 Parker who was stealing the .22 gun, stole the money, and
10 whatnot. And you can go back and look at that statement, but
11 that came from the defendant himself.

12 And so, again, we ask for justice and ask you to find
13 him guilty. Thank you.

14 THE COURT: I thank counsel for their closing arguments.

15 Now comes the charge of the law and it's going to take a
16 while. It's going to take probably at least 45 minutes, if
17 not a little longer. Does anybody need to take a brief
18 recess before we get into that?

19 All right. The jury step back. Knock on the door when
20 you're ready and we'll come back and give you the charge on
21 the law.

22 (WHEREUPON, the jury exited the courtroom.)

23 (WHEREUPON, there was a break in the proceedings, after
24 which the proceedings resumed as follows.)

25 (WHEREUPON, the jury entered the courtroom.)

1 CHARGE ON THE LAW

2 THE COURT: Madam Forelady and ladies and gentlemen of
3 the jury, if I could have your attention, it's now my duty to
4 give you the charge on the law in this case. You have
5 followed very patiently and listened to the evidence that's
6 been presented and I thank you for that.

7 Under the Constitution of this state, it is my duty to
8 charge and instruct you the law applicable to the case and it
9 is your duty as jurors to accept and apply the law as the
10 Court states it to you. As jurors, it's your exclusive duty
11 to decide all the issues of fact in this case and, for that
12 purpose, to determine the effect, the value, and the weight
13 of the evidence.

14 Both the State and the defendant have a right to expect
15 that you will conscientiously consider and evaluate the
16 evidence and apply the law of the case thereto, to the end
17 that both the State of South Carolina and the defendant will
18 receive and obtain a fair and impartial trial in this case.

19 When I use the word defendant, I am referring to Mr.
20 James David Busby, who is charged in the bill of indictments
21 with the offenses of murder, armed robbery, and possession of
22 a weapon during the commission of a violent crime. To these
23 charges and to these indictments, the defendant has entered a
24 plea of not guilty. This plea of not guilty by the defendant
25 places the burden of proof on the State to prove by evidence

1 the guilt of the defendant beyond a reasonable doubt before
2 you, the jury, can find the defendant guilty.

3 The defendant is presumed in law innocent of the charges
4 contained in the indictments. It is a cardinal and
5 fundamental rule of the law of evidence that a defendant,
6 irrespective of the enormity of the charges against him, will
7 always be presumed innocent of the crimes for which he is
8 indicted unless and until the guilt of the defendant has been
9 proved by evidence that satisfies you, the jury, of his guilt
10 beyond a reasonable doubt.

11 The presumption of innocence is not a mere legal theory
12 and it's not just a legal phrase. The presumption of
13 innocence is a substantial right to which every accused is
14 entitled. Our Supreme Court has declared that the
15 presumption of innocence is like a robe of righteousness
16 placed about the shoulders of a defendant and it remains with
17 him and assigns him to that class, the innocent, until that
18 presumptive robe of righteousness has been stripped from his
19 person by evidence satisfying you, the jury, of the guilt of
20 the defendant beyond a reasonable doubt.

21 The presumption of innocence accompanies the defendant
22 from the time of his arraignment and appearance in the court
23 and continues with the defendant throughout every stage of
24 the trial and continues with the defendant after you retire
25 to the jury room to deliberate your verdict. The presumption

1 of innocence continues in existence to the benefit of the
2 defendant until you, the jury, reach the conclusion that the
3 State has proved the guilt of the defendant beyond a
4 reasonable doubt.

5 The State is not required to prove the guilt of a
6 defendant beyond all doubt or beyond every doubt, but beyond
7 a reasonable doubt. Proof beyond a reasonable doubt is proof
8 that leaves you firmly convinced of the defendant's guilt.

9 There are very few things in this world that we know
10 with absolute certainty and, in criminal cases, the law does
11 not require proof that overcomes every possible doubt. If
12 based on your consideration of the evidence you are firmly
13 convinced that the defendant is guilty of the crime charged,
14 you must find him guilty. If, on the other hand, you think
15 there is a possibility that he is not guilty, you must give
16 him the benefit of the doubt and find him not guilty.

17 I charge you that a defendant is entitled to every
18 reasonable doubt arising in the case. If upon any issue of
19 fact essential to conviction and a verdict of guilty you have
20 a reasonable doubt as to how that issue should be resolved,
21 it would be your duty to resolve that reasonable doubt in
22 favor of the defendant.

23 A defendant is not required to prove his innocence, but
24 the State is required in law to prove every essential element
25 of the offense charged against the defendant by evidence

1 which satisfies you, the jury, of the guilt of the defendant
2 beyond a reasonable doubt before you can convict the
3 defendant and find him guilty.

4 If then upon the whole case you have a reasonable doubt
5 as to the guilt or innocence of the defendant, he is entitled
6 to that reasonable doubt and would be entitled to an
7 acquittal and a verdict of not guilty. But on the other
8 hand, if upon the whole case you find that the State has
9 proved by evidence which satisfies you, the jury, of the
10 guilt of the defendant beyond a reasonable doubt, then in
11 such circumstances it would equally be your duty to convict
12 the defendant and find him guilty.

13 Now, in many cases that come before the Court, there are
14 lesser-included crimes to the original crime that was
15 charged. If you find the defendant guilty but you have a
16 reasonable doubt as to whether the defendant would be guilty
17 of the greater crime charged or the lesser crime charged,
18 then you would resolve that reasonable doubt in favor of the
19 defendant and write a verdict of guilty only as to the lesser
20 charge. But of course, you could not write a verdict of
21 guilty to any charge unless it's to that charge you find all
22 elements of the charge have been proven by the State beyond a
23 reasonable doubt.

24 I instruct you that the indictments in this case, which
25 are up here, that you will have later on, they are not

1 evidence and cannot be considered by the jury as evidence in
2 the case. An indictment is simply the formal written
3 instrument which contains the charges against the defendant
4 and it serves as the formal document by which this case is
5 processed into the court.

6 During the trial, each of us, you and I, have certain
7 duties to perform. As the trial judge, it is my
8 responsibility to preside over the trial of the case and I
9 have the duty to rule upon or pass upon the admissibility of
10 the evidence offered during the progress of the trial.

11 You are to consider only the competent evidence before
12 you and you are to disregard and disabuse from your mind any
13 testimony ordered stricken from the record of this case
14 during the progress of the trial, if there be any, and you
15 are to consider only the evidence -- only the testimony which
16 has been presented from the witness stand, together with any
17 exhibits admitted into the record of this case and any
18 stipulations of counsel made into the record, if there be
19 any.

20 Now, I have the additional duty to charge you the
21 applicable law of the case. As the presiding judge, I am the
22 sole judge of the law of the case and it's your duty to
23 accept and apply the law as I state it to you. If you have a
24 preconceived idea as to what the law is or what the law ought
25 to be in this case and it should not agree with what I tell

1 you the law is, you are obligated under your oath to abandon
2 this preconception on your part because you are sworn to
3 accept the law precisely as I state it to you.

4 In every case tried in this court before a jury, the
5 jury becomes the sole and exclusive judge of the facts of a
6 case. You, the jury, are the judge of the facts in this
7 case. The Court is the judge of the law in the case.

8 The Constitution of this state has declared that the
9 trial judge shall not intimate, state, comment upon or make
10 any statement to a trial jury about the facts in a case.
11 Since you are the sole judge of the facts, you are not to
12 infer from anything that I have said during the progress of
13 this trial in ruling upon the admissibility of evidence or
14 otherwise or anything that I say during the course of this
15 charge to you that I have an opinion about the facts in this
16 case. The law does not allow me to have an opinion about the
17 facts. That is a matter solely for you, the jury, to
18 determine.

19 As jurors, it is your duty to determine, as I have
20 stated to you, the effect, the value, and the weight of the
21 evidence presented during the course of this trial.
22 Necessarily then, you must assess the credibility of the
23 witnesses who have testified in this case. Credibility is
24 simply a legalistic term which means believability.

25 I charge you that in determining the question of the

1 credibility or the believability of the witnesses, you may
2 believe one witness as against several witnesses or several
3 witnesses as against one witness. You may believe a part of
4 the testimony of a witness and reject the remaining part of
5 the testimony of that same witness. You may believe the
6 testimony of a witness in its entirety or reject the
7 testimony of a witness in its entirety.

8 You may consider whether any witness has exhibited any
9 interest, any bias or any prejudice in the case and you may
10 consider the demeanor of a witness, the appearance of a
11 witness from the witness stand, and you may consider the
12 opportunity for knowledge concerning those things about which
13 a witness testifies.

14 And in doing so and exercising your mental processes,
15 the law simply requires that you exercise your good judgment,
16 your common sense, your sense of logic and reason, and your
17 experiences in life. You then apply these attributes of
18 ability to the evidence and determine the weight of the
19 evidence and to these state of facts as determined by you,
20 the jury, you take and apply the law as I state it to you and
21 thus arrive at a verdict in the case.

22 Now, you are to reach your verdicts based on the
23 evidence that has been presented in court. This is real
24 life. It has nothing to do with any TV shows, any movies or
25 anything outside the evidence that you have heard presented

1 in this court. For you to do that would be improper.

2 Now, I'm going to speak with you about these charges.
3 Before I get into the actual charges, I'm going to speak with
4 you about direct and circumstantial evidence, since I've just
5 discussed what I just presented to you.

6 There are two types of evidence which are generally
7 presented during a trial. That's direct evidence and
8 circumstantial evidence.

9 Direct evidence is the testimony of a person who claims
10 to have actual knowledge of the facts, such as an eyewitness.
11 It is evidence which immediately establishes the main fact to
12 be proved.

13 Circumstantial evidence is proof of a chain of facts and
14 circumstances indicating the existence of a fact. It is
15 evidence which immediately establishes collateral facts from
16 which the main fact can be inferred. Circumstantial evidence
17 is based on inference and not on personal knowledge or
18 observation.

19 The law makes absolutely no distinction between the
20 weight or the value to be given to either direct or
21 circumstantial evidence, nor is a greater degree of certainty
22 required of circumstantial evidence than of direct evidence.
23 You should weigh all of the evidence in the case. After
24 weighing all of the evidence, if you are not convinced of the
25 guilt of the defendant beyond a reasonable doubt, you must

1 find the defendant not guilty.

2 Also at this time before I get into the specific
3 charges, I'm going to talk to you about the failure -- or
4 correct that. This is to do with constitutional right to
5 remain silent. It's the election of a defendant to not
6 testify.

7 I instruct you and emphasize to you that the fact the
8 defendant did not testify is not a factor to be considered by
9 you in any way in your deliberation and in your consideration
10 on the question of the guilt or the innocence of the
11 defendant. It must not be considered by you in any manner
12 whatsoever.

13 A defendant has the constitutional right to remain
14 silent and the assertion of this right must not be considered
15 by you in your deliberations. I repeat, under your oath, you
16 are to draw no conclusion whatsoever from the fact that the
17 defendant in this case did not testify. The fact that this
18 defendant did not testify should not even be discussed in the
19 jury room.

20 The burden of proof, as I have stated to you, is on the
21 State. A defendant is not required to prove his innocence.
22 The burden of proof remains on the State to prove guilt
23 beyond a reasonable doubt.

24 The first indictment I will speak with you about is that
25 of the crime of murder. Murder is the killing of any person

1 with malice aforethought, either expressed or inferred. And
2 I point out to you inferred also means implied.

3 Now, upon the principle in theory of our law that any
4 greater offense includes a lesser offense in some cases, the
5 charge of murder also includes the lesser offense of
6 voluntary manslaughter, even though the charge of voluntary
7 manslaughter is not written into the body of this particular
8 indictment. I'm going to define for you the law of murder
9 and then I'm going to define for you the law of voluntary
10 manslaughter.

11 Murder is the unlawful killing of any person with malice
12 aforethought, either expressed or inferred. Hence, in order
13 to convict one of murder, the State must not only prove the
14 killing of the deceased by the defendant, but that it was
15 done with malice aforethought and such proof must be beyond a
16 reasonable doubt.

17 Malice aforethought is an essential element in the crime
18 of murder. What is malice? Malice is defined in the law of
19 homicide as a term of art. Malice does not necessarily mean
20 an actual intent to kill. This is a technical term importing
21 wickedness and excluding just cause or legal excuse. It is
22 something which springs from wickedness, from depravity, from
23 a depraved spirit, from a heart devoid of social duty, and
24 fatally bent on mischief.

25 The words expressed or inferred malice do not mean

1 different kinds of malice, but merely the manner in which the
2 only kind of malice known to the law may be shown to exist.
3 That is to say either by direct evidence or by inference.

4 Malice may be expressed where previous threats of
5 vengeance or lying in wait or other circumstances show
6 directly that an intent to kill was entertained. Malice may
7 be inferred where, though no expressed intent to kill is
8 proved by direct evidence, it may be inferred from the facts
9 and circumstances which are proved.

10 Malice may be inferred from the willful, deliberate, and
11 intentional doing of an unlawful act without just cause or
12 legal excuse. In other words, in its general meaning, malice
13 means the doing of a wrongful act intentionally, without
14 justification or legal excuse.

15 But even if facts proved are sufficient to raise an
16 inference of malice, this inference would be simply an
17 evidentiary fact to be taken into consideration by you along
18 with all the other evidence in this case and you may give it
19 such weight as you determine it should receive as to whether
20 or not malice has been proved beyond a reasonable doubt.

21 And it will be observed, ladies and gentlemen, that
22 where there must be malice aforethought and while the law
23 does not require that malice shall exist for any particular
24 length of time before the commission of the act, it must be
25 aforethought. There must be a combination of the previous

1 evil intent and the act of producing the fatal result.

2 The State is not required to prove a motive for a
3 homicide.

4 I am now going to define for you the law of voluntary
5 manslaughter. I have already indicated to you and instructed
6 you that an indictment for murder includes the lesser crime
7 of voluntary manslaughter, even though the lesser crime of
8 voluntary manslaughter is not physically written into the
9 bill of indictment. In other words, a defendant indicted for
10 murder may be convicted of voluntary manslaughter if the
11 evidence warrants it.

12 Now, what is manslaughter? Manslaughter is the unlawful
13 killing of a human being without malice, expressed or
14 inferred. You will notice then, ladies and gentlemen, that
15 the absence of malice is what distinguishes voluntary
16 manslaughter from murder.

17 I have instructed you that malice is an essential
18 element of the crime of murder. Malice is not an essential
19 element of the crime of voluntary manslaughter. The presence
20 of malice in murder and the absence of malice in voluntary
21 manslaughter is what distinguishes these offenses.

22 Now, what is voluntary manslaughter? Voluntary
23 manslaughter is the felonious taking of a life of another
24 human being in sudden heat and passion upon a sufficient
25 legal provocation. The law recognizes, ladies and gentlemen,

1 the fact that sudden heat and passion may for the time being
2 affect one's self control, temporarily disturb the sway of
3 reason, and hence reduces the crime of murder to that of
4 voluntary manslaughter where the homicide was done in sudden
5 heat and passion provided there was a sufficient legal
6 provocation.

7 Sufficient legal provocation would or -- sorry -- must
8 be such and would be calculated to cause a person of ordinary
9 reason and prudence, sometimes described as the average
10 person, to become enraged. That is to experience sudden heat
11 and passion and hence to lose control of himself temporarily,
12 and frequently it involves some physical aggression or
13 assault.

14 It can be said by way of illustration and illustration
15 alone it can be when an unjustifiable assault is made of
16 violence or with circumstances of indignity upon a man's
17 person and the party so assaulted kills the aggressor. In
18 that illustration, the crime will be reduced to manslaughter
19 if it appears that the assault was resented immediately and
20 the aggressor was killed in the heat of blood, for it will be
21 observed that the killing must be in sudden heat and passion.

22 And if, in fact, the passion had cooled or if there was
23 sufficient time between the provocation and the killing for
24 passion to cool, the killing would not be attributed to the
25 heat of passion, but to malice. The sufficiency of cooling

1 time would depend upon whether there was time, all
2 circumstances being considered, for a person of ordinary
3 reason and prudence to cool.

4 Now, I'm not commenting upon the facts. I'm not telling
5 you -- as I told you, I don't get involved in the facts and
6 these illustrations are strictly illustration and you have to
7 find the facts from the evidence presented.

8 The next indictment that I come to is that of armed
9 robbery. I charge you 16-11-330 of the Code of Laws of the
10 State of South Carolina, as amended, for armed robbery. A
11 person who commits robbery while armed with a pistol, dirk,
12 slingshot, metal knuckles, razor or other deadly weapon or
13 while alleging either by action or words he was armed while
14 using a representation of a deadly weapon or any object which
15 a person present during the commission of the robbery
16 reasonably believed to be a deadly weapon is guilty of armed
17 robbery. A pistol or gun or rifle is a deadly weapon,
18 whether or not it was actually loaded with ammunition at the
19 time of the robbery.

20 I need to define robbery for you. Robbery is the
21 felonious taking away of the goods of another against the
22 owner's will and without his consent by force, intimidation
23 or violence. It is essentially larceny by force.

24 The next indictment is the possession of a weapon during
25 the commission of a violent crime. I charge you Section 16-

1 23-490 of the Code of Laws of the State of South Carolina of
2 1976, as amended. Section 16-23-490 makes it illegal to
3 possess a firearm or visibly display what appeared to be a
4 firearm during the commission of a violent crime. Section
5 16-1-60 provides that a violent crime includes the offenses
6 of murder, voluntary manslaughter, and armed robbery.

7 For you to find the defendant guilty of this separate
8 statutory offense of possessing a firearm during a violent
9 crime, you must first find the defendant guilty of the
10 violent crime. If you find the defendant guilty of the
11 violent crime, then you must determine whether the State has
12 proved beyond a reasonable doubt that the defendant was in
13 possession of a firearm or visibly displayed what appeared to
14 be a firearm during the commission of the violent crime.

15 As used in Section 16-23-490 of the South Carolina Code,
16 a firearm is defined as any machine gun, automatic rifle,
17 revolver, pistol or any weapon which will or is designed to
18 or may be readily converted to expel a projectile.

19 I will speak with you about the hand of one is the hand
20 of all. If a crime is committed by two or more persons who
21 are acting together in the commission of that offense, the
22 act of one is the act of all. This is true if there are two
23 people or more than two involved in the act.

24 Two or more than two people can be guilty of killing
25 another when only one of the persons fired the shot or

1 committed the act that caused death. If two or more people
2 are together, acting together, assisting each other in the
3 commission of an offense, the law says that under these
4 circumstances the act of one is the act of all, the hand of
5 one is the hand of all.

6 I charge you that mere presence at the scene of a crime
7 is not a crime.

8 I will speak with you about voluntary intoxication. I
9 charge you that voluntary intoxication is never an excuse for
10 or a defense to a crime, regardless of whether the crime was
11 one involving general or specific intent. A person who
12 voluntarily renders himself intoxicated is no less
13 responsible for his acts while in such condition.

14 If one voluntarily drinks intoxicating liquors, wine or
15 beer, or is under the influence of drugs and becomes
16 intoxicated of whatever degree and if while in that condition
17 commits an act which would be a crime if it had been
18 committed by a sober person, the fact of drunkenness would
19 not relieve the intoxicated person from responsibility.

20 There have been admitted into the record of this case
21 statements alleged to have been made by the defendant.
22 Before you may consider statements as evidence for any
23 purpose, you must first determine four questions.

24 First, did the defendant make the statement?

25 Second, was the statement -- correction. Was the

1 defendant warned of his constitutional rights?

2 Third, did the defendant knowingly and intelligently
3 waive his constitutional rights?

4 And fourth, was the statement given voluntarily?

5 The fact that the Court has admitted the statement into
6 evidence should not be considered by you as any evidence
7 whatsoever that the defendant made such a statement or that
8 the constitutional safeguards which are required, in fact,
9 were provided and waived by defendant or that the statement
10 was voluntarily given because these issues are for you, the
11 jury, to determine. The State must prove beyond a reasonable
12 doubt each of the four essentials or the four requirements
13 which I just stated to you before you may consider the
14 statement or statements as evidence for any purpose
15 whatsoever.

16 Now, as to the first requirement, did the defendant make
17 a statement, if you conclude that the defendant did not make
18 the statement, you must then completely and totally disregard
19 the statement. If you conclude that the defendant did not
20 make the statement, you cannot and you must not consider the
21 statement as evidence in any manner whatsoever and you should
22 completely disregard the statement in its entirety and every
23 part of it.

24 If you find that the defendant did make the statement,
25 you must then consider the second requirement. Was the

1 defendant warned of his constitutional rights? When an
2 individual is taken into custody or otherwise deprived of his
3 freedom of action in any significant way by police or law
4 enforcement officer, he must be warned of his constitutional
5 rights prior and before any custodial interrogation or
6 custodial question, and these rights are:

7 A. That he has the right to remain silent.

8 B. That any statement that he does make -- let me start
9 over on that. That any statement that he does make
10 can and will be used against him in a court of law.

11 C. That he has the right to select a lawyer of his
12 choice, but if he does not have the money or
13 resources to employ a lawyer, the Court will appoint
14 and provide a lawyer to represent him without cost or
15 expense to him, if he so desires.

16 D. That he has the right to consult an attorney or
17 lawyer before answering any questions or making any
18 statement.

19 E. That he has the right to have his lawyer present with
20 him at all times during all interviews and
21 interrogations.

22 If you determine that these constitutional warnings were
23 not given to the defendant prior to interrogation and the
24 taking of the statement or that the defendant was not
25 afforded the opportunity to exercise these rights, you must

1 completely disregard the statement and you cannot consider
2 the statement as evidence in any manner whatsoever.

3 If you find that the defendant did make the statement
4 and if you conclude that these constitutional warnings were,
5 in fact, given to the defendant and the defendant was
6 afforded an opportunity to exercise these constitutional
7 rights, you must consider the third requirement. Did the
8 defendant knowingly and intelligently waive his
9 constitutional rights?

10 Before you can consider the statement as evidence in
11 this case, the State must prove beyond a reasonable doubt
12 that the defendant, after being given his constitutional
13 warnings, knowingly and intelligently waived his
14 constitutional rights and agreed to answer questions and make
15 a statement.

16 Therefore, if you find that the defendant did not
17 knowingly and intentionally waive his constitutional rights,
18 then any answer given by him or any statement made by him
19 cannot be used against him and you must completely disregard
20 all of the testimony concerning any such answers or alleged
21 statements.

22 If you find that the defendant did make the statements
23 and if you conclude that the constitutional warnings were, in
24 fact, given to the defendant and that the defendant was
25 afforded an opportunity to exercise these constitutional

1 rights and if you further find that the defendant, after
2 being given his constitutional warnings, knowingly and
3 intelligently waived his constitutional rights and agreed to
4 answer the questions and make a statement, you must next
5 consider the fourth requirement. Was the statement given
6 voluntarily?

7 The word voluntarily means that the statement was the
8 expression of the defendant's own free will and was not
9 induced by the pressure, force or fear or the influence or
10 hope or promise of some benefit or reward or extracted by
11 threats, coercion or intimidation.

12 A statement is not volunteered -- sorry -- voluntary and
13 may not be used against a defendant unless it is the product
14 of an essentially free and unrestrained choice by its maker.
15 If the statement is voluntary, if the defendant has will to
16 make a statement, it may be used against him. If the
17 statement is not voluntary, it cannot be used against him.
18 The true test to be applied is whether such statement is
19 freely, voluntarily, and understandingly made without
20 compulsion or inducement.

21 In determining whether or not the alleged statement of
22 the defendant was voluntary, you may consider all of the
23 facts and circumstances surrounding the taking or the making
24 of the statement concerning and relating to the voluntary or
25 involuntary character thereof and you may consider all of the

1 evidence in the case in reaching an ultimate conclusion as to
2 the voluntary or involuntary character of any such statement.

3 The ultimate question to be resolved by you with respect
4 to the alleged statements of the defendant, in addition to
5 the questions of whether or not the defendant, in fact, made
6 the statement and whether or not his constitutional rights
7 were observed and knowingly and intelligently waived by him,
8 is was the statement the expression of the defendant's own
9 free will, made without compulsion or inducement, but
10 representing an essential free and unconstrained choice by
11 the defendant or was it the product of the overborne will of
12 the defendant?

13 With regard to the alleged statements of the defendant,
14 I instruct you that the State must prove by evidence each and
15 every requirement by which I've instructed you and such proof
16 must be beyond a reasonable doubt before you can consider the
17 alleged statement as evidence in the case. Absent any one of
18 these requirements about which I've instructed you, the
19 alleged statement must be disregarded completely and you will
20 accord no evidential weight whatsoever to it or to any part
21 of it.

22 On the other hand, if you find beyond a reasonable doubt
23 that the defendant made the statement, that the defendant was
24 given the required constitutional warnings before the
25 interrogation, that the defendant knowingly and intelligently

1 waived his constitutional rights and thereafter gave a
2 voluntary statement, the statement may be considered by you
3 together with all the other evidence in the case and given
4 such weight and such value and such effect as to the whole or
5 any part thereof to which you conclude it is entitled.

6 Ladies and gentlemen, you're not partisans or advocates
7 for the State of South Carolina or the defendant. You do not
8 serve as jurors to reward friends or punish enemies.
9 Obviously, such a perverted system of justice would be
10 intolerable in our society.

11 You have been selected by both the State and the
12 defendant as fair and impartial jurors. It is your duty then
13 by your joint deliberations to determine the facts of this
14 case, giving to the defendant the benefit of every reasonable
15 doubt on each and every issue. Then to the facts which you
16 determine, you then take and apply the law which has been
17 given to you by the Court and thus arrive at a verdict.

18 When you have accomplished these responsibilities, you
19 will have satisfied your oath as jurors and you will have
20 discharged your duty to the Court. I will now speak with you
21 about the forms of the verdict in this case.

22 If the State has failed to prove the guilt of the
23 defendant beyond a reasonable doubt, your verdict would be
24 two words: not guilty. If the State has proved the guilt of
25 this defendant beyond a reasonable doubt, your verdict will

1 be one word: guilty.

2 The verdict that you render in this case must be the
3 verdict of each and every juror. It must be your unanimous
4 verdict. All twelve deliberating jurors must agree on the
5 verdict which you authorize Madam Forelady to write for the
6 jury.

7 Now, Madam Forelady, we've got three different
8 indictments here. You have to deliberate on each of the
9 indictments.

10 I'm going to -- I'm going to take the armed robbery one
11 first. After the jury has deliberated, Madam Forelady, and
12 the choices of verdict here would be guilty or not guilty, it
13 would be your duty to write in the appropriate verdict on
14 this back of the indictment where it says verdict and sign
15 your name and put the date on there. Okay?

16 And I gave you specific instructions about the
17 possession of a weapon during the commission of a violent
18 crime. Same situation there. The possible verdicts there
19 would be guilty or not guilty. You would need to enter that,
20 sign your name and put a date.

21 Now, as to the murder indictment, there's three possible
22 verdicts there and it will be your duty to write in whatever
23 the verdict may be. The possible verdicts would be murder,
24 voluntary manslaughter or not guilty. You need to sign your
25 name and date where it says date. Okay?

1 I'm going to ask the twelve jurors to step back. We
2 need to keep the alternates separate for right now. We've
3 got lunch coming here. We can arrange for a different room
4 for the alternates to enjoy lunch. Once again, I want to
5 thank Madam Clerk for arranging that for us and we're going
6 to expand a room back here where you'll have plenty of room
7 for lunch.

8 Madam Forelady, once the jury has reached verdicts on
9 these three indictments, it will be your duty to knock on the
10 door and let the bailiff know so we can receive the verdicts.

11 Do not begin your deliberations until I send the
12 indictments along with all the exhibits back to you. Once we
13 have done that, then you may begin your deliberations, but
14 don't do that until I have done that because I've got to
15 check in with counsel one last time before we turn you loose
16 on the deliberations.

17 So if y'all would step back, the first twelve of you,
18 and then, Madam Clerk, we need to find a room for the two
19 alternates. The two alternates will remain with us, please.

20 (WHEREUPON, the jury exited the courtroom.)

21 THE COURT: Now, the alternates are Mr. Donnie Chavis
22 and Ms. Megan Little. Okay. We need to find a room for them
23 and take their lunch in. Before we do that, I have to check
24 in with the attorneys to see if I overlooked anything.

25 MS. JOHNSON-LEE: The State has seen no issues, Your

1 Honor.

2 MS. COPELAND-LITTLE: Just the charge I had asked for
3 previously which Your Honor denied the charge. I would take
4 exception to that.

5 THE COURT: So noted.

6 I want to take this time to thank both -- all three of
7 you for your presentation and working together and getting
8 the case presented and diligently representing your positions
9 in the case. It makes my job so much easier when I've got
10 really competent great lawyers before me. Y'all just don't
11 know how much I appreciate your competence and working
12 together to get all this presented.

13 MS. JOHNSON-LEE: Thank you, Your Honor.

14 MR. REDMOND: Thank you, Your Honor.

15 MS. COPELAND-LITTLE: Thank you, Your Honor.

16 THE COURT: I need to ask you to do one more thing.
17 It's to check off on these exhibits and then we'll send them
18 back with these indictments.

19 MS. COPELAND-LITTLE: Yes, sir. Are we going to wait
20 until after they eat to send them back or --

21 THE COURT: We can go ahead and do it and turn them
22 loose.

23 MS. COPELAND-LITTLE: Okay.

24 THE COURT: At this time, I want to thank the alternates
25 for serving. I know you'd like to go back there and take

1 part, but unfortunately, if I were to allow that to happen,
2 there could be consequences. Alternate jurors serve in case
3 one of the first twelve become incapacitated for any reasons.
4 Your duties are now ended, but I hope you will stay and
5 enjoy some lunch and then you're welcome to stay and watch
6 the next thing we do and, you know, if you want to stay and
7 watch and see what happens with this case, that's fine.
8 We're going to probably do some other things too, but right
9 now we're going to be standing at ease to get this lunch in
10 there and also checking off on the exhibits. Okay?
11 (WHEREUPON, the alternate jurors were released.)
12 MS. JOHNSON-LEE: Thank you.
13 MR. REDMOND: Thank you, Your Honor.
14 THE COURT: How many total did you have?
15 MR. REDMOND: I don't even want to say. I think it's
16 240.
17 THE CLERK: 240.
18 (WHEREUPON, the exhibits were checked and then the
19 exhibits and indictments were delivered to the jury room
20 and jury deliberations began at approximately 11:28
21 a.m.)
22 (WHEREUPON, there was a break in the proceedings, after
23 which the proceedings resumed as follows.)
24 THE COURT: Go into jury deliberations and ask her to
25 step out here, please.

1 (WHEREUPON, the jury forelady entered the courtroom.)
2 THE COURT: Madam Forelady?
3 THE FORELADY: Yes?
4 THE COURT: It is now about 5:10 and I have been
5 informed that we will be back here tomorrow to do other work.
6 So what I normally do in this situation when it gets after 5
7 and I've got a jury deliberation, I let the foreperson know
8 that we have the option certainly of coming back tomorrow, if
9 the jury so desires, but I have to leave that up for you to
10 talk with the jury, poll them about it to see if you want to
11 continue to work tonight or if they would rather come back in
12 the morning since we know we will be operating tomorrow.
13 THE FORELADY: Okay.
14 THE COURT: Okay? I will await your advice.
15 (WHEREUPON, the forelady exited the courtroom.)
16 THE COURT: We'll stand at ease until we get further
17 instructions.
18 (WHEREUPON, there was a break in the proceedings, after
19 which the proceedings resumed as follows.)
20 (WHEREUPON, the forelady entered the courtroom.)
21 THE COURT: Court come to order.
22 THE FORELADY: Coming back tomorrow.
23 THE COURT: All right. That's fine. 9:30 tomorrow.
24 Everybody else remain seated while the jury -- well, I've got
25 to get them out here and give them some instructions for

1 tonight. Bring them out.

2 THE BAILIFF: Okay.

3 (WHEREUPON, the jury entered the courtroom.)

4 THE COURT: All right. Ladies and gentlemen of the
5 jury, this is my standard practice after we get past this
6 time of the evening. I always give deliberating jurors the
7 option of continuing or either coming back in the morning
8 because court will be operating tomorrow.

9 And I asked Madam Forelady to speak with you about that
10 and it appears that we will cease deliberations for the night
11 and ask you to be back here at 9:30 in the morning. If
12 you'll report straight back to the jury room and begin your
13 deliberations or restart your deliberations at that time.

14 Once again, I need to instruct you do not allow anybody
15 to contact you concerning this case. Do not discuss the case
16 with anyone. Don't even discuss it with any family members.
17 Also, you have to decide this case based on the evidence that
18 was presented in court. So not do any independent research.

19 Okay? Y'all have a good night and we'll see you in the
20 morning.

21 Everybody else remain seated.

22 (WHEREUPON, the jury exited the courtroom.)

23 THE COURT: Anyone in the courtroom that are with the
24 victim's family or have interest in the victim's family here,
25 you may leave at this time. We don't want any -- we don't

1 want any problems. Okay? So y'all may depart at this time
2 and we'll have a little delay and we will release others here
3 in the courtroom.

4 Court is in recess until 9:30 in the morning.

5 (WHEREUPON, the proceedings adjourned for the day.)

6 JULY 19, 2019

7 (WHEREUPON, jury deliberations resumed at approximately
8 9:30 a.m.)

9 (WHEREUPON, the proceedings resumed at approximately
10 11:00 a.m. as follows.)

11 THE COURT: The jury has knocked on the door and
12 informed Mr. Bailiff they have reached a verdict. I want to
13 talk with everybody in the courtroom before we bring them in.
14 I know it's been a long week. There's a lot of emotions. In
15 a case like this, we don't want anybody else hurt, no matter
16 what this verdict is.

17 So I guess the best way and simplest way for me to say
18 it is, no matter what the verdict is, if you think you cannot
19 handle it emotionally, it probably would be better off if you
20 step out because we don't want any outbursts and we don't
21 want any further violence. No matter what the outcome of
22 this is, there's enough injury already been done.

23 All right. Mr. Bailiff, if you'll bring them in.

24 (WHEREUPON, the jury entered the courtroom.)

25 THE COURT: Thank you, sir.

1 Madam Clerk?

2 THE CLERK: Madam Foreperson, have you reached a
3 verdict?

4 THE FORELADY: Yes.

5 THE CLERK: Can you pass it up, please?

6 THE COURT: All verdict forms have been completed,
7 signed and dated. Madam Clerk, you may publish the verdicts,
8 beginning with 408.

9 VERDICTS

10 THE CLERK: Docket Number 2018-GS-13-408, the State of
11 South Carolina versus -- Court of General Sessions. It's the
12 State versus James David Beasley -- Busby. I'll get it right
13 in a minute. Indictment for murder. The verdict is --
14 that's not -- the verdict is -- okay. The verdict is
15 voluntary manslaughter guilty.

16 Docket Number 2018-GS-410, State of South Carolina
17 versus David Busby, indicted for possession of a weapon
18 during the commission of a violent crime, the verdict is
19 guilty.

20 Docket number 2018-GS-13-409, the State of South
21 Carolina versus James David Busby, indictment for armed
22 robbery, the verdict is guilty.

23 Is this your verdict?

24 THE FORELADY: Yes.

25 THE CLERK: So say you all?

1 THE JURORS: Yes.

2 THE COURT: Counsel, anything further of the jury?

3 MS. COPELAND-LITTLE: Your Honor, just -- just to be
4 clear, could we just ask anybody that -- or poll the jury and
5 ask if anybody didn't agree to notify us.

6 THE COURT: Madam Clerk, poll the jury.

7 THE CLERK: As I call your name, please answer.

8 Darlene Adams, is this your verdict and is it still your
9 verdict?

10 JUROR NUMBER 2: Yes.

11 THE CLERK: Donna Teal, is this your verdict and is it
12 still your verdict?

13 JUROR NUMBER 137: Yes.

14 THE CLERK: Robert Hammond, is this your verdict and is
15 it still your verdict?

16 JUROR NUMBER 73: Yes.

17 THE CLERK: Dawone Louallen, is this your verdict and is
18 it still your verdict?

19 JUROR NUMBER 97: Yes.

20 THE CLERK: Delisa Davis, is this your verdict and is it
21 still your verdict?

22 JUROR NUMBER 46: Yes.

23 THE CLERK: Terry Williams, is this your verdict and is
24 it still your verdict?

25 JUROR NUMBER 145: Yes.

1 THE CLERK: Sonya Ingram, is this your verdict and is it
2 still your verdict?
3 JUROR NUMBER 80: Yes.
4 THE CLERK: Mia Hillian, is this your verdict and is it
5 still your verdict?
6 JUROR NUMBER 78: Yes.
7 THE CLERK: Hampson Blakeney, is this your verdict?
8 JUROR NUMBER 12: Yes.
9 THE CLERK: And is it still your verdict?
10 JUROR NUMBER 12: Yes.
11 THE CLERK: Taylor Freeman, is this your verdict and is
12 it still your verdict?
13 JUROR NUMBER 62: Yes.
14 THE CLERK: Hayne Blakeney, is this your verdict?
15 JUROR NUMBER 13: Yes.
16 THE CLERK: Is it still your verdict?
17 JUROR NUMBER 13: Yes.
18 THE COURT: Anything further?
19 MS. COPELAND-LITTLE: No, Your Honor.
20 THE COURT: Anything from the State?
21 THE CLERK: I missed one, I guess. Oh, Kristin --
22 JUROR NUMBER 16: Kirsten.
23 THE CLERK: Kirsten Boan, is this your verdict?
24 JUROR NUMBER 16: Yes, ma'am.
25 THE CLERK: Is it still your verdict?

1 JUROR NUMBER 16: Yes, ma'am.

2 THE CLERK: Okay. Thank you.

3 MS. JOHNSON-LEE: Nothing from the State, Your Honor.

4 THE COURT: All right. It's been a long week for all of
5 us and I want to thank you for your service and I especially
6 want to thank you for your patience with the Court.

7 As you know, the courthouse has been here since the mid-
8 70s and there was a recent modification and remodeling of the
9 courthouse. And since that has been completed, this is the
10 first jury trial that I've had in the new facility. I've had
11 many, many in the past and one of our problems was the jury
12 room.

13 From my experience this week in observing you, the jury,
14 having to be confined in that particular new jury room has
15 enlightened all of us that we're going to have to go back to
16 County Council and ask for some modifications, and I
17 apologize for it. Somewhere along the track of this
18 remodeling, things got out of hand because in the old jury
19 room, which is located back here, we had two restrooms, and
20 now we're down to one, which I don't know the answer of why
21 that happened, but I apologize for it. We will make every
22 attempt to try to look into that.

23 But once again, thank you for serving. I hope it's been
24 a rewarding experience for you and I hope in the future if
25 you're asked to serve on a jury that you'll be willing to do

1 so.

2 Now, before you go, I'm going to turn it back over to
3 Madam Clerk to tell you about your expense checks. Let me
4 say this in protection of Madam Clerk and her office and
5 myself, we do not control those expense checks. Jury pay is
6 controlled exclusively by the County Council and I profusely
7 apologize to you for the small amount of pay that you get.
8 That has become an issue in a lot of the counties as compared
9 to the federal court jury service, which is much more in line
10 as far as trying to help you with expenses.

11 Before we go, I also want to thank Madam Clerk for
12 arranging those meals for us that she did to help out for
13 that.

14 All right. Completely something that has nothing to do
15 with this case, Mr. Blakeney, Mr. Hayne Blakeney, your father
16 was Hayne Blakeney?

17 JUROR NUMBER 13: Yes, sir.

18 THE COURT: He was a classmate of mine.

19 JUROR NUMBER 13: Okay.

20 THE COURT: And I think you might've been a classmate
21 with my daughter.

22 JUROR NUMBER 13: Yes, I was.

23 THE COURT: How is your father?

24 JUROR NUMBER 13: He's okay.

25 THE COURT: You do know what he is famous for from high

1 school days?

2 JUROR NUMBER 13: I heard, but I need somebody else to
3 tell me too.

4 THE COURT: I do want to make sure you know about that
5 because he is quite famous and quite popular with our high
6 school class.

7 JUROR NUMBER 13: I'm told.

8 THE COURT: He served on a jury here one time and we
9 talked about it.

10 Okay. Madam Clerk?

11 THE CLERK: I just want to thank y'all for serving and
12 your checks will be in the mail. You've heard that before.
13 And if you need an excuse for work, you can come by the
14 clerk's office and they'll get you one. Thank you again.

15 THE COURT: See, Ms. Miles is very smart. She knows to
16 mail you that check because if she were to hand it to you
17 now, you're probably going to yell at her. It's not her
18 fault.

19 Thank you so much. Y'all are dismissed.

20 Now, before you go, I always do this with the jurors
21 that have served in my court. If you would like to stay and
22 watch the mitigation, which means the sentencing phase of
23 this case, it will be next. I will hear from both sides
24 concerning any mitigation, concerning sentencing, and that
25 will be completed immediately after this.

1 If you would like to stay and watch, you're more than
2 welcome to do so and if you would be more comfortable in
3 doing that, if you so desire, you can step back and relax in
4 one of the chairs back in the left side of the gallery. I'll
5 leave that up to you. Otherwise, you're free to go. Okay?

6 But everybody else is going to remain seated while the
7 jury departs or either relocates to the courtroom. So
8 everybody just stay where they are until the jury departs or
9 either stays in the courtroom.

10 (WHEREUPON, the jury was released.)

11 THE COURT: The defendant, Mr. Busby, please. I would
12 prefer that we would take the following approach, but I
13 certainly will adjust according to what counsel may wish to
14 do about the order that we're going to do this, but normally
15 I would hear from the State, then I prefer to hear from the
16 defense, and then I would allow any statements by family or
17 any other interested parties before we finalize the
18 mitigation.

19 MS. COPELAND-LITTLE: Judge?

20 THE COURT: Also, even before we get to that, the
21 motions. I'm sorry.

22 MS. COPELAND-LITTLE: Yes, Your Honor.

23 THE COURT: Okay.

24 MS. COPELAND-LITTLE: Your Honor, at this time the
25 defense moves for a new trial based on failure of the State

1 to present sufficient evidence in this case.

2 THE COURT: What sayeth the State?

3 MR. REDMOND: The State would submit that these matters
4 -- I think there's more than enough evidence to sustain the
5 convictions as they are. So I guess I will interpret this
6 also as a motion to renew the directed verdict motion at the
7 end of the State's and the defense case. So I'll respond to
8 that at this time as well for the same reasons.

9 THE COURT: The motion is denied based on the evidence
10 and the jury verdict.

11 MR. REDMOND: Your Honor, I'm going to yield to Senior
12 Assistant Solicitor Johnson-Lee and let her give the -- I
13 guess start with the State's portion on the sentencing.

14 MS. JOHNSON-LEE: Your Honor, in light of the heinous
15 nature of the killing of Farris Mickey Short, the State would
16 recommend the maximum sentence on each of the charges as
17 allowed by statute.

18 As far as prior record, there is no significant prior
19 record other than magistrate's court offenses and most
20 recently he did plead in Lancaster County to a receiving
21 stolen goods, which was a gun in that county.

22 MR. REDMOND: May it please the Court, Your Honor. I
23 would concur. I would just want to clarify and make sure
24 that when we say maximum, we are asking that the Court
25 consider consecutive sentences in light of the fact that Mr.

1 Short's life ended as a result of this incident during the
2 course of this robbery.

3 I think that -- and when I first moved to Chesterfield
4 County about 10 years ago, I remember I think we had gone a
5 couple years without a murder before I moved here. There was
6 a murder shortly after I moved here and then it was another
7 two-and-a-half years before there was another murder in
8 Chesterfield County.

9 Of course, we all know over the last few years there has
10 been a severe uptick in violent activity in this county, and
11 I think the Court is allowed through its sentence to send a
12 message to this defendant and hopefully that message will
13 then resound that these cases are going to be vigorously
14 prosecuted and we are going to seek to hopefully have the
15 perpetrators, if convicted, not be a threat to the public at
16 all here in Chesterfield County.

17 And I think that that's something that -- oh, and on
18 behalf of the family, I know during trial I haven't really
19 interacted much, but that's just my little -- that's my
20 thing. I don't really do much interaction during the course
21 of the trial and I haven't been involved in the case a long
22 time.

23 I only got to meet with y'all I think once at the office
24 before the trial, but my condolences went out then and
25 continue to go out to you.

1 Now, hopefully, I look at these situations as almost
2 being the last phase of the funeral for Mr. Short. There's
3 hopefully some closure. There's never closure, but hopefully
4 this will be the last part of that and hopefully he can truly
5 rest in peace.

6 The last thing I'll say, Judge, you know, is something
7 that hit me this morning. On my way here, I decided to go to
8 that spot on Wamble Hill Road and I had been there last week
9 in preparation of the trial, but went there this morning and
10 right to the spot where Mr. Short died. And one of the
11 things that struck me is -- like I said, I'm originally from
12 Darlington County, but I've lived here in Chesterfield County
13 for 10 years, but the view there is amazing and I can imagine
14 watching the sunset when you're looking to the west and all
15 of the sandhills you can see around there. It's one of the
16 more striking views I've seen since I've lived in
17 Chesterfield County.

18 And I know for the folks, for the family and the folks
19 here in Chesterfield, that view, that area is forever
20 tarnished because of the carnage that occurred at the hands
21 of the defendant. So I'd ask that you take that and, of
22 course, anything that the victim's family would have to say
23 in the course of your sentencing.

24 But I would reiterate the fact that we are asking for
25 maximum consecutive sentences in this case. I think the

1 heinous nature of it, the disregard, and you've heard the
2 testimony in this case, the fact that he went out of his way
3 to try to bring other people into this mess and actually did
4 affect other lives. So he touched a lot of people in a
5 negative way and I think your sentence should reflect that.

6 THE COURT: All right.

7 MS. JOHNSON-LEE: Your Honor, two of his three daughters
8 are here. The third daughter has some health issues; so
9 she's at home today. Her mother, who is Mr. Short's former
10 wife, they are seated in the jury box. This is Haley,
11 Farrah, and Melanie, and I do believe they wish to address
12 the court.

13 THE COURT: I want to thank you for being here. My
14 practice is to allow the victims to have the last say because
15 I would like for you to hear anything the defense may have to
16 say. Okay? So I'll come right back to you.

17 MR. REDMOND: And, Your Honor, with the court's
18 permission, may I sit down? My back has been bothering me
19 some this week and I was just wondering during the rest of
20 the presentation if I may be seated?

21 THE COURT: Sure.

22 MR. REDMOND: Thank you, Your Honor.

23 THE COURT: Ms. Little?

24 MS. COPELAND-LITTLE: Thank you, Your Honor.

25 First, I would also like to express my condolences to

1 you all for the loss of your loved one. And just a reminder
2 that under our Constitution, no defendant could ever be
3 prosecuted unless he had a lawyer. So I think a lot of
4 people here may not realize that we are all just doing our
5 jobs as part of the criminal justice system and I personally
6 am very sorry for your loss.

7 Your Honor, my client, James David Busby, is 32 years
8 old now. He went -- he's from the Jefferson area of
9 Chesterfield County. Judge, he went up to the ninth grade, I
10 believe, in public school and then later on obtained his GED.
11 Judge, he worked and I want to make sure I'm telling this
12 correctly. Your Honor, he worked for quite some time as a
13 welder. He's single, Judge. He has a 12-year-old son.

14 And, Your Honor, as the solicitor stated, he really has
15 no record to speak of. I think maybe possibly a DUI, a
16 possession of stolen property.

17 Judge, I want to just talk for a minute about -- touch
18 on the fact that methamphetamine or ice, meth, is really a
19 scourge on our society. Testimony in the trial showed that
20 the major players were all involved in the use of this drug.
21 They were selling, buying. They were certainly all using.

22 And I just want to ask the Court -- I know voluntarily
23 -- voluntary intoxication is not a defense, but I would ask
24 the Court to bear in mind that everyone involved or alleged
25 to be involved was under the influence and actively seeking

1 meth.

2 I've never seen anything like it since the -- since
3 crack first came around and everybody was on crack. My
4 understanding is that this drug is a lot cheaper than crack
5 and it lasts a lot longer, and I just -- I just think we've
6 got a bad problem here in Chesterfield County and in
7 Darlington County, and I would ask your Court -- the Court to
8 consider that my client was under the influence during the
9 time that this crime was committed.

10 Your Honor, also, I would ask the Court to -- in
11 response to their request for consecutive sentences, I would
12 ask the Court to not hold it against my client that he's
13 exercised his right to a trial. Judge, if he was before the
14 Court entering a plea, I understand that the Court would take
15 that into consideration, but he did have the right to a trial
16 and he felt that there was some very substantial issues that
17 would create doubt as to his guilt or innocence and, for
18 those reasons, he went forward with the trial and I would
19 just ask the Court to consider concurrent sentences as the
20 Court would likely do in the event of a guilty plea.

21 And that's all I have and, Your Honor, he is not being
22 disrespectful and I know you're going to ask him if he wants
23 to say anything, but on my advice, I've asked him not to
24 speak today.

25 THE COURT: All right. Mr. Busby,

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You certainly have a right to make a
3 statement at this time. That's strictly up to you.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: So I will ask you is there anything that you
6 would like to state at this time?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. Who do you want to hear from,
9 Solicitor?

10 MR. REDMOND: One thing I forgot to mention and, of
11 course, they're good friends of mine and I'd be remiss if I
12 did not mention the work put in by the Chesterfield County
13 Sheriff's Office, specifically the deputies that you heard
14 from, as well as the other deputies who investigated it.
15 Investigator Burns, Lt. Jordan, and I don't know if Joey
16 Carnes is here. Of course, they testified during the trial,
17 but Grant Polson as well. He wasn't an investigator, but his
18 actions right there at the beginning I think helped lead
19 toward putting everything together. So I'd be remiss if I
20 did not extend those thanks to them as well.

21 And as well to Angie Thurman, our coworker who was
22 drafted into a role in this case and we appreciate that as
23 well.

24 THE COURT: All right. I'd be glad to hear from the
25 family. We need your name.

1 MS. FARRAH SHORT: My name is Farrah Short and I'm the
2 victim's oldest daughter. And I think that he shouldn't have
3 been left like trash laying on the side of the road without
4 his face for a stranger to find him.

5 My sister has never got married. She doesn't have her
6 daddy to walk her down the aisle.

7 And drugs are just no excuse. I mean he's shown no
8 remorse and we don't know. I mean I don't know. Did my
9 daddy know it was coming? Did he suffer? He was just left
10 there.

11 And thank you.

12 THE COURT: Thank you for being here.

13 MS. MELANIE SHORT: My name is Melanie Short and I was
14 married to Mickey for 26 years. He was a good person and I
15 hope y'all understand he weren't a mean person. He would
16 give you the shirt on his back. He provided. He always
17 drove a truck. He never had a criminal record, never.

18 I don't know how all this happened. I don't, but I hope
19 and pray to God that Mr. Busby can find it in his heart to
20 let somebody know, to let his family, his children know why
21 he killed him and left him like that like trash. Not only
22 left him as trash, went -- went somewhere for days before he
23 got arrested, and it just bothers me how in the world can you
24 do that? It's not fair and drugs is no excuse for that, to
25 just leave somebody like that.

1 As bad as all this happened and me hearing about the
2 girls and even though we were divorced, it was hard hearing
3 that, knowing Haley went to school and went 13 years and
4 never missed a day, went to college and never missed a day,
5 and Mickey not helping her with that and her struggling
6 paying her student loans and giving young girls money, that
7 makes me mad, but not mad enough to kill somebody. You know,
8 you just don't do that and leave them like that.

9 So I hope and pray that he can find it in his heart to
10 let somebody know so his children can find out why he did
11 that and if Mickey suffered. I hope and pray he didn't and I
12 want to thank everyone for what they've done because they
13 have -- everybody has worked hard. Thank y'all.

14 THE COURT: Thank you for being here.

15 MS. HALEY SHORT: Your Honor, my name is Haley Short and
16 I want to say that I know my father was not perfect and he
17 did have a drug problem, but he was a very loving person and
18 I know that he loved me.

19 Near the end of his life, he was homeless. He didn't
20 have anywhere to live and I said, daddy, you can just come
21 and stay with me, but he told my other sister -- he said I'm
22 not going to go stay with Haley because I do not want any of
23 those people around her. I do not want her to be around
24 drugs and I'm so proud of her and I just can't involve her in
25 that lifestyle.

1 And the last time I talked to my dad was two weeks
2 before he was murdered and I said, dad, I'm thinking about
3 going back to get my Master's and he was so proud of me and
4 he told me he loved me and that he was excited and he
5 couldn't wait to attend my graduation for my Master's.

6 In speaking with the funeral director, I was not able to
7 see my dad. I could only see his hand because Mr. Taylor
8 said it was the most terrible crime scene he ever witnessed.
9 He said it was just awful. You know, my dad's face was
10 completely gone he said and he really advised all of us not
11 to see him and we were only able to see his hand.

12 And it's just really hard for me. Not only has it
13 affected several people, but it's also affected myself. I've
14 been scared, Your Honor. I've had to buy security cameras.
15 Even though I do not know any of these people involved and I
16 don't do drugs, I'm a teacher, but I bought security cameras,
17 an alarmed security system, and I go to bed every night just
18 scared.

19 And, Your Honor, I just pray that you consider all of
20 that. And I want to thank everyone for their hard work. You
21 all have been wonderful to us and I appreciate everything you
22 all have done. Thank you.

23 THE COURT: Thank you.

24 MS. MELANIE SHORT: Your Honor, can I say one more
25 thing?

1 THE COURT: Yes, ma'am.

2 MS. MELANIE SHORT: Not only my heart goes out to my
3 girls, my children, my heart goes out to his family because
4 it's hard seeing stuff like this going on.

5 So my heart goes out to you all. Thank you.

6 THE COURT: I appreciate your comments of counsel, both
7 sides on this case, made a few minutes ago about
8 methamphetamine. Over 25 years just on this job, but even
9 before that, 40-something years, the last 10 years in this
10 criminal justice system has been a totally different ballgame
11 because of methamphetamine. It is so available, so cheap to
12 make, that it has changed the drug scene drastically.

13 And the solicitor is right. Our homicide rate has just
14 skyrocketed since methamphetamine has become popular in the
15 drug culture. And I can tell you in speaking with other
16 colleagues on the bench across this country we are not alone.
17 It is the same story. Whether you go to South Dakota,
18 Arizona, California, it is the same story.

19 So I hope all of you through your families, through the
20 church, through the school, whatever you can do to help the
21 community to try to come up with a solution about drug use.
22 It's just like Ms. Little said. It's a scourge on society,
23 and the last 10 years it's just seen drastic change,
24 especially in the violence that's occurred. People get
25 desperate for it. They get addicted to it. They can't come

1 off of it and the next thing you know, they hurt another
2 family member trying to obtain money to get their hands on
3 it. It's just a -- just a terrible situation and it's really
4 taxing society, as well as the criminal justice system, to
5 try to -- to try to deal with it.

6 Mr. Busby, I'm going to -- I'm going to say a few more
7 things. The violence of using -- and I'm not going to say it
8 was an illegal sawed-off shotgun. Apparently, it was more
9 than 18 inches. Most of us know the law on that. But to
10 have a shotgun that has been sawed-off to the length that
11 that one was and to load it with a three-inch shell, I guess
12 a Magnum shell of buckshot, certainly wasn't used to deer
13 hunt with. That right there indicates a bit of a violent
14 tendency to load a sawed-off shotgun with buckshot.

15 There's an old saying about shotguns. They don't
16 discriminate. The mere fact that such a weapon was used and
17 a man was shot in the face with that is appalling. Of
18 course, any -- any homicide is appalling, but this is
19 especially appalling.

20 And you know what really bothers me to a great degree
21 about this whole situation? Through your actions, you caused
22 an innocent man to sit in that jail out there for over eight
23 months. And without ignoring another factor, you caused some
24 other innocent people a lot of grief.

25 Of course, I need to know his jail credit for the time

1 that he has already served in jail time. Does anybody have
2 that readily available?

3 MS. COPELAND-LITTLE: I don't have it in here, but if
4 you want to go ahead and announce the sentence --

5 MS. JOHNSON-LEE: He has been --

6 MR. REDMOND: I beg the Court's indulgence. I have an
7 app that I can -- because if I'm not mistaken, his date that
8 he went in was on the 21st of June of 2017. When did he make
9 bond?

10 MS. COPELAND-LITTLE: In March. No. May 31st.

11 MR. REDMOND: May the 31st.

12 MS. COPELAND-LITTLE: Okay.

13 MR. REDMOND: If the Court will indulge me just a
14 minute?

15 THE COURT: You got it.

16 MR. REDMOND: 714 days up until that point and then I
17 guess he spent two days in or however many days in since this
18 week. So 714 plus whatever for this week.

19 THE COURT: Two? Three.

20 SENTENCES

21 THE COURT: Okay. 2018-GS-13-408, voluntary
22 manslaughter, this jury has reached a guilty verdict. The
23 sentence of the Court is that James David Busby be confined
24 in the State Department of Corrections for a period of 30
25 years. Credit for 717 days.

1 On Indictment 2018-GS-13-0409, he stands convicted by a
2 jury trial of the offense of armed robbery. The sentence is
3 15 years consecutive. Credit for 1717 [sic] days.

4 On possession of a weapon during a violent crime, that's
5 2018-GS-13-410, which James David Busby has been found guilty
6 by jury trial, the sentence is 5 years. That is a
7 consecutive sentence to 2018-408 and 2018-409. Credit for
8 717 days.

9 Mr. Busby, I tell you now that you have a right -- a
10 constitutional right to appeal. However, you need to take
11 note that the notice of appeal has to be filed within 10 days
12 of sentencing, which just occurred, to preserve your appeal.

13 I hope you understand that I did not give you the
14 maximum I possibly could have, but under the circumstances of
15 this case, the use of that shotgun as I explained, and the
16 other matters of concern, this is a decision I have reached
17 about sentencing.

18 I wish you the very best, and I want to thank counsel
19 one more time before we leave or end these proceedings for
20 their professional conduct in the way they presented the case
21 and worked with the Court to get this case tried and
22 completed.

23 All right. I know some of the jurors stayed. There's
24 one thing that I wanted to mention to you that normally I do
25 and I didn't do it on Monday. Please do not be offended by

1 any of the attorneys that may have been in the courthouse
2 that had cases pending. Even though you may personally know
3 them, if they just said good morning or hello and kept it to
4 that, they were not intentionally being rude to you because
5 it is very serious matter for an attorney or anyone else as
6 far as that is concerned to speak with a potential juror
7 about the cases.

8 So to protect their professional status, they have to be
9 very standoffish, I guess is a good way to say it, whenever
10 there are potential jurors present. So please don't be
11 offended by any attorney that you may think had snubbed you
12 because it was not an intentional thing. They are just
13 protecting themselves.

14 All right. We're going to stand at ease for 10 or 15
15 minutes and there's some things we need to do. It's been a
16 long week. So we're not going to tarry around here very
17 long.

18 (WHEREUPON, the proceedings ended.)

19

20 --- END REQUESTED TRANSCRIPT ---

21

22

23

24

25

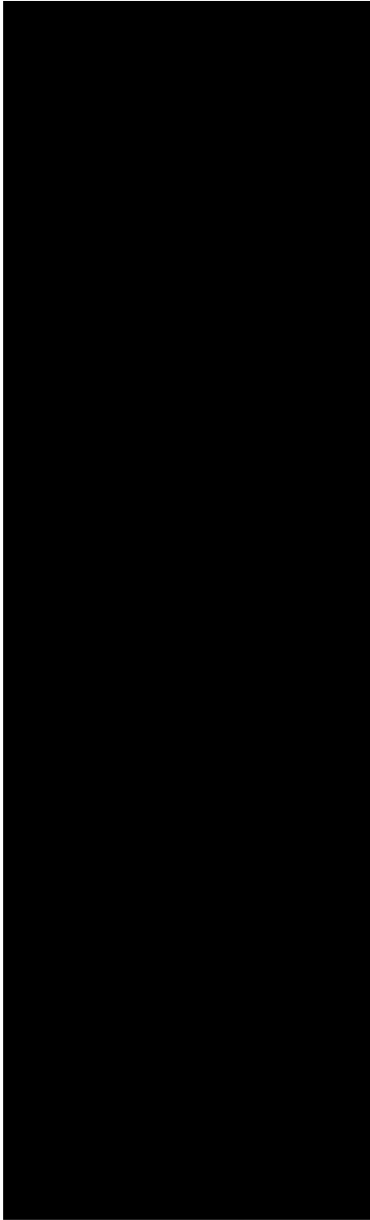
7-15-19

**Chesterfield County Courthouse
RANDOM STRIKE SHEET**

JUDGE NAME : Burch Paul M.
TRIAL TYPE : Criminal
PANEL ID : 2018- 408;09&10
COURTROOM CTRM

DESCRIPTION : State vs. James David Busby

Sorted by: Random Nbr
Trial

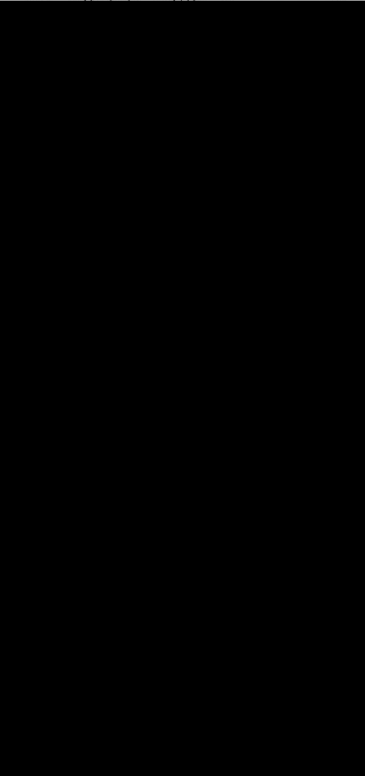
NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
		W	F	()	()	()	1
		W	M	()	(✓)	()	
		W	F	()	()	()	2
		W	M	()	()	()	3
		B	M	()	()	()	4
		B	M	()	()	()	not here
		B	F	()	(✓)	()	
		W	F	()	(✓)	()	
		W	F	()	()	()	5
		W	M	()	()	()	6
		W	F	(✓)	()	()	
		B	F	()	()	()	7
		B	F	()	()	()	8
		W	F	()	(✓)	()	
		B	M	()	(✓)	()	
		B	M	()	()	()	9
		W	F	()	()	(✓)	
		W	F	()	(✓)	()	
		W	M	(✓)	()	()	
		B	M	()	()	()	10
		W	F	()	(✓)	()	
		W	F	()	()	()	11
		B	M	()	()	()	12
		B	F	()	()	()	act 1

**Chesterfield County Courthouse
RANDOM STRIKE SHEET**

JUDGE NAME : Burch Paul M.
TRIAL TYPE : Criminal
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COURTROOM CTRM

DESCRIPTION : State vs. James David Busby

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
		W	F	()	(✓)	()	
		W	M	()	()	()	alt 2
		W	F	()	(✓)	()	
		W	M	(✓)	()	()	
		W	F	()	(✓)	()	
		W	F	()	()	()	alt 3
		B	F	()	()	()	
		B	F	()	()	()	
		W	M	()	()	()	
		B	M	()	()	()	
		W	F	()	()	()	

35

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Chesterfield

VS.

James David Busby

INDICTMENT/CASE#: 2018-GS-13-0408

A/W#: 2017A1310400245

Date of Offense: 6/18/2017

S.C. Code §: 16-03-0010; 16-03-0020

CDR Code #: 0116

AKA:

Race:

Age:

2018 JUL 19 PM 1:20

DOB: 0

Address:

City, State, Zip:

Wanda C. Miles
CLERK OF COURT

CHESTERFIELD COUNTY, S.C.

SENTENCE SHEET

DL#: 103133976

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Voluntary Manslaughter

in violation of § 16-3-50 of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]

Solicitor

65347

SC Bar#

Defendant

[Signature]

Attorney for Defendant

74928

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOP.

717 days.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

[Signature]
Christy M. Hobbie*[Signature]*
Hattie Mordon

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

[Signature]
Wanda C. Miles
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date:

2048
7/19/2019

ARREST WARRANT

2017A1310400245

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chesterfield

THE STATE

against

James David Busby

Address:

Phone: [REDACTED] 2690

Sex: M Race: Height: 5 10 Weight: 190

DL State: SC DL: [REDACTED]

DOB: 1/7/1987 Agency: SC0150000

Prosecuting Agency: Chesterfield County Sheriff

Prosecuting Officer: Graig C Burns - S00045

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant James David Busby

on 06/22/2017

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
200 West Main
P O Box 529
Chesterfield, SC 29709

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chesterfield

Personally appeared before me the affiant Graig C Burns

who

being duly sworn deposes and says that defendant James David Busby

did within this county and state on or about 6/18/2017

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Chesterfield)

in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on June 18, 2017, one James David Busby and co-defendants did, with malice aforethought, cause the death of Farris M. Short by shooting victim at Hurst Cemetery Road in the Chesterfield area of Chesterfield County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chesterfield

Affiant's Address

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/18/2017

defendant James David Busby

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Chesterfield

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 6/22/2017

Signature of Issuing Judge

John A Davis

Judge Code: 7227

Judge's Address

Judge's Telephone

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

2017 JUN 22 PM 4:17
CLERK
CHESTERFIELD COUNTY, SCA true Copy Attest
C. Miles
OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC



Judge _____
 on _____
 Type and Amount: _____
 Name of Surety: _____

Name: _____
 Address: _____
 Telephone: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____
 Decision: _____

Name: _____
 Address: _____
 Telephone: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. pros., etc.)
 Disposition: _____
 Sentence: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

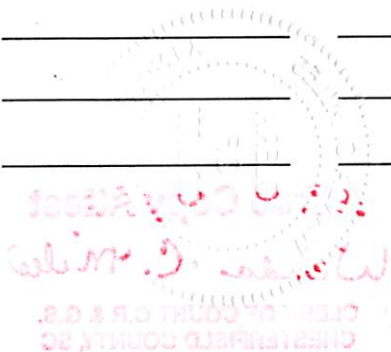
Name: _____
 Address: _____
 Telephone: _____

JURORS

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS



WITNESSES

Graig C Burns

Chesterfield County Sheriff

Law Enforcement Case #:
347

2018 JUL 24

PM 2:59

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

DOCKET NUMBER:
2018-GS-13-0408

State of South Carolina

County of Chesterfield

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2017A1310400245

ARRESTED ON: 2017-06-22

ACTION OF GRAND JURY

True Bill

Grand Jury Foreperson

Date

VERDICT

Voluntary manslaughter
Guilty

Petit Jury Foreperson

Date

COURT OF GENERAL SESSIONS

Term:
JULY 2018

THE STATE

vs.

James David Busby

INDICTMENT FOR
MURDER

§16-03-0010; 16-03-0020

CDR Code: 0116

William B. Rogers, Jr., Solicitor

A True Copy Attest
Wanda C. Miles
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

INDICTMENT FOR

Murder

§16-03-0010; 16-03-0020

At a Court of General Sessions, convened on JULY 24, 2018, the Grand Jurors of Chesterfield County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That James David Busby did in Chesterfield County, on or about June 18, 2017, willfully, feloniously, and intentionally kill the victim, Farris "Mickey" Short, with malice aforethought, either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about June 18, 2017 in Chesterfield County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.



Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Chesterfield
 STATE VS.
James David Busby

INDICTMENT/CASE#: 2018-GS-13-0409

AKA:

A/W#: 2017A1310400246Race: W Sex: M Age: 32 JUL 19Date of Offense: 6/18/2017DOB: [REDACTED]S.C. Code §: 16-11-0330(A)Address: [REDACTED]CDR Code #: 0139City, State, Zip: Kershaw, SC 29067

Wanda C. Miles
 CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

DL#: 103133976SID#: [REDACTED]

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: ARMED ROBBERY

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

M. Lee
 Solicitor

65347

SC Bar#

Defendant

Ja. Ratts
 Attorney for Defendant

SC Bar# 74928WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2018-GS-13-0408☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.717 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-214(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$3.75

TOTAL

\$128.95

Clerk of Court/Deputy Clerk

Court Reporter: Hattie Gordon

SCCA/217 (04/2018)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge

Judge Code: 2048Sentence Date: 7/19/2019

A True Copy Attest:
Wanda C. Miles
 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

ARREST WARRANT

2017A1310400246

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chesterfield

THE STATE
against

James David Busby

Address:

Phone:

Sex: M Race: Height: 5 10 Weight: 190DL State: SC DL #:DOB: 1/7/1987Prosecuting Agency: Chesterfield County SheriffProsecuting Officer: Graig C Burns - S00045Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponOffense Code: 0139Code/Ordinance Sec: 16-11-0330(A)This warrant is **CERTIFIED FOR SERVICE** in the☒ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant James David Busbyon 06/22/2017

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

200 West Main

P O Box 529

Chesterfield, SC 29709

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chesterfield

Personally appeared before me the affiant Graig C Burns whobeing duly sworn deposes and says that defendant James David Busbydid within this county and state on or about 6/18/2017 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Chesterfield)

in the following particulars:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on June 18, 2017, one James David Busby and co-defendants armed with a shotgun did rob victim Farris M. Short at Hurst
Cemetery Road in the Chesterfield area of Chesterfield County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chesterfield

Affiant's Address

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/18/2017 defendant James David Busby

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Chesterfield) as set forth below:DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 6/22/2017

Signature of Issuing Judge

John A Davis

Judge Code: 7227

Judge's Address

Judge's Telephone

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SCA True Copy
Wanda C. MilesCLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2017 JUN 22 PM 4:17

BAIL set by

Judge _____
 on _____
 Type and Amount: _____
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____
 Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. pros., etc.)
 Disposition: _____
 Sentence: _____

JURORS

WITNESSES

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____

Telephone: _____

Name: _____
 Address: _____

Telephone: _____

Name: _____
 Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS



WITNESSES

Graig C Burns

Chesterfield County Sheriff

2018 JUL 24 PM 2:39

Law Enforcement Case #:

347

Wanda C. Miles

CLERK OF COURT

CHESTERFIELD COUNTY, S.C.

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER

2017A1310400246

ARRESTED ON: 2017-06-22

ACTION OF GRAND JURY

True Bill

Grand Jury Foreperson

Date

VERDICT

Guilty

Perit Jury Foreperson

Date

DOCKET NUMBER:

2018-GS-13-0409

The State of South Carolina

County of Chesterfield

COURT OF GENERAL SESSIONS

Term:

JULY 2018

THE STATE

vs.

James David Busby

INDICTMENT FOR

ARMED ROBBERY

§16-11-0330(A)

CDR Code: 0139

A True Copy Attest

Wanda C. Miles

CLERK OF COURT C.G. & G.S.
CHESTERFIELD COUNTY, SC

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

INDICTMENT FOR

Armed Robbery
§16-11-0330(A)

At a Court of General Sessions, convened on JULY 24, 2018, the Grand Jurors of Chesterfield County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That James David Busby did in Chesterfield County on or about June 18, 2017, while armed with a deadly weapon, to wit: a shotgun, take and carry away personal property of Farris "Mickey" Short from or in the immediate presence of the victim with the intent to deprive the victim of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

A True Copy Attest
Wanda C. Miles
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Chesterfield
STATE VS.
James David Busby

INDICTMENT/CASE#: 2018-GS-13-0410

AKA:

A/W#: 2017A1310400247

Race: W

Sex: M

Age: 32

Date of Offense: 6/18/2017

DOB: [REDACTED]

S.C. Code § 16-23-0490

Address: [REDACTED]

CDR Code #: 0549

City, State, Zip: Kershaw, SC 29067

CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

SENTENCE SHEET

DL#: 103133976 SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature]

65347

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*: the balance is suspended probation for _____

with _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code2018
2018-GS-13-0408 and GS-13-0409
§ 24-13-40 to be calculated and applied by the SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Probation) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(I) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75

TOTAL

\$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA217 (04/2018)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

A True Copy Attest

[Signature]

CLERK OF COURT C.A. & C.S.
CHESTERFIELD COUNTY, SC☐ Appointed PD or appointed other counsel
Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2048

Sentence Date: 7/19/2019

WITNESSES

Graig C Burns

Chesterfield County Sheriff 2018 JUL 24 PM 2:40

Law Enforcement Case #:
347

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2017A1310400247

ARRESTED ON: 2017-06-22

ACTION OF GRAND JURY

True B.Y.

Grand Jury Foreperson

Date

VERDICT

Guilty

Petit Jury Foreperson

Date

DOCKET NUMBER:
2018-GS-13-0410

The State of South Carolina

County of Chesterfield

COURT OF GENERAL SESSIONS

Term:
JULY 2018

THE STATE

vs.

James David Busby

INDICTMENT FOR

Possession of a Weapon during the
Commission of a Violent Crime

§16-23-0490

CDR Code: 0549

A True Copy of
Wanda C. Miles
CLERK OF COURT C.R. & G.S.
CHESTERFIELD COUNTY, SC

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF CHESTERFIELD)

) Possession of a Weapon during the Commission of a
Violent Crime

§16-23-0490

At a Court of General Sessions, convened on JULY 24, 2018, the Grand Jurors of Chesterfield County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That James David Busby did in Chesterfield County, on or about June 18, 2017, possess a firearm during the commission of a violent crime, to wit: murder of Farris "Mickey" Short, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

A True Copy Attest
Wanda C. Miles
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WILLIAM B. ROGERS, JR.
SOLICITOR

ARREST WARRANT

2017A1310400247

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chesterfield

THE STATE
against

James David Busby

Address:

Phone:

Sex: M Race: Height: 5 10 Weight: 190DL State: SC DL #: DOB: 1/7/1987 Agency ORI #: SC0130000Prosecuting Agency: Chesterfield County SheriffProsecuting Officer: Graig C Burns - S00045Offense: Weapons / Possession of weapon during violent crime, if not also sentenced to life without paroleOffense Code: 0549Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

605 County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant James David Busbyon 6/22/2017

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
200 West Main
P O Box 529
Chesterfield, SC 29709

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chesterfield

Personally appeared before me the affiant Graig C Burns who
being duly sworn deposes and says that defendant James David Busby
did within this county and state on or about 6/18/2017 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Chesterfield)
in the following particulars:DESCRIPTION OF OFFENSE: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or deathI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on June 18, 2017, one James David Busby and co-defendants did have in their possession a shotgun during a fatal armed
robbery of victim Farris M. Short along Hurst Cemetery Road in the Chesterfield area of Chesterfield County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Chesterfield

Affiant's

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/18/2017 defendant James David Busbydid violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Chesterfield) as set forth below:DESCRIPTION OF OFFENSE: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or deathHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 6/22/2017

Signature of Issuing Judge

John A Davis

Judge Code: 7227

(L.S.)

Judge's Address

Judge's Telephone

Issuing Court:

☒

Magistrate

☐

Municipal

☐

Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

A True Copy Attest

Wanda C. Miles

CLERK OF COURT

CLERK OF COURT

CLERK OF COURT

CLERK OF COURT

CLERK OF COURT

CLERK OF COURT

CLERK OF COURT

CLERK OF COURT

Judge _____
on _____
Type and Amount: _____
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

JURORS

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Tele _____

Nar _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



Law

909

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of General Sessions

Appellate Case No. 2019-001274

The Honorable Paul Burch, Circuit Court Judge

RECEIVED

Apr 28 2021

SC Court of Appeals

The State of South Carolina.....Respondent,

v.

James D. Busby.....Appellant.

FINAL BRIEF OF APPELLANT

Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
2725 Devine Street
Columbia, South Carolina 29205
(803) 331-3421
elizabeth@franklinbestlaw.com

Other Counsel:
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South Carolina Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-3372

TABLE OF AUTHORITIES

Cases

<i>State v. Adams</i> , 337 S.C. 334, 659 S.E.2d 272 (Ct. App. 2008)	8
<i>State v. Green</i> , 330 S.C. 551, 499 S.E.2d 817 (Ct. App. 1997)	7
<i>State v. Plath</i> , 277 S.C. 126, 284 S.E.2d 221 (1981)	6
<i>State v. Robinson</i> , 306 S.C. 399, 412 S.E.2d 411 (1991)	6
<i>United States v. Melendez-Garcia</i> , 28 F.3d 1046, 1053 (10 th Cir. 1994)	6
<i>United States v. Najjar</i> , 300 F.3d 466 (4 th Cir. 2002)	10
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STATEMENT OF ISSUE ON APPEAL

The trial court erred in not suppressing evidence found during the search of Busby's truck, nor the admission of other items that were obtained based on that search, because Chesterfield County's search violated Busby's rights under the Fourth Amendment and the South Carolina Constitution, Article I, §10.

STATEMENT OF THE CASE

James David Busby was indicted by the Chesterfield County grand jury for murder, armed robbery, and possession of a weapon during the commission of a violent crime. 2018-GS-13-00408, -409, and -410. He was tried before the Honorable Paul M. Burch and a jury between July 15-19, 2019. The State was represented by Mary Thomas Johnson-Lee and Kernard E. Redmond. The defense was represented by Tonya Copeland-Little.

Busby was convicted of voluntary manslaughter, armed robbery, and possession of a weapon during the commission of a violent crime. He was sentenced to 30 years for voluntary manslaughter. He was sentenced to a consecutive 15 years for armed robbery, and another consecutive 5 year sentence for the weapons charge.

This appeal timely follows.

RELEVANT FACTS

James David Busby was convicted of voluntary manslaughter in the death of Mickey Short, a drug user, with whom he had a dispute regarding Short's alleged

purchase of a shotgun from him. Apparently Short paid Busby for the gun but did not receive it. ROA 74, 191, 349. In the late hours of June 18, 2017, in rural Chesterfield County, Short was shot in the face with buckshot and died. When first responders arrived, it appeared that someone had rifled through Short's pockets. ROA 254. No drugs or money were located at the incident location. Tire tracks which appeared, to law enforcement, consistent with the tires on Busby's truck were present. The State's expert, however, testified those tires were mass produced and that she did not detect any random characteristics or wear patterns. ROA 247. According to one witness—also a heavy drug abuser—Busby indicated he shot Short after Short attacked him with a machete.

During what the court concluded was a “consensual” search of Busby's truck, law enforcement located items belonging to Short inside of a cowboy boot located in the truck. Once these items were recovered, law enforcement obtained a search warrant. ROA 195.

On June 21, 2017, Busby gave his first statement to law enforcement after he was arrested on an outstanding warrant from another jurisdiction. He had been up for days because he had been ingesting crystal methamphetamine. He spoke to law enforcement again on June 22, 2017. During both encounters, Busby denied responsibility for the death of Short. During his second statement, he indicated that another person committed the murder. Busby did, however, indicate to law enforcement that he knew where the murder weapon, and some items from the scene

were located. The State's expert however, testified that she was unable to tell what firearm fired the buckshot that killed Short. ROA 270.

Busby took law enforcement to Lake Terry where a Department of Natural Resources (DNR) dive team recovered items relating to the crime from the bottom of the lake. ROA 281. Later, the State obtained a buccal swab from Busby. ROA 220-229. With his DNA, the State was able to show that Short's DNA was located on a Maglite found in Busby's car and on a pair of blue jeans that belonged to Busby. Busby's DNA was found in the interior waistband of those jeans.

In its case-in-chief, the State also heavily relied on cell phone data to show that Kenneth Parker, who Busby claimed actually shot Short, was not in the area when Short was killed. That data also showed that Busby and Short had been in communication shortly before Short's death. The State also introduced evidence tending to show that Busby tried to convince others that he had not been with Short that evening. ROA 340.

The defense presented a witness who testified that about a week before Short was killed, Busby actually assisted Short when he was injured due to an accident with a horse. ROA 483.

ARGUMENT

The trial court erred in not suppressing evidence found during the search of Busby's truck, nor the admission of other items that were obtained based on that search, because Chesterfield County's search violated Busby's rights under the Fourth Amendment and the South Carolina Constitution, Article I, §10.

The State, lacking probable cause to search Busby's truck, improperly enlisted the help of a neighboring jurisdiction to manufacture Busby's "consent to search" wherein law enforcement located items connecting Busby to Short's death. Prior to the start of trial, the trial court held a suppression hearing.

The State called Jason Catoe of the Lancaster County Sheriff's Office. Catoe testified that he received a call from Wayne Jordan of the Chesterfield County Sheriff's Office, asking about David Busby. ROA 60. Catoe told Jordan that Lancaster County was investigating Busby for a robbery and stolen pistol. Lancaster County had already retrieved the stolen pistol at the time of this conversation. ROA 61. Jordan asked Catoe to get a warrant on Catoe's charges in Lancaster County. At the time of this request, Catoe had not already received approval to obtain a warrant. ROA 61. After its discussions with Chesterfield County, Lancaster County then obtained warrants for breach of trust, obtaining goods under false pretenses, and receiving stolen goods. ROA 65. Jordan, with Chesterfield County, did not receive copies of the warrants. ROA 65.

With Lancaster County's warrants issued, Jordan located Busby at Nicole Deese's house. ROA 70. Jordan told Busby that he had warrant for him from Lancaster County and that he needed the pistol. He told Busby that he needed to

search Busby's car to search for the pistol. ROA 71. Busby consented to that limited search. ROA 71. According to Jordan's testimony, Busby gave him the keys to his car. Then Busby was handcuffed. Sergeant Burns and Jordan then searched Busby's car and found the victim's identification cards located inside of a cowboy boot. ROA 71. Law enforcement then secured Busby's truck and took it to the police station. ROA 72. Jordan admitted during trial that he has been denied a search warrant before. ROA 79. Jordan's search of Busby's truck was improper because it was not based on probable cause and because it exceeded the limited scope of Busby's consent (which was improperly obtained because the pistol Jordan claimed he needed to search for was already in the possession of Lancaster County).

The fruit of the poisonous tree doctrine holds that where evidence would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality, the evidence must be excluded. *State v. Plath*, 277 S.C. 126, 284 S.E.2d 221 (1981); see *Wong Sun v. United States*, 371 U.S. 471 (1963).

Consent to search, by itself, is not sufficient to purge the taint of a previous unlawful search or seizure. "When a consensual search is preceded by a Fourth Amendment violation, ... the government must prove not only the voluntariness of the consent under the totality of the circumstances, but the government must also 'establish a break in the causal connection between the illegality and the evidence thereby obtained.'" *United States v. Melendez-Garcia*, 28 F. 3d 1046, 1053 (10th Cir. 1994) (citation and footnote omitted); see *State v. Robinson*, 306 S.C. 399, 412 S.E.2d

411 (1991) (holding consent to search procured during unlawful stop invalid unless State proves consent is voluntary and that sufficient attenuating circumstances remove taint of unlawful stop so that search is not an exploitation of unlawful stop). *See also State v. Greene*, 330 S.C. 551, 499 S.E.2d 817 (Ct. App. 1997).

Busby did not provide voluntary consent to Jordan to search his car. As Jordan testified:

We knock on the door. Nicole Deese answers the door and we ask her if Mr. Busby is in the residence. She said he is. She pointed to—she said he was in the back bedroom.

I walked through the hall, went through the living room, down the hall, and I met Mr. Busby face-to-face in the back bedroom and told him—I said—I asked him who he was. He said his name was David Busby. I said, man, you’ve got a warrant out on you out of Lancaster County. Where’s the pistol? He said I don’t have a pistol. **I said, man, I need to search your car for a pistol.** He said, okay, no problem, I don’t have a pistol.

ROA 70-71 (emphasis added).

Busby was then handcuffed while his car was searched. ROA 71. The State did not provide any evidence that Busby signed a waiver. Busby clearly only “consented” to Jordan’s search of his car for the pistol because Jordan told him he had an arrest warrant out for him.

Jordan continued to describe the encounter:

I said I need to search your truck for the pistol. He said, okay, I don’t have a pistol in my truck. **I said, well, I need to search it.** He said okay. I said where’s your keys, because we saw—we knew the vehicle was locked because you can see where the vehicle was locked. He said they were in his pocket. I said I need your keys. He reached in his pants pocket and handed me his keys. When I had them in my possession, I handcuffed him.

ROA 72, ll. 13-20.

Jordan then testified that, had Busby denied him consent to search the car, he would have “obtained a search warrant for the vehicle for the tires. . .”

Those tires were very—they were very unique. I say unique because they were a mud grip tire. They were a big tire. They wasn’t a standard street tire. They had mud grips to them, and that it very similar, very, very close in similarity to what we found on our scene.

ROA 73, ll. 14-18.

Okay. So if he had not given you consent to search or said no, you are not searching the vehicle, you would have gotten a search warrant, towed it, based on the fact that the tires appeared similar to the tracks at the scene?

That is correct. If he would have told us no at the onset, we would seize—we were going to seize the vehicle. **That was our intent going there, seizing the vehicle for the tire impressions.**

ROA 73, l. 19- ROA 74, l. 1.

First of all, Jordan did not seek consent to search Busby’s truck so much as informed him that *he was going to search it* to find the pistol that was then sitting in an evidence locker in Lancaster County. Jordan then implicitly threatened to arrest Busby on the Lancaster warrant. Busby was then immediately placed in handcuffs after Jordan told him he needed to search the truck and Busby handed him his keys. Busby was not informed of his right to refuse consent. *Cf. State v. Adams*, 337 S.C. 334, 659 S.E.2d 272 (Ct. App. 2008) (defendant found to have voluntarily consented when defendant asked officer if he could refuse consent and officer told him he could). It was error for the trial court to find that Busby voluntarily consented to the search of his truck.

Additionally, Jordan's testimony during the suppression hearing does not make sense. If Jordan had believed the tire impressions were such strong evidence against Busby for murder, then why did he reach out to another jurisdiction to have Lancaster County swear out warrants against *his* suspect? In other words, if he was so confident in his case, why did not appear before a magistrate judge and obtain his own warrant for murder? The fact that Jordan knew the tire impressions did not constitute probable cause for a search warrant is underscored by the State's expert witness who testified during the State's case-in-chief that the tires on Busby's truck were mass produced and that she could not conclude, based on those tracks, that Busby's truck was the source of the tracks found at the scene. The tire tracks would not have constituted probable cause for a search warrant, as Jordan must have known, and Jordan's actions were calculated to evade his responsibility for complying with the warrant requirement and Busby's Fourth Amendment rights.

It is further proof of Jordan's search of Busby's truck was a sham that his pretext—to search for the stolen pistol—was rendered null by the fact that Lancaster County *already had the pistol in their custody*. Jordan certainly was not going to find any evidence of that “stolen pistol” in Busby's car since it was, at the time of the search, located in Lancaster County, most likely in an evidence locker.

Law enforcement's actions in this case were an egregious violation of Busby's rights to be free from unreasonable searches and seizures. Chesterfield County, unwilling to obtain its own warrant because it lacked probable cause to search Busby's truck, had a neighboring jurisdiction obtain warrants in its jurisdiction solely

to assist Chesterfield County. Chesterfield County then coerced Busby into “consenting” by threatening to arrest him on a stolen pistol charge when that pistol had already been recovered and was in Lancaster County’s custody. Chesterfield County searched Busby’s truck without probable cause and without valid consent in violation of Busby’s rights under the federal and state constitutions. U.S.C. Amend. IV; S.C. Constitution, Article I, §10. This Court should find the search was invalid and suppress the fruits of the poisonous tree. *United States v. Najjar*, 300 F.3d 466 (4th Cir. 2002); *Wong Son v. United States*, 371 U.S. 471, 484-85 (1963) (Generally, evidence derived from an illegal search or arrest is deemed fruit of the poisonous tree and is inadmissible.”).

CONCLUSION

This Court should reverse the trial court.

Respectfully submitted,

/s/ Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
2725 Devine Street
Columbia, South Carolina 29205
(803) 331-3421
elizabeth@franklinbestlaw.com

April 28, 2021.

**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 David Busby, Appellant.

Appellate Case No. 2019-001274

Appeal From Chesterfield County
Paul M. Burch, Circuit Court Judge

Unpublished Opinion No. 2022-UP-239
Submitted April 1, 2022 – Filed June 8, 2022

AFFIRMED

Elizabeth Anne Franklin-Best, of Elizabeth
Franklin-Best, P.C., of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General William M. Blich,
Jr., both of Columbia; and Solicitor William Benjamin
Rogers, Jr., of Bennettsville, all for Respondent.

PER CURIAM: James D. Busby appeals his convictions for voluntary manslaughter, armed robbery, and possession of a weapon during the commission of a violent crime and sentences of thirty years' imprisonment, fifteen years'

imprisonment and five years' imprisonment, respectively. On appeal, Busby argues the trial court abused its discretion by not suppressing evidence found in Busby's vehicle because the evidence was obtained from a search that violated his rights under the Fourth Amendment of the United States Constitution and the South Carolina Constitution. We affirm.

We hold the trial court did not abuse its discretion by denying Busby's request to suppress evidence obtained from the search of his vehicle because the totality of the circumstances supported the trial court's finding Busby voluntarily consented to the search. *See State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) ("In criminal cases, the appellate court sits to review errors of law only."); *State v. Missouri*, 361 S.C. 107, 111, 603 S.E.2d 594, 596 (2004) ("When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm the trial [court's] ruling if there is any evidence to support the ruling."); *Palacio v. State*, 333 S.C. 506, 514, 511 S.E.2d 62, 66 (1999) ("The constitutional immunity from unreasonable searches and seizures may be waived by valid consent."); *id.* ("Warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment when conducted under the authority of voluntary consent."); *State v. Greene*, 330 S.C. 551, 557, 499 S.E.2d 817, 820 (Ct. App. 1997) ("Whether a consent to search was voluntary or the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances."); *id.* ("A trial judge's conclusions on issues of fact regarding voluntariness will not be disturbed on appeal unless so manifestly erroneous as to be an abuse of discretion."); *Palacio*, 333 S.C. at 514, 511 S.E.2d at 66 ("On a motion to suppress, the State has the burden of proving the validity of the consent."); *see e.g., State v. Mattison*, 352 S.C. 577, 585, 575 S.E.2d 852, 856 (Ct. App. 2003) (rejecting the defendant's contention that "the fact that he was 'surrounded' by a drug dog and four police officers with squad cars flashing blue lights demonstrated a 'show of force' that indicate[d] coercion").

AFFIRMED.¹

THOMAS, MCDONALD, and HEWITT, JJ., concur.

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

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Jun 09 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of General Sessions

The Honorable Paul Burch, Circuit Court Judge

Case No. 2019-1274

State of South Carolina.....Respondent,

James David Busby Appellant.

v.

PETITION FOR REHEARING

Pursuant to SCACR Rule 221, Petitioner respectfully asks this Court to rehear his case. Respectfully, this Court has overlooked or misapprehended issues of law that require the Court to grant this petition.

RELEVANT FACTS

James David Busby was convicted of voluntary manslaughter in the death of Mickey Short, a drug user, with whom he had a dispute regarding Short's alleged purchase of a shotgun from him. Apparently Short paid Busby for the gun but did not receive it. ROA 74, 191, 349. In the late hours of June 18, 2017, in rural Chesterfield County, Short was shot in the face with buckshot and died. When first responders arrived, it appeared that someone had rifled through Short's pockets. ROA 254. No drugs or money were located at the incident location. Tire tracks which appeared, to law enforcement, consistent with the tires on Busby's truck were present. The State's expert, however, testified those tires were mass produced and

that she did not detect any random characteristics or wear patterns. ROA 247. According to one witness—also a heavy drug abuser—Busby indicated he shot Short after Short attacked him with a machete.

During what the court concluded was a “consensual” search of Busby’s truck, law enforcement located items belonging to Short inside of a cowboy boot located in the truck. Once these items were recovered, law enforcement obtained a search warrant. ROA 195.

On June 21, 2017, Busby gave his first statement to law enforcement after he was arrested on an outstanding warrant from another jurisdiction. He had been up for days because he had been ingesting crystal methamphetamine. He spoke to law enforcement again on June 22, 2017. During both encounters, Busby denied responsibility for the death of Short. During his second statement, he indicated that another person committed the murder. Busby did, however, indicate to law enforcement that he knew where the murder weapon, and some items from the scene were located. The State’s expert however, testified that she was unable to tell what firearm fired the buckshot that killed Short. ROA 270.

Busby took law enforcement to Lake Terry where a Department of Natural Resources (DNR) dive team recovered items relating to the crime from the bottom of the lake. ROA 281. Later, the State obtained a buccal swab from Busby. ROA 220-229. With his DNA, the State was able to show that Short’s DNA was located on a Maglite found in Busby’s car and on a pair of blue jeans that belonged to Busby. Busby’s DNA was found in the interior waistband of those jeans.

In its case-in-chief, the State also heavily relied on cell phone data to show that Kenneth Parker, who Busby claimed actually shot Short, was not in the area when Short was killed. That data also showed that Busby and Short had been in communication shortly before Short's death. The State also introduced evidence tending to show that Busby tried to convince others that he had not been with Short that evening. ROA 340.

The defense presented a witness who testified that about a week before Short was killed, Busby assisted Short when he was injured due to an accident with a horse. ROA 483.

ARGUMENT

The trial court erred in not suppressing evidence found during the search of Busby's truck, nor the admission of other items that were obtained based on that search, because Chesterfield County's search violated Busby's rights under the Fourth Amendment and the South Carolina Constitution, Article I, §10.

The State, lacking probable cause to search Busby's truck, improperly enlisted the help of a neighboring jurisdiction to manufacture Busby's "consent to search" wherein law enforcement located items connecting Busby to Short's death. Prior to the start of trial, the trial court held a suppression hearing.

The State called Jason Catoe of the Lancaster County Sheriff's Office. Catoe testified that he received a call from Wayne Jordan of the Chesterfield County Sheriff's Office, asking about David Busby. ROA 60. Catoe told Jordan that Lancaster County was investigating Busby for a robbery and stolen pistol. Lancaster County had already retrieved the stolen pistol at the time of this conversation. ROA

61. Jordan asked Catoe to get a warrant on Catoe's charges in Lancaster County. At the time of this request, Catoe had not already received approval to obtain a warrant. ROA 61. After its discussions with Chesterfield County, Lancaster County then obtained warrants for breach of trust, obtaining goods under false pretenses, and receiving stolen goods. ROA 65. Jordan, with Chesterfield County, did not receive copies of the warrants. ROA 65.

With Lancaster County's warrants issued, Jordan located Busby at Nicole Deese's house. ROA 70. Jordan told Busby that he had warrant for him from Lancaster County and that he needed the pistol. He told Busby that he needed to search Busby's car to search for the pistol. ROA 71. Busby consented to that limited search. ROA 71. According to Jordan's testimony, Busby gave him the keys to his car. Then Busby was handcuffed. Sergeant Burns and Jordan then searched Busby's car and found the victim's identification cards located inside of a cowboy boot. ROA 71. Law enforcement then secured Busby's truck and took it to the police station. ROA 72. Jordan admitted during trial that he has been denied a search warrant before. ROA 79. Jordan's search of Busby's truck was improper because it was not based on probable cause and because it exceeded the limited scope of Busby's consent (which was improperly obtained because the pistol Jordan claimed he needed to search for was already in the possession of Lancaster County).

The fruit of the poisonous tree doctrine holds that where evidence would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality, the evidence must be excluded. *State v.*

Plath, 277 S.C. 126, 284 S.E.2d 221 (1981); *see Wong Sun v. United States*, 371 U.S. 471 (1963).

Consent to search, by itself, is not sufficient to purge the taint of a previous unlawful search or seizure. “When a consensual search is preceded by a Fourth Amendment violation, ... the government must prove not only the voluntariness of the consent under the totality of the circumstances, but the government must also ‘establish a break in the causal connection between the illegality and the evidence thereby obtained.’” *United States v. Melendez-Garcia*, 28 F. 3d 1046, 1053 (10th Cir. 1994) (citation and footnote omitted); *see State v. Robinson*, 306 S.C. 399, 412 S.E.2d 411 (1991) (holding consent to search procured during unlawful stop invalid unless State proves consent is voluntary and that sufficient attenuating circumstances remove taint of unlawful stop so that search is not an exploitation of unlawful stop). *See also State v. Greene*, 330 S.C. 551, 499 S.E.2d 817 (Ct. App. 1997).

Busby did not provide voluntary consent to Jordan to search his car. As Jordan testified:

We knock on the door. Nicole Deese answers the door and we ask her if Mr. Busby is in the residence. She said he is. She pointed to—she said he was in the back bedroom.

I walked through the hall, went through the living room, down the hall, and I met Mr. Busby face-to-face in the back bedroom and told him—I said—I asked him who he was. He said his name was David Busby. I said, man, you’ve got a warrant out on you out of Lancaster County. Where’s the pistol? He said I don’t have a pistol. **I said, man, I need to search your car for a pistol.** He said, okay, no problem, I don’t have a pistol.

ROA 70-71 (emphasis added).

Busby was then handcuffed while his car was searched. ROA 71. The State did not provide any evidence that Busby signed a waiver. Busby clearly only “consented” to Jordan’s search of his car for the pistol because Jordan told him he had an arrest warrant out for him.

Jordan continued to describe the encounter:

I said I need to search your truck for the pistol. He said, okay, I don’t have a pistol in my truck. **I said, well, I need to search it.** He said okay. I said where’s your keys, because we saw—we knew the vehicle was locked because you can see where the vehicle was locked. He said they were in his pocket. I said I need your keys. He reached in his pants pocket and handed me his keys. When I had them in my possession, I handcuffed him.

ROA 72, ll. 13-20.

Jordan then testified that, had Busby denied him consent to search the car, he would have “obtained a search warrant for the vehicle for the tires. . .”

Those tires were very—they were very unique. I say unique because they were a mud grip tire. They were a big tire. They wasn’t a standard street tire. They had mud grips to them, and that it very similar, very, very close in similarity to what we found on our scene.

ROA 73, ll. 14-18.

Okay. So if he had not given you consent to search or said no, you are not searching the vehicle, you would have gotten a search warrant, towed it, based on the fact that the tires appeared similar to the tracks at the scene?

That is correct. If he would have told us no at the onset, we would seize—we were going to seize the vehicle. **That was our intent going there, seizing the vehicle for the tire impressions.**

ROA 73, l. 19- ROA 74, l. 1.

First of all, Jordan did not seek consent to search Busby's truck so much as informed him that *he was going to search it* to find the pistol that was then sitting in an evidence locker in Lancaster County. Jordan then implicitly threatened to arrest Busby on the Lancaster warrant. Busby was then immediately placed in handcuffs after Jordan told him he needed to search the truck and Busby handed him his keys. Busby was not informed of his right to refuse consent. *Cf. State v. Adams*, 337 S.C. 334, 659 S.E.2d 272 (Ct. App. 2008) (defendant found to have voluntarily consented when defendant asked officer if he could refuse consent and officer told him he could). It was error for the trial court to find that Busby voluntarily consented to the search of his truck.

Additionally, Jordan's testimony during the suppression hearing does not make sense. If Jordan had believed the tire impressions were such strong evidence against Busby for murder, then why did he reach out to another jurisdiction to have Lancaster County swear out warrants against *his* suspect? In other words, if he was so confident in his case, why did not appear before a magistrate judge and obtain his own warrant for murder? The fact that Jordan knew the tire impressions did not constitute probable cause for a search warrant is underscored by the State's expert witness who testified during the State's case-in-chief that the tires on Busby's truck were mass produced and that she could not conclude, based on those tracks, that Busby's truck was the source of the tracks found at the scene. The tire tracks would not have constituted probable cause for a search warrant, as Jordan must have

known, and Jordan's actions were calculated to evade his responsibility for complying with the warrant requirement and Busby's Fourth Amendment rights.

It is further proof of Jordan's search of Busby's truck was a sham that his pretext—to search for the stolen pistol—was rendered null by the fact that Lancaster County *already had the pistol in their custody*. Jordan certainly was not going to find any evidence of that “stolen pistol” in Busby's car since it was, at the time of the search, located in Lancaster County, most likely in an evidence locker.

Law enforcement's actions in this case were an egregious violation of Busby's rights to be free from unreasonable searches and seizures. Chesterfield County, unwilling to obtain its own warrant because it lacked probable cause to search Busby's truck, had a neighboring jurisdiction obtain warrants in its jurisdiction solely to assist Chesterfield County. Chesterfield County then coerced Busby into “consenting” by threatening to arrest him on a stolen pistol charge when that pistol had already been recovered and was in Lancaster County's custody. Chesterfield County searched Busby's truck without probable cause and without valid consent in violation of Busby's rights under the federal and state constitutions. U.S.C. Amend. IV; S.C. Constitution, Article I, §10. This Court should find the search was invalid and suppress the fruits of the poisonous tree. *United States v. Najjar*, 300 F.3d 466 (4th Cir. 2002); *Wong Son v. United States*, 371 U.S. 471, 484-85 (1963) (Generally, evidence derived from an illegal search or arrest is deemed fruit of the poisonous tree and is inadmissible.”).

CONCLUSION

This Court should grant Busby's petition for rehearing and grant him relief.

Respectfully submitted,

/s/ Elizabeth Franklin-Best

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The South Carolina Court of Appeals

The State, Respondent,

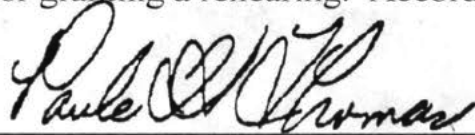
v.

James David Busby, Appellant.

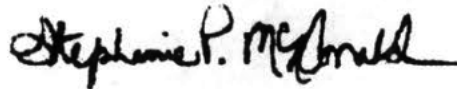
Appellate Case No. 2019-001274

ORDER

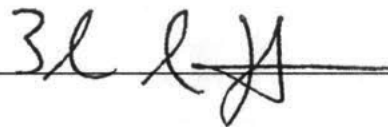
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

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FILED
Jun 22 2022

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May 06 2021

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of General Sessions
The Honorable Paul M. Burch, Circuit Court Judge

Appellate Case No. 2019-001274

THE STATE, ...RESPONDENT,

v.

JAMES DAVID BUSBY, ...APPELLANT.

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly allowed the State to introduce evidence collected from Appellant's truck because the evidence was obtained from a consensual search of the vehicle. Further, even if the search had been improper, the evidence obtained from the search was admissible pursuant to the doctrine of inevitable discovery.

STATEMENT OF THE CASE

Appellant was indicted by the Chesterfield County Grand Jury for murder, armed robbery, and possession of a weapon during the commission of a violent crime. On July 15–19, 2019, Appellant proceeded to a jury trial before the Honorable Paul M. Burch. Assistant Solicitors Mary Thomas Johnson-Lee, Esquire and Kernard E. Redmond, Esquire, represented the State; Tonya Copeland-Little, Esquire, represented Appellant. The jury found Appellant guilty of voluntary manslaughter, armed robbery, and possession of a weapon during the commission of a violent crime, and he was sentenced to thirty years' incarceration, fifteen years' incarceration, and five years' incarceration, respectively

Appellant timely filed a notice of appeal and brief. This brief of Respondent now follows.

STATEMENT OF FACTS

Trial Evidence

At approximately 7:30 a.m. on June 19, 2017, Bryan Rivers was about to leave his home on Hurst Cemetery Lane in Chesterfield, South Carolina when a woman drove up to his home and pulled in the driveway. She told Rivers that she saw a man on top of the nearby hill, “laying down taking a nap or something.” Rivers went to check on the man and found Victim’s corpse, at which point he contacted law enforcement and waited for officers to arrive. (R.p.169, line 20–R.p.173, line 15)

Sergeant Grant Polson of the Chesterfield County Sheriff’s Office arrived at the scene and observed the corpse was lying next to a red truck. Victim was on his back and missing part of his face as a result of an apparent gunshot wound, and it appeared his pants had been tampered with because the belt had been removed and the pockets were inside-out. Additionally, there was a baseball bat and a small bag near his head. The inside of the truck contained blood spatter and other body tissue throughout. Near the truck, Polson found a tire track for a mud terrain tire. The tire track appeared fresh; due to the remote location of the crime scene and the recently-planted soybean field nearby, he immediately suspected the tire track belonged to the vehicle of someone associated with the crime. (R.p.174, line 4–R.p.182, line 24)

Jordan arrived at the scene shortly after, and Polson showed him everything he had observed. Jordan also recognized brain matter and fragments of Victim’s head and face in the cab of the red truck. Victim was quickly identified, and Jordan tasked other officers with interviewing Victim’s known friends and family. Rachel Hammond Gullede provided officers with several persons of interest, including Appellant, due to a recent conflict between the men regarding Appellant’s failure to deliver a shotgun purchased by Victim. She also provided officers with a possible location for Appellant, the home of Nicole Deese on Plyler Road. When

detectives arrived, they found a white Chevy pickup truck with tires consistent with the tire track found at the crime scene. (R.p.186, line 25–R.p.192, line 10)

Deese was not home at that time, but officers were able to contact her later, also finding Appellant at the home. Jordan sought Appellant's permission to search¹ the truck, which was given, and during the search officers found a set of boots with Victim's driver's license, debit card, and social security card within. At that point, Jordan halted the search and ordered the truck transported to the Chesterfield County Sheriff's Office. Before proceeding further, Jordan obtained a search warrant for the truck's tire impressions as well as for an extensive search inside for items including a shotgun, which officers had learned was the murder weapon. (R.p.192, line 11–R.p.197, line 7)

Officers interviewed Appellant on multiple occasions, during which Appellant went from claiming he had no knowledge of the murder to later providing officers with information confirming officers' suspicions that he was responsible for Victim's death. Appellant led officers to a wooded area approximately a quarter of a mile from Deese's home where he led them to a spot where a shotgun was buried. On a separate occasion, Appellant led officers to Lake Terry, where divers located a white plastic bag containing a glove, shotgun shell, spent shotgun shell, and a wrench. (R.p.204, line 17–R.p.212, line 16; R.p.214, line 1–R.p.215, line 7; R.p.396, line 22–R.p.403, line 14; State's Exhibit 1)

SLED Agent Anna Tankersley was one of the crime scene investigators involved in the case. In addition to collecting evidence at the crime scene, she later met Appellant and received his permission to collect his DNA. Dawn Claycomb, Tankersley's partner at that time, recalled

¹ In front of the jury, Jordan omitted reference to Appellant's other charged offenses from Lancaster County, instead explaining he asked to search the vehicle for "a particular item." (R.p.193, lines 1–14)

her participation in the investigation, including her collection of evidence from Appellant's vehicle. In the front seat of Appellant's truck, Claycomb discovered a pair of jeans and a Maglite flashlight, both of which appeared covered in blood. She also found the I.D. cards found in the initial search of Appellant's truck. After comparing the tire impressions found at the crime scene with the tires on Appellant's truck she found the tires could have created the tire marks, but she did not find any unique wear patterns or other marks which excluded other tires of the same type from leaving the impressions. (R.p.220, line 20–R.p.226, line 6; R.p.233, line 14–R.p.248, line 4)

SLED agent Chris Johnson, an expert in cellular (phone) analysis, testified about his analysis of call histories and location data for Victim, Appellant, and several other individuals officers treated as persons of interest in their murder investigation. Appellant's phone signal bounced off the same towers Victim's phone was using during the late night/early morning Victim was murdered. Further, while Appellant's phone stopped calling Victim's phone around the time investigators believed Victim was murdered, other individuals associated with the case called Victim's phone throughout the night and morning after Victim's death and, in some cases, hours after the body was discovered. (R.p.292, line 8–R.p.323, line 20)

David Eddins, a friend of Victim's for many years, recalled seeing him on the night of June 18, 2017. Victim arrived at Eddins's home sometime between 10:30 and 11:00 p.m. that day with an electrical box he needed Eddins to modify. Victim, however, was not alone: a white Chevrolet truck pulled in behind him. Curious, Eddins asked Victim who the person in the truck was but the latter brushed aside the question and claimed the person was with him and nobody to worry about. Eddins also observed that the white truck had a loud muffler. Victim and the unknown man soon left, but around 12:30 a.m. Eddins heard a vehicle with a loud muffler

approaching his home. Eddins looked outside and noticed it was the same white truck he had seen earlier that night. The man in the truck asked Eddins whether he had seen Victim, claiming the men were separated after they left. The man also claimed he could not call Victim because his phone had died and told Eddins that if Victim returned to give him the message that the man was staying the night with his grandmother in Jefferson. As the man was leaving, he got out of his vehicle to inspect a bag in the driveway. He left the bag and departed the premises.

(R.p.335, line 5–R.p.343, line 5)

Clint Gulledge, Victim's friend and cousin, hosted Victim at his home the weekend he disappeared. Victim had slept at the home both Friday and Saturday nights and had spent most of Sunday there as well until going to dinner with his daughter for Father's Day. Victim briefly returned after dinner before leaving again. Victim never returned to the house and failed to answer any of the calls Gulledge made trying to contact him. (R.p.344, line 21–R.p.349, line 1)

When officers contacted Gulledge after finding Victim's body, Gulledge provided police with all relevant information he could recall. Gulledge informed officers about an ongoing dispute between Victim and Appellant over a shotgun the former purchased from the latter. Appellant claimed he left the shotgun behind Gulledge's barn, but it was never found. He also told law enforcement about Nicole Deese, with whom Victim was very close. Shortly after Gulledge was informed of Victim's passing, he called Appellant who acted strangely on the call, including aggressive behavior towards Deese who was audibly distraught in the background.

(R.p.349, line 2–R.p.355, line 10)

Rachel Hammond,² Gullledge's wife, confirmed Gullledge's testimony regarding the days leading up to Victim's death and the ongoing dispute between Appellant and Victim over a shotgun purchase. Hammond also explained that Hurst Cemetery Road was first explored by herself, a friend of hers, and Appellant a few weeks before Victim's death when the three of them went for coffee. (R.p.361, line 5–R.p.368, line 22)

Nicole Deese was a good friend of Victim's who regularly hung out with him around the time of his death. Appellant, however, was a relatively new acquaintance of hers around that time; she had only known him a few days. (R.p.369, line 21–R.p.372, line 4)

On June 18, 2017, Victim called Deese asking if she would accompany him on a trip to obtain drugs. Appellant, who was with Deese at the time, forced her to hang up the phone. Shortly after the call, Appellant informed Deese he was leaving to meet Victim to obtain dope. Hours passed, but Deese never heard from Victim despite expecting a call from him later that evening. Worried, Deese contacted others and asked them to also call Victim and Appellant. Appellant eventually returned to the home at a late hour, which seemed odd to Deese given a drug pick-up should not have taken a long time. Deese also observed Appellant wearing clothing different from what he had left the home in and in possession of a "longer gun." Deese pressed Appellant for answers, but he refused to say what occurred during his time with Victim. Between the night of June 19 and the morning of June 20, Appellant finally cracked and told Deese he killed Victim. (R.p.372, line 5–R.p.379, line 3)

Kenneth Parker met up with Victim around 9:15 p.m. on June 18 in Pageland, South Carolina to obtain drugs. Victim told Parker he was meeting up with Appellant afterwards for a

² Although Hammond is referred to as "Rachel Hammond Gullledge" throughout the transcript, her last name is still legally Hammond. (R.p.361, lines 9–10)

separate drug transaction. Later that night, Deese contacted Parker and told him she was concerned because she had been unable to reach Appellant and Victim. Parker attempted to contact both men but was only able to reach Appellant who claimed he never met up with Victim. (R.p.407, line 3–R.p.426, line 18)

Later, Parker was arrested for Victim’s murder after Appellant told law enforcement that Parker committed the murder. While incarcerated, he ran into Appellant on a few occasions. During one such interaction, Appellant told Parker that “somebody else” would hurt Parker and his family if Parker did not admit to shooting Victim. (R.p.430, line 21–R.p.433, line 2)

Maryann Boehm was the SLED DNA analyst who reviewed the items collected in the case. Her tests conclusively established the blood found on the Maglite was Victim’s while the bloody jeans found in Appellants truck contained Victim’s DNA in the bloodstains while Appellant’s DNA was the major contributor to the DNA found in the interior waistband of those same jeans. (R.p.446, line 4–R.p.456, line 15)

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) (“[W]e will review the trial court’s ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling.”). The reviewing court may conduct its own review of the record to determine whether the trial judge’s ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence supporting the ruling. See State v. Moore, 415 S.C. 245, 251, 781 S.E.2d 897, 900 (2016) (“[A]ppellate courts must affirm if there is any evidence to support the trial court’s ruling.”); State v. Morris, 411 S.C. 571, 578, 769 S.E.2d 854, 858 (2015) (“‘When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling.’ “(citation omitted)). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009); see Khingratsaiphon, 352 S.C. at 70, 572 S.E.2d at 459 (“In State v. Brockman, . . . [w]e concluded the appellate court would not review the trial judge’s ultimate determination de novo but, rather, would apply a deferential standard of review.”).

ARGUMENT

The trial judge properly allowed the State to introduce evidence collected from Appellant's truck because the evidence was obtained from a consensual search of the vehicle. Further, even if the search had been improper, the evidence obtained from the search was admissible pursuant to the doctrine of inevitable discovery.

Appellant argues the trial judge erred in allowing the State to introduce evidence discovered during the search of Appellant's vehicle, and the evidence obtained as a result of that search, because the search violated Appellant's rights under the Fourth Amendment and Article I, Section 10 of the South Carolina Constitution. The State disagrees with this allegation of error. Notably, the items were obtained pursuant to a consensual search and, even if the search was improper, the contested items would have inevitably been discovered during the course of law enforcement's investigation into Victim's death.

Suppression Hearing

Prior to trial, Appellant's trial counsel moved to suppress evidence obtained from his truck during a preliminary search by officers. Trial counsel claimed the search was made without Appellant's consent and without probable cause. Notably, the search was made pursuant to warrants from Lancaster County relating to Appellant's theft of a gun, but the weapon was already in possession of the Lancaster County Sheriff's Office when officers searched the vehicle. Expecting trial counsel's motion, the State presented witnesses explaining the facts which led to the search. (R.p.58, line 4—R.p.59, line 5)

Jason Catoe, a criminal investigator with the Lancaster County Sheriff's Office, testified he was contacted by Wayne Jordan of the Chesterfield County Sheriff's Office on June 21, 2017. Jordan asked Catoe whether he knew Appellant. Catoe informed Jordan they were investigating

him for a robbery and a stolen gun, and that they had enough probable cause to obtain warrants³ for Appellant's arrest. Jordan asked Appellant to get the warrant, and Catoe agreed to get the process started. Catoe, however, was not in the office at that moment because he was attending a class. He contacted his lieutenant, who he had emailed the night prior for approval of the warrants after meeting with the victim who had purchased the stolen weapon from Appellant. The victim gave Catoe the gun during their meeting and Catoe told his lieutenant as much when seeking approval to obtain the warrants. After Catoe contacted his supervisor about his conversation with Jordan, the arrest warrants were approved and then presented to a magistrate judge by a different officer. As soon as the warrants were signed, Catoe contacted Jordan to let him know they were in NCIC. However, Catoe never relayed to Jordan that he had already recovered the gun. (R.p.59, line 11–R.p.65, line 1)

Jordan also testified, explaining he contacted Catoe after their initial investigation into Victim's death led officers to identify Appellant as a person of interest in the case. After the Lancaster County Sheriff's Office obtained the warrants, Jordan and other officers went to the home of Nicole Deese, where officers believed Appellant to be staying. At the home, officers noticed Appellant's truck had special mud grip tires which appeared to match the tire impressions. After officers knocked on the door, Deese answered and told officers that Appellant was in a back bedroom of the home. Jordan, alone, walked to the bedroom and found Appellant. After confirming his identity, Jordan informed him he had arrest warrants from Lancaster County. Jordan described the remainder of the conversation between the two men as:

Where's the pistol? He said I don't have a pistol. I said, man, I need to search your car for a pistol. He said, okay, no problem, I don't have a pistol. I said where's your keys. He said they're in my pocket. I said I need your keys. He

³ The arrest warrants were for receiving stolen goods less than \$2,000 and obtaining goods by false pretense. (R.p.62, lines 16–21)

took – he reached in his pants pocket, pulled his keys out to his truck, and handed them to me. I handcuffed him. We walked outside. We started our search. I physically unlocked the car and then myself and Sgt. Burns started our search.

(R.p.68, line 11–R.p.71, line 9; R.p.72, lines 9–25; R.p.73, lines 12–18)

Before long, the men discovered a boot with a black-in-color t-shirt inside of it. Sgt. Burns pulled the t-shirt out and found two ID cards belonging to Victim. Jordan immediately ended the search, put the shirt, boots, and ID cards back as they were found, and immediately called for the transport of the vehicle to the Sheriff's Office where it could be secured. (R.p.71, line 10–R.p.72, line 8; R.p.75, line 11–R.p.76, line 2)

Jordan testified that, had Appellant refused the search of the vehicle, officers would still have ultimately seized the vehicle due to the evidence of Appellant's involvement in Victim's death. Officers were already aware from another witness, Rachel Hammond, that Appellant and Victim were in an ongoing dispute over a shotgun the former was supposed to sell to the latter but was never delivered; notably, Victim had been killed with a shotgun. Hammond had informed officers Victim was very upset he never received the weapon. Further, the fact that Appellant's truck tires matched the unique impression found at the crime scene meant officers had probable cause supporting a search warrant for the vehicle. Later, after the car was towed, Jordan obtained search warrants to collect tire impressions and search the interior of Appellant's vehicle. (R.p.73, line 1–R.p.75, line 10; R.p.76, lines 10–14; R.p.78, line 11–R.p.79, line 4)

After hearing the witnesses' testimony, the trial judge found he did not hear "any evidence to the contrary" that Jordan was not given permission to search the vehicle, so he denied the motion to suppress the evidence obtained from the car. To protect itself on the record, the State also indicated that it believed the challenged evidence was also subject to inevitable discovery based on the information known by officers at that time. The trial judge

acknowledged the argument, and trial counsel did not make any further arguments on the issue.
(R.p.80, line 6–R.p.81, line 2)

Analysis

Consent to Search

Warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment when conducted under the authority of voluntary consent. Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 66 (1999). “Undoubtedly, a law enforcement officer may request permission to search at any time.” State v. Pichardo, 367 S.C. 84, 105, 623 S.E.2d 840, 851 (Ct. App. 2005). Whether consent to search was voluntary or the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances. State v. Wallace, 269 S.C. 547, 550, 238 S.E.2d 675, 676 (1977); State v. Mattison, 352 S.C. 577, 584, 575 S.E.2d 852, 855 (Ct. App. 2003). The State bears the burden of establishing the voluntariness of the consent. Schneckloth v. Bustamonte, 412 U.S. 218 (1973); Mattison, 352 S.C. at 584, 575 S.E.2d at 855. In a custodial situation, the custodial setting is a factor to be considered in determining whether consent was voluntarily given; however, custody is not, by itself, enough to demonstrate a coerced consent to search. Mattison, 352 S.C. at 584, 575 S.E.2d at 855. “The issue of voluntary consent, when contested by contradicting testimony, is an issue of credibility to be determined by the trial judge.” Mattison, 352 S.C. at 584-85, 575 S.E.2d at 856; State v. Dorce, 320 S.C. 480, 482, 465 S.E.2d 772, 773 (Ct. App. 1995). A trial judge's conclusions on issues of fact regarding voluntariness will not be disturbed on appeal unless so manifestly erroneous as to be an abuse of discretion. Mattison, 352 S.C. at 585, 575 S.E.2d at 856.

Under our state constitution suspects are free to limit the scope of the searches to which they consent. State v. Forrester, 343 S.C. 637, 648, 541 S.E.2d 837, 843 (2001); State v. Funderburk, 367 S.C. 236, 240, 625 S.E.2d 248, 250 (Ct. App. 2006); Mattison, 352 S.C. at 585, 575 S.E.2d at 856. When relying on the consent of a suspect, a search must not exceed the scope of the consent granted or the search becomes unreasonable. Forrester, 343 S.C. at 648, 541 S.E.2d at 843; Funderburk, 367 S.C. at 240, 625 S.E.2d at 250; Mattison, 352 S.C. at 585, 575 S.E.2d at 856. Even in a situation where police have received a general and unqualified consent, “the police do not have carte blanche to do whatever they please.” Forrester, 343 S.C. at 648-49, 541 S.E.2d at 843 (quoting 3 Wayne R. LaFave, *Search and Seizure* § 8.1(c), at 612 (3d ed. 1996)). The scope of the consent is measured by a test of “‘objective’ reasonableness - what would the typical reasonable person have understood by the exchange between the officer and the suspect?” Florida v. Jimeno, 500 U.S. 248, 251 (1991); Mattison, 352 S.C. at 585-86, 575 S.E.2d at 856. Conduct falling short of “an unequivocal act or statement of withdrawal” is not sufficiently indicative of an intent to withdraw consent. Mattison, 352 S.C. at 587, 575 S.E.2d at 858; United States v. Alfaro, 935 F.2d 64, 67 (5th Cir. 1991). Effective withdrawal of consent to search requires unequivocal conduct, in the form of either an act, statement or some combination of the two that is inconsistent with consent previously given. Mattison, 352 S.C. at 585, 575 S.E.2d at 858; Burton v. United States, 657 A.2d 741 (D.C. 1994).

As an initial matter, the State notes Appellant’s concern over the presence of probable cause demonstrates his fundamental misunderstanding of the requirements of a consensual search: Jordan did not need a reason or probable cause to initiate a consensual search of Appellant’s vehicle. Although Jordan believed he was looking for the stolen pistol due to Catoe’s failure to inform him that the Lancaster County Sheriff’s Office already obtained the

weapon, he could have requested the search even without believing he would find evidence specifically related to the Lancaster County charges. See Palacio, 333 S.C. at 514, 511 S.E.2d at 66. Appellant was arrested pursuant to a lawful warrant and officers were free to ask for his consent to search after that arrest. Cf. Pichardo, 367 S.C. at 105, 659 S.E.2d at 851 (“Undoubtedly, a law enforcement officer may request permission to search at any time. However, when an officer asks for consent to search after an unconstitutional detention, the consent procured is per se invalid unless it is both voluntary and not an exploitation of the unlawful detention.” (emphasis added)) Further, even if Jordan had known the weapon was recovered, he still could have requested to search that vehicle. Thus, the question of whether Lancaster County had possession of the stolen firearm and Jordan’s knowledge of that fact is irrelevant to the determination of the constitutionality of the search.

The constitutionality of the search boils down to a single issue: whether Appellant willingly gave consent to the search. While Appellant was arrested immediately before officers requested to search his vehicle, the totality of the circumstances demonstrate Appellant voluntarily gave his consent for the search. The fact Appellant was placed under arrest immediately before he gave consent does not, by itself, render the consent involuntary. See Mattison, 352 S.C. at 584, 575 S.E.2d at 855. In Mattison, this Court found that the defendant’s presence among four police officers, squad cars with flashing blue lights, and a drug dog did not, as a matter of law, render his consent involuntary. Id. at 585, 575 S.E.2d at 585. Notably, Appellant’s arrest occurred in a much more relaxed and even less “coercive” situation than Mattison’s: Appellant was arrested by a single officer, in a bedroom of a home where he had been staying, and was not placed in handcuffs until after he had already pulled his keys from his pocket and given them to Jordan. When Jordan requested the search, Appellant said “okay, no

problem.” Further, Appellant never placed any limits on the scope of the search nor did the record reveal any overt act, threat, or other method of coercion. Appellant failed to present any testimony or other evidence contradicting the State’s evidence that his consent was willing. See Mattison, 352 S.C. at 584-85, 575 S.E.2d at 856 (“The issue of voluntary consent, when contested by contradicting testimony, is an issue of credibility to be determined by the trial judge.”) Accordingly, the trial judge did not abuse his discretion in finding Appellant willingly gave his consent to the search of his vehicle.

Inevitable Discovery

The “fruit of the poisonous tree” doctrine provides that evidence may be excluded if it is the product of unconstitutional police conduct. See Wong Sun v. United States, 371 U.S. 471 (1963). But more is required than simple but-for causation. As explained in Wong Sun:

We need not hold that all evidence is ‘fruit of the poisonous tree’ simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is ‘whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.’

Id. at 487–88 (internal citation omitted).

Any evidence seized as the result of an unreasonable search and seizure typically must be excluded from trial. State v. Weaver, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007). The inevitable discovery doctrine is an exception to the exclusionary rule which requires the State to establish by a preponderance of the evidence the same evidence seized unlawfully would have been discovered inevitably by lawful means. See State v. Jenkins, 398 S.C. 215, 227, 727 S.E.2d 761, 767 (Ct. App. 2012) (citing State v. Brown, 389 S.C. 473, 483, 698 S.E.2d 811, 816 (Ct. App. 2010); Nix v. Williams, 467 U.S. 431, 447 (1984) (holding evidence may be admitted despite a violation of the Fourth Amendment “if the government can prove that the evidence

would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police”)). When the doctrine applies, the evidence will not be suppressed despite the fact it was obtained pursuant to an illegal search. Brown, 389 S.C. at 483, 698 S.E.2d at 816.

In Nix, officers violated the defendant’s Sixth Amendment right to counsel by speaking with him after agreeing with his lawyer not to communicate with the defendant. As a result of the communications, the defendant led the officers to the location of a missing child’s body. The United States Supreme Court acknowledged the violation of the Sixth Amendment, but found because individuals were already canvassing the area, the body would have been inevitably discovered. The Court explained its reasons for not excluding the evidence based on the constitutional violation saying:

Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial. . . . Suppression, in these circumstances, would do nothing whatever to promote the integrity of the trial process, but would inflict a wholly unacceptable burden on the administration of criminal justice.

Nix, 467 U.S. at 446. The Court continued that exclusion was not necessary to cure an ill or to ensure fairness, finding:

Fairness can be assured by placing the State and the accused in the same positions they would have been in had the impermissible conduct not taken place. However, if the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury in order to ensure the fairness of the trial proceedings. In that situation, the State has gained no advantage at trial and the defendant has suffered no prejudice. Indeed, suppression of the evidence would operate to undermine the adversary system by putting the State in a worse position than it would have occupied without any police misconduct. Williams’ argument that inevitable discovery constitutes impermissible balancing of values is without merit.

Id. at 447.

Even if this Court finds the search of Appellant's vehicle was non-consensual, the evidence was still properly admitted at trial because it inevitably would have been discovered at a later point in time. Unquestionably, in Appellant's case, the law enforcement officers that investigated the murder had probable cause to procure a search warrant for the vehicle based on the numerous pieces of evidence they had obtained up to that point, especially the fact that Appellant's tires matched the impressions found at the crime scene. Additionally, officers had already learned about the dispute between Appellant and Victim over a shotgun transaction, and a shotgun also happened to be the murder weapon. In fact, Jordan testified officers were already prepared to obtain a warrant to search the vehicle based on the information in their possession and only proceeded without the warrant because of Appellant's consent. Other evidence obtained by law enforcement in the subsequent days and weeks only supports the inevitability of the search warrant: Victim's phone records placed Appellant and Victim in contact with each other the night of the murder and that contact led to the discovery that cell tower data also placed the men in proximity of each other during that period. Eddins and Parker both observed a white truck consistent with Appellant's following or driving near Victim before the latter disappeared, and Appellant even informed Parker that he had attempted to meet up with Victim. Notably, none of this evidence was obtained from the contents of Appellant's vehicle. These facts, taken together, readily establish the search warrant would have been obtained independent of the alleged constitutional violation. See Nix, 467 U.S. at 443

Appellant's argument that the Chesterfield County Sheriff's Office contacted the Lancaster County Sheriff's Office because it lacked probable cause to obtain its own warrant ignores the record presented by the State. The State, within the first day or two of its investigation, established Appellant as a person of interest and, shortly before his arrest,

discovered that his tire tread matched that found at the crime scene. This, along with the evidence subsequently uncovered by law enforcement supported a **search** warrant of the vehicle. However, the Chesterfield County Sheriff's Office discovered the Lancaster County Sheriff's Office already had enough evidence to obtain an **arrest** warrant for Appellant, preventing him from fleeing or destroying potential evidence while it took the time to obtain warrants based on its own investigation of Victim's death. Utilizing the Lancaster County arrest warrant was merely a matter of convenience for the Chesterfield County Sheriff's Office.

CONCLUSION

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

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May 6, 2021

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of General Sessions
The Honorable Paul M. Burch, Circuit Court Judge

Appellate Case No. 2019-001274

THE STATE, ...RESPONDENT,

v.

JAMES DAVID BUSBY, ...APPELLANT.

CERTIFICATE OF COUNSEL

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

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