

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Post Conviction Relief

S.C. SUPREME COURT

Honorable Edgar W. Dickson, Circuit Court Judge

App. Case No.: 2022-001121

Kadrin Singleton, 335449,

Petitioner,

vs.

State of South Carolina,

Respondent.

APPENDIX
VOLUME III of IV

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WEEK OF JANUARY 5, 2015

#	SSN	LAST NAME	FIRST	M	SU	S	R	DOB	ADDRESS	CITY	ZIP CODE
		Adams	Matthew			M	H			Mount Pleasant	29464
		Albert	Samantha	L		F	W			Mount Pleasant	29464
		Aldridge	Travis	M		M	B			MT PLEASANT	29466
		Allegood	Ogene	L		M	W			Charleston	29412
		Anderson	Cameron	E	G	F	W			Charleston	29414
		Anderson	Michael	P		M	W			Mt Pleasant	29466
		Aprile	Amanda	E		F	W			Mount Pleasant	29464
		Ashcraft	Amanda	M		F	W			Charleston	29412
		Atkinson	Carolyn	P		F	W			Charleston	29407
		Aycock	Nathan	P		M	W			Charleston	29403
		Bair	Nancy	G		F	W			Charleston	29412
		Ballenger	Tamara	H		F				Charleston	29403

Bancroft	Khayrud-Diyn	A	M	B	1	CHARLESTON AFB	29404
Bangma	Jennifer	A	F	W		Charleston	29412
Banks	Sarah	E	F	W		Charleston	29407
Bardaville	Jarrold	N	M	W	1	Charleston	29407
Barker	Donald	W III	M	W		CHARLESTON	29414
Barkley	Denyse	Hydrick	F	W		Mt Pleasant	29464
Barnes	Linda	E	F	W		North Charlesto	29406
Barnwell	Kendal	D	M	B		CHARLESTON	29406
Bayer	Karen	C	F	W		Isle of Palms	29451
Becerra	Francisco	J Jr.	M	W		Mount Pleasant	29466
Beebe	Mara	L	F	W		Charleston	29414
Beightol	Jennifer	M	F	W		Charleston	29412
Bernardiwatson	Sheree	A	F	W		Charleston	29414
Beykirch	Meredith	H	F	W	1	Mount Pleasant	29464
Bjornson	Elizabeth	J	F	W		Sullivan's Is	29482

Blackmore	Christopher	A	M	B	/	Charleston	29403
Blank	Michele	G	F	W		MOUNT PLEASANT	29466
Blunt	Austin	W	M	W		Mt Pleasant	29466
Bobo	Geraldine	D	F	W		No Charleston	29405
Boettcher	Eric	C	M	W		Charleston	29412
Botts	Joseph	A	M	W		Sullivans Is	29482
Bowers	Kristen	A	F	W		Mount Pleasant	29466
Brent	Malisha	A	F	B		Charleston	29412
Brooks	Nelson	G	M	W		Charleston	29414
Broughton	Shawntey	M	F	B		Hollywood	29449
Brown	Barry	L	M	B		Summerville	29485
Brown	Glen	E	M	W		Ladson	29456
Brown	Haris	G	M	B		N CHARLESTON	29418
Brown	Jahmoni	L	F	B		No Charleston	29418
Brown	Monica	M	F	B		Ladson	29456

	Brown	Shonda	R	F	B	Charleston	29414
	Brown	Tomekia	S	F	B	Charleston	29403
	Bruce	Jessica	S	F	A	CHARLESTON	29407
	S Bruce	Matthew	P	M	W	LADSON	29456
	Brunson	Taylor	A	F	B	Charleston	29414
	Burbage	Alvin	A	III	M W	957 CHARLESTON	29412
	Burn	Robert	J	III	M W	Charleston	29414
	Burris	Maryann		F	B	Ladson	29456
	Butcherglavin	Lisa	M	F	W	Mt Pleasant	29466
	Cameron	Darcy	M	F	W	Mt Pleasant	29466
	Campbell	Mark	T	M	W	Mt Pleasant	29466
	Capers	Kendrick	L	M	B	No Charleston	29405
	Cappallo	Gary	R	M	W	Mt Pleasant	29464
	Carter	Brittney	S	F	W	Charleston	29414
	Castro	Diego	A	M	H	Charleston	29403

Caughill	Kimberly	S	F	W	Charleston	29412
Cave	Dianna	M	F	W	Meggett	29449
Ceccoli	Elizabeth	A	F	W	Johns Island	29455
Cellini	Vincent	I	M	O	Charleston	29403
Ceva	Cecelia	A	F	W	Charleston	29414
Chambers	Christopher	D	M	W	CHARLESTON	29412
Chandler	Clinton	L Jr.	M	B	Charleston	29403
Chaney	Samuel	D	M	W	Mt Pleasant	29466
Cherry	Kristine	O	F	W	Johns Island	29455
Chisholm	Carolyn	S	F	W	Charleston	29407
Chisolm	Michael	M	M	B	No Charleston	29405
Chisolm	Nathan	L	M	B	NORTH CHARLEST	29405
Clark	Shawn	A	M	B	No Charleston	29406
Clark	Walter	P	M	W	Mt Pleasant	29464
Close	George		M	W	Charleston	29414

Cofer	Regena	F	F	W	Edisto Island	29438
Coker	Meredith	L	F	W	Charleston	29401
Collins	Ricky	L	M	B	Charleston	29403
Colly	Curtisha	A	F	B	CHARLESTON	29414
Conlee	Xavier	R	M	W	Mount Pleasant	29466
Cook	Kathleen	M	F	W	Charleston	29403
Cooke	Joanne	M	F	W	Mt Pleasant	29464
Cooper	Jacquelyn	G	F	W	MT PLEASANT	29466
Cooper	Kathleen		F	W	Charleston	29401
Corbett	Joel	J	M	W	Charleston	29412
Couch	Timothy	T	M	W	Charleston	29412
Crawford	Antwan	L	M	B	Charleston	29407
Crockett	Jeanna	C	F	W	Mount Pleasant	29464
Crosby	Lloyd	T	M	W	Johns Island	29455
Crump	Edward	W	M	W	Johns Island	29455

Cumbee	Kenneth	M	W	Mt Pleasant	29466
Cunin	Jacqueline	A	F B	No Charleston	29406
Cunningham	Elizabeth	D	F W	MOUNT PLEASANT	29466
Daugherty	Sarah	E	F W	Charleston	29407
Davis	David	R	M W	Charleston	29407
Davis	Dennis	R	M W	CHARLESTON	29406
Davis	John	H	M W	Mount Pleasant	29464
Dawson	Edward	M	M B	Charleston	29403
Dawson	Veronica		F B	No Charleston	29405
Day	Colby	L	F W	Charleston	29412
Deas	Creola	S	F B	McClellanville	29458
Deas	Rayshaun	M	M B	NORTH CHARLEST	29406
Demare	Joseph	D	M W	CHARLESTON	29403
Deputy	Iisheia	A	F B	North Charlesto	29406
Deweese	Christopher	B	M W	CHARLESTON	29414

Dickson	Jennifer	L	F	W	Charleston	29407
Dillon	James	M	M	W	Mt Pleasant	29464
Dinkins	Tracee	D	F	W	Charleston	29412
Dizon	Philip	J	M	O	Charleston	29414
Douglas	Christina	M	F	W	North Charlesto	29418
Drayton	Kendra	A	F	B	Huger	29450
Drayton	Lamar		M	B	Ravenel	29470
Driggers	Stephen	J	M	W	Mt Pleasant	29466
Driscoll	Cynthia	D	F	W	No Charleston	29406
Dubose	Benjamin	P	M	W	AWENDAW	29429
Dueger	Russell	C	M	W	Mount Pleasant	29466
Duffy	Patrick	M	M	W	Charleston	29412
Eady	Marquis	X	M	B	Charleston	29407
Ealy	Maureen	C	F	W	Charleston	29403
Eleazer	Marilyn	J	F	W	Mt Pleasant	29466

	Ellington	Joe	M	B	North Charlesto	29405		
	Elliot	Deloris	F	B	Charleston	29420		
	Ellis	Chardnay	C	F	B	Charleston	29407	
	Emerson	Donna	Looms	F	W	Charleston	29412	
	Enter	Bryan	S	M	W	Ladson	29456	
	Fain	Earl	IV	M	W	Charleston	29403	
	Fantry	Regan	C	F	W	Mt Pleasant	29464	
	Farnsworth	William	W	M	W	Mt Pleasant	29464	
	Felder	Deborah	E	F	B	Charleston	29403	
	Ferrell	Jennifer	L	F	W	Charleston	29407	
	Fleming	Cacinthia		F	B	Charleston	29414	
	Fletcher	Dana	L	F	W	3/	Charleston	29405
	Floyd	Ashley	R	F	B	No Charleston	29420	
	Flynn	Kevin	J	M	W	Charleston	29401	
	Frazier	Deadra	G	F	B	Johns Island	29455	

Free	Ande	M	F	W	Mount Pleasant	29464
French	Charles	S	M	W	Mount Pleasant	29464
French	Vincent	A Jr.	M	W	Charleston	29412
Frits	Lisha	L	F	W	Mt Pleasant	29466
Fuhrmeister	Cory	W	M	W	Folly Beach	29439
Furtwangler	Robert	G	M	W	Johns Island	29455
Gallagher	Jean	T	F	W	Kiawah Island	29455
Gallman	Everette	A	M	W	Charleston	29414
Garden	Athena	L	F	B	Charleston	29414
Gardner	Elise	P	F	W	C Charleston	29407
Garner	Jolisa	L	F	B	No Charleston	29418
Gaspi	Angelica	L	F	A	CHARLESTON	29406
Generette	Patricia	A	F	B	No Charleston	29418
Gethers	Kierra	J	F	B	North Charlesto	29420
Giardino	Paul	H	M	W	Seabrook Island	29455

Gibbs	Benjamin	N	M	B	Charleston	29414
Gibbs	Krystal	A	F	B	Charleston	29414
Gibson	Juanita	C	F	W	Charleston	29412
Giegher	Marva	A	F	B	7 Charleston	29407
Gould	Shannon	L	F	W	CHARLESTON	29412
Grant	Nakia	S	F	B	Dr Charleston	29418
Grant	Patricia	W	F	B	St Charleston	29407
Gratzmiller	Jeffrey	W	M	W	Mt Pleasant	29464
Green	Joe	M	M	B	Mt Pleasant	29464
Green	Nathaniel		M	B	Charleston	29403
Green	Rhoda	A	F	B	Charleston	29407
Green	Stephanie	L	F	W	Mount Pleasant	29464
Griggs	Alisha	J	F	W	Charleston	29412
Grimball	David	O	M	W	Johns Island	29455
Grimes	Melissa	D	F	W	Meggett	29449

	Gromo	Angela	N	F	W	NORTH CHARLEST	29405	
	Guardiabaker	Marilene		F	W	Charleston	29414	
	Guffey	Susan	J	F	W	Mt Pleasant	29464	
	Habecker	Martin	V	IV	M	W	Charleston	29407
	Hadden	Leonard	D	M	W	Charleston	29407	
	Hadley	Vernon	W	M	W	MT PLEASANT	29466	
	Hall	Erica	L	F	W	Mount Pleasant	29464	
	Hardwick	Christopher	B	M	W	Mt Pleasant	29466	
	Hargett	Michael	B	M	W	Charleston	29407	
	Harris	William	S Jr.	M	W	Johns Island	29455	
	Harvey	Laura	N	F	W	Mt Pleasant	29464	
	Hawkins	Sarah		F	W	CHARLESTON	29407	
	Hayes	Jamalyna	J	F	B	1/	CHARLESTON	29418
	Hayward	Stacey	Y	F	B	Charleston	29403	
	Hazel	Jeron	B	M	B	Mt Pleasant	29466	

	Heidtman	William	D	III	M	W	Charleston	29414
	Heins	Amelia	B		F	W	Mount Pleasant	29464
	Hendricks	Madison	H		F	W	Charleston	29407
	Henrikson	Jon	H	II	M	W	Charleston	29414
	Hester	Melinda	B		F	W	Charleston	29412
	Hill	Lora	A		F	W	North Charleston	29418
	Hill	Scott	R		M	W	Charleston	29412
	Hines	Kaisha	L		F	B	Hollywood	29449
	Hoffman	Brenda	J		F	W	Charleston	29407
	Hollis	Andrew	O		M	W	Charleston	29407
	Hord	Heather	J		F	W	Charleston	29412
	Horner	William	S		M	W	Mount Pleasant	29464
	Howard	Latoya	E		F	B	WADMALAW IS	29487
	Howard	Steven	P		M	W	Charleston	29407
	Howell	Lindsay	C		F	W	Charleston	29414

Hull	Lowell	E	M	W	Charleston	29407
Hutchinson	Michael	J	M	B	Ladson	29456
Ingraham	John	L	M	W	Charleston	29412
Jacob	Herman	R Sr.	M	W	Ravenel	29470
Jefferson	Sandree	S	F	B	Charleston	29414
Jehle	Kathryn	A	F	W	No Charleston	29418
Jenkins	Sandra	L	F	B	Hollywood	29449
Johansen	Mikkel	E	M	W	McClellanville	29458
Johnson	Evangeline	C	F	W	CHARLESTON	29412
Johnson	William	A	M	W	Charleston	29412
Jones	Beatrice	J	F	B	No Charleston	29406
Jordan	Robert	B	M	W	Johns Island	29455
Kaldas	Ibrahim	M	M	W	Mt Pleasant	29466
Kaufmann	Linda	K	F	W	Pleasant	29466
Kerman	Rebecca	B	F	W	Charleston	29403

Klevit	Richard	B	M	W	Mt Pleasant	29464
Kim	Rena	H	F	A	Charleston	29407
Kirby	James	D	M	W	Mt Pleasant	29464
Kleskie	Kathleen	R	F	W	Charleston	29412
Klingemann	Patrick	G	M	W	Mount Pleasant	29464
Kopald	Patricia	R	F	W	Mt Pleasant	29466
Kotila	John	M	M	W	Johns Island	29455
Kozek	Regina	E	F	W	Folly Beach	29439
Kress	Kevin	M	M	W	Mount Pleasant	29466
Kuqo	Elona		F	W	CHARLESTON	29414
Kurzejamconnell	Melissa		F	W	Mount Pleasant	29464
Lancaster	Mary	Y	F	W	Charleston	29414
Larose	Jonathan	E	M	W	Isle of Palms	29451
Latto	Nicholas	S	M	W	Charleston	29412
Lee	Matthew	C	M	W	Charleston	29407

Logan	Nicole	R	F	W	Mount Pleasant	29466
Lor	Nicholas	C	M	A	Mount Pleasant	29464
Lucarelli	Gina	M	F	W	North Charleston	29406
Lunsford	Gary	H	M	W	Mt Pleasant	29466
Maknimittanon	Rungriya		F	A	No Charleston	29406
Mangrumjohnson	Elizabeth	L	F	W	Charleston	29414
Maniscalco	Carolee	A	F	W	Mount Pleasant	29466
Massinople	Bonnie	M	F	W	CHARLESTON	29414
Mathis	Jeffrey	B	M	W	Mt Pleasant	29464
Maull	Brittany	D	F	W	CHARLESTON	29412
Mcabee	Mary	W	F	W	Charleston	29407
Mcavoy	Ryan	P	M	W	CHARLESTON	29414
Mcbride	Mary	C	F	W	Mt Pleasant	29464
Mccall	Richard	L	M	W	Charleston	29401
Mccrea	Michael	L	M	W	Charleston	29403

Mcguiness	Nicholas	W	M	W	Folly Beach	29439
McInain	Timothy	M	M	W	Mt Pleasant	29466
Mclean	Karen	M	F	W	Mount Pleasant	29464
Mcmanus	Kelly	S	F	W	MOUNT PLEASANT	29464
Mcpherson	Jeffrey	T	M	W	CHARLESTON	29412
Meadepender	Katherine	L	F	W	North Charlesto	29406
Meadows	Betty	R	F	W	No Charleston	29406
Meier	Sheryl	L	F	W	Summerville	29483
Melville	Pamela	M	F	W	Charleston	29418
Melvin	Hattie	M	F	B	No Charleston	29418
Merritt	Kevin	S	M	W	Mount Pleasant	29466
Meyer	Ted	A	M	W	Johns Island	29455
Milam	Geneva	P	F	H	Charleston	29412
Milledge	Dorothy	C	F	B	No Charleston	29405
Milligan	Antoine	S	M	B	North Charlesto	29405

Mills	James	R	M	W	Charleston	29412
Mitchum	Ricky	W	M	W	CHARLESTON	29414
Mix	Craig	S	M	W	NORTH CHARLEST	29418
Montalvo	Ramiro	A	M	W	Mt Pleasant	29464
Montgomery	De'ja	L	F	B	LADSON	29456
Montgomery	Robert	S	M	W	Mount Pleasant	29466
Morhee	Yvette	L	F	O	Ladson	29456
Morris	Herman	H Jr.	M	W	Ravenel	29470
Morrison	Autumn	S	F	W	Mt Pleasant	29466
Morrison	Nancy	M	F	W	McClellanville	29458
Muhammad	Ameen	A	M	B	Charleston	29403
Murray	Demetria	S	F	B	HOLLYWOOD	29449
Myers	C	Harris	M	W	Mt Pleasant	29464
Nagel	Robert	A	M	W	Mt Pleasant	29464
Naik	Anjali	K	F	A	Charleston	29401

Nelson	Horace	S B	M	W	Charleston	29403
Nelson	Vetta	L	F	B	Mt Pleasant	29466
B Nelson	Woodrow	E	M	W	Charleston	29412
Nesbitt	Stephen	L	M	W	Johns Island	29455
Nicklas	William	D	M	W	Charleston	29412
Norwood	Joseph		M	W	Mt Pleasant	29466
Okane	Shawn	E	M	W	Charleston	29414
Olayer	Chiara	B	F	W	Mount Pleasant	29464
Oliver	Leonard	W	M	B	Charleston	29407
Oser	Ruth	K	F	W	Charleston	29407
Owens	John	M	M	W	Pleasant	29464
Owens	Otis		M	W	0 NORTH CHARLEST	29418
Page	Teresa		F	W	Charleston	29414
Palnter	Patricia	A	F	W	Charleston	29414
Patterson	David	L	M	B	Charleston	29407

	Peek	Nadiya	P	F	W	Charleston	29414	
	Pendarvis	Andrew	H	III	M	W	Mt Pleasant	29464
	Pepper	Ashleigh	C	F	M	MT PLEASANT	29464	
	Peterson	Mary	B	F	B	Wadmalaw	29487	
	Petrucci	Carina	N	F	W	3/	Johns Island	29455
	Pettus	James	E	M	W	Johns Island	29455	
	Piening	Ralph	B	M	W	Isle of Palms	29451	
	Pierson	Thomas	R	III	M	W	CHAS	29407
	Ploetz	Linda	D	F	W	Charleston	29412	
	Potts	Jacob	A	M	W	Charleston	29407	
	Powers	Margaret	K	F	W	Charleston	29403	
	Powers	Melissa	A	F	W	JOHNS ISLAND	29455	
	Ramamoorthy	Bhavishya	U	F	A	MOUNT PLEASAN	29464	
	Rathman	Kristin	D	F	W	CHARLESTON	29412	
	Razumich	Joshua	Z	M	W	Pleasant	29466	

Reed	Linda	S	F	W	Ladson	29456
Reeves	Taiann	L	F	W	Charleston	29401
Rentz	Terry	E	M	W	Meggett	29449
Ricci	Dina		F	W	Charleston	29412
Richardson	Courtney	A	F	B	No Charleston	29418
Richmond	Teri	L	F	W	Charleston	29412
Ringel	Beth	A	F	W	Mt Pleasant	29466
Ringhiser	Daniel	J	M	W	A CHARLESTON	29407
Roach	Winston	A Jr.	M	B	No Charleston	29418
Roberts	Carolyn	A	F	W	Charleston	29412
Robinson	Brenda	D	F	B	No Charleston	29405
Rockers	Stefani	D	F	W	Charleston	29407
Rodriguez	Dakota	D	M	O	North Charlesto	29418
Rodriguez	Diaz	Cesar A	M	H	CHARLESTON	29414
Rogers	James	L Jr.	M	W	Pleasant	29464

	Rollins	Gereza	M	F	A	Charleston	29412
	Sanchez	Christopher		M	H	MOUNT PLEASANT	29464
	Sargent	Jeffrey	R	M	W	MOUNT PLEASANT	29466
	Sauer	Kelly	A	F	W	North Charleston	29405
	Saxon	Emmett	L IV	M	W	CHARLESTON	29407
	Schiller	Crystal	E	F	W	Charleston	29401
	Schofield	Kristen	E	F	W	Charleston	29403
	Schroder	Jennifer	M	F	W	Charleston	29414
	Scott	Dierdre	L	F	B	Charleston	29407
	Sears	Senta	B	F	B	Adams Run	29426
	Serniak	Mark	A	M	W	Mount Pleasant	29464
	Sessions	Roy	B	M	W	Seabrook Island	29455
	Sheppard	Jiquan	T	M	B	CHARLESTON	29407
	Shivers	Tiffany	C	F	B	Apt F154 Charleston	29407
	Siedell	Helen	S	F	W	Wadmalaw	29487

Sigman	Walter	E	M	W	Charleston	29412
Silvia	Kenneth	A	II	M	W	Charleston 29414
Simmons	Brian	J	M	W	Mt Pleasant	29464
Simmons	Timothy	J	M	B	Charleston	29407
Skinner	Margaret	J	F	W	Mt Pleasant	29464
Skinner	Mary	Kate D	F	W	Charleston	29412
Smalls	Maurice	M	M	B	Charleston	29418
Smith	Anna	M	F	W	Charleston	29412
Smith	Austin	G	M	W	C Charleston	29403
Smith	Kathleen	B	F	W	Mt Pleasant	29464
Smith	Krystle	S	F	B	North Charleston	29420
Smith	Michael	L	M	W	CHARLESTON	29414
Smith	Veronica	R	F	W	Charleston	29414
Smoot	Carmelita	C	F	A	No Charleston	29405
Sneed	Nora	C	F	B	No Charleston	29420

Sobus	Krysten	D	F	W	Mt Pleasant	29466
Soltis	Teresa	D	F	W	Mt Pleasant	29466
Spurgeon	Aundrela		F	W	Charleston	29403
Starr	Richard	L	M	W	Charleston	29401
Steadman	Paul	W	M	W	Charleston	29412
Stephens	Kathy	Marie	F	W	Charleston	29407
Stevenson	Linda	M	F	W	Mt Pleasant	29464
Taylor	Suzanne	O	F	W	NORTH CHARLEST	29406
Thames	Anne	Y	F	W	Mt Pleasant	29466
Thomas	Julie	L	F	W	Mt Pleasant	29464
Thompson	Ann	B	F	W	Mount Pleasant	29464
Thompson	Annie	P	F	W	Charleston	29412
Thompson	Betsy	M	F	W	Charleston	29407
Threlfall	Crystal	M	F	W	Charleston	29401
Tilman	Annette	G	F	W	No Charleston	29405

Timmons	Linda	D	F	W	Awendaw	29429
Todd	Jennifer	A	F	W	Charleston	29403
Tomlin	Lewis	A Jr.	M	W	N Charleston	29406
Tomlinson	Tyler	R	M	W	Charleston	29412
Tremayne	Morgan	W	F	W	Charleston	29414
Turner	Alisa	M	F	W	Mt Pleasant	29464
Turner	Corey	M	M	W	Mt Pleasant	29464
Utz	Benjamin	A	M	W	NORTH CHARLEST	29406
Vanburen	Sean	M	M	W	Isle of Palms	29451
Vanderhorst	William	L	M	B	Mt Pleasant	29464
Vane	Deanne	R	F	W	Mt Pleasant	29464
Vanraalte	Lisa	S	F	W	Mt Pleasant	29464
Velasquez	Joni	G	M	H	No Charleston	29418
Vickers	Bianca	L	F	W	Pleasant	29464
Vincent	Brittanie	R	F	W	Mount Pleasant	29466

Walker	Ruth	P	F	W	Charleston	29412
Waring	Gladys	V	F	B	No Charleston	29405
Washington	Lori	A	F	B	Hollywood	29449
Washington	Maria	L	F	B	North Charlesto	29406
Washington	Monaye	L	F	B	Charleston	29412
Watkins	Bryan	E	M	W	No Charleston	29406
Watson	Samantha	A	F	W	Mount Pleasant	29466
Weber	Rachel		F	W	Charleston	29412
Weissglass	Barry	L	M	W	Charleston	29414
West	Kenneth	W	M	W	Johns Island	29455
Whales	Mark	A Jr.	M	W	Mt Pleasant	29464
Whaley	Brittany	O	F	B	No Charleston	29405
White	Joshua	P	M	B	Charleston	29407
Whitlow	James	L Jr.	M	W	Charleston	29407
Wilder	Loretha		F	B	JAMES ISLAND	29412

Wilhite	Chris	M	M	W	Mt Pleasant	29464
Williams	Acquenetta	S	F	B	Charleston	29407
Williams	Eleanor	S	F	B	Charleston	29414
Williams	Quiana	M	F	B	No Charleston	29405
Williams	Susan	D	F	B	Charleston	29407
Wilson	Karen	K	F	W	Charleston	29412
Wise	Barbara		F	B	Pleasant	29464
Wolfe	Paul	R	M	W	Isle of Palms	29451
Wright	Reginald	D	M	B	Charleston	29412
Wright	Shonte	A	F	B	Charleston	29412
Wyatt	Rachel	L	F	W	Charleston	29407
Young	Sharon	A	F	B	Awendaw	29429
Zbierski	Brian	M	M	W	Hollywood	29449

Charleston County Courthouse
RANDOM STRIKE SHEET

Selection 1 **1019**

JUDGE NAME :

TRIAL TYPE :

PANEL ID : 2013GS1001153

COURTROOM 4C

DESCRIPTION : State vs. Kadrin Singleton

Sorted by: Random Nbr

Trial

NAME	NUMBER	RACE	SEX	STRIKE	DEF	ERT	REMARKS
1 Bardaville, Jarrod N	16	W	M	~~/~~	()	()	
2 Hull, Lowell E	193	W	M	()	~~/~~	()	
3 Skinner, Mary Kate D	333	W	F	()	()	()	①
4 Smalls, Maurice M	334	B	M	~~/~~	()	()	
5 Kirby, James D	210	W	M	()	~~/~~	()	
6 Tomlinson, Tyler R	361	W	M	~~/~~	()	()	
7 Scott, Dierdre L	321	B	F	()	()	()	②
8 Drayton, Kendra A	108	B	F	()	()	()	③
9 Kopald, Patricia R	213	W	F	()	~~/~~	()	
10 Drayton, Lamar	109	B	M	~~/~~	()	()	
11 Rentz, Terry E	300	W	M	()	()	()	④
12 Soltis, Teresa D	344	W	F	()	~~/~~	()	
13 Bayer, Karen C	21	W	F	()	~~/~~	()	
14 Latto, Nicholas S	221	W	M	()	()	()	⑤
15 Vane, Deanne R	368	W	F	()	()	()	⑥
16 Crockett, Jeanna C	85	W	F	()	()	()	⑦
17 Rollins, Gereza M	313	A	F	()	()	()	⑧
18 Rogers, James L Jr.	312	W	M	()	~~/~~	()	
19 Garden, Athena L	141	B	F	()	()	()	⑨
20 Vanraalte, Lisa S	369	W	F	()	~~/~~	()	
21 Treadway, Kristin D	296	W	F	()	()	()	⑩
22 Morrison, Autumn S	261	W	F	()	~~/~~	()	
23 Sigman, Walter E	328	W	M	()	()	()	⑪

1020

Charleston County Courthouse RANDOM STRIKE SHEET

JUDGE NAME :

TRIAL TYPE :

PANEL ID : 2013GS1001153

COURTROOM 4C

DESCRIPTION : State vs. Kadrin Singleton

Sorted by: Random Nbr

Trial

NAME	DEFORNER	RACE	SEX	ST/PL	HT	DOB	OPT	REMARKS
24 Ferrell, Jennifer L	127	W	F	()	~~/~~	()		
25 Day, Colby L	97	W	F	()	~~/~~	()		
26 Whitlow, James L Jr.	386	W	M	()	()	()		(13)
27 Piening, Ralph B	289	W	M	~~/~~	()	()		
28 Howard, Steven P	191	W	M	()	~~/~~	()		
29 Grant, Patricia W	154	B	F	()	()	()		A-1
30 Thompson, Ann B	353	W	F	()	~~/~~	()		
31 Hord, Heather J	188	W	F	()	~~/~~	()		
32 Naik, Anjali K	267	A	F	()	()	()		A-2
33 Myers, C Harris	265	W	M	()	()	()		
34 Kress, Kevin M	216	W	M	()	()	()		
35 Powers, Melissa A	294	W	F	()	()	()		
36 Hoffman, Brenda J	186	W	F	()	()	()		
37 Smith, Veronica R	340	W	F	()	()	()		
38 Crump, Edward W	87	W	M	()	()	()		
39 Serniak, Mark A	323	W	M	()	()	()		
40 Grimbball, David O	161	W	M	()	()	()		
41 Merritt, Kevin S	248	W	M	()	()	()		
42 Flynn, Kevin J	131	W	M	()	()	()		
43 McLain, Timothy M	239	W	M	()	()	()		
44 Dizon, Philip J	106	O	M	()	()	()		
45 Burris, Maryann	50	B	F	()	()	()		
46 Ellis, Chardnay C	120	B	F	()	()	()		

Charleston County Courthouse
RANDOM STRIKE SHEET

1021

JUDGE NAME :

TRIAL TYPE :

PANEL ID : 2013GS1001153

COURTROOM 4C

DESCRIPTION : State vs. Kadrin Singleton

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	SUPLTFF	DEPT	CRT	REMARKS
47 Maniscalco, Carolee A	229	W	F	()	()	()	
48 Siedell, Helen S	327	W	F	()	()	()	
49 Okane, Shawn E	274	W	M	()	()	()	
50 Mcavoy, Ryan P	234	W	M	()	()	()	
51 Guardiabaker, Marilene	164	W	F	()	()	()	
52 Smith, Austin G	336	W	M	()	()	()	
53 Chisolm, Michael M	68	B	M	()	()	()	
54 Generette, Patricia A	145	B	F	()	()	()	
55 Harvey, Laura N	173	W	F	()	()	()	
56 Milledge, Dorothy C	251	B	F	()	()	()	
57 Enter, Bryan S	122	W	M	()	()	()	
58 Blank, Michele G	29	W	F	()	()	()	

Total Number of Jurors:

58

** END OF REPORT **

1022

Charleston County Courthouse

RANDOM STRIKE SHEET

Selection 2

JUDGE NAME :

TRIAL TYPE :

Sorted by: Random Nbr

PANEL ID : 2013GS1001153

DESCRIPTION : State vs. Kadrin Singleton

Trial

COURTROOM 4C

NAME	JUROR NBR	RACE	SEX	STPLTFF	DEF	CR	REMARKS
1 Morrison, Autumn S	261	W	F	()	/	()	
2 Genereette, Patricia A	145	B	F	()	/	()	
3 Whitlow, James L Jr.	386	W	M	()	()	()	1
4 Scott, Dierdre L	321	B	F	()	/	()	
5 Enter, Bryan S	122	W	M	()	/	()	
6 Burris, Maryann	50	B	F	/	()	()	
7 Bardaville, Jarrod N	16	W	M	/	()	()	
8 Dizon, Philip J	106	O	M	()	()	()	2
9 Howard, Steven P	191	W	M	()	/	()	
10 Piening, Ralph B	289	W	M	()	()	()	3
11 Hord, Heather J	188	W	F	()	()	()	4
12 Rogers, James L Jr.	312	W	M	()	/	()	
13 Latto, Nicholas S	221	W	M	()	()	()	5
14 Rentz, Terry E	300	W	M	()	()	()	6
15 Maniscalco, Carolee A	229	W	F	()	/	()	
16 Thompson, Ann B	353	W	F	()	()	()	7
17 Merritt, Kevin S	248	W	M	()	()	()	8
18 Drayton, Kendra A	108	B	F	()	()	()	9
19 Bayer, Karen C	21	W	F	()	/	()	
20 Flynn, Kevin J	131	W	M	()	()	()	10
21 Vane, Deanne R	368	W	F	()	()	()	11
22 Skinner, Mary Kate D	333	W	F	()	()	()	12
23 Hoffman, Brenda J	186	W	F	/	()	()	1

**Charleston County Courthouse
RANDOM STRIKE SHEET**

1023

JUDGE NAME :

TRIAL TYPE :

PANEL ID : 2013GS1001153

COURTROOM 4C

DESCRIPTION : State vs. Kadrin Singleton

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	STATUS	DEF	OFF	REMARKS
24 Kopald, Patricia R	213	W	F	()	~~()~~	()	
25 Serniak, Mark A	323	W	M	()	()	()	A-1
26 Drayton, Lamar	109	B	M	~~()~~	()	()	
27 Mcavoy, Ryan P	234	W	M	()	()	()	A-2
28 Garden, Athena L	141	B	F	()	()	()	
29 Kirby, James D	210	W	M	()	()	()	
30 Kress, Kevin M	216	W	M	()	()	()	
31 McLain, Timothy M	239	W	M	()	()	()	
32 Ellis, Chardnay C	120	B	F	()	()	()	
33 Vanraalte, Lisa S	369	W	F	()	()	()	
34 Treadway, Kristin D	296	W	F	()	()	()	
35 Myers, C Harris	265	W	M	()	()	()	
36 Smith, Veronica R	340	W	F	()	()	()	
37 Naik, Anjali K	267	A	F	()	()	()	
38 Grant, Patricia W	154	B	F	()	()	()	
39 Soltis, Teresa D	344	W	F	()	()	()	
40 Siedell, Helen S	327	W	F	()	()	()	
41 Sigman, Walter E	328	W	M	()	()	()	
42 Rollins, Gereza M	313	A	F	()	()	()	
43 Okane, Shawn E	274	W	M	()	()	()	
44 Crump, Edward W	87	W	M	()	()	()	
45 Day, Colby L	97	W	F	()	()	()	
46 Chisolm, Michael M	68	B	M	()	()	()	

**Charleston County Courthouse
RANDOM STRIKE SHEET**

JUDGE NAME :

TRIAL TYPE :

PANEL ID : 2013GS1001153

COURTROOM 4C

DESCRIPTION : State vs. Kadrin Singleton

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	STRIKE	DEF	PROT	REMARKS
47 Harvey, Laura N	173	W	F	()	()	()	
48 Powers, Melissa A	294	W	F	()	()	()	
49 Smalls, Maurice M	334	B	M	()	()	()	
50 Smith, Austin G	336	W	M	()	()	()	
51 Milledge, Dorothy C	251	B	F	()	()	()	
52 Blank, Michele G	29	W	F	()	()	()	
53 Crockett, Jeanna C	85	W	F	()	()	()	
54 Guardiabaker, Marilene	164	W	F	()	()	()	
55 Hull, Lowell E	193	W	M	()	()	()	
56 Ferrell, Jennifer L	127	W	F	()	()	()	
57 Tomlinson, Tyler R	361	W	M	()	()	()	
58 Grimball, David O	161	W	M	()	()	()	

Total Number of Jurors:

58

** END OF REPORT **

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
)

Warrant No(s): 2012A1010202651
Charge(s): Murder

STATE OF SOUTH CAROLINA

vs.

KADRIN RAJUN SINGLETON,

Defendant

)
) DEFENDANT'S REQUESTED
) JURY CHARGE No.: _____
)
)
)
)
)

SELF-DEFENSE

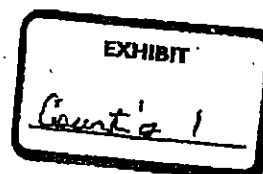
Request to Charge No. 1

Ladies and gentlemen of the jury, Kadrin Singleton has offered evidence of having acted in self-defense when he shot Sharrell Williams. And ladies and gentlemen of the jury, I charge you that self-defense is a complete defense to the charge Murder.

I charge you that in deciding whether Kadrin Singleton is guilty or not guilty of Murder, the State has the burden of proving beyond a reasonable doubt, that he did not act in self-defense.

In other words, if you have a reasonable doubt about whether Kadrin Singleton was acting in self-defense, you are to resolve that doubt in his favor and find him not guilty.

State v. Burkhardt, 350 S.C. 252, 565 S.E.2d 298 (2002); *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).



Request to Charge No. 2

There are four elements required by law to establish self-defense in this case. The first element is that Kadrin Singleton must be without fault in bringing on the difficulty.

The second element is that Kadrin Singleton must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.

Third, if Kadrin Singleton's defense is based upon his belief of his being imminent danger of suffering a serious bodily injury or death, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief.

If Kadrin Singleton actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life.

The fourth element is that Kadrin Singleton had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

Request to Charge No. 3

In this case, Kadrin Singleton has offered evidence that he believed he was in imminent danger of death or of receiving serious bodily harm. If Kadrin Singleton's belief was reasonable, he does not have to wait until he is actually attacked or injured or until force is used by the aggressor before he exercises his right to use deadly force in self-defense.

In other words, Kadrin Singleton does not have to wait until the assailant "gets the drop on him" in order to be entitled to use force in self-defense.

See F. PATRICK HUBBARD, JURY INSTRUCTION FOR CRIMINAL CASES IN SOUTH CAROLINA: DEFENDANT'S REQUESTED INSTRUCTIONS 265-298 (2d ed. 2001).

Request to Charge No. 4

In determining whether Kadrin Singleton's belief of being in imminent danger of death or of receiving serious bodily harm was reasonable, you should try as near as you can to put yourself in his situation at the time of this incident because people are entitled to act on appearances.

You should consider the circumstances by which Kadrin Singleton was surrounded, and take into consideration the person with whom he was dealing, and all of the facts which surround him, as you obtained the same from the testimony, and as near as you can, view the situation from the Defendant's standpoint.

I further instruct you that you are not to determine if Kadrin Singleton made the wisest choice possible, but only a reasonable one under the circumstances as he perceived them.

See State v. Day, 341 S.C. 10, 535 S.E.2d 431, 435-36 (2000); *State v. Fuller*, 297 S.E.2d 440, 377 S.E.2d 328 (1989); *State v. Rash*, 182 S.C. 42, 48-49, 188 S.E. 435 (1936); F. PATRICK HUBBARD, JURY INSTRUCTION FOR CRIMINAL CASES IN SOUTH CAROLINA: DEFENDANT'S REQUESTED INSTRUCTIONS 265-298 (2d ed. 2001).

Request to Charge No. 5

In determining whether Kadrin Singleton's belief of being in imminent danger of death or of receiving serious bodily harm was reasonable, I instruct you that you may consider the following factors:

You may consider whether Kadrin Singleton's belief of being attacked by Mr. Williams was a reasonable belief when there were words accompanied by hostile acts. I further charge you that that words accompanied by hostile acts may be sufficient alone to establish that Kadrin Singleton acted in self-defense.¹

¹ *State v. Harvey*, 220 S.C. 506, 68 S.E.2d 409 (1951).

Request to Charge No. 6

Ladies and gentlemen of the jury, the prosecution has offered evidence that Kadrin Singleton shot Mr. Williams more than once. I charge you that "ordinarily one is not justified in . . . employing a deadly weapon after the adversary has been disarmed or disabled. However, when a person is justified in [using deadly force], he is justified in continuing to [use deadly force] until it is apparent that the danger to his life and body has ceased."

State v. Hendrix, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978) (internal quotation marks and citations omitted).

Request to Charge No. 7

Without fault means that "if the defendant's conduct was the type with was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal on self-defense."

State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007); *State v. Dickey*, 394 S.C. 491, 716 S.E.2d 97 (2011).

CDD20121108549

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2012041520

ARREST WARRANT NUMBER

2012A1010202651

DATE OF ARREST

November 25, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

MAR 05 2013

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1001153

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2013

THE STATE

vs.

KADRIN R SINGLETON

DOE

B/M

Indictment for

Murder

RECEIVED
FEB 19 2015
SC COURT of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on March 4, 2013 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about November 20, 2012, with malice aforethought, KADRIN R SINGLETON did, while acting alone or concert with others, kill and murder Sharrell Williams by means of a gunshot and that Sharrell Williams did die in Charleston County as a proximate result thereof on November 20, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

RECEIVED
FEB 19 2015
SC Court of Appeals

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

Amir M. Harrell
for CULVER KIDD
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Kadrin R Singleton
 AKA:
 Race: BLACK Sex: M Age: 24
 DOB: SS#:
 Address:
 City, State, Zip: SC
 DL#: SC01846738

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes how the Defendant who was
 TO: Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS1001153
 A/W#: 2012A1010202631
 Date of Offense: 11/20/2012
 S.C. Code §: 16-03-0010, 0020
 CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
 w/minor 1st or Lowd Act)
 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: Kidd, Culver SC Bar# 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 Life 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: 2013-GS-10-N-57, 2013-GS-10-2402
☒ 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 State Department of Corrections.
☐ 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 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered RTUP
 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 47.9 (Public Def/Prob) \$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 \$
 Proviso 90.5 (SCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk: Samuel Perry
 Court Reporter: Mia Person
 SCCA/217 (03/2011)

 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:

RECEIVED

FEB 19 2015

SC Court of Appeals

☐ Appointed PD or appointed other counsel;
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge: Kristin Smith
 Judge Code: 11915
 Sentence Date: 11/9/15

14:36:47 Friday, April 13, 2018

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 04/13/18
OMCOMITA RELEASE DATE SCREEN C056427
SCDC# > 335449 LOC: LIEBER
SINGLETON, KADRIN R SCDC CLASSIFICATION... VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
SEXUAL PREDATOR...: NOT APP
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:
PREA PERP...: NONE
PREA VICTIM...: NONE
CURRENT SENTENCE: CONSECUTIVE SENTENCE ...
LIFE CURRENT SENT START DATE: 11/24/2012
PROJECTED COMPLETION DATES
MAXOUT DATE ...: 99/99/9999 CURRENT EWC .:
YOA SIX YEAR DATE: CURRENT EEC .:
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000
TOTAL GT DAYS EARNED ...: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000000 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ..: 000000 ISS.....
PFKEYS: 5:HISTORY OF DATE CHANGES

South Carolina Department of Corrections

Classification Summary Reports

Date: Friday, April 13, 2018

Classification Summary Reports

Inmate Number **335449**

Submit

Classification Summary Report for SINGLETON, KADRIN R :

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 04/13/2018

SCDC# 00335449

SINGLETON, KADRIN R

FBI# 982564AD5

OFFENDER ADULT-STRAIGHT
TYPE: SENTENCE

INSTITUTION: LIEBER

SECURITY/CUST: 3 MINIMUM IN

CURR INCARC 999 YRS 0 MOS
SENT: 0 DAYS

VICTIM
WITNESS: SEPREQ:N

MED
CLASS:

INST
RESTRICT: NO RESTRICTION

MENTAL
CLASS:

CURRENT NO CURRENT
PROGRAM: PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 28

RESIDENT
STABILITY: NA

DORMROOMBUNK_CODE: AB 0027 A

PROJ MAXOUT
DATE:

PROJ PAROLE
DATE:

EWC
JOB: GENERAL WORKER

ASSIGNMENT: RECREATION DEPT

EWC
LEVEL: 3F5 EEC LEVEL:

EDUC
PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	SENTENCE		START	SENTENCE	
			DYS	COUNTY		V/NV	CAT INDICT
BURGLARY-2ND DEGREE	3	0	0	DORCHESTER	09/13/2014	V	4 13GS180688
MURDER	999	99	999	CHARLESTON	11/24/2012	V	5 13GS1001153
TRAF COCAINE(10-28G,1ST)	10	0	0	CHARLESTON	11/24/2012	V	4 13GS1001457
POSSESS STOLEN VEHICLE	5	0	0	CHARLESTON	11/24/2012	N	2 13GS1002602
FAIL TO STOP FOR OFFICER	3	0	0	CHARLESTON	11/24/2012	N	2 13GS1002603

11/17/2009	UNAUTH I/M ORGAN/PART STG OR STG ACT	CLOSED	OTHER ACTION TAKEN/INFORM
11/15/2009	REFUSING OR FAILING OBEY ORDERS	CLOSED	OTHER ACTION TAKEN/INFORM
10/28/2009	INTERFERING WITH COUNT	CLOSED	OTHER ACTION TAKEN/INFORM
10/20/2009	REFUSING OR FAILING OBEY ORDERS	CLOSED	OTHER ACTION TAKEN/INFORM
10/03/2009	REFUSING OR FAILING OBEY ORDERS	CLOSED	OTHER ACTION TAKEN/INFORM

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

10/10/2017	LIEBER	INCARCERATED	ADMINISTRATIVE
10/10/2017	KIRKLAND	INCARCERATED	MEDICAL
10/25/2016	LIEBER	INCARCERATED	ADMINISTRATIVE
10/25/2016	KIRKLAND	INCARCERATED	MEDICAL
04/13/2015	LIEBER	INCARCERATED	RETURN FROM COURT
04/13/2015	DORCHESTER CO	AUTH ABSENCE (AWL)	TO COURT
03/04/2015	LIEBER	INCARCERATED	ADMINISTRATIVE
01/12/2015	KIRKLAND	INCARCERATED	NEW ADMISSION
11/10/2014	UNK	RELEASE	YOA TERM SATISFIED
10/15/2010	DORCHESTER CO	YOA PAROLE - CONDITIONAL	PAROLE BOARD ACTION
02/03/2010	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
02/02/2010	LIEBER	INCARCERATED	RETURN FROM COURT
02/02/2010	BERKELEY CO	AUTH ABSENCE (AWL)	TO COURT
02/01/2010	LIEBER	INCARCERATED	ADMINISTRATIVE
09/17/2009	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
07/17/2009	WATEREE RIVER	INCARCERATED	RETURN FROM COURT
07/13/2009	BERKELEY CO	AUTH ABSENCE (AWL)	TO COURT
07/09/2009	WATEREE RIVER	INCARCERATED	ADMINISTRATIVE
06/24/2009	KIRKLAND	INCARCERATED	R&E PROCESSING
06/24/2009	LIEBER	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
GENERAL WORKER	05/12/2016	-		3F5
FOOD SERVICE AIDE	03/09/2015	06/30/2015	PLACED IN ST/SP CUSTODY	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 3 - FULL TIME(NO EWC)	07/08/2010	10/15/2010	RELEASED/PAROLED
LVL 2 - FULL TIME(NO EWC)	10/02/2009	02/01/2010	INSTIT TRANSFER
LVL 3 - FULL TIME(NO EWC)	09/17/2009	10/01/2009	MI ELIGIBLE FOR LEVEL 2

***** END OF REPORT *****

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[Version: 1.4.13 Built: 02/01/2018 11:35:22 AM Time: 02:37:57 PM]

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

6-10 yrs

COUNTY OF
STATE

Dorchester

335449

VS.

Kadrin Singleton

AKA:

Race: BLACK

Sex: M

Age: 25

DOB:

SS#:

Address:

City, State, Zip: Summerville, SC 29483

DL#:

SID#:

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

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

TO: Burglary (Vandalism) - Second Degree NV

INDICTMENT/CASE#: 2013GS18-0688

A/W#: 2013A1810300221

Date of Offense: 9/12/2012

S.C. Code §: 16-11-311

CDR Code #: 0079

RECEIVED
JUL 02 2015

SENTENCE SHEET

SCDC

VICTIM SERVICES

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-312(B)

of the S.C. Code of Laws, bearing CDR Code #

0080

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The 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:

Ward, Kyle

101005

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

3

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 State Department of Corrections.☐ 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 (Criminal 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

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:

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Praviso 47.9 (Public Def/Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(I) (Vehicle Assessment)

\$40/ea

\$

Praviso 90.5 (SCCJA Surcharge)

\$5

\$

3% to County (if paid in installments)

\$

TOTAL

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

INMATE RECORDS OFFICE
2015 JUL 23 AM 8:31☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.Kadrin R Singleton

AKA:

Race: BLACK Sex: M Age: 24DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Summerville, SC 29483-7552DL#: [REDACTED] SID#: SC01846738*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Failure to stop for a blue light, no injury or death, 1st offense

IN THE COURT GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS1002603A/W#: 21798FZDate of Offense: 11/24/2012S.C. Code §: 56-05-0750(B)(1)CDR Code #: 0065

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)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:

Kidd, Culver76671
SC Bar#[Signature]
Defendant[Signature]
Attorney for Defendant100053
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 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: 2013-G-S-10-1153, 1457, 2602
☒ 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 State Department of Corrections.☐ 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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>500.00</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

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:

DEFERRED SENTENCE: (Plea Accepted)Judge: [Signature]Date: Jan 6, 2015☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge [Signature]Judge Code: 2151Sentence Date: 1/9/15Clerk of Court/ Deputy Clerk [Signature]Court Reporter: Mia Person

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.Kadrin R Singleton

AKA:

Race: BLACK Sex: M Age: 24DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Summerville, SC 29483-7552DL#: [REDACTED] SID#: SC01846738*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or ☒ PLEADSTO: Vehicle / Poss., conceal, sell., or dispose of stolen vehicle, value more than \$2,000 but less than \$10,000in violation of § 16-21-0080 of the S.C. Code of Laws, bearing CDR Code # 3467☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

Kidd, Culver76671
SC Bar#[Signature]
Defendant[Signature]
Attorney for Defendant100053
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 yearsand/or to pay a fine of \$, provided that upon the service of days/months/years and/or paymentof \$; 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: 2013-GS-10-2003, 1153/1457☒ 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 State Department of Corrections.☐ 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 (Criminal 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	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Mia Penon

SCCA/217 (03/2011)

IN THE COURT GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS1002602A/W#: 2012A1010202696Date of Offense: 11/24/2013S.C. Code § : 16-21-0080CDR Code #: 3467

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-21-0080 of the S.C. Code of Laws, bearing CDR Code # 3467☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

Kidd, Culver76671
SC Bar#[Signature]
Defendant[Signature]
Attorney for Defendant100053
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 yearsand/or to pay a fine of \$, provided that upon the service of days/months/years and/or paymentof \$; 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: 2013-GS-10-2003, 1153/1457☒ 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 State Department of Corrections.☐ 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 (Criminal 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	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Mia Penon

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2151Sentence Date: 11/19/13

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.Kadrin R Singleton

AKA: _____

Race: BLACK Sex: M Age: 24DOB: [REDACTED] SS#: [REDACTED]

Address: _____

City, State, Zip: Summerville, SC 29483-7552DL#: [REDACTED] SID#: SC01846738*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in Cocaine, 10 to 28 grams, 1st offensein violation of § 44-53-0370(e)(2)(a)1 of the S.C. Code of Laws, bearing CDR Code # 0278☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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: _____

Kidd, Culver76671
SC Bar#[Signature]
Defendant[Signature]
Attorney for Defendant100053
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 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 State Department of Corrections.☐ 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 (Criminal
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	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>8.46</u>
TOTAL		\$ <u>288.40</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Mia Perrot

SCCA/217 (03/2011)

IN THE COURT GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS1001457A/W#: 2012A1010203117Date of Offense: 12/24/2012S.C. Code § : 44-53-0370(e)(2)(a)1CDR Code #: 0278

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS2013-GS-10-2102, 2103, 1153

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 _____

DEFERRED SENTENCE (Plea Accepted)Judge: [Signature]Date: Jan 6, 2013☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2151Sentence Date: 1/9/13

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.Kadrin R Singleton

AKA:

Race: BLACK Sex: M Age: 24DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Summerville, SC 29483-7552DL#: [REDACTED] SID#: SC01846738*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS1001153A/W#: 2012A1010202651Date of Offense: 11/20/2012S.C. Code §: 16-03-0010, 0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116.☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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] 76671
Kidd, Culver 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 4 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: 2013-GS-10-457; 2013-GS-10-2602
☒ 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 State Department of Corrections.☐ 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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ 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 47.9 (Public Def Prob)	\$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	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)		\$3.90
TOTAL		\$133.90

PTUP days/hours Public Service EmploymentObtain 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 FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/ Deputy Clerk [Signature]Court Reporter: Mia Person

SCCA/217 (03/2011)

Presiding Judge [Signature]Judge Code: 119/15Sentence Date: 11/9/15

CDD20121108549

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2012041520

ARREST WARRANT NUMBER

2012A1010202651

DATE OF ARREST

November 25, 2012

ACTION OF GRAND JURY

TRUE BILL

South Butler
Foreperson of Grand Jury
Date:

MAR 05 2013

VERDICT GUILTY

Ralph B. Perry 1-9-2015
Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2013GS1001153

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2013

THE STATE

vs.

KADRIN R SINGLETON

DOB: [REDACTED]
B/M

Indictment for

Murder

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on March 4, 2013 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about November 20, 2012, with malice aforethought, KADRIN R SINGLETON did, while acting alone or concert with others, kill and murder Sharrell Williams by means of a gunshot and that Sharrell Williams did die in Charleston County as a proximate result thereof on November 20, 2012; in violation of Section 16-3-10 of the South Carolina 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.

for Amy M. Harrell
CULVER KIDD
ASSISTANT SOLICITOR

WITNESSES

North Charleston Police Department

The State of South Carolina

County of Charleston

AGENCY CASE NUMBER

2012041520

COURT OF GENERAL SESSIONS

March Term 2013

ARREST WARRANT NUMBER

2012A1010202651

DATE OF ARREST

November 25, 2012

ACTION OF GRAND JURY

TRUE BILL

South Butler

Foreperson of Grand Jury
Date:

MAR 05 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

THE STATE

vs.

KADRIN R SINGLETON

DOB: [REDACTED]

B/M

Indictment for

Murder

FILED

3/12/2013 8:08:59 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on March 4, 2013 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about November 20, 2012, with malice aforethought, KADRIN R SINGLETON did, while acting alone or concert with others, kill and murder Sharrell Williams by means of a gunshot and that Sharrell Williams did die in Charleston County as a proximate result thereof on November 20, 2012; in violation of Section 16-3-10 of the South Carolina 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.

for Amy M. Harrell
CULVER KIDD
ASSISTANT SOLICITOR

ARREST WARRANT

2012A1010202651

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

THE STATE
against

Kadrin R Singleton

Address

Summerville, SC 29483-7552

Phone _____ SSN _____

Sex M Race B Height 6 Weight 185DL State SC DL# _____DOB _____ Agency URI# SC0100800Prosecuting Agency North Charleston Police DepartmentProsecuting Officer Joseph Niemiec - 0305Offense Murder / MurderOffense Code 0116Code/Ordinance Sec 16-03-0010, 0020This 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 KADRIN R. SINGLETONon 11/25/2012Sgt. [Signature] #155 NCPD
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Personally appeared before me the affiant Joseph Niemiec whobeing duly sworn deposes and says that defendant Kadrin R Singletondid within this county and state on or about 11/20/2012State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Charleston)
in the following particularsDESCRIPTION OF OFFENSE: Murder / MurderI further state that there is probable cause to believe that the defendant
the crime set forth and that probable cause is based on the following facts

see attached

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Affiant's Address 2500 City Hall LaneNorth Charleston, SC 29406-

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 11/20/2012 defendant Kadrin R Singleton

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

☒ County/ ☐ Municipality of Charleston) as set forth belowDESCRIPTION OF OFFENSE: Murder / MurderHaving 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 meon 11/21/2012

Signature of Issuing Judge

Alvin Earl Bligen

Judge Code: 5536

(L.S.)

Judge's Address 3870 Leeds Avenue, Suite 106North Charleston, SC 29405-7469Judge's Telephone (843)746-9822Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 515

AFFIDAVIT

SCC IN 11/21/12OPR 858NCIC 11/21/12OPR 858NCIC W306249936

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

OCA# 2012041520

Personally appeared before me, a magistrate of this County,
one who, first being duly sworn, deposes and says that

J. Niemiec

Kadrin R. Singleton

did within this County and State on the 20th of November 2012 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

Murder

VIOLATION OF SECTION

16-3-10

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on November 20, 2012 at approximately 10:45pm while at Cambridge Ave, located in the City of North Charleston, County of Charleston, State South Carolina, the defendant **KADRIN R. SINGLETON**, did commit the offense of **MURDER**, in violation of section **16-3-10** of the South Carolina Code of Laws of 1976, as amended. In that the defendant did shoot Sharrell Williams with malice aforethought resulting in his death.

Facts to establish the above are that the defendant and co-defendant entered the victim's residence under the pretense that they were to conduct an illicit drug transaction. During the course of this transaction the defendant brandished a firearm and ordered the victim to "give it up". When the victim refused, the defendant shot the victim resulting in his death. The co-defendant implicated himself and the defendant, via photo lineup, in the shooting death of Sharrell Williams. Detective Hughes, Sgt. Johnson, Det. Evans, Det Terry, co-defendant are witnesses to prove the same. All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 21st day of November
2012

B. R.
Signature of Judge

163
(AFFIANT)

Address: 2500 City Hall Lane
N. Charleston, SC 29406

Phone: 554-5700

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Charleston

VS.

Kadrin R Singleton

AKA:

Race: BLACK Sex: M Age: 24

DOB: SS#:

Address:

City, State, Zip: Summerville, SC 29483-7552

DL#: SID#: SC01846738

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

INDICTMENT/CASE#: 2013GS1001153

A/W#: 2012A1010202651

Date of Offense: 11/20/2012

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

Kidd, Culver

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 Life 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: 2013-GS-10-457; 2013-GS-10-2602☒ 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 State Department of Corrections.☐ 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 (Criminal 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 47.9 (Public Def/Prob)	\$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	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)		\$3.90
TOTAL		\$133.90

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: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: _____

Sentence Date: 11/21/13

Clerk of Court/ Deputy Clerk

Court Reporter: Mia Person

SCCA/217 (03/2011)

THE STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

STATE OF SOUTH CAROLINA)

v.)

KADRIN SINGLETON,)
_____)

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2013-GS-10-1153

VERDICT FORM

VERDICT

1. We, the Jury, find the Defendant Kadrin Singleton NOT GUILTY of Murder. _____

OR

2. We, the Jury, find the Defendant Kadrin Singleton GUILTY of Murder. X

I certify that this decision is the unanimous decision of the Jury.

Ralph B. Piening
Ralph B. Piening, Foreperson.
January 7, 2015.

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

JAN 20 2015)
IN THE COURT OF GENERAL SESSIONS)
FOR THE NINTH JUDICIAL CIRCUIT)
Case Nos:)
Warrant Nos: 2012A1010202651)
Charge(s): Murder)
BY: *MJS*)

STATE OF SOUTH CAROLINA)

vs.)

MOTION FOR RECONSIDERATION OF
SENTENCE

KADRIN RAJAUN SINGLETON)

Defendant)
_____)

PLEASE TAKE NOTICE that the above-captioned defendant, by and through the undersigned attorney, moves this Honorable Court for a reconsideration of the sentence imposed upon the defendant by the Honorable Kristi Lea Harrington on January 9, 2015 in the above-styled matter.

On January 9, 2014 the Defendant was found guilty of the charge of Murder. The Defendant was sentenced to Life Without Parole. In fashioning the Life Sentence, the Court considered that the Defendant committed the Murder during the commission of a robbery.

On January 9, 2015, after the verdict was rendered, Defense Counsel was contacted by Juror #368, DeAnne Vane.

On January 12, 2015, the Court heard Defendant's Motion for a New Trial and Objections to Jury Charges. These motions were held on this date due to the late nature of the verdict on Friday, January 09, 2015.

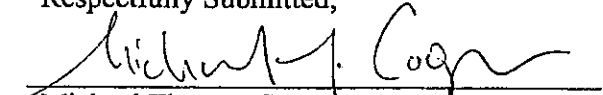
On January 13, 2015, Defense Counsel met with Juror #368. During this meeting Juror #368, disclosed to Defense Counsel that the jury found Kadrin Singleton to be a

credible witness. The jury did not find that Mr. Singleton intended to commit a robbery or that he planned to commit a violent act. The jury's deliberations centered around whether or not Mr. Singleton was entitled to an acquittal based on Self-Defense. The jury found Mr. Singleton guilty of Murder.

On January 20, 2015, Defense Counsel met with Juror #108, who stated the same as above.

Pursuant to Rule 28, the Defendant requests this Honorable Court to reconsider the sentence of Life without Parole. In support of Defendant's motion, the Affidavits in Mitigation are submitted. The Defendant respectfully requests a hearing on this matter.

Respectfully Submitted,


Michael Thomas Cooper
Assistant Public Defender
Attorney for Defendant

Charleston, South Carolina

Dated: 1/20/15

FILED
2015 JAN 20 PM 12:46
CLERK OF COURT
BY 

Exhibit 1

2018 JAN 20 PM 12:49
CLERK OF COURT

BY) PAH

)

)

1

$$\left(\frac{1}{2} \right)$$

—

-)

12. Based on the law that was given to us, we found that Kadrin Singleton did not meet all of the elements charged.

13. I swear the above statement is true and correct and has been given freely and voluntarily by myself, DeAnne Reed Vane, Juror #368.

DeAnne Reed Vane
DeAnne Reed Vane, Juror #368

Dated: January 16, 2015

SWORN to and subscribed to before me this

16th day of January, 2015.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 07/06/2018

FILED
2015 JAN 20 PM 12:50
CLERK OF COURT
BY [Signature]

Exhibit 2

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

FILED

2015 JAN 20

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

Case Nos:

Warrant Nos: 2012A1010202651

Charge(s): Murder

STATE OF SOUTH CAROLINA

vs.

KADRIN RAJAUN SINGLETON

Defendant

AFFIDAVIT IN MITIGATION
RULE 28

Affidavit in Mitigation of Juror #108, Kendra Drayton:

1. I, Kendra Drayton, reached out by email to Michael Cooper, attorney for Kadrin Singleton on Tuesday, January 13, 2015, regarding the Kadrin Singleton trial and verdict.
2. On January 20, 2015, I met with Michael Cooper to speak to him about the jury's deliberation process and our verdict.
3. I have given this affidavit freely and voluntarily.
4. No one has promised me anything or threatened me in any way to give this affidavit.
5. It has been explained to me that I did not have to give this affidavit if I did not want to.
6. I did not believe Kenneth Fludd's version of events.
7. It appeared to me that the other jurors did not find his story credible either.
8. The idea that this was a robbery was dismissed early in the deliberation process.
9. I did not find that Kadrin Singleton went to Cambridge Ave. with the intention of committing an act of violence or to commit an armed robbery.
10. We found Kadrin Singleton's account of events to be credible.
11. Our deliberations and analysis centered on whether Kadrin Singleton acted in self-defense.

12. Based on the law that was given to us, we found that Kadrin Singleton did not meet all of the elements charged.

13. I swear the above statement is true and correct and has been given freely and voluntarily by myself, Kendra Drayton, Juror #108.

Kendra Drayton
Kendra Drayton, Juror #108

Dated: Jan. 20, 2015

SWORN to and subscribed to before me this

20 day of January, 20 15.

Henry Ray
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3-27-24

FILED
2015 JAN 20 PM 12:50
JAMES H. STRONG
CLERK OF COURT
BY HR

A 2

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
2015 JAN 23 PM 3:42

State of South Carolina JUL 23 2015 JUDGE J. W. WATSON
CLERK OF COURT Indictment Number: 2013GS1001153

BY [Signature]

vs.

KADRIN SINGLETON,
Defendant.

State's Response to Defendant's
Motion for Reconsideration of Sentence

The State has been served with a copy of the Defendant's Motion for Reconsideration of the sentence imposed by this Court. The State files this Response.

PROCEDURAL HISTORY

The Defendant was charged with one count of Murder and a jury unanimously convicted him of the charge on January 9, 2015. Prior to trial, Defendant pled guilty to the charges of Trafficking Cocaine, Failure to Stop for Blue Lights, and Possession of a Stolen Motor Vehicle, which stemmed from the same events. The Honorable Kristi Harrington thereafter sentenced Defendant to life in prison.

DISCUSSION

Defendant Singleton has multiple prior convictions including Strong Arm Robbery, Burglary, 3rd degree, Unlawful Carry of a Firearm, and Driving Under Suspension. The State's overwhelming evidence connecting the Defendant to the shooting of Sharrell Williams on Cambridge Avenue brought about the Defendant's assertion of self-defense. This is evident from his prior denial of involvement or presence at Cambridge Avenue to NCPD Detectives. Despite which theory of the case any

particular juror subscribed to, the jury as a whole ultimately rejected self-defense and in turn, found the Defendant responsible for the shooting death of Sharrell Williams, without justification or excuse.

Regarding the two juror affidavits submitted by the Defendant in his Motion for Reconsideration, this Court should not only find them unpersuasive, but also inadmissible and inappropriate pursuant to S.C.R.E 606(b) and our state's jurisprudence.

S.C. Rules of Evidence, Rule 606(b) provides:

"Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes."

"The general policy in South Carolina is courts should not intrude into the privacy of the jury room to scrutinize how jurors reached their verdict."¹ Consistent with this policy, S.C.R.E. Rule 606(b), prohibits the introduction of a juror's affidavit concerning the statements, thought processes, and conduct of jurors during deliberations. Further, under

¹ State v. Hunter, 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995).

the Rule, a juror's testimony or affidavit as to what occurred during deliberations is not admissible to challenge "the validity of the verdict."²

The only recognized exception is when a juror's affidavit suggests that juror conduct rendered the trial 'fundamentally unfair.'³ Fundamental unfairness is constituted "on the question of whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror."⁴ In State v. Spriggs, the Court of Appeals affirmed the trial court's refusal to consider a juror affidavit where the jury's foreman sought to explain his personal considerations for voting against the murder conviction and lists the results of a preliminary poll at the beginning of deliberations. "The affidavit contains no allegations that the jury's verdict was tainted by any juror misconduct. Because there is no suggestion that the actions of the jury rendered the trial unfair, we find the affidavit does not rise to the high level of seriousness required for admission."⁵

In the case at hand, the submitted affidavits bring to light no misconduct or improper external influence. These affidavits merely seek to present content and conduct of the deliberation process which is directly contrary to the intent of S.C.R.E. 606(b), as well as the policy of South Carolina, in maintaining the secrecy and integrity of the jury deliberation process. Two individuals' perspectives as to the thoughts and consideration of testimony by their fellow jurors should have no impact on sentencing. Such testimony is speculative at best, but is submitted as an attempt to create appellate issues by

² Lynch v. Carolina Self Storage Centers, Inc., 409 S.C. 146, 152 (Ct. App. 2014)

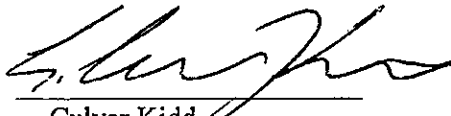
³ Shumpert v. State, 378 S.C. 62, 68-69 (2008)

⁴ Lynch, 409 S.C. at 152 (S.C. Ct. App. 2014)

⁵ State v. Spriggs, No. 2013-UP-435, 2013 WL 8541581, at *3-4 (S.C. Ct. App. Nov. 27, 2013).

Respectfully submitted,

Scarlett Wilson
Solicitor, Ninth Judicial Circuit

By: 
Culver Kidd
Assistant Solicitor

Date: January 23rd, 2015
Charleston, SC

FILED
2015 JAN 23 PM 3:42
JULIA M. JOHNSON
CLERK OF COURT
BY 

A3

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
2015 FEB 11 AM 10:02)

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT
Case Nos.: 2013-GS-10-1153

STATE OF SOUTH CAROLINA)
JULIE S. ARMSTRONG)
CLERK OF COURT)

v.)
BY [Signature])

ORDER

KADRIN RAJAUN SINGLETON,)
)
)
Defendant.)
_____)

THIS MATTER IS BEFORE THE COURT on Defendant Kadrin Singleton's Motion for Reconsideration of Sentence. On January 5, 2015, Defendant Kadrin Singleton pled not guilty and proceeded to jury trial in Charleston County on Indictment Nos. 2013-GS-10-1153 (Murder), 2013-GS-10-1457 (Trafficking in Cocaine), 2013-GS-10-2602 (Possession of a Stolen Motor Vehicle), and 2013-GS-10-2603 (Failure to Stop for a Blue Light). During his trial, Defendant Kadrin Singleton indicated he wished to enter a plea of guilt on Indictment Nos. 2013-GS-10-1457, 2013-GS-10-2602, and 2013-GS-10-2603. The Court accepted Defendant Singleton's plea and deferred sentencing until the end of trial. On January 9, 2015, Defendant Kadrin Singleton was found guilty on Indictment No. 2013-GS-10-1153 (Murder) and was sentenced to Life Without the Possibility of Parole.

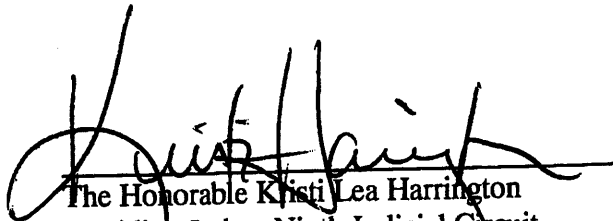
Defendant Kadrin Singleton filed the instant Motion for Reconsideration of Sentence on January 20, 2015. The State filed a Response to Defense's Motion for Reconsideration on January 23, 2015.

After a review of the case, together with Defendant's Motion and the State's Response, the Court finds that the sentence imposed January 9, 2015, shall remain in place and hereby denies Defendant's Motion.

THEREFORE, IT IS ORDERED that Defendant Kadrin Singleton's Motion for Reconsideration is hereby DENIED.

IT IS ORDERED!

February 9, 2015
Charleston, South Carolina


The Honorable Kristi Lea Harrington
Presiding Judge, Ninth Judicial Circuit

FILED

2015 FEB 11 AM 10:02

JULIE S. ANDERSON
CLERK OF COURT

BY _____

A4

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM CHARLESTON COUNTY
Court of General Sessions**

The Honorable Kristi L. Harrington, Presiding Judge

**INDICTMENT NO(S): 2013GS1001153
WARRANT NO(S): 2012A1010202651**

STATE OF SOUTH CAROLINA, RESPONDENT

vs.

KADRIN RAJUN SINGLETON, APPELLANT

NOTICE OF APPEAL

Kadrin Rajun Singleton appeals his conviction(s) and sentence(s) following the jury trial held before the Honorable Kristi L. Harrington, wherein he was found guilty and sentenced on January 9, 2015. A Motion to Reconsider the Sentence was filed on January 20, 2015. This motion was ruled upon and the Order was filed on February 11, 2015.

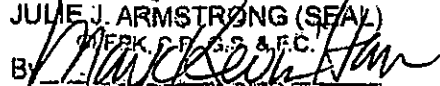


Michael T. Cooper
Attorney for Kadrin Rajun Singleton
Charleston County Public Defender's Office
101 Meeting Street, Suite 500
Charleston, SC 29401

FILED
2015 FEB 11 PM 4:51
JULIE J. ARMSTRONG
CLERK OF COURT
MK

Other counsel of record are:

Culver Kidd, Assistant Solicitor
Office of the Solicitor, Ninth Judicial Circuit
O.T. Wallace County Office Building
101 Meeting Street, 4th Floor
Charleston, SC 29401
(843) 958-1900

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF COURT
BY 
DEPUTY CLERK

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

AUG 11 2016

THE STATE,

SC Court of Appeals
RESPONDENT,

V.

KADRIN RAJUN SINGLETON,

APPELLANT

APPELLATE CASE NO. 2015-000306

FINAL BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

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STATEMENT OF ISSUES ON APPEAL	3
STATEMENT OF THE CASE	4
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STATEMENT OF ISSUES ON APPEAL

1.

Whether the trial court erred in refusing appellant's requested charge that he did not have to wait until he was attacked and allow the assailant to "get the drop" on him because appellant testified that the decedent threatened him with a gun, which appellant grabbed and used in self-defense?

2.

Whether the trial court erred in granting the State's motion pursuant to Batson v. Kentucky, 476 U.S. 79 (1986) because the defense gave race-neutral explanations for its strikes and the State failed to prove pretext?

STATEMENT OF THE CASE

On March 4, 2013, a Charleston County grand jury indicted appellant for murder. R. 1032 - 1033. Appellant was also indicted for possession of a stolen motor vehicle, failure to stop for a blue light, and trafficking cocaine to which he pled guilty before the trial. R. v. 1, 11, ll. 5 - 24. R. v. 1, 33, l. 2 - 37, l. 22. On January 5, 2015, appellant was tried before the Honorable Kristi L. Harrington and a jury. R. v. 1, 1. Culver Kidd and Chris Lietzow represented the State. R. v. 1, 2. Michael T. Cooper and Megan Ehrlich represented appellant. R. v. 1, 2. The jury convicted appellant of murder. R. v. 5, 28, ll. 13 - 19. Judge Harrington sentenced appellant to life imprisonment for murder and concurrent terms of ten years, five years, and three years' imprisonment on the other charges. R. v. 5, 40, l. 3 - 41, l. 9. This appeal of appellant's murder conviction now follows.

ARGUMENT

1.

The trial court erred in refusing appellant's requested charge that he did not have to wait until he was attacked and allow the assailant to "get the drop" on him because appellant testified that the decedent threatened him with a gun, which appellant grabbed and used in self-defense.

Relevant Facts

Appellant Kadrin Singleton ("Singleton") testified that he shot the decedent in self-defense. R. v. 4, 21, ll. 24 – 25. Singleton admitted he dealt marijuana. R. v. 4, 63, l. 22 -- 64, l. 3. Singleton was referred to Chris Felder ("Felder") as someone who knew where marijuana could be obtained. R. v. 4, 25, l. 21 – 26, l. 4. On the evening of the shooting, Felder told Singleton that Felder's cousin would sell him marijuana at Pizza Hut. R. v. 4, 26, ll. 2 – 18. Singleton did not know Felder's cousin. R. v. 4, 28, ll. 17 – 20. Singleton rode with Felder in Felder's car to Pizza Hut. R. v. 4, 27, ll. 18 – 25. Singleton did not take a gun. R. v. 4, 26, ll. 20 – 21.

At the Pizza Hut, Felder introduced Singleton to Kenny Fludd ("Fludd").¹ R. v. 4, 28, l. 21 – 29, l. 10. Fludd got into their car and they waited for approximately an hour when Fludd left to use the bathroom. R. v. 4, 31, l. 10 – 32, l. 2. Singleton told Felder he thought they were going to make the transaction at the Pizza Hut and was surprised when Fludd returned and told them to follow him in his car. R. v. 4, 31, l. 21 – 32, l. 12. After following Fludd for approximately five minutes, Fludd told them to park their car. R. v. 4, 32, ll. 16 – 23. Fludd told them to leave their car, and get in his car. R. v. 4, 35, ll. 16 – 22.

¹ Fludd is sometimes referred to in the transcript by his nickname, "Boss Hogg." R. v. 4, 29, ll. 6 – 9.

Singleton was reluctant. R. v. 4, 35, ll. 23 – 24. The streets were dark and unfamiliar. R. v. 4, 35, ll. 10 – 25. Fludd taunted Singleton that he was scared and eventually Singleton relented and he and Felder got into Fludd's car. R. v. 4, 36, l. 1 – 37, l. 8.

Fludd drove them two blocks to a house that was under FBI surveillance as part of a massive operation involving approximately fifty targets for drug trafficking. R. v. 4, 37, ll. 9 – 18. R. v. 2, 211, l. 11 – 212, l. 15. State's Ex. 2. A video of the outside of the house was admitted into evidence. State's Ex. 2. The decedent, Sharell Williams ("Williams"), arrived in his SUV and the four men went into the house. R. v. 4, 37, l. 15 – 38, l. 22. State's Ex. 2. Singleton had never seen Williams before this night. R. v. 5, 38, ll. 2 – 7. Williams had the key to the house and let them inside. R. v. 4, 38, ll. 12 – 20. Before they went inside, Singleton asked Felder what he had gotten him into and Felder said, "I don't know." R. v. 4, 38, ll. 12 – 20.

Once inside the house, Fludd told Williams that Singleton and Felder were afraid. R. v. 4, 38, l. 23 – 39, l. 3. Williams made a phone call to find out the location of the drugs and at the conclusion of the call, opened the refrigerator and pulled out marijuana. R. v. 4, 39, ll. 14 – 20. Williams began weighing the marijuana. R. v. 4, 40, ll. 1 – 3. Fludd went to the bathroom and when he returned, Felder went outside. R. v. 4, 40, ll. 4 – 9. Despite the fact that Felder and Singleton arrived in Fludd's car, Fludd testified that Singleton sent Felder out to get their money. R. v. 2, 92, ll. 14 – 17.

Singleton denied sending Felder outside and testified that his money was in his pocket. R. v. 4, 40, ll. 12 – 15. The FBI surveillance video shows Felder walk outside and talk on his phone in front of the house. State's Ex. 2 (29:10 to 30:01). Felder remains

outside until Singleton runs out of the house, they get into Fludd's car, and drive away. State's Ex. 2 (30:01 to 30:22).

Fludd claimed that after Felder went outside, Singleton (now alone) decided to rob him and Williams. R. v. 2, 90, l. 12 – 96, l. 23. Fludd denied having a gun when he entered the house. R. v. 2, 92, ll. 19 – 23. According to Fludd, a gun was sitting on the countertop of a bar area in the unoccupied house. R. v. 2, 92, l. 24 – 93, l. 6. Singleton supposedly told Williams to "give it up." R. v. 2, 96, ll. 19 – 23. Fludd and Williams laughed. R. v. 2, 96, ll. 19 – 23. Singleton pulled a black pistol from behind his back and fired. R. v. 2, 96, l. 19 – 97, l. 24. Singleton demanded Fludd's car keys. R. v. 2, 98, ll. 16 – 21. Singleton took the gun from the bar and the marijuana that Williams was weighing. R. v. 2, 98, ll. 16 – 99, l. 17. Fludd claimed he heard "several more gunshots" before Singleton left. R. v. 2, 99, ll. 18 – 21.

The police recovered shell casings from two different pistols. R. v. 3, 49, ll. 9 – 11. They recovered two .40 caliber shell casings and one 9mm shell casing. R. v. 3, 49, ll. 9 – 11. The police also found an empty gun holster in a back bedroom of the house. R. v. 3, 82, ll. 2 – 7. The State's pathologist admitted that it was possible that Williams' gunshot wounds came from different directions. R. v. 3, 142, ll. 10 – 13.

Singleton testified that he was forced to shoot Williams in self-defense. When Fludd returned from the bathroom, he went into the living room behind Singleton. R. v. 4, 43, ll. 14 – 22. Williams finished weighing the marijuana and Singleton paid him. R. v. 4, 44, ll. 3 – 8. Singleton asked Williams to let him see the weight of the marijuana on the scale. R. v. 4, ll. 9 – 21. The weight was twenty grams less than the negotiated amount. R. v. 4, l. 14 – 45, l. 17.

Singleton told Williams that he wanted "what I paid for." R. v. 4, 45, ll. 18 – 20. Williams told him, "Man, you better take that and go on ahead about your business." R. v. 4, l. 23 – 46, l. 2. Singleton again protested and Williams asked Fludd, "what's wrong with him." R. v. 4, 45, l. 23 – 48, l. 7. Singleton told Williams to return his money. R. v. 4, 48, ll. 10 – 14.

In response, Williams pulled a gun from his waist, set it on the bar, and told Singleton that he was "going to get what you paid for." R. v. 4, 48, ll. 15 – 24. Singleton testified that he thought Williams would shoot him. R. v. 4, 49, ll. 2 – 12. Singleton grabbed the gun. R. v. 4, 49, ll. 15 – 21. He pointed the gun at Williams and said "Give me my money back," while Fludd, positioned behind him, pointed a gun at Singleton and said, "Don't do that, little bro." R. v. 4, 50, ll. 1 – 23.

Singleton testified that he believed that if he tried to leave, he would get shot. R. v. 4, 50, l. 24 – 51, l. 10. When Singleton looked at Fludd, Williams charged. R. v. 4, 51, ll. 1 – 10. Singleton "just reacted and pulled the trigger." R. v. 4, 52, l. 21 – 53, l. 1. Fludd fired, accidentally shooting Williams, and then Fludd's gun jammed. R. v. 4, 54, ll. 2 – 13. R. v. 4, 68, ll. 9 – 14.

Singleton pointed the gun at Fludd and Fludd threw his gun down on a couch. R. v. 4, 54, l. 25 – 55, l. 5. Singleton told Fludd to give him his car keys so he could leave. R. v. 4, 55, ll. 6 – 14. Singleton "grabbed the weed off of the counter" and left. R. v. 4, 55, ll. 15 – 21. Singleton took nothing else from the house. R. v. 4, 55, ll. 22 – 24.

When the police arrived at the scene, they found large amounts of cocaine and marijuana in the refrigerator in the same room where the shooting occurred. R. v. 2, 222, l. 15 – 229, l. 2. There was cash throughout the house in several different locations,

including in plain view in the living room. R. v. 3, 79, ll. 16 – 24. Photographs showing the easy accessibility of these drugs and cash if Singleton had wanted to steal them were entered into evidence by the defense. Defendant's Ex. 1, 2, 3, 8, 9.

At the time of his testimony, Fludd had a pending charge for drug conspiracy related to the drugs found in the house. R. v. 2, 131, l. 18 – 131, l. 23. Fludd had not yet pled guilty to the charge. R. v. 2, 131, ll. 24 – 25. He admitted there was a possibility the solicitor would dismiss his case but claimed he had no deal with the State. R. v. 2, 134, ll. 2 – 15. Fludd told the Solicitor's office that he was afraid of Williams' cousin because he is "a scarey dude." R. v. 2, 135, l. 18 – 136, l. 7. Defense counsel also impeached Fludd's testimony with the multiple lies he told the police after the shooting, beginning with the 911 operator. R. v. 2, 154, ll. 3 – 166, l. 8. After much evasiveness, Fludd also admitted on cross-examination that he told the police there was "like a tussle" between Williams and Singleton. R. v. 2, 168, l. 22 – 169, l. 7. The defense called a witness from SLED who testified that Fludd tested positive for gunshot residue on his hands. R. v. 4, 125, ll. 9 – 19.

The trial judge agreed to charge self-defense. R. v. 4, 146, ll. 9 – 12. During the charge conference, trial counsel requested a charge that the defendant "does not have to wait until the assailant gets the drop on him." R. v. 4, 146, l. 24 – 147, l. 21. The trial judge stated she was not aware of any such charge. R. v. 4, 147, ll. 6 – 21. Judge Harrington told appellant, "I am not charging the wait until you get the drop on." R. v. 4, 152, ll. 17 – 20.

Defense counsel also submitted written charges. R. v. 4, 152, ll. 3 – 20. Court's Exhibit 1 from v. 6 of trial transcript (Defendant's Requests to Charge). Defendant's third Request to Charge read:

In this case, Kadrin Singleton has offered evidence that he believed he was in imminent danger of death or of receiving serious bodily harm. If

Kadrin Singleton's belief was reasonable, he does not have to wait until he is actually attacked or injured or until force is used by the aggressor before he exercises his right to use deadly force in self-defense.

In other words, Kadrin Singleton does not have to wait until the assailant "gets the drop on him" in order to be entitled to use force in self-defense.

See F. PATRICK HUBBARD, JURY INSTRUCTION FOR CRIMINAL CASES IN SOUTH CAROLINA: DEFENDANT'S REQUESTED INSTRUCTIONS 265-298 (2d ed. 2001).

Court's Exhibit 1 from v. 6 of trial transcript (Defendant's Requests to Charge). While the trial judge charged the jury that the defendant has the right to act on appearances, she did not give the defendant's requested charge. R. v. 5, 18, ll. 2 -- 13.

Discussion

The court erred in refusing appellant's requested charge because a trial judge has a duty to craft her self-defense charge to fit the facts of the case. State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011); State v. Fuller, 297 S.C. 440, 444-45, 377 S.E.2d 328, 331 (1989). As recognized in Fuller, there is a "body of common law self-defense" and trial judges must "consider the facts and circumstances of the case at bar in order to fashion an appropriate charge." Fuller at 443, 377 S.E.2d at 330.

A deep understanding of Fuller demonstrates the court's error. In Fuller, the defendant was black. Id. at 441, 377 S.E.2d at 329. He solicited a white prostitute. Id. The prostitute took him to her trailer for sex, but the trailer was occupied and the defendant left. Id.

The defendant later returned to the prostitute's trailer and a car driven by a white woman was blocking the road. Id. The defendant asked her to move her car. Id. At this point, two men approached the defendant's car and asked him "what he was 'trying to do to

that white lady.” Id. One of the men used a racial slur and grabbed the defendant by the throat. Id. at 441, 377 S.E.2d at 329-30.

The defendant fired a warning shot which temporarily allowed him to drive away, but the street was a dead end. Id. at 442, 377 S.E.2d at 330. The two assailants tried to block the defendant’s car from leaving and the defendant ultimately crashed and pinned his car against a steel rail. Id. The two men yelled, “we’re going to take care of you.” Id. The defendant thought he saw something shiny in one of the men’s hands and fired four shots at them, killing them both. Id. No gun was found on the assailants. Id.

Relying on State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984), the trial judge in Fuller only instructed the jury on the basic elements of self-defense. Id. Fuller held it was error to only give the general charge from Davis when the defendant “repeatedly requested additional charges.” Id. at 443, 377 S.E.2d at 330. The trial judge erred by not giving three specific charges on self-defense that explained the principles in the general charge.

In this case, appellant’s request was a correct statement of the law of self-defense that has been in existence since at least 1936. State v. Rash, 182 S.C. 42, 50, 188 S.E. 435, 438 (1936). In State v. Nichols, 325 S.C. 111, 117, 481 S.E.2d 118, 121 (1997), the Supreme Court cited Rash in reversing a conviction for the trial judge’s failure to give a charge that “a person does not have to wait before acting in self-defense.” In State v. Starnes, 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000), the Supreme Court reversed a capital conviction, in part, because of the failure to give the Rash charge. The Court stated, “Appellant did not have to wait for Welborn or Champlin to fire or aim at him before acting in self-defense. Accordingly, appellant was entitled to a charge instructing the jury he did

not have to wait before acting in self-defense.” Starnes at 322, 531 S.E.2d at 913. “Refusal to charge this request was reversible error.” Id.

Appellant’s request was manifestly necessary in this case. Singleton testified that when Williams placed the gun on the bar, he was afraid for his life and grabbed the gun. R. v. 4, 49, ll. 2 – 21. In a classic Mexican Standoff, Fludd simultaneously pointed a gun at Singleton.² R. v. 4, 50, ll. 1 – 23. Singleton testified he was afraid that if he turned to leave, he would be shot. R. v. 4, 50, l. 24 – 51, l. 10.

The Rash charge exists for just this circumstance. It would have made a difference on multiple elements of self-defense. It would have justified appellant’s initial grab of the gun instead of leaving. It would have justified appellant pointing the gun at Williams. It also would have justified shooting Williams. This case amounted to a credibility contest between Fludd and Singleton and appellant had a right to a properly constructed self-defense charge under Fuller. The failure to give this charge was reversible error.

2.

The trial court erred in granting the State’s motion pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986) because the defense gave race-neutral explanations for its strikes and the State failed to prove pretext.

Following jury selection, the State challenged appellant’s strikes pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986). R. v. 1, 87, ll. 1 – 12. The State argued that appellant’s

² A “Mexican Standoff” is a “confrontation among two or more parties in which no participant can proceed or retreat without being exposed to danger.” https://en.wikipedia.org/wiki/Mexican_standoff. As noted in the Wikipedia article, a famous example from cinema is the end of Sergio Leone’s famous Spaghetti Western, *The Good, the Bad, and the Ugly*, in which Clint Eastwood, Lee Van Cleef, and Eli Wallach face down each other in a cemetery over buried gold.

use of all of its strikes against whites violated Batson. R. v. 1, 87, ll. 5 – 21. The trial judge required appellant to provide explanations for all of his strikes. R. v. 1, 87, l. 22 – 88, l. 6.

Appellant gave the following reasons for his strikes:

1. Juror 193, white male: military ties and asked to be excused during qualification;
2. Juror 210, white male: military ties, retired colonel;
3. Juror 213, white female: asked to be excused during qualifications and was “cavalier, didn’t seem to be taking anything real seriously;”
4. Juror 344, white female: would not make eye contact with defense and seemed disinterested;
5. Juror 21, white female: had ties to a crime victim;
6. Juror 312, white male: occupation as a real estate appraiser and “wouldn’t be able to relate at all to the poverty of this case, when dealing with corporate real estate appraising;”

R. v. 1, 88, l. 7 – 90, l. 1.

At this point, Judge Harrington interrupted trial counsel and asked him why he struck people in the military. R. v. 1, 290, ll. 2 – 7. Trial counsel explained that people in the military were associated with “state institutions, institutions of power and authority, which is similar to law enforcement, similar to the State.” R. v. 1, 90, ll. 8 – 11. The trial judge responded, “Mr. Cooper, then you strike some people because they have too much knowledge and some people because they don’t have any?” R. v. 1, 90, ll. 12 – 14. Trial counsel explained that the circumstances are different in that a person’s affluence was different than being connected to the military. R. v. 1, 90, ll. 15 – 17. The trial judge then

asked, "So you're saying he is too well-paid to be on the jury?" R. v. 1, 90, ll. 20 – 21.

Appellant then continued with his explanations for his strikes:

7. Juror 369, white female: prior victim involvement and a husband who was an attorney in North Charleston;
8. Juror 261, white female: prior jury service in a murder case;
9. Juror 127, white female: when asked about prior jury service, did not specify whether it was civil or criminal;
10. Juror 97, white female: her uncle was murdered;
11. Juror 191, white male: prior jury service on an armed robbery case;
12. Juror 353, white female: employed by the Department of the State and a connection to a government entity;
13. Juror 188, white female: Singleton did not like the way she looked at him and expressed his concerns to counsel.

R. v. 1, 90, l. 25 – 93, l. 10.

The State first argued that appellant's strikes were pretextual because he seated some jurors who had prior jury service. R. v. 1, 93, ll. 14 – 17. The State pointed to Jurors 333 and 321. R. v. 1, 93, ll. 20 – 25. Appellant explained that Juror 333's jury service was in small claims court and was "not connected to a criminal matter at all." R. v. 1, 94, ll. 5 – 7. The State then pointed out that Juror 321 was a black female and sat as a juror on an assault case and was employed by the Department of the Navy. R. v. 1, 94, ll. 17 – 25. The State also pointed to Juror 154 who worked for the Department of Social Services as a person with a connection to the government that was seated by the defense. R. v. 1, 95, ll. 4

– 16. The trial judge indicated that she was concerned that similarly situated jurors were not struck and then took a recess. R. v. 1, 96, l. 4 – 97, l. 15.

When court resumed, the trial judge stated that after a conference in chambers, she was inclined to grant the State's motion because "the totality of the circumstances" showed that the State had met its burden. R. v. 1, 97, l. 20 – 98, l. 2. Trial counsel was allowed to place his argument on the record. R. v. 1, 98, l. 3 – 99, l. 12. Appellant pointed out that out of a panel of forty-four jurors, there were only seven non-white jurors which greatly increased the odds that the majority of jurors struck would be white. R. v. 1, 99, ll. 5 – 9. As for Juror 321, appellant explained that the assault case on which she served as a juror "was a very long time ago," was "not as similar as armed robbery or murder, which were the other jurors that I used that strike on...." R. v. 1, 98, ll. 7 – 18. As for Juror 321's employment with the Navy, appellant explained that she was a secretary with the civil department at "[Space and Naval Warfare Systems Command], which is different from retired Army colonel or other greater connection" to the State. R. v. 1, 98, ll. 7 – 18. Appellant also explained that Juror 154's employment at the Department of Social Services meant that she was "well-connected to low-income families" and was a social worker, which led him to believe she would be favorable to the defense. R. v. 1, 98, l. 19 – 99, l. 4.

The judge persisted in her ruling, but noted that trial counsel's articulation of "appearance and demeanor, I did not find that to be pretextual." R. v. 1, 100, ll. 11 – 18. Judge Harrington again stated that "under the totality of the circumstances and the reasons given, I find that your striking was pretextual." R. v. 1, 101, ll. 1 – 3. The parties then selected another jury. R. v. 1, 102, l. 1 – 120, l. 4.

Discussion

The trial judge erred in finding that the State had met its burden of proving pretext when appellant provided race-neutral explanations for his strikes and explained why certain jurors were not similarly situated. State v. Inman, 409 S.C. 19, 26, 760 S.E.2d 105, 108 (2014). After appellant provided race-neutral reasons, the State had the burden to prove purposeful discrimination. Id. at 26, 760 S.E.2d at 108 (*quoting* State v. Giles, 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014)).

Appellant's reasons were sufficient and the State failed to prove pretext. The State ultimately only challenged only three strikes as pretextual by claiming that appellant seated similarly situated jurors: Jurors 333, 321, and 154. The State challenged Juror 333 because appellant claimed he struck other jurors for prior service, but those jurors served on an armed robbery and murder case. As the defense explained, these cases were far more serious than the small claims court jury on which Juror 333 had served. Juror 321's service on an assault case was remote and not as serious as this case.

The court also erred in accepting the State's argument that appellant struck similarly situated jurors who had ties to the government. The defense explained that it did not want jurors with a military background as it perceived such jurors to be pro-police. Appellant did not strike Juror 321 because she was a civilian employee of the Navy, not military personnel. Appellant's seating of Juror 154, who worked at DSS, is also race-neutral because appellant perceived social workers as sympathetic to lower-income people. A social worker is a far cry from Juror 210, a retired army colonel. R. v. 1, 88, ll. 16 – 25.

The trial court also erred in relying solely on the "totality of the circumstances." State v. Ford, 334 S.C. 59, 512 S.E.2d 500 (1999). In Ford, twelve of the defendant's

thirteen strikes were used against whites. Ford at 61-62, 512 S.E.2d at 502. The trial judge quashed the jury, stating that “[t]he cumulative effect is a lot worse picture than looking at it on an individual basis.” Id. at 63, 512 S.E.2d at 503. The Supreme Court reversed, stating “the fact that appellant used most of his challenges to strike white jurors is not sufficient, in itself, to establish purposeful discrimination.” Id. at 66, 512 S.E.2d at 504. Here, like in Ford, the trial judge did not follow the Batson analysis and make a finding of purposeful discrimination, but made a decision based on the “totality” of appellant’s strikes. This was error. As pointed out by appellant, the vast majority of the pool was white, so the odds of striking white jurors were much greater than black jurors. Prejudice is presumed and the proper remedy is a new trial. Inman at 29-30, 760 S.E.2d at 110.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's murder conviction and remand this case for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of August, 2016.

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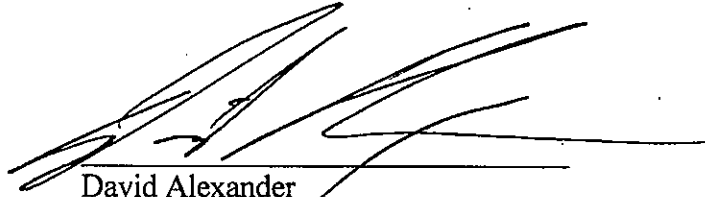
AUG 11 2016

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief 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."

August 11, 2016

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

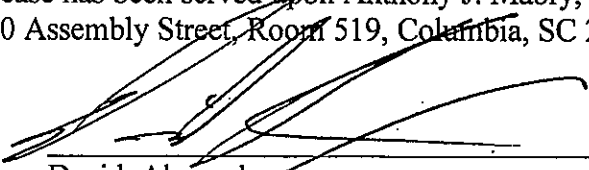
KADRIN RAJUN SINGLETON,

APPELLANT

APPELLATE CASE NO. 2015-000306

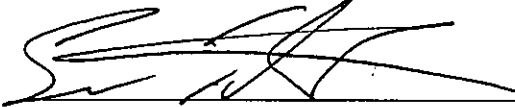
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Anthony J. Mabry, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of August, 2016.


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of August, 2016.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2015-000306

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AUG 04 2016

SC Court of Appeals

THE STATE,

Respondent,

V.

KADRIN RAJUN SINGLETON,

Appellant,

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ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2015-000306

THE STATE,

Respondent,

V.

KADRIN RAJUN SINGLETON,

Appellant,

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court erred in refusing appellant's requested charge that he did not have to wait until he was attacked and allow the assailant to "get the drop" on him because appellant testified that the decedent threatened him with a gun, which appellant grabbed and used in self-defense?
- II. Whether the trial court erred in granting the State's motion pursuant to Batson v. Kentucky, 476 U.S. 79 (1986) because the defense gave race-neutral explanations for its strikes and the State failed to prove pretext?

STATEMENT OF THE CASE

On November 20th, 2012, appellant [Kadrin Rajun Singleton] murdered Sharrell Williams in Charleston County. Appellant was arrested for the murder four (4) days later on the night of November 24, 2012. On March 4, 2013, the Charleston County grand jury indicted appellant for Williams' murder, possession of a stolen motor vehicle, failure to stop for a blue light, and trafficking in cocaine (Ind. #s 2013-GS-10-1153, 2602, 2603, & 1457). (R. 11, ll. 5-24; R. 33, l. 2 – R. 37, l. 22). Immediately before trial, appellant pled guilty to all charges except murder. Sentencing was deferred on the charges to which appellant pled guilty. Appellant was tried for the murder before a jury of his peers from January 5th – 9th, 2015, the Honorable Kristi L. Harrington, Circuit Court Judge, presiding. (R. 1). Michael T. Cooper and Megan Ehrlich, Esquires, represented appellant. (R. 2). At the conclusion of the trial, the jury found appellant guilty of murder. Judge Harrington sentenced appellant to life imprisonment for murder (Ind. # 2013-GS-10-1153) and concurrent sentences of ten (10) years for trafficking in cocaine (Ind. # 2013-GS-10-1457), five (5) years for possession of a stolen vehicle (Ind. # 2013-GS-10-2602) and three (3) years for failure to stop for a blue light (Ind. # 2013-GS-10-2603). (R. 967, l. 3 – R. 968, l. 9).¹ Appellant appeals his conviction for murder raising two (2) issues.

¹ At sentencing, appellant's prior record was provided to Judge Harrington. Appellant was previously convicted of burglary 3rd degree, common law or strong armed robbery, and unlawful carrying a pistol, in addition to the crimes he pled guilty to at the beginning of the trial; trafficking in cocaine, possession of a stolen vehicle, and failure to stop for a blue light. The State also informed Judge Harrington that appellant was a member of a Blood's street gang from Summerville, S.C. (R. 960-68).

RESPONDENT'S STATEMENT OF FACTS

At the time of this murder, appellant, Kadrin R. Singleton ("Singleton"), was an admitted marijuana dealer. (R. 753, ll. 1-5). Before this murder, Singleton had also previously been convicted of several felonies, including burglary in the third degree and strong armed robbery. (R. 745, ll. 16-21, R. 808, ll. 5-21).

On November 20, 2012, Singleton was trying to obtain marijuana to sell. (R. 747, ll. 12-13). Singleton wanted to purchase a quarter (1/4) pound of marijuana. He contacted a friend, who set him up with Chris Felder ("Felder"), whose cousin by marriage, Kenneth Fludd ("Kenny"), could arrange a deal for the marijuana Singleton wanted to purchase. (R. 747, ll. 12-16; R. 264-65).

Felder contacted Kenny by phone at Kenny's place of employment, a Pizza Hut in Charleston, and asked if Kenny could arrange the transaction. Kenny informed Felder he thought he knew someone who could sell that amount of marijuana and would see what he could do. Kenny contacted his cousin by blood relation, Sherrell Williams ("Williams" or "the victim") by phone, and Williams agreed to sell the quarter (1/4) pound of marijuana to Singleton. (R. 264-66, 268).

Singleton and Felder drove from Summerville to the Pizza Hut where Kenny worked. After arriving at the Pizza Hut and waiting there for approximately five (5) minutes, Kenny came out of the Pizza Hut, and got in the car with the two (2) men. (R. 750, l. 23 – R. 753, l. 12). They all sat and waited for approximately an hour for the victim to return from Walmart, where he was shopping with his girlfriend, so Kenny could take the men to the victim to get the marijuana. (R. 268, l. 20 – R. 270, l. 25; R. 750, l. 23 – R. 753, l. 12).

The victim eventually phoned Kenny and told him to meet him at a house on Cambridge Avenue. (R. 270-71). Kenny got in his own car, started it, and told Singleton and Felder to follow him, which they did for approximately five (5) minutes. (R. 270-71; R. 754, ll. 5-23).

Felder and Singleton then pulled-over a couple of blocks away from the final destination in order to be close to the interstate. (R. 271, l. 11– R. 275, l. 6). Kenny then instructed Felder and Singleton to ride with him, which Singleton initially refused to do because he was acting nervous. (R. 275, ll. 9-14; R. 754, l. 20 – R. 758, l. 6). After trying to reassure Singleton he was in no danger, Kenny, exasperated, left in his car alone giving up on the drug deal. (R. 275, l. 21 – R. 276, l. 6).

Singleton and Felder then phoned Kenny in his car and informed him they had decided to go ahead with the transaction and ride with Kenny to meet the victim. (R. 275-76; R. 758, l. 20 – R. 759, l. 5). Kenny turned his car around and returned to the location at which Singleton and Felder were parked. Singleton and Felder got in the car with Kenny, and left Felder's vehicle parked near the interstate. (R. 275-77).

Singleton, Felder, and Kenny then rode together to a house on Cambridge Avenue, 2364 Cambridge Ave., about two (2) blocks from where Singleton and Felder parked their car, and pulled up alongside an SUV containing the victim Sharrell Williams, which arrived at approximately the same time. (R. 274-75, R. 78-82, State's Ex. 2; R. 759, l. 20 – R. 760, l. 1). The victim's girlfriend was driving the SUV, and after dropping the victim off, she drove down the street to her mother's house, just two (2) houses away. (R. 280-82; State's Ex. 2; R. 462-75). Singleton, Felder, and Kenny got out of Kenny's vehicle and followed the victim Williams into the house. (R. 279-83; State's Ex. 2; R. 462-75; R. 761, ll. 13-20).

Unknown to any of the four (4) men involved in the drug transaction, the FBI had this

residence under video surveillance [unrelated to this murder]. A video camera captured the men getting out of their cars and entering the residence before the murder. (R. 277-82; 317-18; State's Ex. 2).

Once all four (4) men were inside the house, the victim got some marijuana out of the refrigerator and placed it on the counter. (R. 283-87; R. 762, ll. 16-20). Kenny noticed that there was a pistol resting on the same counter in the kitchen. (R. 288, l. 23 – R. 290, l. 8). The victim then began weighing the marijuana and bagged it for Singleton. (R. 283-87; R. 762, ll. 5-9). Singleton sent Felder outside, allegedly to get his money to pay for the marijuana. (R. 288, ll. 2-17). Felder was captured on the FBI surveillance video leaving the house. (R. 288, 290; State's Ex. 2). Kenny went to use the bathroom next to the kitchen. (R. 290, ll. 22-25).

After Kenny returned from the bathroom, Kenny was standing in the kitchen area. Singleton and the victim were standing in the living room/den area, and Singleton was facing the victim. Felder had not returned with the money. Singleton had his hands behind his back. (R. 292, ll. 20-23, R. 319, ll. 21-24).

At this point, Singleton stated: "give it up"—at which point Kenny and the victim laughed thinking it was a joke. (R. 292, ll. 20-23). Singleton then pulled a gun [a .40 caliber semi-automatic pistol] out from behind his back and fired on the victim Williams. Williams was shot several times and collapsed on the floor. (R. 292, l. 20 – R. 294, l. 15).

In reaction to the gunshots, Kenny dove on the kitchen floor behind the kitchen counter. At gun point, Singleton ordered Kenny to give him his car keys. Kenny complied by tossing the keys up in the air to Singleton. Singleton then grabbed the quarter (1/4) pound of marijuana and the gun on the counter and fled out of the residence—firing again on Williams as he left with the

pistol he retrieved from the counter. (R. 292-96).²

Singleton was captured on the FBI surveillance video leaving the residence and fleeing toward Kenny's parked car. Singleton and Felder [who had remained outside the apartment and never reentered] then fled the crime scene in Kenny's car using Kenny's car keys to start and operate the vehicle. Singleton and Felder abandoned Kenny's car where Singleton and Felder had left Felder's car earlier near the interstate. Singleton and Felder then fled the area in Felder's car. (R. 295, ll. 18-21, R. 315-16; State's Ex. 2; R. 777, l. 7 – R. 778, l. 9).

The victim Sharell Williams died from one (1) of the gunshot wounds inflicted by Singleton. Williams bled to death at the scene. Kenny ran outside and called 911. Kenny was captured on the FBI surveillance video calling for assistance. The victim's girlfriend, who heard about the shooting, ran from her mother's house to the house where the victim was killed finding his body. (R. 568-84, R. 295-99; State's Ex. 2; R. 452-75; R. 823, ll. 6-13).

Several days later, at night, Singleton was arrested after a car chase, with police blue lights flashing, and an eventual foot chase, and the use of a police dog. Singleton was driving a stolen vehicle before he fled on foot, and during the foot chase, he discarded a bag of cocaine and marijuana. In the bag with the drugs were two (2) cell phones. At the time of Singleton's arrest, police did not recover these items because the officer chasing Singleton did not see him discard the bag containing the items. (R. 604-20).

After his arrest, from the Charleston County Detention Center, Singleton phoned an associate and requested the associate or others recover the drugs and cell phones he had

² Kenny could not see which gun Singleton fired on the victim with as he left the house, he only heard Singleton fire another gunshot as he fled the scene. Ballistics later determined Singleton fired with the pistol off the counter as he fled the house.

discarded during the foot chase.³ Before the drugs and phones could be recovered by Singleton's associates, a neighbor, in whose yard the drugs and phones had been thrown by Singleton during the foot chase with police, discovered the items and contacted police. Police recovered the evidence. One (1) of these cell phones was directly linked to Singleton at trial, and Singleton's movements on the night of the murder were established with the use of cell phone tower information. The cell phone tower information established Singleton drove from Summerville to the Pizza Hut and then to the area of the house where the murder occurred. And, Singleton then fled the area after the murder occurred. (R. 546-63, 604-20, 624-29, 632-37, State's Ex. 62, R. 651-57; 803-04).

After his arrest, Singleton was questioned by police. He denied knowing anything about the victim's murder and denied being present when Williams was murdered. (R. 786-88). He claimed he was at a friend's house at the time the victim was murdered. (R. 786-88). Singleton admitted at trial this was a lie. (R. 788).

Police also recovered the .40 caliber pistol used in the murder from another individual. (R. 639-49). The weapon forensically matched two (2) fired shell casings found inside the crime scene. (R. 499-500, 659-65, 667-72). Cell phone tower information also showed Singleton's cell phone "pinged" in Holly Hill, S.C., in close proximity to the residence of the individual who was arrested for possession of the .40 caliber pistol. (R. 639-49, 685-712). Singleton admitted at trial he gave the gun to a friend and asked him to hold it. (R. 806-07).

³ These phone calls were recorded by the Detention Center and introduced at trial.

ARGUMENT I

Judge Harrington properly refused Singleton's requested jury charge.

The Issue

On appeal, Singleton argues Judge Harrington erred in refusing his requested charge that he did not have to wait until he was attacked and allow the assailant to "get the drop" on him. Singleton is wrong.

What Occurred Below

During the trial, Singleton no longer claimed alibi as his defense but self-defense. Singleton testified that he fired on Williams after Williams "rushed him." (R. 774, l. 4 – R. 775, l. 1). Singleton testified that prior to Williams rushing him, Williams tried to give him less marijuana than what was bargained for, and as a result of Williams' miserliness the situation began to get heated. (R. 767, ll. 3-4). Singleton testified that after he [Singleton] demanded his money back, Williams pulled out a gun and set it on the counter next to him. (R. 770, ll. 11-20). Singleton claimed that he quickly grabbed the gun on the counter at which point he looked at Kenny who had a gun pointed at him. (R. 771, ll. 16-17). Singleton testified that when he glanced back at Williams, he [Williams] rushed him [Singleton], and Singleton just reacted by pulling the trigger. (R. 774, ll. 4-6). He did not admit to firing any other shots.

Based on these statements, Singleton requested the trial judge charge self-defense. Judge Harrington agreed and composed an appropriate self-defense charge for the jury. However, Singleton requested that the trial judge use the following specific language:

In this case, Kadrin Singleton has offered evidence that he believed he was in imminent danger of death or of receiving serious bodily harm. If Kadrin Singleton's belief was reasonable, he does not have to wait until he is actually attacked or injured or until force is used by the aggressor before he exercises his right to use deadly force in self-defense. In other words, Kadrin Singleton does not have to wait until the assailant "**gets the drop on him**" in order to be entitled

to use force in self-defense.

(Court's Ex. 1, R. (Defendant's Requests to Charge)(emphasis added)). The trial judge refused [R. 874, ll. 17-20] charging instead that:

The defendant does not have to show that he was actually in danger . . . The defendant has the **right to act on appearances**, even though the defendant's belief may have been mistaken. It is for you to determine whether the defendant's fear of imminent danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation. Words accompanied by hostile acts may, depending on the circumstances, establish self-defense.

(R. 945, ll. 2-13). Singleton now alleges Judge Harrington committed reversible error by not charging the specific "gets the drop on him" language. This contention is without merit. State v. Harris, 382 S.C. 107, 113, 674 S.E.2d 532, 535 (Ct. App. 2009).

Judge Harrington's Charge Was Sufficient

When read as a whole, Judge Harrington's charge to the jury was sufficient as given as it adequately covered the issues raised by the evidence. (R. 935-48).

"The law to be charged to the jury must be determined by the evidence presented at trial." Harris, 382 S.C. at 113, 674 S.E.2d at 535; *citing* State v. Patterson, 367 S.C. 219, 231-32, 625 S.E.2d 239, 245-46 (Ct. App. 2006). Generally, a trial court is required to charge only the current and correct law of South Carolina. *Id*; State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006); Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472-73 (2004); State v. Zeigler, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct. App. 2005); State v. Brown, 362 S.C. 258, 261-62, 607 S.E.2d 93, 95 (Ct. App. 2004).

A jury charge is correct if it contains the correct definition of the law when read as a whole. Harris, at 113, 674 S.E.2d at 535; Rayfield, 369 S.C. at 1119, 631 S.E.2d at 251; Sheppard, at 665, 594 S.E.2d at 473; State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463

(Ct. App. 2003); *see also* State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007) (“A trial court’s decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied.”); *citing* State v. Burkhardt, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002).

A trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence. State v. White, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004); State v. Burris, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); State v. Harrison, 343 S.C. 165, 539 S.E.2d 71, 74 (2000). On review of a jury charge, an appellate court considers the charge as a whole in view of the evidence and issues presented at trial. Harris, supra; Welch v. Epstein, 342 S.C. 279, 311, 536 S.E.2d 408, 425 (Ct. App. 2000). “We have often held that the charge of the judge must be considered in its entirety.” State v. Chaffee, 285 S.C. 21, 328 S.E.2d 464 (1984), *citing* State v. Vaughn, 268 S.C. 119, 232 S.E.2d 328 (1977); *see also* State v. Marin, 404 S.C. 615, 620, 745 S.E.2d 148, 151 (Ct. App. 2013) (“[A]n appellate court must consider the charge as a whole in evaluating whether the trial court charged the correct law applicable to the case.”) *citing* State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011); Barber v. State, 393 S.C. 232, 236, 712 S.E.2d 436, 438 (2011), *affirmed as modified* State v. Marin, Shearhouse Advance Sheets, Opinion No. 27613 (Filed March 23, 2016).

A charge which is substantially correct and covers the law does not require reversal. State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996); State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994). To warrant reversal, a trial judge’s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. Harris, supra; State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000); Adkins, supra.

In charging self-defense, the trial judge must consider the facts and circumstances of the

case and fashion an appropriate charge. Harris, supra; citing State v. Starnes, 340 S.C. 312, 531 S.E.2d 907, 913 (2000); see also State v. Fuller, 297 S.C. 440, 377 S.E.2d 328, 330 (1989) (holding common-law instruction on self-defense in State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984) was not intended to be exclusive charge for self-defense). However, **the substance of the law** is what must be charged, **not any particular verbiage**. Brandt, at 549, 713 S.E.2d at 603; State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010); State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994); Davis, supra; Marin, at 620, 745 S.E.2d at 151; Harris, supra; Burkhart, supra.

The failure to provide specific jury instructions is not reversible error if the general instructions are sufficiently broad to enable the jury to understand the law and the issues involved. Hughey, supra; citing Cohens v. Atkins, 333 S.C. 345, 509 S.E.2d 286, 289 (Ct. App. 1998). The failure to provide specific jury instructions is not error when the given instructions use the proper test for determining the issues before the jury. Harris, supra; Hughey, supra; citing Miller v. City of West Columbia, 322 S.C. 224, 471 S.E.2d 683 (1996); see also State v. Barwick, 280 S.C. 45, 310 S.E.2d 428 (1983). A jury charge which is substantially correct and covers the law does not require reversal. Harris, supra; State v. Cherry, 348 S.C. 281, 559 S.E.2d 297 (2002). "Therefore, there is no error of law in refusing to give a specific request to charge where . . . the trial court used language different from that requested, but considering the charge as a whole, the charge as given stated the requested principle of law correctly." Marin, at 620, 745 S.E.2d at 151.

The resolution of this appellate issue is controlled by State v. Harris, 382 S.C. 107, 674 S.E.2d 532 (Ct. App. 2009). In Harris, this Court held the trial court's refusal to use the language "[gets] the drop on him" did not render the charge improper." Harris, at 115, 674

S.E.2d at 536. The defendant in Harris claimed that as the victim was coming down the stairs of his ex-girlfriend's house to talk to the defendant, he saw something "“flicker from the back where [victim] had his hand,” and [victim] lunged at him as [victim] made his way down the stairs.” Id. at 112, 674 S.E.2d at 535. At trial, the defendant claimed self-defense and requested that the trial judge charge:

If a defendant is in imminent danger or if defendant's belief that he is in imminent danger of death or receiving bodily harm is reasonable, he need not wait until actual attack or injury or until force is used by the aggressor before exercising the right to use deadly force in self-defense. In other words, defendant need not wait until the assailant **“gets the drop on him”** in order to be entitled to use force in self-defense.

Id. at 114, 674 S.E.2d at 536 (emphasis added). The trial judge refused to charge the “gets the drop on him” language. Id. Instead, the trial court charged:

You may consider the deceased's conduct[,] actions and general demeanor immediately before the incident as bearing on the deceased's temper and state of mind at the time of the fatal encounter[,] and **the defendant does not have to show that he was actually in danger.** It is enough if the defendant believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief. **The defendant has the right to act on appearances even though the defendant's beliefs may have been mistaken.**

Id. at 115, 674 S.E.2d at 536 (emphasis in original).

On appeal, Harris argued the trial judge's refusal to charge “gets the drop on him” constituted reversible error. This Court noted the first use of this language in State v. Rash, 182 S.C. 42, 50, 188 S.E. 435, 438 (1936) (“[The defendant] doesn't have to wait until his assailant gets the drop on him, he has a right to act under the law of self-preservation and prevent his assailant getting the drop on him; if it is apparent, or reasonably apparent his assailant is taking steps to get the drop on him, he must take steps first to prevent such assailant from getting the drop on him.”), and its later interpretation in State v. Nichols, 325 S.C. 111, 117-18, 481 S.E.2d 118, 121-22 (1997) and State v. Starnes, 340 S.C. 340, 322, 531 S.E.2d 907, 913 (2000)—

finding that it means “a defendant does not have to wait until actually fired upon to use force to defend his life.” Id., at 114, 674 S.E.2d at 536.

This Court, in affirming Harris’ conviction, held “[t]he trial court’s instructions made it clear that Harris did not have to wait until he was actually under attack in order to employ force to defend his life.” Id., at 115, 674 S.E.2d at 536. This Court made special note the trial court informed the jury that Harris had a right to *act on appearances*, even if those appearances were later found to be incorrect. Id. Essentially, this Court found the trial court’s charge adequately covered the essence of the appellant’s requested “get the drop on him” charge—noting that it is “[t]he substance of the law [that] must be charged to the jury, not particular verbiage.” Id.; Burkhart, at 261, 565 S.E.2d at 303; *see also*, Brandt, at 549, 713 S.E.2d at 603; Mattison, at 479, 697 S.E.2d at 583; Smith, *supra*; Davis, *supra*; Marin, at 620, 745 S.E.2d at 151.

The facts of Harris are completely analogous to the present case. Like the appellant in Harris, Singleton here argues it was error for the trial court to refuse his requested “gets the drop on him” language. Also, like the trial judge in Harris, the trial judge here [Judge Harrington] properly instructed the jury on Singleton’s right to act on appearances (**Compare:** the Harris instruction—“The defendant does not have to show that he was actually in danger . . . The defendant has the right to act on appearances even though the defendant’s beliefs may have been mistaken,” and the present instruction—“The defendant does not have to show that he was actually in danger . . . The defendant has the right to act on appearances, even though the defendant’s belief may have been mistaken.”). Harris, at 115, 674 S.E.2d at 536; (R. 945, ll. 2–8).

Like the instruction in Harris, Judge Harrington’s charge made it clear that Singleton “did not have to wait until he was actually under attack in order to employ force to defend his life.” Harris, at 115, 674 S.E.2d at 536. (R. 943-46). Also alike is the fact that both trial judges

“informed the jury that [the appellant] had a right to act on appearances.” Id. (R. 943-46). Therefore, just as in Harris, “[t]he simple fact that the trial court refused to use the ‘[gets] the drop on him’ language does not render the charge improper.” Id.; see also Marin, at 625, 745 S.E.2d at 153 (affirming trial court’s charge “because the trial court here covered in its charge the substantive principle of law [Appellant] requested.”). (R. 935-48). Singleton fails to mention State v. Harris anywhere in his brief.

An ancillary point, which further justifies Judge Harrington’s refusal to charge “gets the drop on him,” is that the whole notion that Singleton had the right to defend himself before actually being attacked runs counter to Singleton’s stated theory of the case. As counsel for Singleton makes clear in his brief, with confirmation from the trial transcript, and according to the sworn testimony of Singleton himself, Singleton *did not* fire upon the victim *before* being attacked—rather, Singleton testified that victim “rushed [him]” before he “just reacted and pulled the trigger.” (IBOA, p. 6; R. 774, l. 4 – R. 775, l. 1). This testimony completely undermines the need for a self-defense charge containing the language “gets the drop on him” since Singleton himself argues he was actually under attack at the time he fired. With this context in mind, the addition by Judge Harrington of the “gets the drop on him” language to her self-defense charge would have been superfluous at best (considering the fact that she sufficiently charged the jury with Singleton’s “right to act on appearances”) and confusing and contradictory to Singleton’s *stated* defense at worst.

Therefore, based on the great weight of the relevant case law, as well as Singleton’s own assertions, Judge Harrington’s ruling to exclude Singleton’s requested “gets the drop on him” language in her self-defense charge to the jury was clearly not erroneous and Singleton’s conviction should be affirmed. Harris; Marin.

ARGUMENT II

Judge Harrington properly granted the State's Batson motion, and Singleton cannot show prejudice.

The Issue

On appeal, Singleton argues Judge Harrington erred in granting the State's motion pursuant to Batson v. Kentucky, 476 U.S. 79 (1986), because he *alleges* he gave race-neutral explanations for his strikes and the State failed to prove pretext. Singleton is wrong.

What Occurred Below

During the first (1st) jury strike, Singleton proceeded to strike thirteen (13) white venire members—constituting all of Singleton's strikes. (R. 66, l. 1 – R. 85, l. 25). The State made a Batson challenge to Singleton's strikes. (R. 87, l. 1 – R. 101, l. 5). The State argued based on the totality of the strikes, all made against white jurors, a *prima facie* showing of racial discrimination had been shown. (R. 87, ll. 6-21). Judge Harrington agreed and instructed defense counsel to go down the list of its strikes, stating the reason for each of them. (R. 87, l. 25 – R. 88, l. 5).

Defense counsel explained that it struck:

- Juror number 193, white male, for military service in the Air Force Reserve as well for requesting to be excused
- Juror number 210, white male, for being a retired Army Colonel
- Juror number 213, white female, for requesting to be excused and for acting "cavalier"
- Juror number 344, white female, for not making eye contact with the defense and seeming disinterested
- Juror number 21, white female, for having ties to a victim of a robbery
- Juror number 312, white male, for being a real estate appraiser who wouldn't be able to relate to the "poverty of this case"

(R. 88, l. 7 – R. 90, l. 1). Judge Harrington then interrupted to ask defense counsel why it struck those with military ties. (R. 90, ll. 2-7). Defense counsel responded that it was because of their

association with State institutions. (R. 90, ll. 8-11). Defense counsel then stated that he struck Juror number 312 because his level of affluence would affect his ability to connect with the facts of this case. (R. 90, ll. 22-24). Defense counsel then explained that it struck:

- Juror number 369, white female, for having victim ties and for her husband being an attorney⁴
- *Juror number 261, white female, for having prior jury service on a murder case*
- *Juror number 127, white female, for having some type of jury service, criminal or civil, but not specifying which*
- Juror number 97, white female, because her uncle was murdered
- *Juror number 191, white male, for jury service in an armed robbery case*
- *Juror number 353, white female, for working for the Department of State*
- Juror number 188, white female, for making Singleton feel uncomfortable

(R. 90, l. 25 – R. 93, l. 10).

The State then argued that Jurors number 261, 127, and 191, were struck ostensibly for prior jury service, while Jurors number 333 and 321, who also had prior jury service, were allowed to sit. (R. 93, ll. 20-23). Defense counsel argued that one (1) of these jurors, Juror number 333, had done jury service in a small claims court unconnected with a criminal matter, and that's why the defense had allowed her to sit. (R. 93, l. 24 – R. 94, l. 7). The State responded that Juror number 321, a black female, was allowed to sit even though she had prior jury service for a criminal matter, an assault case, and furthermore, was employed with the Department of the Navy—debunking both the defense's prior jury service purported reason and ties to State institutions through military or government contacts purported reason. (R. 94, ll. 17-25).

The State further argued that an alternate sat, Juror number 154, an African-American, worked for the Department of Social Services, a State institution, showing further discriminatory striking of similarly-situated white jurors. (R. 95, ll. 5-10). Based on this evidence of discriminatory intent and pretext in Singleton's striking of similarly-situated jurors, the State

⁴ Part of this reason is not true. Juror 369 did not indicate she had any victim ties. (R. 62-65).

requested that the court re-draw the jury. (R. 95, ll. 12-19).

Defense counsel then argued that it had provided race-neutral reasons for making its strikes. (R. 95, l. 21 – R. 96, l. 3). Judge Harrington then expressed concern over two (2) black jurors being sat by the defense while white jurors with “basically the same position” were struck. (R. 96, ll. 4-20). Judge Harrington ruled the State had met its burden, and she therefore, was granting the Batson motion. (R. 98, ll. 1-2).

After an in chambers conference, Judge Harrington then allowed defense counsel to put additional arguments on the record. Defense counsel used this opportunity to argue that Juror number 321’s prior jury service was distinguishable from the jury service of the struck white jurors since 321’s service had been on an assault case a “very long time ago.” (R. 98, ll. 7-12). Part of this response was simply not true. This Juror did not state her prior jury service had been a “very long time ago.” In fact, she did not state when her prior jury service was. (R. 53, ll. 11-21). Defense counsel also argued that Juror number 321’s employment with the military was civilian in nature, which distinguished it from the greater connection to the military of the struck retired Colonel. (R. 98, ll. 15-18). Also, according to defense counsel, sat Juror number 108’s employment with the Department of Social Services as a social worker meant that she would be well-connected to low income families. The State then argued that Juror number 328 **was seated** though he had jury service **of some undisclosed kind** while the defense purportedly struck another juror because she had jury service of an unarticulated or un-disclosed kind, which the Solicitor argued was further evidence of pretext. (R. 99, l. 21 – R. 100, l. 4).

Judge Harrington ruled that based on the totality of the circumstances she found the defense’s striking was pretextual. (R. 100, l. 24 – R. 101, l. 5). Judge Harrington ordered the jury re-struck. According to the record, Judge Harrington did not order that defense counsel

could not re-strike any of the disputed jurors. On re-strike, Singleton struck several jurors he struck during the first (1st) jury strike, and seated two (2) jurors he initially struck in the first (1st) jury strike. Singleton had several strikes remaining when the second (2nd) jury selection was completed.

Upon re-strike, the following jurors were seated on the jury which tried Singleton and found him guilty:

1. James Whitlaw #386;
2. Phillip Dizon, #106;
3. Ralph Piening #289;
4. Heather Hord, #188;
5. Nicholas Latto, #221;
6. Terry Renz, #300;
7. *Ann Thompson*, #353;
8. Kevin Merit, #248;
9. Kendra Drayton, #108;
10. Kevin Flyn, #131;
11. Deane Vane, #368;
12. Mary K. Skinner, #333;

Alternates:

1. Mark Serniak, #323;
2. Ryan McAvoy, #109.

The only disputed juror who was seated on the 2nd jury was Juror #353, Ann Thompson. Juror Thompson was allegedly struck by Singleton because she worked for a State or

government agency, the Department of State, while Singleton seated a black juror who worked for a State agency, the Department of Social Services, and Singleton seated another black juror who was a civilian employee for a federal government agency, the Department of Navy. Juror #188, Heather Hord, was seated on the 2nd jury, but she was not a disputed juror and appellant was not prevented from re-striking her.⁵ Singleton now claims Judge Harrington committed reversible error by granting the Batson motion. This contention is without merit.

Standard of Review

“[O]n review, the court is limited to determining whether the trial court abused its discretion.” State v. Stewart, 413 S.C. 308, 313, 775 S.E.2d 416, 418-19 (Ct. App. 2015); *citing* State v. Edwards, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” State v. Jennings, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011); *citing* Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). The “Court does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court’s ruling is supported by any evidence.” Stewart at 313, 775 S.E.2d at 419; *citing* Edwards, at 508, 682 S.E.2d at 822.

“The trial judge’s findings of purposeful discrimination rest largely on his [or her] evaluation of demeanor and credibility.” Edwards, at 509, 682 S.E.2d at 823; *citing* Sumpter v. State, 312 S.C. 221, 224, 439 S.E.2d 842, 844 (1994). Because the trial judge’s findings regarding purposeful discrimination rest largely upon his or her evaluation of credibility, those findings will be given great deference by the appellate court. State v. Tucker, 334 S.C. 1, 512

⁵ During the Batson hearing, Judge Harrington specifically stated on the record that she found Singleton’s strike of Heather Hord and other jurors *based on demeanor to be credible and was not pretextual*. (R. 100, ll. 11-18).

S.E.2d 99 (1998); Sumpter v. State, 312 S.C. 221; 439 S.E.2d 842. An “evaluation of an attorney’s mind” based on demeanor and credibility lies “peculiarly within a trial judge’s province.” Hernandez v. New York, 500 U.S. 352 (1991); State v. Evins, 373 S.C. 404, 645 S.E.2d 904 (2007). “The trial court’s findings regarding purposeful discrimination are given great deference and will not be set aside by this court unless clearly erroneous.” State v. Garris, 394 S.C. 336, 714 S.E.2d 888 (Ct. App. 2011), *citing* Evins, 373 S.C. at 416, 645 S.E.2d at 909-10; Toal, C.J. et. al, Appellate Practice in South Carolina 2nd Ed., p. 201. *See also* State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009)(same). “It is within the discretion of the trial judge to determine purposeful discrimination based on the ‘**totality of relevant facts[.]**’” including the credibility of the attorney. State v. Garris, 394 S.C. 336, 353, 714 S.E.2d 888, 897 (Ct. App. 2011); *citing* State v. Wilder, 306 S.C. 535, 539, 413 S.E.2d 323, 325 (1991) (emphasis added); *see also*, Edwards, at 509, 682 S.E.2d at 823 (stating “[w]hether a Batson violation has occurred must be determined by examining the **totality of the facts** and circumstances in the record.”) (emphasis added). Furthermore, a strike must be examined in light of the circumstances under which it is exercised, including an examination of the explanations offered for other strikes. Id.; State v. Oglesby, 298 S.C. 279, 280 379 S.E.2d 891, 892 (1989). “Therefore, those findings are given great deference and will not be set aside [on appeal] unless clearly erroneous.” Evins, supra; State v. Haigler, 334 S.C. 623, 630, 515 S.E.2d 88, 91 (1999); *citing*, State v. Ford, 334 S.C. 59, 512 S.E.2d 500 (1999); State v. Dyar, 317 S.C. 77, 452 S.E.2d 603 (1994); *see also*, State v. Inman, 409 S.C. 19, 25, 760 S.E.2d 105, 108 (2014); State v. Guess, 318 S.C. 269, 272-73, 457 S.E.2d 6, 8 (Ct. App. 1995)(Typically, the decisive question becomes whether counsel’s neutral explanation for a peremptory challenge should be believed. There is seldom much evidence in the record bearing on that issue, and the

trial court's findings regarding purposeful discrimination necessarily will rest largely on the evaluation of demeanor and credibility of counsel. Therefore, those findings are given great deference and will not be set aside unless clearly erroneous.), *citations omitted*.

The Law

"The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a [juror] on the basis of race or gender." McCrea v. Gheraibeh, 380 S.C. 183, 186, 669 S.E.2d 333, 334 (2008) (*citing* State v. Shuler, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001); *see* Batson v. Kentucky, 476 U.S. 79 (1986)). A criminal defendant may not engage in racial discrimination in exercising peremptory strikes. Georgia v. McCollum, 505 U.S. 42, 59 (1992). The prohibition against engaging in purposeful discrimination on the grounds of race extends to an African-American defendant who engages in purposeful discrimination by striking white jurors. State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996); State v. Govan, 312 S.C. 71, 439 S.E.2d 263 (1993).

The procedure for finding whether jurors have been discriminatorily struck based on race or gender is as follows:

First, the opponent of the peremptory challenge must make a prima facie showing that the challenge was based on race. If a sufficient showing is made, the trial court will move to the **second** step in the process, which requires the proponent of the challenge to provide a race neutral explanation for the challenge. *If* the trial court finds that burden has been met, the process will proceed to the **third** step, at which point the trial court must determine whether the opponent of the challenge has proved purposeful discrimination.

Stewart, at 314, 775 S.E.2d at 419; *citing* State v. Giles, 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014).

A legally sufficient explanation for the strike—tendered by the strike's proponent, pursuant to the second step of the Batson test—is one that need not be "persuasive, or even

plausible,” but that, nevertheless, “must be clear and reasonably specific.” Giles, at 21-22, 754 S.E.2d at 265.

If the trial judge finds the proponent of the strike has made a threshold showing of non-discriminatory reasoning for the strike, the burden is then on the opponent of the strike to show that the race/gender-neutral reason given in step two was mere pretext—“generally established by showing the party did not strike a similarly-situated member of another race or gender.” Stewart, at 314, 775 S.E.2d at 419; citing Haigler, at 629, 515 S.E.2d at 91.

The two (2) methods of attacking a pretextual strike are (1) to establish the alleged reason or criteria for the exercise of any peremptory strike was not consistently applied to every juror; and (2) the explanation is so implausible or fantastic that it lacks any credibility. Evins, supra; Adams, supra. See Haigler, 334 S.C. at 629, 515 S.E.2d at 91 (“Pretext generally will be established by showing that similarly situated members of another race were seated on the jury). Under some circumstances, the race-neutral explanation given by the proponent may be so fundamentally implausible the judge may determine, at the third step of the analysis, that the explanation was mere pretext even without a showing of disparate treatment”), quoted in State v. Williams, 379 S.C. 399, 665 S.E.2d 228, n. 2 (Ct. App. 2008). Although a party does not have a duty to state whether the same standards are applied to jurors that are seated, as are to jurors that are excused, a party must be prepared to show that the reason or criteria for the exercise of any peremptory strike was consistently applied to every juror, and was not merely pretextual. Sumpter v. State, 312 S.C. 221, 439 S.E.2d 842 (1994); State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990); Guess, supra.

Whether a party has engaged in any purposeful discrimination will largely depend on the trial judge’s evaluation of the credibility of the party’s explanation. In the typical peremptory

challenge inquiry, the decisive question will be whether counsel's neutral explanation for a peremptory challenge should be accepted by the trial judge as being non-discriminatory. There will seldom be much evidence bearing on that issue, and the best evidence will often be the demeanor of the attorney who exercises the challenge. Shuler, supra. As with the state of mind of a juror, evaluation of an attorney's state of mind based on demeanor and credibility lies "peculiarly within a trial judge's province." Hernandez; Evins; Shuler; State v. Cochran, 369 S.C. 308, 631 S.E.2d 294 (2006); Guess. Because the trial judge's findings regarding purposeful discrimination rest largely upon his evaluation of credibility, those findings will be given great deference by the appellate court. Tucker, supra; State v. Casey, 325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997). It is within the discretion of the trial judge to determine purposeful discrimination based on the totality of relevant facts, including the credibility of the party making the strike. Garris, supra; Wilder, supra.

The failure of a party to consistently apply a proffered neutral reason for striking jurors, infers an invidious discriminatory purpose. Oglesby, supra. Whether or not jurors are struck for reasons similar to those who are seated, is left to the determination of the trial judge. State v. McCray, 332 S.C. 536, 506 S.E.2d 301 (1998).

In Oglesby, it was held to be error for the prosecutor to strike 3 black female jurors for the reason they were patients of a doctor who was a witness in the case, when a white female juror was seated who also was a patient of the same doctor. Similarly, in State v. Grate, 310 S.C. 240, 423 S.E.2d 119 (1992), a new trial was granted where the prosecutor struck 2 black male jurors because of their ages (22 and 28), but seated a 21 year old white juror. See Miller-El v. Dretke, 545 U.S. 231 (2005)(if prosecutor's proffered reason for striking black panelists applies just as well to an otherwise-similar non-black panelist who is permitted to serve, such evidence

tends to prove purposeful discrimination which is to be considered at 3rd step); Snyder (State did not strike similarly situated jurors for same reason).

The Constitution forbids striking even a single prospective juror for a discriminatory purpose. Snyder v. Louisiana, 552 U.S. 472, (2008); United States v. Lane, 866 F.2d 103, 105 (4th Cir. 1989). If the circuit court finds a single juror has been struck in violation of Batson, our appellate Courts have mandated that the circuit court quash the entire selected jury and begin the jury selection process *de novo*. State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999); State v. Heyward, 357 S.C. 577, 594 S.E.2d 168 (Ct. App. 2004).

Analysis

Singleton's "totality of the circumstances" argument in his brief overlooks the proper analysis done by Judge Harrington as well as the strength of the pretextual evidence presented by the State. In fact, because the trial judge stated that she was finding certain strikes were pretextual "under the totality of the circumstances" does not render her ruling inappropriate but entirely proper. *See Ford*, at 65, 512 S.E.2d at 504 ("Whether a Batson violation occurred must be determined by examining the **totality of the facts and circumstances** in the record surrounding the strike."); *citing State v. Green*, 306 S.C. 94, 409 S.E.2d 785 (1991) (emphasis added); *Garris*, at 353, 714 S.E.2d at 897; *citing Wilder*, at 539, 413 S.E.2d at 325 ("[i]t is within the discretion of the trial judge to determine purposeful discrimination based on the '**totality of relevant facts.**'") (emphasis added); *see also, State v. Rayfield*, 357 S.C. 497, 502, 593 S.E.2d 486, 489 (Ct. App. 2004) ("Whether a Batson violation has occurred must be determined by examining the **totality of the circumstances.**") (emphasis added); *State v. Palmer*, 415 S.C. 502, 783 S.E.2d 823 *5 (Ct. App. 2016) ("Whether a Batson violation has occurred must be determined by examining the **totality of the facts and circumstances** in the

record.”) (emphasis added) (internal citation omitted).

Contrary to Singleton’s contention that Judge Harrington relied entirely on some superficial assessment of the “totality of the circumstances” by *allegedly* looking only at the totality of his strikes, Judge Harrington conducted a full and detailed hearing on the matter, which included evidence produced by the State sufficient to rebut Singleton’s alleged “race-neutral” reasons. Moreover, Singleton’s reliance on Ford to bolster his contention is equally unfounded; the two (2) cases are not analogous. Unlike in Ford, where the State offered no evidence of similarly-situated jurors of another race who were seated rather than struck, the State here provided several examples of similarly-situated black jurors who were seated while their white counterparts were struck. Ford, at 65-66, 512 S.E.2d at 504; *see* Palmer, at *5 (holding: “the State demonstrated the explanations were pretextual by showing Palmer did not strike similarly-situated members of another race.”). Furthermore, unlike in Ford, here Singleton struck *only* white venire members [all thirteen (13) of his strikes]. *Id.*

After Singleton gave purportedly or alleged race-neutral reasons for striking thirteen (13) white veneer members—which constituted all of the defense’ strikes—the State responded by providing evidence that several white jurors, numbers 261, 127, and 191, were all struck for prior jury service, while two (2) jurors, numbers 333 and 321 were allowed to sit. As regards Juror number 333, Singleton countered that she was seated because her jury service had been in small claims court rather than criminal court. However, the State responded that Juror number 321, a black female, was allowed to sit even though she had served on a jury for a criminal case. *See Miller-El v. Dretke*, 545 U.S. 231 (2005)(if proffered reason for striking black panelists applies just as well to an otherwise-similar non-black panelist who is permitted to serve, such evidence tends to prove purposeful discrimination which is to be considered at the 3rd step); Snyder (party

did not strike similarly situated jurors for the same reason).

In his brief, Singleton argues that Juror number 321 was not similarly-situated in relation to Juror numbers 261, 127, and 191 because the assault case *was remote* and *not as serious* as the present case. This explanation is not credible. Singleton's claim that the case *was remote* is patently false. Juror 321 never stated her prior jury service was a long time ago or remote. She did not say when it occurred. Further, Singleton's claim the case *was not as serious* is not credible as the prior jury service could have been in a case of assault and battery with intent to kill (ABWIK), assault and battery of a high and aggravated nature (ABHAN) or even criminal sexual assault, Juror 321 did not specify. And, Singleton did not ask for clarification. What is clear is this Juror previously served as a juror in a criminal case.

Singleton's extraordinarily thin parsing of criminal trial jury membership was not persuasive or credible to Judge Harrington, is not supported by the record, or the totality of the circumstances. The key here is whether Judge Harrington's determination of racial bias in jury selection—is "supported by *any* evidence." Stewart at 313, 775 S.E.2d at 419; *citing Edwards*, at 508, 682 S.E.2d at 822 (emphasis added). It is. State v. McCray, 332 S.C. 536, 506 S.E.2d 301 (1998)(whether or not jurors are struck for reasons similar to those who are seated, is left to the determination of the trial court).

The evidence presented in the record indicates Singleton struck Juror numbers 261, 127, and 191, all white, while seating, for all intents and purposes, similarly-situated Juror number 321, who was black. This evidence is bolstered by the fact that Judge Harrington was in the position to best evaluate the "demeanor and credibility" of defense counsel **and** the African-American juror *did not state her jury service was remote or a long time ago*. Edwards, at 509, 682 S.E.2d at 823; *citing Sumpter*, at 224, 439 S.E.2d at 844; *see also Hernandez*, at 365

("[E]valuation of the [attorney's] mind lies peculiarly within a trial judge's province."). Furthermore, given that Judge Harrington's determination of purposeful discrimination is granted "great deference and will be set aside on appeal only if clearly erroneous," Judge Harrington's determination here passes muster since the record shows she evaluated the credibility of defense counsel based on the evidence in the record—evidence which demonstrated counsel struck similarly-situated jurors based on race. State v. Haigler, 334 S.C. 623, 630, 515 S.E.2d 88, 91 (1999); *citing*, Ford, *supra*; Dyar, *supra*; *see also*, Inman, at 25, 760 S.E.2d at 108.

Furthermore, as the State pointed out, counsel's explanation for striking Juror number 127, specifically because she had prior jury service, criminal or civil, **but did not specify which**, is clearly not credible based on the record. Juror number 328 stated under oath he had previous jury service, **but did not specify whether it was criminal or civil**, and he was seated by appellant Singleton while Singleton had two (2) strikes remaining with which to strike this juror, Juror 328. (R.p. 58, ll. 8-15, p. 79, ll. 11-19). *See Snyder* (Court can consider other strikes in determining whether current strike is discriminatory); Haigler, 334 S.C. at 629, 515 S.E.2d at 91 (same), and McCrea, *supra* (Court considered in part vagueness of reason for the strike in finding inherent discriminatory intent). In fact, he was seated immediately before Juror number 127 was seated. It is clear, Singleton's explanation for striking Juror number 127 was not credible and was pretext, i.e. a made up reason after the State forced him to explain his striking of this Juror. Sumpter v. State, 312 S.C. 221, 439 S.E.2d 842 (1994)(Although a party does not have a duty to state whether the same standards are applied to jurors that are seated, as are to jurors that are excused, a party must be prepared to show that the reason or criteria for the exercise of any peremptory strike was consistently applied to every juror, and was not merely

pretextual.); State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990); Guess, *supra*. Judge Harrington did not abuse her discretion in finding counsel's purported reasons for his strikes to be not credible.

The State further persuasively pointed out that un-struck Juror number 321 [an African-American female] was employed with the Department of the Navy, which undermined another of defense counsel's purportedly race-neutral reasons for striking white veneer members—prior military service justified striking white jurors because they would have connections to State institutions or agencies. Juror number 321 would have had just as much of a connection to State institutions or agencies as the two (2) white jurors who were struck.

Moreover, the State noted that an additional black veneer member, Juror number 154, was seated although she worked for a State agency, the Department of Social Services, undermining yet another of defense counsel's race-neutral explanations for striking white veneer members—that several of the struck veneer members worked for a government agency or had ties to State institutions. Singleton argues that the struck white jurors were not similarly-situated to the seated black jurors because the white jurors had actual military experience, whereas Juror number 321 was a civilian employee of the Navy and Juror number 154 was a social worker with the Department of Social Services. However, Singleton admitted Juror 154 was involved in child abuse cases on behalf of the State. Once again, this thin post-hoc parsing of what are essentially similarly-situated jurors was not persuasive or credible to the trial judge—and it is certainly not an abuse of discretion that Judge Harrington ruled it was not persuasive or credible.

Regardless of the above, the fact remains, Singleton struck a white female juror, [Juror #353 Ann Thompson], because she worked for a federal or a state government agency or institution, the Department of State, while he seated a black female juror [Juror # 321] who was

as a civilian employee for the Department of Navy [Space and Naval Warfare Systems Command], a federal government agency or institution,⁶ and seated a black female juror, Juror 154, who worked for a state government agency or institution [the Department of Social Services], and he admitted this juror was involved in child abuse cases on behalf of the State. This is clear proof of pretext in the striking of Juror #353, Ann Thompson. Oglesby, *supra* (The failure of a party to consistently apply a proffered neutral reason for striking jurors, infers an invidious discriminatory purpose.); Grate, *supra* (a new trial was granted where attorney struck 2 black male jurors because of their ages (22 and 28), but seated a 21 year old white juror. See Miller-El v. Dretke, *supra* (if proffered reason for striking black panelists applies just as well to an otherwise-similar non-black panelist who is permitted to serve, such evidence tends to prove purposeful discrimination which is to be considered at 3rd step); Snyder (State did not strike similarly situated jurors for same reason). See also Sumpter, *supra*; Johnson, *supra*; Guess, *supra*.

As already noted, the trial judge is in the best position to judge credibility regarding purposeful racial discrimination and her determination should not be disturbed unless found to have been made without any evidentiary support whatsoever. See Stewart, *supra*, *et al.* This is simply not the case here; where there was evidence that Juror number 321 and 154 were seated while a fundamentally similarly-situated white juror was not, Juror 353. The mere fact that the trial judge did not find counsel's purportedly race-neutral reason persuasive does not constitute error where the trial judge was best in position to evaluate the credibility of that reason in person, and her determination is fully supported by evidence in the record.

In summation, Judge Harrington's ruling that Singleton struck similarly-situated white

⁶ Further, Juror 321 [a black female seated] had ties to the military, another reason given for striking white male jurors.

jurors based on race was not erroneous based on the totality of the circumstances, and Singleton's verdict and sentence must be affirmed.

Lack of Prejudice

The right to serve on a jury and not be discriminated against because of race or gender belongs to the potential juror, not a litigant. Evins, 373 S.C. at 416, 645 S.E.2d at 910. This is because a defendant has no right to a trial by a particular jury. Evins, *supra*, citing Adams, 322 S.C. 126, 470 S.E.2d at 373.

As a result, in order to establish prejudice where the Court has granted a Batson motion and ordered re-striking of a jury, appellant must show he was improperly prohibited from re-striking a juror or jurors that he properly struck for a race or gender neutral reason when the 1st jury was struck. See Adams, 322 S.C. at 126, 470 S.E.2d at 373 (even if the trial court commits error in granting the State's Batson motion, the error is reversible only if the 2nd jury is comprised of jurors whom the trial court *erroneously* prohibited the defendant from re-striking); State v. Williams, 379 S.C. 399, 665 S.E.2d 228 (Ct. App. 2008); Rayfield, *supra* (a defendant is not entitled to a particular jury); Cochran, 369 S.C. at 324, 631 S.E.2d 294 ("Our case law dictates that even if the trial court commits error in granting the State's Batson motion, the error is reversible only if the second jury is comprised of jurors whom the trial court erroneously prohibited the defendant from re-striking based on Batson");⁷ Heyward, *supra* (trial court's seating of a juror who has once been improperly struck by a party in violation of Batson is not, an impairment or denial of that party's right to peremptory challenges). Singleton cannot show prejudice for several reasons.

⁷Conversely, if a defendant is prohibited from re-striking a juror who the defendant had previously properly struck for a racially or gender neutral reason, he does not have to show prejudice and is entitled to a new trial. State v. Ford, 334 S.C. 59, 63-66, 512 S.E.2d 500, 503-04 (1999); State v. Short, 333 S.C. 473, 476-78, 511 S.E.2d 358, 360-61 (1999).

First, as shown above, Singleton was not improperly prohibited from re-striking a juror he properly struck for a race neutral reason. The record shows, as Judge Harrington correctly found, Singleton did not strike the disputed jurors for race neutral reasons. Adams; Williams; Rayfield; Cochran; Heyward.

Second, Singleton cannot show prejudice and his conviction and sentence must be affirmed because there is no evidence in the record Singleton was prohibited from re-striking any specific juror in the 2nd jury strike. During the first (1st) jury strike, Singleton struck the following jurors: #193, #210, #213, #344, #21, #312, #369, #261, #127, #97, #191, #353, & #188. There is no indication in the record Singleton was specifically prohibited from re-striking any of the jurors he struck in the first (1st) jury selection. On re-strike (2nd jury strike), Singleton **re-struck** Juror numbers **213, 21, 312, 261, and 191.**⁸ (R. 102, 107, 108-09, 112, 115). He did not strike Juror numbers 353 and 188 in the 2nd jury strike, and they were seated, but there is no evidence or indication in the record Judge Harrington specifically prohibited him from re-striking these jurors. Juror 188 was not even a disputed juror, per Judge Harrington's specific holding. In fact, Singleton had strikes remaining at the end of the 2nd jury strike, but chose not to exercise them, for whatever reason. And, during the 2nd jury strike, Singleton **struck jurors who he seated in the original [1st] jury strike.** As a result, Singleton cannot show prejudice from the granting of the Batson motion and ordering of a re-strike. Adams; Williams; Rayfield, Cochran, Heyward.

Finally, Singleton cannot show any prejudice because the only "disputed juror" that was seated on the final [2nd] jury was Juror #353, Ann Thompson. Adams; Williams; Rayfield,

⁸ Jurors #261 and #191 had prior jury service in criminal cases. Singleton re-struck them in the 2nd jury strike. Juror #127, who had prior jury service of an un-disclosed kind, and was struck by Singleton in the 1st jury strike, was not seated on the 2nd jury. (R. 102-20).

Cochran, Heyward. During the 1st jury strike, Juror #353 was *allegedly* struck by Singleton because she worked for a government agency or state institution, the Department of State. However, Singleton seated one (1) black juror who worked for a state government agency, the Department of Social Services, and seated one (1) black juror who worked as a civilian employee for a federal government agency, the Department of Navy [Space and Naval Warfare Systems Command]. Therefore, Singleton did not properly strike Juror #353, Ann Thompson, for a race neutral reason *but for a pre-textual reason*, and even if Judge Harrington prevented Singleton from re-striking Juror #353, Ann Thompson, [which the record does not reflect] that ruling would have been correct.⁹ As a result, Singleton cannot show prejudice and his conviction and sentence must be affirmed. Adams; Williams; Rayfield, Cochran, Heyward.

CONCLUSION

For the above stated reasons, Singleton's conviction and sentence for the murder of Sherell Williams must be affirmed and this appeal dismissed.

Respectfully submitted,

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⁹ At the Batson hearing's conclusion, Judge Harrington specifically found Singleton's strike of Juror #188, Heather Hord and other jurors *based on demeanor, to be credible and was not pretextual*. (Tr. Vol. 1, p. 100, ll. 11-18). As a result, Juror #188, who Singleton struck in the 1st jury selection but seated on the 2nd jury, was not a "disputed juror" according to Judge Harrington's specific finding, and Singleton would not have been prevented from re-striking her. Singleton simply chose not to strike her in the 2nd jury strike. Jurors #193 and #210 struck by Singleton in the 1st jury selection for military ties were not seated on the 2nd jury. (R. 102-20).

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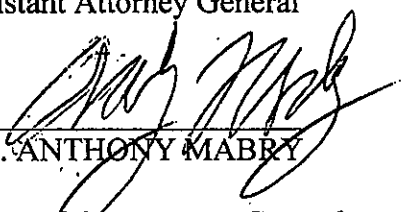
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ATTORNEY FOR RESPONDENT

August 4, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

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SC Court of Appeals

Appeal from Charleston County
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2015-000306

THE STATE,

Respondent,

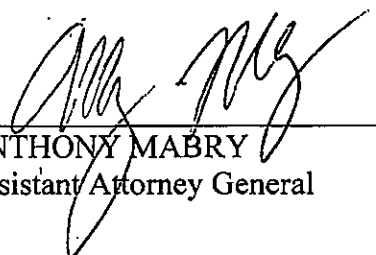
V.

KADRIN RAJUN SINGLETON,

Appellant,

CERTIFICATE OF COMPLIANCE

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



ANTHONY MABRY
Assistant Attorney General

August 4, 2016

**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.

Kadrin Rajun Singleton, Appellant.

Appellate Case No. 2015-000306

Appeal From Charleston County
Kristi Lea Harrington, Circuit Court Judge

Unpublished Opinion No. 2017-UP-283
Submitted May 1, 2017 – Filed July 12, 2017

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, and Assistant
Attorney General J. Anthony Mabry, all of Columbia;
and Solicitor Scarlett Anne Wilson, of Charleston, all for
Respondent.

PER CURIAM: Kadrin Rajun Singleton appeals his murder conviction and
sentence, arguing the circuit court erred (1) in refusing to give his requested jury

charge and (2) granting the State's motion pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986). We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in refusing to give Singleton's requested jury charge: *State v. Rye*, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) ("A [circuit] court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied."); *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) ("The substance of the law is what must be charged to the jury, not any particular verbiage."); *State v. Harris*, 382 S.C. 107, 115, 674 S.E.2d 532, 536 (Ct. App. 2009) ("The simple fact that the [circuit] court refused to use the '[gets] the drop on him' language does not render the charge improper.").

2. As to whether the circuit court erred in granting the State's *Batson* motion: *Batson*, 476 U.S. at 86 ("Purposeful racial discrimination in selection of the venire violates a defendant's right to equal protection."); *State v. Taylor*, 399 S.C. 51, 57, 731 S.E.2d 596, 599 (Ct. App. 2012) ("Whether a *Batson* violation has occurred must be determined by examining the totality of the facts and circumstances in the record."); *State v. Garris*, 394 S.C. 336, 353, 714 S.E.2d 888, 897 (Ct. App. 2011) ("The [circuit] court's findings regarding purposeful discrimination are given great deference and will not be set aside by this court unless clearly erroneous.").

AFFIRMED.

WILLIAMS and KONDUROS, JJ., and LEE, A.J., concur.

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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL

PETITION TO CHARLESTON COUNTY
FOR REHEARING
Kristi L. Harrington Circuit Court Judge

Kardin Singleton,

Petitioner

RECEIVED

AUG 03 2017

SC Court of Appeals

V.

State of South Carolina

Respondent

Appellate Case No. 2015-000306

PETITION FOR REHEARING
Pursuant To Rule 221 (2)

Kardin Singleton
Lieber Corr. Inst.
P.O. Box 205
Ridgeville, SC 29472

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ISSUE PRESENTED

Whether the trial court in denying Petitioner's motion to suppress Kenneth Fludd out of court identification?

STATEMENT

ON November 20th 2012, Sharrell Williams of Charleston County Murdered at gun point. Petitioner was arrested for the Murder four (4) days later. On March, 4, 2013 the Charleston County grand Jury indicted Petitioner on Summary hearsay evidence for Murder, possession of a stolen Motor Vehicle, failure to stop for blue light and trafficking Cocaine (Ind. # 2013-GS-10-1153, 2602, 2603, & 1457). (Tr. P. Vol. 1, p. 11, 5-24; p. 33, 1. 2-p. 37, 1. 22). Immediately before trial, Petitioner unknowingly, involuntarily and unintelligently Pled guilty to all charges except Murder. Sentencing was deferred on the charges to which Petitioner Pled guilty. Petitioner was tried for the Murder before a Jury of his peers from January 5th-9th, 2015, the Honorable Kristi L. Harrington, Circuit Court Judge, Presiding (Tr. P. Vol. 1, p. 1). Michael T. Cooper and Megan Ehrlich, Esquires, represented Petitioner. At the conclusion of the trial the Jury found Petitioner guilty of Murder. Judge Harrington Sentence Petitioner to life imprisonment for Murder (Ind. # 2013-GS-10-1153) and concurrent sentences of ten (10) years for trafficking in Cocaine (Ind. # 2013-GS-10-1457, and five (5) years for possession of a stolen Vehicle (Ind. # 2013-GS-10-2602) and three (3) years for failure to stop for a blue light (Ind. # 2013-GS-10-2603). (Tr. P. Vol. 5, p. 40 1. 3-p. 41, 1. 9). Petitioner appeals his conviction.

ARGUMENT

The trial Court did err in denying Petitioner's Motion to suppress Kenneth Fludd's out of court identification.

Factual Background

On January 5, 2015 Petitioner appeared before the trial Court on several Motions one being a Biggers Hearing involving the testimony of Kenneth Fludd, Vol. 1, Tr. p. 150-192, 16.

During the hearing the Court clearly witness Mr. Fludd's inconsistent testimony and his unwillingness to admit the truth when confronted, Vol. 1, Tr. p. 177, 1-23, Tr. p. 178, 6-22, Tr. p. 179, 10-12, Tr. 183, 1-6. Thereafter trial counsel proffered documents to the court and then provided the trial court with a summary argument to which Respondent acknowledged, Vol. 1, Tr. p. 185, 23-Tr. p. 187, 24, Tr. p. 188, 11-17. Trial Counsel then noted for the record that no law enforcement personnel testified to the procedure while at the same time demonstrating opposition of a contemporaneous nature, Vol. 1, Tr. p. 189, 9-12, Tr. p. 190, 3-4. After hearing the facts and knowing that the testimony of inconsistent statement of any witness could not be received as evidence of any fact touching the issue the trial court denied Petitioner's Motion to suppress based upon his opinion rather than the facts of law and supportive evidence, Vol. 1, Tr. p. 191, 12-Tr. p. 192, 15.

The trial court's denial of Petitioner's Motion to suppress dismantles Petitioner's equal protected due process rights to a defense by effectively precluded the development of true facts and resulted in the admission of false ones to which trial counsel contended, Vol. 2, Tr. p. 35, 15-Tr. p. 36, 5, Tr. p. 37, 17-24, Tr. p. 50, 4-10, 16-19-Tr. p. 51, 3-4, Tr. p. 52, 4-11, 21-22, Tr. p. 53, 7-18, Tr. p. 57, 2-4, Tr. p. 62, 19-Tr. p. 63, 7, Tr. p. 204, 22-Tr. p. 205, 6, Tr. p. 207, 2-6, Tr. p. 233, 23-Tr. p. 234, 3, Tr. p. 235, 12-15, Tr. p.

Tr.p. 242, 16-25, Tr.p. 243, 1-7, 25-Tr.p. 244, 11. Trial Counsel knowing that Respondent's evidence was prejudice, confusing and a waste of time continued to object. Vol. 3. Tr.p. 12, 12-15, Tr.p. 13, 9-20, Tr.p. 16, 8-9, Tr.p. 107, 16-Tr.p. 108, 7, Tr.p. 120, 3-13, Tr.p. 154, 18-22, Tr.p. 156, 12-18, Tr.p. 163, 17-19, Tr.p. 164, 21-Tr.p. 165, 12, Tr.p. 166, 3-13, 24-Tr.p. 167, 3, 13-14, Tr.p. 184, 19-Tr.p. 185, 3, Tr.p. 188, 17-Tr.p. 189, 5, Tr.p. 193, 2-18, Tr.p. 195, 17-19, Tr.p. 198, 2-5, 13-16, Tr.p. 205, 3-9, Tr.p. 247, 4-10, Trial Counsel knowing that Petitioner was not a murderer exposed the cunning Kenneth Fluid and thereafter rested the defense while reserving all motions and matters including any rebuttal to which where none. Vol. 4. Tr.p. 124, 9-24, Tr.p. 125, 17-19, Tr.p. 139, 16-20. During summations trial counsel continued the exposure of the fugitive Kenneth Fluid's testimony while Respondent improperly placed the prestige of the United States government behind Kenneth Fluid while shifting their burden upon Petitioner. Vol. 4. Tr.p. 162, 2-7, Tr.p. 165, 13-Tr.p. 166, 7, 16-Tr.p. 167, 15, Tr.p. 168 1-5, 11-Tr.p. 169, 12, Tr.p. 182, 10-Tr.p. 183, 10, Tr.p. 188, 5-7, 9-11, 14-15, Tr.p. 189, 14-15, Tr.p. 193, 34, 25-Tr.p. 194, 5, Tr.p. 199, 17-23. After Respondent concluded misstating the facts in order to give the false impression of the evidence trial counsel renewed all of our previously stated motions out of an abundance of caution and then made a contemporaneous objection to which the abusive trial court noted for the record. Vol. 4. Tr.p. 203, 16-Tr.p. 204, 7, Vol. 5. Tr.p. 6, 8-24, Tr.p. 39, 21-25, Vol. 6. 18, 20-Tr.p. 19, 3, Tr.p. 20, 22-Tr.p. 21, 4.

THE APPEAL COURT'S RULING

Opinions which are not printed in the advance sheets are identified as "unpublished", and are given docket numbers with the designation "up" have no precedential value. Courts Key 107. See Edwards v. Carpenter, 529 U.S. 446, 120 S.Ct. 1587, 146 L.Ed. 518 (2000) (Effective trial counsel preserves claims to be considered on appeal.) See Vol. 6. 4, 17-20 (I placed my objection contemporaneously on the record and the court allowed me to further articulate that objection today.) See Criminal Law Key 1043(2), (In order to preserve an error for appellate

review, a defendant must make a contemporaneous objection on a specific ground.) See U.S. v. Young, 105 S.Ct. 1038 ("the plain error exception to the contemporaneous objection is to be used solely in those circumstances in which a miscarriage of Justice would otherwise result as in the petitioner's case")

DISCUSSION

The Appeal Court erred in affirming Petitioner's conviction by unpublished opinion. See Vol. 2, 7, 4-Tr.p. 8, 12. Note: 9-12 "there was no oral supplement to the search warrants to the Magistrate. Respondent: That's correct." See Vol. 2, 8, 13-Tr.p. 14, 7. See: Tr.p. 12, 16-19, Tr.p. 17, 10-12, 22-24

Trial Counsel: As I stated, the second search warrant is fruit of the poisonous tree under the wrong-- and would not have been obtained but for the product of prior ability to search.

Respondent: So I'm not going to sit here and say that it's a great warrant, because it is obviously a little short. It does make that leap as to why he believe he is the petitioner, that a witness saw him responsible for the shooting.

See State v. Johnson, 318 S.C. 372, 375, 458 S.E. 2d 49, 51 (Ct. App. 1995) ("[A] person in fear of his life presumably has a more acute degree of attention to his surroundings than a mere passerby.") See Vol. 1, 186, 6-14 (Notes 7-8, 11-14)

And then, Your Honor, I think I will argue that the opportunity to view the witness. As Mr. Fluid testified

they're in the house together for forty-five minutes.
He's nondescript about where everybody was, but he
did say he got to see him there.

See State v Ford, 278 S.C. 384, 386, 296 S.E. 2d 846, 867 (1982) ("because [the eye-witness] was a victim as opposed to a mere passerby, his degree of attention was presumably acute."). See Vol. 1. 187, 25, Tr. P. 188, 11-17

Respondent: The opportunity to view, as stated by the witness, was ample, over an hour prior to the shooting, at the time of the shooting. He testified he'll never forget someone's face who pointed a gun at him. I think those stress factors, accompanied with the time and ability and lighting and opportunity had to do with the witness was ample.

See Vol. 4, 184, 17-19, Tr. P. 188, 5-7

The evidence shows that Kenneth Fludd is lying. But the evidence shows that petitioner is truthful.

Respondent: Now, was Kenny honest from the go?
No. In the first twenty minutes from when the shooting happened, he made a couple lies.

See Riddle v Ozment, 631 S.E. 2d 70 (2006) (per curiam) ("The issue is not why [the witness] failed to tell the truth; rather, it is why the solicitor who knew [the] testimony to be false failed to correct it. Id. at 75. Reversal was required because the failure to correct false evidence is as reprehensible as its presentation.")

; U.S. v. Bartko, 728 F.3d 327 (4th Cir. 2013) (Government may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, regardless of whether the government solicited testimony it knew or should have known to be false or simply allow such testimony to pass uncorrected.); Miller v. Paste, 87 S.Ct 785 (The Supreme Court made it clear a defendant can not be convicted on false evidence.).

Rather than correct the false testimony Respondent is clearly seen asking the court to suborn perjury. See Vol. 4. 188, 14-15.

Respondent: So, I want to talk to you about why you can believe Kenny Fludd.

See Chewning v. Ford Motor Company, 354 S.Ct. 72 (2003) 579 S.E.2d 605 ("Involvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud on the court.") quoting Great Coastal Express, Inc., v. Int'l Brotherhood of Teamsters, 675 F.2d 1349, 1357 (4th Cir. 1982)

The trial Judge has the responsibility to maintain decorum in keeping with the nature of the proceeding; "the Judge is not a mere moderator but is the governor of the trial for the purpose of assuring it, proper conduct, Quercia v. United States 289 U.S. 466, 469, 53 S.Ct. 698, 77 L.Ed 1321 (1933). The Judge must meet situations as they arise and [be able] to cope with... the contingencies inherent in the adversary process." Geders v. United States, supra, 425 U.S., at 86, 96 S.Ct. at 1334. Of course "hard blows" cannot be avoided in criminal trials; both the prosecutor and defense counsel must be kept within appropriate bounds. Herring v. New York, 422 U.S. 853, 862, 95 S.Ct. 2550, 2555, 45 L.Ed. 2d 593 (1975)

The court is clearly seen in this case violating Appellate Court Rule 3.1; and Rule 3.3 (3) and also Rule 8.4 (a) (d) (e) (g).

Like its counterpart in the Fifth Amendment, the due process clause of

the Fourteenth Amendment was intended to prevent government from abusing [its] power, or employing it as an instrument of oppression, Davidson v. Cannon, Supra, 474 U.S. at 348, 106 S.Ct. at 670; see also Daniels v. Williams, supra, 474 U.S. at 331, 106 S.Ct. 665 ("to secure the individual from the arbitrary exercise of the powers of government," "and" to prevent governmental power from being "used for purposes of oppression" (internal citations omitted); Parrot v. Taylor, 451 U.S. 527, 549, 101 S.Ct. 1908, 1919, 68 L. Ed. 2d 420 (1981) (Powell, J., concurring in result) (to prevent the "affirmative abuse of power"). See Chenning v. Ford Motor Company, 579 S.E.2d 605 (2003) ("since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court.") Quoting H.K. Porter Co. v. Goodyear Tire & Rubber, 536 F.2d 1115, 1119 (6th Cir. 1976), see Vol. 3. 195, 10-13, 17-19, Tr.P. 198, 2-5, 13-16

Brian George: That's Craig Thompson. An

Respondent: And is that the individual who came out and said the gun was his?

Brian George: Correct

Respondent: So you took Craig Thompson to jail?

Brian George: Yes, sir, for the gun.

Trial Counsel: Officer George, Petitioner was not there at the scene that day and had nothing to do with any of that; correct?

Brian George: Correct. Okay. Correct.

Trial Counsel: And Petitioner was not involved with any of that, your scene?

Brian George: Not that I'm aware of.

See Vol. 4. 163, 15-16, Tr.P. 199, 17-19, 21-23.

Trial Counsel: KENNY never says he saw Petitioner with a gun before they go in the house.

Respondent: Let me make one more brief comment about KENNY. And you know, I know maybe he didn't come off very likeable. Maybe didn't answer them as straight forward as he should have or should have at times, because, for whatever reason.

Under the equal protected due process rights of the Fifth Amendment we have the right that protects us from self incrimination. See Herman v. Claudy 76 S.Ct. 223 (holds that a conviction following trial or on a guilty plea of guilty based on a confession extorted by violence or by mental coercion is invalid under Federal due process clause.). See Vol. 1, 132, 4-10, Tr. p. 133, 4-5

Respondent: And your K-9 was able to apprehend the petitioner?

A. That is correct.

Q. And after the K-9 apprehended him, were you right behind him?

A. I was a little ways back, but I always kept visual of the petitioner and my K-9.

Q. Did you ever see him throw anything?

A. No, I did not.

See Vol. 3, 164, 21-Tr. p. 165, 10, 12.

Q. Did y'all search the immediate area where the chase took place for any contraband?

A. Yes, we did. We searched the area.

Q. Did you find anything that night?

A. No, I did not.

Q. Did you later become aware that drugs and cell phones were located very close to where this chase took place?

A. Yes, I did.

Q. Tell us about how you came to know that.

A. The Sargent at the time, Sargent Reintwelski, informed me the following day that some contraband was found in the same general area where the Petitioner was caught.

Trial Counsel: Hearsay, Your Honor

The Court: Overruled.

See Marshall v. Jerico, Inc., 100 S.Ct. 1610 (1980) (Due process entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement in adjudication proceedings safeguards the two central concerns of procedural due process the prevention of unjustified or mistaken deprivations and promotion of participation and dialogue by affected individuals in the decision making process. See Carey v. Piphus, 435 U.S. 247, 259-262 98 S.Ct. 1042, 1043... (1978) The Mentality requirement helps to guarantee that life, liberty or property will not be taken on the basis of an erroneous or distorted conception of facts or the law. See Matthews v. Eldridge, 424 U.S. 319, 344 96 S.Ct. 893, 907 47 L.Ed. 18 (1976) at the same time it preserves both appearance and reality of fairness, "generating the feeling, so important to a popular government that justice has been done," Joint Anti Fascist Committee v. McGrath 341 U.S. 123, 172, 11 S.Ct. 624, 96 L.Ed 817... by ensuring that no person will be deprived of a proceeding in which he may present his case with assurance that the arbiter is not predispose to find against him.). See Vol. 2, 6, 11-18, Tr. P. 36, 2-5.

Respondent: My only concern about not taking the plea before we start the trial is that what if he balks at the plea? If he-- when we try and take his plea he says No--

The Court: Too much talking. We'll get the plea done. Let me hear-- start the search warrant issue. Do we have the sentencing sheets?

Respondent: We do.

The Court: I deny the petitioner's motion to suppress the evidence obtained under the April 16, 2013 search warrant as it was amply supported by probable cause. Note your exception to my ruling.

The court was completely aware that petitioner had a complete defense to respondent's charges nevertheless the trial court prevent petitioner from fully exhibiting and trying his case by denying petitioner the full panoply of protection afforded to criminal defendants by the constitution.

At this time petitioner will reiterate Vol. 6, 18, 20-Tr. p. 19, 3.

The trial court: Are there any other post-trial motions?

Trial counsel: Your Honor, we move for a new trial. We renew our motion for a direct verdict. We renew all of our pretrial motions and any and all objections made and ruled against by the court during the course of trial.

The trial court: Mr. Kidd? (Respondent?)

Respondent: I have nothing further.

"A felony conviction-like-ambition must be made of sterner stuff." Shakespeare, Julius Caesar, Act III, Scene 2.

CONCLUSION

For the foregoing reasons, this court should grant Petitioner's Petition for rehearing with the ultimate relief of vacating or reversing Petitioner's convictions and granting him a new trial consistent facts and laws herein.

Respectfully Submitted,
S/ Saliz
Petitioner

NOTE: There is no declaration of cooperation to support Respondent's frivolous bad faith argument.

July 28, 2017

CERTIFICATION

I, KADEN SINGLETON, hereby certify that on July 31, 2017, I caused a true copy of Petitioner's Petition for rehearing pursuant to Rule 221 (a) to be served via Lieber Corr. Inst. mailroom with postage prepaid addressed as follows:

Alan Wilson
Attorney General
Attorney General Office
P.O. Box 11549
Columbia, SC 29211-1549

David Alexander, Esq.
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

RECEIVED

AUG 03 2017

SC Court of Appeals

The Clerk of Court
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State v Singleton, 2015-000306

Dear Clerk

PLEASE find enclosed for filing in your court Petitioner's Petition for rehearing pursuant to Rule 221 (a) and a certificate of service. Thank you and good day.

Sincerely
SI. [Signature]
Petitioner

RECEIVED
AUG 03 2017
SC Court of Appeals

July 28, 2017

The South Carolina Court of Appeals

The State, Respondent,

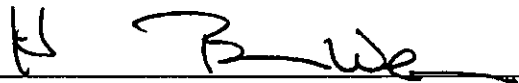
v.

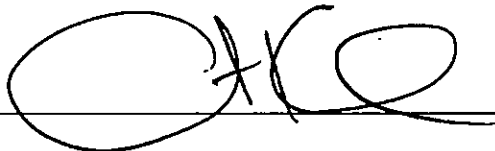
Kadrin Rajun Singleton, Appellant.

Appellate Case No. 2015-000306

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.

 A.J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

David Alexander, Esquire

Donald J. Zelenka, Esquire

J. Anthony Mabry, Esquire

FILED

September 22, 2017

○ Scarlett Anne Wilson, Esquire

○

○



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 16, 2018

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: The State v. Kadrin Rajun Singleton
Lower Court Case No. 2013GS1001153
Appellate Case No. 2015-000306

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
David Alexander, Esquire
Donald J. Zelenka, Esquire
J. Anthony Mabry, Esquire
Scarlett Anne Wilson, Esquire

FORM 5

2018-CP-10-1658

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Kadrin Rajun Singleton, 335449,
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2018 APR -2 PM 3:32
JULIE L. GIBSON
CLERK OF COURT

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution, 136 Wilborn Ave., PO Box 205, Ridgeville, SC 29472
2. Name and location of Court which imposed sentence Charleston County Court of General Sessions, 100 Broad Street, Charleston, SC 29401
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-10-01153: Murder
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2003

- (a) January 9, 2015: Life
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 12, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2017-UP-283
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

Revised 3/2003

custody unlawfully:

(a) Ineffective assistance of counsel for failure to properly prepare and investigate prior to trial.

(b) Ineffective assistance of counsel for failure to properly handle the pre-trial motions/hearings.

(c) Ineffective assistance of counsel for failure to effectively present Applicant's defense and argue for charges in support of that defense.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Counsel failed to conduct an independent investigation and properly review the evidence with Applicant prior to his trial date.

(b) Counsel failed to call witnesses and make effective arguments.

(c) Counsel failed to utilize witnesses and evidence and argue properly for jury charges.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or

Revised 3/2003

Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) PCR is the proper forum.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes.

(b) your trial, if any? _____

(c) your sentencing? Yes.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Michael T. Cooper, 3 Morris Street, Ste. A, Charleston, SC 29413

ii. Megan Ehrlich, 101 Meeting Street, 5th Floor, Charleston, SC 29401

iii. David Alexander, Office of Appellate Defense, PO Box 11589, Columbia, SC

29211

(b) the proceedings at which each such attorney represented you:

i. Trial.

ii. Trial.

iii. Direct appeal.

19. State clearly the relief you seek in filing this application:

A new trial.

20. Are you now under sentence from any other court that you have not challenged?

Yes.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Dorchester)

I, Kadrin Rajun Singleton, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Kadrin Rajun Singleton

SWORN to and subscribed before me this 27th
day of March, 2018.

[Signature] (L.S.)
Notary Public

My Commission Expires: 5/23/26

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-1658

RETURN AND MOTION FOR A MORE DEFINITE STATEMENT

V.

Respondent.

I. Procedural History

Kadrin Singleton (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. On November 20, 2012, Applicant murdered Sharrell Williams in Charleston County. Applicant was arrested for the murder four days later on the night of November 24, 2012. On March 4, 2013, the Charleston County grand jury indicted Applicant for Williams' murder, possession of a stolen motor vehicle, failure to stop for a blue light, and trafficking in cocaine (Ind. #s 2013-GS-10-1153, 2602, 2603, & 1457). (Tr. Vol. 1, p. 11, ll. 5-24; p. 33, l. 2 – p. 37, l. 22). Applicant was represented by Assistant Public Defenders Michael T. Cooper and Megan Ehrlich of the Ninth Circuit Public Defender's Office. Assistant Solicitor Culver Kidd of the Ninth Circuit Solicitor's Office prosecuted the case.

Immediately before trial, Applicant pled guilty to all charges except murder. Sentencing was deferred on the charges to which Applicant pled guilty. Applicant was tried for the murder before a jury of his peers from January 5th – 9th, 2015, the Honorable Kristi L. Harrington, Circuit

Court Judge, presiding. (Tr. Vol. 1, p. 1). At the conclusion of the trial, the jury found Applicant guilty of murder. Judge Harrington sentenced appellant to life imprisonment for murder (Ind. # 2013-GS-10-1153) and concurrent sentences of ten years for trafficking in cocaine (Ind. # 2013-GS-10-1457), five years for possession of a stolen vehicle (Ind. # 2013-GS-10-2602) and three years for failure to stop for a blue light (Ind. # 2013-GS-10-2603). (Tr. Vol. 5, p. 40, l. 3 – p. 41, l. 9).

Applicant filed a timely notice of appeal and was represented by Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense-Office of Appellate Defense. On appeal, Applicant raised the following issues:

1. The trial court erred in refusing Applicant's requested charge that he did not have to wait until he was attacked and allow the assailant to "get the drop" on him because Applicant testified that the decedent threatened him with a gun, which appellant grabbed and used in self-defense.
2. The trial court erred in granting the State's motion pursuant to Batson v. Kentucky, 476 U.S. 79 (1986) because the defense gave race-neutral explanations for its strikes and the State failed to prove pretext.

Following the submission of briefs, the South Carolina Court of Appeals affirmed Applicant's convictions by unpublished opinion filed on July 12, 2017. State v. Singleton, Op. No. 2017-UP-283 (S.C. Ct. App. filed July 12, 2017). Applicant petitioned or rehearing, which was denied by the Court of Appeals on September 22, 2017. The remittitur was returned to the circuit court on January 16, 2018.

II. Summary of Facts Adduced at Trial

At the time of this murder, Singleton was an admitted marijuana dealer. (Tr. Vol. 4, p. 31, ll. 1-5). Before this murder, Singleton had also previously been convicted of several felonies, including third-degree burglary and strong armed robbery. (Tr. Vol. 4, p. 23, ll. 16-21, p. 86, ll. 5-21).

On November 20, 2012, Singleton was trying to obtain marijuana to sell. (Tr. Vol. 4, p 25, ll. 12-13). Singleton wanted to purchase a quarter (1/4) pound of marijuana. He contacted a friend, who set him up with Chris Felder ("Felder"), whose cousin by marriage, Kenneth Fludd ("Kenny"), could arrange a deal for the marijuana Singleton wanted to purchase. (Tr. Vol. 4, p. 25, ll. 12-16; Tr. Vol 2, pp. 68-69).

Felder contacted Kenny by phone at Kenny's place of employment, a Pizza Hut in Charleston, and asked if Kenny could arrange the transaction. Kenny informed Felder he thought he knew someone who could sell that amount of marijuana and would see what he could do. Kenny contacted his cousin by blood relation, Sherrell Williams ("Williams" or "the victim") by phone, and Williams agreed to sell the quarter (1/4) pound of marijuana to Singleton. (Tr. Vol. 2, pp. 68-70, 72).

Singleton and Felder drove from Summerville to the Pizza Hut where Kenny worked. After arriving at the Pizza Hut and waiting there for approximately five (5) minutes, Kenny came out of the Pizza Hut, and got in the car with the two (2) men. (Tr. Vol. 4, p. 28, l. 23 – p. 31, l. 12). They all sat and waited for approximately an hour for the victim to return from Walmart, where he was shopping with his girlfriend, so Kenny could take the men to the victim to get the marijuana. (Tr. Vol. 2, p. 72, l. 20 - 74, l. 25; Tr. Vol. 4, p. 28, l. 23 – p. 31, l. 12).

The victim eventually phoned Kenny and told him to meet him at a house on Cambridge Avenue. (Tr. Vol. 2, pp. 74-75). Kenny got in his own car, started it, and told Singleton and Felder to follow him, which they did for approximately five minutes. (Tr. Vol. 2, pp. 74-75; Vol. 4, p. 32, ll. 5-23).

Felder and Singleton then pulled-over a couple of blocks away from the final destination in order to be close to the interstate. (Tr. Vol. 2, p. 75, l. 11 – p. 79, l. 6). Kenny then instructed Felder and Singleton to ride with him, which Singleton initially refused to do because he was

acting nervous. (Tr. Vol. 2, p. 79, ll. 9-14; Tr. Vol. 4, p. 32, l. 20 – p. 36, l. 6). After trying to reassure Singleton he was in no danger, Kenny, exasperated, left in his car alone giving up on the drug deal. (Tr. Vol. 2, p. 79, l. 21 – p. 80, l. 6).

Singleton and Felder then phoned Kenny in his car and informed him they had decided to go ahead with the transaction and ride with Kenny to meet the victim. (Tr. Vol. 2, pp. 79 - 80; Tr. Vol. 4, p. 36, l. 20 – p. 37, l. 5). Kenny turned his car around and returned to the location at which Singleton and Felder were parked. Singleton and Felder got in the car with Kenny, and left Felder's vehicle parked near the interstate. (Tr. Vol. 2, pp. 79-81).

Singleton, Felder, and Kenny then rode together to a house on Cambridge Avenue, 2364 Cambridge Ave., about two blocks from where Singleton and Felder parked their car, and pulled up alongside an SUV containing the victim Sharrell Williams, which arrived at approximately the same time. (Tr. Vol. 2, pp. 78-79, 82-86, State's Ex. 2; Tr. Vol. 4, p. 37, l. 20 – p. 38, l. 1). The victim's girlfriend was driving the SUV, and after dropping the victim off, she drove down the street to her mother's house, just two houses away. (Tr. Vol. 2, pp. 84-86; State's Ex. 2; Tr. Vol. 3, pp. 11-24). Singleton, Felder, and Kenny got out of Kenny's vehicle and followed the victim Williams into the house. (Tr. Vol. 2, pp. 83-87; State's Ex. 2; Tr. Vol. 3, pp. 11-24; Vol. 4, p. 39, ll. 13-20).

Unknown to any of the four men involved in the drug transaction, the FBI had this residence under video surveillance [unrelated to this murder]. A video camera captured the men getting out of their cars and entering the residence before the murder. (Tr. Vol. 2, pp. 81-86; 121-22; State's Ex. 2).

Once all four men were inside the house, the victim got some marijuana out of the refrigerator and placed it on the counter. (Tr. Vol. 2, pp. 87-91; Tr. Vol. 4, p. 39, ll. 16-20). Kenny noticed that there was a pistol resting on the same counter in the kitchen. (Tr. Vol. 2, p. 92, l. 23 –

p. 94, l. 8). The victim then began weighing the marijuana and bagged it for Singleton. (Tr. Vol. 2, pp. 87-91; Tr. Vol. 4, p. 40, ll. 5-9). Singleton sent Felder outside, allegedly to get his money to pay for the marijuana. (Tr. Vol. 2, p. 92, ll. 2-17). Felder was captured on the FBI surveillance video leaving the house. (Tr. Vol. 2, pp. 92, 94; State's Ex. 2). Kenny went to use the bathroom next to the kitchen. (Tr. Vol. 2, p. 94, ll. 22-25).

After Kenny returned from the bathroom, Kenny was standing in the kitchen area. Singleton and the victim were standing in the living room/den area, and Singleton was facing the victim. Felder had not returned with the money. Singleton had his hands behind his back. (Tr. Vol. 2, p. 96, ll. 20-23, p. 123, ll. 21-24).

At this point, Singleton stated: "give it up"—at which point Kenny and the victim laughed thinking it was a joke. (Tr. Vol. 2, p. 96, ll. 20-23). Singleton then pulled a gun [a .40 caliber semi-automatic pistol] out from behind his back and fired on the victim Williams. Williams was shot several times and collapsed on the floor. (Tr. Vol. 2, p. 96, l. 20 – p. 98, l. 15).

In reaction to the gunshots, Kenny dove on the kitchen floor behind the kitchen counter. At gun point, Singleton ordered Kenny to give him his car keys. Kenny complied by tossing the keys up in the air to Singleton. Singleton then grabbed the quarter (1/4) pound of marijuana and the gun on the counter and fled out of the residence—firing again on Williams as he left with the pistol he retrieved from the counter. (Tr. Vol. 2, pp. 96-100).

Singleton was captured on the FBI surveillance video leaving the residence and fleeing toward Kenny's parked car. Singleton and Felder [who had remained outside the apartment and never reentered] then fled the crime scene in Kenny's car using Kenny's car keys to start and operate the vehicle. Singleton and Felder abandoned Kenny's car where Singleton and Felder had left Felder's car earlier near the interstate. Singleton and Felder then fled the area in Felder's car. (Tr. Vol. 2, p. 99, ll. 18-21, pp. 119-20; State's Ex. 2; Tr. Vol. 4, p. 55, l. 7 – p. 56, l. 9).

The victim Sharell Williams died from one of the gunshot wounds inflicted by Singleton. Williams bled to death at the scene. Kenny ran outside and called 911. Kenny was captured on the FBI surveillance video calling for assistance. The victim's girlfriend, who heard about the shooting, ran from her mother's house to the house where the victim was killed finding his body. (Tr. Vol. 3, pp. 117-33, p. 33; Tr. Vol. 2, pp. 99-103; State's Ex. 2; Tr. Vol. 3, pp. 1-24; Tr. Vol. 4, p. 101, ll. 6-13).

Several days later, at night, Singleton was arrested after a car chase, with police blue lights flashing, and an eventual foot chase, and the use of a police dog. Singleton was driving a stolen vehicle before he fled on foot, and during the foot chase, he discarded a bag of cocaine and marijuana. In the bag with the drugs were two cell phones. At the time of Singleton's arrest, police did not recover these items because the officer chasing Singleton did not see him discard the bag containing the items. (Tr. Vol. 3 pp. 153-69).

After his arrest, from the Charleston County Detention Center, Singleton phoned an associate and requested the associate or others recover the drugs and cell phones he had discarded during the foot chase. Before the drugs and phones could be recovered by Singleton's associates, a neighbor, in whose yard the drugs and phones had been thrown by Singleton during the foot chase with police, discovered the items and contacted police. Police recovered the evidence. One of these cell phones was directly linked to Singleton at trial, and Singleton's movements on the night of the murder were established with the use of cell phone tower information. The cell phone tower information established Singleton drove from Summerville to the Pizza Hut and then to the area of the house where the murder occurred. And, Singleton then fled the area after the murder occurred. (Tr. Vol. 3, pp. 95-112, 153-69, 173-78, 181-86, State's Ex. 62, 200-06; Vol. 4, pp. 81-82)).

After his arrest, Singleton was questioned by police. He denied knowing anything

about the victim's murder and denied being present when Williams was murdered. (Tr. Vol. 4, pp. 64-66). He claimed he was at a friend's house at the time the victim was murdered. (Tr. Vol. 4, pp. 64-66). Singleton admitted at trial this was a lie. (Tr. Vol. 4, p. 66).

Police also recovered the .40 caliber pistol used in the murder from another individual. (Tr. Vol. 3, pp. 188-98). The weapon forensically matched two fired shell casings found inside the crime scene. (Tr. Vol. 3, pp. 48-49, pp. 208-14, 216-21). Cell phone tower information also showed Singleton's cell phone "pinged" in Holly Hill, S.C., in close proximity to the residence of the individual who was arrested for possession of the .40 caliber pistol. (Tr. Vol. 3, pp. 188-98, 234-61). Singleton admitted at trial he gave the gun to a friend and asked him to hold it. (Tr. Vol. 4, p. 84-85).

III. Allegations Raised and Relief Sought

In his application for post-conviction relief, Applicant, through retained counsel Blanchette, alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Ineffective assistance of counsel for failure to properly prepare and investigate prior to trial"
 - i. Counsel failed to conduct an independent investigation and properly review the evidence with Applicant prior to his trial date
 - b. "Ineffective assistance of counsel for failure to properly handle the pre-trial motions/hearings."
 - i. Counsel failed to call witnesses and make effective arguments
 - c. "Ineffective assistance of counsel for failure to effectively present Applicant's defense and argue for charges in support of that defense"
 - i. Counsel failed to utilize witnesses and evidence and argue properly for jury charges

Applicant has failed to set forth with any specificity the facts to support these allegations.

As requested relief, Applicant states he is seeking a new trial.

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject conviction, Applicant's records from the South

Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Allegations of Ineffective Assistance of Counsel

Applicant alleges ineffective assistance of counsel, but has failed to set forth with any specificity the factual basis to support these allegations. Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made

all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Additionally, Applicant has failed to set forth his claims with any factual basis or specificity beyond general allegations of failure to investigate, failure to call witnesses, failure to prepare for trial, and failure to raise defenses, and therefore, it is impossible for Respondent to respond to these allegations with any specificity. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue and demands that Applicant, through his counsel, file an amended application with specific allegations and facts to support those allegations well in advance of an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. Motion for a More Definite Statement

Respondent also hereby moves for a more definite statement. Applicant makes general claims that counsel failed to investigate, failed to call witnesses, failed to prepare for trial, and failed to raise defenses, but does not provide any specificity or factual bases to support these broad and general allegations. The Uniform Post-Conviction Procedure Act requires the Applicant to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are

based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

V. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Request for an Evidentiary Hearing

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel after Applicant has failed an amended application with sufficient specificity of his allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 3, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

KADRIN SINGLETON, #335449

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

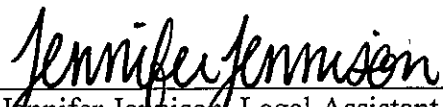
2018-CP-10-1658

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tricia A. Blanchette, Esquire
Law Office of Tricia A. Blanchette, LLC
PO Box 2147
Leesville, SC 29070

DATED this the 3rd day of July, 2018.


Jennifer Jennison, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Kadrin Singleton, #335449,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2018-CP-10-1658

MOTION FOR DISCOVERY

FILED
2019 JAN 14 PM 1:56
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW Applicant, by and through his undersigned attorney, and requests that this Court enter an Order for Production of Discovery pursuant to S.C. Code Ann. §17-27-150(a) (2008).

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on April 2, 2018. The State submitted a Return and Motion for a More Definite Statement on July 3, 2018.

Undersigned counsel has been given the opportunity to review and copy Applicant's file maintained by the Ninth Circuit Public Defender's file. Upon review of the file, Applicant's counsel discovered several juror questionnaires with information pertinent to the preparation and presentation of Applicant's PCR Application. Therefore, Applicant would ask for permission, if needed, for Applicant's counsel and/or private investigator to contact and/or interview jurors from Applicant's trial. Applicant, through counsel, would also request the opportunity for counsel to review the Solicitor's file, if needed, and to review any and all evidence that cannot be copied.

Therefore, to ensure that Applicant, has the case materials needed to properly prepare his case for an evidentiary hearing, Applicant would respectfully request the opportunity to issue subpoenas to the appropriate people, offices or agencies for the production of the following case files/materials pursuant to S.C. Code Ann. §17-27-

150(a) (2008) limited to those files/materials that were subject to discovery during the underlying criminal proceeding:

1. The opportunity to review a complete copy of the Charleston County Solicitor's Office file, and if not contained therein, the files maintained by law enforcement (to include SLED).
2. A complete copy of all records maintained by the Charleston County Clerk of Court.
3. The opportunity for Applicant's counsel, private investigator and potential expert to review the evidence maintained with the Charleston County Clerk of Court, SLED and local law enforcement.

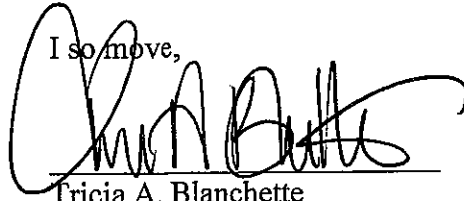
As stated above, Applicant would also request permission, if needed, to contact and/or interview the jurors from Applicant's trial.

Applicant would ask the Court to find that if a party fails to comply or does not have a file or requested item to produce, a written explanation must be provided for the failure to produce said file or item to Applicant's counsel.

Applicant, through undersigned counsel, submits that the above listed requests are necessary to properly prepare his case and to present his claims. Furthermore, the Applicant, through counsel, submits that this request is not being made as a fishing expedition, but it is only being submitted to the Court due to the importance of the requested materials in Applicant obtaining "one full bite of the apple." See Poston v. State, 339 S.C. 37, 528 S.E.2d 422 (2000), Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002).

THEREFORE, based upon the foregoing the Applicant respectfully requests that this Court hold a hearing and/or enter an Order for Discovery, which allows counsel to issue subpoenas to the appropriate parties, offices and agencies for the above requested case materials that are necessary for the presentation of Applicant's case.

I so move,

A handwritten signature in black ink, appearing to read 'Tricia A. Blanchette', written over a horizontal line.

Tricia A. Blanchette
Attorney at Law
PO Box 2147
Leesville, SC 29070

January____, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Kadrin Singleton, #335449,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

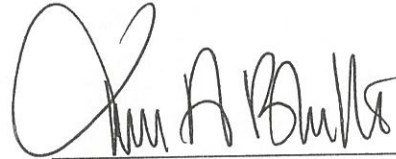
2018-CP-10-1658

CERTIFICATE OF SERVICE

FILED
2019 JAN 14 PM 1:56
JULIE J. ARMSTRONG
CLERK OF COURT

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the United States mail this 8th day of January 2019 a Motion for Discovery to Benjamin Limbaugh of the Attorney General's Office, at:

Office of the Attorney General
Att: Benjamin Limbaugh, Ast. AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

January 8, 2019

cc
AG
AT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
Kadrin Singleton, #335449,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2018-CP-10-1658

ORDER AUTHORIZING DISCOVERY

FILED
2019 FEB 20 AM 11:29
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on April 2, 2018. The State submitted a Return and Motion for a More Definite Statement on July 3, 2018. On January 14, 2019, Applicant, through counsel, filed a Motion for Discovery. A motion hearing was conducted at the Charleston County Courthouse on January 24, 2019 in front of the Honorable J. Cordell Maddox, Jr. Applicant was present and represented by Tricia A. Blanchette, Esquire.¹ Respondent was represented by Benjamin H. Limbaugh, Assistant Attorney General.

By way of the written motion and at the hearing, Applicant, through counsel, requested an Order Authorizing Discovery pursuant to S.C. Code Ann. §17-27-150(a) (2008). Counsel explained that she had been given the opportunity to review and copy Applicant's file maintained by the Ninth Circuit Public Defender's office. Upon review of the file, Applicant's counsel discovered several juror questionnaires with information pertinent to the preparation and presentation of Applicant's PCR Application. Therefore, Applicant requested permission, if needed, for Applicant's attorneys and/or private investigator to contact and/or interview jurors from Applicant's trial. Applicant also requested the opportunity for counsel to review the Solicitor's file and law enforcement files, if needed, and inspect any and all evidence that could not be copied.

¹ Jeremy A. Thompson, Esquire, also represents Applicant, but he was not present at the motion hearing.

To ensure that Applicant and his attorneys have the case materials needed to properly prepare his case for an evidentiary hearing, this Court finds Applicant shall be allowed to issue written requests and/or subpoenas to the appropriate people, offices or agencies for the production of the following case files/materials pursuant to S.C. Code Ann. §17-27-150(a) (2008) **limited** to those files/materials that were subject to discovery during the underlying criminal proceeding:

1. The opportunity to review and obtain a complete copy of the Charleston County Solicitor's Office file, and if not contained therein, the files maintained by law enforcement (to include SLED).
2. A complete copy of all records maintained by the Charleston County Clerk of Court.
3. The opportunity for Applicant's attorneys, private investigator and potential expert to review the evidence maintained with the Charleston County Clerk of Court, SLED and local law enforcement.

Applicant, through his attorneys and private investigator, is also granted permission to contact and/or interview the jurors from Applicant's trial.

If copies cannot be made of items in the requested file(s), this Court grants the opportunity for counsel for both parties, a private investigator and/or expert(s) to review such items in person. This Court finds that if a person, office or agency does not have a file to provide, Applicant's counsel must be provided with a written response and explanation for the absence of such file. Applicant's counsel is to provide the Office of Attorney General with the opportunity to copy all discovery received pursuant to this Order.

IT IS THEREFORE ORDERED:

1. That Applicant's counsel is permitted to serve a subpoena and/or submit a request, along with a copy of this Order, upon the above listed people, offices or agencies for the above listed items.
2. That Applicant, through his attorneys and private investigator, is granted permission to contact and/or interview the jurors from Applicant's trial.
3. That any party in receipt of a subpoena pursuant to this Order may file a timely objection with the Chief Administrative Judge for the Ninth Judicial Circuit.

AND, IT IS SO ORDERED.



Honorable J. Cordell Maddox
Presiding Judge, Ninth Judicial Circuit

February 5, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Kadrin Singleton, #335449,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2018-CP-10-1658

AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

FILED
2019 NOV 15 PM 2:42
JULIE J. ARMISTEAD
CLERK OF COURT

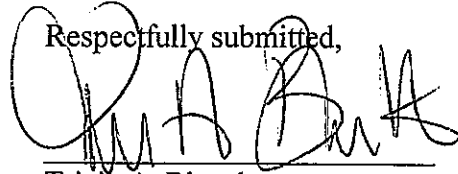
This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on April 2, 2018. The State submitted a Return and Motion for a More Definite Statement on July 3, 2018.

By and through his undersigned counsel, Applicant would move to amend his Application for Post Conviction Relief. In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of trial and appellate counsel:

1. Trial counsel rendered ineffective assistance related to the handling of matters related to the jury for the following:
 - a. Failure to properly respond to the State's Batson Motion.
 - b. Failure to properly utilize information given by jurors post trial and move for a new trial.
2. Trial counsel rendered ineffective assistance related to the juror instructions for the following:

- a. Failure to enter an objection or exception to the jury instruction on malice for lacking the general permissive inference instruction. Gibson v. State, 416 S.C. 260, 786 S.E.2d 121 (2016).
 - b. The handling of the self- defense instruction.
 - c. Failure to request the lesser included manslaughter offenses.
 - d. Failure to object to the Allen charge.
3. Appellate counsel rendered ineffective assistance for failing to raise all meritorious issues on appeal (911 call, Biggers) and for failing to file for rehearing.

Respectfully submitted,



Tricia A. Blanchette
Attorney for Applicant
PO Box 2147
Leesville, SC 29070

Jeremy A. Thompson
Attorney for Applicant

November 13, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Kadrin Singleton, #335449,)
Applicant,)

2018-CP-10-1658

v.)

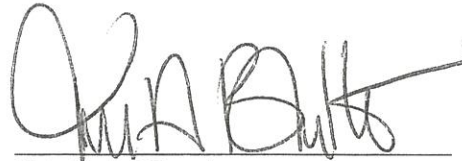
CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

FILED
2019 NOV 15 PM 2:43
JULIE J. ARMSTRONG
CLERK OF COURT

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the United States mail this 13th day of September 2019 an Amendment to Benjamin Limbaugh of the Attorney General's Office, at:

Office of the Attorney General
Att: Benjamin Limbaugh, Ast. AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

November 13, 2019

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) .COURT OF COMMON PLEAS NONJURY

3
4 KADRIN SINGLETON,) TRANSCRIPT
5 APPLICANT,) OF
6 vs.) RECORD
7 STATE OF SOUTH CAROLINA,) 2018-CP-10-1658
8 RESPONDENT.)

9
10 January 21st, 2020
11 Charleston, South Carolina
12

13 B E F O R E:

14 THE HONORABLE EDGAR W. DICKSON, Judge.
15

16 A P P E A R A N C E S:

17 TRICIA BLANCHETTE and JEREMY THOMPSON
18 ESQ.
Attorneys for the Applicant

19 BENJAMIN LIMBAUGH
20 ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent
21
22

23 Transcribed by Pamela E. Green, from
24 DCRP, Digital Courtroom Recorder Project
25

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E X H I B I T S

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A-1	Motion to Reconsider		12
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1 P R O C E E D I N G S

2
3 THE COURT: All right. Mr., Mr Limbaugh?

4 MR. LIMBAUGH: Yes, sir, Your Honor.

5 THE COURT: Okay. Are you ready to go forward with the
6 Singleton case?

7 MR. LIMBAUGH: Yes, sir, Your Honor. I believe Mr.---

8 THE COURT: Okay.

9 (Pause.)

10 THE COURT: Mr. Limbaugh, whenever you're ready.

11 MR. LIMBAUGH: Yes, sir.

12 May it please the Court, Your Honor?

13 THE COURT: Yes, sir.

14 MR. LIMBAUGH: This is the case of Mr. Kadrin
15 Singleton. Case Number 2018-CP-10-1658.

16 Mr. Singleton is presently confined in the South
17 Carolina Department of Corrections pursuant to Orders of
18 Commitment from Charleston County Clerk of Court.

19 On November 20th, 2012, Applicant was charged with,
20 with murder of Sharell Williams in Charleston County.
21 Applicant was represented by Assistant Public Defenders
22 Michael T. Cooper and Megan Ehrlich of the Ninth Circuit
23 Public Defender's Office. Assistant Solicitor Culver Kidd,
24 of the Ninth Circuit Solicitor's Office, prosecuted the
25 case.

1 Immediately before trial, Applicant pled guilty to all
2 charges except murder. Sentencing was deferred on the
3 charges to which Applicant pled guilty. Applicant was tried
4 for the murder before a jury of his peers from January the
5 5th through the 9th of 2015 before the Honorable Kristi
6 L. Harrington.

7 At the conclusion of the trial, the jury found
8 Applicant guilty of murder. Judge Harrington sentenced
9 Ap -- Appellate, Applicant, my apologies, to life
10 imprisonment for murder, and concurrent sentences of 10
11 years for trafficking in cocaine, five years for possession
12 of a stolen vehicle, and three years for failure to stop for
13 a blue light. Applicant filed a timely Notice of Appeal,
14 and was represented by Appellate Defender David Alexander of
15 the South Carolina Commission on Indigent Defense Office of
16 Appellate Defense.

17 On appeal, Applicant raised the following issues:

18 The Trial Court erred in refusing Applicant's requested
19 charge that he did not have to wait until he was attacked,
20 and allow the assailant to get the drop on him because
21 Applicant testified that the decedent had threatened him
22 with a gun, which Appellate grabbed and used in
23 self-defense.

24 Second, that the Trial Court erred in granting the
25 State's Motion pursuant to Batson v. Kentucky because the

1 defense gave race neutral explanations for its strikes, and
2 the State failed to prove pretext.

3 Following the submission of briefs, South Carolina
4 Court of Appeals affirmed Applicant's convictions by an
5 unpublished opinion filed on July 12th, 2017. Applicant
6 petitioned for rehearing, which was denied by the Court of
7 Appeals on September 22nd, 2018. Remittitur was returned
8 to the Circuit Court on January 16th, 2018.

9 Applicant originally filed an Application for
10 Post-Conviction Relief alleging ineffective assistance of
11 counsel for failure to properly prepare and, and investigate
12 prior to trial, counsel failed to conduct an independent
13 investigation, and properly review the evidence with
14 Applicant prior to his trial date, ineffective assistance of
15 counsel for failure to properly handle the pretrial motions
16 hearings, counsel failed to call witnesses and make
17 effective arguments, ineffective assistance of counsel for
18 failure to effectively present Applicant's defense and argue
19 for charges in support of that defense, and counsel failed
20 to utilize witnesses, and evidence, and argue properly for
21 jury charges.

22 Applicant is represented today by Ms. Blanchette, and I
23 would like for her to elaborate on the allegations with
24 which they would like to go forward with Your Honor.

25 THE COURT: Thank you, Mr. Limbaugh.

1 Ms. Blanchette.

2 MS. BLANCHETTE: Yes, Your Honor.

3 May it please the Court.

4 Just to clarify, the Applicant is actually represented
5 by myself and Mr. Jeremy Thompson, who's my cocounsel in
6 this case. We will each be handling some of the witnesses
7 called before Your Honor today, and I just wanted to make
8 sure that it was for the record that he's also an attorney
9 of record in the case. I believe the State's return did not
10 mention that we submitted and filed an amendment to an
11 Application for Post-Conviction Relief on November 15th of
12 2019.

13 Does Your Honor have a copy of that amendment?

14 THE COURT: You filed it when?

15 MS. BLANCHETTE: November 15th of 2019.

16 THE COURT: The last or the one that I have is from
17 one -- is what you submitted on March 29th, 2018. So, if
18 you have another copy -- if you have a copy of that, Ms.
19 Blanchette, I would, I would appreciate it.

20 MS. BLANCHETTE: Your Honor, may I approach?

21 THE COURT: Yes, ma'am. Thank you, ma'am.

22 MS. BLANCHETTE: Yeah, and, for the record, I'll just
23 go over the allegations that are in that amendment.

24 By they -- by way of that amendment, the Applicant is
25 alleging that trial counsel rendered ineffective assistance

1 related to the handling of matters related to the jury for
2 the following:

3 Failure to properly respond to the State's Batson
4 motion, failure to properly utilize information given by
5 jurors posttrial and move for a new trial.

6 Secondly, trial counsel rendered ineffective assistance
7 related to the jury instructions for the following:

8 Failure to enter an objection or exception to the jury
9 instruction on malice for lacking the general permissive
10 inference instruction pursuant to Gibson versus State, the
11 handling of the self-defense instruction; failure to request
12 the lesser included manslaughter offenses, failure to object
13 to the Allen charge, and then our third allegation is
14 appellate counsel rendered ineffective assistance for
15 failing to raise all meritorious issues on appeal. I give
16 some potential examples of the 9-1-1 call or the Biggers
17 hearing, and for failing to file for rehearing.

18 Your Honor---

19 THE COURT: And, Ms. Blanchette, I hate to interrupt
20 you, but---

21 MS. BLANCHETTE: Yes.

22 THE COURT: But the -- what you are going forward with
23 is just these allegations?

24 MS. BLANCHETTE: Yes, Your Honor. The
25 November 15th amendment---

1 THE COURT: Right.

2 MS. BLANCHETTE: ---is what we intend to go forward on.
3 I think that's what the State wanted me to clarify for the
4 record.

5 MR. LIMBAUGH: That's correct, Your Honor.

6 THE COURT: Okay. All right. Thank you, ma'am.

7 MS. BLANCHETTE: And, Your Honor, just as a matter of
8 housekeeping, as to the third allegation, it's my
9 understanding that Your Honor has agreed to allow Appellate
10 Defender, David Alexander, to provide his testimony via
11 video conference today.

12 THE COURT: Yes, ma'am, and you were gonna give me the
13 fees for that as well.

14 MS. BLANCHETTE: I have asked him to do that.

15 THE COURT: Okay.

16 MS. BLANCHETTE: So, we shall see what he comes up
17 with.

18 THE COURT: Okay.

19 MS. BLANCHETTE: And it's my understanding that the
20 Attorney General's Office has the technology that will allow
21 that to happen.

22 MR. LIMBAUGH: We are working on that at the moment,
23 Your Honor.

24 THE COURT: Okay. Well, that -- this is gonna be a
25 technology day for me. I see that the tra -- traffic

1 technology has failed Charleston magnificently, but I'm
2 hoping that the, the regular technology that we do in the
3 courtroom will be up to snuff. So --.

4 MS. BLANCHETTE: Yes, Your Honor, and last time I was
5 two hours late to Court. So that's why I stayed in
6 Charleston last night. I did not want you waiting on me.

7 THE COURT: That was -- yeah, that was a nice
8 subterfuge.

9 MS. BLANCHETTE: No, that was a I'm not, I'm not doing
10 that again --

11 THE COURT: Gotcha.

12 MS. BLANCHETTE: -- to another judge waiting on me.

13 THE COURT: No, that's okay. That's fine.

14 MS. BLANCHETTE: Your Honor, also, as to that last
15 allegation, I've shared this with the Assistant Attorney
16 General, we may need to move to amend under 15(b) to more
17 specific allegations. For instance, it may come up through
18 the testimony today that certain issues were preserved --
19 believed preserved by trial counsel but then not raised on
20 appeal. So, I just ask, once their testimony is elicited,
21 that we be allowed to maybe further clarify that issue
22 number three based upon their testimony.

23 THE COURT: Well, depending on what happens in trial,
24 you always have the right to amend.

25 MS. BLANCHETTE: I appreciate that, Your Honor, and

1 just because traffic gave you a surprise this morning, I
2 want to make sure there's no surprises in the fact that we
3 intend to call two jurors today. They were originally on
4 the jury in this case. We will call them last after we call
5 all the attorneys in this case.

6 The issue, number one, is related to the jury --
7 jurors. We plan to limit their testimony to the matter in
8 this case, and I'm gonna hand these up in just a second,
9 that counsel filed a posttrial motion to reconsider based
10 upon two juror affidavits. The State filed a response and
11 Judge Harrington issued an order, and that was referenced in
12 the Notice of Appeal.

13 So, that is the issue that we intend to go into with
14 those jurors, but I personally have never called jurors in a
15 Post-Conviction Relief hearing. So, I just wanted to give
16 Your Honor notice that we intended to do that later today.

17 Your Honor, at this time, it's my understanding the
18 State does not object to me moving into the record those
19 items I just addressed, the Motion for Reconsideration of
20 Sentence, the State's response, the Order issued by Judge
21 Harrington, and the Notice of Appeal. So, at this time, I
22 would move the Motion for Reconsider as Applicant's No. 1.

23 MR. LIMBAUGH: No objection, Your Honor.

24 THE COURT: All right. Is that motion -- the motion is
25 in evidence without objection.

1 MS. BLANCHETTE: And, Your Honor, would you like a
2 copy?

3 THE COURT: Yes, ma'am, if you have one. Thank you,
4 ma'am.

5 (WHEREUPON, the Motion to Reconsider was marked as
6 Applicant's Exhibit No. 1, and received into evidence at
7 this time.)

8 THE COURT: All right.

9 MS. BLANCHETTE: Your Honor, at this time I move the
10 State's response to the Defendant's Motion as Applicant's
11 No. 2.

12 THE COURT: Any objection?

13 MR. LIMBAUGH: No objection, Your Honor.

14 THE COURT: Applicant's No. 2 is in without objection.
15 That's the State's response.

16 (WHEREUPON, the State's response to the Motion to
17 Reconsider was marked as Applicant's Exhibit No. 2, and
18 received into evidence at this time.)

19 MS. BLANCHETTE: Your Honor, I would move the Order
20 issued by Judge Harrington on February 9th of 2015 as
21 Applicant's No.3.

22 THE COURT: Any objection from the State?

23 MR. LIMBAUGH: No objection, Your Honor.

24 THE COURT: The Judge's Order from February of 2018 is
25 in without objection.

1 (WHEREUPON, the Order of Judge Harrington was marked as
2 Applicant's Exhibit No. 3, and received into evidence at
3 this time.)

4 MS. BLANCHETTE: And just to be clear for the record,
5 Your Honor, I'm sorry, it's 2015 if I misstated that, the
6 Order.

7 THE COURT: Oh, okay. All right.

8 MS. BLANCHETTE: And then, finally, the Notice of
9 Appeal filed by Attorney Michael T. Cooper as Applicant's
10 No. 4.

11 MR. LIMBAUGH: No objection, Your Honor.

12 THE COURT: All right. Thank you. Thank you for
13 stepping ahead. Appreciate it.

14 MR. LIMBAUGH: My apologies, Your Honor.

15 THE COURT: No, no, no, no. Thank you, sir. No, I
16 appreciate it.

17 All right. Then Applicant's No. 4 is in without
18 objection.

19 (WHEREUPON, the Notice of Intent to Appeal was marked
20 as Applicant's Exhibit No. 4, and received into evidence at
21 this time.)

22 THE COURT: All right.

23 MS. BLANCHETTE: Your Honor, if there's nothing further
24 from the State, I am prepared to call my first witness.

25 THE COURT: Anything, Mr. Limbaugh?

1 MR. LIMBAUGH: No, Your Honor.

2 THE COURT: All right. Ms. Blanchette, if you wouldn't
3 mind calling your first witness.

4 MS. BLANCHETTE: Your Honor, I call Megan Ehrlich,
5 Esquire, to the stand please.

6 THE CLERK: All right. Please raise your right-hand.
7 Place your left-hand on the Bible. Thank you.

8 MEGAN EHRLICH, being first duly
9 sworn, testified as follows:

10 THE CLERK: Thank you. You may have a seat, and, for
11 the record, please state your name, spelling your last name.

12 THE WITNESS: My name is Megan Ehrlich. Last name
13 E-H-R-L-I-C-H.

14 DIRECT EXAMINATION

15 BY MS. BLANCHETTE:

16 Q Ms. Ehrlich, what is your current occupation?

17 A I'm an attorney at the Charleston Public Defender's
18 office.

19 Q And how long have you been with the Charleston Public
20 Defender's office?

21 A Since 2006.

22 Q Okay. And when did you begin practicing law?

23 A In 2006.

24 Q Okay. So, you've been there your entire career?

25 A I have.

1 Q And what is your primary area of duties there?

2 what type of cases do you typically handle?

3 A I handle a variety of cases. It can range from smaller
4 level offenses all the way up to complicated homicides, rape
5 cases. I'm also the Chief Public Defender. So, I have some
6 admin -- administrative duties as well, but I have a full
7 caseload.

8 Q Okay. And do you recall your representation of
9 Mr. Singleton that resulted in his trial in January, 2015 in
10 front of Judge Harrington?

11 A I do.

12 Q And how did you become involved in the case?

13 what was your role in the case?

14 A I became involved in the case kind of late in the game.
15 The case was assigned to Michael Cooper in our office. He
16 was the lead counsel, and, for some reason, I, I think maybe
17 somebody else was gonna sit with him, but then I became
18 involved in December of 2014 as the second chair.

19 Q Okay. And do you recall if another attorney, who's now
20 deceased, Mr. Grimes with your office, was on the case?

21 A I don't, I don't know if it was Mr. Grimes or if it was
22 a different attorney.

23 Q And you said you worked with Mr. Cooper then as a
24 second chair.

25 Is that correct?

1 A Yes.

2 Q As your work as a second chair, did you assist him in
3 developing defenses in this case?

4 A I think he had already really worked the case up by the
5 time I was involved. It was clearly a self-defense case.
6 So, my involvement was so late in the game I think most of
7 the case had already been developed as far as prepping --
8 prepping it for trial.

9 Q Okay. And you said it was primarily a self-defense
10 case.

11 Was there also another nuisance to that self-defense in
12 this case or a different argument?

13 A There was an issue that Michael planned on raising, an
14 imperfect self-defense claim, and arguing against the case
15 law precedent at the time.

16 Q Okay. And we'll talk more about that later.

17 The first thing I want to ask you about is one of the
18 allegations that the Applicant is going forward on today
19 relates to the Batson motion that the State made in this
20 case.

21 Do you recall that occurring?

22 A Yes.

23 Q Okay. And just for your reference, I can give you a
24 page number if you need to review that, the State's motion
25 is on Page 87 of the record on appeal, and it's also fully

1 addressed in the Appellant's brief in the direct appeal if
2 you have that in front of you.

3 A I have, I have the transcript in front of me.

4 Q Okay. Now, in both the transcript, the record on
5 appeal, and in the appellate argument, it reflects that the
6 jury makeup of the first jury was four white males, four
7 white females, three black females, one Asian female, and
8 the alternates were a black female, and an Asian female.

9 Is that what you recall?

10 A I believe so. I have my jury notes if I can look at
11 those.

12 Q Please do.

13 A Okay. I've got the notes on it. I'll --.

14 Q Okay. And then a second jury was struck.

15 Is that correct?

16 A That's correct.

17 Q Okay. And the record reflects, and you can just agree
18 if that's what you believe the record reflects, reflects,
19 was there were six white males, four white females, one
20 black female, and other male, and the alternates were both
21 white males on the second jury.

22 A That's correct.

23 Q And so I'll ask you this simple question.

24 Was the racial makeup of the first jury more diverse
25 than the racial makeup of the second jury?

1 A Yes.

2 Q Okay. Now, even though the State seemed to challenge
3 all 14 strikes on white males and females as reflected on
4 Page 87, it seemed to boil down to some specific jurors,
5 Juror 333, and 321, and Jurors, again, 321 and 154 in
6 comparison to Juror 210, and Juror 210 was struck. He was a
7 retired Army colonel.

8 Now, when the State -- when the judge asked for
9 explanations, did you have an explanation written down for
10 Juror Number 210 as to why he was struck?

11 A I did not.

12 Q Are there any other jurors that you did not have
13 responses written down for?

14 A I did not have a response down for 127 or a reason down
15 for 127 or 188.

16 Q But neither of those jurors became subject of the
17 Court's inquiry.

18 Is that correct?

19 A I don't believe they did.

20 Q Okay. Now, as to not having a reason down for 210, is
21 that a regular practice for you?

22 A No, it -- but -- so, when, when I do jury selection, I
23 have a strike sheet and I have a reason that I write down
24 under the notes so that I can document why I struck the
25 juror, juror -- proposed juror in case there is a Batson

1 motion, and so that I can remember everything I was
2 thinking. If I don't have a note down, it's because either
3 I wasn't consulted with by the lead counsel or I didn't know
4 why the person was struck.

5 Q Okay. But you would agree you did not have a reason
6 down by Juror Number 210?

7 A I did not.

8 Q And would that be a normal practice for you to not have
9 a reason down?

10 A If I was part of the decision, I would try to have a
11 reason down.

12 Q Okay. And as a result of not having a reason down, you
13 didn't have anything to offer to Mr. Cooper when he was
14 trying to defend the strike of that juror.

15 Is that correct?

16 A That's correct.

17 Q Okay. And is that something that you would try to
18 regularly do?

19 I mean is that a concern to you that you didn't have,
20 have a reason down there to offer it to him?

21 A Yes.

22 Q Okay. Do you want to explain that at all?

23 A No, I just -- I think it's a good practice to know why
24 you struck somebody. So -- cause you can't remember it,
25 and, you know, even 10 minutes later it could be difficult

1 to remember. So, I like to have everything documented so I
2 know why a juror was struck.

3 Q Okay. And, in that instance, you had nothing to
4 provide to him to give to the judge as to why Juror 210 was
5 struck?

6 A That's correct.

7 Q Okay. And while we're talking about jurors, I'm gonna
8 kind of jump to a matter that came up posttrial.

9 Were you aware that the jurors had reached out to
10 Mr. Cooper at the conclusion of trial, but prior to the
11 posttrial motion hearing the following Tuesday?

12 A Yes.

13 Q Okay. And what information did you have about that?
14 What did he tell you about that?

15 A I know that one juror had reached out to him, and was
16 concerned about the verdict. And then a second juror sent
17 an email referencing that she knew that the other juror had
18 spoken to Mr. Cooper, and wanting us to know that they
19 had -- she, she had fought for Mr. Singleton, some language
20 like that. So, there were two jurors who had reached out
21 directly to Mr. Cooper.

22 MS. BLANCHETTE: Your Honor, may I approach the
23 witness?

24 THE COURT: You may.

25 MS. BLANCHETTE: Your Honor, do I have to continue to

1 ask or do I have continuing permission to approach?

2 THE COURT: Oh, you have continuing.

3 MS. BLANCHETTE: Thank you.

4 THE COURT: Unless you get too close and she objects.

5 MS. BLANCHETTE: Thank you, Your Honor.

6 THE COURT: Okay.

7 Q Can you identify that document for the record?

8 A Sure. This is an email that I, I believe -- it looks
9 like I forwarded it to you on January 2nd that Mr. Cooper
10 forwarded the original email to me on January 13th of
11 2015, and the original email is from Kendra Drayton, who was
12 one of the jurors.

13 Q Okay. And was this the email that you were just
14 referencing in your prior testimony?

15 A Yes.

16 MS. BLANCHETTE: Okay. Your Honor, at this time I
17 would move to admit the email as Applicant's No. 5.

18 THE COURT: Any objection?

19 MR. LIMBAUGH: No objection.

20 THE COURT: Applicant's No. 5, email, is in evidence
21 without objection.

22 (WHEREUPON, the email was marked as Applicant's Exhibit
23 No. 5, and received into evidence at this time.)

24 Q And, Ms. Ehrlich, if you can just kind of take us
25 through this email. I know you testified a little bit about

1 it, but the content is there, and it's been marked as an
2 exhibit, and then you said it was forwarded to you by
3 Mr. Cooper.

4 Is that correct?

5 A Correct.

6 Q And what is it that he's telling you there when he's
7 forwarding it?

8 A He says see other juror email. This one bugs me.
9 Don't really know why.

10 Q Do you recall any discussion or actions you-all took
11 after you knew about this information, and this email's
12 being forwarded to you?

13 A I know we were highly annoyed that the jury -- the
14 jurors had second thoughts so quickly, and we're trying to
15 figure out what to do about it, and didn't understand why
16 they would convict him if they had these hesitations. I
17 think the next step that Mr. Cooper took was having an
18 investigator, or either Mr. Cooper, I can't, I can't recall
19 which, somebody reached out to them again and had affidavits
20 done.

21 Q Okay. And I will show you another document.

22 If you can identify that for the record?

23 A This is a juror questionnaire that was sent out. So,
24 it's pretty common practice in our office that we may send
25 out questionnaires to the jury to find out more information

1 about how they think we did with the case, and then
2 sometimes we may ask, ask questions directly related to the
3 facts or the defense to see kind of where we went wrong or,
4 or why the jury didn't believe the defense. And so this is
5 a response that looks like it was mailed back by Juror
6 Number 368, and she actually attached a typed up response
7 where she says a lot, expands on her opinions on things.

8 Q And, Ms. Ehrlich, you have provided this questionnaire
9 to me as part of what was contained in the Public Defender's
10 file in Mr. Singleton's case.

11 Is that correct?

12 A That's correct.

13 MS. BLANCHETTE: Your Honor, at this time I would move
14 this questionnaire as Applicant's No. 5.

15 THE COURT: You mean six?

16 MS. BLANCHETTE: I mean six. Thank you, Your Honor.

17 THE COURT: Okay. Thank you.

18 Any objection?

19 MR. LIMBAUGH: No objection, Your Honor.

20 THE COURT: All right. The questionnaire is in
21 evidence without objection as Applicant's No. 6.

22 (WHEREUPON, the questionnaire was marked as Applicant's
23 Exhibit No. 6, and received into evidence at this time.)

24 THE COURT: Thank you, ma'am.

25 Q Now, Ms. Ehrlich, I've already introduced, and if you

1 need to look at those, I'm happy to give them to you --

2 A I have---

3 Q -- the Motion to Reconsider and the response.

4 A Okay.

5 Q As a result of the information contained in those
6 affidavits or in the -- that questionnaire, were you
7 involved in obtaining affidavits from the jurors?

8 A I don't remember any involvement in that. I know that
9 Michael and I would of discussed what to do, but I don't
10 recall, I don't recall even seeing the affidavits --

11 Q Okay.

12 A -- honestly.

13 Q And going back, cause you did have the questionnaire in
14 your hand, was there anything in that questionnaire that
15 we've admitted that jumped out at you or that you remember
16 discussing with Mr. Cooper?

17 A Well, I mean, in number one, she says I personally feel
18 that Kadrin Singleton did meet the criteria for
19 self-defense. However, there was no way I could of
20 convinced the rest of the jurors of this. And then she goes
21 on to talk about how the fact that he took the marijuana
22 seemed contrary to self-defense, but, in retrospect, she
23 thinks that that was more incidental to the event. So, that
24 stood out.

25 Q Does she over and over again here say that she does not

1 believe he went there with the intent to commit a crime?

2 A Yes.

3 Q And was very concerned with the 43 seconds, I think
4 that's on the last page, she emphasizes the 43 seconds in
5 which the shooting occurred?

6 A Yes.

7 Q I want to specifically ask you about Number 9. It says
8 my verdict was a weak compromise based on the pressure in
9 the deliberation room.

10 A Uh-huh. (Affirmative).

11 Q Did you-all do anything further to investigate what was
12 meant by pressure in the deliberation room, and her
13 admission that it was a weak compromise as the last juror
14 standing?

15 A I don't recall any involvement in that. Mr. Cooper may
16 be able to better answer that question.

17 Q Okay. And do you recall doing any type of research or
18 assisting him in any way trying to figure out what could be
19 argued as far as jurors are concerned, and what to present
20 to the Court with this information that you-all had in hand?

21 A I mean I, I don't recall specifics --

22 Q Uh-huh. (Affirmative).

23 A -- because of the time that's passed. But I feel
24 certain that we would of talked to other lawyers to try to
25 figure out if there was anything that we could do with the

1 juror information, and, ultimately, I know that the Motion
2 to Reconsider Sentence was filed. I don't recall if I was
3 part of that decision making or not.

4 Q Do you know that -- I'm trying to be fair to you---

5 A Yeah.

6 Q ---cause you say you don't recall, but I just have to
7 flesh all this out.

8 A Yeah.

9 Q Do you recall ever discussing filing a motion for a new
10 trial asking the judge to set the verdict, verdict aside
11 versus the Motion to Reconsider just asking for a reduction
12 in sentence?

13 A I don't recall ever discussing filing a, filing a
14 motion for new trial based on the juror information.

15 Q All right. Now, if you can follow me, I'm gonna jump
16 back into the trial and specifically---

17 A Okay.

18 Q ---the charges and instructions that were given in this
19 case. One of the Applicant's allegations is that trial
20 counsel, which yourself and Mr. Cooper would be, failed to
21 object to the failure to include specific language in the
22 inferred malice instruction.

23 Do you recall recognizing that there was an omission in
24 the malice instruction, and do you have any strategic reason
25 for not objecting?

1 A I, I don't recall that, and I, I don't know if there
2 was a -- I don't recall any reason why we would not object
3 to that.

4 Q Now I'm gonna ask you a little bit about what you
5 discussed as the defense in this case. You said it was
6 primary a self-defense case.

7 Is that correct?

8 A Yes.

9 Q And would you say this was also a case where you were,
10 were attempting to argue against pre, or sorry, against
11 precedent for imperfect self-defense?

12 A Yes.

13 Q And what would be the outcome?

14 What would be the charge that you would ask the judge
15 to give the jury as, as a result of an imperfect
16 self-defense?

17 A So, if you were asking for imperfect self-defense,
18 you're asking a jury to consider manslaughter, a lesser
19 included, instead of con -- a conviction for murder.

20 Q And can you point to anywhere in the record where it is
21 reflected that you-all asked, during the course of the trial
22 itself, not at the posttrial motion hearing, for a charge on
23 voluntary manslaughter?

24 A We did not request a regular voluntary manslaughter
25 charge. We only requested the imperfect self-defense

1 charge, which includes trying to have a conviction for
2 voluntary even though it doesn't meet the regular voluntary
3 elements.

4 Q And, specifically, I would note, on Page 17, or sorry,
5 Page 715, that's when I see Mr. Cooper begins telling the
6 Court -- giving the Court notice that you're gonna be
7 arguing for an imperfect self-defense. That is alluded to
8 during the directed verdict stage, but, in the charge
9 discussion, specifically beginning on Page 865, can you
10 point to anywhere where you-all specifically asked or got a
11 charge marked requesting imperfect self-defense that would
12 result in voluntary manslaughter?

13 A If you just give me a second?

14 My---

15 Q And if I need to break---

16 A ---page number---

17 Q Go ahead.

18 A My page numbers are different than yours.

19 Q Okay. Are you using the---

20 A So---

21 Q ---record on appeal or the volumes?

22 I apologize.

23 A I just have whatever was sent to me --

24 Q Okay.

25 A -- and it -- my coversheet says day four, Thursday

1 January 8th, 2015. And so, each volume, I -- it looks
2 like it starts over with page numbers.

3 Q It does.

4 And, Your Honor, if I may?

5 I was using that up until last week too, and just
6 switched over to the record on appeal cause it's my
7 understanding Your Honor had the record on appeal.

8 Is that correct that Your Honor has the record on
9 appeal?

10 THE COURT: I do. I believe I got one that's
11 labeled -- it says like Volume 2 of 3.

12 MS. BLANCHETTE: Okay.

13 THE COURT: I'm gonna switch over to volumes 1 of 6, 2
14 of 6, 3 of 6 in the jury trial.

15 Is that right?

16 MS. BLANCHETTE: Your Honor, we---

17 THE COURT: But, but, when, when you use -- excuse me.

18 But when you cited Page 87, that was the Batson part
19 for me, and now I was looking for the seven -- 715 for this
20 part and 685. We've got it, I believe---

21 MS. BLANCHETTE: Okay.

22 THE COURT: ---using those numbers.

23 MS. BLANCHETTE: Cause, Your Honor, I was provided -- I
24 believe it's six separate volumes, one for each day, and
25 then I was provided the record on appeal, which is three

1 volumes. It was my understanding Your Honor was gonna get
2 the record on appeal. So, our citations today are to the
3 record on appeal. I have an extra copy if that would
4 help---

5 THE WITNESS: Yes.

6 MS. BLANCHETTE: ---Ms. Ehrlich---

7 THE COURT: Yeah.

8 THE WITNESS: ---in answering these questions.

9 THE COURT: Okay. But if you got an extra copy for
10 her, that would be great. That way she doesn't have to sort
11 of look --.

12 MS. BLANCHETTE: Thankfully Mr. Cooper was following
13 along. So I hope -- and these are the numbers up there.

14 A Okay. Could you repeat your question?

15 Q I will.

16 A I'm sorry.

17 Q And I'll rephrase the question so you don't have to sit
18 there and read hundreds of pages of the transcript, and the
19 charge discussions.

20 But, at the posttrial motion hearing, which is the
21 following Tuesday, the judge indicates that she's gonna
22 allow Mr. Cooper to finally put his argument on the record
23 regarding imperfect self-defense.

24 A Correct.

25 Q And there's a packet of charges marked as Court's

1 Exhibit 1 that are included in the record on appeal.

2 A Okay.

3 Q Do you recall, prior to that, any time where you were
4 allowed to or where you-all put on the record that you're
5 requesting imperfect self-defense, and specifically
6 requesting voluntary manslaughter as a result?

7 A I don't recall that. I know that there was an informal
8 charge conference, and I remember us submitting charges via
9 email. But if you can direct me to a specific page that you
10 want me to be looking at, I'm happy to do that.

11 Q And I'll be fair to you. I, I did not see where that
12 was done. There's charge conferences off-the-record.

13 A Correct.

14 Q There's requests to charge that get the drop language
15 that's part of the appeal.

16 A Right.

17 Q And I can take you through about 150 pages---

18 A Right.

19 Q ---where it's discussed back and forth.

20 A Right.

21 Q But, at the posttrial motion hearing that starts on
22 Page 973 of the record, after Mr. Cooper marks Court's
23 Exhibit 1 and gives argument, the Court asked, on Page 978,
24 Lines 8 through 10, after she reads what appears to be a
25 request for voluntary manslaughter, she asks did you request

1 the lesser included. She goes on to read, on Lines 12
2 through 17, and it ends with you should find him guilty of
3 voluntary manslaughter, and they continue discussing it.
4 And she specifically asks, on Page, Page 98, if she missed
5 requesting a charge for voluntary manslaughter, and
6 repeatedly Mr. Cooper says no, it was not requested.

7 Would you agree with that?

8 A I would agree that it wasn't a, a -- a charge of
9 voluntary manslaughter was not requested as a lesser
10 included. It was requested only through the imperfect
11 self-defense charge -- requested charge.

12 Q Okay. And you said that there was an off-the-record
13 charge conference where you believe you requested that.

14 A I'm pretty -- I, I think that we had some sort of
15 meeting in chambers with the judge.

16 Q And did you, just today, pull up some emails to help
17 refresh your memory as to what was submitted to the judge
18 and when?

19 A Yes. So there was -- on January 8th, around
20 2:30, Mr. Cooper sent an email to the judge's clerk with his
21 requested jury charges, and said that he was also preparing
22 a charge on imperfect self-defense to make a part of the
23 record, and then there's an additional email that I sent at
24 2:49 with a proposed charge for imperfect self-defense. And
25 it looks like I labeled it as Number 7 or somebody labeled

1 it as Number 7, which I think led to some confusion as to
2 which the proposed -- there's two proposed jury charges
3 Number 7 that were submitted, but they're different.

4 Q And the posttrial motion, which, if I am incorrect the
5 record will speak for itself, but it appears that's when
6 Judge Harrington's allowing him to put his imperfect
7 self-defense argument on the record that may have been
8 discussed off-the-record.

9 A Right.

10 Q And Court's Exhibit 1 is marked, and that is included
11 in the record on appeal, and, on Page 1,031, it has the
12 Requested Charge Number 7, and if you could just tell us if
13 that matches the Number 7 that you were just referencing
14 that was emailed to the judge?

15 A So, it -- it's not---

16 Q Or if you can just explain---

17 A Okay.

18 Q ---the mess, however, please do.

19 A Michael Cooper sent the proposed jury charges at 2:31
20 and he had seven. Then, about 20 minutes later, I sent the
21 additional imperfect self-defense charge, but I labeled it
22 as Number 7 or somebody labeled it as Number 7. So, we
23 submitted two number sevens to the Court, but it looks like
24 the only one that was marked in the record that you have is
25 the original Number 7 that was sent at 2:30.

1 Q So, you would agree that, if there's nothing further
2 marked in the record, that Number 7, the, the second seven,
3 maybe we could call it 7-A that's the imperfect
4 self-defense, appears to have not been marked and made part
5 of the exhibits?

6 A It does not appear to have been marked.

7 Q Okay. And---

8 THE COURT: That's the one on Page 1,031?

9 THE WITNESS: The one on 1,031 was marked.

10 THE COURT: Oh, 1,031 was marked.

11 THE WITNESS: There's a separate one that's part of an
12 email that I don't know if you've marked this yet as an
13 exhibit.

14 MS. BLANCHETTE: I was gonna say, Your Honor, I can
15 move these in as exhibits at this time to help us on the
16 confusion.

17 THE COURT: That would---

18 MS. BLANCHETTE: Your Honor, the first email---

19 THE COURT: Is there any objection, Mr. Limbaugh?

20 MR. LIMBAUGH: No objection, Your Honor.

21 THE COURT: Okay. All right.

22 THE WITNESS: That's the first one.

23 MS. BLANCHETTE: Okay.

24 THE WITNESS: This is the second one.

25 MS. BLANCHETTE: The first email, Your Honor, that has,

Megan Ehrlich - Direct examination
by Ms. Blanchette

1 I believe, contains seven request to charge in total sent by
2 Mr. Cooper we would mark as Applicant's No. 7, and then --
3 well, I'll let the State respond. I apologize.

4 THE COURT: But he, he's already said he doesn't
5 object---

6 MS. BLANCHETTE: Oh, he has?

7 THE COURT: ---to it.

8 MS. BLANCHETTE: Okay. And then the second email that
9 Ms. Ehrlich sent with a second Defendant's Request Jury
10 Charge Number 7, which embodies the imperfect self-defense
11 charge, we would move as Applicant's No. 8.

12 THE COURT: All right. And those are in evidence
13 without objection.

14 MS. BLANCHETTE: Your Honor, because we do---

15 THE COURT: Hold, hold on.

16 MS. BLANCHETTE: Oh, sorry.

17 THE COURT: She's, she's marking those or he's marking
18 those. I don't know who -- somebody's marking it.

19 MS. BLANCHETTE: I apologize. I turned my back.

20 (WHEREUPON, the two requested jury charge instructions
21 were marked as Applicant's Exhibit Nos. 7 and 8, and
22 received into evidence at this time.)

23 MS. BLANCHETTE: Your Honor, since we just received
24 these this morning, I have one extra copy if it would help
25 Your Honor to see what we're referencing. I can give the

1 exhibits back to the witness.

2 THE COURT: Okay. Well, do you, do you -- does he---

3 MS. BLANCHETTE: If it's fine with you I can do it.

4 THE COURT: All right. And, and, Mr. Limbaugh, you
5 have copies of this.

6 Is that correct?

7 Hold, hold on one second.

8 MR. LIMBAUGH: I, I have electronic copies, Your Honor.

9 THE COURT: Huh?

10 MR. LIMBAUGH: I believe I -- do I have electronic
11 copies?

12 THE WITNESS: No.

13 MS. BLANCHETTE: We just received those this morning.
14 So, we may need to make extra copies of what I just handed
15 Judge Dickson. I think we put it in---

16 THE COURT: Let, let Mr. Limbaugh look at those.

17 MS. BLANCHETTE: Okay.

18 THE COURT: I have put them in evidence, and, Mr.
19 Limbaugh, if you -- if it -- if you determine that you had
20 not seen them, and like to ask, we will revisit---

21 MR. LIMBAUGH: Okay.

22 THE COURT: ---that argument.

23 MR. LIMBAUGH: I've seen them, Your Honor. I just
24 don't believe I have copies of them.

25 THE COURT: Oh, okay. Well, we'll, we'll make sure you

1 get a copy.

2 MR. LIMBAUGH: Thank you, Your Honor.

3 THE COURT: Okay. Thank you.

4 okay. All right.

5 Q Since it's a PCR and we don't have a jury waiting on us
6 or sitting here through all this, let's just kind of go back
7 through this again---

8 A Okay.

9 Q ---just to make sure we're clear now that we have all
10 the exhibits marked.

11 A Okay.

12 Q You -- we have introduced Applicant's No. 7 whereby
13 Mr. Cooper submitted a proposed jury charge, including Jury
14 Charges 1 through 7, to Judge Harrington.

15 Is that correct?

16 A Yes.

17 Q And on that Jury Charge Number 7, does that match Jury
18 Charge Number 7 that's included in the record on appeal at
19 Page 1,031?

20 A Yes.

21 Q So it appears that those seven charges are the seven
22 charges that were marked as Court's Exhibit 1, and marked
23 for the record in this case?

24 A Yes.

25 Q Okay. Now, you have an additional email whereby you

1 sent -- yes, Your Honor.

2 THE COURT: Hold, hold on one second now.

3 Mr. Cooper's Charge Number 7 you said matches the one
4 on 1,031, correct?

5 THE WITNESS: I believe it does.

6 THE COURT: Okay. Well, I -- does it?

7 Unless I've got this -- okay. No, I got -- I have it.
8 Well, it's my fault.

9 Go ahead.

10 THE WITNESS: Yes.

11 THE COURT: Go ahead. I have -- so I had them, I had
12 confused.

13 MS. BLANCHETTE: Your Honor, and I appreciate your
14 patience cause we've been sorting this out this morning. So
15 --.

16 THE COURT: No, no, no. I'm, I'm with you on that.
17 Okay?

18 MS. BLANCHETTE: Yeah.

19 THE COURT: Two days later.

20 Q Then my next question is going to be you submitted an
21 additional Request Number 7?

22 A I did.

23 Q And it's not a duplicate. It's actually a request for
24 a different charge.

25 A Correct. And I emailed the Court that it's the

1 proposed charge based on the Imperfect Self-Defense
2 Doctrine.

3 Q Okay.

4 A And I don't know why it's also labeled Number 7.

5 Q Okay. So, in the transcript, when Mr. Cooper's
6 speaking about Number 7, maybe he'll be the one that has to
7 clarify, but, according to the Court's Exhibit, it would
8 reflect that he's not talking about the imperfect
9 self-defense charge?

10 A Say that one more time.

11 Q If you were reading the transcript, and he's discussing
12 Requested Charge Number 7, the Requested Charge Number 7
13 that was marked as the one that we had in the record on
14 appeal as Court's Exhibit 1.

15 A Correct. But he does say, on 977, he refers to
16 Defendant's Requested Jury Charge 7. Mr. Singleton
17 requested a charge on imperfect self-defense.

18 Q And so---

19 A So he's---

20 Q Oh, go ahead.

21 A So he's talking, at one point, about the second Number
22 7.

23 Q So, the posttrial motion day, he's discussing the
24 Emailed 7. Maybe we should call it that.

25 A Yes.

1 Q The Emailed 7.

2 A Yes.

3 Q The judge is actually reading language from it, and
4 then questions did I not include a voluntary manslaughter
5 charge. Did you request voluntary manslaughter. I think
6 it's on three different occasions he says no, we did not
7 request voluntary manslaughter.

8 Would you agree with that?

9 A Yes.

10 Q Okay. Was there a strategic reason why you-all did not
11 enter a formal request for voluntary manslaughter in the
12 record in this case?

13 A I would defer to Mr. Cooper on that, but I, I would
14 imagine that there was concern that it wouldn't meet regular
15 voluntary manslaughter. But I'd defer to Mr. Cooper on
16 that.

17 Q Do you ever recall meeting with Mr. Singleton and
18 asking him if he just wanted to pursue murder, he didn't
19 want to ask for any lesser included?

20 A I don't recall that.

21 Q And would you agree that the outcome of a successful
22 imperfect self-defense argument would be a charge on
23 voluntary manslaughter?

24 A Yes, but I think, under this Imperfect Self-Defense
25 Doctrine, you're giving yourself -- you're giving the jury a

1 different option even if they don't find that it's a regular
2 voluntary manslaughter by the elements. If that makes any
3 sense.

4 Q It is complicated---

5 A Yeah.

6 Q ---and it does make sense.

7 Now, with that in mind though, when you read the
8 information given by the jurors, specifically Juror 368, do
9 you think there was grounds to ask for voluntary
10 manslaughter in this case?

11 A Are you referring to the questionnaire or an affidavit?

12 Q On the questionnaire.

13 A I mean it's clear, from the questionnaire, that she was
14 torn. And so, had there been a voluntary manslaughter
15 instruction, I, I don't -- I don't know for sure what they
16 would of done.

17 Q And that's fair. Let me ask you about the posttrial
18 motion hearing.

19 A Yes.

20 Q There's some discussion, beginning on 986, about
21 whether self-defense/involuntary are mutually exclusive, and
22 then, in response, Mr. Kidd, representing the State, my
23 summary's essentially he wants it clear -- he wants some
24 clarification about his failure to request voluntary
25 manslaughter cause the judge just keeps questioning did I

1 fail to, you know, charge on involuntary manslaughter, did
2 you-all request it, and the judge responds, beginning on
3 Page 988, Line 17, it makes it clear that it was not raised
4 at trial, but she's allowing him to raise it now to preserve
5 it for appeal.

6 would you agree though that you have to raise an issue
7 at trial, such as a request to charge, and properly admit
8 the exhibit for it to be preserved for appeal?

9 A Yes.

10 Q So, it can't just be something that you do post hac at
11 a motion hearing and argue for the first time?

12 A I would agree with that.

13 Q Okay. And would you further agree that imperfect
14 self-defense was the primary defense in this case?

15 A I think self-defense was.

16 Q And, in conjunction with that, you were also arguing
17 for imperfect self-defense?

18 A Correct.

19 MS. BLANCHETTE: Your Honor, if I can beg the Court's
20 indulgence one moment?

21 THE COURT: Okay.

22 (Pause.)

23 Q And just so we don't have to recall you, did you have
24 any involvement in the decision to not object to the Allen
25 charge in this case?

1 A I, I don't know. I don't recall any conversation about
2 it, but Mr. Cooper may have a better memory of it than I do.
3 I'm sorry.

4 MS. BLANCHETTE: Your Honor, I have no further
5 questions of this witness.

6 THE COURT: Mr. Limbaugh, any questions of this
7 witness?

8 MR. LIMBAUGH: May it please the Court, Your Honor.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. LIMBAUGH:

12 Q Morning, Ms. Ehrlich.

13 A Morning.

14 Q To -- can you just briefly explain the facts of this
15 case just briefly?

16 A I mean -- a summary of the facts would be there's an
17 allegation that there was a drug deal that was set up, that
18 Mr. Singleton was buying marijuana, that there was money
19 exchanged, and that there was a dispute over the -- whether
20 or not they had provided the correct weight, and then I
21 think, factually, things kind of differed depending on what
22 witness you're calling. But there, ultimately, at some
23 point, there's a gun presented.

24 Mr. Singleton's testimony was that the drug dealer
25 placed a gun on the table or a counter, and introduced the

1 gun into the alter -- the altercation, and that he grabbed
2 the gun and shot.

3 Q Okay. So that kind of goes again to my next question.

4 Can you just, again, briefly explain the defense theory
5 in this case, whether it be the self-defense, and then going
6 into what -- this imperfect self-defense argument?

7 A Well, Mr., Mr. Cooper could probably answer the
8 question much clearer than me just because he was involved
9 with the case longer, but the alle -- the claim of
10 self-defense, there was another person in the room. I can't
11 remember his name. His name might of been Kenny, who
12 Mr. Singleton had indicated was kind of Lebron (phonetic),
13 and that, when he turned his head, the victim had rushed,
14 and that's when he grabbed the gun and shot.

15 And so he testified, I think pretty well, about his
16 fear in the situation. He was originally from a different
17 part of town, didn't know these people. They had made him
18 park the car in a different area, which kind of raised
19 suspicions, but it was a two on one situation for him, and
20 he thought that he didn't have a choice but to fire the
21 weapon.

22 Q All right.

23 A I think the State's theory was that it was some sort of
24 robbery, and that he produced a gun and tried to rob the
25 drug dealers, which it sounds like some of the jurors

1 dismissed that, but --.

2 Q Okay. And what's the -- the imperfect self-defense
3 theory and---

4 A So, for---

5 Q ---I believe you said it was against precedent.

6 A So for---

7 Q Can you just go over that?

8 A So for imperfect self-defense, we were making the
9 argument that, if the jury felt and believed that he was
10 fearful that he was at risk of serious bodily injury or
11 death, that he should be, instead of, of -- instead of being
12 convicted of murder, if they didn't find that that fear was
13 reasonable, they could instead convict of voluntary. So, it
14 takes a look at whether or not the person's fear is
15 reasonable at the time. So, if they're in actual fear, but
16 a jury finds that that fear is not reasonable, asking them
17 to convict of voluntary manslaughter instead of murder.

18 Q Okay. And did I hear your testimony earlier that that
19 was against precedent---

20 A Correct.

21 Q ---that you were requesting that?

22 A I -- there, there wasn't -- there wasn't case law to
23 support imperfect self-defense in South Carolina.

24 Q Okay. So, you were essentially going above and beyond
25 trying to get Mr. Singleton some sort of self-defense charge

1 in this case, is that correct, arguing against or at least
2 to try and create case law for that?

3 A Well, we wanted that at least to be preserved for him,
4 yes.

5 Q Okay. And just, again, is -- was there any reason that
6 you guys did not formally request voluntary manslaughter to
7 your knowledge?

8 A I, I would defer to Mr. Cooper on that question just
9 because he was involved with the case much more than I, I
10 was. I, I do think that there could be an argument that
11 it's not a proper -- that there may not have been enough
12 testimony to support that as a lesser included.

13 Q Okay.

14 A But I don't know if that's the reason why it wasn't
15 requested.

16 Q Do you know, do you know of any reason why
17 Mr. Singleton would of been prejudiced from the State's
18 Batson motion being granted?

19 I mean do you have any reason to believe that any of
20 the jurors, struck or seated, would of been better or worse
21 for Mr. Singleton at trial?

22 A I mean I have no idea whether certain jurors would of
23 been better or not.

24 Q Okay.

25 A But it certainly affected the racial makeup of the

1 juror -- jury.

2 Q Okay. And you don't have any evidence firsthand that
3 that made any impact on their decision, do you?

4 A I mean I haven't spoken to -- I, I haven't -- I --
5 there's no way for me to know that. I haven't spoken to any
6 of the jurors.

7 Q Okay. And, and now we've seen to the exhibits that
8 are -- at least some of the jurors were quite sympathetic,
9 at least posttrial, to Mr. Singleton's position.

10 Is that correct?

11 A Yes.

12 Q Okay. But the, the jurors didn't, at least in their
13 conversations with you or in the emails to Mr. Cooper, as
14 far as I saw, they didn't mention any outside pressures
15 coming into the jury room or any racial bias being discussed
16 by other jurors?

17 Do you recall any of that?

18 A Well, in re -- in Juror Number 368---

19 Q Uh-huh. (Affirmative).

20 A -- in her response to Number 9, she says my verdict was
21 a weak compromise based on the pressure in the deliberation
22 room, the fact that I was the last juror standing who felt
23 he was not guilty, and ultimately the fact that Kadrin took
24 the marijuana when he left. As I mentioned in Number 1, I
25 now feel this was an incidental act. This is something I

1 feel very badly about.

2 Q All right. That -- the response doesn't mention, you
3 know, somebody going outside and doing outside research or
4 there being threats on that jury or even that, you know,
5 this white juror was racist towards Mr. Singleton, and,
6 therefore, wanted to -- us to convict him.

7 Is there any of that anywhere in this?

8 A There's no mention of race in her response --

9 Q Okay.

10 A -- or outside threats or research.

11 MR. LIMBAUGH: That's all I have for this witness, Your
12 Honor.

13 THE COURT: Anything on recross (sic)?

14 MS. BLANCHETTE: Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. BLANCHETTE:

17 Q The State was asking you about the juror questionnaire.

18 In your practice now, if you received that information,
19 would you further investigate it if you were the lead
20 counsel?

21 A Yes.

22 Q And would you consider filing a motion for a new trial?

23 A I would.

24 Q And why would you do that?

25 A Well, I've got two jurors who are saying that they have

1 regrets about their verdict. I, I feel like that could be
2 an appropriate remedy in the situation.

3 Q And this is a matter where you were all getting this
4 information before you even had the posttrial hearing with
5 Judge Harrington. This was an instantaneous information you
6 received where the jurors were reaching out to you and
7 Mr. Cooper right after the verdict was rendered.

8 Is that correct?

9 A They reached out to Mr. Cooper directly after the
10 verdict, and before the, the posttrial motions.

11 Q And---

12 A I don't know, I don't know the date of when the typed
13 up juror questionnaire response would of come in.

14 Q But if it's referenced in the Motion to Reconsider as
15 being received in affidavits, it would all be before he got
16 the notice -- he filed the Motion to Reconsider.

17 Is that correct?

18 A Sure.

19 Q So, it was within a short timeframe. It wasn't a
20 matter of we have some case law in South Carolina that talk
21 about buyer's remorse months later, years later where a
22 juror can't sleep at night. So now they're upset.

23 A No, it's---

24 Q This was information you received right away?

25 A Correct.

1 Q All right. And, in your practice, you would have filed
2 a motion for a new trial if you were the lead counsel in
3 this case?

4 A Looking back at it now, if this happened to me today,
5 that's what I would do. I, I can't give any insight as to
6 why it didn't happen five years ago.

7 MS. BLANCHETTE: Your Honor?

8 THE COURT: Be, before you---

9 MS. BLANCHETTE: Yes.

10 THE COURT: Is there anything in the record about the
11 Juror Number 368, male, female, black, white?

12 MS. BLANCHETTE: Your Honor---

13 THE COURT: What would---

14 MS. BLANCHETTE: ---in the affidavits that are attached
15 to the Motion to Reconsider, it gives their names --

16 THE COURT: Okay.

17 MS. BLANCHETTE: -- and more information. The juror
18 strike sheets are actually included---

19 THE COURT: In the record, yeah.

20 MS. BLANCHETTE: ---in the record on appeal I believe
21 in this case.

22 THE COURT: Okay.

23 MS. BLANCHETTE: And, Your Honor, those -- these are
24 the two jurors we intend to call today --

25 THE COURT: Okay.

1 MS. BLANCHETTE: -- these two jurors that we've been
2 discussing.

3 THE COURT: Okay. All right. Thank you, ma'am.
4 Did, did you finish your questions on redirect?

5 MS. BLANCHETTE: Let me just beg the Court's indulgence
6 one moment real quick.

7 (Pause.)

8 MS. BLANCHETTE: Your Honor, I have nothing further.

9 THE COURT: All right. Anything on recross?

10 MR. LIMBAUGH: Nothing, Your Honor.

11 THE COURT: You may step down. Thank you, Ms. Ehrlich.

12 THE WITNESS: Thank you.

13 THE COURT: Is Applicant prepared to call its next
14 witness?

15 MS. BLANCHETTE: Yes, Your Honor, and Mr. Thompson will
16 be handling the next witness.

17 If it's okay with the Court, I would like to step out
18 of the courtroom just to arrange our next witnesses.

19 THE COURT: Okay. All right. Mr. Thompson.

20 MR. THOMPSON: We would call Attorney Michael Cooper,
21 Your Honor.

22 THE COURT: Okay.

23 UNIDENTIFIED SPEAKER: Your Honor, before we begin, can
24 we take a two minute comfort break?

25 THE COURT: Sure.

1 UNIDENTIFIED SPEAKER: Thank you.

2 THE COURT: That'd be good for the Court too.

3 All right. We might extend it to five.

4 okay. All right. We'll take a break. Thank you.

5 (WHEREUPON, a short recess was taken at this time.)

6 THE COURT: All right. Applicant ready to proceed?

7 MR. THOMPSON: We are, Your Honor.

8 THE COURT: State ready to proceed?

9 MR. LIMBAUGH: Yes, Your Honor.

10 THE COURT: All right. Mr. Thompson.

11 MR. THOMPSON: May it please the Court, Your Honor.

12 We, we would -- again, we would call Attorney Michael

13 Cooper to the stand, and I believe he's already in the

14 witness chair.

15 THE COURT: Well, way to get there, Mr. Cooper.

16 THE WITNESS: Yes, sir.

17 THE COURT: All right.

18 THE CLERK: All right. Please -- thank you.

19 MICHAEL COOPER, being first duly

20 sworn, testified as follows:

21 THE CLERK: Thank you. And, for the record, please

22 state your name spelling your last name.

23 THE WITNESS: Michael Thomas Cooper. Cooper is spelled

24 C-O-O-P-E-R.

25 MR. THOMPSON: Your Honor, a, a brief kind of

1 housekeeping matter before we get started. Both Ms.
2 Blanchette and I provided notepads for Mr. Singleton to
3 write notes to us with, but, apparently, he can't actually
4 write cause his, his arms are in the handcuffs. The
5 officers have instructed us that we have to ask Your Honor
6 if they can loosen one of the cuffs so he can write.

7 THE COURT: I will let you talk to him.
8 okay?

9 MR. THOMPSON: okay.

10 THE COURT: I'll give you time for a break anytime.
11 okay?

12 MR. THOMPSON: okay.

13 THE COURT: All right. We've got all the time in the
14 world. Since I've been in traffic in Charleston, I've
15 learned new patience.

16 okay.

17 DIRECT EXAMINATION

18 BY MR. THOMPSON:

19 Q Good morning, Mr. Cooper.

20 How are you?

21 A Good morning.

22 Q Forgive me. I, I tend to go through a lot of water
23 when I talk cause I, I get pretty cottoned mouth. So, so
24 forgive me for taking a few sips here and there.

25 So, I just want to go over a bit of your background

1 before we get kind of into the, into the trial stuff.

2 How long have you been practicing law?

3 A So I was admitted to the South Carolina Bar in November
4 of 2011.

5 Q So, that's just over eight years I believe?

6 A Yes, sir.

7 Q Okay. And where are you currently employed?

8 A McLeod Law Group.

9 Q And how long have you been with McLeod?

10 A Since April of 2015.

11 Q And so this trial was in January of 2015?

12 A Yes, sir.

13 Q So, about three months after this trial you joined
14 McLeod?

15 A Yes, sir.

16 Q Prior to joining McLeod, you were with the Public
17 Defender's Office.

18 Is that right?

19 A The Charleston County Public Defender, yes, sir.

20 Q And was that your first job as an attorney or did you
21 have a job prior to that?

22 A No, I immediately, upon swearing into the South
23 Carolina Bar, began work at the Charleston County Public
24 Defender.

25 Q All right. So, November of 2011 to April, '15, you're

1 with the Charleston County Public Defender's Office?

2 A Yes, sir.

3 Q And then April, '15 to now, you've been with McLeod?

4 A Yes, sir.

5 Q Obviously, with the Public Defender's Office, I would
6 assume that a hundred percent of your practice was criminal
7 in nature?

8 A It was.

9 Q How about at McLeod?

10 How much criminal work do you do now?

11 A None.

12 Q Has that been the case since you started with McLeod?

13 A Yes, sir.

14 Q What kind of work do you do now at McLeod?

15 A Catastrophic injury and social justice.

16 Q When you were at the Public Defender's Office, what
17 kind of cases did you handle?

18 Did you just kind of handle whatever they gave you, the
19 run of -- all the way up and down the chain?

20 A Yes, I mean I think every lawyer at the Public
21 Defender's Office, at the time that I worked there, was
22 expected to handle, at least once you've been through two
23 years there, you're expected to handle anything from, you
24 know, a minor habitual traffic offender type of case to a, a
25 homicide.

1 Q And, over the course of your career, how many homicide
2 cases would you say you've taken to trial?

3 A So I guess maybe it's three. So, I had one that we did
4 a, a miniature trial under the Protection of Persons and
5 Property Act, the Castle Doctrine, and won an acquittal
6 there. And then I had another trial where a man shot
7 another man twice in the head, and, and, on the second day
8 or third day of trial, the State offered a, a very
9 beneficial plea deal. And so my client accepted that deal.
10 And then Kadrin's, I think, was the third homicide that
11 actually went to trial.

12 Q And I assume you'd obviously handled other trials
13 before working at the Public Defender's Office?

14 A Yes, sir.

15 Q Now -- and you -- obviously, I don't, I don't expect
16 you to remember the exact date, but, if you do, feel free to
17 testify about it.

18 When did you first begin representing Kadrin?

19 A So, I don't remember the exact date. Kadrin was
20 originally represented by Andrew Grimes with the Charleston
21 County Public Defender, and I think that Andrew had handled
22 Kadrin's case for maybe like two years. And then I, I think
23 it was the -- that Fall Andrew had a medical incident, and
24 was in a car accident, and passed away.

25 And so all of his cases had to be reassigned, and

1 Kadrin's was one of the cases that was assigned to me
2 because I was going to be second chair to Andrew. So, I had
3 some familiarity with the case. I think I met Kadrin maybe
4 once, and, you know, had done some review of the file before
5 Andrew passed away.

6 Q So, since you had been -- since you had been assigned
7 second seat, is it -- I guess let me rephrase that.

8 Is it customary to assign second seat to cases that
9 aren't going to trial?

10 A No.

11 Q So, a second seat at the Public Defender's Office comes
12 on when the case is expected to go to trial?

13 Is that fair to say?

14 A It's not a formal process necessarily. I mean it was
15 the -- it was sort of the culture of the Public Defender's
16 Office is that you would have two lawyers try every case.
17 And so the more experienced lawyers try to have younger
18 lawyers sit second chair early on, and then, as you, you
19 know, develop your skills and handle more serious cases,
20 then, as a first chair, you would generally have a more
21 experienced lawyer sit with you, and, you know, just -- I
22 mean everybody does it. Ashley Pennington always has a
23 second chair sit with him. And so that was sort of just
24 the, the way it worked.

25 Q So, do you remember when you came on as second chair?

1 A The case was up for trial. So, I think, you know,
2 Andrew -- I think Andrew was preparing for trial, and I
3 think he was either going to or coming from the jail to meet
4 with Kadrin when he was in the car accident and died. And
5 so this case was up like immediately for trial around the
6 time of his death.

7 Q And you mentioned that he was on the way perhaps to see
8 Kadrin or on his way back from the jail.

9 was Kadrin housed at the jail throughout the course of
10 your representation of him?

11 A Yes, sir.

12 Q How many times would you say you personally met with
13 Kadrin at the jail?

14 A A bunch. I don't know -- I don't know a number.

15 Q would 10 be too many?

16 A No.

17 Q Okay. So at least 10 meetings?

18 A Probably, yeah.

19 Q Did you receive any plea offers in the case from the
20 State?

21 A No.

22 Q Were you -- and did you discuss any plea offers
23 potentially that -- with Kadrin that he would accept prior
24 to going to trial?

25 A Well, I mean I'm sure we had some like, you know,

1 hypothetical conversations, but there was never a plea offer
2 made. I reached out to, you know, reached out to the
3 solicitor, and asked if there was really gonna be any plea
4 offer, and there was no plea offer extended.

5 And so I mean, you know, my focus, at that point, is
6 just get ready for trial. I mean I'm not, you know, cause
7 there's nothing else we're gonna do. It's just time to
8 prepare.

9 Q And that's, and that's my -- that's kind of my next
10 question.

11 So, you knew, very early on, this case was going to
12 trial and there were kind of no ifs, ands, or buts about it?

13 A Yeah.

14 Q Now, when -- and I, I, I don't know if she's -- no. I
15 don't know. I hope not to but -- butcher her name, Ms.
16 Ehrlich, is that correct?

17 When did she come on board?

18 A So, I asked Megan to sit second chair with me --
19 probably I asked her to get involved some time shortly
20 before the Christmas holiday. We had a January trial. So,
21 I got the file after Andrew passed, met with Kadrin. We
22 start -- we got right to work, and then I brought Megan into
23 the case to sort of, you know, sit with me along the way,
24 and be a second set of eyes and ears during the trial.

25 Q And so that would mean, since the trial began basically

1 right after -- the week after New Years --

2 A Right.

3 Q -- that would mean she was on the case for maybe three,
4 three, four weeks or so prior to trial?

5 Does that sound about right?

6 A That's possible.

7 Q Okay. And I was just going back and, and checking this
8 morning, double-checking to make sure, I believe you handled
9 the questioning of every single witness in the case.

10 Is that, is that fair to say?

11 A Yes, sir, I did everything in the trial from beginning
12 to end.

13 Q And I want to start about -- we've talked before. I
14 told you I like to work just kind of sequentially through
15 the process and through the trial. You have the trial
16 transcript there in front of you.

17 Is that, that right, the record on appeal?

18 A Yes, sir, there is a, a copy of the trial transcript, I
19 believe that's what it is, that's in front of me.

20 Q All right. So, the first issue that we've alleged is
21 the, is the Batson issue.

22 Do you recall the State making a Batson challenge to
23 your strikes at trial?

24 A Yes.

25 MR. THOMPSON: And, Your Honor, again, for the record,

1 that begins at Page 87 is when the Batson challenge begins.

2 And the State had pointed out that you used all, I
3 believe it was 14, of your strikes against white individuals
4 in the jury.

5 Is that, that accurate?

6 A I don't think I got -- I guess maybe. I don't remember
7 getting 14 strikes, but --.

8 Q If, if, if they were saying the number is incorrect,
9 and obviously the record, I think, will reflect how many
10 strikes there were, but is it fair to say you did use all of
11 your strikes against white individuals?

12 A If that's what's reflected in the record, that's
13 correct.

14 Q Were you deliberately striking people on the basis of
15 race?

16 A No, absolutely not.

17 Q The explanations that you gave for striking the jurors,
18 and, Your Honor, this, this is obviously fleshed out more in
19 the, in the record and as well as on the appellate brief,
20 des -- talks about your reasons for striking those
21 individuals.

22 The reasons that are in the record, do you recall
23 specifically having any other explanations for striking
24 those individuals?

25 A No. So, if I had an explanation for striking the

1 individual, it would of been put on the record. I'm not
2 gonna have some internal basis that I struck somebody, and
3 not put that on the record during a Batson challenge
4 hearing.

5 Q And Ms. Ehrlich testified about kind of the, I guess,
6 the juror sheets.

7 Do you -- how much information did you get about the
8 jurors prior to jury selection?

9 A We got the standard State Court information, and then
10 what you're allowed to, you know, ask in voir dire.

11 Q So, she -- were y'all working from the same -- were
12 y'all working from the same sheet?

13 Did y'all each have separate like -- separate juror
14 lists?

15 A So, I would of written -- I would of had my own notes,
16 and then Ms. Ehrlich would of been taking notes
17 contemporaneously, but separately from my notes.

18 Q Okay. So, when you're reading out the explanations, to
19 the best of your knowledge, those were from your notes that
20 you had written down?

21 A Or reasons that I knew that I didn't necessarily have
22 in front of me, yes.

23 Q Okay. But, again, you did not have any other
24 explanations, other than what was given at -- during the
25 trial, for why you struck those jurors?

1 A As I sit here today, I have no secret reason for
2 striking or sitting any juror.

3 Q Okay. I'm gonna move on to the voluntary manslaughter
4 issue as well as the imperfect self-defense issue.

5 So, Ms. Ehrlich testified a little bit about, you know,
6 about the facts of the case.

7 In your meetings with Kadrin, what was the discussion
8 like about whether or not he was going to testify at trial?

9 Was that something that was a close call or did you
10 always anticipate he was going to be testifying at trial?

11 A That was something that we spent a lot of time talking
12 about both in terms of content and strategy. So, the
13 question was is he gonna testify at trial, and, if so, what
14 is he gonna say. And then, you know, if he decides what
15 he's gonna say, then we talk about some of the best ways to
16 make sure that he is communicating to the jury exactly what
17 he is wanting to communicate. And so we talked about making
18 sure that he can express himself in a way that a jury will
19 actually understand what he's trying to say.

20 Q So, heading into the trial, how certain were you that
21 Kadrin was going to testify?

22 A I was, I was -- that was the plan was that Kadrin was
23 going to testify. Unless something happened that made it so
24 that we didn't feel that Kadrin had to testify, then the
25 plan was for him to present his side of the case and tell

1 what actually happened.

2 Q And like, for example, do you recall asking Kenneth
3 Flood, Your Honor, this is on Pages 362 and 363, regarding
4 whether or not there was a tussle between Kadrin and the
5 victim?

6 A I don't have a specific recollection of exactly what I
7 crossed Kenneth Flood about question by question. But I'm
8 sure that I asked him questions in a way to plant seeds for
9 Kadrin's testimony, and so that way Kadrin isn't the only
10 person telling the essential facts of this story.

11 Q And that's why you were trying to get Mr. Flood to
12 testify that, that there was something, as he, as he put it,
13 like a tussle even though they weren't actually tussling?

14 He tried to make that distinction on the stand. If you
15 don't remember, that's what the record will reflect.

16 A Yeah, I re -- I remember. He was a -- he was not a
17 credible witness. He, you know, he would not concede even
18 simple points, and I would have to argue with him about
19 everything. But, yeah, I mean he was -- it was Boss Hog
20 Flood.

21 Q So, Ms. Ehrlich, I believe, testified earlier that the
22 primary defense was going to be self-defense.

23 A Yes, sir.

24 Q Is that -- that's fair to say?

25 A Yes, sir.

1 Q Was your backup plan to request a charge on imperfect
2 self-defense?

3 A Backup plan is probably not the right word. The plan
4 was that we were gonna present a self-defense defense. This
5 is -- I mean this is not a murder, right. I mean it just
6 wasn't a murder.

7 Okay. So, the idea was we had to prove self-defense,
8 and that's why Kadrin -- the plan was for Kadrin to testify.
9 And so I forget your, your initial question. I'm sorry.

10 Q The, the -- you, you -- were you strategizing to
11 request imperfect self-defense?

12 A Excuse me. Thank you.

13 So, if -- this was a self-defense case. Collaterally,
14 I -- my goal was to set up the issue on appeal for imperfect
15 self-defense, and I -- and there was a case that as
16 recent -- there was a recent Supreme Court or Court of
17 Appeals case that had come down, and I don't remember what
18 it is as I sit here today, where the Court did not address
19 the issue of imperfect self-defense in South Carolina. But,
20 in dicta, hinted that it might readdress this long common
21 law if the issue was presented in a way that allowed the
22 Court to review the case law on that issue. And I thought
23 this was the perfect case to be able to do that.

24 And so that's why we, we set up, collaterally, this
25 issue on a -- to have an issue on appeal in case there was a

1 conviction.

2 Q So, I'm gonna, I'm gonna kind of handle the, the
3 substance of the, of the charge with I guess, vis-à-vis,
4 voluntary manslaughter, and the preservation of the charge
5 kind of separately.

6 So, what, what is the goal of imperfect self-defense?

7 If the jury finds imperfect self-defense, what is the
8 verdict?

9 A Voluntary manslaughter.

10 Q Did you request on the record, during trial, voluntary
11 manslaughter?

12 A So, this is where like there's some confusion, I guess.
13 So, I didn't submit the classic voluntary manslaughter
14 charge. I submitted what has been marked -- it's the second
15 Jury Charge, Jury Charge Number 7. And in Jury Charge
16 Number 7, I, I said, now I can read it, where defendant had
17 an actual but unreasonable fear of immanent peril or bodily
18 harm from the victim, and he believed he had to use deadly
19 force to prevent it, you should find him guilty of voluntary
20 manslaughter instead of murder.

21 So, the charge that I requested included language that
22 would of instructed the jury to find him guilty of voluntary
23 manslaughter. So, voluntary manslaughter was never on the
24 verdict form, and I never requested a classic voluntary
25 manslaughter charge. But I believed that, in my Requested

1 Charge Number 7, that I was requesting voluntary
2 manslaughter through the imperfect self-defense theory.

3 Q Did you consider requesting voluntary manslaughter
4 under the traditional sense of voluntary manslaughter?

5 A I did consider it, but I did not believe that the Court
6 would of instructed it or that the facts of the case called
7 for a classic voluntary manslaughter charge.

8 Q Did you do any research on voluntary manslaughter, and,
9 in particular, shooting out of fear as a result of the
10 request -- to, to request voluntary manslaughter?

11 A I don't remember doing any specific research about
12 fear. I had a, a working knowledge and a grasp on what
13 voluntary manslaughter was, and, you know, I -- there was a
14 trial that I sat second chair on that we retried three
15 times. Beattie Butler was lead counsel in that case, and
16 that would -- the case was a -- about whether or not it was
17 voluntary manslaughter, and it was a self-defense case.

18 And so I was very familiar with voluntary, and the case
19 law through my experience in, in that case. Rick Morocco
20 Williams was the defendant in that case.

21 Q Did you know Kadrin was going to testify that he shot
22 out of fear?

23 A Yes.

24 Q Okay. Did you specifically research whether or not
25 fear can serve as a basis for sudden heat of passion---

1 A No, I, I---

2 Q ---for voluntary manslaughter?

3 A I don't recall, I -- I don't recall doing any specific
4 research that whether or not fear would suffice under the
5 heat of passion. My understanding was that you had to have
6 a legally adequate provocation or heat of passion, and that
7 the charge -- essentially the State's -- or, or the, the
8 Court's standard charge said like a sudden impulse to do
9 violence. And so, based off of my understanding of the law,
10 and my understanding of the case that we were presenting, I
11 did not believe that, that I would of ever gotten the
12 voluntary manslaughter or that it was worth requesting under
13 a normal scenario or a classical scenario.

14 Q Do you recall, during the posttrial hearing, Your
15 Honor, this is Page 984, where the Solicitor is talking --
16 this is 280 -- 984 and 985, where the Solicitor is talking
17 about voluntary manslaughter?

18 And, Your Honor, specifically Lines 21 into 985, the
19 Solicitor says you could have arguably found voluntary
20 manslaughter on the facts of this case.

21 Do you remember him saying that during the posttrial
22 hearing?

23 A No. I'm -- do I mind if I read this---

24 Q Go ahead.

25 A ---and familiarize myself?

1 Q Yep.

2 A Do you know what line number it begins?

3 Q Line 9 -- Page 984 and specifically he starts talking
4 on Line 21.

5 A okay. Thank you.

6 (Pause.)

7 A okay. Yes, sir.

8 what's the question?

9 I'm sorry.

10 Q So -- and I guess let me, let me preface it by saying
11 this.

12 with voluntary manslaughter, you need to have both
13 sufficient legal provocation, and sudden heat of passion in
14 order to get a charge of voluntary manslaughter.

15 would you disagree with that?

16 A No, I don't.

17 Q And do you believe that the sufficient legal
18 provocation portion of, of -- well, voluntary manslaughter
19 would be established through Kadrin's testimony specifically
20 that the victim put the gun on the table when Kadrin was
21 requesting that he get the drugs that he paid for, and that
22 the victim then rushed him.

23 would you, would you agree that's sufficient legal
24 provocation?

25 A Yes.

1 Q So, the issue is in sudden of heat of passion in your
2 minds (sic)?

3 A Yes.

4 Q That's correct.

5 Okay. And, and what the, what the solicitor says, in
6 this portion of the transcript, is he says it would have
7 been close to request voluntary manslaughter, that it
8 would -- if, if you had requested voluntary manslaughter, he
9 believes that it would of been, at least, at minimum, a
10 close question that you should -- your client should of
11 received voluntary manslaughter.

12 A Okay.

13 Q Do you disagree with that statement?

14 Do you disagree that it would have been close?

15 A So, the Court, if you look right above it, says that
16 she wasn't going to charge it. I mean we had a -- we had an
17 informal conference, and the Court said she's not charging
18 voluntarily essentially. And so -- and, and I, I disagree
19 with the, with the State's sort of characterization of what
20 we were doing.

21 okay?

22 So -- and under -- in several ways. But, in my mind,
23 at that time, the classic voluntary charge was not an
24 option.

25 Q And the judge, and this is Lines 14 through 20, says

1 that she -- she indicated she was going to follow the law.

2 That was in response to your request for voluntary
3 manslaughter based on imperfect self-defense, right?

4 A I don't -- I mean I don't -- I'd have to look back and
5 reread it.

6 THE COURT: You're talking about Line 14 on what page?

7 MR. THOMPSON: On 984, Your Honor.

8 Q Because you had not requested voluntary manslaughter.
9 You had only requested imperfect self-defense. You had not
10 made a classic request of vent -- of voluntary manslaughter.

11 A Yes, I did -- I did -- that is correct. I did not make
12 a classic -- a request of the classic voluntary manslaughter
13 charge. I did not.

14 Q And what she is saying is that, is that part of the
15 reason they didn't request it is I had indicated I was going
16 to follow the law, and that was on imperfect self-defense,
17 which was not the law at the time, right, and still not the
18 law in South Carolina?

19 A That's correct.

20 Q Okay.

21 A I don't know if she's only talking about the imperfect
22 self-defense or the voluntary manslaughter. If you look up
23 above that, Culver Kidd, the solicitor, was talking about
24 that the defense never requested a voluntary manslaughter
25 charge, and whether or not that was strategic, and then the

1 Court said that she indicated she was going to follow the
2 law. My understanding was that the Court did not believe
3 that a classic voluntary manslaughter charge was warranted
4 under these facts.

5 Q Based on what?

6 A Based off of, of the -- our, our -- this, this
7 testimony -- this conversation here, and our informal charge
8 conference.

9 Q That you never requested it during the informal charge
10 conference, did you?

11 You just said it wasn't warranted. You didn't request
12 it.

13 A I never submitted a formal jury charge request on the
14 classic voluntary manslaughter charge. That is correct.

15 Q So, how could you know how she felt about it?

16 A We had an informal conference -- in chambers discussion
17 about what the appropriate charges of this case might be.

18 Q And you requested imperfect self-defense as a method to
19 get to voluntary manslaughter, right?

20 A I did that.

21 Q But you did not request voluntary?

22 A I did not.

23 Q And I, I do want to clarify, you made sure -- I mean
24 your, your testimony, when, when the solicitor is saying
25 that you didn't want to request voluntary, that you didn't

1 want to give the jury a way to split the baby, that that's
2 not accurate. It's not a strategic decision on your part.
3 You wanted voluntary through imperfect self-defense.

4 A Yeah, I mean that's obvious. Oh, it's, it's not -- you
5 can request any -- you can request any charge that's
6 supported by the facts. You don't have to argue the charges
7 that the Court's gonna give in your closing. So, you don't
8 have to present contradictory theories of the case, but the
9 Court has to charge any charge that is supported by the
10 facts. So, I disagree with his characterization of all of
11 this.

12 Q All right. Now, I want to talk about the preservation
13 of your argument to, to charge imperfect self-defense for a
14 few minutes.

15 Your Honor, on Page 715, Lines 15 through 19.

16 Mr. Cooper, you say you would potentially request to
17 argue against precedent for an imperfect self-defense
18 charge.

19 A Yes, sir.

20 Q And then again -- forgive me, Your Honor.

21 (Pause.)

22 Q There's a, a portion in the transcript on Page 873
23 where you're getting ready to do the -- you're doing the
24 charge conference -- and, Your Honor, specifically the, the
25 charge conference runs from about Page 865 to Page 873. And

1 then, on Page 8 -- so, the, the charge conference is all
2 about self-defense. You do not re -- you do not request
3 imperfect self-defense at any point in time during that
4 charge conference, and you may not have a specific
5 recollection of that. But if that's what the record
6 reflects, you wouldn't disagree with that.

7 Is that accurate to say?

8 A Maybe. When I was reviewing that -- this this morning,
9 I think I -- that there was something in there where I
10 request -- like I put this -- what is the Requested Charge
11 Number 7 -- the second Request to Charge Number 7's on the
12 record, but---

13 Q And---

14 A You know---

15 MR. THOMPSON: Your Honor, that's at---

16 A ---I don't know if I'll be able to find it right here.

17 MR. THOMPSON: That's at Page 874.

18 So, I guess let -- walk us through, walk us through
19 this, this charge process -- this charge conference process.

20 Did you have an in-chambers meeting with Judge
21 Harrington regarding the charges?

22 A Yes.

23 Q Was that prior to this on-the-record charge conference?

24 A Yes.

25 Q And was it, at that time in the in-chambers conference,

1 that you discussed imperfect self-defense?

2 A Yes, I -- it was, it was an ongoing discussion
3 throughout this trial in several instances, but we did
4 discuss it in the in-chambers informal conference because
5 the Court didn't -- I mean frankly, she didn't know what I
6 was really trying to ask for. And so we went and I
7 explained sort of the status of the law in South Carolina,
8 and what we were looking for, and -- because I, I think the
9 Court didn't -- had never heard of imperfect self-defense to
10 some degree.

11 Q And did she indicate to you, in the in-chambers
12 conference, that she was not going to charge imperfect
13 self-defense?

14 A Yes.

15 Q Now, on the record, when you come back out and have the
16 charge conference, you do not discuss imperfect self-defense
17 at that time.

18 Is that fair to say?

19 A I will defer to what's in the transcript.

20 Q And just for -- I don't know if this is -- not
21 necessarily housekeeping might not be the right way to put
22 it, but on Page 873, Lines 19 and 20, Your Honor, it says
23 off-the-record 2:07PM. Back on the record 3:03PM.

24 Is it during that time -- is that timeframe when you
25 sent those preposed charges to, to Judge Harrington that

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1 have been admitted as Applicant's 7 and 8 cause those emails
2 are dated for 2:30PM and 2:49PM I believe?

3 A I don't -- so, if the emails are 2:30---

4 THE COURT: Show him the---

5 MR. THOMPSON: Yeah.

6 THE COURT: If you don't mind, showing him the---

7 THE WITNESS: So, we were off the record for about an
8 hour?

9 THE COURT: Can -- and, and, Mr. Cooper, you can look
10 at the emails.

11 A Right. So that would be correct.

12 Q So that's when you, that's when you sent that formal
13 charge over to Judge Harrington during that, that hour long
14 break?

15 A Yes, that's what it's -- that's what it looks like,
16 yeah.

17 THE COURT: It looks like Page 874, Line 10.

18 Mr. Cooper, you were saying I emailed them too. And so
19 I'm assuming that's what you were referring to on the
20 record.

21 Is that correct?

22 THE WITNESS: Yes, sir. And then the -- I think the
23 Court indicated that she didn't get a copy. And so I, I
24 think I walked a copy up to the bench at that time.

25 THE COURT: Okay.

1 Q Now, at that point in time, did you argue for imperfect
2 self-defense prior to, prior to the closing arguments?

3 A I'll defer to what's in the transcript. I mean I
4 submitted the proposed charge to the Court when we requested
5 that charge.

6 MR. THOMPSON: Your Honor, beg the Court's indulgence.
7 Make sure I've got the cite right here.

8 THE COURT: I'm looking at the last few pages.

9 (Pause.)

10 Q Okay. And then there are a few times, during the
11 course of the -- okay. So, if you look on Page 932, and
12 Page -- Page 932, Line 21, and then over into Page 933 going
13 into, I guess, Line 22. There's a discussion where you say
14 you just want to place the objection on the record, and you
15 will be able to articulate in terms of the imperfect
16 self-defense charge that we requested. The judge responds
17 I'm going to let you do that, and she says, even after the
18 jury turns (sic), I can allow to do that.

19 Do you recall that discussion?

20 A I don't have a specific memory of this, but it appears
21 that we, after, after the, the Court charged the jury and
22 they were dismissed, she was going to set due -- set bonds
23 at that time. And so I had to put an objection on the
24 record contemporaneously with the charge, and I think that's
25 me attempting to do that there. But there were, there were

1 people lined up to, to hear bonds, and I think the Court
2 said that she was going to hear bonds.

3 Q And then again, on Page 953, when -- this is when
4 you've gotten the -- you've gotten notice of the verdict,
5 Lines 18 through 21, Judge Harrington again says Mr. Cooper,
6 I did not allow you to -- we haven't had time for you to
7 articulate. I'll allow you to place everything on the
8 record, including the imperfect self-defense, after the
9 verdict.

10 So, at that point in time, you still had never had an
11 on-the-record discussion about imperfect self-defense.

12 Is that fair to say?

13 A Yeah, I mean I'll defer to the transcript.

14 Q And then, obviously, the guilty verdict comes back, and
15 if the transcript reflects that you do not, at that point in
16 time, discuss imperfect self-defense, you don't disagree
17 with that?

18 A No, sir, I don't disagree with that.

19 Q So, the first time that you actually talk about
20 imperfect self-defense on the record is at the posttrial
21 hearing on January 12th, 2015, where you put---

22 A Well, I mean I don't think you could say it's the first
23 time we talked about it, right, because we identified other
24 places where we've talked about it. But I haven't had an
25 opportunity to articulate the factual and legal foundation

1 for that argument.

2 Q You had not had time to articulate the factual and
3 legal basis for your argument prior to the posttrial
4 hearing.

5 Is that fair to say?

6 A Yes, sir.

7 Q Okay. Are you familiar with how to preserve objections
8 regarding jury charges for appeal?

9 A Yes, sir.

10 Q How do you do that?

11 A You have to submit a charge, and let the Court know
12 what you want to charge. The Court's gonna indicate what
13 they are gonna charge, and then, after the Court's charge,
14 you have to object immediately after the Court charges the
15 jury as to any deficiencies in the Court's given charge.

16 Q And you have to do this on the record at the trial?

17 A Yes, sir, and contemporaneously with the, with the
18 charge.

19 Q Do you believe you preserved your imperfect
20 self-defense argument for appeal?

21 A I, I believed, at that time when I, when I said we -- I
22 reserve my objection on the imperfect self-defense, that I
23 was reserving -- was -- would -- that I had preserved that
24 issue for appeal.

25 Q Even though you had not put the factual and legal basis

1 for the argument on the record until the posttrial hearing?

2 A Yes, sir. I mean I, I -- what I believed I was doing
3 was the Court charged the jury. I placed an objection. The
4 Court had other matters that were not our trial that the
5 Court wanted to entertain, and was gonna give us an
6 opportunity to place a more detailed objection on the record
7 when the Court had time. And, and whether it's right or
8 not, I don't know, but I believed, at that time, that I had
9 preserved that issue for the appeal.

10 Q I have, hopefully, a couple of quick issues to move
11 onto before we'll get to the juror testimony, juror, juror
12 issues at the -- as the final thing.

13 Regarding your charge on self-defense, are you --
14 you're familiar, I assume, with the principle that the State
15 must disprove self-defense beyond a reasonable doubt?

16 That's an accurate statement of law?

17 A Every element.

18 Q Every element of self-defense beyond a reasonable
19 doubt?

20 A Yes.

21 Q Did you consider objecting to the jury instruction for
22 self-defense which appears to place the burden on
23 establishing the elements of self-defense on the defendant?

24 A I don't know. I think we proposed -- I don't remember.
25 I believe that we proposed a self-defense charge. The State

1 proposed a self-defense charge, and the Court decided which
2 self-defense charge it was going to read to the jury. And
3 if I didn't place a contemporaneous objection to it, then I
4 didn't object.

5 MR. THOMPSON: And, Your Honor, for a couple of
6 specific provisions here, Page 944. At -- and I'll go --
7 start Page -- Line 13 through 17, and I will just read this
8 instruction to you.

9 It says if the defendant was actually in immanent
10 danger, it must be shown that the circumstances would have
11 warranted a person of ordinary firmness and courage to
12 strike the fatal blow to prevent death or seriously bodily
13 injury.

14 In your mind, reading that instruction, who must do the
15 showing?

16 who bears the burden of proving that?

17 A Well, as I sit here today and read that, I, I think it
18 implies that Kadrin would of had the burden of proof.

19 Q And, further, the next sentence, if the defendant
20 believed he was in immanent danger of death or seriously
21 bodily injury, it must be shown that a reasonably prudent
22 person of ordinary firmness and courage would of had the
23 same belief.

24 Again, reading that, who do you think has the burden of
25 proof with regard to that charge?

1 A It implies that Kadrin would.

2 Q Is that the law, who must prove or disprove
3 self-defense beyond a reasonable doubt?

4 Does the State bear the burden of disproving
5 self-defense beyond a reasonable doubt?

6 A Yeah, I mean I'm not an expert on the law on that. So,
7 it's been quite some time since I ever -- since I've handled
8 self-defense cases. My like general grasp of it is that,
9 essentially, we have to -- we have some burden to get the
10 charge. We have to lay a factual foundation enough to get a
11 charge, right. We have some burden to introduce evidence
12 and testimony to prove self-defense in some way. And, once
13 we've done that, then the State has to disprove the
14 self-defense, and they have to disprove each of the
15 elements.

16 Q But this charge is telling the jury that you must
17 prove, the defense must prove, that these elements have been
18 established.

19 A That's the way it -- that's the way it reads, yes.

20 Q Did you consider objecting to the charge as burden
21 shifting and requiring the defense to establish elements of
22 self-defense?

23 A I mean I don't -- I guess not.

24 Q Looking at it now, do you think you should have made
25 such an objection?

1 A Well, I mean -- right. I mean I guess if we look at
2 just that piece, and then sure. I mean that -- and it
3 doesn't have another charge about that the State has the
4 burden of proof. I don't know, I don't know how the charge
5 reads in a whole right now. I don't remember that.

6 So, you know, if the, if the Court's like whole set of
7 charges doesn't make it clear that the State has the burden
8 of proof, then I mean yeah, I should of, I should of
9 insisted that the Court charge that the State has the burden
10 of -- to disprove self-defense if that's not in there. But
11 it -- I, I don't know what the whole charge looks like---

12 Q That---

13 A ---as I sit here.

14 Q That sentence is in there, but do you not disagree that
15 it's confusing to hear the State has to bear the burden of
16 disproving self-defense beyond a reasonable doubt, and then
17 telling the jury that they must -- the defendant must prove
18 certain elements of self-defense?

19 A Sure. I think that could be confusing.

20 Q And so, do you believe you should of made an objection
21 to the charge?

22 A I mean sure. I guess.

23 Q Thank you.

24 Moving on to the malice instruction, Your Honor---

25 THE COURT: Mr. Thompson, I, I hate to interrupt cause

Michael Cooper - Direct examination
by Mr. Thompson

1 I was looking over the charge too when you mentioned that,
2 and since she does say that, tell me what charge that you
3 believe the Court should have made in that situation.

4 MR. THOMPSON: It should be reworded and should be said
5 that the second element of self-defense is that the
6 defendant was actually in immanent danger of death or
7 seriously bodily injury or that the defendant actually
8 believed that he was in immanent danger of death or
9 seriously bodily injury. The following sentence should read
10 the State bears the burden of disproving, beyond a
11 reasonable doubt, that the defendant was actually in
12 immanent danger of death or seriously bodily injury.

13 THE COURT: And even though, just a paragraph or two
14 before that, says the State has the burden to disproving
15 self-defense by proof beyond a reasonable doubt.

16 MR. THOMPSON: Yes, because the rest---

17 THE COURT: So, you believe the State should have
18 repeated that -- I mean the judge should of repeated that
19 two or three times during the charge?

20 MR. THOMPSON: And rework the charge because the
21 current charge places the burden of establishing the
22 elements on the defendant even though they must be---

23 THE COURT: I under---

24 MR. THOMPSON: ---disproven beyond a reasonable doubt.

25 THE COURT: I understand. That's what the standard

1 charge says right now.

2 MR. THOMPSON: Yes.

3 THE COURT: Have you had anybody charge it redoing it
4 as you suggest?

5 MR. THOMPSON: I have not had the opportunity to have a
6 self-defense trial yet, Your Honor.

7 THE COURT: Oh, okay. Well, you should of been here a
8 couple months ago, but it -- but---

9 MR. THOMPSON: All right.

10 THE COURT: And that, that was an issue that came up
11 then, and we, we addressed it, but he is testifying that he
12 should of objected to it, but it is the standard charge.

13 Is that correct?

14 MR. THOMPSON: That is correct, Your Honor.

15 THE COURT: Okay.

16 MR. THOMPSON: I will say, with regard to kind of the
17 next issue that I'm to going address with regard to the
18 inferred malice charge---

19 THE COURT: Another one of those little short things we
20 were gonna do.

21 MR. THOMPSON: A little short. It's, it's shorter
22 hopefully than the voluntary manslaughter, Your Honor, is
23 that Ms. Blanchette and I represented the Gibson brothers in
24 separate PCRs in Richland County. Gibson versus State deals
25 with inferred malice from the use of a deadly weapon, and---

1 THE COURT: That's the case that changed that.

2 MR. THOMPSON: Yes.

3 THE COURT: Yeah, I didn't remember the case name, but
4 I remember the case.

5 MR. THOMPSON: Yes.

6 So, the -- at the time of the Post-Conviction Relief
7 hearing, the bench book for jury instructions for an
8 instruction on inferred malice from the use of a deadly
9 weapon did not include the permissive inference instruction.
10 That's what the bench book had, and the Supreme Court held
11 that it was error even though that was a standard charge
12 that was given over and over and over and over in this
13 State.

14 THE COURT: Well, I'm certainly familiar with the fact
15 that those change even though that's a standard charge you
16 can give.

17 MR. THOMPSON: But Gibson is a post-conviction relief
18 case, Your Honor. And so it's -- it was error for the
19 attorney, at the trial, not to object.

20 THE COURT: It's error for the attorney not to look
21 into the future.

22 Okay. Correct?

23 MR. THOMPSON: No, Your Honor. That was already the
24 law.

25 THE COURT: No -- okay. I got you. Okay. All right.

1 MR. THOMPSON: And, and that's what I'm arguing with
2 self-defense is the law is that self-defense must be
3 disproved beyond a reasonable doubt.

4 THE COURT: No, that -- I, I agree that that's the law.
5 And if he should of objected cause it wasn't repeated right
6 after these, right after these types---

7 MR. THOMPSON: Because that sentence that -- the, the
8 charge, as it stands, is either burden shifting or
9 confusing---

10 THE COURT: I'll, I'll---

11 MR. THOMPSON: ---because it places the burden---

12 THE COURT: I was, I was---

13 MR. THOMPSON: ---on the defendant.

14 THE COURT: I would agree with you that it's at least
15 confusing, you know, and I would agree with you that, in a,
16 in a perfect world, I think it should of been charged.
17 You're telling me that, under Gibson, even if he didn't
18 charge -- since Gibson was a PCR case, since he didn't
19 object to it, that's still a way to get it back---

20 MR. THOMPSON: Yes, Your Honor. If---

21 THE COURT: ---to the Supreme Court.

22 MR. THOMPSON: If, if the law is that the, that -- that
23 a jury charge is suppose to be given a certain way --

24 THE COURT: Right.

25 MR. THOMPSON: -- and it's not, then it's error for an

1 attorney not to have objected to the charge.

2 THE COURT: Okay. Okay. That's another way to get it
3 back up.

4 MR. THOMPSON: Yes.

5 THE COURT: Okay. Well, thank you for your help.

6 MR. THOMPSON: Thank -- thank you, Your Honor.

7 So, turning to the malice instruction, Mr. Cooper, and
8 specifically there's a standard instruction that says that
9 malice aforethought may be express or inferred, this is Page
10 943, and I just read Lines 4 through 5, and then Lines 15
11 through 16, it says malice may and be -- may be inferred for
12 conduct -- from conduct showing a total disregard for human
13 life.

14 Are you familiar with the principle that, with a malice
15 instruction, an inferred malice instruction, there are two
16 components?

17 There's the way you measure -- you, you get the
18 inferred malice, and you can't do it anymore through a gun.
19 But you can use it through a gun or committing a crime
20 showing a total disregard for human life or something along
21 those lines.

22 Are you familiar with that?

23 A I guess generally. I mean I haven't, I haven't touched
24 this material in five years.

25 Q I understand.

1 You haven't been practicing criminal law day in and day
2 out since April of 2015?

3 A Yes, sir.

4 Q Are you also familiar that there's a general permissive
5 inference instruction that says that the inference is only
6 something that the jury can take into account, and can
7 accept or reject based on their entire view of the evidence?

8 Are you familiar with that?

9 A No, I mean I don't remember all that right now.

10 Q Okay. Let me just ask you a very simple question.

11 In your mind, is pointing a gun at somebody and firing
12 conduct showing a total disregard for human life?

13 A Well, I mean, I mean yeah.

14 Q Yeah. That's not a trick question.

15 You, you point a gun at somebody, and you fire, that's
16 conduct showing a total disregard for human life?

17 A Yeah.

18 Q So, reading this charge, it says malice may be inferred
19 from conduct showing a total disregard for human life. If
20 the jury believed Kadrin, that he picked up the gun and
21 fired, they would, therefore, infer that he acted with
22 malice, correct?

23 A Unless he was acting in self-defense.

24 Q And that's the reason for the rest of the charge, the
25 general permissive inference instruction which allows them

1 to reject that inference based on their review of the
2 evidence.

3 A Okay.

4 Q And you didn't object to the failure to include that
5 charge, and, if the record reflects, you don't disagree with
6 that?

7 A No, I mean I -- my understanding was that this was --
8 this is the charge that the Court cited it was gonna give.
9 It seemed, at the time, like the charge. I don't, I don't
10 know if it was right or not as I sit here today. If I
11 didn't object, I didn't object, but my goal was to prove
12 self-defense.

13 Q Wouldn't it be helpful for the jury to know that they
14 could reject an inference of malice, to be specifically told
15 and that they could reject any inference of malice?

16 A I mean I -- I'm sure that could be helpful.

17 Q And so you may not have, have recognized it at the
18 time, but would you want that instruction in -- that -- to
19 been -- to have been given to the jury, the general
20 permissive inference instruction?

21 A I don't know that I -- I mean I don't have enough of
22 familiarity with this. I mean you're saying that the Court
23 should -- I don't know if I really understand. I'm sorry.

24 Q Okay. I'll move on.

25 Do you recall -- Your Honor, and this is on -- starting

1 on Page 950.

2 It says -- Judge Harrington says she received a note
3 that the jury was split 6/6, and that she was going to give
4 an Allen charge.

5 Do you recall that happening during this trial?

6 A Yes.

7 Q Excuse me.

8 And on Lines 18 through 19, you say you think that's
9 appropriate at this time. So, you did not object to the
10 Allen charge.

11 Is that fair to say?

12 A No, this was -- I mean normally the Court does not tell
13 you the split, and because the split -- it was an even
14 split, 6/6, it, it -- if, if, if -- if that's the split, the
15 Court charge -- does the Allen charge, and they come back
16 and say we still can't unanimously give a jury -- give a
17 verdict, then the Court has no choice but to grant a
18 mistrial. And so my thought, at that time, was there's no
19 way six people are gonna get rolled between -- you know, and
20 them not come out and say we can't have a unanimous jury.
21 There's gonna be some -- something that has to happen.

22 So, we do an Allen charge. They'll come back still
23 deadlocked. He gets a new trial, and, and maybe there's a
24 plea in-between. I don't know what happens, but he -- at
25 least he's not convicted.

1 Q So, did you, did you receive a copy of the Allen charge
2 before Judge Harrington gave it?

3 A I think she just -- I don't know if she gave us a copy.
4 I think we -- she discussed what she was gonna charge, and
5 I'd had multiple trials with Judge Harrington at that point,
6 and knew what her Allen charge was. And I don't believe I
7 had any objection to the specific, the specific wording of
8 her Allen charge.

9 Q So, you did not consider objecting to the, to the Allen
10 charge for any basis?

11 I mean there was -- there actually -- with it being a
12 6/6 split, there was no minority or majority, but---

13 A I wanted the Allen charge.

14 Q You wanted the Allen charge.

15 Beg the Court's indulgence.

16 (Pause.)

17 Q All right. Finally, moving on to the juror's
18 posttrial. On Page 956, Lines 6 through 7, you do request
19 that the Court poll the jury after the verdict has been
20 returned.

21 Do you remember that?

22 A Yes, sir.

23 Q Why did you want the jury polled?

24 A Well, that's -- a standard practice is to poll the jury
25 to make sure that the verdict is still each of the juror's

1 verdict cause you don't know. They might come to some
2 decision in the jury room, and have regret, or whatever, as
3 they walk out here or whatever.

4 And then, specifically though, I remember there was one
5 juror who was visibly upset at the verdict. And she had her
6 head down, and she was shaking her head, and she was either
7 still crying or had just been crying, and was like -- looked
8 like -- I mean she was visibly upset. And she was looking
9 at another juror in the jury box who was sitted -- seated
10 behind her.

11 So, she was looking back behind her at this other
12 juror. And so, my thought was well, maybe they'll change
13 their mind right now. I don't know.

14 Q And obviously they all voted in the affirmative that it
15 was their verdict?

16 A Yes.

17 Q Now, I believe there's a, a -- I guess a specific
18 reason why this day may stick out to you, January 9th,
19 2015.

20 where did you head after the trial was over?

21 A So, this was one of -- the weekend of one of my very
22 good friend's wedding, and I was the best man in his
23 wedding, which was in Greenville. So, I mean it sticks out
24 to me for two reasons because I had Kadrin's trial, and we
25 worked really hard on this, and I believed in his case, and

1 we lost. And so like that's something I'm never gonna
2 forget.

3 But it also was like one of my very best friend's
4 wedding that weekend, and, and I had alerted the Court to
5 that ahead of time. She said well, Michael, you know,
6 Mr. Cooper, you know, do you want to continue it or not, and
7 we were ready. And so I, I said well, let's try the case,
8 but we got the verdict I think at like 5:00 or, or
9 5:30 Friday evening, and I'm suppose to give a best man
10 toast in Greenville at dinner.

11 Q And, on your way up to Greenville, are you contacted by
12 any of the jurors?

13 A Yes.

14 Q Do you remember which one?

15 A I don't remember exactly, but it was, it was the juror
16 who was -- it, ultimately, was the juror who was visibly
17 upset, and, and -- so, she called me on my cell phone.

18 Q And what was your conversation like?

19 Describe your conversation with her.

20 A I mean essentially she wanted to change her vote. So,
21 she wanted to know how she could change her vote or how she
22 could contact the Court or what she could do. She didn't
23 think that Kadrin committed a murder. She didn't think that
24 this was a murder, and she wanted me to tell her what she
25 could do about it.

1 Q And, ultimately, you ended up, I believe -- did you,
2 did you end up meeting with the jurors specifically who, who
3 signed the affidavits?

4 A I'm sure I did. I don't, I don't specifically
5 remember, but I'm sure, you know, I would of met with them
6 with my investigator to serve as a witness for that meeting.

7 Q And they signed affidavits, and you filed a Motion for
8 Resentencing?

9 A Yes.

10 Q Is that fair to say?

11 A That's correct.

12 Q Did you consider filing a motion for a new trial based
13 on the information?

14 A I did consider that.

15 Q Did you file a motion for a new trial?

16 A I did not.

17 Q Why did you not file a motion for a new trial?

18 A Because my understanding of the law is that you can not
19 impeach a verdict. So, once the jury renders a verdict, the
20 verdict's been rendered, and I mean I -- I don't know if
21 it's specifically in here or not, but I did -- you know,
22 when I was public defender, I did a closing, and I would
23 say, and I learned this from J.D. Bow (phonetic), like your
24 verdict will exist forever in blood, and stone, and there's
25 no way that you can ever change that. So, you -- this is,

1 this is your chance to vote and get it right now. And that
2 was my understanding of the law at the time, and that it
3 doesn't matter if they want to change their vote, the
4 Court's not gonna let them impeach the verdict.

5 Q Did you consider making a new trial based on
6 fundamental fairness based on the information you'd been
7 provided by the jurors?

8 A I did not consider that.

9 MR. THOMPSON: Beg the Court's indulgence.

10 (Pause.)

11 Q Mr. Cooper, I'm gonna show you Plaintiff's Exhibit 5.

12 A Yes, sir.

13 Q Review that.

14 THE COURT: Appellate's 5.

15 MR. THOMPSON: Appellate -- the Applicant's, yes. I
16 said plaintiff. That's Applicant's 5, yes.

17 THE COURT: Well, we both kind of got it wrong. I knew
18 it started with an A.

19 MR. THOMPSON: You were closer than I was, Your Honor.

20 THE COURT: I know.

21 A Yes, sir.

22 Q And so this is an email I believe that you sent to Ms.
23 Ehrlich.

24 Is that correct?

25 A This -- so, this is -- I forwarded an email that I

1 received from Kendra Drayton to Megan Ehrlich.

2 Q And you said see other juror email. This one bugs me.
3 Don't know why really.

4 A Right.

5 Q So, do you recall sending -- do you recall sending this
6 email?

7 A I mean I don't have a specific memory of that, no.

8 Q If you remember is -- I know you said the -- in the
9 email you didn't know why.

10 Do you remember -- do you know why, at this time, why
11 that information bugged you so much?

12 A So, I mean Ms. Ehrlich alluded to it, and I mean I
13 was -- I mean I was basically angry and frustrated that
14 these jurors did not -- that they say -- she says none of us
15 thought Kadrin was a "murderer." But they convicted him of
16 murder. So, I mean like I did my job, he did his job, and
17 then these guys want to change their vote. Like I don't
18 know how much more frustrating it could be.

19 MR. THOMPSON: Beg the Court's indulgence.

20 (Pause.)

21 Q Do you think it would of been helpful for the jury for
22 them to have had a lesser included offense to consider?

23 A And that was what I was trying to do, yeah.

24 MR. THOMPSON: No further questions, Your Honor.

25 THE COURT: Anything on cross-examination?

1 MR. LIMBAUGH: Please the Court, Your Honor?

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. LIMBAUGH:

5 Q I'll try to walk through this as cleanly and formulate
6 it the ways I can with you.

7 So, you testified, I believe, that you didn't think
8 that there were grounds to request the voluntary
9 manslaughter instruction.

10 Is that correct?

11 A Based on my understanding of the law at the time, that
12 was correct.

13 Q Okay. And I believe -- I'm just -- well, I'm just
14 trying to find the page number. There was some discussion
15 on direct about the conversation with the Court on the
16 record on Page 984 where -- about the voluntary manslaughter
17 being charged.

18 THE COURT: Did you say Page 94?

19 MR. LIMBAUGH: 984, Your Honor.

20 THE COURT: Okay.

21 Q Lines 14 through 20.

22 A Yes, sir.

23 Q And I believe Applicant was trying to make it seem that
24 the Court and Mr. Kidd were referencing this imperfect
25 self-defense charge.

1 Is that how you took that line of questioning?

2 A Respectfully, I'm, I'm gonna refrain from
3 characterizing opposing counsel's intentions.

4 Q I'll rephrase.

5 In your opinion in reading through the record, does it
6 appear that the Court is referring to just the voluntary
7 manslaughter charge and not the imperfect self-defense
8 charge?

9 A It's -- I, I don't remember exactly, but it was my -- I
10 think that the Court was -- when she says and perhaps part
11 of the reason they didn't request it is that I had indicated
12 that I was going to follow the law, she's indicating that
13 she's not gonna charge the classic formulation of voluntary,
14 and she's not going to charge my requested charge for
15 imperfect self-defense voluntary manslaughter.

16 Q Okay. So, would it be fair to say that, in reading
17 that paragraph concerning voluntary manslaughter charge,
18 that, if you had requested the charge, the Court would not
19 have granted that request?

20 A I don't know the -- I don't know. The Court, the Court
21 may or may not have. I don't know. I don't think the Court
22 was inclined to, but whether she would do that or not --

23 Q Okay.

24 A -- to -- you know, I have no idea.

25 Q So, I'm just trying to figure out again the strategy

1 with the imperfect self-defense and the voluntary
2 manslaughter.

3 A Yes, sir.

4 Q So, you, ultimately, didn't request, at least
5 officially on the record it appears, a voluntary
6 manslaughter.

7 Is that correct?

8 A In its classic formulation, you are correct.

9 Q Okay. So -- and you stated that, in requesting an
10 imperfect self-defense instruction, the goal is to get the
11 jury to convict of voluntary manslaughter.

12 Is that correct?

13 A To give them that option.

14 Q Give them the option.

15 A The goal is to win an acquittal.

16 Q Okay. Exactly.

17 So, with that in mind, if no voluntary manslaughter
18 instruction is given to the jury, it's not on the verdict
19 form, but you give them the option to consider it with the
20 imperfect self-defense -- and they must acquit if they can't
21 find him guilty of murder.

22 Is that correct?

23 A Well, so I mean the, the -- if the Court was gonna
24 charge it, it would be on the verdict form. So then the
25 jury will be presented the options of not guilty, guilty of

1 voluntary manslaughter, guilty of murder. So, I mean
2 there -- it would be an option for the jury to find
3 voluntary manslaughter if the Court were to charge imperfect
4 self-defense. But, you know, my goal, in walking into the
5 courtroom, is to have my client acquitted.

6 Q Okay. How strongly do you believe that the evidence
7 was presented for the self-defense claim in this case?

8 A Well, strongly's a difficult word, and I don't know if
9 I would use that word or not, and I don't -- you know, I
10 think it's for someone else to characterize the quality of
11 my representation of Kadrin Singleton. I believe that
12 Kadrin put up compelling testimony. I believed his account
13 of the events. And so, based off of how compelling I
14 believed him to be, I believed that we presented a very
15 strong case for self-defense.

16 Now, the jurors, I guess, are witnesses and they can
17 maybe speak better to the quality of that presentation, and
18 I think that is obvious that several of them have regrets
19 about convicting for murder.

20 Q They're potential witnesses. So I'm trying to get some
21 of this testimony placed on the record through you.

22 A Yes, sir, I understand.

23 Q So, as to the self-defense charge given by the Court,
24 there was some, some questioning earlier as to whether or
25 not it was confusing.

1 Do you recall that?

2 A Yes, sir.

3 Q And I believe that was on Page 944.

4 A Okay.

5 Q And then I believe you brought up, on 943, directly
6 above the lines in question, the Court does specifically say
7 the State must prove beyond a reasonable doubt that -- oh,
8 I'm sorry. Wrong page. My apologies.

9 A Page 943. Line 17.

10 Q Yes.

11 But this does -- the Court does directly say that the
12 State has the burden of proving --

13 THE COURT: Proving---

14 Q Self-defense.

15 THE COURT: ---self-defense.

16 MR. LIMBAUGH: Right.

17 THE COURT: Yes, sir.

18 MR. LIMBAUGH: Okay. Just wanted to make that clear
19 for Your Honor on the record.

20 A Yes, sir, that's what---

21 Q The State does make that---

22 A That's what's reflected in the transcript on Page 943
23 that -- the, the clause begins at Line 17, but that specific
24 line begins at the very end of Line 19.

25 Q Okay. So, the jury had heard that a short but for

1 three lines before they heard the charge in question?

2 A As it's reflected in the transcript.

3 Q Okay. Did you have -- moving to the Allen charge,
4 again, you said you didn't have really any basis for
5 objecting to that being given.

6 A No, sir, I wanted the Allen charge because, at that
7 point, with the 6/6 split, and it's unusual to find out that
8 they are -- like the numbers. My calculation was that they
9 would remain holdouts, and we would get a mistrial, and then
10 he would either get a new trial or we could work out some
11 type of plea arrangement in the interim.

12 Q Okay. And my apologies to hop back one question.

13 A Yes, sir.

14 Q As, as your understanding or it's your understanding
15 that the self-defense charge given is -- was and is still
16 good law in South Carolina?

17 A That -- I don't know if that's really for me to comment
18 necessarily. I mean, at the time, you know, that was the
19 charge that was given. I don't -- you know, whether
20 anything has changed or not, I don't know. I don't practice
21 criminal defense, and I, frankly, haven't kept up with it
22 too much of any degree.

23 MR. LIMBAUGH: Moments indulgence, Your Honor.

24 (Pause.)

25 Q And, again, you were trying to ask for this imperfect

1 self-defense charge with solely dicta, but no actual case
2 law in South Carolina to support that charge.

3 Is that correct?

4 A Yes, sir, it was, it was not the state of the law in
5 South Carolina at the time that recognized imperfect
6 self-defense. There was a trend in the country to recognize
7 imperfect self-defense, and there was some dicta recently,
8 from either the Court of Appeals or the Supreme Court, that
9 indicated that the -- that they might revisit the issue
10 given the appropriate opportunity, and I thought that this
11 could be that case.

12 MR. LIMBAUGH: Okay. That's all I have for this
13 witness, Your Honor.

14 THE COURT: Thank you, sir.

15 Mr. Thompson, anything on redirect?

16 MR. THOMPSON: I don't have any further questions, Your
17 Honor.

18 THE COURT: All right. Thank you, Mr. Cooper. You may
19 step down.

20 THE WITNESS: Yes, sir.

21 May I be released?

22 THE COURT: Yes, sir.

23 You got any, any problem with him being released---

24 MS. BLANCHETTE: I---

25 THE COURT: ---Ms. Blanchette?

1 MS. BLANCHETTE: I have no objection, Your Honor, but
2 he is here under the State's subpoena.

3 THE COURT: That's okay. I'm sorry.

4 Any objection, Mr. Limbaugh?

5 MR. LIMBAUGH: No objection, Your Honor.

6 THE COURT: I -- we know where to find you if we need
7 you.

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay. Thank you, sir.

10 All right. Is -- your next witness is gonna be
11 approximately how long, Ms. Blanchette?

12 MS. BLANCHETTE: My next witness should be rather
13 brief, but he is our video conference witness. So, we will
14 need a couple moments, I believe, to set that up.

15 THE COURT: How many moments will you need?

16 MS. BLANCHETTE: I'm just suppose to call him on his
17 direct line, and we have to push a button, and that's it.

18 THE COURT: Okay. All right.

19 MS. BLANCHETTE: So, I just wanted to go off-the-record
20 while I was placing a phone call if that would be okay.

21 THE COURT: Okay. We'll do that.

22 MS. BLANCHETTE: Am I okay to call in the courtroom,
23 Your Honor?

24 THE COURT: Sure.

25 MS. BLANCHETTE: Okay. Thank you.

1 (Pause.)

2 THE COURT: okay. All right.

3 MS. BLANCHETTE: Your Honor, I believe he needs to be
4 sworn in.

5 THE COURT: okay.

6 THE CLERK: That's what I was wondering.

7 THE COURT: Go ahead.

8 MS. BLANCHETTE: I, I didn't want to take his testimony
9 without swearing him in.

10 THE COURT: No, no. This is more fun.

11 THE CLERK: Good afternoon.

12 THE WITNESS: Good afternoon.

13 THE CLERK: Can you raise your right-hand, and, I
14 guess, put your left-hand on the Bible?

15 DAVID ALEXANDER, being first duly
16 sworn, testified as follows:

17 THE CLERK: Thank you. And, for the record, please
18 state your name spelling your last name.

19 THE WITNESS: David Alexander. A-L-E-X-A-N-D-E-R.

20 DIRECT EXAMINATION

21 BY MS. BLANCHETTE:

22 Q David, this is Tricia Blanchette. As I said, I just
23 called you to the witness stand. Thank you for appearing
24 via video conference.

25 Can you see and hear me okay?

1 A I can.

2 Q Okay. And, if anytime you can't, please interrupt me
3 if we lose a connection or anything happens.

4 A I will.

5 Q Okay. David, can you please tell us your current
6 position and occupation?

7 A I'm an attorney with the Office of Appellate Defense.
8 I'm an appellate defender.

9 Q How many years have you been with the Office of
10 Appellate Defense?

11 A About eight.

12 Q And how many years have you been practicing law?

13 A Twenty.

14 Q Any idea, during your eight years, or even time prior
15 to being at Appellate Defense, how many criminal appeals
16 you've handled?

17 A Before Appellate Defense, zero criminal appeals.
18 Several civil appeals.

19 Q And during your time at Appellate Defense, can you
20 estimate how many criminal appeals you've handled?

21 A Hundreds.

22 Q And do you handle criminal appeals to include death
23 penalty cases?

24 A I do.

25 Q Okay. David, we've talked a little bit about your

1 experience. I now want to ask you about your involvement in
2 this case.

3 How was it that you became involved in the appeal for
4 Kadrin Singleton?

5 A The chief appellate defender assigns all the cases, and
6 he assigned me Mr. Singleton's case.

7 Q And do you have a normal practice for identifying
8 issues and starting to prepare your brief that you do in all
9 of your cases or that you would of done in Mr. Singleton's
10 case?

11 A I do. I read the transcript, and I make note of any
12 objections or motions by either side that might be a
13 fruitful issue on appeal, and then just use process of
14 elimination to try to select the best issues for the appeal.

15 Q Okay. And some of the issues or objections that were
16 made that were not raised, I'm just gonna run through a
17 couple of those with you. There was a Biggers hearing in
18 this case.

19 Do you have a specific recollection as to why you did
20 not raise that issue on appeal?

21 A Because of the self-defense and his testimony.

22 Q And then, on Page 203, there was objections entered to
23 the use of the cell phone evidence that was procured through
24 a search warrant.

25 Is there a specific reason why you did not raise that

1 issue on appeal?

2 A I'm -- I strongly considered raising that issue. I
3 think, ultimately, the reason I did not is because they,
4 they ended up getting two search warrants for it. I think
5 the way the case law has felt -- fallen out since then is
6 that they do need a warrant. They do need -- there is an
7 expectation of privacy now under historical cell site
8 location data, but the, the police did obtain warrants for
9 them. And then you would also have to overcome inevitable
10 discovery, and good faith exceptions as well. So,
11 ultimately, I decided not to raise it because of the
12 warrants.

13 Q And the final issue I want to ask you about, as far as
14 issues that weren't raised that aren't really connected to
15 any other issues, is there was an objection to the 9-1-1
16 call in this case on Page 299.

17 Do you have any specific recollection as to why that
18 issue was not briefed?

19 A I don't, I don't have a specific recollection as to why
20 I did not brief that one. I do have it in my notes. I have
21 it crossed out, but I did not write a reason down as to why
22 I did not raise it. So, I don't have a specific memory
23 about it.

24 Q But based upon your notes, is it fair to say you did
25 consider that issue?

1 It's not an issue you just overlooked?

2 A That's correct.

3 Q Okay. I want to now go through the issues you did
4 raise.

5 Do you have your brief there in front of you?

6 A I do.

7 Q Okay. And the judge has a copy of your brief.

8 So, Your Honor, I'm just going to summarize instead of
9 reading the entire issue into the record.

10 But, essentially, the first issue deals with the Batson
11 motion that the State made in this case.

12 Is that correct?

13 A That was the second issue I raised.

14 Q I apologize. I got those out of order. Let's first
15 talk about the Batson issue you raised.

16 Can you explain kind of what the aim was in that issue
17 on appeal?

18 A Well, Batson issues are, are terrific issues to raise
19 on appeal because one of the things we have to consider is
20 the standard review in proving prejudice, and harmless
21 error, and, and those are things that you don't really have
22 to, to prove when you raise a Batson. If, if you pass the
23 test for Batson, then it's a reversal. So, that factor
24 strongly went into my consideration to raise it.

25 Q And on Pages 13 through 15 of your brief, you discuss

1 how even -- it started essentially with all 14 strikes being
2 challenged, and then it was narrowed down to a set of
3 jurors, Juror 333 and 321, and then again 321 and 154 who
4 were similarly situated to 210. Today, one of the trial
5 counsels has responded that she didn't have a specific,
6 specific reason written down for striking Juror 210.

7 Did you find, in this case, that there were not very
8 good reasons given, and would it have benefited the appeal
9 if there were further reasons given?

10 And if that was a bit too lengthy, please tell me.

11 A No, I understand your question.

12 Juror 210 is the question you're asking me about?

13 Q Yes, the retired Army colonel.

14 A My memory was that the trial counsel gave good reasons
15 as to why she made the strikes. I have in my brief that
16 they struck Juror 210 because he was a retired colonel.
17 They equated military ties as being pro-police, and the
18 State said it was pretextual because they didn't strike
19 someone who was a, a Department of Navy employee. I think,
20 in my brief, that's on Page 16. I discuss that. That's
21 Juror 321. I thought trial counsel did distinguish her
22 because she was a civilian employee of the Navy and, and not
23 a retired colonel, which is a very big deal in the military.

24 Q And, in here, would you agree that the makeup of the
25 jury, you go through and kind of break down the makeup of

1 the two juries, that there was definitely a racial
2 difference from Jury 1 to Jury 2 in this case?

3 A There was.

4 Q And did that aid your argument on appeal?

5 A It did. Another good point I thought trial counsel
6 made was that there were -- the, the overall juror pool was
7 overwhelmingly white, which is a, a mathematical explanation
8 as to why his strikes were mostly of white people. That
9 would make sense.

10 Q And, David, I'm gonna step away just for a moment to
11 grab some exhibits to make sure I reference them correctly.

12 (Pause.)

13 Q David, today we have marked, as Applicant's No. 1, a
14 Motion for Reconsideration of Sentence that has two juror
15 affidavits attached. We have also marked the State's
16 response to that motion as Applicant's No. 2. I have marked
17 Judge Harrington's Order dated February, 2015 on those
18 motions as Applicant's No. 3. And then the Notice of
19 Appeal, which, which references those motions, as
20 Applicant's No. 4.

21 Do you agree that I provided you those documents prior
22 to today to review?

23 A You did, and I had those documents in my file already.

24 Q So, just to be clear, you had those documents when you
25 were assessing the issues for appeal in this case?

1 A I did.

2 Q And what was your assessment as whether or not -- well,
3 obviously, you didn't raise it.

4 So, why did you not raise this Motion for
5 Reconsideration of Sentence regarding the jurors on appeal
6 in this case?

7 A The standard of review is terrible on that issue on
8 appeal. Discretion is left pretty much, on appeal, wholly
9 with the trial judge, and overcoming that standard review is
10 next to impossible on appeal.

11 Q And when -- you're saying that you're referencing the
12 standard of review for a Motion to Reconsider where they're
13 simply asking for the judge to reconsider the sentence.

14 Is that correct?

15 A That's correct. Unless you have a real legal error
16 such as you sentence a defendant outside of the maximum. As
17 I say the maximum provided is 30, you gave a defendant 50,
18 unless you have something like that, I just -- there's
19 virtually no way to get a trial judge reversed based on
20 refusing to reconsider a sentence.

21 Q Now, would the issue have differed if the attorneys had
22 filed a motion for a new trial in this case?

23 A Well, that depends on, on what the issue is. If you're
24 talking the juror affidavits, I, I, you know, I can't
25 honestly answer that. I don't know the answer to that.

1 Q Okay. But you weren't able to evaluate the strength of
2 an issue asking for a new trial or to have the verdict set
3 aside because that issue was not raised via the Motion to
4 Reconsider.

5 Is that correct?

6 A Not in the context as it was in the reconsideration of
7 sentence, correct.

8 Q And did you have anything in the record before you
9 where the -- it had been preserved or trial counsel had
10 argued that the verdict in this case was fundamentally
11 unfair due to pressures and -- and/or coercion on the jury?

12 A I don't recall having that, but, you know, if it's, if
13 it's in the record and I missed it, it's there.

14 Q And, as an appellate defender, do you have the
15 opportunity to further investigate juror issues or raise any
16 matters that have not been put in the record?

17 A I've never done that. That would be something
18 extraordinary. I can't rule out that there's a way we could
19 do it, but that seems very, very unlikely to me.

20 Q Now I want to turn your attention to some additional
21 issues that were not raised that have been discussed at
22 length here today.

23 Specifically, I want to ask you if you considered the
24 arguments that appear in the record, primarily in the
25 posttrial hearing, regarding a charge on imperfect

1 self-defense?

2 A I did consider those, but did not raise that issue.

3 Q Can you please explain why you reached the decision to
4 not raise that issue?

5 A I ultimately concluded it was not preserved because
6 they did not request a voluntary manslaughter instruction.
7 The judge, at the posttrial hearing, I think makes clear
8 that she -- I think Judge Harrington was somewhat surprised
9 by the notion that they wanted her to charge voluntary
10 manslaughter.

11 Q And specifically, on, on Page 982, in your record -- in
12 the record that you compiled for appeal, there the defense
13 attorney has given an argument and gone back and forth
14 regarding this request for imperfect self-defense.

15 Now, what I want to first ask you is, arguing that at a
16 posttrial motion, does that properly preserve the issue as
17 far as you are concerned in raising it under a --
18 preservation requirements?

19 A Well, you can't raise something for the first time in a
20 posttrial motion and have it be preserved. There are
21 multiple points where they, they discuss the imperfect
22 self-defense before the jury is charged. But if it's raised
23 for the first time in the posttrial motion, it's not
24 preserved.

25 Q And do you also have to enter a contemporaneous

1 objection and/or exception at the time the jury is charged?

2 A You do.

3 Q Okay. And did you see that in this case?

4 A I think that the judge says she's gonna put the, the --
5 allow the trial counsel to put imperfect self-defense
6 argument on the record before the verdict, but my memory of
7 it, in reviewing it, preparation for today, is that they
8 never told the judge that they wanted a voluntary
9 manslaughter instruction. She makes that point quite clear
10 at the posttrial motions. And when she asked them if they
11 had any objections to the verdict form, there is no
12 objection made. If you want the jury to find voluntary
13 manslaughter, it's gonna need to be on that verdict form.

14 Q And specifically on Page 980, she interrupts Mr. Cooper
15 and says is it a correct statement that you never requested
16 a voluntary manslaughter charge as a lesser included. He
17 says yes, Your Honor, Honor, under the heat of passion.

18 But it's your position they would of had to make a
19 request, just like Judge Harrington keeps questioning, did I
20 miss something on the verdict form, that would of needed to
21 be requested for you to raise that on appeal?

22 A Yes, I, I think one of the things that appellate judges
23 always ask, especially at, at an oral argument, is what did
24 you want the trial judge to do, and what do you want us to
25 do, didn't you need to tell the trial judge what you wanted

1 her to do. I think, in this case, he needed to tell the
2 trial judge specifically he wanted a, a possible verdict
3 option of voluntary manslaughter.

4 Q And this may seem obvious, and I apologize, but what is
5 discussed, either via emails or an off record discussion in
6 the courtroom, or a chambers meeting regarding charges, is
7 that something you can raise on appeal?

8 A Off-the-record discussions?

9 Q Correct.

10 A No, I can only raise things that are in the record.

11 Q So, you are limited by the record.

12 Is that correct?

13 A That's correct.

14 Q Okay. And today we have introduced an email that
15 contained a Defendant's Exhibit 7, which is different than
16 the defendant's -- sorry. A Defendant's Request to Charge
17 7, which was different in its language than the Defendant's
18 Request to Charge Number 7, which was a Court's Exhibit 1
19 that is included in the record on appeal that you compiled.

20 Do you know if you had the emailed version or the
21 separate version of, of Request to Charge Number 7, which
22 was the imperfect self-defense charge?

23 A I did have that in my file. I made a request for the
24 Court's Exhibits from the Clerk of Court. What she sent me
25 was the defendant's request to charge labeled Court's

1 Exhibit 7, and that has seven jury charges in it. Hold on a
2 second. And the, the last of that is with all -- without
3 fault means that if the defendant's conduct was the type
4 which was reasonably calculated to and did provoke a deadly
5 assault, the defendant would be at fault in bringing on the
6 difficulty, and would not be entitled to an acquittal on
7 self-defense. Then, in my file right after, I have
8 Defendant's Requested Jury Charge Number 7, which is on a
9 whole separate caption, which says where a defendant had
10 actual but unreasonable fear of immanent peril or bodily
11 harm from the victim, and he believed he had to use deadly
12 force to prevent it, you should find him guilty of voluntary
13 manslaughter instead of murder.

14 Q So, my question is this.

15 When you evaluated whether or not the imperfect
16 self-defense was properly preserved for appellate review,
17 you did have the independent one page sheet, Requested
18 Charge Number 7, that was imperfect self-defense?

19 A I did.

20 THE COURT: And just so the record is clear, that is
21 Applicant's No. 8 on the record?

22 MS. BLANCHETTE: Yes -- Your Honor, I'll verify that.

23 THE COURT: Yeah, make sure that we got it on the
24 record that we're talking about the same thing.

25 MS. BLANCHETTE: Just one moment.

1 THE COURT: I'm pretty sure that's it.

2 Okay. All right. Go ahead.

3 Q And, David, to be clear -- oh, Your Honor, I'm seeing
4 you now instead of David or I'm seeing your law clerk.

5 THE COURT: Oh, I'm sorry.

6 Q David, have we lost you?

7 THE COURT: That is terrifying.

8 A I, I did not understand any of that discussion.

9 Q I apologize. For a minute our technology failed us,
10 and I saw the Judge's bench instead of you.

11 David, just to be clear for the record, you haven't
12 been with us today, but we have marked Plaintiff's or
13 Applicant's Exhibit 8 as an email that was sent to Judge
14 Harrington that contained Defendant's Requested Jury Charge
15 Number 7 that reads where a defendant had an actual but
16 unreasonable fear of immanent peril or bodily harm from the
17 victim, and he believed that he had to use deadly force to
18 prevent it, you should find him guilty of voluntary
19 manslaughter instead of murder.

20 So, you had Applicant's No. 8 in your possession.

21 Is that correct?

22 A I have that charge. If there's an email -- who is the
23 email from?

24 Q The email is from Megan Ehrlich, and it is sent to
25 Judge Harrington's law clerk. It appears there's also one

1 just in this chain from Michael Cooper to Judge Harrington.
2 So, you don't have the email itself, but you have the one
3 page document.

4 A Let me finish scrolling through my folder on that. I
5 don't have that email, but I do have that jury charge
6 request.

7 Q David, I'm gonna ask to beg the Court's indulgence for
8 one moment, and I'll be right back.

9 okay?

10 A Okay.

11 MS. BLANCHETTE: Your Honor, can I beg the Court's
12 indulgence?

13 THE COURT: It is granted.

14 (Pause.)

15 Q And, David, and I apologize for calling you David if
16 you prefer Mr. Alexander.

17 A That's fine.

18 Q Just to be clear, you are stating that it's your
19 position, to have a viable issue for appeal, trial counsel
20 would of needed to request a voluntary manslaughter charge
21 to even raise the imperfect self-defense argument?

22 A That was the reason why I did not raise it.

23 Could you make an argument that it was preserved?

24 Perhaps, but I don't think it would be successful.

25 Especially given the, the verdict form, the lack of

1 objection to the verdict form.

2 Q And when you have two other issues that you fully
3 briefed, are you gonna raise an issue that you determine is
4 not properly preserved?

5 A Probably not. I like to present a, a very focused
6 appeal when I have the chance to do so.

7 Q Mr. Alexander, I have no further questions.

8 THE COURT: Mr. Limbaugh, any questions of this
9 witness?

10 MR. LIMBAUGH: Briefly, Your Honor.

11 THE COURT: Okay.

12 CROSS-EXAMINATION

13 BY MR. LIMBAUGH:

14 Q Good afternoon, Mr. Alexander.

15 A Hello, Mr. Limbaugh.

16 Q I'm gonna be fairly brief with you.

17 So, you raised the Batson issue on -- in your brief, is
18 that correct, on appeal?

19 A That's correct.

20 Q Okay. And, in your opinion, and I believe you
21 testified earlier, did trial counsel give sufficient reasons
22 for the strikes?

23 A I thought they had given very good reasons for the
24 strikes.

25 Q Okay. And it was your opinion that the Trial Court

1 erred in its analysis of -- for the Batson challenge.

2 Is that correct?

3 A It was my opinion, but, unfortunately, the Court of
4 Appeals did not agree with me.

5 Q Yes, sir.

6 So, again, your, your testimony is that the imperfect
7 self-defense was not preserved because no voluntary
8 manslaughter charge was requested?

9 A Well, I think whether it's preserved or not is really a
10 legal question for the Court, and for Judge Dickson, but the
11 reason why I didn't raise it was because I viewed it as
12 unpreserved.

13 Q Okay. And, to your knowledge, is imperfect
14 self-defense recognized in South Carolina at the moment?

15 A It is not. It is not. Our Courts have been hostile to
16 it in the context of involuntary manslaughter.

17 Q Okay. So, in your experience and opinion, did you
18 raise the best issues that you had, and the issues you had
19 that were preserved?

20 A I did.

21 MR. LIMBAUGH: Okay. That's all I have for this
22 witness, Your Honor.

23 THE COURT: Anything on redirect?

24 MS. BLANCHETTE: No, Your Honor.

25 THE COURT: Thank you, Mr. Alexander.

1 THE WITNESS: Thank you, Your Honor.
2 THE COURT: You're free.
3 THE WITNESS: Much appreciated.
4 THE COURT: Yes, sir.
5 MR. LIMBAUGH: May I remove the witness, Your Honor?
6 THE COURT: You may remove him.
7 MR. LIMBAUGH: Thank you, Mr. Alexander.
8 MS. BLANCHETTE: Shouldn't it be noted---
9 THE WITNESS: Thank you.
10 MS. BLANCHETTE: ---he provided no background music?
11 THE COURT: I know. I know. I hope you warned him of
12 that.
13 Okay. All right. We're gonna take a break for lunch.
14 MS. BLANCHETTE: Your Honor, at this -- the next step
15 would be that I intended to call the two jurors. I assume
16 there may be some argument before that would happen. So, if
17 the Court would like to break, that's -- those are our next
18 witnesses to call.
19 THE COURT: Okay. We -- I have got to do a bond
20 hearing that the Chief Justice requested that I do at two
21 o'clock. And so y'all will not need to be back here until
22 2:30.
23 Okay. Enjoy your lunch.
24 MR. LIMBAUGH: Thank you, Your Honor.
25 (WHEREUPON, Court was in recess for the lunch hour.)

1 THE COURT: If I can see the parties up here?

2 (WHEREUPON, a bench conference was held at this time.)

3 THE COURT: All right. Ms. Blanchette, are you ready
4 to call your next witness?

5 MS. BLANCHETTE: I am, Your Honor.

6 The Applicant would call Deanne Vane. She is Juror
7 Number 1 or 368 from the trial in this case.

8 MR. LIMBAUGH: And, Your Honor, I'm not sure when you'd
9 like me to do this, but the State's gonna object to any
10 juror testimony in this case.

11 THE COURT: Okay. And just, out, out of curiosity, put
12 the basis for that so on the record -- if you want to do
13 it---

14 MR. LIMBAUGH: Yes, Your Honor.

15 THE COURT: ---in case you want to do it -- you say I,
16 I -- yeah, usually I don't have jurors in, in here. So, so,
17 I, I didn't know. How do you -- do you want her to step
18 out?

19 Are you gonna make some comments about her testimony or
20 how do you want to do that?

21 MR. LIMBAUGH: It's all -- it's a legal argument, Your
22 Honor.

23 THE COURT: Okay. All right.

24 MS. BLANCHETTE: May she rejoin back here though so she
25 doesn't have to sit on the stand during the argument or

1 would you like her on the stand during the argument?

2 THE COURT: You can go ahead and sit down if you want
3 to, and we'll get you to stand up when you, when you're
4 sworn in.

5 THE WITNESS: Thank you.

6 THE COURT: Okay. All right. Go ahead, Mr. Limbaugh.

7 MR. LIMBAUGH: Your Honor, just the State, in its
8 search, and Ms. Blanchette has been searching, but she'll
9 note some cases, I believe, in her argument. However, I was
10 not able to find a case that allows juror testimony based on
11 any of the grounds in the evidence that has been laid before
12 you so far. The Supreme Court and the South Carolina Courts
13 have been fairly strict on when juror testimony is allowed
14 in Court proceedings, and it should not be used to impeach
15 the verdict.

16 Of course, when juror testimony can be used is when
17 there's some allegation or some evidence of an external
18 force that is being put on the jury as in them getting some
19 form of outside information or outside contact during
20 deliberations, things of that nature. As of yet, I've heard
21 nothing that would indicate that to be the case. So, that
22 would not allow it to come in for that reason.

23 So, the other basis to look at would be using it for
24 internal deliberations and internal misconduct, and the two
25 grounds that I have found, one is the more broad, there's

1 some accusation that it would -- the fundamental fairness of
2 the trial is at question, and then the second, more
3 specific, I believe, I believe it's Franklin that states
4 that there's some allegation that there was racial prejudice
5 at play within the internal jury deliberations.

6 As of yet, the State has seen no evidence or any
7 accusations that the -- there was any racial prejudice that
8 came into the jury deliberations, and there wasn't any in
9 the affidavits that have been brought in as Court Exhibits,
10 Your Honor.

11 So, the State would just contend that the Applicant has
12 shown no reason as to put forth the juror testimony, and, as
13 the Court states in Zeigler, but the integrity of the jury
14 system is jeopardized anytime a Court finds it necessary to
15 intrude into the internal deliberation process. Such an
16 inquiry should not be made lightly. So, the State would
17 just rest on that, Your Honor.

18 THE COURT: All right. Thank you, Mr. Limbaugh.

19 And, Ms. Blanchette, anything in reply?

20 MS. BLANCHETTE: I do, Your Honor, and it's not a brief
21 reply. I have four---

22 THE COURT: All right.

23 MS. BLANCHETTE: ---four cases, and some argument I'd
24 like to offer at this time.

25 THE COURT: Okay.

1 MS. BLANCHETTE: First of all, since this Court is just
2 joining us today, I'd like to show how the issue developed
3 in this case.

4 There was a discovery hearing back on January 24th,
5 2019, in front of Judge Maddox regarding a request for
6 discovery, which included requesting permission, because I
7 wanted the Court and both opposing counsel to be aware that
8 we intended to contact the jurors, and be as forthright
9 about this issue from its inception as we could be. As a
10 result of that, there was an Order authorizing discovery
11 issued on February 20th of 2019 by Judge Maddox, Maddox
12 allowing me permission or counsel or investigators to
13 contact the jurors that had provided juror questionnaires
14 and/or the affidavits in this case.

15 If it'd be helpful to Your Honor, I have a copy of that
16 Order issued by Judge Maddox.

17 THE COURT: Yeah, I'd, I'd like to see it.

18 Prior to coming up, Ms. Blanchette, did that order
19 allow you to contact all of the jurors or just the two that
20 wrote---

21 MS. BLANCHETTE: Your Honor, as the basis, I didn't
22 argue that in front of Judge Maddox the best that I recall
23 as we didn't get a discovery motion transcript. I
24 referenced the two affidavits that were attached---

25 THE COURT: Yeah.

1 MS. BLANCHETTE: ---to the motion --

2 THE COURT: Okay.

3 MS. BLANCHETTE: -- as well as the questionnaire
4 provided by Juror Number 368 because those were the
5 documents I had at the time.

6 THE COURT: Okay.

7 MS. BLANCHETTE: And so we were specific as to the two
8 jurors we intend to call today.

9 THE COURT: Okay. But, but, as, as to your ability to
10 contact the jurors under this order, did it allow you to
11 contact all of the jurors or just those two?

12 MS. BLANCHETTE: I believe it was broader than that,
13 Your Honor. But, when I was making the request, I just
14 wanted to be candid with Your Honor---

15 THE COURT: Okay.

16 MS. BLANCHETTE: ---I was discussing the two jurors we
17 intend to call today.

18 THE COURT: Okay.

19 MS. BLANCHETTE: I did not indicate to Judge Maddox our
20 scope, plan to go beyond that.

21 THE COURT: All right. Okay. All right. Go ahead.

22 MS. BLANCHETTE: Your Honor, thereafter, we filed the
23 amendment in November of 2019 indicating that we would be
24 alleging that counsel was ineffective for the handling of
25 matters related to the jury for the following:

1 A beginning the Batson, B, the failure to properly
2 utilize information given by jurors posttrial and move for a
3 new trial.

4 I would just like to note, because procedurally this
5 does appear in some of the other cases where jurors are
6 called, at no time has the State filed any type of written
7 motion or moved to exclude this testimony. The State has
8 been informed kind of of the process, and I've been trying
9 to keep the State, through Mr. Limbaugh, informed of our
10 intention to call these jurors. I'm, in no way, saying he
11 does not have a right to object at this time. I'm just
12 trying to give the judge the complete background on this
13 issue and how it's developed.

14 Now, Your Honor, in the State's actual response on the
15 Motion to Reconsider, there's a number of cases cited where
16 they are imposing, at that time in the General Sessions
17 case, the use of the juror affidavits as they were submitted
18 by the defense in the original trial in this case. One of
19 those cases is Schumpert that I'll be discussing today, and,
20 in that case, I submit that it indicates there's likely a
21 different standard for admission of juror affidavits or
22 testimony if the allegation is a PCR case.

23 All the cases that I could find in precedent, which I
24 will be handing up, deal with a direct appeal analysis, and
25 the use of it in the General Sessions context. Here we are

1 actually alleging that counsel was ineffective for their
2 failure to utilize the information they had on the
3 questionnaire that has already been admitted into evidence
4 without objection.

5 So, I would first submit that it's relevant because we
6 have made this allegation, and for the Court to determine if
7 counsel was ineffective for the way they handled the
8 information they got from the jurors posttrial, which not
9 only do we have exhibits, but counsel has testified about
10 the information they received, I believe that the testimony
11 should be heard because we're not looking at trying to
12 combat and impeach the verdict. We are obsessing whether or
13 not counsel was ineffective based upon the allegation that
14 we have made.

15 I would also submit that these juror affidavits, and
16 information from these jurors, are already part of our
17 record here today, and the State didn't object to those.
18 They were also part of the record in the General Sessions
19 case.

20 In the State's responsive motion in the General
21 Sessions case, they moved to strike, but, in Judge
22 Harrington's Order, which is part of the record, she did not
23 strike the affidavits as improper. So, I'd further submit
24 hearing from these jurors today is appropriate and proper
25 and called for under the law and the precedent, despite Rule

1 606(b), because it is already part of the record in this
2 case, and it was not struck by the trial judge when
3 submitted to her.

4 Now, as the State has already indicated, Rule 606(b)
5 essentially excludes testimony unless it deals with external
6 influences, but I submit there are several exceptions to
7 that exclusion, and those are what I want to go over with
8 Your Honor today.

9 If appropriate, at this time, I'd like to hand up the
10 cases I'll be referencing?

11 THE COURT: Sure.

12 MS. BLANCHETTE: And I have a copy for the State as
13 well.

14 THE COURT: I expect Mr. Limbaugh may tell you he
15 appreciates it.

16 MS. BLANCHETTE: I know he's very busy this week. So
17 --.

18 THE COURT: Did you already highlight them all?

19 MS. BLANCHETTE: I could give you my copy.

20 THE COURT: No, no. I want to make it easy for you.

21 MS. BLANCHETTE: And, Your Honor, just as an overview,
22 I would say that these cases support a finding that it is
23 necessary -- it's -- juror testimony is allowed when it's
24 necessary to address fundamental fairness and ensure due
25 process. I think, part of that, the State has already

1 conceded.

2 In these cases, they go through some guideposts because
3 it's that beautiful gray language of what is fundamental
4 fairness. So, they do give us some guideposts such as
5 racial and gender discrimination, coercion, pressure,
6 prejudice. And specifically the cases say, if there's
7 claims of any type of prejudice, it must be investigated.
8 And, as simply, what we're saying, by way of this PCR, is
9 that counsel had information regarding these jurors. They
10 even submitted a watered down version of it to the Court,
11 but they didn't properly investigate it or present it via
12 motion for new trial.

13 Now, if Your Honor would allow, I would just like to
14 hit the highlights on the cases that I submitted, and then I
15 can wrap up my argument?

16 THE COURT: Okay.

17 MS. BLANCHETTE: Specifically, Your Honor, in
18 Schumpert, which was decided in 2008, that is cited too in
19 the State's response in the General Sessions motion, there
20 the evidence in the case dealt with witnesses and
21 codefendants identifying the actual perpetrator, the
22 defendant, and he was convicted of armed robbery. They
23 sought to admit a juror affidavit, not juror testimony at a
24 PCR.

25 Looking at Rule 606, the Court found there was a

1 distinction between evidence of external influences on jury
2 deliberations, and comments of -- regarding jury
3 deliberations. And there was an exception when you could
4 get into internal versus external, and that's when there was
5 testimony involving internal misconduct can be received when
6 necessary to ensure fundamental fairness. And, essentially,
7 what they said is you must demonstrate prejudice from juror
8 misconduct to get a new trial, and I submit to you the only
9 way to do that is you have to hear from the jurors to
10 determine if what they have to offer rises to the level of
11 prejudice in this case.

12 Again, this is the case where they note that there
13 hasn't been particular guideposts put in place as to what is
14 fundamental fairness. Some examples are it must raise a
15 concern of, of a substantial injustice. If a juror claims
16 there's -- the prejudice played a role in determining the
17 guilt or the innocence, then an investigation is required,
18 and it -- in this case -- in the Schumpert case, they said
19 this is just an issue of buyer's remorse that doesn't
20 deserve any credence.

21 I think we've shown today these jurors contacted the
22 trial attorneys instantaneously. So, this is not something
23 that's come up later, and is just a mere issue of buyer's
24 remorse at a later date.

25 In Schumpert, the Court indicates that the true

1 question that should have been presented to them is whether
2 the affidavits suggest the conduct of the jury rendered his
3 trial fundamentally unfair, and I believe that we have asked
4 questions about that today. We have had testimony on that
5 today, and that is what we plan to submit to Your Honor, but
6 we can only establish that by offering these juror's
7 testimony. And this is the case where they go on to note
8 that it's not argued as a PCR standard, but there may be a
9 different standard for admission in PCR cases for juror
10 testimony because Schumpert is analyzed under a direct
11 appeal analysis.

12 Now, the second case is Hunter. It's from 1995. It
13 deals with a motion for new trial, which was not filed in
14 this case. There the Court found that juror testimony
15 involving internal matters is competent only when necessary
16 to ensure due process, and one example is fundamental
17 fairness. There they say that racial prejudice involves
18 principles of fundamental fairness, and there they found
19 that that standard was not met because there was simply
20 testimony of a juror saying a racial slur that was later
21 explained, and there were no evidence of threats, coercion,
22 or pressure.

23 Your Honor, the next case is Pittman and do not worry.
24 I do not intend to go through this entire Pittman case as
25 it's very lengthy. I just like to direct the Court's

1 attention to Issue Number 3 that deals---

2 THE COURT: And that is page --?

3 MS. BLANCHETTE: Your Honor, we may have different
4 copies. Mine is on Pages---

5 THE COURT: And is that -- no, that's okay. I can find
6 it.

7 MS. BLANCHETTE: ---8 and 9.

8 THE COURT: It was the unanimous verdict?

9 MS. BLANCHETTE: Yes, Your Honor.

10 THE COURT: Okay. All right.

11 MS. BLANCHETTE: In Pittman, it was argued that the
12 verdict was not unanimous due to a conversation post-verdict
13 I believe at bar by jury -- jurors that revealed some issues
14 with the case. Both jurors testified that they felt
15 pressured to vote guilty by other jurors, and they had a
16 misunderstanding regarding unanimous verdicts.

17 So, in that case, they were allowed to testify. So,
18 when the State said they couldn't find any cases where it
19 was allowed, it was allowed in Pittman.

20 The Court there found no, that the testimony did not
21 implicate fundamental fairness, and because there was no
22 testimony to show coercive behavior in that case.

23 And then, finally, Your Honor, I provided a copy of
24 winkler, which is also a lengthy 2016 decision. I'd like to
25 direct your attention to Justice Hearn's concurrence. In

1 winkler, two jurors were allowed to testify over the State's
2 objection, but they found -- but what Justice Hearn
3 addresses that is, at best, the testimony revealed remorse
4 and a misunderstanding of the law. It would have been
5 proper to allow the testimony on issues of racial prejudice
6 and intimidation, and then she goes into the further
7 exceptions regarding fundamental fairness and coercion.

8 And so, what I would submit to Your Honor is I do not
9 intend to put these jurors up to ask them tell me about when
10 you reported for jury duty, and take me through your entire
11 week. I will self-limit as to these exceptions when I
12 question them. I don't want to induce the Court to commit
13 an error of law. I believe there is dicta in these cases
14 that, if the Court were to rely upon juror testimony in a
15 prejudice analysis of another issue that doesn't fall into
16 these categories, that could be reversible. So, I will try
17 to stay within the scope of these exceptions when I do
18 question these jurors.

19 Your Honor, if I could beg the Court's indulgence just
20 so that my co-counsel just to see if I missed anything
21 before I conclude my argument?

22 THE COURT: Okay.

23 (Pause.)

24 MS. BLANCHETTE: And, Your Honor, he says I should
25 finish my argument. So, I shall, unless you have any

1 questions.

2 THE COURT: No, I don't have any questions. I'm gonna
3 allow Mr. Limbaugh to make any comments in reply that he
4 would like.

5 MR. LIMBAUGH: Just extraordinarily briefly, Your
6 Honor.

7 It just appears that, at least from some of the cases
8 and from Pittman, there was at least some indication or some
9 form of evidence or knowledge that the Court was aware of
10 prior to allowing the testimony of the juror. Like, in
11 Pittman, there was the bar conversation that there was
12 internal pressure from other jurors.

13 At least from this affidavit, and from the email that I
14 have, there's no indication that other jurors were the ones
15 pressuring her. She does note that my verdict was a weak
16 compromise based on the pressure in the deliberation room.
17 The fact that I was the last juror standing who felt he was
18 not guilty, and ultimately to be continued, that doesn't say
19 that she made her decision based on other juror's forcing
20 her to do so.

21 I mean, being in a deliberation room for a murder trial
22 is a pretty pressured -- pressure intensive thing I would
23 assume, and then, in the email, it just says my vote
24 changed. It literally came down to a matter of seconds, and
25 interpretation of the law that was given to us. That does

1 not indicate at all that there was pressure from other
2 jurors to make her to make the decision.

3 So, the State would just say that there's been nothing
4 presented that would bring this testimony in or give the
5 indication that the exceptions have been met in this case,
6 Your Honor.

7 THE COURT: All right. Thank you, Mr. Limbaugh, and,
8 Mr. Limbaugh, I note your objection on the record.
9 Fortunately, we're not in front of a jury. So, I can, I can
10 consider it -- I, I mean re, reconsider how I'm going to
11 take this testimony, and will let you go into it under the
12 self-limiting inaction which she told me about.

13 Okay. That does not mean that, after I hear from both
14 jurors, that I'm going to consider it. It will not depend
15 on just what they say.

16 Okay. I mean pressure in the jury room is where it's
17 suppose to be.

18 MR. LIMBAUGH: Okay.

19 MS. BLANCHETTE: Yes, Your Honor, and I would say that
20 the reason that we don't have a fully developed record is
21 because counsel was ineffective for failing to investigate,
22 and fully develop that record, which is what we intend to
23 ask about today.

24 THE COURT: Okay. Well, you get to ask.

25 MS. BLANCHETTE: Thank you, Your Honor.

1 THE COURT: Okay. Thank you.

2 MR. LIMBAUGH: Thank you.

3 THE COURT: I'll note your objection, your objection,
4 sir, Mr. Limbaugh.

5 MR. LIMBAUGH: Thank you, Your Honor.

6 THE COURT: Thank you, sir.

7 All right. All right. And now we can swear in -- yes,
8 ma'am.

9 THE CLERK: Ma'am, if you could just raise your
10 right-hand, and place your left on the Bible for me please.
11 Thank you.

12 DEANNE VANE, being first duly
13 sworn, testified as follows:

14 THE CLERK: Thank you. Please have a seat, and, for
15 the record, please state your name spelling your last name.

16 THE WITNESS: My name is Deanne Reed Vane. V-A-N-E.

17 DIRECT EXAMINATION

18 BY MS. BLANCHETTE:

19 Q And, Ms. Vane, just to get this out of the way, are you
20 also known as Juror Number 368 from the criminal trial of
21 Kadrin Singleton in 2015?

22 A Yes, I am.

23 Q Okay. Ms. Vane, you don't have to be specific, but can
24 you tell us what your current occupation or area of
25 occupation is?

1 A I'm a marketing director for a retirement community in
2 Mt. Pleasant.

3 Q Okay. And we've already indicated you recall being a
4 juror at the trial of Mr. Singleton in January, 2015.

5 Is that correct?

6 A Yes.

7 Q And you recall that your jury service concluded on
8 January 9th of 2015?

9 A Yes.

10 Q When that jury service concluded, did you reach out to
11 trial counsel in this case?

12 A I did.

13 Q And how did you go about doing that?

14 A A phone call.

15 Q Okay. And I will provide you with what's already been
16 marked in this case as Applicant's No. 1, which is a Motion
17 for Reconsideration, and attached to that are two exhibits,
18 and Exhibit 1 is identified as the affidavit in mitigation
19 of Juror 368, Deanne Reed Vane.

20 A Uh-huh. (Affirmative).

21 Q Are you familiar with that affidavit?

22 A Yes, I am.

23 Q Okay. And by way of that affidavit, some information
24 is given regarding your contact with trial counsel.

25 Is that correct?

1 A I'm not sure I understand. Just --.

2 Q Correct. I'll restate that question.

3 In that affidavit, and let me just turn to it here
4 really quickly, it says that you reached out to, number one,
5 reached out by email to Michael Cooper on Friday,
6 January 9th, 2015, regarding the Kadrin Singleton trial
7 and verdict.

8 A Yes.

9 Q Do you agree with that?

10 A Yes.

11 Q And just a quick summary, do you -- have you reviewed
12 this and you stand by everything stated in this affidavit?

13 A Yes.

14 Q Okay. So, you reached out to him on Friday,
15 January 9th, 2015.

16 Why did you do that?

17 A Well, because I felt justice had been neglected. I
18 really did and I felt really very badly about it.

19 Q Okay. And so you felt that an injustice had occurred
20 in this case, and you needed to reach out to counsel
21 immediately?

22 A I had a pit in my stomach on -- the minute I walked out
23 the door.

24 Q Okay. And then it states in the affidavit that, on
25 Tuesday, January 13th, 2015, I met with Michael Cooper to

1 speak to him about the jury's deliberation process and/or
2 verdict.

3 Do you recall meeting with Mr. Cooper?

4 A Yes, I do.

5 Q And did you get to explain to him, in detail, the
6 concerns you had with the outcome in this case?

7 A Yes, I feel I did.

8 Q Okay. And those are the things that you're prepared to
9 testify about today --

10 A Yes.

11 Q -- is that correct?

12 Okay. Now, we have also admitted into evidence today a
13 questionnaire that you provided that's been marked as
14 Applicant's No. 6.

15 Are you familiar with this --

16 A Yes.

17 Q -- questionnaire?

18 A Yes, I am.

19 Q And do you know about approximately -- you emailed him
20 on the 9th for the affidavit. You met with him on the
21 13th.

22 Do you recall approximately when you did the affidavit?
23 Was that after the meeting or before?

24 A After we met I believe if I may -- I may be recalling
25 incorrectly, but I recall I took a couple of days, I think,

1 to do that.

2 Q And you filled out those responses for him and provided
3 that to him.

4 Then was there any further follow-up?

5 A Not really that I recall.

6 Q Okay. Did you, at some point though, sign the
7 affidavit that's included -- that we've been discussing as
8 well?

9 A Well, right. He rewrote this and then I, I guess I did
10 sign it, right.

11 Q All right. Did you ever discuss with him why a lot of
12 the information contained in your affidavit -- in your
13 questionnaire, and the responses that you gave, and the
14 details you gave, why those weren't in the affidavit?

15 A I didn't really. I'm -- I -- I'm not a lawyer and I
16 don't know how these things are suppose to go.

17 Q I want to ask you about Number 9. We've talked about
18 it a little bit today on your questionnaire where you
19 indicated that there was pressure essentially that caused
20 you to change your verdict. I just want to give you the
21 opportunity to explain that in further detail if you'd like.

22 A After I went in -- after we were split, and then we
23 went back in, it -- the pressure in that room, in that room
24 was quite, quite high, and I think it was a, a -- it was a
25 mix of, of, of me thinking well, maybe -- cause after that

1 Allen charge came, I, I felt like I maybe had been sort of
2 admonished that maybe I hadn't -- maybe I wasn't looking at
3 everything correctly. Maybe I wasn't -- maybe I needed to
4 go back and, and do what she said, you know, which I don't
5 know. It -- this was a very difficult time. I didn't know
6 that I had -- we -- I had an option, really, for any --
7 anything else other than what happened.

8 Q All right.

9 A As far as somebody was killed, that's it, or he's not
10 guilty.

11 Q And was that pressure you were putting on yourself or
12 was that pressure you were feeling from the other jurors?

13 A It was definitely pressure from the rest of it. I
14 think everybody in the, in the -- the rest of the jury, with
15 one exception, was really ready to go. I heard several
16 different things said in there that, that made me just feel
17 really quite angry about how they were approaching it. Like
18 is -- it just didn't matter almost.

19 But it was -- and, and I -- the -- I don't know exactly
20 what the final moment was that made me say okay, I'll, I'll
21 go as the last one in to say that he, he was guilty. I feel
22 very badly about it. I don't know if it was a psycho --
23 psychological kind of intimidation. I don't know what. It
24 was, it was a long, long day, a very difficult thing to talk
25 about, something that we did not really have an option other

1 than what the murder call was.

2 And so I, I basically just -- I may have just caved to
3 their, to their coercion. I, I don't want to use the word
4 coercion necessarily, but I want to say that they, they were
5 really just coming at me about it, and I don't think I, I
6 just -- I didn't do very well in that call.

7 Q So, you -- you've kind of taken us through the Allen
8 charge, and then, you know, the, the pressure, the
9 intimidation, you've even used that word, that you felt
10 after that.

11 Did you feel that prior to that as well?

12 A Somewhat, but it was -- there were more -- you know, we
13 had more discussion about it. At the end, I, I think that
14 the people -- I'm trying to say the best way to put this.

15 In, in those, in those jury -- in those deliberation
16 rooms, the, the psychological pressure is very, very real,
17 and, you know, I'm not gonna -- I, I feel like I was given
18 all kinds of excuses as to why I should join them in their,
19 in their thought, and trying to remember all of the
20 different parts of the case at the time, and all the things
21 that we had been discussing, and this was four years ago,
22 and I apologize for being kind of -- well, blurry about it.
23 But there was a lot of psychological pressure in there, and
24 I didn't -- I, I -- the second I walked out, I felt awful
25 about it, and I know that I didn't -- that I still affirmed

1 it later. I, I realize that.

2 Q Is that---

3 A And that was a---

4 Q Is that the reason why you immediately tried to reach
5 out to Mr. Cooper?

6 A Yeah.

7 Q So, it's not something that you came up with days later
8 or years later, buyer's remorse? Unfortunately some of our
9 cases say it.

10 It was instantaneously you knew that that was not your
11 verdict?

12 A I was upset because I thought that there was -- this
13 was not the right -- this was not justice to me. This is --
14 this was not the way that this should of happened, and, and
15 I, I think I just didn't have the guts to, to stand up. And
16 when I, when I was also then, you know, at the same time
17 being sort of a coach and talk -- you know, not coach. I
18 was -- there were, there were 11 -- 10 other people trying
19 to convince me I suppose that---

20 Q And---

21 A ---that this was the -- that I was wrong.

22 MR. LIMBAUGH: I'm not sure how best to
23 contemporaneously, contemporaneously note my objections, but
24 in---

25 THE COURT: Well, your objection's running through all

1 of her testimony.

2 MR. LIMBAUGH: I just wanted to---

3 THE COURT: And, and so, just for the record, in hopes
4 that we are making a contemporaneous objection, it's during
5 her testimony and, Mr. Limbaugh, rather than having to do
6 this through the whole time, I'm saying on the record that I
7 believe it's contemporaneous, and that your objection to all
8 of her testimony continues, and it includes when you
9 cross-examine her. You're not giving up your objection by
10 cross-examining her.

11 Okay?

12 MR. LIMBAUGH: Thank you, Your Honor.

13 THE COURT: Now -- and we'll see what happens.

14 Okay?

15 MR. LIMBAUGH: Yes, sir.

16 THE COURT: Thank you, sir.

17 MR. LIMBAUGH: Thank you.

18 THE COURT: Yes, sir, appreciate it.

19 Excuse me. Go ahead, Ms. Blanchette.

20 Q Ms. Vane, when you came back out, what happens is we
21 called polling the jury --

22 A Uh-huh. (Affirmative).

23 Q -- where each of you get asked if that is your verdict.
24 Did you understand, at that point, that you had any
25 option but to say yes, that is my verdict?

1 A I was looking at murder or, or not. I, I, I would say
2 that I wished I had a lot more information about what, what
3 my options were at that point.

4 Q And since the State's objection is continuing, I'm
5 going to ask you this question with the understanding that
6 they would object, but when you say it was murder or not, in
7 your affidavit though you go into self-defense.

8 Did you---

9 A I thought---

10 Q ---think that he met the elements of self-defense?

11 A Yes, I did.

12 Q Okay. But you weren't able to convince the other
13 jurors of that?

14 A No, and---

15 Q And---

16 A ---so then I was told to really reexamine what I was
17 thinking, and what I was saying, and then that combined with
18 the heightened discussion in the, in the deliberation room,
19 it caused me to, to give into it.

20 Q And as the judge has noted, a jury room is a high
21 pressure situation that we ask a lot of civilians that
22 aren't lawyers to go in a room and do.

23 A Uh-huh. (Affirmative).

24 Q But, to, to you, did this just exceed normal pressure?
25 Were there things said or specific -- any specific

1 examples you can give us that made you feel like you didn't
2 have an option but to go with the majority in this case?

3 A Well, ultimately, I said I, I thought that -- because
4 that's what a lot of the people in there were saying. At
5 least two specific ones I believe were saying that because
6 the marijuana was taken at the end of it, at the end of the
7 incident, that perhaps that, that did not -- that made --
8 meant that he didn't meet certain qualifications, I guess,
9 that are -- or, or whatever the word is for that. But I
10 do -- I, I, I regretted that. I, I just -- I didn't, I
11 didn't say the right thing. I didn't -- I, I let somebody
12 get to me on that. And so --.

13 Q You said there was one juror that stayed with you.
14 Who was that juror?

15 A Kendra.

16 Q Okay.

17 A For the longest time, yeah.

18 Q And is she here in the courtroom today?

19 A Uh-huh. (Affirmative).

20 Q Okay. And did you have communication with Kendra once
21 the jury was or the verdict was handed down?

22 A Yes, immediately.

23 Q Okay. And what was the nature of that communication?

24 A Well, we both felt the same way, that we thought it had
25 been -- especially when we heard the sentence. I -- it, it

1 just sent me reeling. I felt like that should not have
2 turned out that way, and she felt the same way I believe. I
3 can't speak for her, put words in her mouth, but we did have
4 immediate and constant communication for, for the, the
5 foreseeable -- you know, the hours and days after that.

6 Q And if I understand what you're saying today and I
7 understand what's in your affidavit, and please correct me
8 if I'm wrong --

9 A Uh-huh. (Affirmative).

10 Q -- you felt that he met the elements of self-defense.
11 You felt he was not guilty of murder. And you tried to
12 convey that to the other jurors. But there was this
13 situation regarding, regarding the marijuana that was
14 taken---

15 A Uh-huh. (Affirmative).

16 Q ---from the home---

17 A Uh-huh. (Affirmative).

18 Q ---where this occurred.

19 If you were given the opportunity for a lesser charge,
20 such as a manslaughter charge, do you think that's something
21 that you would of held fast on?

22 A I think we would of been out there in about a half an
23 hour.

24 Q why?

25 A Cause I believe it was that -- I mean somebody died.

1 We know that. That's all. I just think it would -- I think
2 it -- that's what -- I think that would of been a very, a
3 very reasonable thing to say, to assume, in that situation.
4 The -- it was -- there's no way that wasn't self-defense.
5 He would be -- it'd be suicide to do anything else. I mean
6 it's just, it's just a crazy -- the whole thing is just a
7 very -- really crazy incident. I think it's a drug deal
8 gone bad.

9 Q And do you feel like your position was being heard by
10 the other members of the jury, but for Ms. Drayton?

11 A I, I didn't really. I heard some things that I was
12 kind of appalled at even. I -- you know, that, that really
13 doesn't matter. They're both -- you know, they're both
14 criminals. Who cares. You know, I heard that in there. I
15 heard, I heard people just say they were tired of talking
16 about it. In retrospect, I -- you know, I -- a lot of it I,
17 I should of stood up, and I just didn't. But I do believe
18 that some -- that part of it was with -- based on what the
19 other people were saying to me, and, after that long day,
20 that's what, that's what I came to. So --.

21 Q And my reading of the case law is that -- and, to be
22 honest, we're asking Judge Dickson to do a huge thing --

23 A I understand.

24 Q -- to overturn a murder conviction --

25 A I understand.

1 Q -- with a life sentence. And so I'm not trying to
2 badger you in any way.

3 A No, I know.

4 Q And I appreciate you being here, but are there any
5 other specific instances of things that you thought rose to
6 the level of rendering what happened in that jury room
7 unfair?

8 Any other things that were said?

9 THE COURT: Ms. Blanchette, this is gonna be the last
10 time you're permitted to ask that.

11 MS. BLANCHETTE: Okay.

12 THE COURT: You've asked it a number of times already.
13 She's answered it.

14 MS. BLANCHETTE: Okay.

15 THE COURT: But I will, I will let this be like the
16 last cleansing breath.

17 okay?

18 MS. BLANCHETTE: I appreciate that, Your Honor.

19 THE COURT: Okay. All right. Anything else you want
20 to add to that?

21 THE WITNESS: No, I guess not.

22 MS. BLANCHETTE: Your Honor, one, one other point of
23 clarification.

24 I had attempted to ask you about when you were polled,
25 and I, I don't think you followed the question.

1 A Uh-huh. (Affirmative).

2 Q When you-all came back out and you get asked one-by-one
3 is this your verdict, did you understand, at that point,
4 that you had an option to say no, that's not my verdict, I
5 would like to change my verdict?

6 A Yes, I did.

7 Q You did understand you could do that?

8 A Uh-huh. (Affirmative).

9 Q What is the reason you did not do that?

10 A I'm one -- I -- I'm really not sure. I mean I think I,
11 I was in a place that -- I think I was in a place that, that
12 somehow maybe I had misinterpreted something or -- and I, I
13 just kind of went with the -- went with that, that flow.
14 So, I, I don't know why I didn't. Maybe I'm just not very
15 brave.

16 Q Ms. Vane, you did the affidavit that we've already
17 admitted. You filled out the questionnaire.

18 If you would of been asked to do a further affidavit
19 back in 2015 or testify as you've done today, would you have
20 been willing to do that---

21 A Sure.

22 Q ---in front of Judge Harrington or any other setting
23 back in 2015?

24 A Absolutely.

25 Q So, this isn't just something you've decided to do all

Deanne Vane - Direct examination
by Ms. Blanchette

1 these years later?

2 A No, no. Not at all.

3 MS. BLANCHETTE: All right. Your Honor, if I could beg
4 the Court's indulgence one moment?

5 THE COURT: Okay.

6 (Pause.)

7 Q Ms. Vane, I have no further questions.

8 THE COURT: All right. Mr. Limbaugh, anything on
9 cross-examination, and, and since you're objecting to her
10 whole testimony, I've noted for the record, I'm not -- it's
11 not affecting your objection.

12 MR. LIMBAUGH: Thank you, Your Honor.

13 May it please the Court?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. LIMBAUGH:

17 Q Good afternoon.

18 A Hi.

19 Q I, I do want to start by saying none of my questioning
20 is -- are trying to attack you personally.

21 A Okay.

22 Q That's, that's -- I promise.

23 But you did testify that you understood, when you were
24 sworn, and you came back into that courtroom, and the judge
25 asked you if that was your verdict, you could of told the

1 Court that no, you didn't believe he was guilty?

2 Is that correct?

3 A Yeah.

4 Q Okay. And the reason you gave for not doing that just
5 now I believe was you just weren't particularly brave in
6 that moment.

7 Is that correct?

8 A Ultimately, combined with the discussion that went on
9 in the room in there.

10 Q Uh-huh. (Affirmative).

11 And I very well may, may be mistaken, but I understood
12 your testimony earlier, when you were discussing what was
13 the conversations in the jury room, that people were just
14 expressing their thoughts about the facts of the case.

15 Is that correct?

16 A It's very hard to remember exactly what everybody said
17 in there, but I did hear some things like I, like I've
18 already stated that I've heard some things that I thought
19 were not really appropriate to a, to a jury discussion --

20 Q Okay.

21 A -- or a deliberation room.

22 Q But those are not directed at you, were they?

23 A At me like -- I, I don't think so. I mean they were,
24 they were trying to convince me. I was the last person
25 there. I -- you know, they were -- I, I thought it was a

1 very rude thing for someone to say that really what did it
2 matter, you know. That's not, that's not justice. You get
3 justice no matter who you are.

4 Q Correct.

5 And you could of given that justice by just going with
6 what you thought the verdict could be, and were asked by the
7 Court what your verdict was.

8 A Uh-huh. (Affirmative).

9 Q But you didn't do that, did you?

10 A No, I didn't.

11 Q Okay. And you haven't testified to anything that any
12 other jurors were putting any specific, extraordinary,
13 inappropriate pressure on you to change your mind or to make
14 that decision?

15 A I think that they didn't respect the idea of what they
16 were trying -- they were there to do. So --.

17 Q Was that a yes or a no to my question?

18 A Ask the question again.

19 Q You haven't said at all that any other juror put some
20 extraordinary pressure on you specifically---

21 A Well, I was the only one in there that they were
22 ever -- that everyone was trying to convince except for
23 Kendra.

24 MR. LIMBAUGH: I'll move on, Your Honor.

25 THE COURT: Okay.

1 A Uh-huh. (Affirmative).

2 Q That's all I have. Thank you.

3 THE COURT: Anything on redirect?

4 MS. BLANCHETTE: No, Your Honor.

5 THE COURT: Thank you, ma'am.

6 THE WITNESS: Thanks.

7 THE COURT: You may step down. Thank you, ma'am.

8 Appreciate your time.

9 THE WITNESS: Thank you.

10 You want me to take these or --?

11 MS. BLANCHETTE: I can take those back for you.

12 And, Your Honor, she's here under my subpoena. I'd ask
13 that she be released.

14 THE COURT: Any objection to that, Mr. Limbaugh?

15 MR. LIMBAUGH: My apologies. I was---

16 THE COURT: Oh, she, she can be released from the
17 subpoena?

18 MR. LIMBAUGH: Yes, Your Honor. Thank you.

19 THE COURT: Thank you, ma'am. You are released from
20 the subpoena.

21 MS. BLANCHETTE: Your Honor, I would call Kendra
22 Drayton to the stand.

23 THE COURT: Okay.

24 THE CLERK: Good afternoon. If you can raise your
25 right-hand. Place your left on the Bible please. Thank

1 you.

2 KENDRA DRAYTON, being first duly
3 sworn, testified as follows:

4 THE CLERK: You may be seated, and, for the record,
5 please state your name spelling your last name.

6 THE WITNESS: Hi. My name is Kendra Aileen Drayton,
7 and Drayton is D-R-A-Y-T-O-N.

8 DIRECT EXAMINATION

9 BY MS. BLANCHETTE:

10 Q And, Ms. Drayton, are you also known as Juror 108 from
11 the trial of Kadrin Singleton in 2015 in this courthouse
12 here in Charleston?

13 A Yes.

14 Q Okay. And if you could take us back to January, 2015.
15 How old were you at that time?

16 A I was 24 going on 25.

17 Q Okay. And did you have an occupation at that time?

18 A Yeah, I was working as a medical scribe at an
19 endocrinologist office in Summerville.

20 Q Okay. And at the time of this trial, had you actually
21 been called for prior jury service?

22 A I had, and I was very nervous because I missed my first
23 Court hearing, and thought that I was going to jail, and
24 they reassigned me to that one. So, I was already like
25 super anxious going into my jury duty.

1 THE COURT: For the record, I wasn't doing that case,
2 was I?

3 THE WITNESS: No, you weren't.

4 THE COURT: Okay. I just wanted to get that on the
5 record.

6 Go ahead.

7 MS. BLANCHETTE: Yes, Your Honor. I was not trying to
8 imply that.

9 THE COURT: No. Well, that's all right.

10 Q And, Ms. Drayton, in this case, there were two juries
11 selected.

12 Do you recall being on the first jury?

13 A Yes.

14 Q And then you were also placed on the second jury
15 obviously since you're here today?

16 A Yes.

17 Q Okay. And do you recall the racial makeup of that
18 first jury being different than the second jury that you
19 ultimately were on?

20 A Yes.

21 Q Okay. And how was it different?

22 A The second selection was majority white. I was the
23 only black juror on that selection, and I, if I be -- if I
24 remember correctly, they were more African-American jurors
25 on the first selection. It was kind of -- it was more

1 split. It was more of an equal dis -- distribution of races
2 on the first selection as opposed to the second.

3 Q Okay. So, you were the lone black juror,
4 African-American, juror on the second jury?

5 A I was like the, the only black and the youngest juror
6 on the second selection.

7 Q And that was gonna be my second question to you.
8 Age wise, where did you fall in that second selection?

9 A I was the youngest person there.

10 Q Okay. And you're obviously also female.
11 Is that correct?

12 A Yes.

13 Q And the second jury had more males than females?

14 A Yes.

15 Q Okay. And just to state the obvious, Mr. Singleton is
16 also of the African-American race.

17 Is that correct?

18 A Yes.

19 Q Okay. And regarding that second jury, you indicated---
20 (WHEREUPON, a phone rings in the courtroom at this
21 time.)

22 MS. BLANCHETTE: You want me to keep going, Your Honor?

23 THE COURT: I'm looking forward to my new phone.
24 Go ahead.

25 MS. BLANCHETTE: Yes, Your Honor.

1 Ms. Drayton, you indicated, like we already said, you
2 were the lone black female on the second jury, and you also
3 said you were the youngest.

4 How did that affect you, being the youngest?

5 A Being that I was the youngest juror, I felt that my, my
6 input wasn't as valued as other opponent -- well, not other
7 opponents, but other jurors. Like I was looked at being
8 the, the young, naive one who doesn't really understand a
9 lot of what's going on. So, it's like if -- her vote is
10 like not as important as another jurors.

11 Q And that was actively conveyed to you from the other
12 jurors?

13 A Yes.

14 Q Okay. I want to ask you about an affidavit that you
15 completed that we have already marked.

16 THE COURT: While you're doing that, I just got to
17 read -- I mean just maybe on the record, renew Mr.
18 Limbaugh's objection to this witness and we got -- we have
19 not done it. So, thank you, sir.

20 MR. LIMBAUGH: Thank you, Your Honor.

21 MS. BLANCHETTE: All right. Thank you, Your Honor, for
22 making us a good record.

23 THE COURT: Yeah. Well, that's what I'm here for.

24 Q I'm gonna show you what's been marked as Applicant's
25 No. 1. It has two affidavits attached to it, and Exhibit

1 No. 2 is an affidavit of Kendra Drayton, Juror Number 108.

2 Are you familiar with that affidavit?

3 A Yes.

4 Q And have you reviewed it prior to today?

5 A Yes.

6 Q And do you stand by the information contained in that
7 affidavit?

8 A Yes, I do.

9 Q Okay. Now, by way of that affidavit that is signed on
10 January 20th, 2015, it says that you had reached out to
11 trial counsel.

12 Do you recall how you did that, how you reached out to
13 him?

14 A I had gotten his email address from Deanne.

15 Q Okay. And so you were in communication with Ms. Vane
16 before you were in communication with trial counsel?

17 A Yes.

18 Q Okay.

19 A I believe so.

20 Q And I'm gonna show you what's been marked as
21 Applicant's No. 5. It's an email chain from
22 January 13th of 2015, and give you a second to review
23 that.

24 A (Witness complies.)

25 Q And then I'll ask you do you recall that email?

1 A Yes, I recall this email.

2 Q Okay. And is that, in fact, an email that you sent to
3 Michael Cooper, the trial counsel in this case?

4 A Yes, it is.

5 Q And what was the point or the reason for sending that
6 email?

7 A Just after we came out, and they, you know, did the,
8 the verdict, it just -- it didn't sit right with me. Like
9 I, I felt sick to my stomach and like I remember going back
10 out, and sitting in the juror's area, and like I just held
11 my head down. Like I couldn't look at Kadrin because I knew
12 that I didn't feel that what was happening was right.

13 Q And can you explain what you mean by what was happening
14 was not right?

15 A That he was being -- like the verdict was that he was
16 guilty. Based on the information that was given to us, it
17 was either we vote guilty or not guilty, and from my point
18 of view, it's like it's -- I couldn't say that he wasn't
19 guilty. He did go there and, unfortunately, another guy
20 died, but my, my understanding or my feeling was that his
21 intentions of going there that day was not to commit a
22 murder or to not -- not to go there with the intentions of
23 robbing this guy. Something happened in the mean time, and
24 that individual lost his life.

25 Yes, I did feel that he was guilty of defending himself

1 cause I don't think that, if given the opportunity, he would
2 be able to get out of that house safely.

3 Q And you were trying to convey that to trial counsel
4 immediately after the verdict was handed down?

5 A Yeah.

6 Q Is that correct?

7 A I mean in my email I even said that, yes. I'm sorry.

8 Q And when you signed the affidavit, would you have been
9 willing to give even more information like you're giving
10 today and/or testify, if needed, back in 2015?

11 A Yeah, when I was given the affidavit, it was just, you
12 know, sign. It wasn't -- I wasn't being asked if there was
13 more that I wanted added or that I -- if I wanted to, you
14 know, explain more about anything.

15 Q So, you don't recall counsel asking you about being the
16 lone black female or about your age, and how that affected
17 you in that deliberation room?

18 A I don't recall that.

19 Q Okay. Do you recall counsel ever asking you if race,
20 or your age, or any type of coercion or pressure played a
21 role in you changing your verdict?

22 A I don't remember.

23 Q Okay. And you-all came back out after the verdict was
24 rendered back in the jury deliberation room. You sat back
25 in the jury box. I wasn't there --

1 A Uh-huh. (Affirmative).

2 Q -- so I'm just, you know, picturing it from the
3 transcript, and you're asked if that is still your verdict.

4 Did you know, at that point, that that you had the
5 option to say it was not?

6 A At that point I didn't know that I had that option.

7 I -- from what I understood, I thought that what my vote was
8 in the deliberation room is what they were asking that I
9 went with when they came out -- when we came back and they
10 asked us. I didn't know that I had the option of saying no,
11 I, I want to change my vote.

12 Q Do you remember being visibly upset in the courtroom?

13 A I do. I remember sitting there with my head down, and
14 not being -- like I, I couldn't look at him.

15 Q And if you would of known you had the option to change
16 your vote at that point, would you have changed it?

17 A Yes.

18 Q Did you ever discuss that with trial counsel
19 immediately after the case?

20 A I don't -- honestly, I don't remember.

21 Q Okay.

22 A I know I wasn't in contact with him a lot, but I don't
23 remember if that was a conversation that we had.

24 Q If he would of asked, would you have answered in the
25 way you have today?

1 A Yes.

2 Q Okay. Would you of been willing to sign an affidavit
3 and testify like you have today?

4 A Yes.

5 Q Okay. And I'm not sure if I asked you this when I
6 showed you your affidavit.

7 Do you stand by everything that you signed in that
8 affidavit there?

9 A Yes.

10 Q And Ms. Vane has already testified today. She
11 indicated that you two were the last two holdouts or the
12 last two that weren't going along with the rest of the jury.

13 Is that what you recall?

14 A Yes.

15 Q Okay. And if you can just explain briefly the reason
16 why you chose to no longer be the last two and to vote
17 guilty?

18 A I -- like I said earlier, like when they came and they
19 explained to us like it's either guilty or not guilty, based
20 on what was provided to me at that time, was like I can't
21 say he's not guilty of anything at all, and that's what that
22 not guilty verdict would be saying. So, during that
23 deliberation time, like you had people in there who, like
24 Ms. Vane, said like people were making comments like, you
25 know, why does it matter. Like you had one drug dealer

1 that's dead, and now you have another drug dealer who's
2 gonna be in jail. Like it, it doesn't matter or you had
3 people who were just being pushy because they said that, you
4 know, we've been doing this all week. Like I'm ready to go
5 home. And, at that time, it was like 4:00, 3:00, four
6 o'clock in the afternoon there on a Friday afternoon
7 downtown.

8 They're like I mean I don't want to be stuck in
9 traffic. I'm ready to go home. We've been at this all
10 week, and just -- I mean I guess not to say making it more
11 convenient for them to be like I just want to go home. I
12 don't want to deal with this anymore. Like let's just vote
13 and get it over with so that we all can leave.

14 Q Was that justice to you, the comments you were hearing?

15 A No, because it's like regardless of if this is a drug
16 dealer, and someone going to buy drugs, it's still a life.
17 Like taking that, that whole concept out of it, it's still a
18 situation where someone lost their life, and now you have
19 someone else's life in your hands, and you're, you're just
20 concerned about being stuck in traffic. You're, you're
21 willing to go home so that you're not stuck in traffic from
22 leaving downtown on a Friday afternoon.

23 Q Did you feel that, in that jury deliberation room, your
24 unique prospective as the lone young, female, black juror
25 was valued by the other jurors?

1 A No.

2 Q Do you want to explain that at all or have -- do -- you
3 already have?

4 A I mean I feel like, at certain points, like I tried to
5 explain to people like look at it from another point of
6 view. Like take into consideration -- put yourself in that
7 person's shoes, and they were just like, you know, the facts
8 are the facts. Like this happened, and this is a result.
9 So, it's like it -- I just felt like I, I -- my opinions
10 were being dismissed.

11 MS. BLANCHETTE: Your Honor, if I can beg the Court's
12 indulgence?

13 THE COURT: You may.

14 (Pause.)

15 MS. BLANCHETTE: Your Honor, I have no further
16 questions of this witness.

17 THE COURT: Okay. Before you ask any questions, Mr.
18 Limbaugh, Ms. Drayton, I, I want to go, to go back over one
19 of your answers. You said -- I believe you said that had
20 you known you could of changed your vote when you were
21 polled, you would of done that.

22 THE WITNESS: Uh-huh. (Affirmative).

23 THE COURT: Okay. So, you had just left the jury room
24 where you concede that you have allowed the pressure to get
25 to you.

1 THE WITNESS: Uh-huh. (Affirmative).

2 THE COURT: And you were standing out here in front of
3 everybody with all the other people that had put pressure on
4 you, and had you known -- you're telling me that, had you
5 known you could of changed your vote, and the judge said is
6 that still your vote, you would of said what?

7 THE WITNESS: I would of -- I feel like I would of
8 changed my vote at that time if I -- not to say that, you
9 know, to use my age as a crux, but I just feel like, at that
10 time, being 24-years old and already being nervous about
11 just even being there, a lot of the things that were going
12 on I didn't fully understand, and I feel like being --
13 knowing that I could of changed my verdict at that time when
14 they went through and asked each one of us, that was one of
15 the things that I just didn't understand at that time.

16 THE COURT: Okay. Thank you, ma'am.

17 THE WITNESS: You welcome.

18 THE COURT: All right. Mr. Limbaugh, you may question
19 her. Your exceptions still, and your objections to her
20 testimony, is still noted for the record.

21 MR. LIMBAUGH: Thank you, Your Honor.

22 Please the Court.

23 CROSS-EXAMINATION

24 BY MR. LIMBAUGH:

25 Q And just to, to piggyback on Judge Dickson's question

1 real quick, so what did you think is this still your verdict
2 meant?

3 why do you think they would ask you if it was still
4 your verdict if you had to answer the same thing that you
5 had before?

6 A Because we had just did that vote in the deliberation
7 room. So, from my point where I'm looking at it, is they're
8 asking me if that's what I, what I voted. Maybe during the
9 time of, you know, the, the emotions I had going on, maybe I
10 didn't hear him say is this still your vote. Maybe I wasn't
11 thinking clearly to say, you know, okay, he's asking me is
12 this still my vote so I have the option of changing.

13 Q Okay. Did I hear you earlier correctly that you didn't
14 think this was murder, is that correct, and you still don't?

15 Is that accurate?

16 A I believe that it wasn't his intention of going there
17 that night to rob and kill this guy.

18 Q Okay. And you were charged with following the law as
19 the judge gave it to you in that case.

20 Is that correct?

21 A Yes.

22 Q And your options were murder or not guilty?

23 A Uh-huh. (Affirmative).

24 Q And you didn't think it was murder?

25 A Uh-huh. (Affirmative).

1 Q So, what was the other option?

2 A The other option was not guilty, but that's just to,
3 to -- from how I look at it, it was saying not guilty was
4 that he was innocent of no wrongdoing.

5 Q And the Court told you to follow the law as he (sic)
6 gave it to you, correct?

7 A Uh-huh. (Affirmative).

8 Q And if you didn't think the law and evidence supported
9 him being charged with murder, the law, as the judge gave it
10 to you, meant that you should of stuck with your gut and
11 gone with not guilty.

12 Is that correct?

13 A Yes.

14 Q Okay. So, other than the normal -- I won't say normal.
15 My apologies. I've never been in that room. But the
16 pressures I expect to be in a normal jury room with people
17 who are tired at the end of the day, I understand it's a
18 very serious case and they should not do it, but were there
19 any other specific, extraordinary pressures people put on
20 you, in particular, to make you change your mind?

21 A I would say someone stating that it doesn't matter
22 because one's a drug dealer and the other one's dead, that
23 that's a pressure. You're basically saying that it's a
24 waste of time to be here, and me arguing that I don't feel
25 that this guy is guilty, you're telling me that it's

1 pointless. Like why are we even doing this. I felt that
2 that -- well, I feel that that's a, a big pressure to be
3 putting on someone when you have just a -- at that time, it
4 was probably two to three people who were still holding on
5 to the not guilty verdict, and then you have other people
6 who are just telling you that they want to get it over with,
7 and that they're ready to go home, yeah, I do feel like
8 that's extraordinary pressure to put on someone.

9 Q Okay. But isn't that them just stating that they were
10 solid in their beliefs as to the facts and the law of the
11 case, and you just as easily could have been on -- as strong
12 on your principle could you not of?

13 MS. BLANCHETTE: Your Honor, I object. He's -- she
14 doesn't have firsthand knowledge of what he's asking her.
15 He's asking what was in the other juror's minds.

16 THE COURT: Well, I'll note your objection, but I'm
17 gonna let him ask it.

18 okay?

19 Now, whether she feels comfortable in answering it,
20 I -- we'll find out.

21 okay. I'll note your objection.

22 Go ahead.

23 A Can you ask your question again?

24 Q Sure. I'll rephrase it.

25 Those other juror's statements were not directed

1 specifically at you as to what you're saying.

2 Could you not also have stood firm on your principles
3 and your beliefs with your original or what you now claim
4 you would of liked to have made your decision in this case?

5 A Well, it was directly -- directed directly towards me
6 because it was me and one other person who were still saying
7 or still saying that it was a not guilty verdict. It wasn't
8 being directed to the other people who were ready to -- who,
9 who had already made up in their mind that they were with
10 the guilty verdict.

11 Q Couldn't you---

12 A He, he couldn't of been making that statement towards
13 anyone else but the people who were saying that -- holding
14 on to the not guilty verdict.

15 Q But no one, you know, threatened you to say change your
16 mind, I want to go home, or anything of that nature, did
17 you -- did they?

18 A Well, I never made the comment that I was threatened.
19 I just felt that they were pressuring us to change our
20 judgment.

21 Q Okay. And you just as easily could of told the foreman
22 of the jury to send a note to the judge that says okay,
23 we're done in here. I've -- me and this other person have
24 made our decision. The rest of the jury has made theirs.
25 We're -- it's not unanimous.

1 A Well---

2 Q Everybody, everybody can go home.

3 A At that age, I didn't know that that was an option. I
4 thought that we had to make the decision before we were able
5 to leave.

6 Q And you had made yours, but then you decided to change
7 it under the normal pressure---

8 A The pressures---

9 Q ---of murder, jury room?

10 A I wouldn't say that they were normal pressures, but it
11 did change under the pressures of the other jury members.

12 Q As a 24 to 25-year old adult woman who has her own mind
13 and can make that up.

14 Is that correct?

15 A Yes, I was a 24 to 25-year old adult woman who could
16 make up her own mind.

17 MR. LIMBAUGH: That's all I have, Your Honor.

18 THE COURT: All right. Before you ask any questions,
19 Ms. Drayton --

20 THE WITNESS: Yes.

21 THE COURT: -- when you said that you thought you had
22 to make a decision, what was that the result of?

23 Why did you think you had to made a decision?

24 THE WITNESS: Well, we were just told that, you know,
25 we wouldn't be able to leave until a decision was made.

1 THE COURT: Ma'am?

2 THE WITNESS: We were just told that we weren't -- we
3 wouldn't be able to leave, like be dismissed that day, until
4 a decision was made.

5 THE COURT: Okay. And you're talking about when you
6 came back out and the judge talked to y'all about how to
7 make a decision?

8 THE WITNESS: Uh-huh. (Affirmative).

9 Yes, sir.

10 THE COURT: That's a yes?

11 THE WITNESS: Yes.

12 THE COURT: And that was the reason you thought you had
13 to make a decision of guilty or not guilty?

14 THE WITNESS: Yes.

15 THE COURT: Okay. All right. Thank you, ma'am.

16 Ms. Blanchette.

17 MS. BLANCHETTE: Just one question, Your Honor.

18 THE COURT: Certainly.

19 REDIRECT EXAMINATION

20 BY MS. BLANCHETTE:

21 Q At the time that you were in communication with Michael
22 Cooper right after the trial had concluded, would you have
23 possibly been able to provide even more examples or have a
24 better, vivid memory of the pressures and -- that happened
25 in that jury room?

1 A Yeah. If it was something that was discussed at that
2 time, and, you know, not trying to recall it four years
3 later.

4 Q And did he ever---

5 A I feel like---

6 Q Did he ever ask you?

7 A No, not that I recall.

8 MS. BLANCHETTE: Your Honor, I have no further
9 questions.

10 THE COURT: Anything on recross?

11 MR. LIMBAUGH: Nothing, Your Honor.

12 THE COURT: All right. You may step down. Thank you,
13 ma'am. Appreciate you coming.

14 THE WITNESS: Thank you.

15 MS. BLANCHETTE: Your Honor, Ms. Drayton's also here
16 under my subpoena. I'd ask that she be released.

17 THE COURT: Any objection?

18 MR. LIMBAUGH: No objection, Your Honor.

19 THE COURT: All right. You are excused from your
20 subpoena. Thank you for coming.

21 THE WITNESS: Thank you.

22 Did you want me to bring these papers out?

23 MS. BLANCHETTE: I'll, I'll grab them. Thank you.

24 Your Honor, we have one final witness, Mr. Kadrin
25 Singleton.

1 THE COURT: Okay. Mr. Singleton, Singleton I mean.

2 Excuse me.

3 MS. BLANCHETTE: Mr. Singleton.

4 THE COURT: I'm sorry.

5 MS. BLANCHETTE: No, I think I mumbled.

6 THE COURT: Huh?

7 MS. BLANCHETTE: I mumbled.

8 THE COURT: I should of been able to read lips.

9 THE CLERK: To the best of your ability, if you can put
10 your left-hand on the Bible, and raise your right-hand.

11 Thank you.

12 KADRIN SINGLETON, being first duly
13 sworn, testified as follows:

14 THE CLERK: Thank you. You may have a seat, and, for
15 the record, please state your name spelling your last name,
16 sir.

17 THE WITNESS: Kadrin Singleton. S-I-N-G-L-E-T-O-N.

18 THE COURT: Your witness.

19 DIRECT EXAMINATION

20 BY MS. BLANCHETTE:

21 Q Mr. Singleton, it's been a long day. Glad to finally
22 have you on the stand. We've been here all day discussing
23 the allegations that are a result of the PCR Application you
24 filed that's docketed at 2018-CP-10-1658.

25 Is that correct?

1 A Yes, ma'am.

2 Q And the allegations that we're going forward on today,
3 and we're asking Judge Dickson to consider, and that we've
4 been talking about all day are the allegations set forth in
5 an amendment that Jeremy and I filed on your behalf in
6 November of 2019 -- yes, 2019.

7 Is that correct?

8 A Correct.

9 Q I apologize. Sometimes this 2020 thing throws me off.
10 By way of the Application and here at your hearing
11 today, what is the relief that you're asking Judge Dickson
12 to grant you?

13 A To reverse and remand my sentence.

14 Q Okay. In effect, are you asking him for kind of this
15 weird language we use in PCR called a new trial?

16 A Yes, ma'am.

17 Q Okay.

18 A A new trial.

19 Q And I have met with you a number of times, and I've
20 explained to you that, by asking him to set aside your
21 current convictions, and allowing you the opportunity to
22 pursue new trial, if so needed, you're facing some risks
23 because essentially what happens is you're put back in a
24 position as if you've never been convicted or sentenced on
25 this charge, and you face the, the charge all over again

1 with guaranteed -- like last time.

2 Do you understand that?

3 A I do.

4 Q And understanding that, you still want to go forward in
5 requesting that relief today?

6 A I do.

7 Q Okay. Now, Mr. Singleton, you testified at the trial
8 in this case. We're not gonna go back over that. So, I'm
9 gonna be kind of brief in the issues that we discuss. I
10 first want to ask you about something that Mr. Cooper talked
11 about a little bit.

12 Did you originally have a different public defender in
13 your case?

14 A Yes, ma'am, I was assigned Andrew Grimes.

15 Q Okay. And did you meet with him and work on preparing
16 your case?

17 A I would say we never actually prepared a case, but we
18 met several times.

19 Q Okay. And as Mr. Cooper, I believe, was the one that
20 testified to, Mr. Grimes got in a car accident and lost his
21 life when he was actually going back and forth to the
22 detention center.

23 Is that correct?

24 A Yes, ma'am.

25 Q And do you recall that happening?

1 A Yes, ma'am.

2 Q Okay. And shortly after that happened, is that when
3 Mr. Cooper took over your case?

4 A Yes, ma'am.

5 Q And I believe, today, he couldn't say a specific number
6 of times that he met with you.

7 Do you remember exactly how long you had to prepare
8 with him and how much you met?

9 A I would say it was at least three to four times that we
10 met in person. When Grimes passed away, he came to see me
11 on video at, at county jail, and, after that, we met at
12 least three to four times.

13 Q And during those meetings, did you-all discuss what the
14 defense was that you were gonna pursue in your case?

15 A Yes, ma'am.

16 Q Okay. And he testified today it was always on a trial
17 track. You always wanted a trial on this case.

18 Is that correct?

19 A Correct.

20 Q Okay. So, there was no discussion of plea offers?

21 A No, ma'am.

22 Q Okay. But going back, what was the primary defense
23 that he conveyed to you that he was working on on your
24 behalf?

25 A Self-defense.

1 Q Okay. And as part of that, was he recommending that
2 you testify in this case?

3 A Yes, ma'am.

4 Q And did he meet with you to go over what your testimony
5 would be?

6 A Yes, ma'am.

7 Q And you did testify at length as I already indicated?

8 A Yes, ma'am.

9 Q And I have asked you, prior to today, to review your
10 testimony.

11 Do you stand by the testimony that you offered?

12 A I do.

13 Q Okay. And you repeatedly said, in that testimony,
14 specific -- one of the specific examples, Page 943, Line 10
15 that you and I've talked about, that you had no plan and no
16 intent that day for these, for these things to happen.

17 A I didn't.

18 Q Okay. Now, going back to this defense of self-defense,
19 did you also discuss this legal idea or argument of
20 imperfect self-defense?

21 A No, ma'am.

22 Q Okay. You don't remember him ever mentioning imperfect
23 self-defense?

24 A Yes, ma'am, I do.

25 Q Okay. And my question was a little wordy. So, you

1 might of been confused.

2 what did he tell you about imperfect self-defense?

3 A Specifics that I remember that it wasn't, it wasn't
4 ruled as a case law in this state, but it was in other
5 states.

6 Q Okay. Did he tell you that anybody else had been
7 successful with imperfect self-defense?

8 A No, ma'am.

9 Q Okay. Did he indicate that you would be the first one
10 if you were?

11 A Yes, ma'am.

12 Q Okay. But he did inform you that was a defense he was
13 gonna be pursuing on your behalf?

14 A Say that one more time.

15 Q He did inform you that imperfect self-defense was an
16 argument he was gonna be making on your behalf?

17 A Yes, ma'am.

18 Q Okay. And with that knowledge, you would of wanted him
19 to properly argue that and preserve that argument in your
20 case.

21 Is that correct?

22 A Of course.

23 Q Now, do you ever remember discussing with him the
24 option of asking for a lesser included offense and whether
25 or not he thought you qualified for that under the evidence

1 of the case?

2 A No, ma'am. No, ma'am, I don't recall.

3 Q Okay. Mr. Singleton, do you need some water?

4 A Yes.

5 Q I know throats get a little dry when you get up there.

6 A Yeah, it's a little dry.

7 MS. BLANCHETTE: Your Honor, do you mind if I get him
8 some water?

9 THE COURT: No. Go ahead.

10 Q There you go.

11 A Yes, ma'am. Thank you.

12 Q All right. We'll just kind of pick up where we left
13 off. You said you don't recall him ever discussing with you
14 lesser included charges such as voluntary or involuntary
15 manslaughter.

16 A No, ma'am.

17 Q Did you ever actively make a decision that you wanted
18 him to only pursue murder and not ask for a lesser included?

19 A No, ma'am.

20 Q Did he ever tell you there was a strategy in place to
21 not ask for a lesser included offense?

22 A No, ma'am.

23 Q Would you of been opposed to him asking for a lesser
24 included offense?

25 A Yes, ma'am.

1 Q Let me rephrase that.

2 If he would of discussed with you we can request
3 voluntary manslaughter, would you of wanted him to do that?

4 A Yes, ma'am.

5 Q Okay. Now I'm just gonna talk about some of the issues
6 that we have raised. We have raised issues regarding
7 Batson, which is the striking of the jury, and how your
8 original jury was set aside, and they had to restrike the
9 jury.

10 Would you of wanted your attorney to make all possible
11 arguments on your behalf regarding the makeup of the jury
12 and the striking of the jury?

13 A Yes, ma'am.

14 Q Okay. And were you relying upon your attorneys to
15 properly strike a jury and get you the most fair jury
16 possible?

17 A I was.

18 Q Okay. Today we've also discussed the making of
19 objections, how objections need to be made throughout the
20 course of the trial. One specific issue was with the
21 inferred malice instruction. I know you're not an attorney.
22 So, I'm not gonna ask you your opinion on it.

23 But would you of wanted your attorney to make the
24 necessary objection to either get the judge to give a
25 different charge or to preserve the issue?

1 A I would.

2 Q Okay. And also your attorney testified today that he
3 did not object to the Allen charge where the jury was split
4 6/6, and they came back out, and the judge gave them a
5 further instruction. You've heard the jurors testify about
6 that today.

7 would you of wanted your attorney to object to that
8 instruction being given?

9 A Most definitely.

10 Q And just, again, you're not an attorney, but would you
11 of wanted him to make all necessary objections, and preserve
12 all available issues for your appeal?

13 A Yes, ma'am.

14 Q Okay. Were you present when there was a posttrial
15 hearing held, it appears to be on Tuesday, January 12th,
16 after you-all had concluded?

17 A No, ma'am.

18 Q Okay. Did you ever waive your appearance at that
19 posttrial hearing?

20 A No, ma'am.

21 Q Now, based upon the documents that we've put in the
22 record today, and documents that you have seen prior to
23 today, and the testimony today, there were two jurors that
24 reached out to your attorney before he reappeared in front
25 of Judge Harrington to do posttrial motions on the 12th.

1 Did he notify you that jurors had reached out to him?

2 A Yes, ma'am.

3 Q When did he notify you?

4 A I'd say I -- January -- maybe like March, some time in
5 March or April once I was, once I was on the yard, on the
6 prison yard.

7 Q So, you knew about it after Judge Harrington had
8 already ruled on the Motion to Reconsider?

9 A Yes, ma'am.

10 Q Okay. But, again, you weren't at that hearing on the
11 12th, and, at that time, he'd already heard from the
12 jurors. So, he couldn't discuss it with you at that time.

13 A Right.

14 Q Did you even know there was a hearing on the
15 12th until after it was over?

16 A No, ma'am.

17 Q Would you of wanted, wanted to be present at that
18 hearing?

19 A Yes, ma'am.

20 Q Would you have wanted the information contained in the
21 juror questionnaire, in these emails, and the things that
22 we're hearing today that Mr. Cooper knew, would you of
23 wanted him to discuss those things with you prior to three
24 months later?

25 A Yes, ma'am.

1 Q Would you of wanted him to make every attempts to bring
2 the full picture, all the information to the Judge's
3 attention, and ask for a new trial?

4 A Yes, ma'am.

5 Q And are you alleging today that he was ineffective in
6 how he handled that information, and how it was presented to
7 the Court?

8 A I am.

9 MS. BLANCHETTE: If I can beg the Court's indulgence
10 one moment?

11 (Pause.)

12 Q Mr. Singleton, just want to jump over to the allegation
13 of ineffective assistance of appellate counsel.

14 Would you have wanted your appellate attorney to raise
15 all properly preserved and meritorious issues on your
16 behalf?

17 A Yes, ma'am, I would.

18 Q And, in this case, you actually attempted to file your
19 own pro se petition for rehearing.

20 Is that correct?

21 A Yes, ma'am.

22 Q And why did you do that?

23 A Because I felt that it wasn't raised in my best -- in,
24 in my best defense.

25 Q Okay. And that was ultimately denied.

1 Is that correct?

2 A Yes, ma'am.

3 Q Okay. Did you have any communication with your
4 appellate defender about the issues that were gonna be
5 raised and how they were gonna be raised?

6 A No, ma'am.

7 Q And just because of the unique P -- nature of PCR and
8 how the statute works, you're given one opportunity to
9 present all claims of ineffective assistance of counsel for
10 those to be considered timely. This is essentially your one
11 day in Court.

12 A Uh-huh. (Affirmative).

13 Q We've worked together on this for a couple years.
14 We've had multiple motion hearings and things of that
15 nature.

16 Mr. Singleton, just to protect your rights and
17 interests, I just want to ask you is there anything else
18 that we haven't addressed today that you'd like for the
19 Court to consider?

20 A Yes, ma'am. I feel like because of -- I was in the
21 county jail for 26 months, and I was scheduled a court date
22 I believe for September the -- September the 5th of 2014,
23 and Andrew Grimes end up passing away five days before that
24 day. And Mr. Cooper came to see me, per video, in the
25 county jail. Told me he was now assigned to my case, but we

1 never met in person to discuss any details about my case
2 until a week before Christmas, and my trial date was January
3 the 5th.

4 So, you know, I don't feel like it was fair for me to
5 be locked up for that amount of time and not really have
6 effective counsel in, in the, in the ample amount, amount of
7 time to be able to overlook my case, you know what I'm
8 saying, in-between not even a month to prepare for a trial.

9 Q And if I'm incorrect the record will stand for itself,
10 but today Mr. Cooper testified that he had a obligation
11 regarding a friend's wedding the Friday night of your trial
12 that he needed to be in Greenville for, and that an issue of
13 a continuance had been discussed.

14 Was that ever discussed with you?

15 A No, ma'am.

16 Q Would you of wanted him to pursue a continuance?

17 A Yes, ma'am.

18 Q And is that for the reasons that you just stated?

19 A Yes, ma'am.

20 MS. BLANCHETTE: Your Honor, if I could beg the Court's
21 indulgence one moment?

22 (Pause.)

23 MR. LIMBAUGH: Objection, Your Honor. I'm just gonna
24 object to that being an allegation. I mean it's -- the
25 application -- that was literally the first time that that's

1 been raised as an allegation as the last question to the
2 Applicant at the end of the case, Your Honor.

3 THE COURT: All right. I'm, I'm gonna note your
4 objection, and, and I'll decide how I'll deal with it.
5 Okay --

6 MR. LIMBAUGH: Thank you, Your Honor.

7 THE COURT: -- Mr. Limbaugh.

8 MS. BLANCHETTE: I was begging indulgence briefly, Your
9 Honor.

10 THE COURT: Yes, ma'am.

11 MS. BLANCHETTE: Okay.

12 (Pause.)

13 MS. BLANCHETTE: Your Honor, I have no further
14 questions of Mr. Singleton.

15 THE COURT: All right. Anything on cross-examination,
16 Mr. Limbaugh?

17 MR. LIMBAUGH: Nothing from the State, Your Honor.

18 THE COURT: All right. You may step down.

19 All right. Mr. Limbaugh, let me ask you a question
20 please, sir, if you don't mind.

21 MR. LIMBAUGH: Yes, Your Honor.

22 THE COURT: I'm, I'm looking over the sentencing of Mr.
23 Singleton, and I'm looking at Page 968, just to get
24 everybody's attention on this, and that would of been Page
25 35 I think of the hearing on January 9th, 2015.

1 MR. LIMBAUGH: Yes, sir, Your Honor.

2 THE COURT: I guess that's right. Must be -- anyways,
3 it's, it's the sentencing portion. I don't know how you --
4 you there on that?

5 MR. LIMBAUGH: Yes, sir, Your Honor.

6 THE COURT: Okay. I'm looking over some -- the only
7 previous conviction he had was an unlawful carrying from
8 2009?

9 That's all I see.

10 MR. LIMBAUGH: That's all I see mentioned at the
11 sentencing. I don't have -- sorry. My apologies, Your
12 Honor.

13 THE COURT: That's okay.

14 MR. LIMBAUGH: I don't have, offhand, what his prior
15 convictions might be.

16 MR. THOMPSON: Your Honor, unfortunately---

17 THE COURT: Mr. Thompson, you, you might know.

18 MR. THOMPSON: Yes, unfortunately, there are further
19 convictions. He's impeached with them as he's testifying.

20 THE COURT: Okay. I, I just wondered. So, I -- okay.
21 so, it just wasn't mentioned in the -- so, when he's
22 testifying, the cross-examination goes over this?

23 MR. THOMPSON: Yes.

24 THE COURT: Okay. You don't happen to know them off
25 the top of your head, do you, Mr. Thompson?

1 MR. THOMPSON: I believe he had a third degree burglary
2 and a, a strong armed robbery, and that's referred to on
3 Pages 736 and 737. They have a, they have a discussion
4 about what he can be impeached with.

5 THE COURT: Now, the, the strong armed robbery is a
6 violent and serious offense, right, or is it most serious?

7 MR. THOMPSON: It's serious. It's not most serious I
8 don't believe.

9 THE COURT: All right.

10 MR. THOMPSON: Armed robbery is serious -- is most
11 serious.

12 THE COURT: Right. And burglary is a---

13 MR. THOMPSON: Burglary third---

14 THE COURT: Burglary is, is deemed -- it may be
15 violent?

16 MR. THOMPSON: I don't even know. I know burglary
17 second is violent.

18 THE COURT: Okay.

19 MR. THOMPSON: There's a specific second violent.

20 THE COURT: So, the only strike he had against him was
21 the strong armed robbery?

22 MR. THOMPSON: Yes, if that's even a serious strike.
23 That would be the only one.

24 THE COURT: Well -- okay. And the murder counts as a
25 violent and most serious?

1 MR. THOMPSON: Yes, he did not have -- he did not have
2 three strikes nor a prior most serious.

3 THE COURT: Well, that's what I was trying to get --

4 MR. THOMPSON: Yes.

5 THE COURT: -- to make sure.

6 MR. THOMPSON: Yes.

7 THE COURT: But now had he been convicted of voluntary
8 manslaughter, that's violent and most serious also?

9 MR. THOMPSON: It, it would be violent and most
10 serious, but he did not have a prior most serious.

11 THE COURT: No, no. I see -- yeah, I agree.

12 MR. THOMPSON: Yes.

13 THE COURT: I agree.

14 MR. THOMPSON: That is correct.

15 THE COURT: It's just like murder.

16 MR. THOMPSON: Yes.

17 THE COURT: But he didn't have a prior violent and most
18 serious.

19 MR. THOMPSON: Right.

20 THE COURT: Okay. All right. That's all on that.

21 Ms. Blanchette.

22 MR. THOMPSON: Yes, Your Honor.

23 THE COURT: Okay. Oh, okay. I---

24 MS. BLANCHETTE: Since he was standing, I was differing
25 to him, Your Honor.

1 MR. THOMPSON: I forgot to --.

2 THE COURT: Okay. All right. Any witnesses on behalf
3 of the State?

4 MR. LIMBAUGH: No, Your Honor. The State rests.

5 THE COURT: Okay. All right. Now, did, as y'all can
6 imagine, I'm not ruling on this right now, and I was, I was
7 provided with detailed forms. See, we don't do this in
8 Orangeburg, but I'm gonna take it back with me to do.

9 All right. This -- the form order that I have, the
10 Application for Post-Conviction Relief is now under
11 advisement, and I go down to Number 6, and it says both
12 sides are directed to submit proposed orders to the Court,
13 and serve the orders on each other within, and it says blank
14 days.

15 Okay. Now, I'm gonna let y'all tell me how to fill in
16 that blank cause I know y'all have -- Mr. Limbaugh, I know
17 you go to the -- you -- you're -- got plenty to do, and I
18 know Ms. Blanchette only has one case every three years.
19 So, I'm gonna let y'all---

20 MS. BLANCHETTE: I wish. No, I'm just joking.

21 THE COURT: I'm gonna let y'all -- off-the-record, I'm
22 gonna let y'all talk about how much time y'all need, and
23 then, if y'all will come back to me, I will put in that
24 time.

25 Okay. And I don't know whether y'all want it after you

1 get a copy of the transcript or what. I -- you -- I'll let
2 y'all discuss that.

3 MS. BLANCHETTE: Okay.

4 THE COURT: Okay. Right now we'll take a short break.
5 (Pause.)

6 MS. BLANCHETTE: And, Your Honor, briefly, we did print
7 out a couple cases that we will probably cite to you in the
8 proposed order if you'd like those---

9 THE COURT: Oh, I---

10 MS. BLANCHETTE: ---to put in the file.

11 THE COURT: I, I want all the paper you printed for me
12 to have.

13 MS. BLANCHETTE: Okay. I thought you did. That's why
14 I printed --

15 THE COURT: You know I like that.

16 MS. BLANCHETTE: -- and I did not email.

17 THE COURT: Okay. And I believe---

18 MS. BLANCHETTE: So, I, I can hand those up. They may
19 be useful when you get the proposed orders.

20 THE COURT: Okay. And I believe, Mr. Thompson, you
21 indicated you wanted to make a motion to be relieved?

22 MR. THOMPSON: That is correct, Your Honor.

23 As I mentioned during the, during the break, I have
24 accepted a position at the Federal Public Defender's Office
25 to begin on February 3rd, and did want to make sure we got

1 this, this hearing done before I started. But I would
2 request to be relieved as counsel at this point. I've
3 discussed it with opposing counsel. I've discussed it with
4 Mr. Singleton as well as Ms. Blanchette. I believe
5 everybody is in agreement.

6 THE COURT: Everyone wants to get rid of you.

7 I'm sorry. Did I misunderstand that?

8 MR. THOMPSON: Is it -- everybody's agreement that I
9 should be relieved.

10 THE COURT: All right. Thank you, sir. I'll relieve
11 you. Thank you.

12 MR. THOMPSON: Thank you, Your Honor.

13 THE COURT: All right. We'll, we'll take about a 10
14 minute break. When we come back, and, by the time I get
15 back, Mr. Limbaugh, you can tell me the blank.

16 MR. LIMBAUGH: Yes, sir, Your Honor.

17 THE COURT: Okay. Thank you, sir.

18 MR. LIMBAUGH: Thank you.

19 (WHEREUPON, a short recess was taken at this time.)

20 THE COURT: Okay. Did, did y'all decide?

21 MR. LIMBAUGH: Yes, sir.

22 MS. BLANCHETTE: Yes, Your Honor. We are both gonna
23 order the transcript if the Court would allow. Then if
24 you'd like to set a time period for once the transcript's
25 received or do that at that time.

1 THE COURT: No, I -- if you want to -- how many days --
2 well, the way I was figuring it, how many days after you get
3 the transcript would y'all need to do the proposed orders?

4 MS. BLANCHETTE: Your Honor, based upon the Attorney
5 General's caseload, I would be willing to ask for 60 if the
6 Court finds that---

7 THE COURT: Does that work for y'all?

8 MR. LIMBAUGH: That would be fantastic, Your Honor.

9 THE COURT: Okay. So, within 60 days after you receive
10 the transcript?

11 MS. BLANCHETTE: Yes, Your Honor. And if I may?

12 THE COURT: You may.

13 MS. BLANCHETTE: The State obviously, in no order,
14 would likely deny every issue, in the Applicant's order, if
15 the Court has any guidance as to issues of interests before
16 the proposed order is written?

17 THE COURT: Well, what I would like, what I would like
18 to do is -- at some point, I would like for us to get
19 together and maybe just talk about a little while cause I
20 doubt if we'll ever be in the county. So, if we are, that
21 would be great, and I want to -- I, I -- but if we could
22 just talk about -- certain things I -- you would be perhaps
23 wasting your time on. You decide. But I'd rather, I'd
24 rather let's, let's just kind of talk it over on the phone
25 for a little while. If we happen to be close enough, I

1 wouldn't mind getting together and going over it
2 face-to-face, but we'll, we'll, we'll just see how our
3 schedules work out.

4 Okay?

5 MR. LIMBAUGH: Yes, Your Honor.

6 MS. BLANCHETTE: Very good, Your Honor.

7 THE COURT: Will that work?

8 Okay with you?

9 Would that work?

10 MR. LIMBAUGH: Yes, sir, Your Honor.

11 THE COURT: All right. Okay. Thank y'all.

12 MS. BLANCHETTE: Thank you, Your Honor.

13 MR. LIMBAUGH: Thank you, Judge.

14 THE COURT: Thank you.

15

16

17 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Charleston County, South Carolina, on the 21st day of January, 2020.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

April 24th, 2020



PAMELA E. GREEN, Court Reporter

FILED
STATE OF SOUTH CAROLINA JAN 20 2015 PINELANDS COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT

Case Nos:
Warrant Nos: 2012A1010202651
Charge(s): Murder
BY: *MA*

STATE OF SOUTH CAROLINA

vs.

KADRIN RAJAUN SINGLETON

Defendant

MOTION FOR RECONSIDERATION OF
SENTENCE

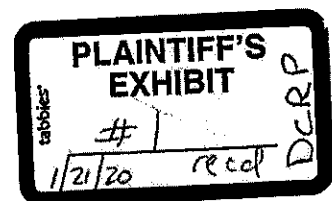
PLEASE TAKE NOTICE that the above-captioned defendant, by and through the undersigned attorney, moves this Honorable Court for a reconsideration of the sentence imposed upon the defendant by the Honorable Kristi Lea Harrington on January 9, 2015 in the above-styled matter.

On January 9, 2014 the Defendant was found guilty of the charge of Murder. The Defendant was sentenced to Life Without Parole. In fashioning the Life Sentence, the Court considered that the Defendant committed the Murder during the commission of a robbery.

On January 9, 2015, after the verdict was rendered, Defense Counsel was contacted by Juror #368, DeAnne Vane.

On January 12, 2015, the Court heard Defendant's Motion for a New Trial and Objections to Jury Charges. These motions were held on this date due to the late nature of the verdict on Friday, January 09, 2015.

On January 13, 2015, Defense Counsel met with Juror #368. During this meeting Juror #368, disclosed to Defense Counsel that the jury found Kadrin Singleton to be a

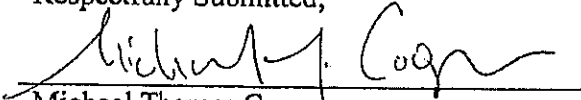


credible witness. The jury did not find that Mr. Singleton intended to commit a robbery or that he planned to commit a violent act. The jury's deliberations centered around whether or not Mr. Singleton was entitled to an acquittal based on Self-Defense. The jury found Mr. Singleton guilty of Murder.

On January 20, 2015, Defense Counsel met with Juror #108, who stated the same as above.

Pursuant to Rule 28, the Defendant requests this Honorable Court to reconsider the sentence of Life without Parole. In support of Defendant's motion, the Affidavits in Mitigation are submitted. The Defendant respectfully requests a hearing on this matter.

Respectfully Submitted,


Michael Thomas Cooper
Assistant Public Defender
Attorney for Defendant

Charleston, South Carolina

Dated: 1/20/15

FILED
2015 JAN 20 PM 12:46
CLERK OF COURT
BY 

Exhibit 1

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
2015 JAN 20 PM 12:49
) Warrant Nos: 2012A1010202651
) Charge(s): MURDER
CLERK OF COURT

STATE OF SOUTH CAROLINA

vs.

KADRIN RAJAUN SINGLETON

Defendant

BY)

AFFIDAVIT IN MITIGATION
RULE 28

Affidavit in Mitigation of Juror #368, DeAnne Reed Vane:

1. I, DeAnne Vane, reached out by email to Michael Cooper, attorney for Kadrin Singleton on Friday, January 09, 2015, regarding the Kadrin Singleton trial and verdict.
2. On Tuesday, January 13, 2015, I met with Michael Cooper to speak to him about the jury's deliberation process and our verdict.
3. I have given this affidavit freely and voluntarily.
4. No one has promised me anything or threatened me in any way to give this affidavit.
5. It has been explained to me that I did not have to give this affidavit if I did not want to.
6. I did not believe Kenneth Fludd's version of events.
7. It appeared to me that the other jurors did not find his story credible either.
8. The idea that this was a robbery was dismissed early in the deliberation process.
9. I did not find that Kadrin Singleton went to Cambridge Ave. with the intention of committing an act of violence or to commit an armed robbery.
10. We found Kadrin Singleton's account of events to be credible.
11. Our deliberations and analysis centered on whether Kadrin Singleton acted in self-defense.

12. Based on the law that was given to us, we found that Kadrin Singleton did not meet all of the elements charged.

13. I swear the above statement is true and correct and has been given freely and voluntarily by myself, DeAnne Reed Vane, Juror #368.

DeAnne Reed Vane
DeAnne Reed Vane, Juror #368

Dated: January 16, 2015

SWORN to and subscribed to before me this

16th day of January, 20 15.

Kimberly H. Hays
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 02/06/2018

FILED
2015 JAN 20 PM 12:50
CLERK OF COURT
BY W

Exhibit 2

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT

2015 JAN 20 PM 12:50

Case Nos:

Warrant Nos: 2012A1010202651

CLEAR OF COURT

Charge(s): Murder

STATE OF SOUTH CAROLINA

vs.

KADRIN RAJAUN SINGLETON

Defendant

AFFIDAVIT IN MITIGATION
RULE 28

Affidavit in Mitigation of Juror #108, Kendra Drayton:

1. I, Kendra Drayton, reached out by email to Michael Cooper, attorney for Kadrin Singleton on Tuesday, January 13, 2015, regarding the Kadrin Singleton trial and verdict.
2. On January 20, 2015, I met with Michael Cooper to speak to him about the jury's deliberation process and our verdict.
3. I have given this affidavit freely and voluntarily.
4. No one has promised me anything or threatened me in any way to give this affidavit.
5. It has been explained to me that I did not have to give this affidavit if I did not want to.
6. I did not believe Kenneth Fludd's version of events.
7. It appeared to me that the other jurors did not find his story credible either.
8. The idea that this was a robbery was dismissed early in the deliberation process.
9. I did not find that Kadrin Singleton went to Cambridge Ave. with the intention of committing an act of violence or to commit an armed robbery.
10. We found Kadrin Singleton's account of events to be credible.
11. Our deliberations and analysis centered on whether Kadrin Singleton acted in self-defense.

12. Based on the law that was given to us, we found that Kadrin Singleton did not meet all of the elements charged.

13. I swear the above statement is true and correct and has been given freely and voluntarily by myself, Kendra Drayton, Juror #108.

Kendra Drayton
Kendra Drayton, Juror #108

Dated: Jan. 20, 2015

SWORN to and subscribed to before me this

20 day of January, 20 15.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 3-27-24

FILED
2015 JAN 20 PM 12:50
JUDGE OF THE COURT
BY [Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

2015 JAN 23 PM 3:42

State of South Carolina

JULIE A. HARRINGTON
CLERK OF COURT

Case Number: 2013GS1001153

BY _____

vs.

KADRIN SINGLETON,
Defendant.

State's Response to Defendant's
Motion for Reconsideration of Sentence

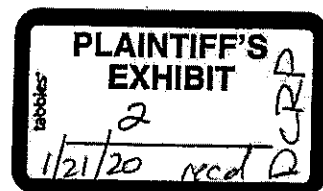
The State has been served with a copy of the Defendant's Motion for Reconsideration of the sentence imposed by this Court. The State files this Response.

PROCEDURAL HISTORY

The Defendant was charged with one count of Murder and a jury unanimously convicted him of the charge on January 9, 2015. Prior to trial, Defendant pled guilty to the charges of Trafficking Cocaine, Failure to Stop for Blue Lights, and Possession of a Stolen Motor Vehicle, which stemmed from the same events. The Honorable Kristi Harrington thereafter sentenced Defendant to life in prison.

DISCUSSION

Defendant Singleton has multiple prior convictions including Strong Arm Robbery, Burglary, 3rd degree, Unlawful Carry of a Firearm, and Driving Under Suspension. The State's overwhelming evidence connecting the Defendant to the shooting of Sharrell Williams on Cambridge Avenue brought about the Defendant's assertion of self-defense. This is evident from his prior denial of involvement or presence at Cambridge Avenue to NCPD Detectives. Despite which theory of the case any



particular juror subscribed to, the jury as a whole ultimately rejected self-defense and in turn, found the Defendant responsible for the shooting death of Sharrell Williams, without justification or excuse.

Regarding the two juror affidavits submitted by the Defendant in his Motion for Reconsideration, this Court should not only find them unpersuasive, but also inadmissible and inappropriate pursuant to S.C.R.E 606(b) and our state's jurisprudence.

S.C. Rules of Evidence, Rule 606(b) provides:

"Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes."

"The general policy in South Carolina is courts should not intrude into the privacy of the jury room to scrutinize how jurors reached their verdict."¹ Consistent with this policy, S.C.R.E. Rule 606(b), prohibits the introduction of a juror's affidavit concerning the statements, thought processes, and conduct of jurors during deliberations. Further, under

¹ State v. Hunter, 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995).

the Rule, a juror's testimony or affidavit as to what occurred during deliberations is not admissible to challenge "the validity of the verdict."²

The only recognized exception is when a juror's affidavit suggests that juror conduct rendered the trial 'fundamentally unfair.'³ Fundamental unfairness is constituted "on the question of whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror."⁴ In State v. Spriggs, the Court of Appeals affirmed the trial court's refusal to consider a juror affidavit where the jury's foreman sought to explain his personal considerations for voting against the murder conviction and lists the results of a preliminary poll at the beginning of deliberations. "The affidavit contains no allegations that the jury's verdict was tainted by any juror misconduct. Because there is no suggestion that the actions of the jury rendered the trial unfair, we find the affidavit does not rise to the high level of seriousness required for admission."⁵

In the case at hand, the submitted affidavits bring to light no misconduct or improper external influence. These affidavits merely seek to present content and conduct of the deliberation process which is directly contrary to the intent of S.C.R.E. 606(b), as well as the policy of South Carolina, in maintaining the secrecy and integrity of the jury deliberation process. Two individuals' perspectives as to the thoughts and consideration of testimony by their fellow jurors should have no impact on sentencing. Such testimony is speculative at best, but is submitted as an attempt to create appellate issues by

² Lynch v. Carolina Self Storage Centers, Inc., 409 S.C. 146, 152 (Ct. App. 2014)

³ Shumpert v. State, 378 S.C. 62, 68-69 (2008)

⁴ Lynch, 409 S.C. at 152 (S.C. Ct. App. 2014)

⁵ State v. Spriggs, No. 2013-UP-435, 2013 WL 8541581, at *3-4 (S.C. Ct. App. Nov. 27, 2013).

including inadmissible affidavits in the Record. The State objects to the submission of these affidavits and takes the position that if submitted, the affidavits should be struck from the Record of the case.

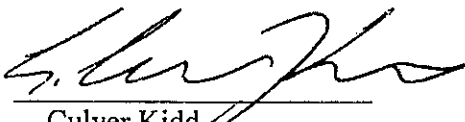
When considering the Defendant's prior convictions, the evidence presented in trial, and the Defendant's admission that he is responsible for the death of the Victim, a sentence of life imprisonment is indeed reasonable and appropriate. This is compounded by the fact that prior to trial Defendant pled to the charges of Trafficking Cocaine, Failure to Stop for Blue Lights, and Possession of a Stolen Motor Vehicle, prior to the start of trial. The State maintains that this Court imposed a just and fair sentence under the circumstances and no proper argument or change in circumstances has been offered to alter the court's order.

CONCLUSION

The Defendant has outlined no sound reason for this Court to change its sentence. Pursuant to Rule 29 of the S.C. Rules of Criminal Procedure, the State respectfully requests that this Court summarily deny the Defendant's Motion for Reconsideration without a hearing. If this Court does not summarily deny the Defendant's Motion, the State respectfully requests a hearing on this matter with 10 days of notice provided by the Court.

Respectfully submitted,

Scarlett Wilson
Solicitor, Ninth Judicial Circuit

By: 
Culver Kidd
Assistant Solicitor

Date: January 23rd, 2015
Charleston, SC

FILED
2015 JAN 23 PM 3:42
JULIA H. STRONG
CLERK OF COURT


FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

2015 FEB 11 AM 10:02

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT
Case Nos.: 2013-GS-10-1153

STATE OF SOUTH CAROLINA

JULIA S. BEECHER
CLERK OF COURT

v.

BY

KADRIN RAJAUN SINGLETON,

Defendant.

ORDER

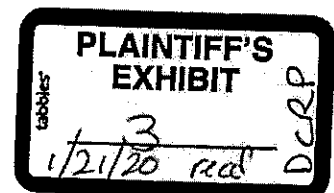
THIS MATTER IS BEFORE THE COURT on Defendant Kadrin Singleton's Motion for Reconsideration of Sentence. On January 5, 2015, Defendant Kadrin Singleton pled not guilty and proceeded to jury trial in Charleston County on Indictment Nos. 2013-GS-10-1153 (Murder), 2013-GS-10-1457 (Trafficking in Cocaine), 2013-GS-10-2602 (Possession of a Stolen Motor Vehicle), and 2013-GS-10-2603 (Failure to Stop for a Blue Light). During his trial, Defendant Kadrin Singleton indicated he wished to enter a plea of guilt on Indictment Nos. 2013-GS-10-1457, 2013-GS-10-2602, and 2013-GS-10-2603. The Court accepted Defendant Singleton's plea and deferred sentencing until the end of trial. On January 9, 2015, Defendant Kadrin Singleton was found guilty on Indictment No. 2013-GS-10-1153 (Murder) and was sentenced to Life Without the Possibility of Parole.

Defendant Kadrin Singleton filed the instant Motion for Reconsideration of Sentence on January 20, 2015. The State filed a Response to Defense's Motion for Reconsideration on January 23, 2015.

After a review of the case, together with Defendant's Motion and the State's Response, the Court finds that the sentence imposed January 9, 2015, shall remain in place and hereby denies Defendant's Motion.

Page 1 of 2
1392

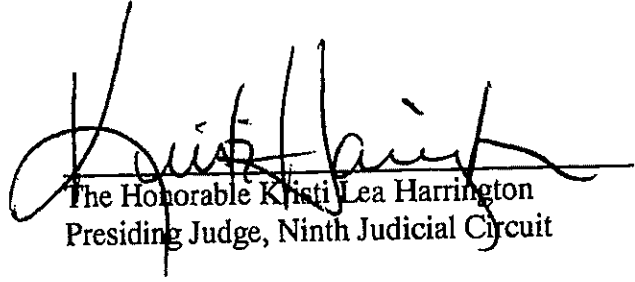
2/9/15



THEREFORE, IT IS ORDERED that Defendant Kadrin Singleton's Motion for Reconsideration is hereby DENIED.

IT IS ORDERED!

February 9, 2015
Charleston, South Carolina


The Honorable Kristi Lea Harrington
Presiding Judge, Ninth Judicial Circuit

FILED

2015 FEB 11 AM 10:02

JULIE A. HARRINGTON
CLERK OF COURT

BY _____

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

The Honorable Kristi L. Harrington, Presiding Judge

INDICTMENT NO(S): 2013GS1001153
WARRANT NO(S): 2012A1010202651

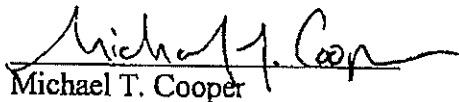
STATE OF SOUTH CAROLINA, RESPONDENT

vs.

KADRIN RAJUN SINGLETON, APPELLANT

NOTICE OF APPEAL

Kadrin Rajun Singleton appeals his conviction(s) and sentence(s) following the jury trial held before the Honorable Kristi L. Harrington, wherein he was found guilty and sentenced on January 9, 2015. A Motion to Reconsider the Sentence was filed on January 20, 2015. This motion was ruled upon and the Order was filed on February 11, 2015.


Michael T. Cooper

Attorney for Kadrin Rajun Singleton
Charleston County Public Defender's Office
101 Meeting Street, Suite 500
Charleston, SC 29401

J. ARMSTRONG
CLERK OF COURT
MK

2015 FEB 11 PM 4:51

FILED

Other counsel of record are:

Culver Kidd, Assistant Solicitor
Office of the Solicitor, Ninth Judicial Circuit
O.T. Wallace County Office Building
101 Meeting Street, 4th Floor
Charleston, SC 29401
(843) 958-1900



ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF COURT
BY 
DEPUTY CLERK

FW: State vs Singleton

1 message

Megan S. Ehrlich <MEhrlich@charlestoncounty.org>
To: Tricia Blanchette <blanchettelaw@gmail.com>

Thu, Jan 2, 2020 at 2:51 PM

On Jan 13, 2015, at 10:11 PM, "Michael T. Cooper" <MCooper@charlestoncounty.org> wrote:

See other juror email. This one bugs me. Don't know why really.

Michael T. Cooper

Begin forwarded message:

From: Aileen <aileendrayton@aol.com>
Date: January 13, 2015 at 9:20:04 PM EST
To: "MCooper@charlestoncounty.org" <MCooper@charlestoncounty.org>
Subject: State vs Singleton

Good evening Mr. Cooper,

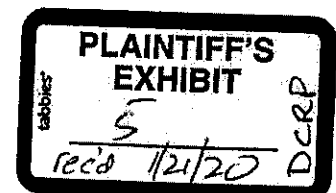
I spoke with DeAnne earlier today and she informed me that she was able to speak with you regarding the verdict for Kadrin's case. She and I have been in contact since leaving the deliberation room that day, and I can honestly say this case has affected us in ways we never imagined.

None of us thought Kadrin was a "murderer" and there were several of us who fought for him for quite some time. My vote change literally came down to a matter of seconds and interpretation of the law that was given to us. I didn't believe and still do not believe that Kadrin could of safely walked out of that house if/when given the opportunity.

If possible could you please let Kadrin know that we fought for him.

Thank you,
Kendra Drayton

Sent from my iPhone



JUROR QUESTIONNAIRE
CHARLESTON COUNTY PUBLIC DEFENDER OFFICE

STATE V. KADRIN R. SINGLETON
Defense Attorney(s): Michael T. Cooper

Juror#: 368

1. Why did you find that Kadrin Singleton *did not* meet self-defense?

Please see attached —

2. Would it have made any difference to you or would the outcome have been different, if Kadrin Singleton, the defendant, had **NOT** testified? Why? Why not?

3. Did you believe that Kadrin Singleton went to the house with the intent to commit an act of violence or an armed robbery? Why? Why not?

4. Do you think that Kadrin Singleton brought a gun to the house or do you believe that it was Sharrell Williams's gun that was used in the shooting?

5. Do you believe that Kenneth Fludd was armed? Do you believe that he shot a gun?

6. Did the number of gun shots affect your decision regarding whether it was self-defense?

7. Did Kadrin Singleton's other convictions affect your decision? Did his conduct after the shooting affect your decision? Please explain.

8. Did the fact that Kadrin took the marijuana from the house affect your decision regarding whether he acted in self-defense?



9. What was most persuasive to you in deciding your verdict?

" "

10. What was the best point made by the defense? What was the worst point made by the defense?

" "

11. How could the defense presentation/case have been improved?

" "

12. What aspect of the case did you wish you knew more about?

" "

13. Did this case change or affect how you think about the police or the Solicitor's office?

" "

If you have any questions about this case or the jury process, please do not hesitate to contact me by email at mcooper@charlestoncounty.org or by phone at (843)958-5138.

Juror #368 Questionnaire Response
Charleston County Public Defender Office

State V. Kadrin R. Singleton
Defense Attorney: Michael T. Cooper

- 1) I personally feel that Kadrin Singleton did meet the criteria for self-defense, however there was no way I could have convinced the rest of the jurors of this. What ultimately convinced me to compromise my stand was the fact that Kadrin took the marijuana when he left, which at the time seemed contrary to the self-defense requirement that the defendant flee if at all possible. In retrospect, the more I think about it, the more I believe Kadrin taking the marijuana was incidental to the event and after the fact. Unfortunately for Mr. Williams, things being somewhat equal at that point there was no reason for Kadrin not to take it, so he did.

The other factor that came into it was the number of shots fired by Kadrin, however in retrospect I was unable to see beyond a reasonable doubt that the number of shots wasn't based on an adrenalin reflex during the "like a tussle."

I really believe most jurors who always felt he was guilty got hung up on the fact that Kadrin grabbed the gun off the table, thereby bringing on the difficulty. But ultimately the point they focused on when trying to convince me of Kadrin's guilt was him taking the pot when he left. They said, "See, the only thing he cared about was the pot!" And for a second it made sense. The pressure in that room was overwhelming at that point.

- 2) At least one of the jurors stated that she was 100% ready to find Kadrin not-guilty until she heard his testimony. She said she felt he implicated himself during the cross-examination by getting tripped up as to which hand the gun was in, etc...And although that juror didn't say this out loud, I think the fact that he said "he was in a zone" and "didn't really know what was happening" once the gun went off also changed her mind.

Contrary to this, it was Kadrin's testimony that convinced me even further that his actions were in self-defense. He was believable and his description of the event was completely plausible when you consider what had just happened...and that's not something you can coach.

As we analyzed the sequence of events during which the event occurred I feel some jurors were of the naïve mindset that Kadrin should have acted 100% rationally in this situation when in fact they had absolutely no reference point for the high-tension, high danger drug world.

- 3) I **DO NOT** feel that Kadrin went to the house with the intention of committing an act of violence or an armed robbery. **No one else on the jury did either.** That supposition was immediately tossed aside as we focused on the self-defense claim. It simply doesn't make sense if you put yourself in that situation...a) He didn't know where he was going and no one in their right mind would try to rob a known dealer if they had no way to escape the situation...it would basically be suicide since in the drug world "justice" is handled internally, so to speak.; b) There was a family relationship between Kenneth Fludd and Kadrin's friend, Chris. To target the dealer he didn't know and/or Fludd would have easily put other friends and family in danger; c) There were so many drugs still left in the house that he could have easily stolen, but didn't – what's the motive?
- 4) I do not believe Kadrin brought a gun to the house. I believe it was Sharell's gun.
- 5) I do believe Kenneth Fludd was armed. I also believed he shot a gun. That guy is a liar.
- 6) See #1 above...the number of shots DID beg the question, however to me it was completely plausible that Kadrin's actions were adrenalin-fed when you consider the actual length of time involved in the incident.
- 7) No, Kadrin's other convictions did not affect my decision. The fact that he ran from the police officer when caught honestly seems like it was a bad decision made by a scared kid, although it certainly didn't help the situation. His prior arrest for strong-armed robbery had no effect on my deliberations.
- 8) See #1 above. In retrospect, no.
- 9) My verdict was a weak compromise based on the pressure in the deliberation room, the fact that I was the last juror standing who felt he was not guilty and ultimately, the fact that Kadrin took the marijuana when he left. As I mentioned in #1 above, I now feel this was an incidental act. This is something I feel very badly about.
- 10) The best point made by the defense was that none of Kenneth Fludd's claims nor that of the solicitor's office made any sense and that the drug world is often a world of "kill or be killed."

Depending on what you mean by "worse," I guess it would have been helpful to better emphasize the "beyond a reasonable doubt" charge. I don't think most of the jurors had all they needed to really doubt Kadrin's guilt. I'm not sure how you might have accomplished this within the context of the courtroom, but I feel they needed to be made more aware of the non-conclusive direct and circumstantial evidence in addition to what you had already pointed out as to the outright illogical nature of the charge.

- 11) I wonder if the 43 seconds during which time the entire sequence of events supposedly occurred could have been made more apparent to the jury, either by Kadrin commenting on the surveillance tape or the Defense listing the sequence of events as described by Kadrin and contrasting it with the actual "counting out" of 43 seconds. Just something to make the jury more physically aware of the timing. I feel like it might have made a difference because most of the jurors were viewing it as though Kadrin had time to think everything through. I don't believe he did.

Also, it might have been helpful to focus on defending the individual criteria required to support self-defense and how Kadrin may have met those criteria. The fact that this case is shrouded in a drug deal made it difficult for some jurors to get past the elements of "Without Fault" and "No Other Way to Avoid Danger" because they couldn't put themselves in that scene.

- 12) I wish I knew more about why the house was under such a comprehensive surveillance. It just begs the question as to what had been going on there. I suppose it wouldn't have been admissible as evidence, though, and I'm really not sure Kadrin could get a break with these limitations.

- 13) The Solicitors Office completely wasted the jury's time with all testimony trying to "prove" that Kadrin was at the house when the shooting happened. I understand that Kadrin initially said he wasn't there, but once he admitted to it that should have been all that was needed. We all assumed he was there from the start of the trial based on your opening remarks.

Also, I was very disappointed in the way the story was portrayed in the Solicitors Office's release to the press...it almost was insulting to those of us who spent so many hours deliberating. We all put a lot of time, thought, energy and emotion into the final verdict, but their press release made it seem inconsequential. I suppose history is written by the winners, but I feel an opportunity to really provide civic, if not human, perspective to the public is/was lost in this process. Instead we get what they want us to think and not necessarily the truth of a situation.

Megan S. Ehrlich

From: Michael T. Cooper
Sent: Thursday, January 8, 2015 2:43 PM
To: Megan S. Ehrlich
Subject: FW: Singleton's requested jury charges
Attachments: SELF-DEFENSE Charge SINGLETON JAN 2015.doc

Michael T. Cooper
Assistant Public Defender
mcooper@charlestoncounty.org
direct: (843)958-5138
fax: (843)958-1860

From: Michael T. Cooper
Sent: Thursday, January 08, 2015 2:31 PM
To: 'Harrington, Kristi L. Law Clerk (Ramsey S. Easley)'
Cc: Culver Kidd
Subject: Singleton's requested jury charges

Ramsey,

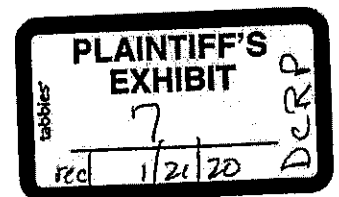
Please find the attached word document with Mr. Singleton's requested jury charges.

I am also preparing a charge on Imperfect Self Defense to make a part of the record. South Carolina does not recognize Imperfect Self-Defense.

Thank you,

Michael

Michael T. Cooper
Assistant Public Defender
mcooper@charlestoncounty.org
direct: (843)958-5138
fax: (843)958-1860



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
)

Warrant No(s): 2012A1010202651
Charge(s): Murder

STATE OF SOUTH CAROLINA

vs.

KADRIN RAJUN SINGLETON,

Defendant

)
)
) **DEFENDANT'S REQUESTED**
) **JURY CHARGE No.: _____**
)
)
)
)
)
)

SELF-DEFENSE

Request to Charge No. 1

Ladies and gentlemen of the jury, Kadrin Singleton has offered evidence of having acted in self-defense when he shot Sharrell Williams. And ladies and gentlemen of the jury, I charge you that self-defense is a complete defense to the charge Murder.

I charge you that in deciding whether Kadrin Singleton is guilty or not guilty of Murder, the State has the burden of proving beyond a reasonable doubt, that he did not act in self-defense.

In other words, if you have a reasonable doubt about whether Kadrin Singleton was acting in self-defense, you are to resolve that doubt in his favor and find him not guilty. *State v. Burkhardt*, 350 S.C. 252, 565 S.E.2d 298 (2002); *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

Request to Charge No. 2

Request to Charge No. 3

In this case, Kadrin Singleton has offered evidence that he believed he was in imminent danger of death or of receiving serious bodily harm. If Kadrin Singleton's belief was reasonable, he does not have to wait until he is actually attacked or injured or until force is used by the aggressor before he exercises his right to use deadly force in self-defense.

In other words, Kadrin Singleton does not have to wait until the assailant "gets the drop on him" in order to be entitled to use force in self-defense.

See F. PATRICK HUBBARD, JURY INSTRUCTION FOR CRIMINAL CASES IN SOUTH CAROLINA: DEFENDANT'S REQUESTED INSTRUCTIONS 265-298 (2d ed. 2001).

Request to Charge No. 4

In determining whether Kadrin Singleton's belief of being in imminent danger of death or of receiving serious bodily harm was reasonable, you should try as near as you can to put yourself in his situation at the time of this incident because people are entitled to act on appearances.

You should consider the circumstances by which Kadrin Singleton was surrounded, and take into consideration the person with whom he was dealing, and all of the facts which surround him, as you obtained the same from the testimony, and as near as you can, view the situation from the Defendant's standpoint.

I further instruct you that you are not to determine if Kadrin Singleton made the wisest choice possible, but only a reasonable one under the circumstances as he perceived them.

See State v. Day, 341 S.C. 10, 535 S.E.2d 431, 435-36 (2000); *State v. Fuller*, 297 S.E.2d 440, 377 S.E.2d 328 (1989); *State v. Rash*, 182 S.C. 42, 48-49, 188 S.E. 435 (1936); F. PATRICK HUBBARD, JURY INSTRUCTION FOR CRIMINAL CASES IN SOUTH CAROLINA: DEFENDANT'S REQUESTED INSTRUCTIONS 265-298 (2d ed. 2001).

Request to Charge No. 5

In determining whether Kadrin Singleton's belief of being in imminent danger of death or of receiving serious bodily harm was reasonable, I instruct you that you may consider the following factors:

You may consider whether Kadrin Singleton's belief of being attacked by Mr. Williams was a reasonable belief when there were words accompanied by hostile acts. I further charge you that that words accompanied by hostile acts may be sufficient alone to establish that Kadrin Singleton acted in self-defense.¹

¹ *State v. Harvey*, 220 S.C. 506, 68 S.E.2d 409 (1951).

Request to Charge No. 6

Ladies and gentlemen of the jury, the prosecution has offered evidence that Kadrin Singleton shot Mr. Williams more than once. I charge you that “ordinarily one is not justified in . . . employing a deadly weapon after the adversary has been disarmed or disabled. However, when a person is justified in [using deadly force], he is justified in continuing to [use deadly force] until it is apparent that the danger to his life and body has ceased.”

State v. Hendrix, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978) (internal quotation marks and citations omitted).

Request to Charge No. 7

Without fault means that “if the defendant’s conduct was the type with was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal on self-defense.”

State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007); *State v. Dickey*, 394 S.C. 491, 716 S.E.2d 97 (2011).

Megan S. Ehrlich

From: Megan S. Ehrlich
Sent: Thursday, January 8, 2015 2:49 PM
To: Harrington, Kristi L. Law Clerk (Ramsey S. Easley)
Cc: Culver Kidd; Michael T. Cooper
Subject: RE: Singleton's requested jury charges
Attachments: Imperfect Self-Defense Proposed Charge.docx

Ramsey,

Please find attached Michael's proposed charge based on the imperfect self-defense doctrine. As indicated below, he recognizes that under State v. Finley, that South Carolina currently does not recognize the theory of imperfect self-defense and that he would be arguing against current case law.

Megan

Megan Ehrlich
Assistant Public Defender, Charleston County
mehrich@charlestoncounty.org
(843) 958-1850 (phone)
(843) 958-1860 (fax)

From: Michael T. Cooper
Sent: Thursday, January 08, 2015 2:31 PM
To: 'Harrington, Kristi L. Law Clerk (Ramsey S. Easley)'
Cc: Culver Kidd
Subject: Singleton's requested jury charges

Ramsey,

Please find the attached word document with Mr. Singleton's requested jury charges.

I am also preparing a charge on Imperfect Self Defense to make a part of the record. South Carolina does not recognize Imperfect Self-Defense.

Thank you,

Michael

Michael T. Cooper
Assistant Public Defender
mcooper@charlestoncounty.org
direct: (843)958-5138
fax: (843)958-1860



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
)

Warrant No(s): 2012A1010202651
Charge(s): Murder

STATE OF SOUTH CAROLINA

vs.

KADRIN RAJUN SINGLETON,

Defendant

)
) **DEFENDANT'S REQUESTED**
) **JURY CHARGE No.: 7**
)
)
)
)
)
)

Where a defendant had an actual but unreasonable fear of imminent peril or bodily harm from the victim, and he believed he had to use deadly force to prevent it, you should find him guilty of voluntary manslaughter instead of murder.

774
GS
OL
AG

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Kadrin Singleton, #335449,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-1658

ORDER OF DISMISSAL

2022 JAN 10 PM 1:30
CLERK OF COURT

This matter came before me in Charleston County on January 21, 2020 upon Applicant's request for post-conviction relief. The Applicant, Kadrin Singleton, made several arguments in support of his claim of ineffective assistance of trial counsel and appellate counsel. Those arguments and the Court's findings on each are discussed below.

I. Procedural History

Kadrin Singleton (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. On November 20, 2012, Applicant murdered Sharrell Williams in Charleston County. Applicant was arrested for the murder four days later on the night of November 24, 2012. On March 4, 2013, the Charleston County grand jury indicted Applicant for Williams' murder, possession of a stolen motor vehicle, failure to stop for a blue light, and trafficking in cocaine (Ind. #s 2013-GS-10-1153, 2602, 2603, & 1457). (Tr. Vol. 1, p. 11, lns. 5-24; p. 33, ln. 2 – p. 37, lns. 22). Applicant was represented by Assistant Public Defenders Michael T. Cooper and Megan Ehrlich of the Ninth Circuit Public Defender's Office. Assistant Solicitor Culver Kidd of the Ninth Circuit Solicitor's Office prosecuted the case.

Immediately before trial, Applicant pled guilty to all charges except murder. Sentencing

was deferred on the charges to which Applicant pled guilty. Applicant was tried for the murder before a jury of his peers from January 5th – 9th, 2015, the Honorable Kristi L. Harrington, Circuit Court Judge, presiding. (Tr. Vol. 1, p. 1). At the conclusion of the trial, the jury found Applicant guilty of murder. Judge Harrington sentenced appellant to life imprisonment for murder (Ind. # 2013-GS-10-1153) and concurrent sentences of ten years for trafficking in cocaine (Ind. # 2013-GS-10-1457), five years for possession of a stolen vehicle (Ind. # 2013-GS-10-2602) and three years for failure to stop for a blue light (Ind. # 2013-GS-10-2603). (Tr. Vol. 5, p. 40, ln. 3 – p. 41, ln. 9).

Applicant filed a timely notice of appeal and was represented by Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense-Office of Appellate Defense. On appeal, Applicant raised the following issues:

1. The trial court erred in refusing Applicant's requested charge that he did not have to wait until he was attacked and allow the assailant to "get the drop" on him because Applicant testified that the decedent threatened him with a gun, which appellant grabbed and used in self-defense.
2. The trial court erred in granting the State's motion pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986) because the defense gave race-neutral explanations for its strikes and the State failed to prove pretext.

Following the submission of briefs, the South Carolina Court of Appeals affirmed Applicant's convictions by unpublished opinion filed on July 12, 2017. *State v. Singleton*, Op. No. 2017-UP-283 (S.C. Ct. App. filed July 12, 2017). Applicant petitioned for rehearing, which was denied by the Court of Appeals on September 22, 2017. The remittitur was returned to the circuit court on January 16, 2018.

Applicant filed his application for post-conviction relief on April 2, 2018. The State submitted its Return and Motion for a More Definite Statement on July 3, 2018. On November 15,

2019, Applicant, through counsel, filed an Amendment to Application for post-conviction relief.

In his original application for post-conviction relief, Applicant, through retained counsel Blanchette, alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Ineffective assistance of counsel for failure to properly prepare and investigate prior to trial"
 - i. Counsel failed to conduct an independent investigation and properly review the evidence with Applicant prior to his trial date
 - b. "Ineffective assistance of counsel for failure to properly handle the pre-trial motions/hearings."
 - i. Counsel failed to call witnesses and make effective arguments
 - c. "Ineffective assistance of counsel for failure to effectively present Applicant's defense and argue for charges in support of that defense"
 - i. Counsel failed to utilize witnesses and evidence and argue properly for jury charges

Applicant raised the following allegations in his amended application:

1. Trial counsel rendered ineffective assistance related to the handling of matters related to the jury for the following:
 - a. Failure to properly respond to the State's Batson Motion.
 - b. Failure to properly utilize information given by jurors post trial and move for a new trial.
2. Trial counsel rendered ineffective assistance related to the juror instructions for the following:
 - a. Failure to enter an objection or exception to the jury instruction on malice for lacking the general permissive inference instruction. Gibson v. State, 416 S.C 260, 786 S.E.2d 121 (2016).
 - b. The handling of the self-defense instruction.
 - c. Failure to request the lesser included manslaughter offenses.
 - d. Failure to object to the Allen charge.
3. Appellate counsel rendered ineffective assistance for failing to raise all meritorious issues on appeal (911 call, Biggers) and for failing to file for rehearing.

On January 21, 2020, an evidentiary hearing was convened at the Charleston County Courthouse in front of the Honorable Edgar W. Dickson. Applicant was present and represented by Tricia A. Blanchette, Esquire, and Jeremy A. Thompson, Esquire. Respondent was represented by Benjamin Limbaugh, Esquire. Applicant took the stand and called the following witnesses:

Megan Ehrlich, Esquire, Michael Cooper, Esquire, David Alexander, Esquire, Deanne Vane, and Kendra Drayton. Applicant introduced eight exhibits. Respondent did not call a witness or mark an exhibit. This Court also had before him a copy of the records stemming from Applicant's underlying trial and appeal.

II. Summary of Facts Adduced at Trial

At the time of this murder, Singleton was an admitted marijuana dealer. (Tr. Vol. 4, p. 31, lns. 1-5). Before this murder, Singleton had also previously been convicted of several felonies, including third-degree burglary and strong armed robbery. (Tr. Vol. 4, p. 23, lns. 16-21, p. 86, lns. 5-21).

On November 20, 2012, Singleton was trying to obtain marijuana to sell. (Tr. Vol. 4, p. 25, lns. 12-13). Singleton wanted to purchase a quarter (1/4) pound of marijuana. He contacted a friend, who set him up with Chris Felder ("Felder"), whose cousin by marriage, Kenneth Fludd ("Kenny"), could arrange a deal for the marijuana Singleton wanted to purchase. (Tr. Vol. 4, p. 25, lns. 12-16; Tr. Vol 2, pp. 68-69).

Felder contacted Kenny by phone at Kenny's place of employment, a Pizza Hut in Charleston, and asked if Kenny could arrange the transaction. Kenny informed Felder he thought he knew someone who could sell that amount of marijuana and would see what he could do. Kenny contacted his cousin by blood relation, Sherrell Williams ("Williams" or "the victim") by phone, and Williams agreed to sell the quarter (1/4) pound of marijuana to Singleton. (Tr. Vol. 2, pp. 68-70, 72).

Singleton and Felder drove from Summerville to the Pizza Hut where Kenny worked. After arriving at the Pizza Hut and waiting there for approximately five (5) minutes, Kenny came out of the Pizza Hut, and got in the car with the two (2) men. (Tr. Vol. 4, p. 28, ln. 23 – p. 31, ln.

12). They all sat and waited for approximately an hour for the victim to return from Walmart, where he was shopping with his girlfriend, so Kenny could take the men to the victim to get the marijuana. (Tr. Vol. 2, p. 72, lns. 20-74, ln. 25; Tr. Vol. 4, p. 28, ln. 23 – p. 31, ln. 12).

The victim eventually phoned Kenny and told him to meet him at a house on Cambridge Avenue. (Tr. Vol. 2, pp. 74–75). Kenny got in his own car, started it, and told Singleton and Felder to follow him, which they did for approximately five minutes. (Tr. Vol. 2, pp. 74-75; Vol. 4, p. 32, lns. 5-23).

Felder and Singleton then pulled-over a couple of blocks away from the final destination in order to be close to the interstate. (Tr. Vol. 2, p. 75, ln. 11 – p. 79, ln. 6). Kenny then instructed Felder and Singleton to ride with him, which Singleton initially refused to do because he was acting nervous. (Tr. Vol. 2, p. 79, lns. 9-14; Tr. Vol. 4, p. 32, ln. 20 – p. 36, ln. 6). After trying to reassure Singleton he was in no danger, Kenny, exasperated, left in his car alone giving up on the drug deal. (Tr. Vol. 2, p. 79, ln. 21 – p. 80, ln. 6).

Singleton and Felder then phoned Kenny in his car and informed him they had decided to go ahead with the transaction and ride with Kenny to meet the victim. (Tr. Vol. 2, pp. 79 - 80; Tr. Vol. 4, p. 36, ln. 20 – p. 37, ln. 5). Kenny turned his car around and returned to the location at which Singleton and Felder were parked. Singleton and Felder got in the car with Kenny, and left Felder's vehicle parked near the interstate. (Tr. Vol. 2, pp. 79–81).

Singleton, Felder, and Kenny then rode together to a house on Cambridge Avenue, 2364 Cambridge Ave., about two blocks from where Singleton and Felder parked their car, and pulled up alongside an SUV containing the victim Sharrell Williams, which arrived at approximately the same time. (Tr. Vol. 2, pp. 78-79, 82-86, State's Ex. 2; Tr. Vol. 4, p. 37, ln. 20 – p. 38, ln. 1). The victim's girlfriend was driving the SUV, and after dropping the victim off, she drove down the

street to her mother's house, just two houses away. (Tr. Vol. 2, pp. 84-86; State's Ex. 2; Tr. Vol. 3, pp. 11-24). Singleton, Felder, and Kenny got out of Kenny's vehicle and followed the victim Williams into the house. (Tr. Vol. 2, pp. 83-87; State's Ex. 2; Tr. Vol. 3, pp. 11-24; Vol. 4, p. 39, lns. 13-20).

Unknown to any of the four men involved in the drug transaction, the FBI had this residence under video surveillance [unrelated to this murder]. A video camera captured the men getting out of their cars and entering the residence before the murder. (Tr. Vol. 2, pp. 81-86; 121-22; State's Ex. 2).

Once all four men were inside the house, the victim got some marijuana out of the refrigerator and placed it on the counter. (Tr. Vol. 2, pp. 87-91; Tr. Vol. 4, p. 39, lns. 16-20). Kenny noticed that there was a pistol resting on the same counter in the kitchen. (Tr. Vol. 2, p. 92, ln. 23 – p. 94, ln. 8). The victim then began weighing the marijuana and bagged it for Singleton. (Tr. Vol. 2, pp. 87-91; Tr. Vol. 4, p. 40, lns. 5-9). Singleton sent Felder outside, allegedly to get his money to pay for the marijuana. (Tr. Vol. 2, p. 92, lns. 2-17). Felder was captured on the FBI surveillance video leaving the house. (Tr. Vol. 2, pp. 92, 94; State's Ex. 2). Kenny went to use the bathroom next to the kitchen. (Tr. Vol. 2, p. 94, lns. 22-25).

After Kenny returned from the bathroom, Kenny was standing in the kitchen area. Singleton and the victim were standing in the living room/den area, and Singleton was facing the victim. Felder had not returned with the money. Singleton had his hands behind his back. (Tr. Vol. 2, p. 96, lns. 20-23, p. 123, lns. 21-24).

At this point, Singleton stated: "give it up"—at which point Kenny and the victim laughed thinking it was a joke. (Tr. Vol. 2, p. 96, lns. 20-23). Singleton then pulled a gun [a .40 caliber semi-automatic pistol] out from behind his back and fired on the victim Williams. Williams was

shot several times and collapsed on the floor. (Tr. Vol. 2, p. 96, ln. 20 – p. 98, ln. 15).

In reaction to the gunshots, Kenny dove on the kitchen floor behind the kitchen counter. At gun point, Singleton ordered Kenny to give him his car keys. Kenny complied by tossing the keys up in the air to Singleton. Singleton then grabbed the quarter (1/4) pound of marijuana and the gun on the counter and fled out of the residence—firing again on Williams as he left with the pistol he retrieved from the counter. (Tr. Vol. 2, pp. 96-100).

Singleton was captured on the FBI surveillance video leaving the residence and fleeing toward Kenny's parked car. Singleton and Felder [who had remained outside the apartment and never reentered] then fled the crime scene in Kenny's car using Kenny's car keys to start and operate the vehicle. Singleton and Felder abandoned Kenny's car where Singleton and Felder had left Felder's car earlier near the interstate. Singleton and Felder then fled the area in Felder's car. (Tr. Vol. 2, p. 99, lns. 18-21, pp. 119-20; State's Ex. 2; Tr. Vol. 4, p. 55, ln. 7 – p. 56, ln. 9).

The victim Sharell Williams died from one of the gunshot wounds inflicted by Singleton. Williams bled to death at the scene. Kenny ran outside and called 911. Kenny was captured on the FBI surveillance video calling for assistance. The victim's girlfriend, who heard about the shooting, ran from her mother's house to the house where the victim was killed finding his body. (Tr. Vol. 3, pp. 117-33, p. 33; Tr. Vol. 2, pp. 99-103; State's Ex. 2; Tr. Vol. 3, pp. 1-24; Tr. Vol. 4, p. 101, lns. 6-13).

Several days later, at night, Singleton was arrested after a car chase, with police blue lights flashing, and an eventual foot chase, and the use of a police dog. Singleton was driving a stolen vehicle before he fled on foot, and during the foot chase, he discarded a bag of cocaine and marijuana. In the bag with the drugs were two cell phones. At the time of Singleton's arrest, police did not recover these items because the officer chasing Singleton did not see him discard

the bag containing the items. (Tr. Vol. 3 pp. 153-69).

After his arrest, from the Charleston County Detention Center, Singleton phoned an associate and requested the associate or others recover the drugs and cell phones he had discarded during the foot chase. Before the drugs and phones could be recovered by Singleton's associates, a neighbor, in whose yard the drugs and phones had been thrown by Singleton during the foot chase with police, discovered the items and contacted police. Police recovered the evidence. One of these cell phones was directly linked to Singleton at trial, and Singleton's movements on the night of the murder were established with the use of cell phone tower information. The cell phone tower information established Singleton drove from Summerville to the Pizza Hut and then to the area of the house where the murder occurred. And, Singleton then fled the area after the murder occurred. (Tr. Vol. 3, pp. 95-112, 153-69, 173-78, 181-86, State's Ex. 62, 200-06; Vol. 4, pp. 81-82).

After his arrest, Singleton was questioned by police. He denied knowing anything about the victim's murder and denied being present when Williams was murdered. (Tr. Vol. 4, pp. 64-66). He claimed he was at a friend's house at the time the victim was murdered. (Tr. Vol. 4, pp. 64-66). Singleton admitted at trial this was a lie. (Tr. Vol. 4, p. 66).

Police also recovered the .40 caliber pistol used in the murder from another individual. (Tr. Vol. 3, pp. 188-98). The weapon forensically matched two fired shell casings found inside the crime scene. (Tr. Vol. 3, pp. 48-49, pp. 208-14, 216-21). Cell phone tower information also showed Singleton's cell phone "pinged" in Holly Hill, S.C., in close proximity to the residence of the individual who was arrested for possession of the .40 caliber pistol. (Tr. Vol. 3, pp. 188-98, 234-61). Singleton admitted at trial he gave the gun to a friend and asked him to hold it. (Tr. Vol. 4, p. 84-85).

III. Findings of Fact and Conclusions of Law

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland*, 466 U.S. 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a “‘reasonably competent attorney.’” 466 U.S. at 687 (quoting *McMann v. Richardson*, 397 U.S. 759, 770 (1970)); Representation is constitutionally ineffective only if it “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair trial. *Strickland*, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. *See generally id.*

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*, 466 U.S. 668. First, an applicant must prove that

counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, *Wiggins*, 539 U. S. at 526-527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. *Strickland*, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. *Id.* at 688; *Harrington v. Richter*, 562 U.S. 86 (2011).

With respect to prejudice, an applicant must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694. It is not enough “to show that the errors had some conceivable effect on the outcome of the proceeding.” *Id.* at 693. Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” *Id.* at 687; *Harrington*, 562 U.S. 86.

“Surmounting *Strickland*’s high bar is never an easy task.” *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. *Strickland*, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel’s representation is a most deferential one. Unlike a later reviewing court, the attorney who observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is “all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.” *Id.* at 689; *see also Bell v. Cone*, 535 U. S. 685, 702 (2002); *Lockhart v. Fretwell*, 506 U.S. 364, 372 (1993). The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. *Strickland*, 466 U.S. at 690.

In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. *Wong v. Belmontes*, 558 U.S. 15 (2009); *Strickland*, 466 U.S. at 693. Instead, *Strickland* asks whether it is “reasonably likely” the result

would have been different. *Id.* at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." *Id.* at 693, 697. The likelihood of a different result must be substantial, not just conceivable. *Id.* at 693; *Harrington*, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Each allegation is addressed fully below:

Failure to properly respond to the State's Batson Motion

Following the seating of the jury, the State made a motion pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986). R. p. 87. The State challenged the use of the fourteen strikes utilized by the defense on white males and females. R. p. 87. The court requested that the defense offer an explanation for the strikes. R. pp. 87-88. The defense offered an explanation, arguments were made by both parties and the court ruled in favor of the State's motion finding the strikes were pretextual. R. pp. 88-101. Thereafter, the parties selected a second jury. R. pp. 102-120.

At the evidentiary hearing, Megan Ehrlich, Esquire, addressed the make-up of the jury and the *Batson* motion. PCR p. 16-20. She agreed that the racial make-up of first jury was more diverse. PCR p. 17. She referenced her notes and admitted she did not have any notes regarding the struck jurors of concern. PCR p. 17-18. She admitted it was not good practice to have nothing written and the reason could be due to consultation with lead counsel or there simply was nothing. PCR p. 18-20. When asked, she responded that she had no idea if the first jury would have been better. PCR p. 46.

While Michael Cooper, Esquire, was on the stand, he testified that he did not exercise the strikes on basis of race. PCR pp. 61-62. He explained that he provided all reasons he had for making the strikes. PCR pp. 61-62. He further explained that he did not have a secret reason for striking the potential jurors. PCR p. 63.

During his testimony David Alexander, Esquire, discussed how he raised the *Batson* issue on appeal and his general thoughts on it. PCR pp. 110-111. He testified that he determined that trial counsel provided good reasons for the exercise of the jury strikes. PCR pp. 111, 121.

Also, Deanne Vane and Kendra Drayton, who served as jurors at Applicant's trial, addressed the make-up of the jurors during their testimony and the impact of the make-up of the jury on the jury deliberations. PCR pp. 141-176. Specifically, Ms. Drayton testified that she was on both juries and was the only black and youngest person on the second jury. PCR pp. 158-160.

This Court has thoroughly reviewed the record, *Batson v. Kentucky*, 476 U.S. 79 (1986), and other applicable case law on this issue. As a result, this Court finds that Applicant has failed to establish deficiency on the part of trial counsel for the handling of the *Batson* motion. This Court finds credible the testimony from Mr. Cooper that he did not exercise strikes on basis of race, that he provided all reasons he had for making the strikes, and he did not have a secret reason for striking the potential jurors. This Court also finds persuasive the testimony of Mr. Alexander that he determined that trial counsel provided good reasons for the strikes. This Court finds that Applicant has not established that counsel failed to provide representation within the range of competence required in criminal cases in the handling of the *Batson* motion.

Additionally, this Court finds that Applicant has failed to show resulting prejudice from counsel's performance. It is undeniable that the second jury was less diverse, and the testimony of the jurors raises serious concerns with this Court about the second jury and the fundamental

fairness of the outcome of Applicant's trial, which are addressed herein. Yet, this Court finds that any prejudice Applicant may have suffered from the issues raised regarding the second jury and the instructions given to the second jury are independent of counsel's performance on the matter of the *Batson* motion. As stated, counsel's performance was not deficient in handling the *Batson* motion nor has Applicant established that a more favorable result would have come from the first jury selected. Therefore, this claim must fail under both prongs of the *Strickland* analysis.

Failure to properly utilize information given by jurors post trial and move for a new trial

As is addressed above, the State made a successful *Batson* motion, and a second jury was selected. Juror 108 (Kendra Drayton) and Juror 368 (Deanne Vane) were selected on both juries. After closing arguments and the jury charge, the jury was sent out for deliberation at 9:20 a.m. on Friday morning. R. p. 948. The jury returned after submitting notes, which included a request to replay testimony. R. p. 949. Thereafter, the court informed the parties that the jury was split 6/6, and she intended to give an *Allen* instruction. R. p. 950. At 1:36 p.m., the jury returned and an *Allen* instruction was given, which will be discussed in detail below. The jury was sent back out at 1:39 p.m., and the jury returned with their verdict at 4:03 p.m. R. pp. 953, 955. Thereafter, the jury was polled. R. p. 957.

On January 12, 2015, a post-trial motion hearing was conducted. R. p. 973. As will be addressed below, the majority of the hearing was spent discussing the matters of self-defense, imperfect self-defense, and the lesser included charges. No mention was made of matters involving jurors. At the close of the hearing, the court denied all motions made by the defense. R. pp. 989-990.

On January 20, 2015, defense counsel filed a Motion for Reconsideration of Sentence. Counsel attached affidavits entitled "Affidavit in Mitigation Rule 28" signed by Ms. Vane and Ms.

Drayton. By way of this motion, defense counsel recounted his post-trial interaction with Ms. Vane and Ms. Drayton. Based upon the information contained in the affidavits regarding the jury deliberations, counsel asked for reconsideration of Applicant's life sentence.

On January 23, 2015, the State's Response to Defendant's Motion for Reconsideration of Sentence was filed. A majority of the response set forth the State's argument that the affidavits were improper under Rule 606(b), SCRE. The response argued that the affidavits did not fall under the exception that the "juror conduct rendered the trial 'fundamentally unfair.'" The State concluded that the submitted affidavits were improper since the affidavits did not bring to light misconduct or improper external influences and requested that the court deny the motion for reconsideration.

On February 9, 2015, the Honorable Kristi L. Harrington issued an Order denying the motion to reconsider. By way of the Order she held: "After review of the case, together with Defendant's Motion and State's Response, the Court finds that the sentence imposed January 9, 2015, shall remain in place and hereby denies Defendant's Motion." As the record reflects, the denial of the motion was not raised on appeal.

By way of the Amendment and at the evidentiary hearing, Applicant, through counsel, alleged that trial counsel was ineffective for the failure to properly utilize information given by the jurors post trial and move for a new trial. Upon review of the record, to include the testimony and evidence offered at the evidentiary hearing, and the applicable case law, this Court finds that Applicant has failed to show that trial counsel was ineffective in his representation as well as failing to prove he suffered any prejudice as a result. Significantly, this Court finds that the testimony of the jurors did not invoke any recognized exception that would allow this Court to undermine the sanctity of the jury process. Further, this Court finds that there was no arguable

basis upon which trial counsel could have attained the testimony of the jurors that was presented at the evidentiary hearing. Again, the affidavits presented no basis for further inquiry nor did they provide an avenue to do so.

Ms. Ehrlich explained that it was common practice in the Ninth Circuit Public Defender's Office to send out juror questionnaires post trial. She identified and counsel admitted the questionnaires received from Ms. Vane and Ms. Drayton. PCR pp. 22-24. She addressed some of the responses contained in the questionnaires and responded to counsel's question about Ms. Vane's answer regarding the verdict being a weak compromise due to pressure in the deliberation room. She explained that she was not involved in any investigation into what was meant by that response. PCR pp. 24-25.

She testified that she could not specifically recall conducting research to determine what to do with the information provided by the jurors and that she was not involved in obtaining the affidavits attached to the filed motion. PCR pp. 24-25. She further could not recall discussing filing a motion for a new trial. PCR p. 26.

On cross-examination, she was asked if jurors provided information regarding outside pressures or racial bias, and she responded by reading the jurors written response and agreeing it did not mention race, outside threats or research. PCR pp. 47-48. On redirect, she was asked how she would have responded to the information provided by the jurors if she was lead counsel. She indicated that she would have further investigated and would have considered filing a motion for a new trial. PCR pp. 48, 50. When asked to explain why she would take that course of action, she responded: "Well, I've got two jurors who are saying that they have regrets about their verdict. I, I feel like that could be an appropriate remedy in this situation." PCR p. 48, ln. 25 – p. 49, ln. 2.

She also acknowledged that the jurors "reached out to Mr. Cooper directly after the verdict, and before the, the post-trial motions." PCR p. 49, lns. 9-10.

When Mr. Cooper was on the stand, he acknowledged he handled three murder cases while working as an Assistant Public Defender and that Applicant's case was the only one where a trial was completed. PCR p. 56. He recalled asking Ms. Ehrlich to assist as a second chair three to four weeks before trial. PCR p. 59. As will be discussed in detail below, he asserted that the primary defense was self-defense and/or imperfect self-defense and the backup plan was "this is not murder." PCR p. 65.

Regarding the jury, he recalled the jury was polled and one juror appeared visibly upset. PCR p. 92-93. He explained that he remembered the events that followed since he left the trial and drove to Greenville to participate in his best friend's wedding. He recalled Judge Harrington offering to continue the trial due to his need to be in Greenville for the wedding. PCR pp. 93-94. While driving to Greenville, the juror that was visibly upset called him on his cell phone and explained she wanted to change her vote because it was not murder. She wanted him to tell her what could be done about it. Tr. p. 94.

When asked, he recalled meeting with the jurors and obtaining the affidavits, but he could not remember the specifics. PCR p. 95. He acknowledged that he filed the motion for reconsideration and that he did consider filing a motion for a new trial. PCR p. 95. He explained that he did not file a motion for a new trial since it was his understanding that you cannot impeach a verdict, and he did not consider filing the motion based upon matters of fundamental fairness. PCR pp. 95-96.

While on the stand, he reviewed the previously admitted email he sent to Ms. Ehrlich. PCR p. 97. He testified that he could not recall sending it, but he recalled being annoyed since he did

his job and the jurors frustrated him for not doing their job. PCR p. 97. Specifically, he testified: "I mean I was basically angry and frustrated that these jurors did not – that they say – she says none of us thought Kadrin was a 'murderer.' But they convicted him of murder. So, I mean like I did my job, he did his job, and then these guys want to change their vote. Like I don't know how much more frustrating it could be." PCR p. 97, lns. 13-18.

During Mr. Alexander's testimony, he acknowledged that he had a copy of the motion for reconsideration, response and court's order when reviewing the record for issues to be raised on appeal. PCR pp. 112-113. He explained that the standard of review is not favorable on direct appeal for reviewing a motion to reconsider and such an issue is typically not successful unless there is a "real legal error" such as a sentence that exceeds the maximum provided. PCR p. 113, lns. 4-20. When asked if the assessment would have differed if the attorneys had filed a motion for a new trial or raised matters of fundamental fairness involving the jurors, he responded that he could not honestly answer that question since such was not presented for his assessment. PCR pp. 113-114.

When Applicant's counsel called Ms. Vane to the stand, the State entered an objection. PCR pp. 124-126. The State argued that juror testimony could be used if "there's some allegation or some evidence of an external force that is being put on the jury as in them getting some form of outside information or outside contact during deliberations, things of that nature." PCR p. 125, lns. 16-20. Counsel further argued that there were two grounds for when it could be taken on matters involving internal deliberations and misconduct, which were matters that addressed fundamental fairness at trial and racial prejudice at play within the internal jury deliberations." PCR p. 125, ln. 23 – p. 126, ln. 5. The State concluded that Applicant had not shown a basis "to put forth the juror testimony." PCR p. 126.

In response, Applicant's counsel explained to this Court how the issue developed, provided a copy of the discovery order issued regarding the jurors and referenced the allegations involving the jurors in the amendment. PCR pp. 127-128. In sum, Applicant's counsel argued that juror testimony was relevant to this Court's determination of whether counsel was ineffective in how he handled the information he received from the jurors post trial. PCR p. 130.

Additionally, Applicant's counsel submitted that the juror affidavits were part of the record from General Sessions and were not struck by Judge Harrington as the State requested. Applicant's counsel also noted that the juror questionnaires and testimony from the attorneys regarding the jurors had been admitted at the evidentiary hearing without objection from the State. PCR p. 130. In reliance upon the case law provided to the Court and addressed in detail, Applicant's counsel explained that the majority of the relevant cases utilized a direct appeal analysis, yet in *Shumpert v. State*, 661 S.E.2d 369 (2008), the court indicated that there may be a different standard for admission of juror affidavits or testimony in post conviction relief matters. After addressing Rule 606(b), SCRE, counsel argued that there were exceptions for taking juror testimony on internal jury deliberations such as when matters of fundamental fairness were invoked and to ensure due process. Counsel further explained:

In these cases, they go through some guideposts because it's that beautiful gray language of what is fundamental fairness. So, they do give us some guideposts such as racial and gender discrimination, coercion, pressure, prejudice. And specifically the cases say, if there's claims of any type of prejudice, it must be investigated. ...what we're saying, by way of this PCR, is that counsel had information regarding these jurors. They even submitted a watered down version of it to the Court, but they didn't properly investigate it or present it via a motion for a new trial.

PCR p. 132, lns. 2-12. After addressing the relevant portions of *Shumpert*, *Hunter*, *Pittman*, and *Winkler* counsel informed the court that she would limit her questions to the exceptions set forth in the case law discussed.¹ PCR p. 136.

After additional brief argument from the State, this Court noted the State's objection and decided that he would hear the testimony and would hold Applicant's counsel to her offer to self-limit her questioning. Additionally, this Court reasoned that the absence of the jury allowed him to hear the testimony; then, he could determine how he would consider it. PCR p. 138.

When Ms. Vane took the stand, she acknowledged that she served as juror 368 at Applicant's trial. PCR p. 139. She recounted how she called trial counsel, answered the questionnaire, met with trial counsel and signed the affidavit. PCR pp. 140-143. She explained that she reached out to trial counsel immediately after trial because she had a "pit in her stomach the minute I walked out the door," and she knew that "justice had been neglected." PCR pp. 141, 146.

Regarding the questionnaire, she did not recall discussing the information in it with Mr. Cooper. PCR p. 143. When asked about her answer to question nine that there was pressure that caused her to change her verdict, she responded that the pressure in "that room was quite, quite high." PCR p. 143, lns. 17-24. She further explained that the *Allen* instruction felt like an admonishment and after it was given it was very difficult – she felt like there was no option but to find Applicant guilty. PCR p. 143-144. Thereafter, counsel asked her if it was pressure she put on herself or if it came from the other jurors, and she responded:

It was definitely pressure from the rest of it. I think everybody in the, in the – rest of the jury, with one exception, was really ready to go. I heard several different things said in there that, that made me just feel really quite angry about how they were approaching it. Like is – it just didn't matter almost.

¹ *State v. Hunter*, 320 S.C. 85, 463 S.E.2d 314 (1995), *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007), *Winkler v. State*, 418 S.C. 643, 795 S.E.2d 686 (2016).

But it was – and, and I – the – I don't know exactly what the final moment was that made me say okay, I'll, I'll go as the last one to say that he, he was guilty. I feel very badly about it. I don't know if it was a psycho – psychological kind of intimidation. I don't know what. It was, it was long, long day, a very difficult thing to talk about, something that we did not really have an option other than what the murder call was.

And so I, I basically was just – I may have just caved to their, to their coercion. I, I don't want to use the word coercion necessarily, but I want to say that they, they were just really coming at me about it, and I don't think I, I just – I didn't do very well in that call.

PCR p. 144, ln. 11 – p. 145, ln. 6. She continued to explain the psychological pressure she felt from the other jurors and how she let ten others convince her she was wrong. PCR pp. 145-146. She also explained how Ms. Drayton remained with her until the end and felt the same way she did. She recounted how they contacted each other immediately after the trial regarding their concerns. PCR pp. 149-150.

She explained how her position that Applicant was acting in self-defense in a “drug deal gone bad” was not heard by other jury members and things were said that truly “appalled” her. PCR p. 151, lns. 4-12. She further explained that the other jurors made statements, as follows: “they’re both criminals,” “who cares,” they were “tired of talking about it.” PCR p. 151, lns. 9-20. She concluded that she should have stood up to it all. PCR p. 151, lns. 9-20.

When asked if she would have been willing to testify if called in front of Judge Harrington or any other setting, she responded: “Absolutely.” PCR p. 153, lns. 18-24. She agreed that her testimony was not just something she had just decided to offer years later. PCR p. 153, ln. 25 – p. 154, ln. 2.

On cross-examination when asked if the comments made by the other jurors were simply jurors expressing their opinions or if they were directed at her, she responded by stating that she heard things that were not appropriate to a jury discussion and that the comments were directed at

her and Ms. Drayton as the last ones holding out. PCR pp. 155-156. She stated: "That's not, that's not justice. You get justice no matter who you are." PCR p. 156, lns. 2-3.

When Ms. Drayton took the stand, she acknowledged that she served as juror 108 at Applicant's trial. PCR p. 158. She recalled that she was 24 going on 25 at the time of trial, and she "very nervous" and "super anxious" since she has missed her first jury duty and thought she was going to jail. PCR p. 158. She recalled being selected on the first jury and explained that it was more racially split than the second jury. PCR pp. 159-160. She testified: "The second selection was majority white." PCR p. 159, ln. 22. She further testified that she was "the only black and youngest juror on the second selection." PCR p. 160, lns. 5-6. She also recalled there being more males on the second jury. PCR p. 160. Thereafter, the following testimony was elicited:

Question: Ms. Drayton, you indicated, like we already said, you were the lone black female on the second jury, and you also said you were the youngest. How did that affect you being the youngest?

Answer: Being that I was the youngest juror, I felt that my, my input wasn't as valued as other opponent – well, not other opponents, but other jurors. Like I was looked at being the, the young, naïve one who doesn't really understand a lot of what's going on. So, it's like if – her vote is like not as important as another jurors.

Question: And that was actively conveyed to you from the other jurors?

Answer: Yes.

PCR p. 161, lns. 1-13.

She recounted how she obtained counsel's email address from Ms. Vane and emailed him.

PCR pp. 162-163. When asked her reason for emailing counsel, she responded:

Just after we came out, and they, you know, did the, the verdict, it just – it didn't sit right with me. Like I, I felt sick to my stomach and like I remember going back

out, and sitting in the juror's area, and like I just held my head down. Like I couldn't look at Kadrin because I knew that I didn't feel that what was happening was right.

PCR p. 163, lns. 7-12. She further explained that she immediately tried to convey this to trial counsel. She testified that she thought Applicant was only guilty of trying to defend himself. PCR pp. 163-164.

Regarding her interaction with counsel, she recalled counsel just wanting her to sign the affidavit and she did not recall him asking her any questions or if she wanted to add or explain anything. PCR p. 164. Specifically, she did not recall him asking her whether her age, race, pressure or coercion played a factor into her changing her vote. PCR p. 164.

When asked about her understanding of the jury polling process, she responded that she did not understand that she could say no or change her vote at that point. PCR p. 165. Later this Court asked her about this testimony, and she affirmed that she would have changed her vote when she was polled if she would have known it was an option. PCR pp. 168-169. After this Court's questions on the matter, the State asked: "Why do you think you they would ask you if it is still your verdict if you had to answer the same thing that you had before?" PCR p. 170, lns. 3-5. She responded:

Because we had just did that vote in the deliberation room. So, my point where I'm looking at it, is they're asking me if that's what I, what I voted. Maybe during the time of, you know, the, the emotions I had going on, maybe I didn't hear him say is this still your vote. Maybe I wasn't thinking clearly to say, you know, okay, he is asking me is this still my vote so I have the option of changing.

PCR p. 170, lns. 6-12.

On direct, she also addressed the reasons why she changed her vote to guilty after the *Allen* charge. PCR pp. 166-168. She agreed with Ms. Vane's testimony that jurors made comments about it just being two drug dealers and "why does it matter." PCR p. 166, ln. 22-25. Specifically, she recalled statements about it not mattering that you had one drug dealer going to jail and one drug

dealer that was dead. PCR pp. 166-167. She also recalled jurors just wanting to conclude deliberations to avoid traffic and get home. PCR p. 167. When asked about the comments, she agreed it was not justice. PCR p. 167. Thereafter, the following testimony was elicited:

Question: Did you feel that, in that jury deliberation room, your unique perspective as the lone young, female, black juror was valued by the other jurors?

Answer: No.

Question: Do you want to explain that at all or have – do – you already have?

Answer: I mean I feel like, at certain points, like I tried to explain to people like look at it from another point of view. Like take into consideration – put yourself in that person's shoes, and they were just like, you know, the facts are the facts. Like this happened, and this is a result. So, it's like – I just felt like, I, I – my opinions were being dismissed.

PCR p. 167, ln. 23 – p. 168, ln. 10.

On cross-examination the State asked her if there was any extraordinary pressure that caused her to change her vote, and she responded:

I would say someone stating that it doesn't matter because one's a drug dealer and other one's dead, that that's a pressure. You basically saying that it's a waste of time to be here, and me arguing that I don't feel that this guy is guilty, you're telling me that it's pointless. Like were even doing this. I felt that that – well, I felt that that's a, a big pressure to be putting on someone when you have just a – at that time, it was probably two to three people who were still holding on to the not guilty verdict, and then you have other people who are just telling you that they want to get it over with, and that they're ready to go home, yeah, I do feel like that's extraordinary pressure to put on someone.

PCR p. 171, ln. 21 – p. 172 ln. 8.

When asked if the statements were truly directed at her, she explained that the statements were being directed at her and that the statements were clearly being made towards the hold-outs, which would include her. PCR p. 172-3. She clarified that she never stated that she was threatened

but that she was pressured. PCR p. 173, ln. 15-20. When the State called the pressures “normal,” she responded that the pressures were not normal that caused her to change her vote. PCR p. 174, lns. 6-11. She further responded that she was not aware that the foreman could have sent a note stating that they could not reach a verdict, and she thought that they had to reach a unanimous verdict before they were able to leave. PCR p. 173, ln. 21 – p. 174, ln. 5.

On redirect, Ms. Drayton affirmed that she would have had a more vivid memory of the pressures and what occurred when she spoke with Mr. Cooper, but he did not ask her about it. PCR pp. 175-176. On direct, she agreed that she would have been willing to testify immediately after trial. PCR p. 166.

When Applicant took the stand, he testified that he was not present at the post trial motion nor did he waive his appearance. PCR p. 185. He stated that he would have wanted to be present. PCR p. 186. He explained that he was not aware of the information counsel had obtained regarding jurors until several months after the post-trial hearing and motion was decided. PCR p. 186. He testified that he would have wanted to be informed at the time the information was known or obtained by counsel, which was when the motion was pending. PCR p. 186. He further testified that he would have wanted counsel to present all available information and/or the full picture to the court, file and/or argue the appropriate motions and involve him in the process. PCR pp. 185-187.

Rule 606(b), SCRE, provides:

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury’s deliberations or to the effect of anything upon that or any other juror’s mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror’s mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury’s attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror’s affidavit or evidence

of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

As was argued by Applicant and conceded by Respondent, this Court finds that South Carolina courts have recognized exceptions to the exclusion of juror testimony or affidavits regarding internal influences: 1) to ensure fundamental fairness, and 2) to ensure due process. The appellate courts have also set forth guideposts to help define what invokes concerns of fundamental fairness such as racial and gender discrimination, coercion and prejudice.

In *Shumpert v. State*, 378 S.C. 62, 661 S.E.2d 369 (2008), the South Carolina Supreme Court found that the lower court did not err in excluding a juror affidavit in ruling upon a post-conviction relief application.² The Court determined that the question was whether the affidavit offered suggested that the conduct of Petitioner's jury rendered his trial fundamentally unfair. *Id.* at 67–68, 661 S.E.2d at 372. The Court reasoned that the information could not simply amount to “buyer’s remorse,” and the affidavit at issue was based largely on speculation and hindsight. *Id.* at 65, 68, 661 S.E.2d at 370, 372.

The Court recognized the following exception to the Rule 606(b) categorical prohibition: juror testimony regarding internal misconduct may be received only when necessary to ensure fundamental fairness.³ *Id.* at 67, 661 S.E.2d at 371. The Court acknowledged that no specific guideposts for defining fundamental fairness had been previously articulated, but in examining existing precedent the court noted that the testimony must raise concerns of substantial injustice.

² In addressing the precedent, the Court noted: “Both of these cases were direct appeals from criminal convictions. The parties to the instant case did not argue that the rules for the introduction of juror testimony and the standard of a grant for post conviction relief based on internal jury misconduct differ from the standard applicable on direct appeal. We therefore assume, but do not decide, that the analysis outlined in our direct appeal precedent applies. *Id.* at 67, n.1, 661 S.E.2d at 371, n.1.

³ The Court also held that even if circumstances called for the admission of the affidavit, prejudice must be established to warrant a new trial. *Id.* at 69, n.2, 661 S.E.2d at 371, n.2.

Additionally, the Court acknowledged that if the testimony involves matters of prejudice; then, the matter must be investigated. *Id.* at 67–68, 661 S.E.2d at 372.

In *Shumpert*, the Court referenced *State v. Hunter*, 320 S.C. 85, 463 S.E.2d 314 (1995), which involved a direct appeal from a motion for a new a trial. In *Hunter*, the Court reasoned that juror testimony involving internal matters is only competent when necessary to ensure due process, i.e. fundamental fairness. *Id.* at 88, 463 S.E.2d at 316. The Court further reasoned that racial prejudice invokes matters of fundamental fairness. *Id.* The Court determined that this standard was not met in the instant case despite the juror using a racial slur since there was no evidence it was directed at an individual. Additionally, the court found no evidence of threats or coercion. *Id.* at 89, 463 S.E.2d at 316.

In *State v. Pittman*, 373 S.C. 527, 553–54, 647 S.E.2d 144, 157 (2007), the South Carolina Supreme Court addressed the argument that the verdict returned by the jury was not a unanimous verdict based upon post trial comments and that the lower court erred in denying a post-trial motion on such grounds. The Court held that the lower court was correct in finding that the testimony offered did not implicate fundamental fairness. *Id.* at 553, 647 S.E.2d at 158. In consideration of precedent argued by Pittman concerning internal influences where courts have held that fundamental fairness required the granting of a new trial, the Court concluded: “In contrast, while the jurors in this case expressed that they felt coerced into voting guilty, no testimony was presented to actually show coercive behavior.” *Id.* at 555, 647 S.E.2d at 158. After discussing the statements regarding the law allegedly made by the other jurors and the polling of the jury, the Court reasoned: “The jurors’ post-verdict testimonies are representative of many jury deliberations where individuals are persuaded, for whatever reasons, to change their vote. As long as the reason

prompting the change was not coercive or oppressive, the court should not disturb the finality of the verdict.” *Id.*, 647 S.E.2d at 158.

We find that these misunderstandings of the law regarding the unanimity of the verdict were insufficient to warrant a new trial. The trial court was correct in its order that such instances of internal influence do not implicate fundamental fairness. Although Appellant cites several cases concerning internal influence where courts have held that fundamental fairness required the granting of a new trial, the instant case does not present similar circumstances. Most of the cases upon which Appellant relies contain an internal influence of a coercive nature (i.e. racial prejudice, gender bias). In contrast, while the jurors in this case expressed that they felt coerced into voting guilty, no testimony was presented to actually show coercive behavior. As other courts have held, a jury’s misapprehension of the law is not enough to impeach a verdict. *See Chi., Rock Island & Pac. R.R. v. Speth*, 404 F.2d 291, 295 (8th Cir.1968).

Pittman, 373 S.C. at 554–55, 647 S.E.2d at 158.

Additionally, even if the jurors mistakenly believed the incorrect information from another juror, they were given ample opportunity to voice those concerns before the trial court accepted the verdict. Before the deliberations, the trial court explicitly charged that a unanimous verdict was not the same as a majority verdict. Moreover, upon receiving the jury verdict, the foreman was asked if the verdict was actually what the jury decided. The trial court also polled each juror, confirming that each agreed with the verdict. *See Green v. State*, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002) (noting that the trial court conducts a poll of the jury for the specific purpose of ensuring a unanimous verdict). The jurors’ post-verdict testimonies are representative of many jury deliberations where individuals are persuaded, for whatever reason, to change their vote. As long as the reason prompting the change was not coercive or oppressive, the court should not disturb the finality of the verdict.

Pittman, 373 S.C. at 555, 647 S.E.2d at 158.

Both of those decisions recognize that it would not be safe to lay down any inflexible rule because there might be instances in which such testimony of the juror could not be excluded without ‘violating the plainest principles of justice.’ This might occur in the gravest and most important cases; and without attempting to define the exceptions, or to determine how far such evidence might be received by the judge on his own motion, it is safe to say that there is nothing in the nature of the present case warranting a departure from what is unquestionably the general rule, that the losing party cannot, in order to secure a new trial, use the testimony of jurors to impeach their verdict.

McDonald v. Pless, 238 U.S. 264, 268–69 (1915).

Although Rule 606 expressly prohibits the introduction of juror testimony regarding both the content and the effect of statements occurring during the jury's deliberations, this Court has recognized an exception to that categorical prohibition. In *State v. Hunter*, this Court held that juror testimony involving internal misconduct may be received only when necessary to ensure fundamental fairness. 320 S.C. 85, 88, 463 S.E.2d 314, 316 (1995). That case involved allegations by a juror that the verdict was tainted by racial prejudice, and this Court affirmed the rule announced in *Hunter* in the later case *State v. Aldret*, 333 S.C. 307, 509 S.E.2d 811 (1999), which involved allegations that the jury began deliberations prematurely. The Court has instructed that a defendant must demonstrate prejudice from jury misconduct in order to be entitled to a new trial. *Id.* at 314, 509 S.E.2d at 814.

Shumpert v. State, 378 S.C. 62, 67, 661 S.E.2d 369, 371 (2008).

State v. Hunter, the seminal case from this Court on the issue of juror testimony regarding statements and conduct during the deliberative process, involved a juror's allegations that she was coerced through racial intimidation to cast her vote one way. We held "[i]f a juror claims prejudice played a role in determining the guilt or innocence of a defendant, investigation into the matter is necessary." 320 S.C. at 88, 463 S.E.2d at 316. "To hold otherwise," we stated, "would violate 'the plainest principles of justice.'" *Id.* The case *McDonald v. Pless*, a federal decision, similarly recognizes the potential for "instances in which [juror testimony] could not be excluded without violating the plainest principles of justice." 238 U.S. 264, 268–69, 35 S.Ct. 783, 59 L.Ed. 1300 (1915) (internal quotation marks omitted). This Court relied on *McDonald* in announcing the limited exception to the exclusion of juror testimony regarding deliberations, *see Hunter*, 320 S.C. at 88, 463 S.E.2d at 316, and other federal precedent echoes *McDonald's* language that juror testimony must raise significant questions of substantial injustice in order to be admissible. *See, e.g., Downey v. Peyton*, 451 F.2d 236, 239–40 (4th Cir.1971) (describing evidence that the jury's verdict was based on certain extrinsic information as creating such a probability of prejudice that the verdict was deemed inherently lacking in due process.)

Shumpert v. State, 378 S.C. 62, 67–68, 661 S.E.2d 369, 372 (2008).

This Court finds that Applicant has failed to meet his burden of proof in showing any ineffective assistance of counsel or any resulting prejudice. This Court considered the testimony of the jurors presented at the evidentiary hearing and the resulting actions of trial counsel. As noted in the above cited case law, the affidavits and testimony of the jurors in this case presented nothing

that would implicate fundamental fairness and alluded to the normal pressures associated with jury deliberations. "Normal" is used not to minimize the pressure placed on jurors during deliberation nor to disparage the affidavits and testimony of these appropriately concerned jurors. However jury service requires the most serious attention of each juror and honest discussion among the jurors *before* a verdict is reached.

The substance of the original charge from *Allen v. United States*, 164 U.S. 492 (1896) instructed the split jury that:

in a large proportion of cases absolute certainty could not be expected; that, although the verdict must be the verdict of each individual juror, and not a mere acquiescence in the conclusion of his fellows, yet they should examine the question submitted with candor, and with a proper regard and deference to the opinions of each other; that it was their duty to decide the case if they could conscientiously do so; that they should listen, with a disposition to be convinced, to each other's arguments; that, if much the larger number were for conviction, a dissenting juror should consider whether his doubt was a reasonable one which made no impression upon the minds of so many men, equally honest, equally intelligent with himself. If, upon the other hand, the majority were for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of a judgment which was not concurred in by the majority.

Allen, 164 U.S. at 501.

During Applicant's trial, in providing the jury with the *Allen* charge, Judge ~~Harrington~~^{So} instructed:

When a matter is in dispute, it isn't always easy for people to agree, even two people to agree, so when twelve of you must agree it becomes increasingly more difficult. In most cases, absolute certainty cannot be reached or expected. However, you have a duty to make every reasonable effort to reach a unanimous verdict. In doing this, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors, tell each other how you feel and why you feel that way, discuss your differences with open minds.

Although the verdict of the jury must be unanimous, every one of you has the right to your own opinion. The verdict you agree to must be your own verdict, the results of your own convictions, and you should not give up your firmly-held beliefs merely to be in agreement with your fellow jurors. The majority should and – should consider the minority's opinion and the minority should consider the

majority's opinion. You should carefully consider and respect the opinions of each other and reevaluate your own opinions for reasonableness, correctness, and impartiality. You must lay aside all outside matters and reexamine the questions before you, based upon the law and the evidence in this case.

If you do not agree on a verdict in this case, I must declare a mistrial. In that case, it does not mean anybody wins. It simply means that at some future time, I will try this case with some other jury sitting exactly where you are. The same participants will come in and the same lawyers will ask basically the same questions of basically the same witnesses and get the same answers and we'll go through this whole process again.

You were selected in the same manner and from the same source as any future jury will be and there is no reason for me to suppose that this case would ever be submitted to twelve more intelligent, competent, impartial, and conscientious jurors that you are here today.

Tr. Vol. 5, p. 24 ln. 7 – p. 25 ln. 18.

All these direct and focus the jury on each juror's duty to their conscience, to determine the facts, to apply the law and to speak the truth to the parties that placed their trust in them. It is not an easy job, nor should it be taken lightly. However once the verdict is pronounced and the jury polled, the jury's decision cannot be overturned without substantial verifiable reason. A juror's failure to speak his conscience, or to ignore the judge's instructions, or to second guess his decision is not grounds to overturn a verdict nor to grant PCR.

At most, the affidavits presented to the trial court and the testimony presented to this Court allege internal influences placed on the jurors. This Court finds no reference to any racial bias alleged towards the defendant nor was there any allegation of truly coercive behavior towards any of the jurors. This Court shares the frustration of trial defense counsel. While this Court allowed considerable latitude in the juror's testimony, their testimony did not establish extraneous prejudicial influences or any improper outside influences. Consequently considering the testimony of the jurors, there was no legally recognized justification for overturning the verdict or granting PCR. There was no testimony presented that would warrant this Court finding ineffective

assistance of trial counsel nor any prejudice resulting from the alleged deficiency. Applicant has also failed to prove any prejudice resulting from the alleged ineffective assistance of counsel. Applicant has not proven the result of his trial would have been different had counsel made a new trial motion. There were no grounds upon which trial counsel could have attained the testimony of the jurors and if he had, this Court finds it unlikely that the trial court would have decided differently in regards to the nature of the deliberations.

Failure to request voluntary manslaughter instruction

Applicant alleges that trial counsel was deficient for failing to request an instruction on the lesser-included offense of voluntary manslaughter. Applicant argues that he was prejudiced by trial counsel's failure to request a voluntary manslaughter instruction. This Court finds Applicant has failed to meet his burden in proving deficiency or any resulting prejudice. Applicant also argues that trial counsel was ineffective for failing to preserve his request for a jury charge on imperfect self-defense. This Court does not find relief is warranted on the imperfect self-defense allegation.

At trial Applicant testified that he acted in self-defense when he shot Williams. Specifically, Applicant testified that he and Williams got into a disagreement after Williams shorted him twenty grams of marijuana. R. p. 767, ln. 14-p. 768, ln. 20. He further testified that Williams placed a firearm on the bar top counter, which he took to mean that "he's the king of the jungle, and I'm in his jungle right now." R. p. 770, ln. 15 – p. 771, ln. 6. Applicant grabbed the gun off the counter, at which point Williams "charged" him. R. p. 771, ln. 15 – p. 773, ln. 5. Applicant then shot Williams out of fear for his life. R. p. 774, ln. 23-p. 775, ln. 23. He testified that "[w]hen it all happened, it happened so fast, it was like a [sic] instinct." R. p. 775, lns. 16-17.

Prior to Applicant's testimony at trial, the trial court questioned defense counsel about "unusual" jury requests, and trial counsel stated that "I would potentially request to argue against precedent for an imperfect self-defense charge." R. p. 715, lns. 15-19. During the portion of the charge conference held on the record, however, trial counsel did not request a jury charge on "imperfect self-defense" nor the lesser-included offense of voluntary manslaughter.⁴ "Imperfect self-defense" was next mentioned after the jury had reached a verdict, but before the verdict was announced. At that point, the trial court informed trial counsel that "I'll allow you to place everything on the record, including the imperfect self-defense, after the verdict." R. p. 953, lns. 18-22. However, that discussion did not occur immediately following the verdict.

Instead, trial counsel addressed "imperfect self-defense" at the post-trial hearing referenced above. There, he argued that "[t]he intent of requesting an imperfect self-defense charge would be to ask the Court for a charge on manslaughter based on the inference—the concept of imperfect self-defense." R. p. 978, lns. 21-24. When asked if he requested a charge on the lesser-included offense of voluntary manslaughter, trial counsel admitted that he had not. R. p. 978, lns. 7-20; *see also* R. p. 982, lns. 10-11 ("We did not request a voluntary manslaughter charge.") The trial court then questioned the State regarding the propriety of such a request, and the State responded that "I think if they had specifically said, we want a voluntary manslaughter charge, if the Court wanted to look for evidence of provocation and the defendant's direct testimony, arguably one could find it." R. p. 984, ln. 22 – p. 985, ln. 1.

At the evidentiary hearing, Mr. Cooper testified that he knew that Applicant was going to testify that he fired out of fear. PCR p. 67, lns. 21-23. He further testified that he did not recall researching whether fear could serve as a basis for sudden heat of passion. PCR p. 67, ln. 24 – p.

⁴ According to trial counsel, the matter of imperfect self-defense was discussed in chambers, but not on the record, and that the trial court indicated that she would not give such an instruction. *See* PCR p. 74, ln. 20-p. 75, ln. 14.

68, ln. 5. He testified that he did not believe that a charge of voluntary manslaughter “was worth requesting under a normal scenario or a classical scenario.” PCR p. 68, lns. 9-13. He believed instead that he “was requesting voluntary manslaughter through the imperfect self-defense theory.” PCR p. 67, lns. 1-2. He further testified that he did not articulate his basis for requesting imperfect self-defense until the post-trial hearing. PCR p. 79, lns. 2-6.

“Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation.” *State v. Wharton*, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009). “[B]oth heat of passion and sufficient legal provocation must be present at the time of the killing.” *State v. Starnes*, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010). “[A] person’s fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion.” *Id.* at 598, 698 S.E.2d at 609. “[T]he fear must be the result of sufficient legal provocation **and** cause the defendant to lose control and create an uncontrollable impulse to do violence.” *Id.* (emphasis in original). For instance, “[t]here can be little argument that an unprovoked knife attack constitutes sufficient legal provocation to warrant the requested charge.” *State v. Knoten*, 347 S.C. 296, 307, 555 S.E.2d 391, 397 (2001).

We reaffirm the principle that a person’s fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion. However, the mere fact that a person is afraid is not sufficient, by itself, to entitle a defendant to a voluntary manslaughter charge. Consistent with our law on voluntary manslaughter, in order to constitute “sudden heat of passion upon sufficient legal provocation,” the fear must be the result of sufficient legal provocation **and** cause the defendant to lose control and create an uncontrollable impulse to do violence. Succinctly stated, to warrant a voluntary manslaughter charge, the defendant’s fear must manifest itself in an uncontrollable impulse to do violence.

A person may act in a deliberate, controlled manner, notwithstanding the fact that he is afraid or in fear. Conversely, a person can be acting under an uncontrollable impulse to do violence and be incapable of cool reflection as a result of fear. The latter situation constitutes sudden heat of passion, but the former does not. Evidence that fear caused a person to kill another person in a sudden heat of passion will mitigate a homicide from murder to manslaughter—it will not justify it. This is the

distinction between voluntary manslaughter and self-defense. We reiterate that evidence of self-defense and voluntary manslaughter may coexist and that a charge on self-defense **and** voluntary manslaughter may be warranted. *See State v. Gilliam*, 296 S.C. 395, 373 S.E.2d 596 (1988) (holding the evidence supported both a self-defense charge and a voluntary manslaughter charge).

State v. Starnes, 388 S.C. at 598–99, 698 S.E.2d at 609.

“Under the ‘imperfect self-defense’ doctrine, the crime is reduced from murder to voluntary manslaughter where a defendant had a genuine but unreasonable fear of imminent peril from the victim, and killed the victim, or where the slayer, although acting in self-defense, was not himself or herself free from blame, as where he or she was the aggressor or used excessive force, although without murderous intent.” *State v. Sams*, 410 S.C. 303, 315, 764 S.E.2d 511, 517 (2014) (quoting 40 C.J.S. *Homicide* § 110 (2006)). South Carolina does not recognize the doctrine of imperfect self-defense. *See id.* (“Heretofore, South Carolina has not expressly adopted the doctrine of imperfect self-defense”); *State v. Finley*, 277 S.C. 548, 551, 290 S.E.2d 808, 809 (1982) (the doctrine of “imperfect self-defense” “is not the law in South Carolina.”).

This Court finds that Applicant has failed to meet his burden in proving ineffective assistance by trial counsel or any prejudice resulting from the alleged deficiency. Applicant has failed to show how trial counsel was ineffective where the trial court would not have charged the jury on voluntary manslaughter as such facts were not present in the record to support the instruction. Applicant was not entitled to an instruction on voluntary manslaughter when facts in the record did not support acting in a sudden heat of passion upon sufficient legal provocation. Here, unlike in *Knoten*, the actions of the victim that lead to the shooting were directly provoked by Applicant. Applicant, as is noted above by his own testimony, reached for and grabbed the gun before the victim made any aggressive acts towards him. No testimony was presented that would amount to sufficient legal provocation, especially considering the victim only began acting

physically aggressive toward Applicant after Applicant grabbed the gun. Further, as noted in the case law above, Applicant stating he was afraid after the fact is not alone sufficient to meet the standard for sudden heat of passion. Considering these elements and the underlying facts together, this Court finds that Applicant has failed to show deficiency on the part of trial counsel for failing to request a jury instruction on voluntary manslaughter. Further, this Court finds that Applicant has failed to prove prejudice where it is unlikely that if the issue had been preserved for appellate review the appellate courts would have overturned the conviction. As previously stated, this Court finds that Applicant was not entitled to receive an instruction on voluntary manslaughter.

This Court does not conclude, however, that trial counsel was ineffective as to his handling of the “imperfect self-defense” charge. While it does not appear that trial counsel preserved his argument for appeal, this Court cannot conclude that it would have been this case that would have compelled the Supreme Court to recognize “imperfect self-defense” when the Supreme Court has heretofore not recognized that doctrine. The fact that it has now been close to six-and-a-half years since *Sams* only reinforces this Court’s conclusion. Accordingly, this allegation is denied, as Applicant cannot show he was prejudiced by trial counsel’s failure to preserve his “imperfect self-defense” argument for appeal.

Failure to object to self-defense charge as burden shifting

Applicant argues that trial counsel was ineffective for failing to object to the self-defense charge as it shifted the burden of proof for establishing the defense from the State to the defense. This Court disagrees. The trial court’s instruction, when read as a whole, constituted a proper statement on the law of self-defense. *See* Tr. Vol. 5, p. 16 ln. 17 – p. 19 ln. 7. Accordingly, trial counsel was not ineffective for failing to object to jury charges that were proper when given. This allegation is therefore denied since it fails to meet either prong of the *Strickland* analysis.

Failure to object to the jury instruction on malice for lacking the general permissive inference instruction

Applicant alleged that trial counsel was deficient for failing to object to the inferred malice instruction. *See* R. p. 943, lns. 15-16. Applicant argues that he was prejudiced by trial counsel's failure to request that the "general permissive instruction" be given alongside the inferred malice instruction.

The trial court instructed the jury on murder and self-defense. *See* R. p. 942, ln. 17 – p. 746, ln. 6. The trial court gave the following instruction regarding express and inferred malice:

Malice aforethought may be express or inferred. These terms express and inferred do not mean different kinds of malice but merely mean the manner in which the malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proved.

Express malice is shown when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished. For example, acts of preparation going to show that the deed was within the defendant's mind would be express malice. Malice may be inferred from conduct showing a total disregard for human life.

R. p. 943, lns. 4-16. Trial counsel did not object to this portion of the jury charge, nor did he request that the trial court give the "general permissive inference" instruction.

At the evidentiary hearing convened in this case, Mr. Cooper testified that he was not familiar with the general permissive inference instruction. PCR p. 89, lns. 4-9. He further testified that he was "sure" that the general permissive inference instruction would have been helpful. PCR p. 90, lns. 13-16. He did not provide a strategic reason for failing to object to the instruction and stated that "[i]f I didn't object, I didn't object." PCR p. 90, lns. 10-11.

In *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991), and *overruled by State v. Burdette*, 427

S.C. 490, 832 S.E.2d 575 (2019), the Supreme Court set forth the standard general permissive inference instruction:

If facts, are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive.

279 S.C. at 421, 308 S.E.2d at 784. However, the above referenced “general permissive inference” instruction is preceded by the following line: “The law says if one intentionally kills another with a deadly weapon, the implication of malice may arise.” *Elmore*, 279 S.C. at 421, 308 S.E.2d at 784. *Elmore* was overruled by *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), where the South Carolina Supreme Court held that “the ‘use of a deadly weapon’ implied malice instruction has no place in a murder . . . prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing.” 385 S.C. at 610, 685 S.E.2d at 809. Applicant argued that he should be entitled to the above cited jury instruction, counsel was ineffective for failing to request the instruction, and Applicant was prejudiced as a result of the alleged failure. However, this Court disagrees. Applicant’s reliance on *Elmore* in support of his argument is flawed, as Applicant’s case does not involve an instruction on malice based on the use of a deadly weapon, and even if it did, evidence was presented warranting a jury charge on self-defense. Thus, the charge in Applicant’s case does not merit the mandatory permissive inference instruction. Therefore, Applicant has failed to prove both deficiency on the part of trial counsel and any resulting prejudice.

Failure to object to the Allen Charge

Applicant alleges that trial counsel was ineffective when he failed to object or enter an exception to the *Allen* charge. As discussed above the jury began deliberation on Friday morning at 9:20 a.m. R. p. 948, ln. 5. The jury returned after submitting notes, which included a request to

replay testimony. R. p. 949. Thereafter, the court informed the parties that the jury was split 6/6, and she intended to give an *Allen* instruction. R. p. 950. Trial counsel responded that he thought the charge was appropriate at that time. R. p. 950, ln. 18. At 1:36 p.m., the jury returned and an *Allen* instruction was given. R. pp. 951-952. The jury was sent back out at 1:39 p.m., and no exception was made to the charge. R. p. 953. The jury returned with their verdict at 4:03 p.m. R. p. 955. Thereafter, the jury was polled. R. p. 957.

At the evidentiary hearing, Mr. Cooper testified he recalled the court telling the parties that the jury was split 6/6, and he thought there was no way six people would get “rolled.” PCR p. 91. He recalled that they likely verbally reviewed the *Allen* charge, and he recalled not having an objection to the contents of it. PCR p. 92. When asked if he considered objecting to the instruction on any basis, he responded: “I wanted the *Allen* charge.” PCR p. 92, lns. 9-13.

When Applicant was on the stand, he testified that he would have wanted counsel to object to the *Allen* charge. PCR p. 185, lns. 2-9.

In *State v. Taylor*, 427 S.C. 208, 214–15, 829 S.E.2d 723, 727 (Ct. App. 2019), the Court of Appeals explained:

South Carolina approves the use of a modified *Allen* charge, which must be neutral and evenhanded, instruct both the majority and minority to reconsider their views, and cannot be directed at the jurors in the minority. *Workman v. State*, 412 S.C. 128, 130, 771 S.E.2d 636, 638 (2015); *Green v. State*, 351 S.C. 184, 194, 569 S.E.2d 318, *State v. Taylor*, 427 S.C. 208, 829 S.E.2d 723 (S.C. App. 2019) 323 (2002). A trial judge has a duty to urge jurors to reach a verdict, but must do so in a way that does not coerce them, eroding their independence and impartiality. No set definition of coercion has emerged; instead, we detect its presence by viewing the charge in context and in light of four factors: (1) whether the charge speaks “specifically to minority jurors”; (2) whether the charge includes “you must return a verdict” type language; (3) whether there was an “inquiry into the jury’s numerical division,” which is generally coercive; and (4) whether the time between when the charge was given and when the jury returned a verdict demonstrates coercion. See *Tucker v. Catoe*, 346 S.C. 483, 492–95, 552 S.E.2d 712, 717–18 (2001) (per curiam). Like most multi-factor constructs, the *Tucker* test does not tell us the relative weight each factor carries, nor is the list of factors exclusive. *Id.* at

491, 552 S.E.2d at 716 (emphasizing the coercion inquiry “is very fact intensive”); *Workman*, 412 S.C. at 130, 771 S.E.2d at 638 (stating coerciveness must be gauged by context and circumstances).

This Court has reviewed the *Allen* instruction in its entirety, *supra* pp. 30–31, along with the relevant portions of the trial and evidentiary hearing transcripts. Transcript pp. 951–52. This Court is not convinced that trial counsel was ineffective for failing to object to the *Allen* instruction. Trial counsel testified that he wanted the court to give the *Allen* instruction after being informed of the numerical split of the jury. When considering counsel’s strategy over the converse strategy of objecting, this Court finds counsel’s strategy to be reasonable. Therefore, this Court does not find Applicant’s trial counsel was ineffective.

Additionally, this Court finds no prejudice resulting from counsel’s decision when considering the viability of such an objection. If counsel had objected and the court denied the objection, this Court finds Applicant would not have been successful on appeal. Despite the brevity of the jury deliberations following the instruction, this Court finds that the instruction could not have improperly spoken to the minority when the jury was evenly split at the time of the instruction. Therefore, this Court finds that the allegation fails under both prongs of the *Strickland* analysis.

Ineffective assistance of Appellate Counsel

Applicant alleges that appellate counsel provided ineffective assistance for failing to raise all meritorious issues on appeal and for failing to file for rehearing. At the evidentiary hearing, David Alexander, Esquire, testified regarding his experience as an attorney and his handling of Applicant’s direct appeal.

Mr. Alexander testified that he is an attorney with the Office of Appellate Defense, and he serves as an appellate defender. PCR p. 107. He testified that he has been an appellate defender

for eight years and has been an attorney for twenty years. PCR p. 107. During his time at appellate defense, he estimated that he has handled hundreds of criminal appeals. PCR p. 107.

When asked to explain the process he utilized to prepare his brief in Applicant's case, he responded: "I read the transcript, and I make note of any objections or motion by either side that might be a fruitful issue on appeal, and then just use process of elimination to try to select the best issues for appeal." PCR p. 108, lns. 11-14.

Thereafter, Applicant's counsel asked him about specific issues not raised on appeal. Regarding the *Biggers* hearing, he responded that he did not raise the issue "because of the self-defense and his testimony." PCR p. 108, lns. 19-21. When asked about not raising the defense objection to the cell phone records, he explained that he strongly considered raising the issue, but he did not since law enforcement obtained two warrants and concerns with having to overcome inevitable discovery and good faith exceptions. PCR pp. 108-109. Finally, he explained that he did not have a specific reason for not raising counsel's objection to the 911 call, but he had crossed it off in his notes. Therefore, he could say that he had considered it and decided to not raise it on appeal. PCR pp. 109-110. On cross-examination, he explained that he raised the best issues he found properly preserved in the record. PCR p. 122.

In analyzing a claim of ineffective assistance of appellate counsel, the South Carolina Supreme Court has held that this Court must apply the two prong *Strickland* test just as it would be to a claim of ineffective assistance of trial counsel. See *Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). In *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 277 (2009), the South Carolina Supreme Court explained that the lower court should "ask 1) whether appellate counsel's performance was deficient, and 2) whether Petitioner was prejudiced by appellate counsel's deficient performance."

Based upon the record, testimony presented and applicable case law, this Court finds that Applicant has failed to establish that the assistance offered by appellate counsel was deficient or that that he was prejudiced as a result. At the evidentiary hearing, counsel testified to his appellate experience and the process he undertook to identify and argue the issues presented in Applicant's appeal. He addressed the issues not raised and provided a reasonable explanation for not briefing further issues. He also addressed his reasons for not filing for rehearing. It must be noted that filing for rehearing is discretionary and rehearing was filed by Applicant and denied by the appellate court; thus demonstrating the lack of prejudice resulting from counsel not filing for such on Applicant's behalf. Therefore, this Court finds that Applicant's claims regarding appellate counsel must fail for failure to establish ineffective assistance or resulting prejudice.

IV. Conclusion

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 7th day of January, 2022.



EDGAR W. DICKSON
Presiding Judge
Fourteenth Judicial Circuit

Orangeburg, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Kadrin Singleton, 335449,

Plaintiff,

vs.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-1658

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

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Defendant's Attorney:

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Phone: 803-734-3737 Fax _____

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☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Rule 59, SCRPC, Motion

Estimated Time Needed: 1 hour

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

January 28, 2022

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	DOCKET NO.: 2018-CP-40-1658
Kadrin Singleton, 335449,	)	
Applicant,	)	
v.	)	MOTION PURSUANT TO RULE
	)	59(a) & (e), SCRCF
State of South Carolina,	)	
Respondent,	)	
_____	)	

Pursuant to Rule 59 (a) and (e) of the South Carolina Rules of Civil Procedure, Applicant would move before this Court for relief as follows.

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on April 2, 2018. The State submitted a Return and Motion for a More Definite Statement on July 3, 2018. On November 15, 2019, Applicant, through counsel, filed an Amendment to Application for Post Conviction Relief, which stated the following:

In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial and appeal. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of trial and appellate counsel:

1. Trial counsel rendered ineffective assistance related to the handling of matters related to the jury for the following:
 - a. Failure to properly respond to the State's Batson Motion.
 - b. Failure to properly utilize information given by jurors post trial and move for a new trial.
2. Trial counsel rendered ineffective assistance related to the juror instructions for the following:
 - a. Failure to enter an objection or exception to the jury instruction on malice for lacking the general permissive inference instruction. *Gibson v. State*, 416 S.C. 260, 786 S.E.2d 121 (2016).

- b. The handling of the self- defense instruction.
 - c. Failure to request the lesser included manslaughter offenses.
 - d. Failure to object to the *Allen* charge.
3. Appellate counsel rendered ineffective assistance for failing to raise all meritorious issues on appeal (911 call, Biggers) and for failing to file for rehearing.

On January 21, 2020, an evidentiary hearing was convened at the Charleston County Courthouse in front of the Honorable Edgar W. Dickson. Applicant was present and represented by Tricia A. Blanchette, Esquire, and Jeremy A. Thompson, Esquire. Respondent was represented by Benjamin Limbaugh, Esquire. Applicant took the stand and called the following witnesses: Megan Ehrlich, Esquire, Michael Cooper, Esquire, David Alexander, Esquire, Deanne Vane, and Kendra Drayton. Applicant introduced eight exhibits. Respondent did not call a witness or mark an exhibit. The Court also had before him a copy of the records stemming from Applicant's underlying trial and appeal.

At the close of the evidentiary hearing, the Court allowed time to obtain the evidentiary hearing transcript. Upon receipt and review of the transcript, the Court requested outlines and/or memorandums from both parties. Applicant, through counsel, submitted an outline, and Respondent did not provide a response. On December 21, 2020, the Court requested proposed Orders from both parties, which were submitted by Applicant on February 11, 2021 and Respondent on February 15, 2021.¹

On January 7, 2022, the Court issued an Order of Dismissal, which was filed on January 10, 2022. Applicant, through counsel, received notice of entry of the Order via mail on January

¹ In submitting the proposed Order, the State acknowledged that they had not obtained the evidentiary hearing transcript; therefore, their proposed Order incorporated Applicant's summary of testimony from the evidentiary hearing and citations as set forth in Applicant's proposed Order.

19, 2022. Applicant, who is presently in quarantine, received verbal notice of entry of the Order from counsel on January 26, 2022, from which this Motion follows.

ARGUMENT

In *Marlar v. State*, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post-conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that the Court ensure that specific findings of fact and conclusions of law are entered on each issue raised and that the record before the Court and testimony of each witness is properly addressed in the standing Order of Dismissal (“Order”).² Additionally, Applicant would respectfully ask that the Court reconsider the Order and find that a new trial should be granted.

As a threshold matter, Applicant would ask the Court to review the record, to include the evidentiary hearing transcript, and ensure the accuracy and completeness of the standing Order and/or reconsider the denial of relief. Applicant would also ask the Court to reconsider the facts, reasonings and findings set forth in the Applicant’s proposed Order, which is attached herein and incorporated by reference, and grant relief.³ It is apparent that significant portions of Applicant’s proposed Order were utilized in the Order of Dismissal. As a result, Applicant submits the summary of facts and evidence are not consistently coherent with the reasoning and conclusions in the Order of Dismissal. Therefore, Applicant would urge the Court to reconsider the Order of Dismissal.

² Applicant submits the “Summary of the Facts Adduced at Trial” are presented in the light most favorable to the State.

³ Applicant does not concede any issues on which the incorporated proposed Order does not grant relief as this Order was drafted in line with persuading the lower court towards granting Applicant relief.

Next, Applicant would specifically argue that the Court has committed an error that is not supported by the record or the law by finding that the permissive inference instruction set forth in *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991), and *overruled by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019), should not have been given by the trial court; therefore, counsel did not render ineffective assistance of counsel despite his admissions that it would have been helpful and he had no reason for not requesting it.

An inferred malice charge has two components, the charge detailing the circumstances from which malice can be inferred, which is not limited to a deadly weapon, and the general permissive malice instruction. Here, as the Order acknowledges before erroneously finding it was not required, the trial court's charge on murder lacks the general permissive inference instruction. In *State v. Elmore*, 279 S.C. at 421, 308 S.E.2d at 784, the South Carolina Supreme Court set forth a standard permissive inference charge to be used when instructing the jury on the inference of malice from a deadly weapon:

The law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts, are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive.

As is ignored in the Order, after promulgating the standard charge, the following warning was issued: "We caution the bench, that hereafter only slight deviations from this charge will be tolerated." *Id.* As relied upon in the Order, *Belcher* and *Elmore* deal specifically with a charge that permits the inference of malice from the use of a deadly weapon, yet the South Carolina Supreme Court has stated that **all** inferences should be accompanied by the general permissive inference instruction. *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009); *See State v.*

Mattison, 276 S.C. 235, 238 277 S.E.2d 598, 600 (1981) (“[W]e strongly suggest to the Trial Bench that a more appropriate instruction on implied malice would deal with the evidentiary nature of the presumption and that the implication does not require the jury to infer malice but only permits it”), *overruled on other grounds by Belcher*.

In *Belcher*, the South Carolina Supreme Court explained that *Elmore*’s first sentence constituted “[t]he standard implied malice charge” whereas the second sentence constituted “the general permissive inference instruction.” 385 S.C. at 612, 685 S.E.2d at 811, fn. 9. Since *Elmore*, South Carolina’s appellate courts have repeatedly instructed trial courts to give the general permissive inference charge when the standard implied malice instruction is given and have not limited this instruction to when a deadly weapon inference charge is given. *See State v. Lewellyn*, 281 S.C. 199, 201, 314 S.E.2d 326, 327 (1984) (“The trial bench is reminded that the proper charge on implied malice is that suggested in *Elmore*.”), *State v. Peterson*, 287 S.C. 244, 247-8, 335 S.E.2d 899, 802-3 (1985) (“Even though the *Elmore* charge dealt only with the prohibition of a presumption of malice from the use of a deadly weapon, the principle behind the case likewise prohibits the presumption of malice from the intentional doing of an unlawful act.”); *Belcher*, 385 S.C. at 612, 685 S.E.2d at 811, fn. 9 (2009) (distinguishing the standard implied malice charge from the general permissive inference charge); *State v. Wilds*, 355 S.C. 269, 277, 584 S.E.2d 138, 142 (Ct. App. 2003) (“In a charge to the jury, the judge should make clear to the jury that it is free to accept or reject the permissive inferences depending on its view of the evidence.”).

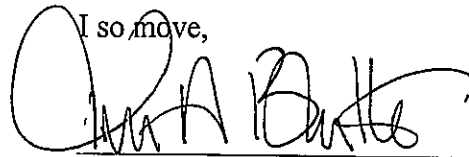
Also, in *Belcher*, the South Carolina Supreme Court concluded that the inference of malice from the use of a deadly weapon is a “half-truth” because “[o]ther facts and evidence (or the absence of other facts and evidence) are required for the fulfillment of [malice’s] component

parts” which “include the absence of justification, excuse and mitigation.” *Belcher*, 385 S.C. at 609-10, 685 S.E.2d at 808. Similarly, the blanket instruction that malice can be inferred from conduct that shows a total disregard for human life conveys a half-truth because there are circumstances where an individual would act in such a way with justification, excuse or mitigation. Contrary to the Order, Applicant submits the permissive inference instruction is required when the “total disregard” malice inference charge is given.

A trial attorney’s failure to object to the lack of a general permissive inference instruction when it is warranted constitutes deficient conduct. *Gibson v. State*, 416 S.C. 260, 786 S.E.2d 121 (2016). Turning to the question of prejudice, the court “must decide whether the erroneous malice instruction contributed to the jury’s verdict based on all the evidence presented to the jury.” *Gibson* at 265, 786 S.E.2d at 265. “The Court must weigh the significance of the presumption to the jury against the other evidence of malice considered by the jury without the erroneous malice charge.” *Id.* Here, the lower court did not conduct the analysis set forth in *Gibson* but merely concluded: “Thus, the charge in Applicant’s case does not merit the mandatory permissive inference instruction. Therefore, Applicant has failed to prove both deficiency and any resulting prejudice.” Order p. 38. Applicant would ask the Court to reconsider and/or address the prejudice analysis and conclusions set forth in the attached proposed Order.

CONCLUSION

In conclusion, Applicant would request that the Court review the full record, including the evidentiary hearing transcript, alter, amend or reconsider the standing Order of Dismissal and/or rehear Applicant's case pursuant to Rule 59(a) and (e), SCRPC.

I so move,


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January 27, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Kadrin Singleton, #335449,	)	2018-CP-10-1658
Applicant,	)	
v.	)	
	)	ORDER GRANTING APPLICATION
State of South Carolina,	)	FOR POST CONVICTION RELIEF
<u>Respondent.</u>	)	

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on April 2, 2018. The State submitted a Return and Motion for a More Definite Statement on July 3, 2018. On November 15, 2019, Applicant, through counsel, filed an Amendment to Application for Post Conviction Relief, which stated the following:

In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial and appeal. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of trial and appellate counsel:

1. Trial counsel rendered ineffective assistance related to the handling of matters related to the jury for the following:
 - a. Failure to properly respond to the State's Batson Motion.
 - b. Failure to properly utilize information given by jurors post trial and move for a new trial.
2. Trial counsel rendered ineffective assistance related to the juror instructions for the following:
 - a. Failure to enter an objection or exception to the jury instruction on malice for lacking the general permissive inference instruction. *Gibson v. State*, 416 S.C. 260, 786 S.E.2d 121 (2016).
 - b. The handling of the self- defense instruction.
 - c. Failure to request the lesser included manslaughter offenses.

- d. Failure to object to the *Allen* charge.
3. Appellate counsel rendered ineffective assistance for failing to raise all meritorious issues on appeal (911 call, Biggers) and for failing to file for rehearing.

On January 21, 2020, an evidentiary hearing was convened at the Charleston County Courthouse in front of the Honorable Edgar W. Dickson. Applicant was present and represented by Tricia A. Blanchette, Esquire, and Jeremy A. Thompson, Esquire. Respondent was represented by Benjamin Limbaugh, Esquire. Applicant took the stand and called the following witnesses: Megan Ehrlich, Esquire, Michael Cooper, Esquire, David Alexander, Esquire, Deanne Vane, and Kendra Drayton. Applicant introduced eight exhibits. Respondent did not call a witness or mark an exhibit. This Court also had before him a copy of the records stemming from Applicant's underlying trial and appeal.

At the close of the evidentiary hearing, this Court allowed time to obtain the evidentiary hearing transcript. Upon receipt and review of the transcript, this Court requested outlines and/or memorandums from both parties. Applicant, through counsel, submitted an outline, and Respondent did not provide a response. Thereafter, this Court requested proposed Orders from both parties, from which this Order follows.

GENERAL SESSIONS PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Charleston County Clerk of Court. During the March 2013 term of the Charleston County Grand Jury, Applicant was indicted for murder (2013-GS-10-1153).

On January 5, 2015, Applicant proceeded to trial in front of the Honorable Kristi L. Harrington and a jury. Applicant was represented by Megan Ehrlich, Esquire, and

Michael Cooper, Esquire. The State was represented by Culver Kidd, Assistant Solicitor. On January 9, 2015, the jury found Applicant a guilty as indicted. The Honorable Kristi L. Harrington sentenced Applicant to life.

A timely notice of appeal was filed on Applicant's behalf and was perfected by David Alexander, Esquire. The Brief of Appellant contained arguments on the following issues:

1. The trial court erred in refusing appellant's requested charge that he did not have to wait until he was attacked and allow the assailants to "get the drop" on him because appellant testified that the decedent threatened him with a gun, which appellant grabbed and used in self-defense.
2. The trial court erred in granting the State's motion pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986) because the defense gave race-neutral explanations for its strikes and the State failed to prove pretext.

On July 12, 2017, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. *State v. Singleton*, 2017-UP-283 (S.C. Ct. App. filed July 12, 2017). Applicant filed a *pro-se* Petition for Rehearing on August 3, 2017, which was denied via Order filed on September 22, 2017. The Remittitur was issued on January 16, 2018.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). Where an application for post conviction relief alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Id.* 466 U.S. at 686; *see Butler v. State*, 286 S.C. 441 (1985). The proper measure of performance is whether the attorney

provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 691. The applicant must overcome this presumption in order to receive relief. *Bell v. State*, 321 S.C. 238 (1996); *see also Cherry v. State*, 300 S.C. 238 (1989); Rule 71.1(e), SCRPC.

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117 (citing *Strickland*, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18.

In analyzing a claim of ineffective assistance of appellate counsel, the South Carolina Supreme Court has held that the lower court must apply the two prong *Strickland* test just as it would be to a claim of ineffective assistance of trial counsel. *See Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). In *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 277 (2009), the South Carolina Supreme Court explained that the lower court should “ask 1) whether appellate counsel’s performance was deficient, and 2) whether Petitioner was prejudiced by appellate counsel’s deficient performance.”

I. Allegations

As a threshold matter, this Court finds credible the testimony of the witnesses presented at the evidentiary hearing, which will be addressed as the testimony relates to each issue discussed below. Regarding the issues raised, this Court will address each allegation as raised in the Amendment and addressed at the evidentiary hearing categorically.

A. Allegations Related to the Jury

1. Whether trial counsel was ineffective in handling the *Batson* Motion.

Following the seating of the jury, the State made a motion pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986). R. p. 87. The State challenged the use of the fourteen strikes utilized by the defense on white males and females. R. p. 87. The court requested that the defense offer an explanation for the strikes. R. pp. 87-88. The defense offered an explanation, arguments were made by both parties and the court ruled in favor of the State's motion finding the strikes were pre-textual. R. pp. 88-101. Thereafter, the parties selected a second jury. R. pp. 102-120.

At the evidentiary hearing, Megan Ehrlich, Esquire, addressed the make-up of the jury and the *Batson* motion. PCR p. 16-20. She agreed that the racial make-up of first jury was more diverse. PCR p. 17. She referenced her notes and admitted she did not have any notes regarding the struck jurors of concern. PCR p. 17-18. She admitted it was not good practice to have nothing written and the reason could be due to consultation with lead counsel or there simply was nothing. PCR p. 18-20. When asked, she responded that she had no idea if the first jury would have been better. PCR p. 46.

While Michael Cooper, Esquire, was on the stand, he testified that he did not exercise the strikes on basis of race. PCR pp. 61-62. He explained that he provided all reasons he had for making the strikes. PCR pp. 61-62. He further explained that he did not have a secret reason for striking the potential jurors. PCR p. 63.

During his testimony David Alexander, Esquire, discussed how he raised the *Batson* issue on appeal and his general thoughts on it. PCR pp. 110-111. He testified that he determined that trial counsel provided good reasons for the exercise of the jury strikes. PCR pp. 111, 121.

At the evidentiary hearing this Court also agreed to hear and consider the testimony of Deanne Vane and Kendra Drayton, whom served as jurors at Applicant's trial. Both jurors addressed the make-up of the juror during their testimony and the impact of the make-up of the jury on the jury deliberations. PCR pp. 141-176. Specifically, Ms. Drayton testified that she was on both juries and was the only black and youngest person on the second jury. PCR pp. 158-160.

When Applicant took the stand, he agreed that he was relying upon his attorneys to properly strike the jury and secure as fair of a jury as possible. PCR p. 184. He also agreed that he wanted his attorneys to make all possible arguments on his behalf regarding the striking and selection of the jury. PCR p. 184.

This Court has thoroughly reviewed the record, *Batson v. Kentucky*, 476 U.S. 79 (1986), and other applicable case law on this issue. As a result, this Court finds that Applicant has failed to establish deficiency on the part of trial counsel for the handling of the *Batson* motion. This Court finds credible the testimony from Mr. Cooper that he did not exercise strikes on basis of race, that he provided all reasons he had for making the

strikes, and he did not have a secret reason for striking the potential jurors. This Court also finds persuasive the testimony of Mr. Alexander that he determined that trial counsel provided good reasons for the strikes. This Court finds that Applicant has not established that counsel failed to provide representation within the range of competence required in criminal cases in the handling of the *Batson* motion.

Additionally, this Court finds that Applicant has failed to show resulting prejudice from counsel's performance. It is undeniable that the second jury was less diverse, and the testimony of the jurors raises serious concerns with this Court about the second jury and the fundamental fairness of the outcome of Applicant's trial, which are addressed herein. Yet, this Court finds that the prejudice Applicant suffered from the issues raised regarding the second jury and the instructions given to the second jury are independent of counsel's performance on the matter of the *Batson* motion. As stated, counsel's performance was not deficient in handling the *Batson* motion nor has Applicant established that a more favorable result would have come from the first jury selected. Therefore, this claim must fail under both prongs of the *Strickland* analysis.

2. Whether trial counsel was ineffective for failing to properly utilize information given by the jurors post trial and move for a new trial.

As is addressed above, the State made a successful *Batson* motion, and a second jury was selected. Juror 108 (Kendra Drayton) and Juror 368 (Deanne Vane) were selected on both juries. After closing arguments and the jury charge, the jury was sent out for deliberation at 9:20 a.m. on Friday morning. R. p. 948. The jury returned after submitting notes, which included a request to replay testimony. R. p. 949. Thereafter, the court informed the parties that the jury was split 6/6, and she intended to give an *Allen* instruction. R. p. 950. At 1:36 p.m., the jury returned and an *Allen* instruction was given,

which will be discussed in detail below. The jury was sent back out at 1:39 p.m., and the jury returned with their verdict at 4:03 p.m. R. pp. 953, 955. Thereafter, the jury was polled. R. p. 957.

On January 12, 2015, a post-trial motion hearing was conducted.¹ R. p. 973. As will be addressed below, the majority of the hearing was spent discussing the matters of self-defense, imperfect self-defense, and the lesser included charges. No mention was made of matters involving jurors. At the close of the hearing, the court denied all motions made by the defense. R. pp. 989-990.

On January 20, 2015, defense counsel filed a Motion for Reconsideration of Sentence. Counsel attached affidavits entitled “Affidavit in Mitigation Rule 28” signed by Ms. Vane and Ms. Drayton. By way of this motion, defense counsel recounted his post trial interaction with Ms. Vane and Ms. Drayton. Based upon the information contained in the affidavits regarding the jury deliberations, counsel asked for reconsideration of Applicant’s life sentence.

On January 23, 2015, the State’s Response to Defendant’s Motion for Reconsideration of Sentence was filed. A majority of the response set forth the State’s argument that the affidavits were improper under Rule 606(b), SCRE. The response argued that the affidavits did not fall under the exception that the “juror conduct rendered the trial ‘fundamentally unfair.’” The State concluded that the submitted affidavits were improper since the affidavits did not bring to light misconduct or improper external influences and requested that the court deny the motion for reconsideration.

¹ At the evidentiary hearing, Applicant testified that he was not present at this hearing, and he asserted that he would have wanted to be present. PCR pp. 185-186.

On February 9, 2015, the Honorable Kristi L. Harrington issued an Order denying the motion to reconsider.² By way of the Order she held: “After review of the case, together with Defendant’s Motion and State’s Response, the Court finds that the sentence imposed January 9, 2015, shall remain in place and hereby denies Defendant’s Motion.” As the record reflects, the denial of the motion was not raised on appeal.

By way of the Amendment and at the evidentiary hearing, Applicant, through counsel, alleged that trial counsel was ineffective for the failure to properly utilize information given by the jurors post trial and move for a new trial. Upon review of the record, to include the testimony and evidence offered at the evidentiary hearing, and the applicable case law, this Court agrees that counsel was ineffective and prejudice resulted that requires a new trial. Ultimately, this Court finds that the record before him invokes matters of fundamental fairness that require a new trial.

A summary of the relevant portions of the evidentiary hearing testimony that this Court heard, reviewed via transcript and considered is as follows. At the evidentiary hearing, Ms. Ehrlich testified that she was aware that two jurors had reached out to Mr. Cooper after the trial. PCR p. 20. She identified and Applicant’s counsel admitted an email from Ms. Drayton that was forwarded to her by Mr. Cooper. PCR pp. 21-22. She recalled Mr. Cooper sharing the email with her, and she recalled him being highly annoyed and not understanding why the jurors had convicted Applicant if they had second thoughts so quickly. PCR p. 22.

Ms. Ehrlich explained that it was common practice in the Ninth Circuit Public Defender’s Office to send out juror questionnaires post trial. She identified and counsel

² The Order was filed on February 11, 2015.

admitted the questionnaires received from Ms. Vane and Ms. Drayton. PCR pp. 22-24. She addressed some of the responses contained in the questionnaires and responded to counsel's question about Ms. Vane's answer regarding the verdict being a weak compromise due to pressure in the deliberation room. She explained that she was not involved in any investigation into what was meant by that response. PCR pp. 24-25.

She testified that she could not specifically recall conducting research to determine what to do with the information provided by the jurors and that she was not involved in obtaining the affidavits attached to the filed motion. PCR pp. 24-25. She further could not recall discussing filing a motion for a new trial. PCR p. 26.

On cross-examination, she was asked if jurors provided information regarding outside pressures or racial bias, and she responded by reading the jurors written response and agreeing it did not mention race, outside threats or research. PCR pp. 47-48. On redirect, she was asked how she would have responded to the information provided by the jurors if she was lead counsel. She indicated that she would have further investigated and would have considered filing a motion for a new trial. PCR pp. 48, 50. When asked to explain why should would take that course of action, she responded: "Well, I've got two jurors who are saying that they have regrets about their verdict. I, I feel like that could be an appropriate remedy in this situation." PCR p. 48, ln. 25 – p. 49, ln. 2. She also acknowledged that the jurors "reached out to Mr. Cooper directly after the verdict, and before the, the post-trial motions." PCR p. 49, lns. 9-10.

When Mr. Cooper was on the stand, he acknowledged he handled three murder cases while working as an Assistant Public Defender and that Applicant's case was the only one where a trial was completed. PCR p. 56. He recalled asking Ms. Ehrlich to assist

as a second chair three to four weeks before trial. PCR p. 59. As will be discussed in detail below, he asserted that the primary defense was self-defense and/or imperfect self-defense and the backup plan was “this is not murder.” PCR p. 65.

Regarding the jury, he recalled the jury was polled and one juror appeared visibly upset. PCR p. 92-93. He explained that he remembered the events that followed since he left the trial and drove to Greenville to participate in his best friend’s wedding. He recalled Judge Harrington offering to continue the trial due to his need to be in Greenville for the wedding. PCR pp. 93-94. While driving to Greenville, the juror that was visibly upset called him on his cell phone and explained she wanted to change her vote because it was not murder. She wanted him to tell her what could be done about it. Tr. p. 94.

When asked, he recalled meeting with the jurors and obtaining the affidavits, but he could not remember the specifics. PCR p. 95. He acknowledged that he filed the motion for reconsideration and that he did consider filing a motion for a new trial. PCR p. 95. He explained that he did not file a motion for a new trial since it was his understanding that you cannot impeach a verdict, and he did not consider filing the motion based upon matters of fundamental fairness. PCR pp. 95-96.

While on the stand, he reviewed the previously admitted email he sent to Ms. Ehrlich. PCR p. 97. He testified that he could not recall sending it, but he recalled being annoyed since he did his job and the jurors frustrated him for not doing their job. PCR p. 97. Specifically, he testified: “I mean I was basically angry and frustrated that these jurors did not – that they say – she says none of us thought Kadrin was a ‘murderer.’ But they convicted him of murder. So, I mean like I did my job, he did his job, and then these

guys want to change their vote. Like I don't know how much more frustrating it could be." PCR p. 97, lns. 13-18.

During Mr. Alexander's testimony, he acknowledged that he had a copy of the motion for reconsideration, response and court's order when reviewing the record for issues to be raised on appeal. PCR pp. 112-113. He explained that the standard of review is not favorable on direct appeal for reviewing a motion to reconsider and such an issue is typically not successful unless there is a "real legal error" such as a sentence that exceeds the maximum provided. PCR p. 113, lns. 4-20. When asked if the assessment would have differed if the attorneys had filed a motion for a new trial or raised matters of fundamental fairness involving the jurors, he responded that he could not honestly answer that question since such was not presented for his assessment. PCR pp. 113-114.

When Applicant's counsel called Ms. Vane to the stand, the State entered an objection. PCR pp. 124-126. The State argued that juror testimony could be used if "there's some allegation or some evidence of an external force that is being put on the jury as in them getting some form of outside information or outside contact during deliberations, things of that nature." PCR p. 125, lns. 16-20. Counsel further argued that there were two grounds for when it could be taken on matters involving internal deliberations and misconduct, which were matters that addressed fundamental fairness at trial and racial prejudice at play within the internal jury deliberations." PCR p. 125, ln. 23 – p. 126, ln. 5. The State concluded that Applicant had not shown a basis for "to put forth the juror testimony." PCR p. 126.

In response, Applicant's counsel explained to this Court how the issue developed, provided a copy of the discovery order issued regarding the jurors and referenced the

allegations involving the jurors in the amendment. PCR pp. 127-128. In sum, Applicant's counsel argued that juror testimony was relevant to this Court's determination of whether counsel was ineffective in how he handled the information he received from the jurors post trial. PCR p. 130.

Additionally, Applicant's counsel submitted that the juror affidavits were part of the record from General Sessions and were not struck by Judge Harrington as the State requested. Applicant's counsel also noted that the juror questionnaires and testimony from the attorneys regarding the jurors had been admitted at the evidentiary hearing without objection from the State. PCR p. 130. In reliance upon the case law provided to the Court and addressed in detail, Applicant's counsel explained that the majority of the relevant cases utilized a direct appeal analysis, yet in *Shumpert v. State*, 661 S.E.2d 369 (2008), the court indicated that there may be a different standard for admission of juror affidavits or testimony in post conviction relief matters. After addressing Rule 606(b), SCRE, counsel argued that there were exceptions for taking juror testimony on internal jury deliberations such as when matters of fundamental fairness were invoked and to ensure due process. Counsel further explained:

In these cases, they go through some guideposts because it's that beautiful gray language of what is fundamental fairness. So, they do give us some guideposts such as racial and gender discrimination, coercion, pressure, prejudice. And specifically the cases say, if there's claims of any type of prejudice, it must be investigated. ...what we're saying, by way of this PCR, is that counsel had information regarding these jurors. They even submitted a watered down version of it to the Court, but they didn't properly investigate it or present it via a motion for a new trial.

PCR p. 132, lns. 2-12. After addressing the relevant portions of *Shumpert*, *Hunter*, *Pittman*, and *Winkler* counsel informed the court that she would limit her questions to the exceptions set forth in the case law discussed.³ PCR p. 136.

After additional brief argument from the State, this Court noted the State's objection and decided that he would hear the testimony and would hold Applicant's counsel to her offer to self-limit her questioning. Additionally, this Court reasoned that the absence of the jury allowed him to hear the testimony; then, he could determine how he would consider it. PCR p. 138.

When Ms. Vane took the stand, she acknowledged that she served as juror 368 at Applicant's trial. PCR p. 139. She recounted how she called trial counsel, answered the questionnaire, met with trial counsel and signed the affidavit. PCR pp. 140-143. She explained that she reached out to trial counsel immediately after trial because she had a "pit in her stomach the minute I walked out the door," and she knew that "justice had been neglected." PCR pp. 141, 146.

Regarding the questionnaire, she did not recall discussing the information in it with Mr. Cooper. PCR p. 143. When asked about her answer to question nine that there was pressure that caused her to change her verdict, she responded that the pressure in "that room was quite, quite high." PCR p. 143, lns. 17-24. She further explained that the *Allen* instruction felt like an admonishment and after it was given it was very difficult – she felt like there was no option but to find Applicant guilty. PCR p. 143-144. Thereafter, counsel asked her if it was pressure she put on herself or if it came from the other jurors, and she responded:

³ *State v. Hunter*, 463 S.E.2d 314 (1995), *State v. Pittman*, 647 S.E.2d 144 (2007), *Winkler v. State*, 418 S.C. 643 (2016).

It was definitely pressure from the rest of it. I think everybody in the, in the – rest of the jury, with one exception, was really ready to go. I heard several different things said in there that, that made me just feel really quite angry about how they were approaching it. Like is – it just didn't matter almost.

But it was – and, and I – the – I don't know exactly what the final moment was that made me say okay, I'll, I'll go as the last one to say that he, he was guilty. I feel very badly about it. I don't know if it was a psycho – psychological kind of intimidation. I don't know what. It was, it was long, long day, a very difficult thing to talk about, something that we did not really have an option other than what the murder call was.

And so I, I basically was just – I may have just caved to their, to their coercion. I, I don't want to use the word coercion necessarily, but I want to say that they, they were just really coming at me about it, and I don't think I, I just – I didn't do very well in that call.

PCR p. 144, lns. 11- p. 145, ln. 6. She continued to explain the psychological pressure she felt from the other jurors and how she let ten others convince her she was wrong.

PCR pp. 145-146. She also explained how Ms. Drayton remained with her until the end and felt the same way she did. She recounted how they contacted each other immediately after the trial regarding their concerns. PCR pp. 149-150.

She explained how her position that Applicant was acting in self-defense in a “drug deal gone bad” was not heard by other jury members and things were said that truly “appalled” her. PCR p. 151, lns. 4-12. She further explained that the other jurors made statements, as follows: “they’re both criminals,” “who cares,” they were “tired of talking about it.” PCR p. 151, lns. 9-20. She concluded that she should of stood up to it all. PCR p. 151, lns. 9-20.

When asked if she would have been willing to testify if called in front of Judge Harrington or any other setting, she responded: “Absolutely.” PCR p. 153, lns. 18-24.

She agreed that her testimony was not just something she had just decided to offer years later. PCR p. 153, ln. 25 – p. 154, ln. 2.

On cross-examination when asked if the comments made by the other jurors were simply jurors expressing their opinions or if they were directed at her, she responded by stating that she heard things that were not appropriate to a jury discussion and that the comments were directed at her and Ms. Drayton as the last ones holding out. PCR pp. 155-156. She stated: “That’s not, that’s not justice. You get justice no matter who you are.” PCR p. 156, lns. 2-3.

When Ms. Drayton took the stand, she acknowledged that she served as juror 108 at Applicant’s trial. PCR p. 158. She recalled that she was 24 going on 25 at the time of trial, and she “very nervous” and “super anxious” since she has missed her first jury duty and thought she was going to jail. PCR p. 158. She recalled being selected on the first jury and explained that it was more racially split than the second jury. PCR pp. 159-160. She testified: “The second selection was majority white.” PCR p. 159, ln. 22. She further testified that she was “the only black and youngest juror on the second selection.” PCR p. 160, lns. 5-6. She also recalled there being more males on the second jury. PCR p. 160. Thereafter, the following testimony was elicited:

Question: Ms. Drayton, you indicated, like we already said, you were the loan black female on the second jury, and you also said you were the youngest. How did that affect you being the youngest?

Answer: Being that I was the youngest juror, I felt that my, my input wasn’t as valued as other opponent – well, not other opponents, but other jurors. Like I was looked at being the, the young, naïve one who doesn’t really understand a lot of what’s going on. So, it’s like if – her vote is like not as important as another jurors.

Question: And that was actively conveyed to you from the other jurors?

Answer: Yes.

PCR p. 161, lns. 1-13.

She recounted how she obtained counsel's email address from Ms. Vane and emailed him. PCR pp. 162-163. When asked her reason for emailing counsel, she responded:

Just after we came out, and they, you know, did the, the verdict, it just – it didn't sit right with me. Like I, I felt sick to my stomach and like I remember going back out, and sitting in the juror's area, and like I just held my head down. Like I couldn't look at Kadrin because I knew that I didn't feel that what was happening was right.

PCR p. 163, lns. 7-12. She further explained that she immediately tried to convey this to trial counsel. She testified that she thought Applicant was only guilty of trying to defend himself. PCR pp. 163-164.

Regarding her interaction with counsel, she recalled counsel just wanting her to sign the affidavit and she did not recall him asking her any questions or if she wanted to add or explain anything. PCR p. 164. Specifically, she did not recall him asking her whether her age, race, pressure or coercion played a factor into her changing her vote. PCR p. 164.

When asked about her understanding of the jury polling process, she responded that she did not understand that she could say no or change her vote at that point. PCR p. 165. Later this Court asked her about this testimony, and she affirmed that she would have changed her vote when she was polled if she would have known it was an option. PCR pp. 168-169. After this Court's questions on the matter, the State asked: "Why do

you think you they would ask you if it is still your verdict if you had to answer the same thing that you had before?" PCR p. 170, lns. 3-5. She responded:

Because we had just did that vote in the deliberation room. So, my point where I'm looking at it, is they're asking me if that's what I, what I voted. Maybe during the time of, you know, the, the emotions I had going on, maybe I didn't hear him say is this still your vote. Maybe I wasn't thinking clearly to say, you know, okay, he is asking me is this still my vote so I have the option of changing.

PCR p. 170, lns. 6-12.

On direct, she also addressed the reasons why she changed her vote to guilty after the *Allen* charge. PCR pp. 166-168. She agreed with Ms. Vane's testimony that jurors made comments about it just being two drug dealers and "why does it matter." PCR p. 166, ln. 22-25. Specifically, she recalled statements about it not mattering that you had one drug dealer going to jail and one drug dealer that was dead. PCR pp. 166-167. She also recalled jurors just wanting to conclude deliberations to avoid traffic and get home. PCR p. 167. When asked about the comments, she agreed it was not justice. PCR p. 167. Thereafter, the following testimony was elicited:

Question: Did you feel that, in that jury deliberation room, your unique perspective as the long young, female, black juror was valued by the other jurors?

Answer: No.

Question: Do you want to explain that at all or have – do – you already have?

Answer: I mean I feel like, at certain points, like I tried to explain to people like look at it from another point of view. Like take into consideration – put yourself in that person's shoes, and they were just like, you know, the facts are the facts. Like this happened, and this is a result. So, it's like – I just felt like, I, I – my opinions were being dismissed.

PCR p. 167, ln. 23 – p. 168, ln. 10.

On cross-examination the State asked her if there was any extraordinary pressure that caused her to change her vote, and she responded:

I would say someone stating that it doesn't matter because one's a drug dealer and other one's dead, that that's a pressure. You basically saying that it's a waste of time to be here, and me arguing that I don't feel that this guy is guilty, you're telling me that it's pointless. Like were even doing this. I felt that that – well, I felt that that's a, a big pressure to be putting on someone when you have just a – at that time, it was probably two to three people who were still holding on to the not guilty verdict, and then you have other people who are just telling you that they want to get it over with, and that they're ready to go home, yeah, I do feel like that's extraordinary pressure to put on someone.

PCR p. 171, ln. 21 – p. 172 ln. 8.

When asked if the statements were truly directed at her, she explained that the statements were being directed at her and that the statements were clearly being made towards the hold-outs, which would include her. PCR p. 172-3. She clarified that she never stated that she was threatened but that she was pressured. PCR p. 173, ln. 15-20. When the State called the pressures “normal,” she responded that the pressures were not normal that caused her to change her vote. PCR p. 174, lns. 6-11. She further responded that she was not aware that the foreman could have sent a note stating that they could not reach a verdict, and she thought that they had to reach a unanimous verdict before they were able to leave. PCR p. 173, ln. 21- p. 174, ln. 5.

On redirect, Ms. Drayton affirmed that she would have had a more vivid memory of the pressures and what occurred when she spoke with Mr. Cooper, but he did not ask her about it. PCR pp. 175-176. On direct, she agreed that she would have been willing to testify immediately after trial. PCR p. 166.

When Applicant took the stand, he testified that he was not present at the post trial motion nor did he waive his appearance. PCR p. 185. He stated that he would have

wanted to be present. PCR p. 186. He explained that he was not aware of the information counsel had obtained regarding jurors until several months after the post trial hearing and motion was decided. PCR p. 186. He testified that he would have wanted to be informed at the time the information was known or obtained by counsel, which was when the motion was pending. PCR p. 186. He further testified that he would have wanted counsel to present all available information and/or the full picture to the court, file and/or argue the appropriate motions and involve him in the process. PCR pp. 185-187.

Rule 606(b), SCRE, provides:

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

As was argued by Applicant and conceded by Respondent, this Court finds that South Carolina courts have recognized exceptions to the exclusion of juror testimony or affidavits regarding internal influences: 1) to ensure fundamental fairness, and 2) to ensure due process. The appellate courts have also set forth guideposts to help define what invokes concerns of fundamental fairness such as racial and gender discrimination, coercion and prejudice.

In *Shumpert v. State*, 661 S.E.2d 369 (2008), the South Carolina Supreme Court found that the lower court did not err in excluding a juror affidavit in ruling upon a post

conviction relief application.⁴ The Court determined that the question was whether the affidavit offered suggested that the conduct of Petitioner's jury rendered his trial fundamentally unfair. *Id.* at 372. The Court reasoned that the information could not simply amount to "buyer's remorse," and the affidavit at issue was based largely on speculation and hindsight. *Id.* at 370, 372.

The Court recognized the following exception to the Rule 606(b) categorical prohibition: juror testimony regarding internal misconduct may be received only when necessary to ensure fundamental fairness.⁵ *Id.* at 371. The Court acknowledged that no specific guideposts for defining fundamental fairness had been previously articulated, but in examining existing precedent the court noted that the testimony must raise concerns of substantial injustice. Additionally, the Court acknowledged that if the testimony involves matters of prejudice; then, the matter must be investigated. *Id.* at 372.

In *Shumpert*, the Court referenced *State v. Hunter*, 463 S.E.2d 314 (1995), which involved a direct appeal from a motion for a new a trial. In *Hunter*, the Court reasoned that juror testimony involving internal matters is only competent when necessary to ensure due process, i.e. fundamental fairness. *Id.* at 316. The Court further reasoned that racial prejudice invokes matters of fundamental fairness. *Id.* at 316. The Court determined that this standard was not met in the instant case despite the juror using a

⁴ In addressing the precedent, the Court noted: "Both of these cases were direct appeals from criminal convictions. The parties to the instant case did not argue that the rules for the introduction of juror testimony and the standard of a grant for post conviction relief based on internal jury misconduct differ from the standard applicable on direct appeal. We therefore assume, but do not decide, that the analysis outlined in our direct appeal precedent applies. *Id.* at fn. 1.

⁵ The Court also held that even if circumstances called for the admission of the affidavit, prejudice must be established to warrant a new trial. *Id.* at fn. 2.

racial slur since there was no evidence it was directed at an individual. Additionally, the court found no evidence of threats or coercion. *Id.* at 316.

In *State v. Pittman*, 647 S.E.2d 144, 157 (2007), the South Carolina Supreme Court addressed the argument that the verdict returned by the juror was not a unanimous verdict based upon post trial comments and that the lower court erred in denying a post trial motion on such grounds. The Court held that the lower court was correct in finding that the testimony offered did not implicate fundamental fairness. *Id.* at 158. In consideration of precedent argued by Pittman concerning internal influences where courts have held that fundamental fairness required the granting of a new trial, the Court concluded: “In contrast, while the jurors in this case expressed that they felt coerced into voting guilty, no testimony was presented to actually show coercive behavior.” *Id.* at 158. After discussing the statements regarding the law allegedly made by the other jurors and the polling of the jury, the Court reasoned: “The jurors’ post verdict testimonies are representative of many jury deliberations where individuals are persuaded, for whatever reasons, to change their vote. As long as the reason prompting the change was not coercive or oppressive, the court should not disturb the finality of the verdict.” *Id.* at 158.

Upon review of the record and applicable case law, this Court finds that trial counsel was ineffective for the failing to properly utilize information given by the jurors post trial and move for a new trial. As Applicant’s counsel argued in response to State’s objection, the affidavits of jurors were attached to the Motion for Reconsideration, opposed by the State, but not struck by the trial court. Therefore, this Court finds the affidavits are properly in the underlying record for his consideration.

Additionally, this Court finds that it was proper to accept testimony from the jurors in the context of the evidentiary hearing to determine if counsel was ineffective for how counsel investigated and addressed the information made known to him by the jurors. This Court could not evaluate and pass judgment upon counsel's performance without reviewing the information contained in the record regarding the jurors and the exhibits and testimony offered at the evidentiary hearing. As a result, this case is unique from the existing precedent stemming from direct appeals of criminal convictions since this Court is not merely reviewing the record to determine if the decision of the lower court should be upheld, but this Court is required to review the record, the testimony and the evidence offered to determine if counsel provided ineffective assistance that requires the granting of a new trial.

This Court finds that trial counsel was ineffective for not further investigating the information contained in the juror questionnaires. The affidavits obtained and provided to the trial court did not encompass the disturbing testimony offered to this Court that invokes concerns of fundamental fairness. Additionally, counsel was contacted by the jurors immediately and their concerns were made known to counsel prior to the post trial motion hearing, yet counsel did not address the matter with the trial court. Furthermore, when counsel addressed the matter in the Motion for Reconsideration he simply asked for a sentence reduction and failed to address the totality of the situation testified to at the evidentiary hearing by the jurors. Applicant was prejudiced by not having the opportunity to have the court rule on the complete information, by counsel not having the court rule on granting a new trial and, if denied, having the issue reviewed by the appellate court

As stated, the testimony and evidence presented at the evidentiary hearing invokes matters of fundamental fairness, which makes both the testimony proper to consider and the granting of a new trial necessary. This Court cannot ignore the testimony of both jurors regarding the disregard for due process by the other jurors and pressures put on the testifying jurors to do the same. This Court also cannot ignore the reported prejudicial statements made about Applicant and his right to a fair trial being disregarded by the other jurors. Furthermore, this Court is truly alarmed by the perceived prejudice against the youngest and lone black juror that caused her to believe that her opinion did not matter and more importantly caused her to abandon her not guilty vote. Respondent tried to classify the pressure in the jury room as normal, but both jurors made it clear to this Court that it was far from normal and described the function of the jury as injustice.

Additionally, this Court is very concerned by both jurors misunderstanding of the *Allen* charge and Ms. Drayton's misunderstanding of the polling process. When questioned by this Court and the parties, Ms. Drayton was adamant that she would have changed her vote when she was visibly upset during the polling process if she would have understood that she could. This testimony is relevant to this Court's review of counsel's performance because these jurors made their concerns known to counsel via phone call and email immediately, and counsel choose to be annoyed by it instead of fully investigating it and presenting the full picture to the trial court. It also must be noted that Ms. Ehrlich agreed that if she was acting as lead counsel, she would investigate such information and consider a motion for a new trial, but she could not speak to what was done at the time. Thankfully, this Court can speak to what was done at the time, and it simply was not enough to be deemed effective assistance. Therefore, based upon the full

record, this Court finds that counsel provided ineffective assistance in his handling of the information provided by the jurors and for failing to move for a new trial.

This Court has already referenced the prejudice suffered in the above discussion; but to be abundantly clear, this Court also finds that Applicant suffered prejudice from counsel's ineffective assistance. As a result of counsel's ineffective assistance, the information provided by the jurors in their questionnaires and addressed at the evidentiary hearing was not discussed with them nor was it presented to the trial court. The trial court was not given the opportunity to determine if a new trial was warranted and if she ruled it was not the appellate court was not given the opportunity to review her findings. Here, this Court has been presented with juror testimony that did not simply impeach the verdict but invokes matters of fundamental fairness that counsel chose to simply be annoyed by because he had done his job and the jury did not. As stated, this Court finds that trial counsel did not do his job and his assistance "undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland*, 466 U.S. at 686. Therefore, this Court finds that a new trial must be granted.

B. Allegations Related to the Jury Instructions

1. Whether trial counsel was ineffective in the handling of self-defense instruction and for failing to request a voluntary manslaughter instruction.
 - i. Whether trial counsel was ineffective for failing to request a voluntary manslaughter instruction.
 - ii. Whether trial counsel was ineffective for failing to preserve his request for a charge of imperfect self-defense.

Applicant alleges that trial counsel was deficient for failing to request an instruction on the lesser-included offense of voluntary manslaughter. Applicant argues that he was prejudiced by trial counsel's failure to request a voluntary manslaughter instruction. This Court agrees. Applicant also argues that trial counsel was ineffective for failing to preserve his request for a jury charge on imperfect self-defense. This Court does not find relief is warranted on the imperfect self-defense allegation.

The facts as presented at trial by the defense bear repeating. Applicant testified that he acted in self-defense when he shot Williams. Specifically, Applicant testified that he and Williams got into a disagreement after Williams shorted him twenty grams of marijuana. R. p. 767, ln. 14-p. 768, ln. 20. He further testified that Williams placed a firearm on the bar top counter, which he took to mean that "he's the king of the jungle, and I'm in his jungle right now." R. p. 770, l. 15-p. 771, l. 6. Applicant grabbed the gun off the counter, at which point Williams "charged" him. R. p. 771, ln. 15-p. 773, ln. 5. Applicant then shot Williams out of fear for his life. R. p. 774, ln. 23-p. 775, ln. 23. He testified that "[w]hen it all happened, it happened so fast, it was like a [sic] instinct." R. p. 775, lns. 16-17.

Prior to Applicant's testimony at trial, the trial court questioned defense counsel about "unusual" jury requests, and trial counsel stated that "I would potentially request to argue against precedent for an imperfect self-defense charge." R. p. 715, lns. 15-19. During the portion of the charge conference held on the record, however, trial counsel did not request a jury charge on "imperfect self-defense" nor the lesser-included offense of

voluntary manslaughter.⁶ “Imperfect self-defense” was next mentioned after the jury had reached a verdict, but before the verdict was announced. At that point, the trial court informed trial counsel that “I’ll allow you to place everything on the record, including the imperfect self-defense, after the verdict.” R. p. 953, lns. 18-22. However, that discussion did not occur immediately following the verdict.

Instead, trial counsel addressed “imperfect self-defense” at the post-trial hearing referenced above. There, he argued that “[t]he intent of requesting an imperfect self-defense charge would be to ask the Court for a charge on manslaughter based on the inference—the concept of imperfect self-defense.” R. p. 978, lns. 21-24. When asked if he requested a charge on the lesser-included offense of voluntary manslaughter, trial counsel admitted that he had not. R. p. 978, lns. 7-20; *see also* R. p. 982, lns. 10-11 (“We did not request a voluntary manslaughter charge.”) The trial court then questioned the State regarding the propriety of such a request, and the State responded that “I think if they had specifically said, we want a voluntary manslaughter charge, if the Court wanted to look for evidence of provocation and the defendant’s direct testimony, arguably one could find it.” R. p. 984, ln. 22-p. 985, ln. 1.

At the evidentiary hearing, Mr. Cooper testified that he knew that Applicant was going to testify that he fired out of fear. PCR p. 67, lns. 21-23. He further testified that he did not recall researching whether fear could serve as a basis for sudden heat of passion. PCR p. 67, ln. 24-p. 68, ln. 5. He testified that he did not believe that a charge of voluntary manslaughter “was worth requesting under a normal scenario or a classical

⁶ According to trial counsel, the matter of imperfect self-defense was discussed in chambers, but not on the record, and that the trial court indicated that she would not give such an instruction. *See* PCR p. 74, ln. 20-p. 75, ln. 14.

scenario.” PCR p. 68, lns. 9-13. He believed instead that he “was requesting voluntary manslaughter through the imperfect self-defense theory.” PCR p. 67, lns. 1-2. He further testified that he did not articulate his basis for requesting imperfect self-defense until the post-trial hearing. PCR p. 79, lns. 2-6.

“Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation.” *State v. Wharton*, 672 S.E.2d 786, 788 (2009). “[B]oth heat of passion and sufficient legal provocation must be present at the time of the killing.” *State v. Starnes*, 698 S.E.2d 604, 608 (2010). “[A] person’s fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion.” *Id.* at 609. “[T]he fear must be the result of sufficient legal provocation **and** cause the defendant to lose control and create an uncontrollable impulse to do violence.” *Id.* (emphasis in original).

“Under the ‘imperfect self-defense’ doctrine, the crime is reduced from murder to voluntary manslaughter where a defendant had a genuine but unreasonable fear of imminent peril from the victim, and killed the victim, or where the slayer, although acting in self-defense, was not himself or herself free from blame, as where he or she was the aggressor or used excessive force, although without murderous intent.” *State v. Sams*, 410 S.C. 303, 315, 764 S.E.2d 511, 517 (2014) (quoting 40 C.J.S. *Homicide* § 110 (2006)). South Carolina does not recognize the doctrine of imperfect self-defense. *See id.* (“Heretofore, South Carolina has not expressly adopted the doctrine of imperfect self-defense”); *State v. Finley*, 277 S.C. 548, 551, 290 S.E.2d 808, 809 (1982) (the doctrine of “imperfect self-defense” “is not the law in South Carolina.”)