

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Edward W. Miller, Circuit Court Judge

Appellate Case No.: 2022-001244

Rajerick Knight, 353409,

Petitioner,

vs.

State of South Carolina,

Respondent.

APPENDIX
VOLUME II OF II

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1 Q In 2007, did you get a conviction for pointing and
2 presenting a firearm?

3 A Yes, sir.

4 Q In 2008, did you get a conviction or were you
5 convicted of a possession of crack cocaine charge?

6 A Yes, sir.

7 Q Okay. And in 2011, were you convicted of an unlawful
8 carrying of a pistol charge?

9 A Yes, sir.

10 Q Okay. Is it true that you have carried a weapon in
11 the past?

12 A Yes, sir.

13 Q Okay. You're not denying that?

14 A No, sir.

15 Q Okay. And is it true that you have been involved in
16 narcotics in the past?

17 A Yes, sir.

18 Q Okay. And you're not denying that?

19 A No, sir.

20 Q Now, and this is very important, okay. Obviously,
21 we're here because of the incident you been charged with
22 in July of 2011 the Subway restaurant. Did you go into
23 the restaurant and shot Mr. Travis Sentell Holmes?

24 A Yes, sir.

25 Q Okay. Now, let's talk about why, okay. First of

1 all, was it your understanding, did you come into
2 knowledge that Mr. Travis Holmes ---

3 MR. STONE: Excuse me objection, Your Honor.

4 THE COURT: Grounds?

5 MR. STONE: On this particular part of this
6 leading.

7 THE COURT: Come on up.

8 (WHEREUPON, a bench conference was held in the
9 presence of the jury, but out of the hearing of the
10 jury.) is

11 THE COURT: Rephrase your question, Mr. Bax.

12 MR. BAX: Thank you, Your Honor.

13 BY MR. BAX:

14 Q Mr. Knight, what was your knowledge about who may
15 have done the shooting at your trailer?

16 A My knowledge was Travis Sentell Holmes did it.

17 Q Anybody else? Did you know if it was just him or
18 there anybody else that may have been involved?

19 A I know it was another guy involve with him.

20 Q Okay. Now, what was your knowledge about Travis
21 Holmes? What did you -- what was your impression of him?

22 A I mean, I had knowledge about him being a very
23 dangerous person and I know about things that he done.

24 Q Okay. Was it your -- did you know -- what did the
25 community think about? Is this stuff you got from the

1 community?

2 A Basically from the community and my knowledge I know
3 that he's known to tote a gun and is a shooter.

4 Q Now, let me ask you this, Mr. Knight, when this
5 shooting happened at your trailer at Donaldson Drive,
6 did that scare you?

7 A I was very scared.

8 Q Okay. Did it -- what impact did it have on you that
9 your son was in that amount of danger?

10 A It made me very frightened and it was just like took
11 my sense of security. I didn't feel safe at home.

12 Q What impact did it have on you that your girlfriend
13 lost -- it was a miscarriage as a result of this?

14 A I was very sad about that. Me and LaShaunica cried
15 many nights about that.

16 Q Now, Miss Allen's testified to this, but let me ask
17 you this. Do you have another child by Miss Allen now?

18 A Yes, sir.

19 Q What is that child's name?

20 A [REDACTED].

21 Q And how old is [REDACTED]?

22 A I think he will be ten months December 7th.

23 Q Let's go forward here. You already told the jury the
24 essential fact about the Subway incident let's talk about
25 that a little bit more in detail, okay?

1 A Yes, sir.

2 Q What were you doing that day, that's July 26, 2011?
3 What were you doing that day?

4 A I was at home with LaShaunica for most of the day.
5 We were just at home watching TV and things like that.

6 Q Okay. Now, do you know Miss Shiecarra Smalls?

7 A Yes.

8 Q Okay. And how long have you known her?

9 A For a very long time since elementary.

10 Q Okay. At any time end up talking to Miss Smalls
11 about going to pick her up?

12 A Yeah.

13 Q Tell us about that?

14 A On that day, LaShaunica was pregnant again now, she
15 was begging me to go get her some Subway. So I went out
16 and left the house, go get her some Subway. And on my way
17 coming through Beaufort, Shiecarra called me. She was
18 telling me how she been off for the last 30 minutes. Her
19 ride hasn't come get her yet. And she just ask me -- and
20 I was telling her where do you work at. And she let me
21 know where she worked at. And I told her I was on my way
22 by there. Since, I had move closer to where she stay, I
23 told her I would just pick her up and take her home on my
24 way back home.

25 Q And this is at a point you had already moved away

1 from One Donaldson Drive? You didn't live there any more,
2 right?

3 A No, sir.

4 Q Where did you live at that time?

5 A I stayed on Three Tammy Lane in Sandhill Estates in
6 Grace Hill.

7 Q So you were back in Grace Hill at that point?

8 A Yes, sir.

9 Q And Donaldson Drive that's in Burton; is that right?

10 A Yes, sir.

11 Q Now, when you -- you talked to her so you were
12 already headed to Subway though to get sandwiches, right?

13 A Yes, sir.

14 Q Where did you pick Miss Smalls up from?

15 A Where she works at is connected to the Wal-Mart.
16 When I came through Wal-Mart parking lot, I called her and
17 she wasn't in the front of her job. She was just coming
18 out of Wal-Mart. She told me to just sit right there in
19 front of Wal-Mart and she came out.

20 Q Okay. After you picked up Miss Smalls from the
21 Wal-Mart, you guys go down to Subway?

22 A Yes, sir.

23 Q Okay. When you got to the Subway, what did you and
24 Miss Smalls do?

25 A We went to the Subway. She walked in there with me.

1 I went to order, but she took a seat down because, I guess
2 because she probably didn't have any money to buy her
3 something to eat or nothing. She was working all day. I
4 didn't know if she had lunch or not, so I offered to buy
5 her something to eat. She said, yeah. So I got a
6 sandwich fix for me, my girlfriend and I got Shiecarra a
7 sandwich.

8 Q Now, at some point, did you, Mr. Holmes, come into
9 the Subway?

10 A After I got all three of the sandwiches made, I paid
11 for them and, I guess, my back was to the entrance, so I
12 never saw him. As I grabbed my sandwiches and turn to
13 leave, I saw Mr. Holmes like my heart just dropped into my
14 stomach. I was just terrified to see him, but I was
15 trying to dodge him to my fullest abilities and I still
16 ran into the one person who I didn't want to see that day.

17 Q What did you and Miss Smalls do at that time after
18 you paid for your sandwiches?

19 A We were trying to rush of the store and get -- walk
20 past Mr. Holmes, but he was just like staring me down.
21 And it was so much attention between us. Shiecarra tried
22 to break the tension by telling him hi. She was like, Hi,
23 Travis, how you doing. And he barely said anything to
24 her. She was on the left-hand side of me. I was on the
25 right-hand side and he was on the right side of me. While

1 we were walking by, he barely acknowledged her. He walk
2 pass me and just was like, Man, I'm gone kill you boy.
3 And when we were leaving out the door, I really rushed out
4 the door. Then me and Shiecarra made it outside.

5 Q Okay. All right, Mr. Knight. Now, after you exit
6 the store with Miss Smalls, where did you all go from
7 there outside the store?

8 A After I exited the store, me and LaShaunica ---

9 Q That's all right take your time.

10 A I mean, me and Shiecarra Smalls, Miss Smalls we were
11 making our way to my car. And I was just explaining to
12 her like did you hear what he said just now. Like, man,
13 he just gone keep trying to kill me. You know, Travy,
14 you know what type of guy he is. And I was just keep
15 telling her that. I told her he just shoot up the house.
16 He just took a son from me. And I was telling her this.
17 I got her to the car. And when we got to the car, that's
18 when I just felt like I didn't want be...

19 Q That's all right take your time, Mr. Knight.

20 A I just felt like I couldn't live like that any more,
21 hiding, running and from Mr. Holmes and just always being
22 a victim to Mr. Holmes.

23 Q Now, after that obviously, did you go back in the
24 store?

25 A Yes, sir.

1 Q Okay. And obviously, you had a weapon on you;
2 correct?

3 A Yes, sir.

4 Q You're not trying to deny that to people on this
5 jury?

6 A No, sir.

7 Q Okay. Now, let me ask you this, why did you have a
8 weapon on you?

9 A At that time, it was just for protection. So if my
10 life was threatened, I be able to protect myself.

11 Q Let me ask you this, you've already admitted to the
12 jury that you been involved with narcotics. Does that
13 have anything to do with the danger level you felt?

14 A Yes. I'm always in danger selling drugs, you know
15 what I'm saying. Danger of being robbed. Sometimes I
16 would keep a firearm to protect myself, so I wouldn't get
17 robbed.

18 Q Now, Mr. Knight, you've already told this jury that
19 you were the one that went into this store that's on these
20 pictures and shot Mr. Holmes; correct?

21 A Yes, sir.

22 Q But you didn't waive a firearm around. Why not?

23 A When I went back into the store, it was females in
24 the store. I didn't want to waive a gun around. I didn't
25 want to in danger those females in the store, so I didn't

1 take a shot as soon as I came in the store. I didn't try
2 to brandish a pistol. I didn't want to harm the females
3 at all, so I walk straight to Mr. Holmes, who was the
4 person with the threat on my life, and I got close and
5 then I pulled the gun out and shot Mr. Holmes.

6 Q Mr. Knight, was what you did dangerous?

7 A I don't understand the question.

8 Q Let me ask you, is it possible that that bullet could
9 have hit somebody else?

10 A Not to my knowledge.

11 Q Would you have wanted that to happen?

12 A No, sir.

13 Q When you shot Mr. Holmes, was the gun right up
14 against him?

15 A Yes, sir, I wanted it to be right up against him to
16 make sure the bullet didn't have any chance to hitting any
17 innocent person.

18 Q Then after that happened, what did you do?

19 A After that happen, I left out of the Subway and I got
20 into my car.

21 Q Mr. Knight, were you scared through that hole thing?

22 A I was very scared. I never did anything like that in
23 my life. I didn't -- I never wanted that to come to that.
24 I'm very sorry for what happened. I never had any
25 intentions for it to go this far.

1 Q Now, after you left, you got into your car; is that
2 right?

3 A Yes, sir.

4 Q Where did you go?

5 A I drove Shiecarra home and I dropped her off home and
6 then I went home.

7 Q Okay. After you went home, what did you do?

8 A At that time, I was just real scared and real shaken
9 up about what just happen and I wanted to get LaShaunica
10 to safety. I didn't want any of Travis' family members or
11 his friends retaliating on me or her, so I just want to
12 grab her and try and get to safety.

13 Q Where did you end up going to?

14 A Me and her -- I took her to Jacksonville, Florida.

15 Q Did you stay in the same places she was or did you go
16 together with her?

17 A Yes, sir.

18 Q Okay. Now, let me ask you this, your hair when you
19 were in the video what's been shown here to the jury you
20 had dread locks; is that right?

21 A Yes, sir.

22 Q And when this happened at the Subway about how long
23 was your dread locks?

24 A About right here shoulder length.

25 Q Okay. Make sure you speak up for us. Thank you,

1 Rajerick. After you -- well, at some point after this,
2 did you cut your hair?

3 A Yes, sir.

4 Q And did you cut your because you were concerned about
5 getting caught and arrested?

6 A I was scared. I was trying to make it to Florida
7 with her and get her into safety before I got captured but
8 the police, so I just was scared and I thought it was the
9 best thing to guess not to be noticed.

10 Q Now, I want to back up a little bit, okay.

11 A Yes, sir.

12 Q Let's go back before all this unpleasantness happened
13 at the Subway that we are here for today. I want to go
14 back to when the shooting happened at the trailer. You
15 already testified you had knowledge about him and that you
16 came into knowledge that he might have been responsible
17 for that. Was there anything -- what was your knowledge
18 about Mr. Holmes having a problem with you?

19 A Well, the time before he told me he was going to kill
20 me. I just know he had problems with me. When I move
21 from Florida, I moved into his neighbor and he didn't like
22 that.

23 Q Let me ask you this, what did you understand his
24 relationship to LaShaunica to be?

25 A LaShaunica's uncle is married to his aunt, so they

1 like cousins through marriage.

2 Q Did Mr. Holmes like the fact that you were dating his
3 cousin?

4 A No, sir.

5 Q And this is very important, Mr. Knight. Did you ever
6 do anything that you can think of, you specifically to
7 Mr. Holmes, did you do anything to him to make him mad or
8 upset or want to hurt you?

9 A Never ever did anything to Mr. Holmes, never.

10 MR. BAX: Moments beg the Court's indulgence,
11 Your Honor.

12 THE COURT: Yes, sir.

13 MR. BAX: Thank you.

14 (WHEREUPON, a pause in the proceedings.)

15 BY MR. BAX:

16 Q Briefly, Mr. Knight. First of all, okay, we have a
17 jury here deciding your fate and you know that; correct?

18 A Yes, sir.

19 Q Now, what can you tell the jury about why they
20 shouldn't think of this as just an execution? Why
21 shouldn't they think that? What about what you did is not
22 that?

23 A Well, what I did in my perspective I think it wasn't
24 an execution?

25 Q Yes, sir.

1 A I think it wasn't execution because Mr. Holmes put me
2 in a situation where I had to choose life or death. I'm
3 young, I didn't want to die. Didn't want to get murdered
4 in cold blood, so I choose life. I choose to live, so I
5 choose to fight for my life and attack the who was
6 attacking my life. I just wanted to live and I wanted to
7 stay alive. I didn't want to get killed by Mr. Holmes.

8 Q Mr. Knight, did you in your mind, okay, did you have
9 any doubt that Mr. Holmes would continue to try to hurt
10 you?

11 A I was always scared for my life with Mr. Travis
12 especially after the incident where he showed he didn't
13 have any remorse for his cousin or her child to try to
14 kill me by shooting through our house. Every day I woke
15 up I thought I was going to die being in a situation with
16 Mr. Holmes.

17 Q So you were also scared about the danger that your
18 family was in, that **Minor** -- let me ask that question
19 first, you were also scared about what could happen to
20 your children; is that right?

21 A I was very scared about what could happen to my
22 children. I had already lost a child behind this whole
23 situation. I wish y'all could meet **Minor**. **Minor** is --
24 that's my everything, that's my heart. I wouldn't be able
25 to make it if I lost **Minor** behind this situation.

1 Q Now, Minor is not your biological son; is that
2 right?

3 A No, sir.

4 Q But did you file paperwork to adopt Minor?

5 A Yes, sir.

6 Q Okay. And had you been -- how long had you been
7 acting as Minor's father?

8 A I gave Minor his first birthday before his first
9 birthday.

10 Q Now, I want to clarify some things, okay. Before I
11 let you go for now, Mr. Knight. You testified earlier
12 that you never done anything like this before. Isn't it
13 true that as a result -- you know, as part of the
14 conviction, you got for pointing and presenting, there was
15 an accusation that you fired a shot at somebody at some
16 point?

17 A Oh, yes, sir.

18 Q Had you ever -- did you hit anybody at that time?

19 A No, sir.

20 Q Okay. When you said that you had done anything like
21 this before, are you talking about walking in broad
22 daylight into here and just getting in somebody's face
23 like this?

24 A Yes, sir, that's what I should have specified myself,
25 that's what I meant, sir.

1 Q Okay. Let me ask you this, okay, you're not getting
2 up here and telling this jury that you haven't made bad
3 decisions; is that right?

4 A I admitted to all my convictions I ever had and I
5 admit that I have made mistakes in my life.

6 Q Do you want to have an opportunity to correct those
7 mistakes and live a better life?

8 A Yes, sir.

9 Q Okay.

10 MR. BAX: Moments indulgence, Your Honor.

11 (WHEREUPON, a pause in the proceedings.)

12 MR. BAX: No further questions on direct at this
13 time, Your Honor.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MR. STONE:

17 Q Yeah, I want to make sure I'm clear on this, Mr.
18 Knight. When you told the jury you never done anything
19 like this, you mean you never actually walked in to this
20 particular Subway and shot and killed somebody; is that
21 what you meant?

22 A No, sir, I didn't mean it like that.

23 Q You certainly didn't mean that you never shot at
24 anybody before, did you?

25 A That's what I just admitted to Mr. Bax.

1 Q In other words, Michael Singleton the man that you
2 shot at in 2006, that was a drive-by shooting then too,
3 was it not?

4 A No, sir, that was a accusation, but I never -- that
5 was an accusation.

6 Q You did get convicted of that did you not, sir?

7 MR. BAX: Objection, Your Honor.

8 A I got convicted of ---

9 THE COURT: Hold on.

10 A I got convicted of ---

11 THE COURT: Hold on.

12 THE WITNESS: Oh, you were talking to me, sir?

13 THE COURT: Yes, sir.

14 Grounds for your objection?

15 MR. BAX: Your Honor, that's in accurate, that's
16 not what he is convicted for.

17 THE COURT: Can you all approach?

18 (WHEREUPON, a bench conference was held in the
19 presence of the jury, but out of the hearing of the
20 jury.)

21 THE COURT: Rephrase your question.

22 MR. STONE: Yes, sir.

23 BY MR. STONE:

24 Q You aren't telling the jury that you did not shoot at
25 Michael Singleton, did you? Do you know who Michael

1 Singleton is by the way?

2 A No, sir.

3 Q You don't?

4 A I know a guy, but I don't know him by Michael
5 Singleton. I know the incident that you're referring to.

6 Q Thank you, sir. Tell us about that? Let me ask you
7 this question, this man that you know that may be Michael
8 Singleton, the guy that you shot at before, was he a drug
9 dealer too?

10 A I don't know, sir.

11 Q You don't know if he was in the narcotic business?

12 A No, sir.

13 Q Okay. And you said earlier I think that you and
14 Travis Holmes, he didn't like moving into his
15 neighborhood; is that right?

16 A Yes, sir.

17 Q Travis Holmes in the drug business?

18 A Yes, sir.

19 Q So when you say that Travis Holmes was a dangerous
20 guy, you're a pretty dangerous guy too; aren't you?

21 A Dangerous in by selling drugs?

22 Q I guess my question is this you and Travis rival drug
23 dealers?

24 A No, sir.

25 Q You want to get rid of Travis, so that you could have

1 that territory too?

2 A I had already moved in.

3 Q You already had that territory?

4 A I already move from Travis' neighborhood.

5 Q I understand. Now, you don't have any argument do
6 you that State's Exhibit 12 is a picture of you and
7 Shiecarra going out of the Subway; is that correct?

8 A Yes, sir.

9 Q That is you, right?

10 A Yes, sir.

11 Q And you say at some point and I believe that is in
12 the very back of State's Exhibit 12 is Mr. Holmes; is that
13 correct?

14 A Yes, sir.

15 Q Still ordering a sandwich, I believe talking to the
16 lady that testified yesterday that you heard; correct?

17 A Yes, sir.

18 Q And when you walk by him according to you today, he
19 said I'm going to kill you, right?

20 A That picture doesn't show that though, sir.

21 Q Of course, it doesn't show that, but that's what
22 you're saying and that's what you told this jury that he
23 threatened to kill you when you walk by him?

24 A Yes, sir.

25 Q I didn't hear Shiecarra say that?

1 A Shiecarra was on the left side of me, sir.

2 Q What about the lady that said she was talking ---

3 MR. BAX: Objection. He needs to be allowed to
4 finish his answer, Your Honor.

5 THE COURT: Let him finish his answer, Mr.
6 Stone.

7 BY MR. STONE:

8 Q Did Shiecarra say that?

9 A Say what, sir?

10 Q Did she hear him say that?

11 A That's why when we got outside, I kept questioning
12 her and asking her if she heard him say that.

13 Q That's a good question. I don't remember her saying
14 that either, do you?

15 A I don't remember her saying that in her testimony.

16 Q When you walked in that Subway, did you have the gun
17 with you when you walked in? When you went in the first
18 time with Shiecarra, did you have the gun with you?

19 A Yes, sir.

20 Q So you just carry it with you at all times?

21 A Yes, sir, I had it concealed underneath my shirt.

22 Q You did everything you could to get away from Travis
23 Holmes; is that right?

24 A That day right there?

25 Q Yes, that day right there?

1 A Yeah, I walked away from him.

2 Q And then when you got out in the car with your
3 sandwiches that you went ahead and paid for and took out,
4 you turned around and went back in; didn't you?

5 A Yes, sir.

6 Q You already at your care and you could have gotten in
7 the car and driven off right then; couldn't you?

8 A I could have, yes, sir.

9 Q But you didn't?

10 A No, sir.

11 Q You decided to go back in and end it; is that right?

12 A I wanted to end the threat of my life, yes, sir.

13 MR. STONE: Excuse me just a moment, Your Honor.

14 THE COURT: Yes, sir.

15 (WHEREUPON, a pause in the proceedings.)

16 BY MR. STONE:

17 Q And so I heard one other thing that you said that he
18 didn't have remorse for your girlfriend getting shot at;
19 is that what you said?

20 A Yes, sir.

21 Q How did that make you feel? Make you mad?

22 A No, sir.

23 Q No. And then when you got in the car and you drove
24 away, you fled to Florida, did you not?

25 A Yeah, I tried to take my girlfriend to safety.

1 Q Cut your hair?

2 A Yes, sir.

3 Q And cut it again after that?

4 MR. BAX: Objection, Your Honor, side bar.

5 THE COURT: What's the grounds for your
6 objection.

7 MR. BAX: Grounds for my objection as I've
8 stated earlier on the record what he appears like today is
9 not an indicia.

10 THE COURT: Cross-examination I'll allow the
11 question.

12 MR. STONE: Thank you, Your Honor.

13 THE COURT: Objection overruled.

14 BY MR. STONE:

15 Q So you went to Florida, you cut your hair and then
16 you started sending texts back to your friend to say watch
17 out for Karra, watch her, don't let her know you watching,
18 but watch her, right? And Shiecarra by the way is
19 Shiecarra Smalls; is it not?

20 A Yes, sir.

21 MR. STONE: I don't have any further questions?

22 THE COURT: Any redirect?

23 MR. BAX: Yes, Your Honor, one question.

24 REDIRECT EXAMINATION

25

1 BY MR. BAX:

2 Q The fact that Mr. Holmes did not care that his
3 pregnant cousin was in the house that he shot up, you said
4 that didn't make you mad. Did it scare you?

5 A It made me very frightened that he would take a
6 chance of killing his own cousin.

7 MR. BAX: No further questions, Your Honor.

8 THE COURT: Mr. Stone.

9 MR. STONE: No, sir.

10 THE COURT: Sir, you may step down. Thank you.

11 (WHEREUPON, the witness leaves the witness
12 stand.)

13 THE COURT: Can the lawyers approach please?

14 MR. BAX: Yes, sir.

15 (WHEREUPON, a bench conference was held in the
16 presence of the jury, but out of the hearing of the
17 jury.)

18 THE COURT: Ladies and gentlemen of the jury,
19 what I'm going to do there's some matters that I need to
20 deal with here this afternoon, it's about three o'clock.
21 I'm going to cut you loose for the balance of today, for
22 the balance of today. We will resume tomorrow morning. I
23 want you all here tomorrow morning at ten o'clock, ten
24 o'clock because there's some matters that we have to deal
25 with this afternoon and in the morning before we start.

1 So I'm going to let you go and I'm going to ask that you
2 be back here tomorrow morning at ten o'clock. My
3 instructions remain the same. You're not to discuss this
4 case with anybody. You're not to discuss this case with
5 anybody. You're not to do any independent investigation
6 of your own. You're not allowed to talk about the case
7 until you're instructed to do so. You all are free to go
8 at this time everybody else in the courtroom remain seated
9 while the jury exits the courtroom. Please be back at ten
10 o'clock.

11 (WHEREUPON, the jury is excused for the day.)

12 THE COURT: Okay. Now, it is my understanding
13 the only remaining witness in this case is Dr. Thomas
14 Martin; is that correct, Mr. Bax?

15 MR. BAX: That is correct, Your Honor, from
16 defense.

17 THE COURT: We discussed the fact yesterday that
18 Dr. Martin could not be here until Thursday morning. And
19 I've asked the jury to be back at ten o'clock in the
20 morning as oppose to nine o'clock in the morning. Because
21 I want to know what Dr. Martin intends to testify to. And
22 rather -- I mean, I don't know if the State intends to
23 object to any of it I don't know. How long do you
24 anticipate Dr. Martin testifying?

25 MR. BAX: Your Honor, as far as direct

1 testimony, I would estimate that his testimony would be
2 between 30 and 45 minutes. I don't think it's going to be
3 any longer than that. I'm trying to give myself as much
4 leeway as possible. I don't foresee it being as lengthy
5 as sometimes expert testimony. I don't know that's my
6 direct. I don't know what cross will involve.

7 THE COURT: Can you tell me what you going to
8 qualify him as an expert in?

9 MR. BAX: Your Honor, I'm going to qualify him
10 in the field of -- says he has a degree in psychiatry. I
11 want to make sure I say it correctly, Your Honor. I
12 think, it's going to be forensic psychology. I don't want
13 to say something to the doctor in his education, he's
14 going to tell me is incorrect, but that's what I think it
15 is forensic psychiatry. He does a lot of evaluations of
16 individuals both for all sorts of levels. And as I have
17 stated to the Court before and I can assert this
18 absolutely without hesitation, he's not here to say
19 there's any problem with my client's competency. He's not
20 here to say that he suffers from any kind of mental
21 illness that would affect his ability under insanity. In
22 fact, I don't even think he's going to say that he suffers
23 from any specific diagnose under the DSM-4. He's purely
24 here as a state of mind witness to talk about what he has
25 as far as his opinion, the mental state of my client when

1 this happened. But I would say forensic psychiatry, I
2 think, that's the way to say the most accurate way to say
3 it. And I have provided to a CV to the Solicitor's office
4 prior to this, but I will make sure we have extra copies
5 tomorrow.

6 THE COURT: Anything from the State at this
7 time?

8 MR. STONE: I don't know that enough, Your
9 Honor, at this time. I don't know that the qualifications
10 not going to be the issue. It's what he's testifying to
11 that concerning the State and I'm just not clear on what
12 that is.

13 THE COURT: I mean, he just said he's going to
14 testify as to state of mind.

15 Mr. Bax, you conveyed to me in chambers
16 yesterday in the presence of Mr. Stone and Mr. Thornton,
17 that this was something that happened on an ongoing basis.
18 And quite frankly, I've never seen an expert come in in a
19 case such as this and testify as to state of mind. I
20 mean, maybe in a mitigation in a death penalty case or
21 something like that. And you indicated that you had it
22 happen on numerous occasions. By no stretch of the
23 imagination just because I'm sitting up here in this black
24 robe, does not mean that I know everything, okay. So if
25 you intend to do that, I certainly want any and all case

1 law that you have that support your position on that so
2 that I can make a ruling on it and not have that jury sit
3 back there for a long period of time. You can e-mail
4 whatever since we're breaking for the balance of today at
5 about 3:05. You can e-mail me case law you want me to
6 look at to myself and my law clerk and I'll be happy to
7 look at it. I assume that's kind of where you were going
8 after I saw that there was a doctor on here. And I've
9 looked at some case law. And the case law that I've seen
10 dealt with a situation wherein there was the batterer
11 syndrome, batterer syndrome, diminished capacity, which
12 South Carolina from my understanding does not recognize.
13 I mean, if I recall correctly, those are the only two that
14 we saw. So you got some case law, some South Carolina
15 case law or something I can look at, I'll be happy to take
16 a look at it. I just want to make sure that I have an
17 opportunity to look at it, so that I make the appropriate
18 ruling in this matter without having to make the jury sit
19 out there an extended period of time while I do some
20 researching.

21 MR. BAX: Certainly, Your Honor, for the Court's
22 information, I have touched base with Dr. Martin informed
23 him that we have moved through all the testimony that we
24 need him tomorrow. He is going to come in late tonight
25 and stay with some people here that he knows in town, so

1 he'll be available. So he can be at the courthouse by
2 8:30.

3 THE COURT: I want court personnel here by nine
4 o'clock. I mean, I hate to do this, but I think it's a
5 situation where based upon my assumptions, I felt like it
6 was probably some testimony that need to be proffered
7 before I made a decision on it.

8 MR. BAX: All right. Certainly, Your Honor.
9 And he's going to be available for that. Additionally,
10 Your Honor, this is a housekeeping matter you may have
11 just been about to get to this. I don't mean to cut into
12 your territory. I was just going to ask if you like would
13 a propose charge.

14 THE COURT: I appreciate -- absolutely. Any
15 propose charges that you all have e-mail to my law clerk
16 tonight. We will take a look at them overnight, first
17 thing in the morning. I suspect that once -- and I'm not
18 going to hold the State to this right now, but I suspect
19 once you rest, the State has conveyed to me up here at
20 side bar a minute ago that they do not anticipate calling
21 any reply witnesses, but I'm not going to hold you to that
22 right now. But once you rest, certainly we're going to go
23 right into closing arguments, okay, regarding closing
24 arguments and the charge on the law.

25 And I'll go ahead and tell everybody that's in

1 this courtroom right now. During closing arguments and my
2 charge on the law, you will not be allowed to leave this
3 courtroom, okay. My charge on the law will be probably be
4 anywhere from 30 to 45 minutes and that's excluding what
5 the lawyers closing arguments, how long their closing
6 arguments may be. But you will not be allowed if do not
7 think you can sit for that long, you don't need to be in
8 here during closing arguments and the charge on the law
9 because I do not allow individuals to come in and out of
10 this courtroom while that is going on. I certainly do not
11 want this jury to be distracted in any way from closing
12 arguments are going on and in my charge on the law is
13 being given to the jury. So I'm just putting you all on
14 notice of that now, okay. All right. Anything else from
15 the State at this time?

16 MR. STONE: Could we approach just briefly, Your
17 Honor?

18 THE COURT: Yes, sir.

19 Mr. Bax.

20 (WHEREUPON, a bench conference was held in the
21 presence of the jury, but out of the hearing of the
22 jury.)

23 THE COURT: Anything else from the State or
24 defense counsel at this time?

25 MR. STONE: No, sir.

1 THE COURT: Court personnel back here at nine
2 o'clock in the morning. We'll resume the trial of this
3 case at ten.

4 (WHEREUPON, the proceedings were concluded for
5 the day to be reconvened on November 29, 2012.)

6 THE COURT: Okay. I had ask the lawyers to be
7 back here at this morning at 8:30, to be in my chambers at
8 8:30 to go over the jury charge. We have done that. We
9 will address that here shortly. I also asked defense
10 counsel to have Dr. Thomas Martin here at nine o'clock to
11 address some issues regarding his testimony Mr. Bax is Dr.
12 Martin here?

13 MR. BAX: Yes, Your Honor, he is.

14 THE COURT: Are you ready to proceed?

15 MR. BAX: I'm ready to proceed, Your Honor. And
16 just for my purposes, does the Court prefer that we go
17 into proffer on Dr. Martin before getting to other issues?

18 THE COURT: Yes, sir, I would.

19 MR. BAX: Well, then for that purpose, Your
20 Honor, I would call Dr. Martin at this time.

21 THE CLERK: Do you swear or affirm to tell the
22 truth, the whole truth, and nothing but the truth so help
23 you God?

24 THE WITNESS: I do.

25 THE CLERK: Please be seated and state your full

1 name.

2 THE COURT: Let me go ahead and put on the
3 record before Mr. Bax begins questioning Dr. Martin. I
4 told Mr. Bax and Mr. Thornton and Mr. Stone in chambers
5 yesterday for purposes of this hearing, it is not
6 necessary for Mr. Bax to lay out the qualifications of Dr.
7 Martin for the purpose of determining his status in
8 testimony as an expert in this court? Any objection to
9 that by the State?

10 MR. THORNTON: None, Your Honor.

11 THE COURT: All right, Mr. Bax.

12 MR. BAX: All right. And thank you, Your Honor.
13 And just for the record, I would ask if Your Honor
14 determines that his testimony is not admissible in front
15 of the jury, that I be allowed to put his qualifications
16 on the record that instance. Obviously, we don't need it
17 now, but in the event that Your Honor rules that his
18 testimony is not admissible before the Court.

19 THE COURT: Absolutely. And if you feel like
20 you need to do that, certainly I want you to do that or in
21 light of that, you can certainly make it an exhibit, a
22 Court's Exhibit his C.V., which covers all that. The
23 State may even stipulate that he qualified to testify. I
24 guess he want to be qualified or would be qualified as a
25 forensic psychologist or psychiatrist.

1 MR. BAX: Yes, Your Honor. Thank you.

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION IN-CAMERA

4 BY MR. BAX:

5 Q Dr. Martin, bearing in mind, that we heard from the
6 Court, I'm just going to get into it. First and foremost,
7 are familiar with Rajerick Knight, sir?

8 A Yes, sir.

9 Q And can you tell the Court how you got involved with
10 the Mr. Rajerick Knight and this case?

11 A You called my office earlier this year maybe around
12 July, midsummer asked if I would evaluate this case that
13 he was charged with murder. And I agreed to take a look
14 at the records and the surveillance video and other
15 documents you felt pertinent. I did that. And then we
16 made arrangements to have him transported to my office in
17 Columbia and I spent three hours meeting with him
18 personally.

19 Q Okay. And so what you have had to review includes
20 not only all the records that I have sent you including
21 discovery in this case involving a shooting at Subway, but
22 also video of the surveillance video that was taken at
23 Subway restaurant; is that correct?

24 A That's correct.

25 Q Did you also receive records provided by my office of

1 the victim's background as well, sir?

2 A Yes, sir, I did.

3 Q Have you had an opportunity to review all those
4 records to your satisfaction, Doctor?

5 A Yes, sir.

6 Q Now, you also testified that you have had an
7 opportunity to meet with Mr. Knight. What date was that
8 on to your remember?

9 A That was September 27th 2012.

10 Q Okay. And during that time, can you tell us a little
11 bit about what you and Mr. Knight talked about?

12 A First of all, I did a standard psychiatric evaluation
13 that would perform with all of my cases in a forensic
14 setting. I went through the charges that were levied
15 against him, his understanding the charges and essentially
16 issues surrounding competent to stand trial, which I found
17 that there was no difficulty there. I also went into his
18 mental health background history. I found that he had
19 trouble with some substances at one time and substances
20 use at one time, but that he had essentially had no mental
21 illness. I didn't find anything psychiatric in terms of
22 major psychiatric illness that was influencing him
23 currently for or at the time of this alleged murder, which
24 was July 26th 2011. So since, I found no major mental
25 illness, I found that he would have been criminally

1 responsible for any of his behaviors around the July 11,
2 2011 time frame as well as having no diminished capacity
3 problems.

4 THE COURT: Had no diminished capacity problems?

5 DR. MARTIN: Yes, sir.

6 THE COURT: Thank you.

7 BY MR. BAX:

8 Q And so for the edification of the Court, you're
9 testimony here today would not be as to any mental illness
10 being suffered by Mr. Knight in your opinion; correct?

11 A Correct.

12 Q Okay. Now, Dr. Martin, let me ask you this in your
13 review of the records that we were provided as well as
14 your discussions with Mr. Knight, did you become familiar
15 with the circumstances surrounding the shooting at Subway
16 and the circumstances surrounding Mr. Knight's life
17 leading up to that shooting?

18 A Yes.

19 Q And in your examination, did you observe Mr. Knight
20 expressing to you motions of fear and stress based on any
21 of the events he described to you that happened before the
22 shooting?

23 A Yes.

24 Q Can you tell us a little bit about that, sir?

25 A Certainly. Mr. Knight reiterated for me his

1 awareness of the victim, Mr. Travis S. Holmes. It wasn't
2 a personal relationship. It was more of a fearful one.
3 He depicted Mr. Holmes as rather a terrorizing in the
4 county. He also depicted for me several times when
5 Mr. Holmes had alleged committed violent crimes, made
6 violent threats against him and his family. It was at
7 that time that I contacted your office and I wanted to
8 know more about the victim in this case. And at that
9 time, you sent materials that supported that there was an
10 investigation of such shootings at his place where his
11 female friend pregnant at the time had been injured, later
12 miscarried earlier that year as well as other violent
13 incidents. He felt that his life essentially living in
14 that county which he felt he had no chance to move from
15 his place of residence at the time that his life and
16 probably his family's life were in eminent danger. And
17 when he went to Subway and saw the victim, he reacted to
18 those fears and that imminent danger.

19 Q Based on your observations of Mr. Knight, based on
20 the things that he told you, which I believe you testified
21 ended up being supported by the documentation records that
22 were provided; correct?

23 A Correct.

24 Q Based on those factors and your observations of Mr.
25 Knight, did he proceed -- was his perception or excuse me

1 let me rephrase, did he appear in your opinion as scared
2 genuinely scared of this man?

3 A It seems like he was living under a reign of terror
4 the way he simply put it.

5 Q And based on your observations of Mr. Knight and what
6 he was depicting to you, did Mr. Knight feel that his fear
7 was reasonable?

8 A Based on, you mean reality?

9 Q Well, Mr. Knight's perception at that time. Did
10 Mr. Knight feel like, was it reasonable to him to be
11 scared?

12 A Yes.

13 Q Okay. Now, obviously, we're in a proffer setting
14 here without the jury present part of the records that you
15 reviewed, did they include anything about Mr. Holmes'
16 prior record including shootings that happened in 2008 and
17 2009?

18 A Yes.

19 Q What information did you have about what Mr. Holmes
20 had done as far as criminal activities in 2008, 2009 to
21 your recollection?

22 A To my recollection, Mr. Holmes was apprehended and I
23 believe charged with some violent crime shootings into
24 homes, into vehicles around that time frame. All these
25 individual -- victims in this case were known to

1 Mr. Knight and were close acquaintances some of them. I
2 also learn that Mr. Holmes was released on, I believe,
3 some form of bond in between all of these or several of
4 these incidences and that created more tension for
5 Mr. Knight because he felt that he was essentially still
6 at large and still a threat.

7 Q Okay. And I think you testified to this a little
8 bit, but based on, you know, your examination of
9 Mr. Knight, did he appear to be well aware of Mr. Holmes
10 past ---

11 A Yes.

12 Q --- including these prior shootings?

13 A Yes, he perceived for me that that was an ongoing
14 threat is that Mr. Holmes out there in the community at
15 large had already shown to his satisfaction that he was a
16 threat to not only him and his family, but also to his
17 family and he was still at large. He felt that he could
18 not get the support. My questions to him were why did he
19 take into his own hands and he felt that he had exhausted
20 the opportunities that the police were able to provide and
21 the was man still on bond.

22 Q In your examination of Mr. Knight, did you question
23 him about how he tried to exhaust the possibilities of
24 police protection or police assistance.

25 A Yes, they contacted, reported and for reasons that I

1 can say I totally understand Mr. Holmes was still on bond.

2 Q And he informed you that his girlfriend, Miss Allen,
3 had repeatedly contacted the police and given him the
4 names of Mr. Holmes and others as potential suspects in
5 the shooting?

6 A That's the way he put it, yes.

7 Q And Mr. Knight seem to be still aware at that time
8 that no one had picked up Mr. Holmes or arrested him or
9 were even trying to?

10 A That's correct.

11 Q Now ---

12 MR. BAX: A moments indulgence, Your Honor.

13 THE COURT: Yes, sir.

14 (WHEREUPON, a pause in the proceedings.)

15 BY MR. BAX:

16 Q Briefly, Dr. Martin, I just want to ask you a couple
17 more questions. In your examination of the records and
18 Mr. Knight, were you able to ascertain, were able to kind
19 of figure out that there was kind of a time line here from
20 incident to incident. Let me ask you this, were you aware
21 of the time line of events that Mr. Knight has been
22 through at that time?

23 A He described it to me starting from I believe 2007 or
24 2008 up until the year several months, maybe three or four
25 months before his shooting incident that he has sighted

1 certain incidences of sort as being within the past couple
2 years.

3 Q So he was able to cite to you his knowledge of Mr.
4 Holmes' reputation and alleged acts as far back as 2007,
5 2008 or earlier as part of what he was afraid of?

6 A Yes, that's what he based his fear on.

7 Q Now, he was Mr. Knight open with you about the fact
8 that the shooting that occurred at his trailer where his
9 girlfriend was wounded and she miscarried about how much
10 time had passed between that shooting and when he saw Mr.
11 Holmes at the Subway?

12 A I believe it was earlier that spring, so March.

13 Q Okay. So you were aware that there was a couple
14 months roughly speaking between when the shooting occurred
15 at his trailer and when the shooting at Subway a occurred?

16 A That's correct.

17 Q In your discussions with Mr. Knight and your
18 observations of him, did it appear that he perceived the
19 threat from Mr. Holmes to be ongoing and continuing
20 throughout that entire period of time?

21 A Yes, the way he described it was it was never going
22 to end.

23 MR. BAX: No further questions at this time.

24 THE COURT: Cross-examination.

25 CROSS-EXAMINATION IN-CAMERA

1 BY MR. THORNTON:

2 Q Okay. Good morning, Dr. Martin.

3 A Good morning, sir.

4 Q Dr. Martin, let me ask you a couple of questions.

5 Did you have discussions with Mr. Holmes (sic) about the
6 fact that he's a drug dealer?

7 A Yes.

8 Q And that he is an armed drug dealer?

9 A Yes.

10 Q Carries a gun everywhere he goes?

11 A Correct.

12 Q That makes him a pretty dangerous man as well, does
13 it not?

14 A It could.

15 Q Did he tell you about the time that he shoot at an
16 unarmed man and was charge with I think assault with
17 intent to kill and pointing and presenting a firearm?

18 A Yes.

19 Q Did you factor that into your analysis as far as
20 whether he would be scared or possibly paranoid?

21 A Yes.

22 Q All right. And isn't it true that drug dealers who
23 carry and because of the business they're, they tend to be
24 a little more paranoid than other folks?

25 A I want speak for all drug dealers.

1 Q How about that drug dealer?

2 A I did not believe that Mr. Knight was using drugs,
3 which sometimes makes people in my practice more paranoid,
4 but I do believe that the field of business he was in
5 creates a hypersensitivity to your surrounding. Paranoid
6 is a psychotic illness and I don't necessarily think that
7 he was that ---

8 Q Forgive, I'm not trying to step into your area. Did
9 he talk to you about Christopher Jackson and your
10 discussions about the shooting at the house?

11 A I don't remember any particular names, so if you
12 could be more specific about the incident.

13 Q Sure. The incident that one of the reasons -- I
14 think the sole reason that you are able to base your
15 position on him being scared or for his family is the
16 shooting into the home is that at least the major one that
17 we would be talking about, the shooting into his trailer
18 where he's worried about Mr. Holmes?

19 A In March?

20 Q Yes, sir -- actually, May 2011?

21 A Sorry.

22 Q Would that be correct?

23 A Yes.

24 Q All right. There were three people who were caught
25 running away from the scene when the police first got

1 there, did you talk about those folks?

2 A No, I did not.

3 Q All right. There was an Antoine Robinson, did you
4 talk about Antoine Robinson?

5 A I remember the name, but I don't remember anything
6 specific.

7 Q Would make it any difference to you if Mr. Holmes
8 having to leave out the fact that Antoine Robinson is the
9 first name that came up in the community quote unquote
10 about this shooting?

11 A Mr. Holmes?

12 Q I'm sorry would it make any difference to you as
13 your discussions with Rajerick Knight that Antoine
14 Robinson's name was the first one to come up in this
15 shooting?

16 A If he did bring it up, I don't remember it, so I
17 can't comment.

18 Q Did he bring up Dion Haygood?

19 A I heard the name, but I don't remember any details.

20 Q Did he bring up the fact to you that Dion Haygood's
21 name a known associate of Antoine Robinson was also
22 brought up in the community as one of the possible
23 shooters?

24 A He said that there perhaps were other suspects in it,
25 but he was convinced that it was Mr. Holmes had a major

1 part in it.

2 Q Did he tell you why he was convinced Mr. Holmes had a
3 major part in it?

4 A He was just certain.

5 Q He was certain, but he was not able to give you any
6 evidence of any kind other than he was certain?

7 A Correct, I have no other evidence

8 Q I understand you don't, but he didn't either because
9 he didn't tell you about any if he did; is that correct?

10 A That is correct.

11 Q What about the fact that there are two Travis
12 Holmes', did he talk about that?

13 A Yes.

14 Q All right. But he's convinced for no other reason
15 that he's convinced, that it was Travis Sentell Holmes the
16 man that he gun down in the Subway in this case?

17 A He knew the difference between the two.

18 Q But he had no evidence other than he was just
19 convinced that it happen to be that one?

20 MR. BAX: Your Honor, asked and answered, that's
21 the same question ---

22 THE COURT: It's cross-examination restate your
23 question.

24 MR. THORNTON: Yes, sir.

25

1 BY MR. THORNTON:

2 Q As to Christopher Jackson, Nashuan Mervin, Jermel
3 Days, Antoine Robinson, Dion Haygood, Jamal or Jemel
4 Jenkins, Travis Sentell Holmes, Travis Javone Holmes, the
5 only thing he was able to tell you about that May shooting
6 is I'm just certain it was Travis Sentell Holmes?

7 A At least having the major part in it, yes. He said
8 there were other figures, but this was the main character.

9 MR. THORNTON: Court's indulgence, Your Honor.

10 BY MR. THORNTON:

11 Q One of the main things you talked about, Doctor, was
12 the fact that he doesn't suffer from any major mental
13 illnesses Mr. Knight; is that correct?

14 A That's correct.

15 Q And he doesn't suffer from diminish capacity?

16 A That's correct.

17 Q So again not to step in your area of expertise
18 basically for a layman that means he knows the difference
19 between right and wrong?

20 A Correct.

21 Q And he has the ability to control himself?

22 A Yes.

23 Q So the day in question when he was at the Subway
24 armed with a gun, he made a conscience decision to go back
25 inside and gun an unarmed man down?

1 A Yes.

2 Q In your experience, Dr. Martin, I know I've seen your
3 C.V. clearly you're qualified and you've done a lot of
4 work with different kinds of folks. Is there anything to
5 be said for the street cred or street credibility that
6 one drug dealer gets by gunning down another drug dealer
7 or a potential drug dealer?

8 A I would imagine there is a reputation that needs to
9 be upheld.

10 Q And is that something if Mr. Knight testify -- I know
11 you weren't here obviously yesterday, but Mr. Knight got
12 up and testified that both he and Mr. Holmes were drug
13 dealers and he was moving into Mr. Holmes' territory and
14 Mr. Holmes was angry about that, wouldn't that be a
15 potential reason for him gunning down -- for Rajerick
16 Knight gunning down Travis Holmes?

17 A It could be one of several, yes.

18 MR. THORNTON: I have no further questions.

19 THE COURT: Anything on redirect?

20 MR. BAX: Yes, Your Honor.

21 REDIRECT EXAMINATION IN-CAMERA

22 BY MR. BAX:

23 Q Dr. Martin, when asked about what Mr. Knight was
24 basing his belief that Travis Holmes in part responsible
25 for the shooting, did he tell you that there were

1 potentially two shooters at the trailer where his
2 girlfriend was wounded?

3 A Yeah, he's mention -- he thought there was more than
4 one.

5 Q And did he mention the fact that Travis Holmes is
6 known in his community to run with Antoine Robinson or
7 anybody else when he goes and shoots at people?

8 A Mr. Holmes according to Mr. Knight was not a loaner.
9 He had, I believe, he called Mr. Holmes a lynch men.

10 Q Okay. All right. Now, you been asked about what he
11 based on his belief that Mr. Holmes had any Travis'
12 animosity towards him, Travis Sentel Holmes animosity to
13 him. Did he describe any other events to you? Did he
14 describe any events where he was conveyed threats directly
15 by Travis Sentell Holmes prior to the shooting at his
16 trailer?

17 A Yes, I don't remember a specific time, but there was
18 not just one threat. There was a threat that he heard in
19 the Subway. The threat would be I say more implied to the
20 trailer and other threats in terms of being shot at or
21 verbally threatened by this man before. I don't know
22 exactly the type of encounters they have had where he
23 heard those threats, but he said that there's not the
24 first time.

25 Q Did he ever -- now, did you become aware during your

1 examination of Mr. Knight or through any of the records
2 that his girlfriend, LaShaunica Allen, was related to
3 Travis Holmes?

4 A I believe so, yes.

5 Q Okay. Did he describe to you any family even for
6 Miss Allen that occurred sometime prior to May 2011, maybe
7 even 2010 where family members of Miss Allen who are
8 related to Mr. Holmes said he wants to kill you?

9 A I believe he mention something about that too, yes.

10 Q And that was well before the shooting at his trailer;
11 is that correct?

12 A Yes.

13 Q So, Dr. Martin, was it just solely his belief that
14 Travis Sentell Holmes had shoot at the trailer or was it
15 based on a hole bunch of things surrounding the entire
16 context of these events?

17 A The folks that Mr. Knight did give me by name would
18 include several individuals who had also been reportedly
19 terrorized by Mr. Holmes and been shot at in the vehicle.
20 The trailer he mentioned in the spring of 2011, his girl
21 lost the baby. And in other words, it was his opinion and
22 it seem to be a community family, a family community
23 opinion, that Mr. Holmes was this kind of danger that he
24 portray to me.

25 Q Now, in your work, Dr. Martin, have you come across

1 communities where there is a lot of rumor and innuendo and
2 talk and people talk with each other and things pass from
3 person to person to person. What we would call in court
4 multiple levels of hearsay. Have you ever run across that
5 in your career as a psychiatrist?

6 A Oh, absolutely.

7 Q In your observations and discussions with Mr. Knight,
8 did he seem to exist in a community where there was a lot
9 of word on the street and great vine kind of information?

10 A Yes.

11 Q Do you think that a lot of that information was
12 making to it him in that manner?

13 A Yes.

14 Q Okay. Despite the fact that some of that stuff is
15 not -- may not be admissible in court was Mr. Knight being
16 impacted by information he was getting through those
17 means?

18 A I believe he was.

19 Q So information he was getting provided through this
20 community. And let me ask you this, during your
21 examinations with Mr. Knight did you encounter in
22 discussing with him these different people in the
23 community, the fact that Mr. Holmes' relatives and his
24 relatives are kind of intertwined?

25 A It seem like it, yes.

1 Q There's a lot of cross relationships and marriages
2 and cousins and stuff like that; is that right?

3 A Yes.

4 Q So there's a lot of people that knew both Mr. Holmes
5 and Mr. Knight; is that not correct?

6 A It seem that way, yes.

7 Q And did he tell you that a lot of these people were
8 continuing to pass along the fact that Mr. Holmes wanted
9 to kill him?

10 A Yes.

11 MR. BAX: No further questions, Your Honor.

12 THE COURT: Any recross?

13 RECROSS-EXAMINATION

14 BY MR. THORNTON:

15 Q How many of these members of the community, did you
16 interview?

17 A None.

18 Q As to Antoine Robinson and the hinch man, that's the
19 first time anybody in this entire court proceeding has
20 heard about. If he gun them down and they were unarmed in
21 a Subway, would it be reasonable for him to be scared of
22 them too?

23 A I'm not sure if I understand the question.

24 Q Okay. You've talked about or I've asked you about
25 the fact that there were other people mentioned in the

1 shooting?

2 A Yes.

3 Q And he said that Mr. Knight apparently told you there
4 other people run with him and he has hinch man, so is he
5 scared of them too or is it all just Mr. Holmes?

6 A It seem to be primarily Mr. Holmes.

7 Q And this community information that he got was based
8 on what he told you and not any interviews you did; is
9 that right?

10 A That is correct.

11 MR. THORNTON: Nothing further, Judge.

12 THE COURT: Dr. Martin, you may step down.

13 Thank you.

14 (WHEREUPON, the witness leaves the witness
15 stand.)

16 THE COURT: Doctor, you don't have to come back
17 up here, but can you stand let me ask you a question. Can
18 you hear me, okay? I want for my clarification can you
19 hear me, okay?

20 DR. MARTIN: Yes, sir.

21 THE COURT: Keshia, can you hear him?

22 COURT REPORTER: Yes, sir.

23 THE COURT: You testified in your direct
24 examination there was no difficulty in his competency to
25 stand trial after your evaluation?

1 DR. MARTIN: Correct.

2 THE COURT: There was no major mental illness?

3 DR. MARTIN: Correct.

4 THE COURT: There was nothing major
5 psychologically that would influence his actions; is that
6 right?

7 DR. MARTIN: That he had no diminished capacity
8 based on major mental illness that's correct.

9 THE COURT: He was criminally responsible for
10 his actions based upon your evaluation?

11 DR. MARTIN: Yes, sir.

12 THE COURT: Okay. Was there any information
13 convey to you by this defendant or anybody of any
14 firsthand knowledge of specific acts, firsthand knowledge
15 or specific acts of violence by this victim against the
16 defendant?

17 DR. MARTIN: Yes, Mr. Knight said that there was
18 personal contact with this victim in the past as well as
19 at the Subway.

20 THE COURT: The personal contacts, I didn't ask
21 about personal contact. I asked about acts of violence by
22 this victim directly against Mr. Knight, that's my
23 question?

24 DR. MARTIN: I'm not sure if I understand it,
25 sir.

1 THE COURT: Did Mr. Knight tell you in your
2 evaluation, during your three-hour evaluation, did he
3 convey to you any specific acts of the victim against him,
4 Mr. Knight?

5 DR. MARTIN: Yes, the ones that I've testified
6 to already that included the shooting at his home where
7 his girlfriend was injured as well as some other shootings
8 of friends of his that were in a vehicle to give two
9 examples.

10 THE COURT: That's not my question. Maybe, I'm
11 not being clear. You said that he conveyed to you
12 shooting of the house?

13 DR. MARTIN: Yes, sir.

14 THE COURT: And he conveyed to you the shooting
15 up of another person's car; correct?

16 DR. MARTIN: Correct.

17 THE COURT: Not Mr. Knight's car, somebody
18 else's?

19 DR. MARTIN: Correct.

20 THE COURT: My question is were there specific
21 instances by Mr. Holmes, specific instances of violence by
22 Mr. Holmes against the defendant, you've talked about the
23 house and you've talked about the car, that Mr. Knight
24 was not in. I want to know about specific instances
25 directed at Mr. Knight by Mr. Holmes, were you aware of

1 any?

2 DR. MARTIN: Only the ones that he told me that
3 were -- he did not incur any physical harm by Mr. Holmes
4 but he had been threatened verbally.

5 THE COURT: Okay. Thank you, Doctor, you may be
6 seated. Thank you.

7 All right. Before I hear arguments, let me ask
8 the State if there's any objection to Dr. Martin's
9 testimony by the State?

10 MR. THORNTON: There is, Your Honor, the State
11 does object?

12 THE COURT: All right. I be happy to hear
13 argument from the State since you all are objecting, then
14 I'll allow Mr. Bax to respond, okay.

15 Be happy to hear from you?

16 MR. THORNTON: Your Honor, what the defense in
17 this case seeks to introduce is testimony regarding the
18 state of mind of the defendant based on his having a
19 reasonable fear. The only cases I can find, Your Honor,
20 and I did run some copies. I think the Court already has
21 them. I think Mr. Bax actually cite some as well. You've
22 got Wilkins, State vs. Wilkins at 305 South Carolina 272.
23 You also have a State vs. Shumpert, Your Honor, and I'll
24 get the site for you for that. State vs. Carlton
25 Shumpert, which is 312 South Carolina 502, which I'm happy

1 to pass up copies. If, Your Honor, needs them, I have
2 copies of both.

3 THE COURT: Okay.

4 MR. THORNTON: Your Honor, the only time this
5 type of evidence has been allowed in South Carolina that I
6 can find -- if the Court's indulgence, I'll hand Mr. Bax a
7 copy as well. The only time that this type of evidence
8 has been allowed is in relation to rape trauma and
9 battered women syndrome. And it is basically used to
10 corroborate what in essence is a self-defense claim,
11 Judge. But in this case first of all, we don't have rape
12 trauma. We don't have battered wife syndrome. What we
13 have is rival drug dealers and the State is not aware of
14 any rival drug dealers syndrome that would justify this
15 type of testimony.

16 Second of all, Your Honor, even if you were
17 going to break with the cases upheld as far as when it is
18 appropriate to use this, you also have the problem of it
19 is going to be the State's position in argument that self
20 defense should not even be charged in this case. You
21 know, one of the questions I asked Dr. Martin if the Court
22 also reiterated is he doesn't suffer from diminished
23 capacity. He knows right from wrong and he's able to
24 control himself. And he makes a conscience decision to go
25 back into the Subway, which to the State completely takes

1 out self defense, any claim of self defense by his own
2 testimony. There's nothing in his testimony that would
3 justify a self-defense charge. Therefore, there's no
4 reason to try to bolster that testimony with Dr. Martin.
5 But I don't even think that you get there, Your Honor,
6 because this type evidence has never been allowed except
7 in rape trauma and battered women recognize syndromes that
8 exist that the courts have held proper and appropriate.

9 For those two reasons, Your Honor, alone I would
10 ask that the Court not allow Dr. Martin to testify and
11 even if you got past those two hurdles, Judge, there's
12 still the probative versus prejudicial effect. I think
13 having a doctor get up and say yet he was reasonably
14 afraid when there's no other justification for it. I do
15 not think that the probative value would outweigh the
16 prejudicial effect. I think quite the opposite, Your
17 Honor. Thank you.

18 THE COURT: All right. Mr. Bax, be happy to
19 hear from you, sir.

20 MR. BAX: Thank you very much, Your Honor. Your
21 Honor, the thing is with this case, I think it has been
22 very much miss characterized. First and foremost, the
23 prosecution has argued rival -- that their rival drug
24 situation here, but there's been absolutely no evidence
25 they been able to introduce about that whatsoever and they

1 haven't even attempted to do it. Other than one question
2 of my client, they have not produced any evidence of that.
3 And they're just arguing it because that's their
4 assumption about Mr. Knight and Mr. Holmes. They've done
5 no investigation to try to get evidence to introduce in
6 this trial about that. They just want to rely on the
7 assumptions about Mr. Knight and Mr. Holmes that they
8 have.

9 Your Honor, this obviously -- what I'm talking
10 about right now is the admissibility of Dr. Martin's
11 testimony. As I sent you before, the Atkins case which I
12 e-mailed to you, I will cite to you in just a second here
13 as I scroll to the top of the page. It is 303 South
14 Carolina 214, Your Honor. It's referred to or excited in
15 the Wilkins case, which has already been cited by the
16 State both of those cases and not in the context of
17 battered women syndrome say that state of mind is relevant
18 in any case that involves a claim of self defense. And
19 state of mind is relevant an admissible in any case where
20 the state of mind of the defendant is implied or involved
21 in an element of the offense that is charged.

22 The State of mind of my client is an essential
23 element of the elements of murder because if the jury has
24 any information or any evidence that they can infer that
25 there was some kind of provocation or that there was some

1 kind of reasonable threat of harm perceived by the
2 defendant, they can find either manslaughter or not guilty
3 under self defense, Your Honor. That is the jury's
4 purview and I'm really scared here that we're about to
5 take away the jury's purview here today. I feel that any
6 lack of being able to help the jury make their decision
7 and then any attempt to take away their ability to make
8 the proper decision is going to be obviously reversible
9 error here.

10 Your Honor, the problem is they have argued that
11 the conscience decision -- well, let me first go to this,
12 there's absolutely nothing in our law about self defense
13 that says that somebody has to suffer from diminished
14 capacity or some kind of mental illness in order to be
15 entitled to a self defense, that's never been the law in
16 South Carolina. I want to make sure that is clear.

17 State vs. Rash 188, Your Honor, 188 I believe
18 that's Southeast Second 435 states that an individual may
19 act on appearances rather than wait for a person to -- and
20 that case talked about the fact that someone is not
21 required to wait for someone to pull on them per se. This
22 is not the wild west. It is not the idea that they have
23 to draw on you first. And that's been recognize in our
24 case law, Your Honor. The State of mind is relevant. The
25 state of mind is cited also State vs. Hill 339

1 Southeastern Second 121 says state of mind is relevant in
2 cases where self defense has been asserted by the
3 defendant and we certainly have in this case. State vs.
4 Davis it's 317 Southeast second 452 talks about the self
5 defense charge and when it is appropriate. Your Honor, I
6 would also refer to ---

7 THE COURT: Let me ask this ---

8 MR. BAX: --- state of mind testimony here
9 before I move into ---

10 THE COURT: I want you to deal with the state of
11 mind why you believe Dr. Martin when you're getting off on
12 self defense ---

13 MR. BAX: And I ---

14 THE COURT: Let me finish talking. My court
15 reporter can't take down both of us talking. I don't want
16 you to get off on arguing what we talked about as far as a
17 jury charge. I want you to deal with why you believe
18 Dr. Martin's testimony should come in, that's what I want
19 you to deal with right now.

20 MR. BAX: Thank you, Your Honor, and I
21 apologize.

22 THE COURT: That's okay.

23 MR. BAX: I'm kind of thinking ahead of myself
24 here.

25 THE COURT: That's okay.

1 MR. BAX: But as I stated state of mind is
2 relevant and that is why I cited the State vs. Hill case
3 because it does talk about state of mind being relevant.

4 Your Honor, and as you've seen from the Wilkins
5 case and the Atkins case, state of mind testimony through
6 an expert has been held admissible in those cases and
7 admissible as state of mind purely just state of mind not
8 just because of battered women syndrome, may have been
9 involved -- I think was involved in only one of those
10 cases. But there was a separate opinion by the appellate
11 court concerning state of mind testimony versus just the
12 testimony on battered wife syndrome. They separated those
13 two.

14 I, in fact, have tried a case and you were
15 asking me about this the other day, State vs. Beulah
16 Butler I tried that in front of Judge McMahan. I had two
17 expert witnesses in that case and one that primarily
18 testified to battered women syndrome but one that
19 testified to state of mind. I believe the one that
20 testified to state of mind was Dr. Ross, a female
21 psychologist. I believe a psychologist might have been
22 psychiatrist. I don't want to smear Dr. Ross who
23 testified in that trial. The rules allowed for this
24 testimony.

25 Additionally, the Solicitor has said that they

1 have asserted that it's never been allowed. Number one it
2 has been allowed and number two, Your Honor, it is not
3 been disallowed. There's not a single case out there and
4 I would challenge anyone to find it because I have
5 certainly look myself, that says it is not admissible per
6 se or it is not admissible under a set of circumstances or
7 there's some test for its admissibility. It has not been
8 held to be inadmissible, Your Honor. So that is also
9 important to state that we have cases stating that state
10 of mind is relevant. We have cases like Atkins saying
11 that testimony about state of mind is admissible because
12 it's relevant. It's allowed by Rule 703 and 704 in the
13 South Carolina Rules of Evidence, which we now mirror the
14 federal rules. And there's plenty of federal case law on
15 the admissibility of state of mind. And it's been
16 testified to in federal courts on many occasions both in
17 the Fourth Circuit and the Supreme Court.

18 I also like to point, Your Honor, to the fact
19 that -- it's happening a lot in South Carolina right now.
20 The State has been allowed enter -- to use experts and
21 things like gang activity and the gang cases that I have
22 been apart of and been tried here in this county as well
23 as in Columbia. It's been ruled to be admissible to have
24 law enforcement expert to take the stand and say I'm an
25 expert in gangs. I've been on the gang task force for x

1 number of years and I can sit up here and I can tell you
2 that when they make this symbol, they mean this. When
3 they wear red, they mean this. And when they do this,
4 this is what they mean by it.

5 Your Honor, that is state of mind testimony.
6 And its been admissible in numerous cases and that's just
7 the ones that have gone up on appeal. It's probably
8 countless cases that haven't gone up on appeal where that
9 has happen.

10 Additionally, in the prosecution of crimes in
11 this case and in the state, have done this for years.
12 They also been allowed to qualify law enforcement officers
13 or SLED officers who been involved in the prosecution of
14 drug cases. As experts in drug people and how they work
15 drug dealers and their activities, drug activities, those
16 have been qualified as experts and allowed in this state.
17 And they testify about well when a drug dealer does this,
18 this is what he means when he has a notebook full of
19 numbers, this is what he means. That's also state of mind
20 testimony, that the State has been allowed to get into.
21 But now we're talking about the defense being able to have
22 their own state of mind testimony when it is relevant and
23 the state of mind in a murder case is essential to the
24 jury. It is essential to his defense. As I stated in my
25 opening argument, we skipped past all the other stuff and

1 went straight to the why, Your Honor. The motive which
2 we're allowed to argue in a murder case, we're allowed to
3 argue in a case where we're asserting self defense and
4 we're asserting those other things that I'm going to argue
5 about later. We are entitled to go into that and his
6 state of mind is absolutely the core of that defense and
7 that argument. And to take away the testimony that we can
8 have that can specifically go to element of his state of
9 mind and whether he perceived his actions to be reasonable
10 is to divest my client of a defense.

11 THE COURT: Okay. Anything in response?

12 MR. THORNTON: Just a couple things, Your Honor,
13 State vs. Atkins that is cited by the defense deals with
14 diminished capacity, that I'm sure the court already was
15 aware of. We already covered that, but the expert have
16 it. I'm not sure if I got the cite right for State vs.
17 Hill, that he also cited. If that's State vs. Sherry Lynn
18 Hill at 287 South Carolina 398, that dealt with battered
19 women syndrome. The case he even cites that he used this
20 expert before was in a battered women syndrome case.

21 Finally, Your Honor, just to clear up the
22 record, the State's assertion that he made a conscience
23 decision to go back into the Subway, I'm not -- I wasn't
24 saying that you have to have diminished capacity to get
25 self defense. The fact of the matter is you have to be

1 able to avoid the trouble. The Court's familiar with the
2 elements of self defense. I thought that was kind of
3 abundantly clear, that was the argument I was making. But
4 as to the expert in this case, Judge, there is no case
5 that I've seen that's been cited by defense where this
6 type of testimony has been allowed except in diminished
7 capacity. I did leave that one out earlier, I thought we
8 covered that one pretty cleanly with Dr. Martin or the
9 rape trauma and battered women syndrome.

10 THE COURT: Let me ask this question, Mr. Bax,
11 what Dr. Martin testified here today to is in essence the
12 same thing that your client testified to. Do you agree
13 with that? What happened -- absent what I excluded based
14 upon my decision that it wasn't relevant to this case?
15 Dr. Martin testified that he took into consideration the
16 very thing that your client testified to; is that correct?
17 My question to you is what does Dr. Martin add to the
18 testimony that your client's already put up here other
19 than the fact that he's a doctor?

20 MR. BAX: Your Honor, Dr. Martin ask had the
21 fact that part of what we have to show is whether or not
22 it can be seen that the perceptions of any person in these
23 situations whether the defendant's perceptions at the time
24 of the incident could be seen as reasonable or not based
25 on what they do. And I think it's an aid to the triers of

1 fact that he has talk to someone of Dr. Martin's past, his
2 experience, his expertise in being able to show that his
3 perceptions of fear could be held as reasonable.

4 Your Honor, Dr. Martin does not take anything
5 away from the triers of fact. He aids the triers of fact
6 in making a decision about whether the perceptions of my
7 client could be held as reasonable.

8 Your Honor, as I stated in my opening, Frankly
9 the world that Mr. Knight and Mr. Holmes live in is a
10 world that most likely many of the jurors, most of the
11 jurors do not live in and probably have had no experience
12 in it. It's a very different world because I have to go
13 into that world all the time. I have been into Burton and
14 Grays Hill. I been to Donaldson Drive. Me and my
15 investigator have gone out in investigating this case.
16 I've done gang cases in Columbia in front Judge Manning.
17 I've done gang cases down in front Judge Mullen. I'm
18 involved with the federal prosecutions involved in the
19 things that were going on in Walterboro. There is a world
20 where there's certain people you get involved within that.
21 You don't go to a neighborhood where there's people riding
22 around that could shoot at you and that's a daily concern.

23 THE COURT: I understand what you're saying
24 there and I did a lot of criminal defense before I was
25 elected to this position. But living in that world, does

1 not make what happened here or allegedly happen here,
2 that's against the law and that's ---

3 MR. BAX: That's for the jury ---

4 THE COURT: That's for the jury to determine.
5 You're exactly right, that's for the jury to determine.
6 But whether or not his actions were reasonable, again
7 that's for the jury to determine under the law, that's
8 what the jury is here to determine whether or not his
9 actions were reasonable. I agree with you 110 percent.
10 My question is what does Dr. Martin add other than what
11 your client's already said. Maybe, in an effort to
12 bolster your client's testimony?

13 MR. BAX: Your Honor, I don't think it's
14 bolstering my client's testimony. The problem is is that
15 my client can only testify as he already has to the jury
16 that he was scared. Dr. Martin can talk about the fact
17 that based on all the factors that he's looked at in his
18 examination of my client, that those fears could be seen
19 as reasonable based on everything that he was going
20 through. Based on the fact ---

21 THE COURT: Why does a jury need him to tell
22 them that? Why can't they make that determination of
23 reasonableness based upon what he said?

24 MR. BAX: They can. Your Honor, they can make
25 the determination of whether they think it's reasonable.

1 He's not taking that away. He's adding to the fact that
2 under circumstances that the jury may not be familiar
3 with, these actions can be seen as reason -- his fear
4 basically was reasonable based on what he was having to
5 deal with. And, Your Honor, I think that's something that
6 the trier of fact can use and is relevant to the case. It
7 can assist them in making a determination of whether the
8 defendant's actions, his state of mind was reasonable at
9 the time of the shooting of Mr. Holmes.

10 THE COURT: Okay. Let me ask the State this,
11 Mr. Thornton, how does he hurt your case? I mean, he says
12 he's criminally responsible. He says he doesn't suffer
13 from any mental illness. He says he has no diminished
14 capacity.

15 MR. THORNTON: Your Honor ---

16 THE COURT: Hold on.

17 MR. THORNTON: Yes, sir.

18 THE COURT: No difficulty with his competency to
19 stand trial et cetra. How does that hurt your case, him
20 testifying?

21 MR. THORNTON: Yes, sir. Here's the State's
22 position on that, Judge, if all he was going to do is get
23 up and say, Yes, based on what he told me he was scared.
24 I mean, I don't know if it does hurt. I think it's
25 cumulative under 403. I don't think it should come in,

1 but that's not what he's going to say. What he's going to
2 say is and that was reasonable. And I wasn't aware he was
3 an expert on reasonableness. I thought he was an expert
4 as to his state of mind. I think -- I don't even think he
5 can testify as to whether it's reasonable or not. I think
6 he can testify as to what Mr. Knight's state of mind is if
7 you were to let it in. So the objection to the State is
8 it's cumulative, but specifically I would object to him
9 getting up in front of a jury and saying, And, yes, I
10 think that's reasonable.

11 MR. BAX: Your Honor, to clarify and we can
12 refer back to questions that I asked him. I asked him if
13 based on everything that he examined with my client and
14 the record and whether his fear could be seen as
15 reasonable, that was my exact question.

16 THE COURT: Well, you said yesterday when we
17 talked in chambers because I asked you in chambers
18 yesterday what's he going to testify to. And you said no
19 problem with competency, no mental illness, no specific
20 diagnosis and he testified exactly to that. And then you
21 said mental state at the time of incident, that's what you
22 told me in chambers yesterday. He was going to testify as
23 to the defendant's state of mind, his mental state at the
24 time of the incident.

25 MR. BAX: And that is correct, Your Honor, his

1 mental state is not based on that 30 seconds. His mental
2 state is based on everything that come up that had
3 happened.

4 THE COURT: Address what Mr. Thornton just said
5 about him being able to say it is reason when that's in
6 the purview of the jury?

7 MR. BAX: Well, Your Honor, he is there to
8 testify about whether or not based on everything that
9 Mr. Knight had told him about what had happened whether to
10 be scared was something that is reasonable in light of
11 everything that he been through, whether or not his fear
12 out based everything that he had -- had told to him,
13 everything he gone through was something that could be
14 seen as reasonable, Your Honor. They don't have to decide
15 what that is.

16 THE COURT: Again, you're ---

17 MR. BAX: Your Honor, all I have to show is that
18 his testimony is relevant to an issue and that it can
19 assist the trier of fact and I think I've shown that.

20 THE COURT: Okay. Anything else from the State?

21 MR. THORNTON: Your Honor, the only other thing
22 I would say is the way it really hurts is, he's based on
23 his opinion on a lot of information that you have deemed
24 inadmissible, so it's basically letting him bolster
25 defendant's testimony with things that you've already held

1 as inadmissible. Thank you, Your Honor.

2 THE COURT: All right. I will stand down. I
3 want to look at a couple things and I will be back. Let
4 me ask this while I'm out here. I asked you all to be
5 here at 8:30 this morning. We talk about -- why don't we
6 go ahead and address this, then I will come back in the
7 other matter. About the jury charge, it was my
8 inclination not to charge to manslaughter or self defense.
9 However, before I make that decision, I want to hear
10 argument by defense counsel as to why it should be in
11 there. I know that probably Mr. Bax is disappointed to
12 say the least that I conveyed that to him. Certainly,
13 understand his position. However, I want to hear legal
14 argument from you, Mr. Bax, as to why manslaughter should
15 be applicable here as well as self defense. I'll be happy
16 to hear from you at this time.

17 MR. BAX: Thank you very much, Your Honor.
18 First -- and I think I cited this before in an e-mail,
19 Your Honor, I would cite the cases that are also cited by
20 professor MacKinish in the book that I reference the other
21 day, Your Honor. I'm now looking at the criminal law of
22 South Carolina Fifth Edition. They do address imperfect
23 self defense. They talked about the fact that originally
24 the idea of imperfect self defense was objected, but that
25 the case law has changed and trended back towards the idea

1 of imperfect self defense.

2 There's the case of State vs. Brown and I would
3 cite that Your Honor 79 South Carolina 390, ground
4 manslaughter would be appropriate if there any evidence of
5 provocation says only if there's evidence of provocation,
6 but if there is evidence of provocation, that it would be
7 applicable and would need to be charged. The Court also
8 in recognize situation which practical effect strongly
9 resembles appropriate self defense and I'm quoting here, A
10 person charged with murder can kill in response to some
11 threatening gesture of another may be entitled to
12 instructions of both self defense and manslaughter. They
13 cite State vs. Jillian and that's spelled J-I-L-L-I-A-N,
14 that's at 296 South Carolina 395. Your Honor, as well as
15 State vs. Linder to 276 South Carolina 304. I think those
16 cites also were in my e-mail last evening. In certain
17 cases, the jury might conclude the defendant's belief that
18 deadly force was necessary was unreasonable but still
19 conclude the threatening act was sufficient provocation.
20 And in those cases as I've said, they have said that the
21 charge on self defense and manslaughter was the
22 appropriate action to take and let the jury decide based
23 on what they perceived the state of mind of the defendant
24 to be based on what they thought was reasonable and not
25 reasonable, what charge to come back with.

1 Judge, the jury's going to have the ability to
2 decide obviously whether they want to convict of murder or
3 not. They need to be entitled to no -- the law of self
4 defense if they think that that's been adequately proven
5 they can fight it. If not, they can.

6 They also need to know they need -- they have
7 the ability to look at manslaughter because, Your Honor,
8 there has been -- and as, Your Honor, knows as stated on
9 the record and has always been stated on the record is not
10 the weight of evidence for the judge to determine. It's
11 merely its existence. And if it's there in any form
12 inference or scintilla, then it is up to the jury to make
13 that determination. So that is why I'm arguing for those
14 charges, Your Honor. And I would cite those cases in
15 support for the idea that if it's out there even if it's
16 imperfect, we should let the jury decide what they want to
17 do with it. I've done -- I'm not here to toot my own
18 horn, but I've done everything I can to put up as much
19 defense for Mr. Knight as I can. I just don't want ---

20 THE COURT: You have and I agree with that. You
21 certainly have, Mr. Bax. You've done a good job in doing
22 that. Anything else on that?

23 MR. BAX: No, sir, Your Honor.

24 THE COURT: All right. State be happy to hear
25 from Mr. Thornton or Mr. Stone.

1 MR. THORNTON: Your Honor, I would just cite the
2 case of Hernandez to the Court. It's 386 South Carolina
3 655. It's actually out of Beaufort County, it was Judge
4 Buckner. I have a copy of that also if I could pass that
5 up?

6 THE COURT: Yes, sir.

7 MR. THORNTON: Basically, in Hernandez, Your
8 Honor, that dealt with the cooling off period. Even if
9 you take away everything else that we would have, all the
10 other arguments in this case, Judge, it would seem to me
11 this would be depositive of it.

12 In Hernandez, you had literally a couple of
13 hours of cooling off. In this case, the only thing that
14 the -- the only thing that they've really got are these
15 prior instances, which you've ruled but one is
16 inadmissible, so the only one that would still even be
17 admissible is the May of 2011. You're talking about a
18 cooling off period of a couple of months unless you go
19 into the, I'm going to kill you that nobody else
20 apparently heard except the defendant. And when he was in
21 the Subway, then he walked out. But words alone as, Your
22 Honor, knows are never sufficient to justify a self
23 defense claim. So all they have is at best even -- at
24 best, Judge, they got words in the Subway and then they
25 got an incident that occurred two months prior to that.

1 And what I would also point out to the Court interestingly
2 enough one of the cases cited by the defendant Jillian, I
3 believe, is what he cited 296 South Carolina 395. I have
4 a copy of that for the Court also.

5 Your Honor, one of the things in that the court
6 says is appellate's testimony that the victim threatened
7 him and then fired at him would support a finding of legal
8 provocation and heat of passion. Well, clearly, Judge,
9 somebody that threatens you and then fires at you would
10 justify that. The interesting person is -- it then goes
11 in to talk about heat of passion for voluntary
12 manslaughter. And it says heat of passion renders the
13 mind of an ordinary person incapable of cool reflection
14 and produces an uncontrollable impulse to do violence,
15 that's the case just cited by the defendant,
16 uncontrollable urge to do violence. If I could pass this
17 up, Your Honor. Their own expert just got up and
18 testified that he made a conscience decision to walk back
19 into the Subway and gun an unarmed man down. Thank you,
20 Your Honor.

21 THE COURT: Hold on, Mr. Bax. All right.
22 Mr. Bax, you were going to stand up. I was writing, I
23 wanted to finish my thoughts in what I was writing.

24 MR. BAX: That's okay, Your Honor. I completely
25 sympathize. I hadn't been able to finish a thought today.

1 Your Honor, I would just point out a couple things. One
2 something that you said in chambers is right here in the
3 case that they just passed to me. In determining whether
4 the evidence requires a charge of voluntary manslaughter,
5 the trial court views the facts in the light most
6 favorable to the defendant, Your Honor, stated that.

7 THE COURT: Right, it's the law.

8 MR. BAX: And as we talked about, it's not a
9 matter of how much, it's a matter of whether there's
10 anything there. Your Honor, we have testimony that there
11 was a threat on that very day. We have testimony that he
12 believed that he already been shot at.

13 Now, whether the shot 60 days before and it came
14 before the threat and there was threats in the intervening
15 time, there still is a threat. And it's on the record and
16 it's been testified to before the jury, so it is there.
17 Your Honor, also this is in the same case, they cite State
18 vs. Norris. And I apologize, Your Honor, I think the like
19 most favorable to the defendant is contributed to State
20 vs. Byrd and that's on the second page of the opinion,
21 Your Honor, at the 323 South Carolina Second 319. But
22 they also cite in that very case State vs. Norris
23 N-O-R-R-I-S at 253 South Carolina 31. That whether he was
24 cool off prior to a violent act must be determined all the
25 circumstances surrounding the event and people involved.

1 And if there's a situation where there's a question of
2 whether or not he had time to cool off or not, my
3 understanding in reading this is that that falls within
4 the purview of the jury. Obviously, if Your Honor does
5 determine to charge manslaughter, you're going to read to
6 them and instruct them on the fact that that is an element
7 of the charge. That they must have been in a state of
8 mind and not had the opportunity to cool off, that's in
9 the charge I know it's there. They're going to hear that.
10 And I know that the prosecution certainly is going to
11 argue to them if you charge that or knowing that you're
12 going charge that, that he had all the time in the world
13 to cool off in their opinion, so they're going to have the
14 opportunity to make those determinations. But if we don't
15 charge it, then they don't get to make that determination.

16 THE COURT: Let me ask this, Mr. Thornton, you
17 specifically, I believe, more or less address the self
18 defense issue. What about the voluntary manslaughter?

19 MR. THORNTON: I'm sorry, Judge, I misspoke when
20 I mentioned self defense. I think Hernandez clearly puts
21 that in your purview. What it says and I'll read from
22 Hernandez, if I can hand you ---

23 THE COURT: On hold. Where are you?

24 MR. THORNTON: I am, Your Honor, on the -- if
25 you will flip back to the third page, it's the bottom left

1 paragraph.

2 THE COURT: Okay.

3 MR. THORNTON: We affirm the trial court's
4 decision not to charge the jury on voluntary manslaughter
5 because the evidence demonstrated Hernandez cooled off
6 between dejection from the party and the shooting. They
7 go on to talk about the facts of it. They then go on if
8 you go on to the top next top, top of the next page that
9 Hernandez argues that this is determination for the jury,
10 which is what Mr. Bax just argued. And the court
11 specifically says that there's been a shift and that this
12 is actually something proper for the judge to determine.
13 So there is not something that is limited to the purview
14 of the jury. This is absolutely a call that Your Honor
15 can make if there isn't any. If there has been a cooling
16 off, then there would not be a reason to do voluntary
17 manslaughter. So, Your Honor, what I would say is that
18 sufficient legal provocation must include more than mere
19 words or a display of willingness to fight without an
20 overt or threatening act, which comes directly from State
21 vs. Rogers, which is at 320 South Carolina 520, which
22 quotes State vs. Johnson and which is actually cited, Your
23 Honor, in State vs. Hernandez also 386 South Carolina 655
24 that I've handed you. So that quote for a charge on that
25 is also in State vs. Hernandez. Your Honor, the point is

1 this, in Hernandez, there was a cooling off of hours. And
2 there was no physical -- the physical altercation that
3 happen before. In this case, the best thing you have is
4 an alleged physical altercation. If you want to talk
5 about the shooting of the house that occurred two months
6 prior and that wouldn't even be directed at the defendant.
7 It was supposedly directed at his girlfriend and child.
8 And in the Hernandez case, they actually knew it was
9 Hernandez. In this case, it's just supposition. And
10 again, it's the cooling off period. You're talking about
11 two months. The only thing they have prior to or that day
12 or prior to that day is an allegation which I understand
13 that, Your Honor, obviously, and Mr. Bax is completely
14 correct, it's any evidence. But even if you take the
15 evidence they have, which is he says -- Mr. Knight says
16 that the victim in the case says I'm gone kill you. The
17 Court has seen the video, the Court has heard the other
18 witnesses who didn't hear that taken everything into
19 account. Even if he said that, Mr. Knight then walks out
20 to his car, stands there for a minute according to
21 Miss Smalls and then walks back in. The only thing they
22 have even if you believe what Mr. Knight says is mere
23 words and mere words by themselves are never enough.

24 THE COURT: All right. Anything else?

25 MR. BAX: No, sir.

1 THE COURT: I'm going to stand down a minute and
2 kind of gather my thoughts before I come back in here and
3 make a ruling. Stand down.

4 (WHEREUPON, a break was taken.)

5 THE COURT: First of all, I want to address the
6 self defense issue with regards to whether or not to
7 include that in the charge. Defense counsel has referred
8 to imperfect self defense, imperfect self defense. Under
9 State vs. English 115 S.C. 535 106 Southeastern Second
10 781, which is a 1921 case. It's a 1921 case, it's still
11 good law at least from my reading of it, it's still good
12 law. That particular case states that the distinction, a
13 distinction between perfect and imperfect self defense.
14 Stating that under perfect self defense all of the well
15 known elements of self defense are established.

16 I think defense counsel would agree that this is
17 not a perfect self defense case. Therefore, State vs.
18 English goes on to define imperfect self defense. It says
19 that a defendant was at fault in bringing on the
20 difficulty though not with the intention of creating the
21 opportunity to take another's life or inflict serious
22 bodily injury. In looking at what the testimony has been
23 here, in looking at it in the light most favorable to the
24 defendant, there has been no specific testimony about
25 specific acts of this victim against this defendant. What

1 has been testified to in this courtroom has been
2 allegations of alleged conduct by the victim against this
3 defendant.

4 In this particular situation, the testimony of
5 the defendant himself, was that after he exited the
6 Subway, that he could have left the Subway that day, but
7 chose to go back in and pull a weapon, stuck it in the
8 side of the defendant and pull the trigger. So I believe
9 that the defendant under imperfect self defense would
10 satisfy the first prong so to speak of at fault in
11 bringing on the difficulty. But he fails to satisfy the
12 second portion of imperfect self defense, which reads
13 though not with the intention of creating the opportunity
14 to take another's life or inflict serious bodily injury,
15 that's of his own testimony.

16 Furthermore, in looking at self defense in and
17 of itself in the elements of self defense, there are four
18 elements. Number one, that the defendant was without
19 fault in bringing on the difficulty. Defendant does not
20 satisfy that of his own testimony, went back into this
21 Subway and shot the victim, when he could have left and
22 had an opportunity to leave.

23 Second element defendant was actually believed
24 that he was in imminent danger of losing his life or
25 sustaining bodily injury. The defendant testified that

1 the victim did say that he was going to kill him, but
2 there was nothing from the victim's actions that were seen
3 on the video or further testimony that would rise to the
4 level of an individual being in eminent danger of losing
5 his life or sustaining serious bodily injury. While there
6 maybe some concern about the previous shooting which
7 occurred in May, again there was no specific testimony
8 that this victim was specifically involved in that
9 shooting. There's nothing more than speculation.

10 The third element a reasonable prudent person of
11 ordinary fitness and courage would have entertained the
12 same belief as the defendant. And the fourth element, the
13 defendant had no other probable means of avoiding the
14 danger of losing his life or sustaining serious bodily
15 injury other than to act as he did.

16 I emphasize and after the third element because
17 each of these elements, each of these elements must exist
18 for self defense to exist. And has already stated without
19 addressing the third element here by the defendant's own
20 testimony, he could have avoided the danger that he
21 voluntarily chose to engage in by re-entering the Subway
22 after he already exited the Subway and had every
23 opportunity or had the opportunity to leave. Because the
24 Court concludes that this defendant does not -- testimony
25 and evidence does not satisfy all of the requirements, all

1 of the requirements of self defense whether it be perfect
2 or imperfect as stated on the record, I am not charging
3 self defense in this case.

4 Now, we with regards to voluntary manslaughter,
5 voluntary manslaughter has two elements. The unlawful
6 killing of a human being in the sudden heat of passion
7 upon sufficient legal provocation. I saw two elements the
8 Court usually break it out into three elements, unlawful
9 killing of a human being and the sudden heat of passion
10 and upon sufficient legal provocation.

11 Certainly, the first element has been satisfied
12 here the unlawful killing of a human being in a sudden
13 heat of passion being the second element. The law says
14 that while it need not dethrone reason entirely, it must
15 be such that would naturally disturb the sway of reason
16 and render the mind of an ordinary person incapable of
17 cool reflection and produce what according to human
18 experience maybe called an uncontrollable impulse to do
19 violence.

20 In State vs. Hernandez, 386 S.C. 655, argued by
21 the State and the Court agrees that the law of a cooling
22 off period although historically was a question for the
23 jury as argued by defense counsel, Hernandez goes on to
24 say that more recent jurisprudence permits the trial court
25 to make that determination.

1 The Court did not allow it into evidence, I
2 believe, it was an '08 and '09 incident involving the
3 victim against someone other than this defendant, but did
4 allow in testimony from an incident that occurred in May
5 of 2011 approximately 60 days before the victim was shoot
6 and killed. The Court does conclude -- and let me say
7 this, I say an incident that occurred approximately 60
8 days before. There was no testimony specifically
9 attributing this incident with direct knowledge or
10 firsthand knowledge of this victim being involved in that
11 particular incident which occurred approximately 60 days
12 before the matter we are here for now.

13 The Court finds that approximately 60 days prior
14 to -- and let me emphasize that within 60 days, there has
15 been absolutely no testimony or any allegations for any
16 evidence that there was any intervening contact between
17 this defendant and the victim within that 60 days prior to
18 the shooting that we're here for now.

19 The final element of voluntary manslaughter
20 addresses sufficient legal provocation. The law in this
21 state says that an unprovoked attack with a deadly weapon
22 or an overt threatening act can constitute sufficient
23 legal provocation to support a jury charge on voluntary
24 manslaughter.

25 The testimony elicited from this witness stand,

1 in this Court's view of the law, did not rise to the level
2 of sufficient legal provocation because the only testimony
3 was and it was testimony by the defendant, no other
4 witness who was in that store testified to it, was that
5 the victim said he was said he was going to kill the
6 defendant. Viewing that statement or that testimony by
7 the defendant in the like most favorable to him, in the
8 like most favorable to this defendant, words alone under
9 the law is not sufficient legal provocation. Therefore,
10 the Court will not charge the jury on voluntary
11 manslaughter.

12 Bear with me just a minute here please.

13 (WHEREUPON, a pause in the proceedings.)

14 THE COURT: I sent my law clerk to get a book
15 and, obviously, she can't find it, so I apologize. With
16 regards to Dr. Martin's testimony, I previously asked or I
17 asked defense counsel to have Dr. Martin here this morning
18 to proffer his testimony so the Court could make a
19 determination as to whether or not it was admissible,
20 whether or not his testimony would be admissible. Under
21 rules -- and we make it abundantly clear for the record
22 and I think I have already done so, but there was no
23 question as to Dr. Martin's qualifications to testify in
24 the field of forensic psychiatry or psychology. Rule 702,
25 the rules of evidence said if scientific or technical

1 other specialize knowledge will assist the trier of fact,
2 but understand the evidence or to determine a fact an
3 issue. A witness qualified as an expert by knowledge,
4 skill, experience, training or education may testify, may
5 testify thereto inform of an opinion or otherwise.

6 Dr. Martin testified here this morning that he
7 conducted a standard evaluation of competency upon Mr.
8 Knight, that there was no difficulty in his competency.
9 Mr. Knight's competency to stand trial, that he suffered
10 no major mental illness. That he was criminally
11 responsible and that he did not suffer from any diminished
12 capacity. And that I believe he also stated that he had
13 the ability to differentiate between right and wrong. And
14 I stop there and ask Dr. Martin, didn't you testify to
15 that as well, Dr. Martin? And I need a verbal response
16 from you.

17 DR. MARTIN: Yes, sir.

18 THE COURT: And I remind you you're still under
19 oath; is that correct?

20 DR. MARTIN: That is correct.

21 THE COURT: All right. Having said that,
22 defense counsel wants Dr. Martin's testimony to come in
23 and as stated yesterday to testify as to mental state of
24 the defendant at the time of the incident. I say that to
25 say that that statement yesterday that Dr. Martin would

1 testify as to the mental state of at the time of the
2 incident to some degree has some moving parts as we get
3 here today. And I say that to emphasize it was argued to
4 some degree, that Dr. Martin will testify as to
5 reasonableness, the reasonableness of this defendant's
6 conduct on the day in question. Dr. Martin's testimony in
7 the Court's opinion does not add, is not of scientific,
8 technical or specialized testimony that would add the
9 trier of fact in this particular case. He in essence
10 reiterated the very things that the defendant testified to
11 himself.

12 It is the Court's opinion that Dr. Martin's
13 testimony is simply in some sense to bolster the
14 defendant's testimony and his resulting actions by virtue
15 of expert testimony. Each of the cases that were cited by
16 defense counsel and its support of an expert testifying as
17 to state of mind dealt either with capital cases, capital
18 cases wherein a state of mind is a mitigating circumstance
19 under statute, under statute or wherein state of mind
20 existed as a result of some defense such as battered spouse
21 syndrome or another viable defense as recognized by this
22 State. Diminished capacity and I will emphasis Dr. Martin
23 didn't say there was any diminish capacity, but if there
24 were any evidence of diminished capacity, diminished
25 capacity is not a defense in this state.

1 Therefore, based upon what I've heard here today
2 and based upon my review of the applicable law in this
3 state, the Court will not allow the testimony of
4 Dr. Martin. However, and this was a reason that I wanted
5 his testimony proffered. However, if I am wrong on that,
6 his testimony is in the record and the Court of Appeals or
7 the Supreme Court can adequately determine based upon
8 their review of his testimony and the facts of this case
9 whether or not I err in disallowing his testimony.
10 Anything further from the State at this time?

11 MR. STONE: No, sir.

12 THE COURT: Defense counsel?

13 MR. BAX: Your Honor, just to protect the
14 record, obviously, we disagree with the Court's ruling and
15 object to the Court's ruling. I'd like to go through a
16 couple things.

17 THE COURT: Mr. Bax, I've already heard argument
18 on it. Your objection is noted for the record. I made my
19 ruling. The rules provide that once I make my ruling, I'm
20 not going to hear any more argument on it. Your objection
21 is so noted for the record and I think your client's
22 interest is protected on that. I have given you the
23 opportunity each of you, ample opportunity to argue you
24 all's position on each of these instances that I just made
25 a ruling on. So I am not going to hear any more argument,

1 okay. We'll stand down for about ten minutes and we'll
2 begin the trial.

3 Mr. Bax, if you have any other witnesses to put
4 up -- do you have any other witnesses to put up?

5 MR. BAX: No, Your Honor, I don't have any other
6 witnesses.

7 THE COURT: What I would anticipate doing is you
8 resting of the State anticipate calling any reply
9 witnesses?

10 MR. STONE: No, sir.

11 THE COURT: After you rest, I would ask that you
12 rather than run the jury right back out of here, that you
13 just renew your motions. And I will indicate that my
14 rulings remain the same and I believe that protects your
15 client's interest on those rulings. And then we will move
16 right into closing arguments.

17 MR. STONE: Yes, sir.

18 THE COURT: All right.

19 MR. BAX: Your Honor, you want me to do that in
20 front of the jury?

21 THE COURT: All I want you to do is once you
22 rest just renew -- just say, Judge, I renew all previous
23 motions and objections raised. And all I'm going to tell
24 you is they are so noted for the record. And your client
25 is protected on those objections that you have previously

1 raised. And my rulings remain the same on them, okay.
2 Unless, you want to do it some other way?

3 MR. BAX: Your Honor, always been my
4 understanding I still have to use the words move for a
5 directed verdict.

6 THE COURT: And then I will run the jury out of
7 here so you can put that on the record, okay.

8 MR. BAX: Thank you, Judge.

9 THE COURT: Yes, sir.

10 (WHEREUPON, a break was taken.)

11 THE COURT: Let me, we briefly discussed the
12 charge in chambers this morning, but let me -- my charge
13 to the jury on murder and I'm getting towards the end of
14 it. Malice may be inferred from conduct showing the total
15 disregard for human life. Inferred malice may also arise
16 when the deed is done with a deadly weapon. A deadly
17 weapon is an article, instrument or substance, which is
18 likely to cause death or great bodily harm whether an
19 instrument has been used as a deadly weapon depend on the
20 facts and circumstances of each case. The following
21 examples of instruments which may be deadly weapons a
22 pistol, a shot gun, a riffle, a dirk, dagger and knife, a
23 slingshot and there's some other examples in here. What
24 I'm getting at is in light of the, I believe, State vs.
25 Belcher taking out the portion of the charge that reads

1 inferred malice may also arise when the deed is done with
2 a deadly weapon. Anything from the State on that?

3 MR. STONE: Can I have just a moment, Your
4 Honor.

5 THE COURT: Yes.

6 (WHEREUPON, a pause in the proceedings.)

7 THE COURT: May we.

8 MR. STONE: May we approach briefly, Your Honor?

9 THE COURT: Yes.

10 Mr. Bax.

11 (WHEREUPON, a bench conference was held.)

12 THE COURT: State vs. Belcher Supreme Court held
13 that a jury charge instructing that malice may be inferred
14 from the use of a deadly weapon is no longer good law in
15 South Carolina where evidence is presented that would
16 reduce, mitigate, excuse or justify homicide.

17 Furthermore, the use of a deadly weapon implied malice
18 instruction has no place in a murder prosecution where
19 evidence -- and it says or assault and battery with intent
20 to kill, where evidence is presented that would reduce,
21 mitigate or excuse or justify the killing, trial court err
22 in charging a jury that malice could be inferred by the
23 use of a deadly weapon could not be considered harmless.
24 No jury in this case, Mr. Stone, based upon the testimony
25 that's been presented here could certainly say that his

1 actions are excused by his fear and what's been argued
2 here. And so therefore, I think it's appropriate to take
3 it out.

4 MR. STONE: Yes, sir, I have no objection for
5 that.

6 MR. BAX: No objection, Your Honor.

7 THE COURT: I think looking at the murder charge
8 in its entirety, the jury could certainly find that there
9 was no malice here based upon the testimony that's been
10 presented.

11 MR. STONE: Yes, sir.

12 THE COURT: Okay. I think only that -- let me
13 see. I think only that sentence that says inferred malice
14 may also arise when the deed is done with a deadly weapon.
15 I think only that sentence needs to come out of that
16 charge.

17 MR. STONE: Yes, sir.

18 THE COURT: Well, let me see. I think that
19 actually the final -- there's three small paragraphs
20 there. It reads as follows inferred malice may also arise
21 when a deed is done with a deadly weapon. Deadly weapon
22 is an article, instrument or substance. If I define a
23 deadly weapon and then give examples of a deadly weapon,
24 it's certainly going to include a weapon that was used
25 here. Any objection to that?

1 MR. STONE: No, sir.

2 THE COURT: Defense counsel?

3 MR. BAX: No, Your Honor.

4 THE COURT: Take that inferred malice sentence
5 out and then those other two paragraphs. Anything before
6 I bring the jury in?

7 MR. STONE: Not from the State, Your Honor.

8 THE COURT: Defense counsel?

9 MR. BAX: No, Your Honor, though I was going to
10 say I could always make my motions right now and then just
11 rest on the record. I believe I've done that in the past
12 if we want to keep the jury from sitting down and having
13 to get back up with the Court's permission.

14 THE COURT: I think, but don't base it on what
15 my thoughts are because I want your client's rights
16 protected on the record. Because if I made a mistake, the
17 Court of Appeals may say otherwise about you making sure,
18 but in the past, I have always, I have always when the
19 defense rest allowed the defendant to stand up or defense
20 counsel to stand up and simply, Judge, I would renew all
21 my previous motions and note all previous objections as
22 previously stated and argued on the record, which in my
23 opinion, that's my opinion on the trial court level, in my
24 opinion protects your client's interest. And I -- at this
25 stage, simply convey on the record that all of my -- that

1 your objections, arguments et cetra are so noted for the
2 record and that my ruling will be the same. And I think
3 that that's the appropriate way to handle it as oppose to
4 you making those motions now before you rest in the
5 presence of the jury.

6 MR. BAX: And I understand, Your Honor, my
7 concern is only that throughout my career and looking at
8 preservation issues, I've always been instructed that I
9 have to make the former motion of directed verdict again
10 to make sure that's preserved. And frankly, I don't know
11 if what you're saying works or not and maybe it does. I'm
12 just concern about making sure that I don't get seen as
13 not having made that motion. Obviously, Your Honor, knows
14 there's not only appeal but post conviction relief. And
15 if that's preservation error, then the appellate court can
16 say he didn't preserve for error, we can't look at that.
17 Then it turns into an ineffective assistance of client
18 claim.

19 THE COURT: Well, I'll let you rest and I'll
20 send the jury out just to make sure, okay.

21 Bring me the jury please.

22 You know, we could do this right here at side
23 bar and you put it on the record after you rest rather
24 than send them out?

25 MR. BAX: Yes, your Honor.

1 THE COURT: Let me say this to everybody in the
2 courtroom, closing arguments and a charge on the law is
3 getting ready to start and that's probably going to take
4 about an hour and a half. You will not be able to leave
5 this courtroom during closing arguments and a charge on
6 the law. So if you do not believe that you can sit that
7 long, now is your time to leave. I want those back doors
8 locked please, sir, I do not want anybody coming in during
9 closing arguments and charge on the law.

10 (WHEREUPON, the jury came into open court.)

11 THE COURT: Good morning, madam forelady, ladies
12 and gentlemen of the jury, I apologize for you all having
13 to sit back there while we wait this morning. While we
14 continue to talk about some matters of law. I apologize
15 for that, but we are now ready to proceed.

16 Mr. Bax, you are recognized, sir.

17 MR. BAX: Your Honor, subsequent to the rulings
18 we have outside the presence of the jury at this time the
19 defense rest.

20 THE COURT: All right, step down here for just a
21 second. Can the lawyers approach please? Go ahead and
22 put it on the record.

23 (WHEREUPON, beginning of bench conference on the
24 record.)

25 MR. BAX: Let me know if you can't hear me. At

1 this time, I move for a directed verdict based that on all
2 the objections that I've made throughout the trial. I
3 base that on the objections to foundation based that on
4 the objections to the admissibility of expert witness
5 testimony and all other applicable objections, Your Honor.

6 THE COURT: Objections are so noted for the
7 record and my rulings remain the same.

8 (WHEREUPON, end of bench conference on the
9 record.)

10 THE COURT: All right. Ladies and gentlemen,
11 the defense has rested in this case, and therefore, the
12 only thing remaining is closing arguments in this case and
13 my charge to you on the applicable law in this case.
14 Before I recognize the attorneys for closing arguments, I
15 will remind you, I will remind you that what the attorneys
16 tell you is not evidence in this case. What the attorneys
17 tell you is not evidence in this case.

18 At this time, I'm going to recognize the State,
19 Mr. Stone.

20 MR. STONE: I would waive arguing on the law,
21 Your Honor.

22 THE COURT: Mr. Bax.

23 MR. BAX: Ladies and gentlemen of the jury,
24 thank you so much for being here throughout this week.
25 We're just about done. Hopefully, after this is all over,

1 you want have any other jury service that you will have to
2 deal with on Friday. I doubt that that will happen, but I
3 hope that it doesn't. I appreciate all of your time and
4 your attention. We at the defense table we have watched
5 and we been very impressed. Everybody has paid attention
6 throughout this trial. We appreciate that.

7 I'm up here to give you the impressions of the
8 evidence. I'm up here to argue what you can infer from
9 what you have seen and what you may take away from it.
10 What we argue is not evidence and that is what the judge
11 is going to instruct you on, what the Solicitor argues is
12 not evidence. It is your decision in the end that is the
13 binning decision. And as the judge said before, what the
14 jury decides on the facts is not something that can really
15 ever be reviewed or changed.

16 There are issues of law that we have dealt with
17 throughout this trial that could be up for review later,
18 but your determination on the facts is not subject to
19 review. It is part of our system. It's how we've always
20 done it and your deliberations are your deliberations.
21 They're secret for a reason. It is to prevent any kind of
22 fear of retribution for what you did or why you did it or
23 people asking you. You get to deliberate in secret, that
24 means that you decide amongst yourselves what your
25 decision is and no one can affect that. No one come back

1 afterwards and give you any trouble about that. And the
2 judge is going to instruct you about that. But when you
3 go back there, you're going back there with the solemn
4 duty of being that juror, being that one person that
5 stands between any person and a loss of their liberty, any
6 person and the accusations that have been made that they
7 have pled not guilty to. I hope and wish and I believe
8 that you will take that duty seriously when you go back
9 and deliberate.

10 This is the only way that Mr. Knight has to
11 defend himself, this is it. You are it. There is no
12 other line of defense that he has.

13 I want to talk to you about what you've heard,
14 but I want to talk to you about what it means as well.
15 You don't have to agree with my interpretation.
16 Unfortunately, you have to listen to it, but I want you to
17 think about it please. I can only ask that. What you
18 seen up here is a little picture of a world that exist all
19 around us. Maybe, you have experience it and I talked
20 about this in my opening. Maybe, you haven't, but
21 unfortunately it exist all over this country. And if I
22 could change things, I would but I can't. This is my job
23 there is what I do. This is my only little way that I can
24 try to affect things.

25 I hope that as best as we could, as best as we

1 could under the law of this state to show you the
2 difficulties of the world that Mr. Knight comes from. The
3 difficulties of the world that Mr. Holmes comes from.
4 This is a world where shots ring out in the nighttime and
5 everybody has to duck. This is a world where crime
6 occurs, where poverty occurs and children run around
7 amongst it and grow up in it, but it doesn't stop. And I
8 want you to ask yourself why it doesn't stop. And I think
9 the answer is in what you heard here. If you think back
10 to the testimony of Sergeant Fraiser when he told you
11 people saying repeatedly I don't want to be involved. I
12 don't want to be involved. Think about why they were
13 saying it. They weren't saying it because they were
14 scared of Mr. Fraiser. He's a nice man. He knows people
15 in this community. He knows them by their names young
16 gentlemen, old people, everybody in between he knows them.
17 They're not scared of him, so why did they not want to get
18 involved, it's not because they're scared of Mr. Fraiser.
19 You know why they want get involved and you know why
20 they're scared. And you know why in this situation I
21 can't put anybody up here to say, yeah, it's Travis that
22 shot at that trailer. Everybody knew it, but I barely
23 been able to get a couple people up to say that the shots
24 even happened because as soon as this stuff goes down, the
25 community is locked down. In that situation, the victims

1 of what happened, they don't get any justice.

2 Now, all of us are just human beings. We come
3 from where we come from. We all know making a perfect
4 choice almost never happens. We all make mistakes.
5 Mr. Knight's got up here and told you he's made mistakes.
6 He did not hide from it. You saw something that you will
7 almost never see again. And even though I don't know what
8 your experience has been in whether or not you ever been
9 on a jury before even years and year ago, I can assure you
10 from my experience that you never see that, that you never
11 see that.

12 I hope that you take into account the honesty of
13 Mr. Knight when he came up here and he laid himself bare
14 because he does sit there bared to you all now hoping and
15 praying that you have seen past what could not be shown to
16 what really happened, to the terror that he experienced to
17 the lost of his unborn child and to the fact that no one
18 has been willing to come forward and say what Mr. Holmes
19 did and what he was and what he continued to be until his
20 life was over. And I am sorry that it is over. And I
21 assure you Mr. Knight is sorry that his life is over. He
22 didn't want to have to be the one that did that, he didn't
23 want to do it. But he was so scared of him you heard from
24 him, he had a gun to the back of his head for months and
25 months and it was just too much to bear and you're here to

1 judge that. But I want you to think about it.

2 You lost a child and you knew that that was
3 going around this community, the same community that you
4 don't feel like you can get away from all your family is
5 here, your girlfriend is here, your children are here.
6 You can't afford to leave with them and support them for
7 any amount of time with any reasonable ability to feed
8 them. You are trapped here with someone who can kill you
9 at any moment. What do you do? I hope that the closed
10 nature of this community, I hope that the poverty, I hope
11 that the lack of opportunity will go away, but we can't do
12 anything about that right now. All we can do is hope to
13 see what's going on and speak the truth. Thank you.

14 THE COURT: Mr. Stone.

15 MR. STONE: Please the Court, Your Honor.

16 THE COURT: Yes, sir.

17 MR. STONE: The defense is asking you -- and
18 let's be quite honest about it to ignore the law. They
19 are asking you based on a world that they say Rajerick
20 Knight has a right to live in. A world that he couldn't
21 escape from. A world that he was able to escape from. A
22 world that he was able to escape from quite easily when he
23 change his hair and got in his car and drove to Florida to
24 escape being caught.

25 Rajerick Knight may have very well lived in a

1 world of burglaries and larcenies and driveby shootings
2 and drug dealing. And people who settles scores by taking
3 a handgun and walking into a public place and putting it
4 up against somebody's side and shooting and killing them.
5 He in fact does live in that world because it is the world
6 that he creates. And he doesn't get to come into this
7 world and say, I'm a bad guy, I'm a drug dealer. I shoot
8 people and we had a problem, so I solved it, so let me go.
9 Because after all, Mr. Knight has a couple of other people
10 he needs to handle as well.

11 I told you at the very beginning of this case
12 that this was a public execution. I told you that the
13 evidence was going to show you that Rajerick Knight walked
14 into that Subway and basically in the middle of the day,
15 in the middle of this community besides people who were
16 there trying to get food, people who were there trying to
17 work, and as you heard from the witness stand, children
18 playing outside. And he walked right in, no concern for
19 safety of others, no concern for what was going to happen
20 and just walked up and executed that man. I told you
21 that's what the evidence was going to show and it did.
22 And had I known that the defense was going to be what it
23 was, I would have simply said because he was settling a
24 score. He was mad. He wasn't scared. He was mad, just
25 like his girlfriend testified he was. Was he pretty mad

1 about that. He was mad about that. Revenge is not a
2 defense. Revenge is what we call in this world motive and
3 motive is murder.

4 I'm going to talk to you very briefly about
5 that. The facts that you heard and the evidence. This
6 not something out there, but what you heard, what you
7 heard direct testimony about. You heard and you saw from
8 witnesses who said Rajerick Knight walked into that
9 Subway, ordered food. There wasn't an argument. There
10 wasn't any words exchanged. He walked out and he walked
11 back in with a gun that he carries with him all the time,
12 not to protect himself. But remember what he told you
13 about why he carries that gun because he's a drug dealer
14 and sometimes he gets robbed. So he needs to hold on to
15 that gun and keep it with him at all time to protect his
16 wife, to protect his child, to protect himself. No, sir
17 no ma'am, to protect his turf and his drugs. And he
18 walked into that Subway like he always is armed and
19 dangerous.

20 When he did it, he shoot a man who was armed
21 with a 20 dollar bill, a 20 dollar bill with his own blood
22 on it that the police photographed right after this
23 happened. A 20 dollar bill that he was handing to
24 Demetria Green, who was standing there as a cashier trying
25 to just do her job. And we know from the testimony of the

1 pathologist that the aggressiveness consisted of the
2 victim trying to climb back out of the counter and get
3 away. We know that because that's the angle of the shot
4 of him trying to get away. We know that because of the
5 blood smeared all over the counter where he jumped over
6 the counter after he was shot again unarmed. We know that
7 this wasn't done in some world that the defendant talks
8 about. It was done in this community right down the
9 street. We know because we heard Mr. Powell testify that
10 when I heard the shot, I didn't really think anything of
11 it. Why? Do you remember why he said he didn't think
12 anything of the sound because there was a child playing
13 right there on that sidewalk and he thought the child was
14 making that sound.

15 Now, you heard Mr. Knight say, well, I was real
16 careful not to shoot at anybody else. Remember, the video
17 when Mr. Knight walked in and he held that gun on him and
18 pulled the trigger. Did he stop and look around to see if
19 anybody got hurt? Did it occur to him that maybe somebody
20 else was in the way. And we know for a fact, ladies and
21 gentlemen, that they were, inches from Demetria Green.
22 She is literally accepting the 20 dollar bill when this
23 man comes in and executes that man. And the bullet goes
24 through him and within inches of where she's standing.
25 And not just through that, but through the wall into the

1 next room or thank goodness her co-worker wasn't standing
2 at the time. And then what did he do? This man who can't
3 escape this world that he creates.

4 Well, he escaped. He cut his hair not from how
5 he looked that day, but here. And he sent a text to a
6 friend of his how about keep an eye on that eyewitness.
7 Don't let her see but keep an eye on her. They questioned
8 her.

9 Ladies and gentlemen, the decision that you have
10 is a simple one. And what the defense wants you to do is
11 say Travis Holmes was a bad guy, so we need to kill him.
12 They want you to ignore the law and they want you to say
13 that this case is about Travis Holmes. This case is about
14 much more than just Travis Holmes. This case is about
15 Demetria Green. This case is about her coworker, who
16 every day have a right to work, to go into their business
17 and work without the threat, without the fear of having a
18 bullet go by their head. What did they do to deserve
19 this? It's about Mr. Powell and Veta Moore. It's about
20 Veta Moore's daughter having the ability in downtown
21 Beaufort to walk into a store just to get food without the
22 fear of being shot by a bullet. It is about this whole
23 community and the community that we use, that we live in
24 according to the law. The law that the defense wants you
25 to ignore. Make no mistake, it may very well be two

1 worlds that he's talking about, but it's not a world of
2 any type poverty that he's talking about. It is a world
3 of crime. A world of crime in which that's how you handle
4 your business. You shoot at people all of which he's
5 done before this. This world of burglary and theft and
6 driveby shootings, he participates in. He makes it all
7 possible. And when that world infringes on the world of
8 love the world of our community, one has to give in what
9 they're asking you to do is pick the world of crime. Let
10 it win.

11 There is no defense to this case. It is a
12 choice. Who's world, which community do we want. End it
13 now. Change the world, stop this now. The shooting, the
14 shootings, the retaliatory shootings that put our entire
15 community at risk including the child on the sidewalk.
16 The mother going into the store. The lady working behind
17 the cash register and all of those people standing there.
18 It needs to end. I told you I was going to ask you for
19 one thing the very beginning of this trial and I'm still
20 only going to ask you for that. When you render a
21 verdict, tell us the truth. Thank you.

22 THE COURT: All right, ladies and gentlemen, it
23 is now my duty as a trial judge under the Constitution of
24 this state to charge you and instruct you on the law
25 applicable to his case. It is your duty as jurors to

1 accept and apply the law as I will now state it to you.
2 Furthermore, it is your exclusive duty to decide all the
3 issues of fact in this case and to determine the effect,
4 the value and weight and truth of the evidence. Both the
5 State and the defendant have a right to expect that you
6 will carefully consider and evaluate the evidence and
7 apply the law of this case to it so that in the end both
8 the State of South Carolina and the defendant will receive
9 a fair and impartial trial.

10 I want you to understand, ladies and gentlemen,
11 when I use the word defendant, I refer to Mr. Rajerick
12 Lovell Knight. Furthermore, it is important to understand
13 that the State of South Carolina in separate indictments
14 charges the defendant with the offense known as murder and
15 possession of a weapon during the commission of or attempt
16 to commit a violent crime. To these charges, the
17 defendant has entered a plea of not guilty. This plea of
18 not guilty places the burden of proof on the State to
19 prove the guilt of the defendant to you, the jury, beyond
20 a reasonable doubt.

21 As I previously mentioned, the indictments in
22 this case allege two separate offenses against the
23 defendant. The charges are murder and possession of a
24 weapon during the commission of a violent crime or attempt
25 to commit a violent crime. Each indictment charges a

1 separate and distinct offense. You must decide each
2 indictment separate on the evidence and the law applicable
3 to it uninfluenced by your decision as to any other
4 indictment. You will be asked to write a separate verdict
5 of guilty or not guilty for each indictment.

6 I remind you, ladies and gentlemen, that the
7 fact that the defendant was arrested, charged and indicted
8 in this case is not evidence in this case and cannot be
9 considered by you as evidence of guilt in this case. Nor
10 does it create any presumption or inference of guilt. The
11 indictments are simply the formal written instruments
12 which contain the charges made against the defendant.
13 They are the formal documents by which this case is
14 brought into this court. It is vital to understand that
15 the defendant is presumed under the law to be innocent of
16 these charges. The defendant has no obligation to prove
17 his innocence.

18 It is a fundamental rule of our law that a
19 defendant irrespective of the seriousness of the charge
20 against him is always presumed innocent of the crimes for
21 which he is charged, unless and until his guilt has been
22 proven by evidence that satisfies you, the jury, beyond a
23 reasonable doubt. The presumption of innocence is not a
24 mere legal theory or a legal phrase. The presumption of
25 innocence is very important and you need to understand

1 that this presumption accompanies the defendant from the
2 time of his arrest and appearance in this court and
3 continues with a defendant even after you retire to the
4 jury room to deliberate.

5 In other words, the defendant receives the
6 benefit of the presumption innocence until the very end of
7 this trial when you, the jury, will deliberate upon the
8 evidence and decide whether the State has proven his
9 guilt beyond a reasonable doubt.

10 Now, ladies and gentlemen, what is a reasonable
11 doubt in the law. A reasonable doubt is the kind of a
12 doubt that would cause a reasonable person to hesitate to
13 act. Proof beyond a reasonable doubt that leaves you
14 firmly convinced of the defendant's guilt.

15 Now, there are very few things in this world
16 that we know with absolute certainty. So even in criminal
17 cases, the law does not require proof that overcomes every
18 possible doubt. However, if based on your consideration
19 of the evidence you are firmly convinced that the
20 defendant is guilty of the crimes charged, you must find
21 him guilty. If on the other hand, you think there is a
22 real possibility that he is not guilty, you must give him
23 the benefit of the doubt and find him not guilty.

24 Jurors please understand that reasonable doubt
25 may arise from evidence which has been presented in the

1 case or from the lack of evidence in the case. It is your
2 responsibility to determine whether or not reasonable
3 doubt exist as to the guilt of this defendant. I charge
4 you that the defendant is entitled to every reasonable
5 doubt arising in the case. If upon any issues of
6 fact essential to conviction in a verdict of guilty, you
7 have a reasonable doubt as to how that issue should be
8 resolved. It would be your duty to resolve that
9 reasonable doubt in favor of the defendant.

10 Thus in summary, it is important to understand
11 that a defendant is not required to prove his innocence.
12 Instead, the State is required by law to prove every
13 essential element of the offenses charged against the
14 defendant by evidence which satisfies you of his guilt
15 beyond a reasonable doubt, only then can you convict the
16 defendant and find him guilty.

17 There's two types evidence, ladies and
18 gentlemen, which are generally presented during a trial
19 direct evidence and circumstantial evidence. Direct
20 evidence is the testimony of a person who claims to have
21 actual knowledge of a fact such as an eyewitness. It is
22 evidence which immediately establishes the main fact to be
23 proved.

24 Circumstantial evidence is proof of a chain of
25 facts and circumstances indicating the existence of a

1 fact. It is evidence which immediately establishes
2 collateral facts from which the main fact may be inferred.
3 Circumstantial evidence is based on inference and not on
4 personal knowledge or observation. The law makes
5 absolutely no distinction between the weight or value to
6 be given to either direct or circumstantial evidence. Nor
7 is a greater degree of certainty required of
8 circumstantial evidence than of direct evidence. You
9 should weigh all of the evidence in this case. If after
10 weighing all the evidence, you are not convinced of the
11 guilt of the defendant beyond a reasonable doubt, you must
12 find the defendant not guilty.

13 Now, during this trial, you and I had separate
14 duties to perform. As the trial judge, it is my
15 responsibility to preside over this trial. And I also
16 have the duty to rule upon admissibility of the evidence
17 offered during the process of this trial. In that regard,
18 you are to consider only the competent evidence before
19 you. And you are to disregard from your mind any
20 testimony ordered stricken from the record of this case
21 during the progress of this trial if there was any. And
22 you are to consider only the testimony which has been
23 presented from this witness stand together with any
24 exhibits admitted into the record of this case and any
25 stipulations of counsel made into the record if there were

1 any.

2 Furthermore, I have the additional duty to
3 charge you on the applicable law of this case. And in
4 that regard, I am the sole judge of the law of this case.
5 It is your duty to accept and apply the law as I state it
6 to you. If you have any preconceived ideas as to what the
7 law is or what the law ought to be and it does not agree
8 with what I tell you the law is, you are obligated under
9 your oath to abandon these preconceptions because you are
10 sworn to accept the law precisely as I state it to you.

11 In this trial, you, ladies and gentlemen, are
12 the sole and excuse judge of the facts and I am judge of
13 the law. Do not infer that I have any opinion about the
14 facts in this case from any thing that I have said during
15 the course of this trial in ruling upon the admissibility
16 of evidence or otherwise or from anything that I say
17 during the course of this charge to you.

18 In this regard, the law simply does not permit
19 me to have an opinion about the facts. As jurors, it is
20 your duty alone to determine the effect, value, weight and
21 truth of the evidence presented during the course of this
22 trial. In determining what the facts in this case are,
23 you must judge the credibility which simply means the
24 believability of the witnesses and the value of weight to
25 be given to their testimony. You alone must decide the

1 force, effect and truth of the testimony.

2 In making this decision, there are many things
3 that you may and should take into consideration such as
4 the appearance and manner of the witness on the stand. A
5 characteristic often referred to as the demeanor of the
6 witness, was the witness forth right or hesitant, was the
7 witness testimony consistent or did it contain
8 discrepancies, what was the ability of the witness to know
9 the facts about which he or she testified. Did the
10 witness have a cause or reason to be biased and prejudiced
11 in favor of the testimony he or she gave. Was the
12 testimony of the witness corroborated or made stronger by
13 other testimony and evidence or was it made weaker or
14 impeached by such other testimony and evidence. And as
15 jurors please understand that you have the right to
16 believe a small portion of a witness' testimony and
17 disregard the larger portion or vice versa. You may
18 believe all of a witness' testimony or none. You may
19 believe the testimony of a single witness against that of
20 many witnesses or the other way around.

21 In exercising your mental processes in
22 attempting to decide truth, the law simply requires that
23 you exercise your good judgment, your common sense, your
24 sense of logic and reason and your experiences in life.
25 You then apply these attributes to the evidence and apply

1 the law as I state it to you and thus arrive at a verdict
2 the.

3 During this trial, you heard the testimony of
4 police officers. Please understand that testimony of a
5 police officer is not entitled to more weight than that of
6 any other witness. You are the sole judge of the
7 credibility of a witness and you are not to give more
8 weight to a police officer's testimony solely because he
9 or she is a police officer. Rather, you should judge an
10 officer's testimony by the same standards that you apply
11 to all other witnesses.

12 In addition, ladies and gentlemen, you also
13 heard the testimony of an individual qualified as an
14 expert. Our rules of evidence ordinarily do not permit
15 witnesses to testify to opinions or conclusions. However,
16 an exception of this rule exist for witnesses that we call
17 expert witnesses. A witness who by education and
18 experience has become an expert in some art, science,
19 profession or calling may state an opinion as to a
20 relevant and material matter, in which the witness claims
21 to be an expert. And may also state the reasons for the
22 opinion. You should consider any expert opinion received
23 in evidence in this case and like any other evidence give
24 it the weight you think it deserves. If you decide that
25 the opinion of an expert witness is not based on

1 sufficient education and experience or if you conclude
2 that the reasons given in support of the opinion are not
3 sound or that the opinion is outweighed by other evidence,
4 you may disregard the opinion testimony entirely.

5 Furthermore, an expert witness' testimony is to
6 be given no greater weight than that of other witnesses
7 simply because the witness is an expert. Further, you are
8 not required to accept an expert's opinion even though it
9 is not contradicted.

10 You also heard evidence that the defendant,
11 ladies and gentlemen, was convicted of crimes other than
12 the ones for which the defendant is now on trial. This
13 evidence may be considered by you if you conclude it as
14 true only in deciding whether the defendant's testimony is
15 believable and for no other purpose. You must not
16 consider the defendant's prior record as any evidence of
17 the defendant's guilt of the charges that we are trying
18 here in this court now.

19 Now, ladies and gentlemen, in order to establish
20 criminal liability, criminal intent is required. For
21 example, the mental state required to be proven by the
22 State for a particular crime might be purpose, intent,
23 knowledge, recklessness or criminal negligence. Criminal
24 intent must be proven by the State beyond a reasonable
25 doubt. Criminal intent is always a matter that must be

1 determined by the jury from the circumstances surrounding
2 the situation. There's no way to prove intent to a
3 mathematical certainty. There is no way that medical
4 science can dissect a person's brain and determine what
5 the person had in mind. So the law says that criminal
6 intent may be inferred from circumstances shown to have
7 existed. This is how you make a determination of whether
8 or not the element requiring intent was present. It is
9 not necessary to establish intent by direct and positive
10 evidence, but intent may be inferred but intent may be
11 establish by inference in the same way as any other fact
12 by take into consideration the acts of the parties and all
13 the facts and circumstances of the case.

14 Criminal intent is a mental state, a conscience
15 wrong doing. It is up to you, ladies and gentlemen, to
16 determine what the defendant intended to do based on the
17 circumstances shown to have existed. Criminal intent can
18 arise from action or a failure to act. It may arise from
19 negligence, recklessness or an indifference to duty or to
20 consequences that is considered by the law to be the
21 equivalent of criminal intent.

22 Now, the defendant, ladies and gentlemen, is
23 charged with offense of murder. The State must prove
24 beyond a reasonable doubt that the defendant killed
25 another person with malice aforethought. Malice, ladies

1 and gentlemen, is hatred ill will or hostility towards
2 another person. It is intentional doing of a wrongful act
3 without just cause or excuse and with an intent to inflict
4 or injure or under circumstances that the law will infer
5 an evil intent. Malice aforethought does not require that
6 malice exist for any particular time before the act is
7 committed, but malice must exist in the mind of the
8 defendant just before and at the time the act is
9 committed.

10 Therefore, there must be a combination of the
11 previous evil intent and the act. Malice aforethought may
12 be expressed or inferred. These terms express and
13 inferred do not mean different kinds of malice, but merely
14 the manner in which malice may be shown to exist, that is
15 either direct evidence or by inference from the facts and
16 circumstances which are proved. Express malice is shown
17 when a person speaks words which express hatred or ill
18 will for another person or when the person prepared
19 beforehand to do the act, which was later accomplished.

20 For example, lying in wait for a person or any
21 other acts of preparation going to show that the deed was
22 within the defendant's mind would be express malice.
23 Malice may be from conduct showing a total disregard for
24 human life.

25 The defendant is also charge, ladies and

1 gentlemen, with possession of a weapon during the
2 commission of or attempt to commit a violent crime. The
3 State must prove beyond a reasonable doubt that the
4 defendant was in possession of a firearm or visibly
5 displayed what appeared to be a firearm during the
6 commission of a violent crime.

7 A firearm, ladies and gentlemen, means any
8 machine gun, automatic riffle, revolver, pistol or any
9 weapon which is design to or maybe readily converted to
10 expel a projectile.

11 In order, to find the defendant guilty of
12 possession of a weapon during commission of a violent
13 crime, you must first find the defendant guilty of either
14 committing a violent crime or attempting to commit a
15 violent crime.

16 Murder, ladies and gentlemen, is a violent
17 crime. The State must prove beyond a reasonable doubt
18 that the weapon further advanced or helped in the
19 commission of the crime.

20 Now, ladies and gentlemen, I am now drawing near
21 the end of my charge and I want you to clearly understand
22 that you are not partisans or advocates for the State of
23 South Carolina or the defendant. It is your duty by your
24 joint deliberation to determine the truth in this case
25 giving to the defendant the benefit of every reasonable

1 doubt on each and every issue. Then to facts which you
2 determine to be true, you should take and apply the law
3 which has been given to you by this court and thus arrive
4 at a verdict which speaks the truth in this case. In
5 fact, the word verdict which has a Latin derivative means
6 a true saying. Thus, when you have accomplished these
7 responsibilities, you will have satisfied your oath as
8 jurors. And you will have discharged your duty to this
9 court. Now, once you retire to the jury room, the bailiff
10 will give the verdict form to the forelady. When you, the
11 jury, arrive at a verdict as to the offenses charged in
12 this case, the forelady will select the verdict as to each
13 charge on the verdict form. If the State has failed to
14 prove the guilt of the defendant beyond a reasonable
15 doubt, your verdict will be two words not guilty.
16 Likewise, if the State has proven the guilt of the
17 defendant beyond a reasonable doubt, your verdict will be
18 one word guilty. Once a decision has been made, madam
19 forelady, you will check whichever choice is the verdict
20 of the jury as to each charge. The verdict that you
21 render in this case must be the verdict of each and every
22 juror. It must be your unanimous verdict. All 12 jurors
23 must agree on the verdict which you authorize the forelady
24 to write for the jury.

25 Ladies and gentlemen, I want you to further

1 understand that the order in which the choice as a verdict
2 appear on the verdict form are not suggestive of any
3 verdict on the part of this court. The verdict in this
4 case is to be determined by you, the jury, not the Court.

5 Furthermore, ladies and gentlemen, please
6 understand that even though I will give the verdict form
7 to the forelady, it is not her verdict alone. It is the
8 verdict of all 12 of you. And I emphasize again, it must
9 be unanimous. I'm also going to give you, ladies and
10 gentlemen, a copy of these instructions in written form.
11 During your deliberations, you may refer to the
12 instructions to guide your decision making. You must
13 consider the instructions, ladies and gentlemen, as a
14 whole and not follow some and ignore others. Please
15 return the instructions to the court at the time that your
16 verdict is rendered.

17 I am now going to ask you, ladies and gentlemen,
18 to retire to the jury room, but do not begin your
19 deliberations. Let me ask everybody on the jury is
20 everybody on the jury feel okay? Anybody not feel well?
21 Okay. Now, the law, ladies and gentlemen, requires that I
22 consult with the attorneys to make sure that I have not
23 left anything out of these instructions. After I check
24 with the attorneys, the bailiff will bring a copy of these
25 instructions to you along with the verdict form and

1 instruct you to begin your deliberations. During your
2 deliberations should you have any questions, a piece of
3 paper and a writing instrument will be provided to you.
4 If you have any questions during your deliberations,
5 those questions need to be reduced to writing, madam
6 forelady, signed and dated by you, knock on the door, let
7 the bailiff know you have a question, provide that piece
8 of paper to him and he will get it to me and I will
9 address it accordingly, okay. Once you have reached a
10 verdict, ladies and gentlemen, please knock on the jury
11 room door as well and let the bailiff know that you have
12 reached a verdict. And the bailiff will in turn let me
13 know and I will get you back in the courtroom as quickly
14 as possible. Now, I'm going to ask that you retire at
15 this time to the jury room, but do not, do not begin your
16 deliberations until you are instructed to do so, okay.

17 (WHEREUPON, the jury retire to the jury room
18 11:59 am.)

19 THE COURT: Okay. Any objection or exceptions
20 to the charge by the State?

21 MR. STONE: No, sir, not from the State.

22 THE COURT: By defense counsel?

23 MR. BAX: Other than what we've already argued
24 on the record, Your Honor, no. I would say at this time
25 have to lodge an objection to sending the written

1 instructions back. The reason for that, Your Honor, would
2 just be that obviously the jurors did not have the means
3 to take a notes throughout the trial. They have no other
4 recording other than their memory of the testimony that
5 was presented. But they're going to have a physical copy
6 of the law, so I would object to the law being sent back.

7 THE COURT: Any objection by the State?

8 MR. STONE: I have no position, Your Honor,
9 that's up to you.

10 THE COURT: Well, your objection to that is so
11 noted for the record. However, when I practiced law, I
12 did a lot of federal criminal defense work and federal
13 judges always send it back, always sends it back. In my
14 experience, two and a half years of experience with the
15 state court bench, I initially started not sending it
16 back. And every time that I didn't send it back, the jury
17 had a question about something in the charge that
18 necessitated bringing them out and recharging them on a
19 small portion of the charge.

20 I, therefore, have concluded to sending the
21 entire charge back. And I have further instructed the
22 jury that they are not to follow some and ignore others.
23 That they are to look at them as a whole, to utilize them
24 as a whole. But your objection to me sending it back is
25 so noted for the record. As well as making it abundantly

1 clear for the record all of Mr. Bax previously objections
2 with regards to the charge and that being -- if I misstate
3 something please correct me Mr. Bax, that being my refusal
4 to charge self defense and voluntary manslaughter. Those
5 objections to the charge are so noted for the record. And
6 my ruling on those remain the same, but your objections
7 are so noted.

8 MR. BAX: Thank you, Your Honor.

9 THE COURT: If you all will come forward and
10 look at the evidence, Mr. Bax, Mr. Stone, Mr. Thornton,
11 look at the evidence make sure everything is there.

12 (WHEREUPON, a pause in the proceedings.)

13 MR. THORNTON: Your Honor, we have all of our
14 evidence.

15 MR. BAX: Your Honor, the only hang up -- I've
16 already been through my evidence. The only thing we've
17 noticed, I've noticed and it may have just been a
18 numbering situation that I didn't notice is there no
19 picture number 33. I've got Defendant's Exhibits one up
20 to 32 laid out and then I've got 34 through 44 laid out.
21 I can't find 33. Maybe, there's was never a picture 33,
22 which I'm fine with if there's no problem from the State.
23 I just want to make sure, that I haven't missed a picture
24 somehow.

25 MR. THORNTON: There's no objection the State

1 has with that many photographs it's certainly possible.
2 It was just a missed number. They were introduced in
3 bulk. The State would be satisfied with that as long as
4 the defense is satisfied they gotten all their
5 photographs, that that's all that would be going back to
6 the jury.

7 THE COURT: Okay. Without objection, I will
8 allow that.

9 MR. BAX: She's going to check the receipt where
10 we had these printed out and see if there's actually -- if
11 it indicates how many pages that we had printed out of
12 pictures because we introduced all of them, so if it
13 indicates there's actually only 43 pages, then that will
14 clear it up. Our receipt says 42 -- we have 44 here and
15 one missing, so we can't all declare that I or we can't do
16 math. That's all right, Judge. I don't think there's a
17 picture missing, so I'm not going to hold the jury any
18 more.

19 MR. THORNTON: No objection from the State.

20 THE COURT: Put those together. Let me ask the
21 ask alternates, I'm going to ask that they be pulled out
22 before you give the items of evidence to the jury. Any
23 objection by the State or defense counsel for me excusing
24 them back there?

25 MR. THORNTON: No, sir.

1 MR. STONE: No, sir.

2 MR. BAX: No, Your Honor.

3 BAILIFF: I'll bring them right in, Judge.

4 THE COURT: Don't bring them in, I'm going to
5 excuse them back here.

6 BAILIFF: Just have them in the hall?

7 THE COURT: Yes, sir.

8 We are going to stand at ease right now. The
9 jury is deliberating. Unless, the Solicitor's has some
10 work to do, that's what I'm here for. There a lot of
11 people in this courtroom right now. I'm going to go ahead
12 and tell everybody. And I'll tell everybody again when I
13 come back out here later if and when a verdict is reached
14 in this case. If there's anybody that comes into this
15 courtroom in the meantime, I would encourage you to pass
16 this message along. When this verdict -- if in fact the
17 verdict is rendered in this case, you are required to keep
18 your emotions in check regardless of what the verdict is.
19 If you do not believe that you can keep your emotions in
20 check, you don't need to be in this courtroom. I
21 understand that it is a situation of very -- emotions
22 running high, I understand that.

23 MR. BAX: They're ready, Judge.

24 THE COURT: Go ahead and give them that evidence
25 and let -- keep the alternates in the hall, give the

1 evidence to the jury, tell them to begin deliberations.

2 BAILIFF: Yes, sir.

3 (WHEREUPON, the jury began deliberations at
4 12:16 pm.)

5 THE COURT: Your failure to keep your emotions
6 in check could result in this court holding you in
7 contempt of court and sentencing you to a term of
8 incarceration. So I want to let everybody in this
9 courtroom know that, so there's no question as to whether
10 or not you know it. All right. We will stand down right
11 now.

12 MR. THORNTON: Thank you, Your Honor.

13 (WHEREUPON, the alternates were excused.)

14 (WHEREUPON, court at ease awaiting verdict.)

15 THE COURT: Okay. All right. My understanding
16 that the jury had a question. Question is Subway video
17 exhibit ten we would like to view, sign by forelady. I'm
18 going to give this to the court reporter and ask that she
19 mark, I believe, as note for the record Court's Exhibit
20 Number 3. Note for the record that Mr. Bax is in here
21 with his client along with Mr. Stone and Mr. Thornton
22 ready to go.

23 (WHEREUPON, Court's Exhibit No. 3 was marked for
24 the record.)

25 THE COURT: Is that cued up and ready to go?

1 MR. STONE: It is loading now, Your Honor.

2 THE COURT: I'm going to bring the jury back out
3 here. Any objection to me bringing the jury back out in
4 the courtroom for them to view it?

5 MR. BAX: No objection, Your Honor, just
6 question for clarification that there's multiple camera
7 angles. The Solicitor played two different ones, I'm just
8 wanting to know are we going to play both of them at the
9 same time.

10 THE COURT: Not at the same time. I'm going to
11 play one just like we did during the course of the trial.
12 I'll let them play one and then play the other one, so
13 that they get an entire picture of exhibit ten which was
14 the video.

15 MR. STONE: Would it be acceptable to, Your
16 Honor, if we cut these lights, I don't want to cut all of
17 them but just these?

18 BAILIFF: I'll take care of it.

19 MR. STONE: Thank you.

20 MR. BAX: And is the video starting when my
21 client was in there and left came back like it was
22 earlier?

23 THE COURT: I want it shown in it's entirety.

24 MR. BAX: All right. Thank you, Your Honor,
25 that's all.

1 THE COURT: If you will bring the jury in
2 please.

3 (WHEREUPON, the jury came into open court at
4 approximately 1:07 pm.)

5 THE COURT: Okay. I'm going to step down so I
6 can see the entire jury. Madam forelady and ladies and
7 gentlemen of the jury, got your note that you wanted to
8 see Exhibit Number 10 again, which was a video of the
9 Subway. The State's got that cued up and they're prepared
10 to play that in its entirety for you. Go ahead.

11 (WHEREUPON, State's Exhibit Number 10 a DVD
12 being played for the jury.)

13 THE COURT: State's Exhibit Number 10 has been
14 played in its entirety for the jury.

15 Anything from the State at this time?

16 MR. STONE: No, sir, not from the State.

17 THE COURT: Anything from defense counsel?

18 MR. BAX: No, Your Honor.

19 THE COURT: Madam forelady, I ask that you
20 return to the jury room to continue your deliberations.

21 (WHEREUPON, the jury retire to the jury room to
22 continue deliberations at 1:16 pm.)

23 (WHEREUPON, court at ease awaiting verdict.)

24 THE COURT: It is my understanding that we have
25 a verdict in this case. Is the State ready to proceed?

1 MR. STONE: State's ready, Your Honor.

2 THE COURT: Defense counsel ready to proceed?

3 MR. BAX: No, Your Honor, I called my partner
4 and my investigator, they're on their way and should be
5 here momentarily. They do wish to be here for this. They
6 put a lot of time and effort to this. And I don't think
7 that they want to leave Mr. Knight without them by his
8 side when he receives the verdict. It should be
9 momentarily.

10 THE COURT: Okay, I'll give them a few minutes.

11 MR. BAX: Thank you very much.

12 (WHEREUPON, a break was taken.)

13 THE COURT: Are they in the building?

14 MR. BAX: She said two minutes. I'm just
15 letting her know you are on the bench.

16 THE COURT: Okay. While we are waiting on
17 Mr. Baxes' law partner and his investigator, I will state
18 once again, regardless of what the verdict is that you are
19 to keep your emotions in check. If you do not do so, this
20 court could hold you in contempt of court and sentence you
21 to a term of incarceration. If you do not believe that
22 you can hold your emotions in check, now is your time to
23 leave the courtroom.

24 MR. BAX: They just let me know they just came
25 in the door and are on their way up.

1 (WHEREUPON, a pause in the proceedings.)

2 THE COURT: Mr. Bax, I'm going to go ahead and
3 have the jury brought in.

4 MR. BAX: They should be in here.

5 (WHEREUPON, the jury came into open court at
6 1:37 P.M. with a verdict.)

7 THE CLERK: Madam forelady, have you reached a
8 verdict.

9 MADAM FORELADY: Yes, ma'am.

10 THE CLERK: Would you please pass it to the
11 bailiff please.

12 THE COURT: Defendant would stand please.

13 Publish the verdict publish.

14 THE CLERK: 2011-GS-07-1673, 2011-GS-07-1674
15 the State of South Carolina vs. Rajerick Lovell Knight, as
16 to the charge of murder: We, the jury, as to the charge
17 of murder, the jury unanimously find the defendant,
18 Rajerick Lovell Knight, guilty.

19 As to the charge of possession of a weapon
20 during the commission of a violent crime or attempt to
21 commit a violent crime: We, the jury, unanimously find
22 the defendant, Rajerick Lovell Knight, guilty. Date
23 11-29-2011, signed by the forelady Tammy McGinnis.

24 Ms. McGinnis, was this your verdict?

25 FORELADY: Yes.

1 THE CLERK: If you all agree, would you please
2 raise your right hand.

3 (WHEREUPON, all jurors' hands were raised.)

4 THE COURT: Anything from defense counsel right
5 now?

6 MR. BAX: Your Honor, we would ask that the jury
7 be polled.

8 THE COURT: Madam clerk.

9 THE CLERK: When I call your name, would you
10 please stand please.

11 Madam forelady, Tammy McGinnis, is this your
12 verdict?

13 JUROR: Yes.

14 THE CLERK: Is it still your verdict?

15 JUROR: Yes.

16 THE CLERK: Thank you, ma'am.

17 Diane Adams, was this your verdict?

18 JUROR: Yes.

19 THE CLERK: Is it still your verdict?

20 JUROR: Yes.

21 THE CLERK: Frederick Beiser, was this your
22 verdict?

23 JUROR: Yes.

24 THE CLERK: Is it still your verdict?

25 JUROR: Yes.

1 THE CLERK: Silvia Bushey, was this your
2 verdict?

3 JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 JUROR: Yes.

6 THE CLERK: Raymond Glover, was this your
7 verdict?

8 JUROR: Yes.

9 THE CLERK: Is it still your verdict?

10 JUROR: Yes.

11 THE CLERK: Clara Holland, was this your
12 verdict?

13 Juror: Yes.

14 THE CLERK: Is it still your verdict?

15 JUROR: Yes.

16 THE CLERK: Andrea Johnson, was this your
17 verdict?

18 JUROR: Yes.

19 THE CLERK: Is it still your verdict?

20 JUROR: Yes.

21 THE CLERK: Dana Porter, was this your verdict?

22 JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 JUROR: Yes.

25 THE CLERK: Jana Reaves, was this your verdict?

1 JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 JUROR: Yes.

4 THE CLERK: Leanne Renato, was this your
5 verdict?

6 JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 JUROR: Yes.

9 THE CLERK: Curtis Warren, was this your
10 verdict?

11 JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 JUROR: Yes.

14 THE CLERK: Asia Williams, was this your
15 verdict?

16 JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 JUROR: Yes.

19 THE CLERK: Thank you.

20 THE COURT: Anything else from defense counsel
21 at this time?

22 MR. BAX: No, Your Honor.

23 THE COURT: Mr. Bax, you and your client may be
24 seated.

25 MR. BAX: Thank you.

1 THE COURT: Ladies and gentlemen, you all have
2 fulfilled are responsibility as jurors here for this week.
3 It is my understanding that you do not have any further
4 obligations this week with regards to jury duty. So I'm
5 going to excuse you all for the balance of the week.

6 It is also my understanding that a -- all of
7 you've heard the proverbial statement of the check is in
8 the mail. You will get a check for your service.
9 However, that check that you get in no way shape or form
10 can add up to the value that your service is to this
11 county to this state and this country. You all have
12 rendered a verdict in this case and I am at this time
13 going to give you an opportunity to leave. You're not
14 required to. If you wish to stay around once you all
15 render a verdict, it's the Court responsibility to hand
16 down sentence, hand down a sentence. You are free to go
17 at this time if you want. Thank you for your service. If
18 called back up here to serve again within the next three
19 years whether it be criminal court or civil court, you can
20 be excused if you want to be excused. If you get called
21 in federal court, city court or magistrate's court nothing
22 me or any other circuit court judge can do to get you
23 excused. But if get called up here, I can excuse you or
24 some circuit judge can excuse you. But again, I want to
25 thank you for your service. I want to thank you for your

1 service. If you wish to leave, you free to leave at this
2 time.

3 Mr. Thornton, you prepared to go forward with
4 sentencing?

5 MR. THORNTON: Mr. Stone will be handling it,
6 Judge. I just want to pass up the sentencing sheet.

7 MR. STONE: We are, Your Honor.

8 THE COURT: Defense counsel ready to proceed at
9 this time with sentencing?

10 MR. BAX: Yes, Your Honor. And if, Your Honor,
11 doesn't mind if we all for my partner to enter ask.

12 THE COURT: Absolutely, if you let his law
13 partner in please.

14 MR. BAX: And I would ask that Dr. Martin be
15 allowed to come in?

16 THE COURT: Yes, sir.

17 MR. BAX: Because I know that he can offer
18 mitigating testimony as well in the sentencing phase, Your
19 Honor.

20 THE COURT: Well, I will say this, I will be
21 happy to hear any new information he wishes to state to me
22 as far as mitigation. However, I heard from him this
23 morning and certainly took notes on that and taken that
24 into consideration. Will you bring your client around to
25 be sentence please.

1 Mr. Stone, be happy to hear from you.

2 MR. STONE: May it please the Court, Your Honor,
3 first of all, the -- and, Your Honor, is well aware of his
4 prior criminal history as to his three burglaries. His
5 two gun charges. The other evidence that was presented.
6 He also has a resisting arrest from a police officer in
7 North Carolina. That was in 1995 or excuse me -- 2005
8 sort of in the middle of these other charges that those
9 preceded the breaking and enterings in Mecklenburg County
10 in North Carolina. He also has simple possession of
11 marijuana charges that, Your Honor, and a possession of
12 cocaine charge. Those are in Georgia. And then the gun
13 charges, Your Honor, are from South Carolina. So there's
14 a three state record. I would ask Your Honor to hear from
15 are -- there are a few family members here and if they
16 wish to address you ask you hear from them. I told you --
17 if I can ask and see they would like to address ask you.

18 THE COURT: I recognize there's numerous family
19 members in here from the victim's family as well as the
20 defendant's family. I will be to happy hear -- I'll limit
21 it to three individuals for each side.

22 MR. STONE: They are here and have been here
23 throughout the trial, Your Honor, and they said they do
24 not wish to address you. From the State's position and I
25 had -- I want to make sure that we're clear from the

1 State's position on this. Prior to this trial, the brazen
2 way that this crime was committed, the lack of respect for
3 not just the law of South Carolina, but the safety of this
4 community. I was in a position and I felt very strongly
5 before we started this case, that this defendant should
6 receive a life sentence. After listening to the
7 testimony, I am more convinced than I was before, the
8 reason it seems to me that this took place is nothing more
9 than someone who chose to end some type of a grudge by
10 doing the same thing that puts this community at risk. I
11 would ask, Your Honor, to consider that before you
12 sentence. Thank you nothing further.

13 THE COURT: Be happy to hear from you, Mr. Bax,
14 with regards to any mitigation.

15 MR. BAX: Thank you very much, Your Honor.
16 First of all, we have two family members of Mr. Knight
17 that wish to speak to the Court at the appropriate time
18 when Your Honor indicates. That is his mother Ms. Renee
19 Knight and LaShaunica Allen, who is mother of his
20 children.

21 Your Honor, for my part as counsel in this case,
22 obviously, we have tried to put up to the best defense
23 that we can for Mr. Knight. I believe, that it was a good
24 defense. Obviously, there's been rulings that we disagree
25 with, but we are here where we are. Obviously, you heard

1 more than what has been put in front of the jury and I
2 would ask you to take into consideration all of those
3 things including a totality of not only of my client's
4 record, but of Mr. Holmes' record including all the prior
5 shootings that were excluded from the trial in this case.

6 As well as what those impacts could be as there
7 was testimony from the psychiatrist, the doctor in my
8 case, Dr. Martin that Your Honor heard. There was
9 element -- there was certainly an element of fear in this
10 case. And, Your Honor, Dr. Martin has testified here
11 today that he took the time to question my client about
12 the problems he saw in it. And despite seeing those
13 things, he was satisfied with the answers that his fear
14 was real, that his stress and terror from what was
15 happening was real and that it was -- it was without
16 malingering. It was not faked.

17 I put a lot of stock in Dr. Martin. I have had
18 him in many cases and he always gives me an honest
19 opinion, Your Honor. And you ask me what he can add, what
20 I would say that he could add and you can ask him this or
21 can take my word for it is that Dr. Martin's reputation is
22 that if he cannot medically find what he can testify to be
23 true, he's not going to testify to it. So I want to make
24 sure that the Court takes that into consideration that if
25 he felt that the fear that he was getting from my client

1 in his examinations were in some way false or not truly
2 genuine, that he would have indicated that to me and that
3 you would have not heard from him in this trial, Your
4 Honor. And I hope that -- and if, Your Honor, wishes to
5 ask him he is here available for that.

6 My client is a young man. He's in his early
7 20's, Your Honor. He is still got a lot of life left. We
8 would ask the Court and we would beg the Court to consider
9 a sentence in the lower range. We would ask the Court to
10 consider a 30 year sentence in this case. Obviously, as
11 Your Honor, knows any sentence that he serves under the
12 conviction of murder is day for day and no parole no
13 release no good time credit, it is every 365 days must be
14 served every 24 hours of it. And I know that, Your Honor,
15 is aware of that from your own experience. So we would
16 ask you to take that into consideration and sentence him
17 in the lower range. I would ask for the Court to consider
18 a sentence of 30 years. Your Honor, at this time we
19 would ask that if the Court allow that those members of
20 the family, who I have mentioned, be allowed to address
21 the Court.

22 THE COURT: If they could stand there one at the
23 time please identify -- I'll allow three people. I'm not
24 sure how many people you indicated which to speak.

25 MR. BAX: Your Honor, I think it's only going to

1 be two, Your Honor.

2 THE COURT: Ma'am, if you would speak loudly,
3 state your name for the record again.

4 LASHAUNICA ALLEN: LaShaunica.

5 THE COURT: Yes, ma'am, I'll be happy to hear
6 from you.

7 LASHAUNICA ALLEN: I just want to say Rajerick
8 is a good man. He made a mistake. I'm sorry that it
9 happened, but please don't punish him for the rest of his
10 life. And my kids look up to him. He is a good father.
11 I'm sorry. He always led me in the right direction. He
12 helped me with my medical license. He's just such a good
13 person. Please just don't take him forever. Let him hold
14 his kids again, let him please, let him just come back
15 into our life, let him show the world he can change and be
16 a better person, just please don't take him from us. He's
17 been gone long enough and **Minor** always ask where his
18 daddy is. I just please, that's all I ask.

19 THE COURT: Thank you, ma'am.

20 Please state your name for the record, ma'am.

21 RENEE KNIGHT: Renee Knight. I just wanted to
22 say that my son is only 25 years old. I understand that
23 he committed a crime and he should be punished but not for
24 life. I beg you, Your Honor, not to take my son away from
25 me for life imprisonment. I apologize to the mother of

1 Mr. Holmes for the actions of my son and I feel so sorry
2 for her pain. I beg, Your Honor, not to take my son away
3 from me for life.

4 THE COURT: Mr. Knight, I will give you an
5 opportunity to say anything if you desire, but you are not
6 required to say anything. And I certainly don't want you
7 to say anything to be used against you or hurt you on
8 appeal, okay. Do you wish to address the Court at all?
9 You do not have to and you're not required to.

10 THE DEFENDANT: I just want to say like I said
11 inside my testimony, I never meant for this to happen. I
12 wish it didn't go this far. And a couple families were
13 torn a part between this situation. Like my mother say, I
14 am very sorry to Travis Holmes' mother. I know she had to
15 live with having to bury her son. I feel sorry to Travis
16 Holmes' kids too, they have to grow up without their
17 father. I'm already having to wear the burden of that
18 right now. I'm going to wear the burden of that for the
19 rest of my life. But I just ask, Your Honor, that you
20 please don't let me spend the rest of my life in prison.

21 MR. BAX: Thank you, Your Honor.

22 THE COURT: Okay. I think it's important -- I
23 heard -- I wanted to hear Dr. Martin's testimony this
24 morning. For legal reasons, I already ruled upon here and
25 I didn't allow him to testify in the trial of this case.

1 But it's important to point out for the record that -- and
2 I want to say this in sentencing, Mr. Knight was
3 evaluated. He was determined to be competent to stand
4 trial. There was no mental illness. There was no
5 diminished capacity, all be it diminished capacity is not
6 a defense in this state. He knew the difference and had
7 the ability to determine right from wrong and that he was
8 criminally responsible in his opinion for his conduct.

9 There's a lot of things in life that we don't
10 have choices about. And I've said this many of times,
11 life is about choices. There's a lot of things that we
12 don't have choices about. Mr. Bax, I stood in your shoes
13 before with clients when I practiced law and often thank
14 God for the family that I was born into and opportunities
15 that I've had in life realizing that not everybody has
16 those opportunities.

17 The family I was born into -- well, the family
18 that anybody was born into, your family didn't work for
19 you to get your law license or any other lawyer in here or
20 any other person that's in here. We had to work hard to
21 get those where we are in life. We don't have a right to
22 choose who are our parents are. We don't have a right to
23 choose who our relatives are. And in a lot of
24 circumstances, we don't have the right to choose the
25 environment that we grow up in. But there are many things

1 in life that we do have choices about, whether we stay in
2 the environment that we grow up in, whether we work hard
3 in school, get a good education, whether we work hard to
4 make an honest living. We have choices about who our
5 friends are, whether or not we want to take advantage of
6 the many opportunities that this great country affords and
7 whether or not you engage in criminal conduct. All of
8 those are choices that we have a right to make day in and
9 day out. I try to teach my children every day that life's
10 about choices and consequences.

11 It is an absolute tragedy, I practiced law and
12 represented many defendants. It was disheartening to see
13 the terrible, awful decisions that young men and women
14 make day in and day out that have such dire consequences.
15 When we make those difficult or wrong decisions, certainly
16 we as individuals suffer as a result of those decisions,
17 but the collateral damage being your family, your
18 children, Mr. Holmes' family, his children, so many lives
19 are impacted.

20 It's tragic, Mr. Knight, that on this particular
21 day, that what you did, whether it was by fear as you
22 testified to and Dr. Martin said as well, that there was
23 also testimony about the opportunity that you had to leave
24 that day and you choose not to. Not only did you take a
25 life that day, you endangered the lives many people.

1 Indictment 2011-GS-07-1674 on possession of a
2 weapon during commission of a violent crime, the defendant
3 is hereby committed to the state department of corrections
4 for a period of five years.

5 On 2011-GS-07-1673, the defendant is hereby
6 committed to the state department of corrections for the
7 balance of his natural life. The sentences are hereby to
8 be run consecutive, that is sentence of the Court.

9 THE COURT: Ladies and gentlemen of the jury,
10 you all are free to leave.

11 If you all will make sure they get out of here
12 safely.

13 (WHEREUPON, the jury was dismissed.)

14 Anything from the State?

15 MR. STONE: No, sir.

16 THE COURT: Anything from defense counsel?

17 MR. BAX: No, Your Honor.

18 END OF REQUESTED TRANSCRIPT

19

20

21

22

23

24

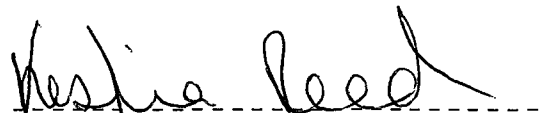
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 637, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of General Sessions for
Florence County, South Carolina, on the 26-29 days of
November, 2012.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 12th
day of August 2013.



Keshia Reed, Court Reporter

COUNTY OF
STATE

Beaufort

VS.

Rajerick Knight

AKA:

Race: B Sex: M Age: 25

DOB: 1987 SS#: [REDACTED]

Address:

City, State, Zip:

DL#:

SID#:

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

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

TO: Murder / Murder

INDICTMENT/CASE#: 2011GS0701673

A/W#: J357990

Date of Offense: 7/26/2011

S.C. Code §: 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010; 16-03-0020 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:

Duffie Stone

#11883

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 116 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: 357995☐ 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 \$ 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 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

_____ 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.

Clerk of Court/ Deputy Clerk

Court Reporter: Keisha Reed

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 260

Sentence Date: 11-29-12

WITNESSES

Josh Dowling

ARREST WARRANT NUMBER

J357990

ACTION OF GRAND JURY

Brian Wolf
Foreperson of Grand Jury
Date:

OCT 20 2011

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2011GS0701673

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2011

THE STATE

vs.

Rajerick Lovell Knight

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

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

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

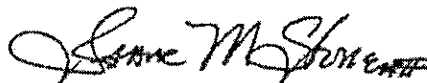
INDICTMENT
2011GS0701673

At a Court of General Sessions, convened on October 20, 2011, the Grand Jurors of Beaufort County present upon their oath:

Murder / Murder

That in Beaufort County on or about July 26, 2011, with malice aforethought, Rajerick Lovell Knight did kill and murder Travis Holmes by means of shooting said victim with a firearm, and that Travis Holmes did die in Beaufort County as a proximate result thereof on 7/26/2011; 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.



Solicitor

ARREST WARRANT

J-357990

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Beaufort

THE STATE

11-01960

against

Rajerick Lovell Knight

Address: 3 Tammy Ln

Beaufort, SC 29906-8709

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 6 Weight: 180

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] 1987 Agency ORI #: SC0070100

Prosecuting Agency: Beaufort Police Department

Prosecuting Officer: Josh Dowling - 1035

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

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

(L.S.)

Signature of Judge

Date: 7/27/11

RETURN

A copy of this arrest warrant was delivered to

defendant Rajerick Knight

on August 2, 2011

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Beaufort County General Sessions
PO Box 1128
102 Ribaut Road, Rm. 208
Beaufort, SC 299011128

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Beaufort

Personally appeared before me the affiant Josh Dowling

who

being duly sworn deposes and says that defendant Rajerick Lovell Knight

did within this county and state on or about 07/26/2011 violate the criminal laws of the

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

in the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder

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

On 7/26/2011 at approximately 1855 hours, while at Subway, 330 Robert Smalls Pkwy within the city limits of Beaufort, SC, the defendant, Rajerick Lovell Knight, committed the offense of murder, to wit: The defendant did kill the victim, Travis Holmes, with malice aforethought, by shooting him with a .40 handgun. The affiant and others are witness to prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Beaufort

Affiant's Address 1901 Boundary Street

Beaufort, SC 29902-

Affiant's Telephone (843)322-7900

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 7/26/2011 defendant Rajerick Lovell Knight

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

☐ County/ ☒ Municipality of Beaufort) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

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

on 07/27/2011

(L.S.)

Signature of Issuing Judge
Ralph Edwin Tupper

Judge Code: 6297

Judge's Address 1901 Boundary Street

Beaufort, SC 29902-3825

Judge's Telephone (843)525-7033

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
S6 CA 418

641

Entered
7/28/2011
AK

BAIL set by

WITNESSES



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

Name: _____
Address: _____
Telephone: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

Name: _____
Address: _____
Telephone: _____

2011 AUG -3 PM 2:40

CLERK OF COURT

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, not. pros., etc.)
Disposition: _____
Sentence: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

JURORS

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	INDICTMENT NOS.: 2011-GS-07-1673 J357990
	)	2011-GS-07-1674 J357995
State of South Carolina,	)	
	)	
-vs-	)	VERDICT
	)	
Rajerick Lovell Knight,	)	
	)	
Defendant.	)	
_____	)	

1. As to the charge of Murder, we the Jury unanimously find the Defendant,

Rajerick Lovell Knight:

_____ Not Guilty X Guilty

2. As to the charge of Possession of a Weapon during the Commission of, or Attempt to Commit, a Violent Crime, we the Jury unanimously find the Defendant, Rajerick

Lovell Knight:

_____ Not Guilty X Guilty

Dated: 11/29

Sammy McShirris
FOREPERSON

(Please let the Bailiff know when you have completed this form)

COUNTY OF Beaufort
STATE VS.

Rajerick Knight

AKA:

Race: B Sex: M Age: 25

DOB: 1987 SS#:

Address:

City, State, Zip:

DL#: SID#:

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

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

☒ CONVICTED OF or ☐ PLEADS

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

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

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(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.

ATTORNEY:

J. Aaron M. Stone #11883

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/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: J357990☐ 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	\$ 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

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.

Clerk of Court/ Deputy Clerk

Court Reporter: Keisha Reed

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2160

Sentence Date: 11-29-12

WITNESSES

Josh Dowling

ARREST WARRANT NUMBER

J357995

ACTION OF GRAND JURY

Barrett L. Knight
Foreperson of Grand Jury
Date:

OCT 20 2011

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2011GS0701674

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2011

THE STATE

vs.

Rajerick Lovell Knight

Indictment for

**Weapons / Poss. weapon during violent crime,
if not also sen**

SC Code: 16-23-0490
CDR Code:0549

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

Defendant

I

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

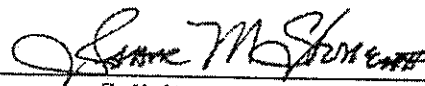
INDICTMENT
2011GS0701674

At a Court of General Sessions, convened on October 20, 2011, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Poss. weapon during violent crime, if not also sen

That in Beaufort County, South Carolina, on or about 2011-07-26, the Defendant, Rajerick Lovell Knight, did possess a knife or visibly display what appeared to be a gun during the commission, or attempted commission, of Murder, a violent crime. This is in violation of 16-23-490 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.


Solicitor

ARREST WARRANT

J-357995

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Beaufort

THE STATE

11-01960

against

Rajerick Lovell Knight

Address: 3 Tammy Ln

Beaufort, SC 29906-8709

Phone: _____ SSN: _____
 Sex: M Race: B Height: 6 Weight: 180
 DL State: SC DL #: _____
 DOB: 1987 Agency ORI #: SC0070100

Prosecuting Agency: Beaufort Police Department

Prosecuting Officer: Josh Dowling - 1035

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

Offense Code: 0549

Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Rajerick Knight
5-2-11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Beaufort County General Sessions
 PO Box 1128
 102 Ribaut Road, Rm. 208
 Beaufort, SC 29901128

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Beaufort

Personally appeared before me the affiant Josh Dowling

being duly sworn deposes and says that defendant Rajerick Lovell Knight

did within this county and state on or about 07/26/2011

violate the criminal laws of the

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

in the following particulars:

DESCRIPTION OF OFFENSE Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

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

IN THAT ON JULY 26, 2011, AT APPROXIMATELY 6:55PM, THE DEFENDANT, RAJERICK KNIGHT DID COMMIT THE
 VIOLENT CRIME OF MURDER, WITH MALICE AFORETHOUGH, BY DISPLAYING AND DISCHARGING A .40
 HANDGUN AND KILLING VICTIM, MR. TRAVIS HOLMES. THE DEFENDANT WAS CAPTURED ON SECURITY
 SURVEILLANCE INSIDE THE STORE AND WAS IDENTIFIED VIA A PHOTO LINE-UP BY A WITNESS DURING THE
 COMMISSION OF THE CRIME WHO HAS SEEN THE DEFENDANT ON PRIOR OCCASSIONS. THIS VIOLATION
 OCCURRED AT 330 ROBERT SMALLS PKWY. WITHIN THE CITY LIMITS OF BEAUFORT, SC. THE AFFIANT HAS
 WITNESSES TO PROVE THE SAME.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Beaufort

Affiant's Address 1901 Boundary Street

Beaufort, SC 29902-

Affiant's Telephone (843)322-7900

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 7/26/2011 defendant Rajerick Lovell Knight

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

☐ County/ ☒ Municipality of Beaufort) as set forth below:

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

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

on 08/02/2011

Judge's Address Post Office Box 2207

Beaufort, SC 29903-4865

Judge's Telephone (843)470-5202

Signature of Issuing Judge

Darlene Smith

Judge Code: 5812

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

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

BAIL set by

WITNESSES

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

Name: _____
Address: _____
Telephone: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

Name: 2011 AUG 3 PM 2:40
Address: _____
Telephone: _____
CLERK OF COURT

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

DISPOSITION before

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

Name: _____
Address: _____
Telephone: _____

Disposition: _____
Sentence: _____

Name: _____
Address: _____
Telephone: _____

JURORS

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

J357995

9:52:28 Thursday, August 20, 2015

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 08/20/15
OMCOMITA RELEASE DATE SCREEN C056427
SCDC# > 353409 LOC: LIEBER
KNIGHT, RAJERICK - SCDC CLASSIFICATION..: VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY..: N
SEXUAL PREDATOR..: NOT APP
DNA STATUS.....: COMPLETED
GPS REQUIREMENT..: N
PREA DECISION....:
CURRENT SENTENCE: CONSECUTIVE SENTENCE ..:
LIFE CURRENT SENT START DATE: 08/02/2011
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: Thursday, August 20, 2015

Classification Summary Reports

Inmate Number

Classification Summary Report for KNIGHT, RAJERICK :

CLASSIFICATION SUMMARY REPORT DATED 08/20/2015

SCDC# 00353409

KNIGHT, RAJERICK

FBI# 490321HC8

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

INSTITUTION: LIEBER

SECURITY/CUST: 3 MINIMUM IN

CURR INCARC SENT: 999 YRS 0 MOS 0 DAYS

VICTIM WITNESS: ☐ SEPREQ:N

MED CLASS: NO MED PROB/NO WORK RESTR

INST RESTRICT: ☐

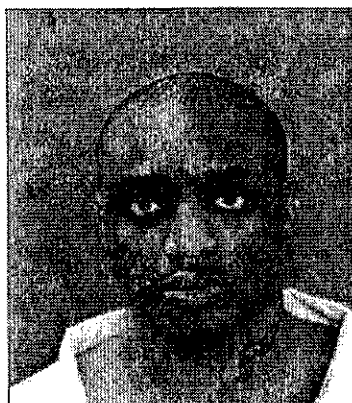
MENTAL CLASS: ☐

CURRENT PROGRAM: NO CURRENT PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 27



RESIDENT STABILITY: NA

DORMROOMBUNK_CODE: CB 0035 A

PROJ MAXOUT DATE: -

PROJ PAROLE DATE: -

EWC JOB: NO CURRENT JOB

ASSIGNMENT: GENERAL DETAIL UNEMP

EWC LEVEL: 0 EEC LEVEL:-

EDUC PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	SENTENCE DYS	COUNTY	START	SENTENCE V/NV	CAT	INDICT
MURDER	999	99	999	BEAUFORT	08/02/2011	V	5	11GS0701673

FIREARMS PROVISION 5 0 0 BEAUFORT 08/02/2011 N 3 11GS0701674

COMPLETED OFFENSES

NO COMPLETED OFFENSES

PRIOR COMMITMENTS OVER 90 DAYS:

03/02/2005 BREAK-ENT W/INTENT-STEAL

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

ESCAPES:

07/29/2011 OTHER ESCAPE RELATED

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

02/08/2014 POSSESSION OF A WEAPON CONVICTED MAJOR DISC. HEARING N

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

08/03/2015	POSS. OR/ATTEMPT TO POSSESS CELL PHONE		MAJOR DISC. HEARING
05/28/2015	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
05/21/2015	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
05/21/2015		CONVICTED	MAJOR DISC. HEARING
10/30/2014	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
08/14/2013	POSSESSION OF CONTRABAND	CONVICTED	ADMINISTRATIVE RESOLUTION
08/14/2013	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

09/19/2014	LIEBER	INCARCERATED	ADMINISTRATIVE
09/19/2014	MACDOUGALL CORR INST	INCARCERATED	MEDICAL
04/09/2013	LIEBER	INCARCERATED	ADMINISTRATIVE
12/06/2012	KIRKLAND	INCARCERATED	R&E PROCESSING
12/06/2012	LIEBER	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

NO HISTORY OF EARNED WORK CREDIT ASSIGNMENTS

HISTORY OF EARNED EDUCATION CREDITS:

NO SCHOOL ASSIGNMENTS

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

Create PDF

Source : SummaryReport.jsp

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[Version: 1.4.12 Built: 02/03/2015 11:57:23 AM Time: 09:53:48 AM]

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Beaufort

VS.

Rajerick Knight

INDICTMENT/CASE#: 2011GS0701673

A/W#: J357990

Date of Offense: 7/26/2011

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

AKA:

Race: B Sex: M Age: 25

DOB: [REDACTED] 987 SS# [REDACTED]

Address:

City, State, Zip:

DL#: SID#:

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

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010; 16-03-0020 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 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:

#11883

Duffie Stone

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 116 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: 357995☐ 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: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

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: _____

Certified - A True Copy

Jami Ann Rousseau - Clerk of Court
Beaufort County, SC - Leandra Young☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 250

Sentence Date: 11-29-12

Clerk of Court/ Deputy Clerk

Court Reporter: Keisha Reed

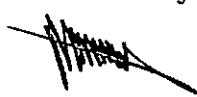
SCCA/217 (03/2011)

*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	\$ 2.50
§ 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
to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
COURT OF GENERAL SESSIONS
CRAIG BROWN, Circuit Court Judge

Case No. 2011-GS-07-1673, 1674

 Rajerick Knight,

Appellant,

vs.

State of South Carolina,

Respondent,

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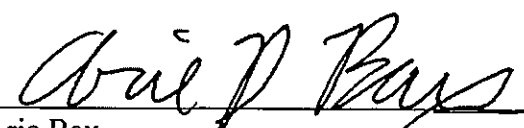
DEC 05 2012

SC Court of Appeals

NOTICE OF INTENT TO APPEAL

Rajerick Knight, by and through counsel, hereby appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Howard S. Barnes on November 29, 2012.

Beaufort, SC
December 3, 2012


Arie Bax
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
COURT OF GENERAL SESSIONS
CRAIG BROWN, Circuit Court Judge

Case No. 2011-GS-07-1673,1674

Rajerick Knight,

Appellant,

vs.

State of South Carolina,

Respondent,

CERTIFICATE OF SERVICE

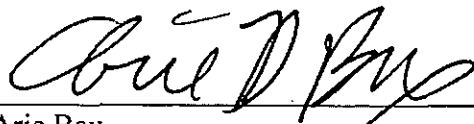
The undersigned attorney hereby certifies that a true copy of the Notice of Intent to Appeal in the above referenced case has been deposited in the United States Mail, postage prepaid on December 3, 2012 addressed to:

Isaac McDuffie Stone
Fourteenth Circuit Solicitor
P.O. Box 1880
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The Honorable Jerri Ann Roseneau
Beaufort County Clerk of Court
PO Box 1128
Beaufort, SC 29901-1128

S.C. Commission on Indigent Defense
1330 Lady Street
Columbia, SC 29201

This 3rd day of December, 2012.


Arie Bax
ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 3rd day of December 2012.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: My Commission Expires June 7, 2016

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUL 14 2014

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable D. Craig Brown, Circuit Court Judge

SC Court of Appeals

Case No. 2011-GS-07-1673

The State..... Respondent

v.

Rajerick Lovelle Knight..... Appellant

APPELLANT'S FINAL BRIEF

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STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Circuit Court err in failing to charge the jury with the lesser included offense of voluntary manslaughter where the only evidence showed Petitioner feared for his life and where there was evidence he acted in the sudden heat of passion and with sufficient legal provocation in killing the decedent?
- II. Did the Circuit Court err when it excluded relevant evidence of Petitioner's state of mind which supported the lesser included offense of voluntary manslaughter?

STATEMENT OF THE CASE

I. Procedural History

Petitioner Rajerick Knight was arrested on July 29, 2011 in Jacksonville, Florida, for the murder of Travis Holmes, which occurred on or about July 26, 2011. (R. p. 13, line 15-p. 14, line 8; R. p. 143, line 22-p. 144, line 6.) The grand jury indicted Petitioner for murder and the possession of a weapon during the commission of, or attempt to commit, a violent crime. Indictments. The case was tried before a jury in the Beaufort County Circuit Court, Court of General Sessions on November 26-29, 2012, with the Honorable D. Craig Brown, Circuit Court Judge, presiding.¹ (R. p. 1.) On November 29, 2012, the jury convicted the Petitioner as charged, and the court sentenced him to life imprisonment on the murder conviction and five years on the weapons count. (R. pp. 442-456; R. p. 461.) The Notice of Appeal was filed on December 12, 2012. (R. p. 462.) The issues set forth in this appeal are whether the trial judge erred in declining Petitioner's request for a lesser included offense instruction on voluntary manslaughter and whether the trial judge's refusal to admit relevant evidence prejudiced the Petitioner

¹ Arie Bax, Esquire, represented the Petitioner at trial.

because such evidence further supported a lesser included offense instruction to the jury.²

The relevant facts are as follows:

II. The Evidence Proffered and Presented at Trial

The shooting death of Travis Holmes (also known as "Travy") took place on June 26, 2011, during daylight in a Subway fast food restaurant at Cross Creek shopping center in Beaufort, armed with surveillance cameras. (R. p. 28, lines 1-4; R. p. 77, line 15-p. 78, line 20; R. p. 123, lines 14-24; R. p. 199, lines 9-15.) The Petitioner presented evidence that he shot Holmes in self-defense, but the trial judge refused his request to submit a perfect or an imperfect self-defense charge to the jury. (R. pp. 396-399.) In addition, although evidence was presented supporting the lesser included offense of voluntary manslaughter, the trial judge refused the Petitioner's request to submit that charge for the jury's consideration. (R. pp. 399-401.)

On the day of Holmes's death, Petitioner and his childhood friend Shiecarra Smalls went to the Subway to purchase sandwiches for the Petitioner and Petitioner's pregnant girlfriend, LaShaunica Allen (also known as "Peanut"). (R. p. 114, lines 2-19; R. p. 323, line 2-p. 325, line 7.) The Petitioner testified:

As I grabbed my sandwiches and turn to leave, I saw Mr. Holmes like my heart just dropped into my stomach. I was just terrified to see him, but I was trying to dodge him to my fullest abilities and I still ran into the one person who I didn't want to see that day.

...

We were trying to rush of the store and get – walk past Mr. Holmes, but he was just like staring me down. And it was so much attention between us. Shiecarra tried to break the tension by telling him hi. She was like, Hi,

² (See generally R. pp. 387-442; R. pp. 446-456.)

Travis, how you doing. And he barely said anything to her. She was on the left-hand side of me. I was on the right-hand side and he was on the right side of me. While we were walking by, he barely acknowledged her. He walk pass me and just was like, Man, I'm gone kill you boy. And when we were leaving out the door, I really rushed out the door. Then me and Shiecarra made it outside.

....

I mean, me and Shiecarra Smalls, Miss Smalls we were making our way to my car. And I was just explaining to her like did you hear what he said just now. Like, man, he just gone keep trying to kill me. You know, Travy, you know what type of guy he is. And I was just keep telling her that. I told her he just shoot up the house. He just took a son from me. And I was telling her this. I got her to the car. And when we got to the car, that's when I just felt like I didn't want be ...

....

I just felt like I couldn't live like that any more, hiding, running and from Mr. Holmes and just always being a victim to Mr. Holmes.

(R. p. 325, line 12-p. 326, line 22.)

The Petitioner does not dispute that when he reentered the Subway, he shot and killed Holmes.³ (R. p. 320, lines 22-24.) "I wanted to end the threat of my life." (R. p.339, line 12; R. p. 328, lines 2-5.) The Petitioner then left the Subway and returned to his car. (R. p. 328, lines 19-20.)

The following evidence was presented and proffered at trial supporting Petitioner's defense and the mitigation of his murder charge.

³ He testified that when he reentered the Subway, he did not brandish his gun or immediately shoot Holmes because he did not want to harm the other people in the store. (R. p. 327, line 22-p. 328, line 5.) The Petitioner put the gun "right up against him to make sure the bullet didn't have any chance to hitting any innocent person." (R. p. 328, lines 13-17.)

a. Petitioner's reasonable fear of Holmes

Petitioner was deeply afraid and "very frightened" of Holmes based on his belief that Holmes previously threatened to kill Petitioner (R. p. 321, lines 14-16.); that Holmes fired numerous shots into Petitioner's home causing the miscarriage of Petitioner's child (R. p. 288, line 11-p. 289, line 4; R. p. 290, lines 2-5; R. p. 318, line 20-p. 319, line 5.); that Holmes's modus operandi once he sets his sights on an enemy is not limited to endangering the life of his enemy but may also include the endangering of Holmes's own family (R. p. 332, lines 1-25; R. p. 51, line 1-p. 52, line 2; R. p. 176, line 2-p. 182, line 2.); and Holmes's direct threat to kill Petitioner when confronted at Subway. (R. p. 325, line 12-p. 326, line 22; R. p. 322, lines 7-15; R. p. 341, lines 5-6.) When Holmes made a direct verbal threat to kill Petitioner when confronted at Subway, Petitioner perceived a life or death situation and his shooting Holmes was a matter of self-defense:

Mr. Holmes put me in a situation where I had to choose life or death. I'm young, I didn't want to die. Didn't want to get murdered in cold blood, so I choose life. I choose to live, so I choose to fight for my life and attack the who was attacking my life. I just wanted to live and I wanted to stay alive. I didn't want to get killed by Mr. Holmes.

I was always scared for my life with Mr. Travis especially after the incident where he showed he didn't have any remorse for his cousin or her child to try to kill me by shooting through our house. Every day I woke up I thought I was going to die being in a situation with Mr. Holmes.

I was very scared about what could happen to my children. I had already lost a child behind this whole situation. I wish y'all could meet Robert. Robert is -- that's my everything, that's my heart. I wouldn't be able to make it if I lost Robert behind this situation.

(R. p. 332, lines 1-25.)

Petitioner believed that Holmes fired numerous shots at Petitioner's home on May 30, 2011.⁴ (R. p. 321, lines 14-16.) Although Petitioner believed those shots were directed at him, a gunshot grazed Petitioner's girlfriend's⁵ shoulder and caused her to miscarry⁶ their child together. (R. p. 288, line 11-p. 289, line 4; R. p. 290, lines 2-5; R. p. 318, line 20-p. 319, line 5.)

Petitioner testified that moments before the May 30, 2011 shooting, a neighbor approached him and communicated that people were looking for, and threatening to kill Petitioner. (R. p. 314, lines 3-7.) The neighbor also testified that, prior to the shooting that night, three cars approached Petitioner's home and communicated they planned to shoot up the residence. (R. p. 305, lines 9-21.)⁷ Petitioner was at the neighbor's house when the shots were fired at his trailer. (R. p. 303, line 8-p. 304, line 19; R. p. 315, lines 3-11; R. p. 280, line 17-p. 281, line 1; R. p. 314, lines 16-24.)

The shots described were "too many to count." (R. p. 303, line 8-p. 304, line 19; R. p. 315, lines 3-11.) Seven .45 caliber shell casings and ten .9 millimeter shell

⁴ On May 30, 2011, officers responded to a call about shots being fired at 1 Donaldson Drive, where LaShaunica Allen and Petitioner lived with LaShaunica's natural son, Robert, who was adopted by Petitioner. (R. p. 201, line 23-p. 202, line 13; R. p. 216, line 23-p. 217, line 1; R. p. 245, lines 6-19; R. p. 266, line 19-p. 267, line 23; R. p. 332, line 21-p. 333, line 9.)

⁵ Allen was also a cousin of Holmes. (R. p. 341, lines 2-6; R. p. 330, line 23-p. 331, line 4.)

⁶ LaShaunica Allen testified that she was in bed when the shots began. (R. p. 277, lines 9-13.) She was pregnant and fell off the bed. (R. p. 277, line 14-p. 278, line 8.) She crawled to her son and shielded him with her body until the police arrived. (R. p. 278, lines 6-18; R. p. 278, line 22-p. 280, line 16.)

⁷ LaShaunica Allen also testified as to the knocking earlier that night. (R. p. 274, lines 9-20.) She said, "Earlier like around five or six someone was knocking on the door and pretty hard." (R. p. 274, lines 9-20.) She testified that she did not answer the door because "Rajerick always told me not to." (R. p. 274, lines 9-20.)

casings were recovered from that crime scene. (R. p. 206, lines 1-7.) Forensic evidence indicated that two shooters were involved. (R. p. 257, lines 20-23.) One witness testified that he saw two people jump out of a white truck parked at a nearby driveway, run across the middle of a yard, and open fire on the trailer located at 1 Donaldson Drive. (R. p. 264, line 21-p. 268, line 17.)

Investigators were unable to get neighborhood folks to talk after that shooting incident. They would not provide their names and did not want to be involved – “Nobody would talk.” (R. p. 246, line 16-p. 247, line 19; R. p. 254, line 12- p. 255, line 14.) The investigator was never able to talk to Travis Sentell Holmes about the incident, and the case was “administratively closed” on June 22, 2011. (R. p. 242, line 19-p. 244, line 12.)

Investigators relied on word of mouth leads provided by LaShaunica Allen. (R. p. 255, lines 15-18; R. p. 256, line 6-p. 257, line 23.) One such lead was that Travis Sentell Holmes was one of the shooters. (R. p. 256, line 22-p. 257, line 19.) LaShaunica Allen testified that when she provided the investigator with Travis Holmes's name, the investigator indicated he had also heard that Travis Holmes was responsible. (R. p. 291, lines 16-20.) The Petitioner testified that Travis Sentell Holmes⁷ was one of the shooters. (R. p. 321, lines 14-16.)

b. Holmes's reputation for violence.

As the Petitioner testified: “I had knowledge about [Travis Sentell Holmes] being a very dangerous person and I know about things that he done.” (R. p. 321, lines 22-

⁷ Petitioner testified that he knew Holmes “had problems with [him]” for reasons such as moving in with Holmes's friend in Florida and dating Holmes's cousin. (R. p. 330, line 17-p. 331, line 4.) Such problems, though, were unprovoked according to Petitioner's testimony: “Never ever did anything to Mr. Holmes; never.” (R. p. 331, line 9.)

24.) "Basically from the community and my knowledge I know that he's known to tote a gun and he's a shooter." (R. p. 322, lines 2-3.)

Petitioner's knowledge of Holmes's violent past goes back to incidents which occurred in 2008 and 2009. (R. p. 354, lines 5-12; R. p. 51, line 1-p. 52, line 2; R. p. 176, line 2-p. 182, line 2.) In 2008, Holmes allegedly shot up an associate of Petitioner's, James Odom's, home. (R. p. 51, line 1-p. 52, line 2; R. p. 176, line 2-p. 182, line 2; R. p. 357.) While out on bond for those charges, Petitioner understood that Holmes shot into a car holding Odom and one of Holmes's cousins. (R. p. 51, line 1-p. 52, line 2; R. p. 176, line 2-p. 182, line 2.) The 2008 and 2009 incidents were not admitted into evidence.

In addition, Smalls testified that based on what she knew about Holmes from the community, she was concerned that he was going to shoot at the vehicle as he exited the Subway. (R. p. 124, line 21-p. 125, line 6; R. p. 125, lines 21-24.) She assumed she would need to "dodge bullets". (R. p. 125, lines 7-15.)

c. Petitioner feared Holmes, perceived Holmes to be an "ongoing threat," and believed he was in "imminent danger" when he saw Holmes at Subway.

In camera, Dr. Thomas Martin, a forensic psychiatrist, was proffered by the defense⁸ to testify as to Petitioner's state of mind. (R. p. 343, line 7-p. 344, line 5.) Dr. Martin conducted a psychiatric evaluation interview of the Petitioner on September 27, 2012.⁹ (R. p. 351.) Dr. Martin testified that he became familiar with the circumstances

⁸ The record relating to defense counsel's arguments in support of Dr. Martin's testimony and the Court's ruling on the issue can be located at R. p. 374, line 9-p. 380, line 10; R. p. 381, line 10-p. 387, line 8.

⁹ Dr. Martin preliminarily observed that the Petitioner had no major psychiatric illness which influenced him either at the time of the evaluation or at the time of the murder;

surrounding the Subway shooting as well as the circumstances surrounding the Petitioner's life leading up to the shooting, in addition to the records of the case. (R. p. 352.) In his examination of the Petitioner, Dr. Martin testified that the Petitioner expressed emotions of fear and stress based on events leading up to the shooting of Travis Holmes. (R. p. 352.) Dr. Martin testified that the Petitioner experienced a fearful awareness of Travis Holmes. (R. p. 352.) Dr. Martin explained:

[Knight] depicted Mr. Holmes as rather a terrorizing in the county. He also depicted for me several times when Mr. Holmes had alleged committed violent crimes, made violent threats against him and his family. It was at that time that I contacted your office and I wanted to know more about the victim in this case. And at that time, you sent materials that supported that there was an investigation of such shootings at his place where his female friend pregnant at the time had been injured, later miscarried earlier that year as well as other violent incidents. He felt that his life essentially living in that county which he felt he had no chance to move from his place of residence at the time that his life and probably his family's life were in eminent danger. And when he went to Subway and saw the victim, he reacted to those fears and that imminent danger.

It seems like he was living under a reign of terror the way he simply put it:

(R. p. 353, lines 3-18; R. p. 354, lines 3-4.) Dr. Martin testified as to his belief that the Petitioner's fear was reasonable based on Travis Holmes's prior record which involved "some violent crime shootings into homes, into vehicles" of individuals known to Knight, and some close acquaintances of Knight, in 2008 and 2009. (R. p. 354, lines 5-12.)

In addition to the Petitioner's ongoing fear based on Holmes's reputation, the Petitioner relayed to Dr. Martin an understanding that Holmes wanted to kill him. (R. pp. 364-367.). The Petitioner's understanding was based on hearsay within the community,

that the Petitioner would have been criminally responsible for his behaviors around the July 11, 2011, time frame; and that the Petitioner had no diminished capacity problems. (R. pp. 351-352.)

including his girlfriend's family (and his girlfriend is Holmes's cousin). (R. pp. 364-367.) Moreover, the Petitioner reported to Dr. Martin his fear based on he and his girlfriend's belief that Holmes was responsible for a shooting which occurred at the Petitioner's trailer several months prior to Holmes's death. (R. p. 357.) The shooting injured the Petitioner's girlfriend and caused the Petitioner's girlfriend to miscarry their child together. (R. p. 357.)

Q: In your discussions with Mr. Knight and your observations of him, did it appear that he perceived the threat from Mr. Holmes to be ongoing and continuing throughout that entire period of time?

A: Yes, the way he described it was it was never going to end.

(R. p. 357, lines 17-22.)

Dr. Martin testified that the Petitioner perceived Holmes to be an "ongoing threat" to both the Petitioner and his family because Holmes was at large, and on bond, in the community. (R. p. 355, lines 13-21.) Dr. Martin testified that he pressed the Petitioner as to why he took the matter into his own hands, and the Petitioner explained that he and his girlfriend had reported Travis Holmes to the police as a result of the shooting and that no one had picked him up or attempted to arrest Holmes. (R. p. 355, line 22-p. 356, line 10.)

STANDARD OF REVIEW

To warrant a court's eliminating the offense of voluntary manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to voluntary manslaughter. State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000). A trial judge is required to charge a jury on a lesser included offense if there is evidence from which it could be inferred that a defendant committed the lesser

offense rather than the greater.” State v. Hernandez, 386 S.C. 665, 660 (2010). In determining whether the evidence requires a charge of voluntary manslaughter, the Circuit Court views facts in a light most favorable to the Defendant. State v. Byrd, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996). Where there is any evidence to support a jury charge, the trial judge should grant the request and will be reversed where such refusal to charge is both erroneous and prejudicial to the defendant. Id. The evidence presented at trial determines the law to be charged to the jury. State v. Brown, 362 S.C. 258, 261-62, 607 S.E.2d 93, 95 (Ct. App. 2004). “The [circuit] court commits reversible error if it fails to give a requested charge on an issue raised by the evidence.” State v. Niles, 400 S.C. 527, 537, 735 S.E.2d 240, 245 (Ct. App. 2012).

The admission or exclusion of evidence is an action within the sound discretion of the Circuit Court and will not be disturbed on appeal absent an abuse of discretion. State v. Tapp, 398 S.C. 376, 385, 728 S.E.2d 468, 473 (2012). An abuse of discretion occurs when the conclusions of the Circuit Court are either controlled by an error of law or are based on unsupported factual conclusions. Id. To warrant reversal based on the admission or exclusion of evidence, the complaining party must prove both the error of the ruling and the resulting prejudice. State v. White, 372 S.C. 364, 373-74, 642 S.E.2d 607, 611 (Ct. App. 2007). To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or the lack thereof. Id.

A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion. State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009).

ARGUMENT

This appeal is about the failure of the trial court to instruct the jury about the lesser included offense of voluntary manslaughter in a murder trial. The error was prejudicial because the accused acted in what he believed to be self-defense in order to avoid being killed by someone known to be violent who had attempted to kill him before. Even though the evidence presented in support of a voluntary manslaughter jury charge surpassed the "any evidence" standard, additional relevant evidence proffered but not admitted further supported the lesser included offense charge.

- I. **The Circuit Court erred in failing to instruct the jury to consider the lesser included offense of voluntary manslaughter where there was evidence that Petitioner's fear of the decedent resulted from sufficient legal provocation based on the totality of the circumstances which made him incapable of cool reflection.**

The evidence presented at Petitioner's murder trial required a charge of the lesser included offense of voluntary manslaughter and exceeded the "any evidence" standard. Petitioner's fear resulted from sufficient legal provocation and the totality of the circumstances made him incapable of cool reflection.

A voluntary manslaughter jury charge turns on the facts, and if the facts disclose any basis for the charge, the charge must be given. State v. Starnes, 388 S.C. 590, 596-99, 698 S.E.2d 604, 608-09 (2010). Voluntary manslaughter¹⁰ is the unlawful killing

¹⁰ Self-defense and the lesser included offense of voluntary manslaughter should be submitted to the jury if supported by the evidence; such charges are not mutually exclusive. State v. Niles, 400 S.C. 527, 534, 735 S.E.2d 240, 244 (Ct. App. 2012). The rationale for this rule is that the jury may fail to find all the elements of self-defense but could find sufficient legal provocation and heat of passion to conclude the defendant was guilty of voluntary manslaughter. Id. The Petitioner recognizes that South Carolina has not adopted legal concept of "imperfect self-defense;" nonetheless, there is

a human being in a sudden heat of passion upon sufficient legal provocation. State v. Wharton, 381 S.C. 209, 214, 672 S.E.2d 786, 788 (2009). Both sufficient legal provocation and heat of passion must be present at the time of the killing to support a jury instruction on voluntary manslaughter. Id. at 215, 672 S.E.2d at 788.

"[S]udden heat of passion upon sufficient legal provocation is defined as an act or event that 'must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence.' While the act or event 'need not dethrone the reason entirely, or shut out knowledge and volition,' it must cause a person to lose control." State v. Starnes, 388 S.C. 590, 596-99, 698 S.E.2d 604, 608-09 (2010); State v. Pittman, 373 S.C. 527, 572 (2007) ("The sudden heat of passion, upon sufficient legal provocation, while it not need to dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence.").

Fear resulting from an attack can constitute a basis for voluntary manslaughter if such fear is the result of sufficient legal provocation and causes the defendant to lose control and create an uncontrollable impulse to do violence. State v. Starnes, 388 S.C. 590, 596-99, 698 S.E.2d 604, 608-09 (2010) (recognizing that fear will warrant a

evidence the Petitioner thought he was acting in self-defense, which further supports Petitioner's position that he was entitled to a voluntary manslaughter instruction because he was acting on a legitimate fear based on the decedent's prior violent acts.

voluntary manslaughter charge where it manifests itself "in an uncontrollable impulse to do violence" and the defendant is "incapable of cool reflection as a result of fear").

The Petitioner in this case had a reasonable fear based on the totality of the circumstances.¹¹ Testimony revealed that Holmes had a reputation for violence (R. pp. 321-322; R. pp. 124-125; R. pp. 51-52.); that Holmes was feared in the community (R. pp. 321-322; R. pp. 124-125; R. pp. 51-52.); and that Holmes was feared by the Petitioner (R. p. 332, lines 1-25.). The evidence supports Petitioner's awareness of and sensitivity to Holmes's reputation for making a threat and following through with the threat by way of gunfire. For example, testimony regarding the 2011 incident revealed Petitioner's understanding that Holmes and an associate sprayed numerous bullets into his trailer at a time when he was supposed to be home and after verbalizing an intent to kill him to at least one neighbor. (R. p. 288, line 11-p. 289, line 4; R. p. 290, lines 2-5; R. p. 318, line 20-p. 319, line 5; R. p. 321, lines 14-16; R. p. 332, lines 1-25.) As a result of those gunshots, the Petitioner's girlfriend's shoulder was grazed, and the Petitioner and his girlfriend endured a miscarriage. (R. p. 288, line 11-p. 289, line 4; R. p. 290, lines 2-5; R. p. 318, line 20-p. 319, line 5.) Petitioner, his girlfriend, and his son all endured the fear of what the Petitioner believed to be a result of Holmes carrying out another threat by way of gunfire. (R. p. 281, lines 2-8; R. p. 305, lines 19-21; R. p. 314, lines 3-7; R. p. 325, line 12-p. 326, line 22.) The evidence supports the Petitioner's belief that he faced a life or death situation when Holmes said "Man, I'm gone kill you boy." (R. p. 325, line 12-p. 326, line 22.)

¹¹ As discussed in Section II, *infra*, the Petitioner's knowledge of the 2008 and 2009 incidents described in subpart (b) of the Statement of Facts, *supra*, also contributed to this reasonable fear which prompted Petitioner's uncontrollable impulse when confronted by Holmes at the Subway in July of 2011.

An overt threatening act or an unprovoked attack with a deadly weapon may also constitute sufficient legal provocation so long as there was no "cooling off" period between the provocation and the killing. State v. Niles, 400 S.C. 527, 536, 735 S.E.2d 240, 245 (Ct. App. 2012). "In determining whether an act which caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing." State v. Pittman, 373 S.C. 527, 575, 647 S.E.2d 144, 169 (2007). Whether an accused cooled off prior to a violent act must be determined by a review of all the circumstances surrounding the event and the people involved. State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 566 (1969). Petitioner's above-described belief that Holmes fired numerous gunshots into his home causing the loss of his child in May of 2011 and Holmes's threat to kill Petitioner at the Subway amounted to an overt threatening act. When he next saw Holmes at Subway after the case against Holmes had been administratively closed, Petitioner did not have time to "cool off" under the circumstances.

The lower court's overly broad interpretation and application of State v. Hernandez, 386 S.C. 655, 658-59, 690 S.E.2d 582, 584 (Ct. App. 2010) effectively denied the Petitioner the "any evidence" standard in this case. Whether an accused cooled off prior to a violent act is determined by a review of all the circumstances surrounding the event and the people involved, and the circumstances set forth in State v. Hernandez are readily distinguishable from the present case. The sole encounter between the victim and the defendant in Hernandez resulted from the defendant's

ejection from a party at the victim's home wherein the victim grabbed the defendant by the neck and threw him toward the porch. Id. at 658-59, 690 S.E.2d at 584. Following that encounter, the defendant went home, and retrieved his gun with the intent to use it against the victim if the victim "messed with him again." Id. The defendant returned to the party and continued drinking, appearing calm and tranquil to other party-goers. Id. When the defendant's friend started fighting with another guest, the defendant encountered the victim again. Id. The victim insulted the defendant, and the defendant shot the victim in the face because of the insult and not because the victim threw him out of the party earlier that night. Id. at 661-62; 690 S.E.2d at 586.

The facts surrounding the "cooling off" period in Hernandez make that case inapposite to the present one. "While the law has not defined a bright-line rule for what constitutes a sufficient time for cooling off, this Court has determined that whether the defendant's actions during the intervening time between the provocation and the killing indicates the absence of sudden heat of passion is an appropriate question for the court." Id. at 662, 690 S.E.2d at 586 (quoting State v. Pittman, 373 S.C. 527, 575, 647 S.E.2d 144, 169 (2007)).

As thoroughly recited in the Statement of the Case, pages 1 to 8, *supra*, the circumstances in this case have much deeper and more impactful roots than those described in Hernandez. Here, the 2011 shooting incident at Petitioner's trailer combined with Holmes's verbal threat at Subway constituted sufficient legal provocation and easily satisfies the "any evidence" standard supporting a charge of voluntary manslaughter. There is no evidence of a prolonged "cooling off" period as was the case in Hernandez. (See, e.g., R. p. 325, line 12-p. 326, line 22; R. p. 332, lines 1-25.) Under

the totality of the circumstances of the present case, where there was evidence that the Petitioner was incapable of cool reflection as a result of fear, the court's reliance on Hernandez effectively rejected the any evidence standard and resulted in prejudice to the Petitioner.

II. The Circuit Court erred when it failed to admit additional relevant evidence which further supported a jury charge for the lesser included offense of voluntary manslaughter.

Although the evidence set forth in Section I, *supra*, reveals that the Petitioner readily met the "any evidence" standard required for a lesser included offense charge, the Petitioner was prejudiced by the trial court's refusal to admit evidence of additional specific instances of violence by Holmes which contributed to the Petitioner's state of mind.¹² (R. p. 51, line 1-p. 52, line 2; R. p. 176, line 2-p. 182, line 2.) The Petitioner was further prejudiced by the trial judge's refusal to admit testimony of a forensic psychiatrist who opined that Petitioner reasonably believed Holmes was an ongoing threat such that Petitioner was living in a "reign of terror". (R. p. 353, lines 3-18; R. p. 354, lines 3-4.)

a. The Petitioner was prejudiced by the Circuit Court's failure to admit additional relevant evidence supporting a voluntary manslaughter charge where evidence of specific instances of violence by the decedent would have shown that the decedent was known to shoot his enemies following chance encounters in public locations.

Petitioner in this case had knowledge of specific instances of violence by Holmes dating back to 2008 and 2009 where it was alleged Holmes shot someone in their house, saw that person in a public place, followed that person from the public place until that person has left the public place, and then fired at that person again. (R. p. 176, line

¹² Arguments as well as the court's ruling on the specific instances of violence are located at R. p. 43, line 15-p. 52, line 18 and R. p. 176, line 2-p. 185, line 12.

2-p. 182, line 2.)¹³

The solicitor argued that such instances were inadmissible because incidents dating two or three years back were too remote to meet the admissibility standard. (R. p. 176, line 2-p. 185, line 14.) Counsel for the Petitioner, by contrast, argued that no such bright line exists and that the Court must instead look at each case on an individualized basis under a Rule 403, SCRE analysis to determine whether there is a close enough relationship in facts and their impact on the defendant's knowledge and state of mind to make it more probative than prejudicial. (R. p. 176, line 2-p. 185, line 14.) The objection was noted, and the Court ruled that the 2008 and 2009 incidents were not directed towards the Petitioner and that, since those incidents were directed at others, they were not so closely connected at point of time or occasion with the homicide to reasonably indicate the state of mind of the deceased. (R. p. 184, line 19-p. 185, line 12.) The ruling effectively precluded testimony from the investigator who handled the 2008-2009 incidents involving James Odom that defense counsel sought to introduce. (R. p. 176, line 10-p. 178, line 20; R. p. 187, line 8-p. 189, line 3.) The trial judge further instructed Petitioner not to bring up his knowledge of those incidents. (R. p. 192, line 21-p. 193, line 4.)

Specific instances of violence by the decedent are admissible where they are so closely connected in point of time or occasion with the homicide so as to produce a reasonable apprehension of great bodily harm. State v. Hill, 129 S.C. 166, 123 S.E. 817 (1924); State v. Amburgey, 206 S.C. 426, 429, 34 S.E.2d 779, 780 (1945) (holding that

¹³ The Petitioner's knowledge of such incidents was not offered for the truth of the matter asserted but rather to show his state of mind when he encountered Holmes at the Subway in July of 2011. (R. pp. 179-182.)

evidence of other specific instances of violence on the part of the deceased are admissible if directed against the defendant, or, if directed against others, were so closely connected in point of time or occasion with the homicide as to produce reasonable apprehension of great bodily harm).

There is no bright line test which indicates what constitutes being "so closely connected in point of time or occasion" with the homicide to as to produce a reasonable apprehension of great bodily harm. (R. p. 183, line 1-p. 185, line 12.) The Court in State v. Brown, 321 S.C. 184, 187, 467 S.E.2d 922, 924 (1996), for example, found that a specific incident of violence which occurred twenty-three years prior was too remote to be admissible under those circumstances. In State v. Day, 341 S.C. 410, 419-21, 535 S.E.2d 431, 436-37 (2000), by contrast, the prior act of violence which occurred within four months of the death was admissible to prove that the defendant had a reasonable apprehension of violence when dealing with the decedent. The testimony demonstrated that the decedent acted "very violently when he felt he had been deceived or double-crossed by a confidant." The evidence was relevant to the defendant's theory of self defense because he claimed that he thought the decedent may pull a gun on him if he thought the defendant deceived him. The decedent's conduct in holding a gun to another's head because he was suspicious of her was further evidence of the continuous and consistent pattern of the decedent's drug – induced, violent paranoia, which the defense attempted to establish during trial. See State v. Mekler, 368 S.C. 1, 12-14, 626 S.E.2d 890, 896-97 (Ct. App. 2005) aff'd, 379 S.C. 12, 664 S.E.2d 477 (2008) (holding prior incident of criminal domestic violence was admissible to prove defendant had reasonable apprehension of great bodily harm from decedent and

holding that prior act of violence by decedent as to another three months prior to his death was so closely connected at point of time to indicate his state of mind at the time of the shooting). The 2008 and 2009 instances of conduct in this case are in line with the spirit of Mekler and Day and are not so far removed to be likened to Brown.

For example, in Mekler, analogous to the present case and as presented to the lower court, this appellate court reversed the lower court's decision to preclude testimony by the defendant regarding her knowledge of the decedent's violent capabilities learned from the decedent's wife. State v. Mekler, 368 S.C. 1, 626 S.E.2d 890 (Ct. App. 2005) aff'd, 379 S.C. 12, 664 S.E.2d 477 (2008). There, the defendant testified that at the time of her confrontation with the decedent, she could not simply go inside her home and lock the door because she knew the decedent would beat in her door and come in. Id. As argued before the lower court, that testimony bore on whether or not her actions were reasonable. Id. Because that defendant knew the decedent would kick the door through, the defendant shot him through the door. Id.

In this case, the 2008 and 2009 incidents directed at others which the Petitioner had knowledge of, combined with the 2011 incident at Petitioner's trailer which was directed towards the Petitioner according to some evidence, are relevant to show the Petitioner's state of mind. As was the case in Mekler, the Petitioner pulled the trigger because he wanted to live and knew what the decedent was capable of. As was the case in Mekler, the evidence excluded demonstrated a continuous and consistent pattern of violence on the part of the decedent. "When juxtaposing the prejudicial effect against the probative value, the determination must be based on the entire record and will turn on the facts of each case." State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201,

206 (Ct. App. 2008). In this case, the probative value of these instances outweighs any prejudice to the state. By contrast, the Petitioner was prejudiced by the exclusion of such instances of conduct which would have been additional evidence supporting a voluntary manslaughter and imperfect self defense charge. The Petitioner's knowledge of the 2008 and 2009 incidents instilled a reasonable fear that when he left the Subway, he would be followed and shot by Holmes because of Holmes's alleged conduct in instances where he has set his sights on an enemy. Knowledge of those incidents, combined with the May of 2011 shooting incident at Petitioner's trailer, would have helped the jury understand the Petitioner's uncontrollable impulse to shoot Holmes at the Subway. The jury was deprived of the whole story, and the Petitioner was deprived of testifying as to all of the circumstances giving rise to his mental state and genuine belief that his own death was imminent but for his shooting Holmes at the Subway.

b. The Circuit Court erred by failing to admit proffered testimony relevant to Petitioner's state of mind.

The Petitioner proffered testimony by Dr. Thomas Martin, a forensic psychiatrist, to testify as to the mental state of the Petitioner. Citing Rules 703 and 704, SCRE, and other South Carolina law discussed below, Petitioner's trial counsel argued that state of mind is admissible and relevant in any case where state of mind of the defendant is implied or involved in an element of the offense that is charged. (R. p. 374, line 9-p. 387, line 3.) Petitioner's trial counsel stated, "The state of mind of my client is an essential element of the elements of murder because if the jury has any information or any evidence that they can infer that there was some kind of provocation or that there was some kind of reasonable threat of harm perceived by the defendant, they can find

either manslaughter or not guilty under self defense." (R. p. 374, line 22-p. 375, line 3.)¹⁴

The trial judge disallowed the testimony¹⁵ on the grounds that "Dr. Martin's testimony is simply in some sense to bolster the defendant's testimony and his resulting actions by virtue of expert testimony." (R. p. 401, line 15-p. 404, line 9.) Petitioner's trial counsel objected to the Court's ruling and attempted to make further argument but was precluded from making further argument.¹⁶ (R. p. 404, line 12-p. 405, line 2.)

The lower court erred in failing to admit the testimony of Dr. Martin because an expert can express an opinion about the ultimate issue in the case. State v. Wilkins, 305 S.C. 272, 276, 407 S.E.2d 670, 672-73 (S.C. Ct. App. 1991); see Rule 704, SCRE ("Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.").

Specifically, "[q]uestions going to an expert's knowledge of state of mind of the accused at the time of the crime are proper, and the expert's opinion as to state of mind

¹⁴ Petitioner's trial counsel went on to say, "That is the jury's purview and I'm really scared here that we're about to take away the jury's purview here today. I feel that any lack of being able to help the jury make their decision and then any attempt to take away their ability to make the proper decision is going to be obviously reversible error here." (R. p. 375, lines 3-9.)

¹⁵ The trial judge further stated, "[B]ased upon what I have heard here today and based on the applicable law in this state, the Court will not allow the testimony of Dr. Martin. However, and this was the reason that I wanted his testimony proffered. However, if I am wrong on that, his testimony is in the record and the Court of Appeals or the Supreme Court can adequately determine based on their review of the testimony and the facts of this case whether or not I err in disallowing his testimony." (R. p. 404, lines 1-9.)

¹⁶ Petitioner's trial counsel stated: "Your Honor, just to protect the record, obviously, we disagree with the Court's ruling and object to the Court's ruling. I'd like to go through a couple of things." (R. p. 404, lines 13-16.) The trial judge responded: "Mr. Bax, I've already heard argument on it. Your objection is noted for the record. I made my ruling. The rules provide that once I make my ruling, I'm not going to hear any more argument on it. Your objection is so noted for the record and I think your client's interest is protected on that." (R. p. 404, lines 17-22.)

is admissible." Id. Expert testimony is relevant to a claim of self-defense. State v. Hill, 287 S.C. 398, 399, 339 S.E.2d 121, 122 (1986) (overruling the lower court's decision that such testimony was cumulative and irrelevant and recognizing that such expert testimony is not only relevant but critical in the battered woman's syndrome context). In State v. Atkins, 303 S.C. 214, 220-21, 399 S.E.2d 760, 763-64 (1990), the Court held that the Defendant's state of mind was relevant and expert testimony as to the Defendant's state of mind on the day of the crimes was proper.¹⁷

In addition, the lower court's justification for disallowing the testimony on the basis that it simply bolstered the Petitioner's testimony is without merit. In State v. Williams, 386 S.C. 503, 516-17, 690 S.E.2d 62, 68-69 (2010), the solicitor proffered and the court admitted testimony by a doctor who interviewed the defendant subsequent to his arrest. The appellant argued that a doctor's testimony impermissibly bolstered and vouched for the solicitor's decision to seek the death penalty. Id. at 516, 690 S.E.2d at 68. The doctor was submitted as a lay witness, rather than an expert witness, but the Court's opinion implies that she could have also been called as an expert witness. Id. at 516-17, 690 S.E.2d at 68-69. The Court held that the doctor could testify as to her factual observations of the course of her interview as a lay witness but recognized that a witness with the doctor's professional expertise may also be called upon to deliver

¹⁷ During the trial of this case, the Solicitor argued that expert testimony regarding the defendant's state of mind based on reasonable fear is only allowable in relation to rape trauma and battered women syndrome. (R. p. 371, line 16-p. 373, line 17.) While much of the case law on the issue does involve that syndrome, it should be noted that Atkins did not involve a battered woman case. As Petitioner's trial counsel stated before the circuit court, such testimony has been allowed outside of the contexts suggested by the Solicitor, and such testimony has never been disallowed in contexts outside of those suggested by the Solicitor.

expert testimony. Id. at 516, 690 S.E.2d at 69. The Court noted that the solicitor "was not bound to call her in that capacity so long as her testimony was limited to lay matters." Id.

Because an expert opinion as to state of mind is admissible, the exclusion of Dr. Martin's testimony was improper and prejudicial to the Petitioner. The proffered testimony demonstrated the reasonableness of the Petitioner's fear, supported a lesser included offense jury charge, and would have assisted the fact finder in understanding why the Petitioner was incapable of cool reflection when confronted by the decedent at the Subway.

Conclusion

The Circuit Court's decision should be reversed because the trial judge failed to charge the jury with the lesser included offense of voluntary manslaughter where there was evidence supporting that charge. In addition, the trial judge committed reversible error when he excluded relevant evidence of the Petitioner's state of mind, which supported the lesser included offense of voluntary manslaughter. Both of these errors prejudiced the Petitioner and warrant reversal.

For the foregoing reasons, the Petitioner requests that this Honorable Court remand this case to the Circuit Court for a new trial with instructions (1) that the Petitioner may present evidence of the aforementioned specific instances of violence committed by the decedent; (2) that the testimony of Dr. Thomas Martin be admitted; and (3) that the Circuit Court charge the jury with the lesser included offense of voluntary manslaughter where, as here, there is evidence of the same.

Respectfully Submitted,

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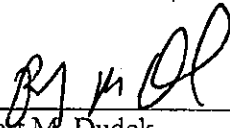
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CERTIFICATE OF COUNSEL

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

July 14, 2014



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Beaufort County
D. Craig Brown, Circuit Court Judge

THE STATE,

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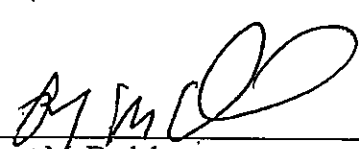
V.

RAJERICK KNIGHT,

APPELLANT

CERTIFICATE OF SERVICE

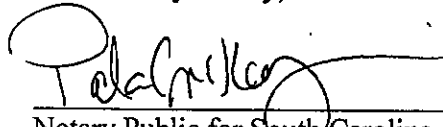
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Kaycie S. Timmons, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 14th day of July, 2014.



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Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of July, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

D. Craig Brown, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RAJERICK LOVELLE KNIGHT,

APPELLANT,

Appellate Case No. 2012-213529.

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Did the Circuit Court err in failing to charge the jury with the lesser included offense of voluntary manslaughter where the only evidence showed Petitioner feared for his life and where there was sufficient evidence he acted in the sudden heat of passion and with sufficient legal provocation in killing the decedent?
- II. Did the Circuit Court err when it excluded relevant evidence of Petitioner's state of mind which supported the lesser included offense of voluntary manslaughter?

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court erred in refusing to charge the jury as to voluntary manslaughter where either sudden heat of passion or sufficient legal provocation was absent under any possible interpretation of the evidence. (Appellant's Issue I).
- II. Whether the trial court erred in denying Appellant's request to admit evidence of prior instances of violent conduct by Victim that were directed against another. (Appellant's Issue II).
- III. Whether the trial court erred in finding Appellant's proffered expert testimony regarding Appellant's state of mind and whether Appellant's state of mind was reasonable to be inadmissible, where the expert's testimony was not based on scientific, technical, or other specialized knowledge and only served to bolster Appellant's own testimony. (Appellant's Issue II).

RESPONDENT'S STATEMENT OF THE CASE

A Beaufort County Grand Jury indicted Appellant, Rajerick Lovelle Knight, in October 2011 for murder and for possession of a weapon during a violent crime. (R. p. 457). On November 26, 2012, Appellant's case was called to trial before the Honorable D. Craig Brown. (R. p. 1, 13). Appellant was represented by Arie Bax and Naki Richardson-Bax during the four-day trial. (R. p. 1). Solicitor Duffie Stone and Assistant Solicitor Sean Thornton represented the State. (R. p. 1). On November 29, 2012, the jury returned a verdict of guilty. (R. p. 442, lines 12-23). Judge Brown sentenced Appellant to life imprisonment for murder and to imprisonment for five (5) years for the possession of a weapon during a violent crime, the sentences to run consecutively. (R. p. 456, lines 1-8).

Thereafter, Appellant served a timely notice of appeal, which he filed with the South Carolina Court of Appeals on December 5, 2012. (R. p. 462).

RESPONDENT'S STATEMENT OF THE FACTS

The State's Case

At Appellant's trial, the State presented evidence, including eyewitness testimony and surveillance video, that Appellant shot Travis Holmes (Victim) in the middle of a Subway restaurant in Beaufort, South Carolina on July 26, 2011.

Sierra Thomas, who worked at the Subway where Victim was killed, testified Appellant came into the restaurant with a female. (R. p. 89, line 1–p. 90, line 25). Thomas testified that she made Appellant's subs and then rang up his order. (R. p. 90, line 25–p. 92, line 9). Around that time, Victim walked into the Subway. (R. p. 92, lines 10–14). Appellant and the female then left the Subway. (R. p. 91, line 19–p. 92, line 14). According to Thomas, her co-worker, Demetria Green, started making a sub for Victim. (R. p. 92, line 10–p. 93, line 16). Thomas then noticed Appellant re-enter the restaurant and walk up to Victim. (R. p. 93, lines 17–24). Thomas heard a gunshot. (R. p. 93, line 24). According to Thomas, at that point Victim jumped on the counter, and Thomas ran away. (R. p. 93, line 24–p. 94, line 2).

Demetria Green also testified about what she witnessed on the day of the shooting. Green knew Victim—they had gone to elementary school together but had not seen each other since then. (R. p. 95, line 20–p. 96, line 6). Green and Victim caught up as she made him a sandwich. (R. p. 95, line 11–p. 96, line 22). Right as Victim was about to pay, Green saw Appellant come back up to Victim. (R. p. 96, line 21–p. 97, line 8). Green thought Appellant was going to greet Victim, but, instead, she heard a gunshot and saw part of a gun. (R. p. 97, lines 9–14). Green then ran to the back of Subway and hid. (R. p. 97, line 14–p. 99, line 11).

Jeannie Salleme, a customer who was in line at Subway when the shooting occurred also testified. (R. p. 100, line 16–p. 104, line 15). Salleme worked at the Golden Corral in Beaufort,

and she recognized Appellant on the day of the shooting because she had seen him “a handful of times” at Golden Corral. (R. p. 100, line 25–p. 104, line 3). When Salleme was going into Subway, Appellant was leaving. (R. p. 103, lines 6–15). But Salleme saw Appellant again when he returned to the restaurant. (R. p. 104, lines 8–19). According to Salleme, Appellant “just goes up to the other gentleman and then I heard a bang and that was it.” (R. p. 104, lines 20–22). Before the shooting, Salleme did not see any argument or words exchanged, nor did she see a fight. (R. p. 104, line 23–p. 105, line 2). Later, Salleme spoke to the police and told them what she had witnessed. (R. p. 106, lines 7–19). She also identified Appellant as the person she had seen in Subway at the time of the shooting. (R. p. 106, line 20–p. 109, line 25).

Shiecarra Smalls, the female who was with Appellant at Subway on July 26, 2011, also testified for the State. (R. p. 111, line 6–p. 114, line 7). According to Smalls, Appellant picked her up from work, and they went to pick up subs from Subway for Appellant and his girlfriend. (R. p. 112, line 15–p. 114, line 15). After Appellant and Smalls got their subs, Victim walked in the door. (R. p. 114, line 24–p. 115, line 8). As Appellant and Smalls were leaving Subway, Smalls spoke to Victim, and he responded, but Smalls did not hear any words exchanged between Appellant and Victim. (R. p. 115, lines 10–20). After Appellant and Smalls left Subway, Smalls got in the car, but Appellant went back in to the restaurant. (R. p. 115, line 25–p. 116, line 16). Smalls testified, “I asked him if he had—if it was something going on and he said that, yeah, he was going back in there.” (R. p. 116, lines 13–14). A short time later, Appellant walked out of Subway and got in the car, and Appellant and Smalls left. (R. p. 116, line 16–p. 117, line 1). Before leaving Smalls saw Victim run out of Subway and fall to the ground. (R. p. 117, lines 2–8). In the car Smalls heard Appellant tell someone on the phone that he had shot Victim. (R. p. 117, lines 13–17).

In addition to the eyewitness testimony of Thomas, Green, Salleme, and Smalls, the State also introduced eyewitnesses who saw Victim come out of Subway and drop to the ground. For example, James Powell testified that he saw Victim collapse, and he called 911 and gave information about a car that was seen leaving the scene. (R. p. 130, line 13–p. 135, line 24). Tanya Terry was also standing outside of Subway at the time of the shooting, and she saw a man come out of Subway right before Victim and jump into a car. (R. p. 136, line 17–p. 138, line 15). Terry then relayed to Powell information about the license tag of the car the man got into. (R. p. 138, line 13–p. 139, line 11).

The State also presented a video recording of the shooting from Subway’s surveillance cameras. (R. p. 77, line 10–p. 83, line 20; State’s Ex. 10).

The Defense’s Case

Appellant testified that he believed that Victim had been involved in a shooting of his home that took place on May 30, 2011. (R. p. 311, line 24–p. 321, line 19). Appellant was across the street at a neighbor’s home at the time of the May 30th shooting, but Appellant’s girlfriend, who was pregnant at the time, and his adopted son, were at his home when the shooting occurred. (R. p. 313, line 2–p. 315, line 24; R. p. 333, lines 1–9). According to Appellant, the shooting lasted for “two to three minutes” during which there were “too many [shots] to count.” (R. p. 315, lines 10–15). Appellant’s girlfriend miscarried as a result of the shooting. (R. p. 318, line 4–p. 319, line 5). Appellant testified that he learned that Victim and another person were involved in the May 30th shooting. (R. p. 321, lines 14–19).

Appellant also testified that he knew Victim was a dangerous person and that Victim was known to “tote a gun and is a shooter.” (R. p. 321, line 20–p. 322, line 3). Appellant further testified that the shooting scared him and took away his sense of security. (R. p. 322, lines 4–

11). He did not feel safe at home and moved to another residence. (R. p. 322, lines 8–11; R. p. 323, line 25–p. 324, line 10).

Appellant also testified about the shooting on July 26, 2011. According to Appellant, he first noticed Victim after he got his subs and turned to leave. (R. p. 325, lines 8–16). Appellant testified that, as he and Smalls tried to rush out of the store, Victim was staring him down. (R. p. 325, lines 17–21). Smalls said hello to Victim, but, according to Appellant, “he barely acknowledge her. He walk pass me and just was like, [‘]Man, I’m gone kill you boy.[’]” (R. p. 325, line 21–p. 326, line 4). Appellant and Smalls exited the Subway, and, as they were walking to the car, Appellant talked to Smalls about Victim. (R. p. 326, lines 8–18). He testified to the following:

And I was just explaining to her like did you hear what he said just now. Like, man, he just gone keep trying to kill me. You know, Travy, you know what type of guy he is. And I was just keep telling her that. I told her he just shoot up the house. He just took a son from me.

(R. p. 326, lines 11–16). By the time Appellant and Smalls reached the car, Appellant had decided he “couldn’t live like that any more, hiding, running and from Mr. Holmes and just always being a victim to Mr. Holmes.” (R. p. 326, lines 20–23). Appellant then went back into Subway, put a gun right up against Victim, and shot him. (R. p. 327, line 18–p. 328, line 17). Appellant then left Subway and got back into his car. (R. p. 328, lines 18–20). He then dropped Smalls off at her home. (R. p. 329, lines 1–6).

After the shooting, Appellant and his girlfriend fled to Jacksonville, Florida, and Appellant cut his shoulder-length dreadlocks so as “not to be noticed.” (R. p. 329, line 7–p. 330, line 9). In early August of 2011, two officers from the Beaufort City Police Department picked Appellant up from Florida. (R. p. 140, line 9–p. 142, line 18).

ARGUMENT

I.

The trial court did not err by refusing to charge the jury as to voluntary manslaughter where the evidence did not support such a charge.

Introduction

The evidence presented at Appellant's trial did not support a voluntary manslaughter charge. Thus, the trial court correctly denied Appellant's request to charge the same.

How the Issue Was Raised at Trial

At trial Judge Brown indicated that he was inclined not to charge manslaughter or self-defense,¹ but he allowed both sides to argue that point before he made a decision. (R. p. 387, line 2–p. 396, line 3).

Defense counsel first argued that both self-defense and manslaughter should be charged “and let the jury decide based on what they perceived the state of mind of the defendant to be based on what they thought was reasonable and not reasonable, what charge to come back with.” (R. p. 388, lines 2–25). Defense counsel cited *State v. Brown*, 79 S.C. 390, 60 S.E. 945 (1908); *State v. Linder*, 276 S.C. 304, 278 S.E.2d 335 (1981); and *State v. Gilliam*, 296 S.C. 395, 373 S.E.2d 596 (1988) in support of his point. (R. p. 388, lines 2–25).

In response, counsel for the State referenced *State v. Hernandez*, 386 S.C. 655, 690 S.E.2d 582 (Ct. App. 2010), and argued that voluntary manslaughter should not be charged. (R. p. 390, lines 1–23). Counsel for the State argued that either there was not sufficient provocation

¹ Appellant is not challenging the trial court's decision not to charge self-defense. However, counsel's arguments and the trial court's analysis are sometimes intertwined in the record. The trial court ultimately did not charge either voluntary manslaughter or self-defense. (R. p. 422, line 22–p. 437, line 16).

for the shooting as words alone are never sufficient or there was a sufficient cooling off period (of two months) if the May 30th shooting was considered the provocation. (R. p. 390, line 13–p. 391, line 20). Under either scenario, Appellant could not meet the voluntary manslaughter standard. (R. p. 390, lines 21–25).

Defense counsel argued that there was evidence of both a threat and a shooting in the record and encouraged the trial court to allow the jury to decide whether Appellant had sufficient time to cool off. (R. p. 392, line 8–p. 393, line 15).

Counsel for the State again referred the trial court to *Hernandez* and noted that it was appropriate for the court to decide the issue as a legal matter because “[i]f there has been a cooling off, then there would not be a reason to do voluntary manslaughter.” (R. p. 393, line 19–p. 394, line 17).

The trial court ultimately decided not to charge either self-defense or voluntary manslaughter. (R. p. 396, line 5–p. 401, line 11). The trial court noted that “words alone under the law is not sufficient legal provocation.” (R. p. 401, lines 8–9). The trial court also noted that there was no evidence of contact between Appellant and Victim between the May 30th shooting (allegedly committed by Victim) and the July 26th shooting by Appellant. (R. p. 400, lines 1–18).

Standard of Review

“The trial court is required to charge the correct law applicable to the case. When a party requests the trial court charge a correct and applicable principle of law, the court must charge it. However, the court is not required to use any particular language in explaining the principle.” *State v. Marin*, 404 S.C. 615, 619–20, 745 S.E.2d 148, 151 (Ct. App. 2013) (citations omitted). “In reviewing jury charges for error, [appellate courts] must consider the [trial] court’s jury

charge as a whole in light of the evidence and issues presented at trial.” *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (quoting *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003)). “To warrant reversal, a trial judge’s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.” *Brandt*, 393 S.C. at 550, 713 S.E.2d at 603 (quoting *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010)).

Analysis

Because the evidence in the record did not support a charge of voluntary manslaughter, Respondent submits that the trial court properly refused to charge voluntary manslaughter. As this Court has stated,

The evidence presented at trial determines the law to be charged to the jury. *State v. Brown*, 362 S.C. 258, 261–62, 607 S.E.2d 93, 95 (Ct. App. 2004). “A trial judge is required to charge a jury on a lesser included offense if there is evidence from which it could be inferred that a defendant committed the lesser offense rather than the greater.” *State v. Drafts*, 288 S.C. 30, 32, 340 S.E.2d 784, 785 (1986). In determining whether the evidence requires a charge of voluntary manslaughter, the trial court views the facts in a light most favorable to the defendant. *State v. Byrd*, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996). However, “[a]n instruction should not be given unless justified by the evidence.” *State v. Moultrie*, 273 S.C. 532, 534, 257 S.E.2d 730, 731 (1979). “If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury.” *State v. Blurton*, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002).

Hernandez, 386 S.C. at 660, 690 S.E.2d at 585.

Under South Carolina law, “[m]urder’ is the killing of any person with malice aforethought, either express or implied.” S.C. Code Ann. § 16-3-10. On the other hand,

[v]oluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. Heat of passion alone will not suffice to reduce murder to voluntary manslaughter. Both heat of passion and sufficient legal provocation must be present at the time of the killing. The sudden heat of passion, upon sufficient legal provocation, which mitigates a felonious killing to manslaughter, while it need not dethrone reason entirely, or shut out

knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection and produce what, according to human experience, may be called an uncontrollable impulse to do violence.

State v. Cole, 338 S.C. 97, 101–02, 525 S.E.2d 511, 513 (2000) (internal quotations and citations omitted).

[E]ven when a person's passion is "sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would be murder and not manslaughter."

Hernandez, 386 S.C. at 661, 690 S.E.2d at 585 (quoting *State v. Knoten*, 347 S.C. 296, 303, 555 S.E.2d 391, 395 (2001)). While "[a]n overt, threatening act or a physical encounter may constitute sufficient legal provocation[.]" *id.*, "[w]here death is caused by the use of a deadly weapon, words alone, however opprobrious, are not sufficient to constitute a legal provocation[.]" *State v. Byrd*, 323 S.C. 319, 322, 474 S.E.2d 430, 432 (1996) (citing *State v. Gardner*, 219 S.C. 97, 64 S.E.2d 130 (1951)).

Respondent submits that the trial did not err in refusing to charge voluntary manslaughter as the evidence presented at trial did not support that charge. This Court's decision in *Hernandez* is both on point and dispositive of this issue. In *Hernandez*, this Court affirmed a trial court's decision not to charge voluntary manslaughter because the evidence demonstrated that Hernandez cooled off between the only physical altercation between himself and the victim and the time when Hernandez shot and killed the victim. 386 S.C. at 661, 690 S.E.2d at 585–86. Specifically, Hernandez and the victim had a physical altercation when the victim kicked Hernandez out of a party at the victim's home. *Id.* at 658, 690 S.E.2d at 584. Hernandez then went to his home and grabbed a gun. *Id.* Hernandez returned to the party and enjoyed the party without incident until later than night when he encountered the victim again, and the victim

insulted him. *Id.* at 658–59, 690 S.E.2d at 584. Hernandez took out his gun and shot the victim. *Id.* at 659, 690 S.E.2d at 584. This Court noted that “whether the defendant’s actions during the intervening time between the provocation and the killing indicates the absence of sudden heat of passion is an appropriate question for the court.” *Id.* at 662, 690 S.E.2d at 586 (quoting *State v. Pittman*, 373 S.C. 527, 575, 647 S.E.2d 144, 169 (2007)). This Court further explained:

[E]vidence indicates Hernandez left the party, drove home, and retrieved his gun, thereby removing himself from any influence the ongoing party might have exerted. Moreover, when Hernandez returned to the party, he calmly resumed drinking and enjoying himself. Hernandez’s intervening actions and demeanor upon returning to the party support a finding that he cooled off after being ejected. No evidence indicates a second physical confrontation between him and Garcia after his return. Consequently, the trial court did not err in declining to charge the jury on voluntary manslaughter.

Id. at 662–63, 690 S.E.2d at 586.

Appellant now argues that “the 2011 shooting incident at [his] trailer combined with [Victim’s] verbal threat at Subway constituted sufficient legal provocation. . . .” Final Br. of Appellant, pp. 14–15. However, this is the same type of evidence—a physical altercation, followed by a cooling down period, followed by a verbal exchange that triggered a shooting—that this Court found did not support a charge of voluntary manslaughter in *Hernandez*. Appellant apparently seeks to combine the physical confrontation and the threat as evidence of sufficient legal provocation. However, for purposes of determining whether sufficient legal provocation exists, if this Court did not combine the physical altercation and the insult in *Hernandez*, where both occurrences took place in the same night, there is no support for combining the May 30th shooting and the July 26th threat in this case, where almost two months separates the occurrences. Appellant has failed to point to any authority that a verbal threat can revive an earlier provocation, and none is readily apparent, and *Hernandez* seems to indicate the contrary.

The alleged threat made by Victim on the day Appellant shot him was not sufficient to warrant a voluntary manslaughter charge. *See State v. Rogers*, 320 S.C. 520, 525, 466 S.E.2d 360, 362 (1996) (“[M]ere words, no matter how opprobrious, are insufficient to constitute adequate legal provocation when death is caused by the use of a deadly weapon.”). Moreover, the May 30th shooting that Victim was allegedly involved in occurred well before Appellant shot Victim, and there was a sufficient time for Appellant to cool down between the two events. Thus, the trial court did not err in denying Appellant’s request to charge voluntary manslaughter where the evidence, viewed in a light most favorable to Appellant, did not support such a charge.

II.

The trial court did not err in denying Appellant's request to admit evidence of specific instances of violent conduct by Victim directed against others.

Introduction

The trial court did not err in denying Appellant's request to present evidence of prior acts of violence by Victim where those acts were not directed against Appellant and were not so closely connected in time or occasion with Victim's homicide so as to indicate the state of mind of Victim or to produce a reasonable apprehension of great bodily harm by Appellant. Additionally, had the evidence been presented to the jury, the evidence would not support a voluntary manslaughter charge.

How the Issue Was Raised at Trial

After jury selection, counsel for the State raised the issue of what Rule 404(b) evidence defense counsel planned to discuss during his opening statement. (R. p. 15, line 25–p. 16, line 15). The State took the position that some of the 404(b) evidence regarding Victim would not be admissible, but the State needed to know what particular instances of conduct defense counsel wanted to introduce. (R. p. 15, line 25–p. 21, line 17). Defense counsel indicated that he did intend to go into things about Victim's past, but he did not want to be specific about exactly what those were. (R. p. 16, line 17–p. 26, line 21). At that time, Judge Brown informed defense counsel "it's your decision however you see fit to defend the case for the defendant. If you open the door, then that may result in some other issues or matters coming out." (R. p. 26, lines 12–13). However, Judge Brown deferred ruling on the 404(b) matters until he heard the particulars of the evidence. (R. p. 26, lines 8–21). Before breaking for the day, the trial court instructed defense counsel to review the law regarding 404(b) evidence. (R. p. 41, line 24–p. 42, line 19).

Prior to the start of trial the next day, the trial court obtained a copy of Victim's criminal record. (R. p. 43, line 21–p. 44, line 12). The trial court then ruled that it would not allow defense counsel to go into Victim's charges or convictions from 2002, 2006,² 2008, or 2009. (R. p. 44, line 1–p. 47, line 3). The trial court noted that the earlier incidents were not directed toward Appellant, and "they were so far removed in time that the Court does not believe that they would be relevant to the matter that we have before us here today." (R. p. 46, lines 18–24). Defense counsel then argued that he should be able to go into the incident from 2011 when Victim allegedly shot at Appellant's home. (R. p. 47, line 4–p. 50, line 20). Defense counsel additionally requested that the trial court reconsider its ruling regarding the incidents from 2008 and 2009, both of which were directed against James Odom. (R. p. 51, lines 1–4). Judge Brown then stated that he had ruled as to the 2002 and 2005 incidents. (R. p. 52, lines 3–16).

After the State rested its case, the trial court took up various matters before the defense began its presentation of evidence. (R. p. 175, line 7–p. 189, line 3). At that time, defense counsel argued he should be able to present evidence regarding instances of violence in 2008 and 2009 by Victim against James Odom. (R. p. 176, lines 10–23). Defense counsel had a law enforcement witness³ in the courtroom who defense counsel said was prepared to testify to the following:

² It appears that this incident is also sometimes attributed to 2005 in the record.

³ Defense counsel had Investigator Kelleher present in the courtroom at that time. (R. p. 176, lines 10–23). However, rather than called Investigator Kelleher to the stand to proffer his testimony about the 2008 and 2009 incident, defense counsel merely recited his understanding of the investigation. (R. p. 176, lines 10–17). Both the State and the defense directed Investigator Kelleher to speak up if defense counsel misrepresented anything in his recitation of the investigation. (R. p. 176, lines 10–17; R. p. 187, line 21–p. 188, line 18). The trial court found that presentation to be an acceptable replacement for the proffer of Investigator Kelleher's testimony. (R. p. 188, line 20–p. 189, line 3).

[T]here was one incident in 2008, Your Honor, where based on the investigation . . . Mr. Holmes was charged in relation to a shooting into a house that Mr. Odom was in or residence. As a result of that, he received the charges—I think it was assault and battery with intent to kill, discharging a firearm into a dwelling and possession of a weapon charge. From our investigation possibly, the possession of a weapon charge might have gone away at prelim, but the rest of them were still existing.

Those charges were pending and Mr. Holmes made bond and was released from pretrial detention. He was currently out on that pretrial release in February Your Honor of 2009 The allegations that were made that Mr. Holmes saw James Odom in February of 2009, at a gas station

And that he then followed Mr. Odom who was being driven [by] Cassandra Simmons, who was I believe according the information I been provided, Mr. Holmes' cousin. He followed them down the road until he was closer to where Mr. Odom was living. And he opened fire out the driver's side window of his car and he struck the white SUV being driven by Cassandra Simmons with James Odom as a passenger several times

(R. p. 177, line 11–p. 178, line 16). Defense counsel then offered that Appellant knew James Odom. (R. p. 179, lines 4–5). Thus, defense counsel indicated that Appellant

had knowledge . . . that Mr. Holmes in prior instances where he had been alleged to have shot at someone in their house, then sees them in a public place, waits until they have left that public place, follows them after they have left that public place and fires on them again.

. . . So the idea that that is the evidence that we intend to present, we would argue that needs to be presented in this case is that my client had that in his mind when he sees Mr. Holmes in a public place.

(R. p. 181, lines 3–19). Defense counsel argued that the evidence was relevant to Appellant's state of mind at the time of the shooting. (R. p. 181, line 21–p. 182, line 2).

In response, the State argued that, based on state case law, the situations were not analogous and were too far removed in time from the July 26th shooting. (R. p. 182, lines 4–25). Defense counsel then stated that he would defer to the trial court's interpretation of the cases but pointed out that those cases did not set a bright-line rule. (R. p. 183, lines 1–25).

Though the trial court agreed with defense counsel that there was no bright-line rule, the trial court ruled that the 2008 and 2009 incidents were not so closely connected in point of time or occasion with the homicide so as to indicate the state of mind of Victim or to produce a reasonable apprehension of great bodily harm by Appellant. (R. p. 184, line 10–p. 185, line 9).

Standard of Review

In general, all relevant evidence is admissible. Rule 402, SCRE. However, there are some exceptions to that rule. For instance, S.C. R. Evid. 404 provides the following constraints on the admission of character evidence:

(a) Character Evidence Generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

...

Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

...

(b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

However, *State v. Day*, 341 S.C. 410, 535 S.E.2d 431 (2001), sets out an exception to the general prohibition on character evidence and evidence of prior bad acts:

In the murder prosecution of one pleading self-defense against an attack by the deceased, evidence of other specific instances of violence on the part of the deceased are not admissible unless they were directed against the defendant or, if directed against others, were so closely connected at point of time or occasion

with the homicide as reasonably to indicate the state of mind of the deceased at the time of the homicide, or to produce reasonable apprehension of great bodily harm. Whether a specific instance of conduct by the deceased is closely connected in point of time or occasion to the homicide so as to be admissible is in the trial judge's discretion and will not be disturbed on appeal absent an abuse of discretion resulting in prejudice to the accused.

341 S.C. at 419–20, 535 S.E.2d at 436 (internal citations omitted).

Analysis

The trial court did not abuse its discretion in finding the specific acts of violence by Victim were not so closely connected in time or occasion as to indicate the state of mind of Victim or to create in Appellant a reasonable apprehension of great bodily harm. As the trial court recognized, there is no bright-line rule for how recent an instance of violence must be in order to satisfy the standard set forth in *Day*. The South Carolina Supreme Court has found that a trial judge did not abuse his discretion in excluding an instance of violence that occurred twenty-three years before a homicide as too remote. *State v. Brown*, 321 S.C. 184, 187, 467 S.E.2d 922, 924 (1996). On the other hand, prior acts of violence that occurred only months before homicides have been found to be admissible under the standard articulated in *Day*. *Day*, 341 S.C. at 421, 535 S.E.2d at 437 (finding act that occurred four months prior to the homicide to be admissible); *State v. Mekler*, 368 S.C. 1, 14, 626 S.E.2d 890, 897 (Ct. App. 2005) (finding act of violence that occurred less than three months before the homicide to be admissible). The instances of violence by Victim that Appellant wished to introduce at trial occurred approximately two and three years before Appellant shot Victim. Respondent submits that the trial court did not abuse its discretion in finding that the 2008 and 2009 instances were too far removed from the 2011 shooting to be admissible.

Appellant argues that this case is akin to *Mekler*, where this Court found that Mekler should have been able to introduce evidence regarding her knowledge of a prior domestic violence incident in which the victim, while drunk, had threatened his wife and beat on her door “until he broke through it with his fists.” *See Mekler*, 368 S.C. at 13–14, 626 S.E.2d at 896–97. In that case Mekler shot the victim after he approached her and his wife on Mekler’s front porch. *Id.* at 3–10, 626 S.E.2d at 891–94. “Mekler testified she retrieved the shotgun because there was no stopping [the victim], she had pleaded with him to leave, he came back to her home on foot, she was scared, and he had told her there was nothing that was going to stop him from coming on the porch.” *Id.* at 9, 626 S.E.2d at 894. The evidence presented in *Mekler* showed that both the prior instance of violent conduct by the victim and the circumstances leading to the victim’s homicide were domestic violence-type situations in which the victim was pursuing his wife. *Id.* at 8–9, 626 S.E.2d at 893–94. This Court found that the prior act of violence was admissible to show the victim’s state of mind and to support Mekler’s contention that she had a reasonable apprehension of great bodily harm from the victim. *Id.* at 14, 626 S.E.2d at 897.

Respondent submits that the circumstances of the prior acts of violence by Victim against James Odom are not close enough to the circumstances in which Appellant shot Victim to be admissible. According to the evidence recited by defense counsel, Victim had previously shot at Odoms’s home, and, at a later date, he encountered Odom at a gas station, followed him, and then shot at his vehicle. While Appellant presented testimony that Victim had been involved in a shooting on Appellant’s home and that he later encountered Victim at Subway, that is where the similarities to the earlier instances of violence stop. There was no evidence that Victim got in his car and followed Appellant and Smalls. There was no evidence that Victim even followed the pair out of Subway. Indeed, after encountering Victim in Subway, Appellant was able to walk to

his car, turn around, walk back into the restaurant, and then walk up to Victim (who was in the process of paying for his sandwich) and shoot him. Respondent submits that the prior instances of violent conduct and the circumstances of Victim's homicide were not close enough in time or occasion to reasonably indicate the state of mind of Victim or to produce a reasonable apprehension of great bodily harm in Appellant at the time of the shooting.⁴ As such, the trial court did not abuse its discretion in find the prior instances inadmissible.

Moreover, even if the trial court had abused its discretion in failing to admit the 2008 and 2009 instances of violent conduct, the prejudice that Appellant now complains of—that “such instances of conduct . . . would have been additional evidence supporting a voluntary manslaughter and imperfect self defense charge[.]” Final Br. of Appellant, p. 19—is off base. Respondent submits that both the voluntary manslaughter charge and the self-defense charge analysis would be completely unchanged if this evidence were admitted. As to voluntary manslaughter, even if the prior instances had been presented to the jury, Appellant would still lack one of the necessary elements (depending on the interpretation of the evidence) to receive a voluntary manslaughter charge. Therefore, the above analysis would not change. Likewise, Appellant would not be entitled to a self-defense charge even with the admission of this evidence.⁵

⁴ While Appellant may have testified that he feared for his life when he walked back into Subway and shot Victim, such fear was not reasonable in light of the evidence presented in this case. See *State v. Brown*, 79 S.C. 390, 60 S.E. 945 (1908) (“We do not make laws for overnervous men, and they must not get scared and strike quicker than a reasonable man would.”).

⁵ Appellant is not challenging the trial court's refusal to charge either perfect or imperfect self-defense. Respondent submits that even if the evidence regarding the 2008 and 2009 incidents had been admitted, the trial court's analysis (R. p. 396, line 5–p. 399, line 3) would not change. The trial court found that Appellant was not entitled to any self-defense charge based on Appellant's own testimony. (R. p. 397, line 4–p. 399, line 3).

As an additional sustaining ground, Respondent submits that since Appellant was not entitled to a self-defense charge as a matter of law, he was not entitled to have the evidence regarding the 2008 and 2009 instances of violent conduct admitted. The exception set forth in *Day* allows for evidence of specific acts of violence by a victim to be admitted “[i]n the murder prosecution of one pleading self-defense against an attack by the deceased” 341 S.C. 410, 419, 535 S.E.2d at 436. Though Appellant pled self-defense, the trial court found that the evidence did not support the charge. Thus, Respondent respectfully submits that Appellant was also not entitled to present evidence under the exception to 404(b) articulated in *Day*.

III.

The trial court did not err in denying Appellant's request to admit testimony of a forensic psychiatrist to opine that Appellant's fear was reasonable.

Introduction

Because the proffered expert testimony was not a matter of expertise, the trial court did not err in finding the expert testimony inadmissible. Additionally, the trial court did not err in refusing to admit the expert testimony because it improperly served to bolster Appellant's testimony. Finally, exclusion of the testimony, even if in error, was harmless.

How the Issue Was Raised at Trial

At trial defense counsel sought to introduce the testimony of Dr. Thomas Martin, an expert in forensic psychiatry. (R. p. 342, line 12–p. 344, line 5). Defense counsel offered that Dr. Martin's testimony was going to go to Appellant's state of mind. (R. p. 343, line 19–p. 344, line 1). The trial court had defense counsel proffer Dr. Martin's testimony. (R. p. 344, line 13–p. 371, line 6).

Dr. Martin opined that Appellant did not suffer from any mental illness, had no diminished capacity problems, and was criminally responsible for shooting Victim. (R. p. 351, line 12–p. 352, line 11). Defense counsel then went on to ask Dr. Martin about Appellant's fear:

Q . . . [D]id he appear in your opinion as scared genuinely scared of this man?

A It seems like he was living under a reign of terror the way he simply put it.

...

Q . . . Did Mr. Knight feel like, was it reasonable to him to be scared?

A Yes.

(R. p. 354, lines 1–12). Dr. Martin further testified about his understanding of the interaction between Appellant and Victim, which was based in part on his interview with Appellant and in part on other information he learned about Victim’s past (some of which the trial court had already ruled inadmissible). (R. p. 354, line 13–p. 357, line 22).

On cross-examination, Dr. Martin testified that Appellant knew the difference between right and wrong, had the ability to control himself, and, on the day he shot Victim, he made a conscious decision to go back inside and gun down an unarmed man. (R. p. 362, line 17–p. 363, line 1).

The trial court also questioned Dr. Martin regarding his opinion. (R. p. 368, line 16–p. 369, line 6).

Counsel for the State objected to Dr. Martin’s testimony and argued that the testimony was not admissible. (R. p. 371, line 16–p. 373, line 16).

Defense counsel, on the other hand, argued that Dr. Martin’s testimony should be admitted to show state of mind. (R. p. 373, line 20–p. 380, line 10). Defense counsel noted, “[I]f the jury has any information or any evidence that they can infer that there was some kind of provocation or that there was some kind of reasonable threat of harm perceived by the defendant, they can find either manslaughter or not guilty under self defense. . . .” (R. p. 374, line 23–p. 375, line 3). Defense counsel cited *State v. Atkins*, 303 S.C. 214, 399 S.E.2d 760 (1990), in support of his position. (R. p. 378, lines 7–12). Defense counsel further pointed out that experts in gang activity and drug activity had been qualified to testify as to state of mind in South Carolina courts. (R. p. 378, line 18–p. 379, line 24).

In response, counsel for the State pointed out that *Atkins* dealt with diminished capacity and that other cases with expert testimony on state of mind involved battered women's syndrome. (R. p. 380, lines 12–20).

The trial court then asked defense counsel, “[W]hat does Dr. Martin add to the testimony that your client’s already put up here other than the fact that he’s a doctor?” (R. p. 381, lines 17–19). Defense counsel responded, “I think it’s an aid to the triers of fact that he has talk to someone of Dr. Martin’s past, his experience, his expertise in being able to show that his perceptions of fear could be held as reasonable.” (R. p. 381, line 25–p. 382, line 3). When the trial court asked about whether Dr. Martin was merely bolstering Appellant’s testimony, defense counsel stated,

Your Honor, I don’t think it’s bolstering my client’s testimony. The problem is is that my client can only testify as he already has to the jury that he was scared. Dr. Martin can talk about the fact that based on all the factors that he’s looked at in his examination of my client, that those fears could be seen as reasonable based on everything that he was going through.

(R. p. 383, lines 4–20). Counsel for the State argued that Dr. Martin was not an expert on reasonableness and further stated that he would object to Dr. Martin testifying to the jury that Appellant’s fear was reasonable. (R. p. 384, line 21–p. 385, line 10). Additionally, counsel for the State pointed out that Dr. Martin’s testimony was only bolstering Appellant’s and additionally relying on evidence that the judge had ruled inadmissible. (R. p. 386, line 21–p. 387, line 1).

After taking some time to look into the issue further, (R. p. 387, lines 2–5), the trial court found Dr. Martin’s testimony to be inadmissible. (R. p. 401, line 14–p. 405, line 2). In its ruling, the trial court stated,

[I]t was argued to some degree, that Dr. Martin will testify as to reasonableness, the reasonableness of this defendant’s conduct on the day in question. Dr.

Martin's testimony in the Court's opinion does not add, is not of scientific, technical or specialized testimony that would add [sic] the trier of fact in this particular case. He in essence reiterated the very things that the defendant testified to himself.

It is the Court's opinion that Dr. Martin's testimony is simply in some sense to bolster the defendant's testimony and his resulting actions by virtue of expert testimony.

(R. p. 403, lines 3–15).

Standard of Review

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

Analysis

Respondent submits that the trial court did not abuse its discretion in declining to admit Dr. Martin's testimony as the proffered testimony did not meet the requirements of S.C. R. Evid. 702. Furthermore, Dr. Martin's testimony would have only served to bolster Appellant's testimony and was, thus, improper under South Carolina law. Finally, even if the trial court erred in excluding Dr. Martin's testimony, the error was harmless.

Under S.C. R. Evid. 702,

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

The Supreme Court of South Carolina has provided the following instruction for trial courts dealing with expert testimony:

When admitting scientific evidence under Rule 702, SCRE, the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable. The trial judge should apply the *Jones* factors to determine reliability. Further, if the evidence is admissible under Rule 702, SCRE, the trial judge should determine if its probative value is outweighed by its prejudicial effect. Rule 403, SCRE. Once the evidence is admitted under these standards, the jury may give it such weight as it deems appropriate.

State v. Council, 335 S.C. 1, 20–21, 515 S.E.2d 508, 518 (1999). The Court has also noted that scientific evidence is subject to attack for relevancy. *Id.* (citing *State v. Ford*, 301 S.C. 485, 392 S.E.2d 781 (1990)).

Though Dr. Martin was originally offered as an expert in forensic psychiatry to testify regarding Appellant's state of mind, it is clear from the discussions between counsel and the trial court that the opinion that the defense sought to elicit from Dr. Martin was that Appellant's fear was reasonable. However, that opinion is not a proper matter for *expert* testimony because Dr. Martin's expertise in forensic psychiatry does not form a basis for him to opine on the reasonableness of Appellant's fear.

As Appellant points out, expert testimony regarding a defendant's state of mind is admissible in some cases, but Respondent would note that in those cases, the expert testimony is based on some scientific, technical, or other specialized knowledge as required by S.C. R. Evid. 702. See, e.g., *State v. Atkins*, 303 S.C. 214, 220–21, 399 S.E.2d 760, 763–64 (1990) (finding the admission of expert testimony regarding state of mind and whether a defendant lacked substantial capacity to conform his conduct to the requirements of law to be proper); *State v. Hill*, 287 S.C. 398, 339 S.E.2d 121 (1986) (finding expert testimony regarding battered woman's syndrome to be relevant as evidence of a defendant's state of mind at the time of the crime). Indeed, this Court, in *State v. Wilkins*, 305 S.C. 272, 407 S.E.2d 670 (Ct. App. 1991), reversed a trial court's decision to exclude expert testimony on the state of mind of an accused who had

presented evidence that she suffered from battered woman's syndrome. This Court relied on *Hill* and noted, "Nothing in [*Hill*] suggests that an expert who states the defendant suffers from battered woman's syndrome cannot also give an opinion connecting that condition to her state of mind at the time of the homicide. Indeed, the Court strongly implies just the opposite." *Wilkins*, 305 S.C. at 276, 407 S.E.2d at 673. Here, that *connection* between state of mind and some area of expertise by the expert is absent from Dr. Martin's testimony. And for that reason, the trial court properly excluded Dr. Martin's testimony regarding Appellant's state of mind and the reasonableness of Appellant's state of mind.

As the trial court found, Dr. Martin's testimony did nothing more than bolster Appellant's testimony. When defense counsel asked Dr. Martin if Appellant's fear seemed genuine, Dr. Martin replied, "It seems like he was living under a reign of terror the way he simply put it." (R. p. 354, lines 1-4). Indeed, the gist of Dr. Martin's testimony was that Appellant was truly scared of Victim and that, based on the information Dr. Martin received, Appellant had reason to be scared. However, it is well-recognized in South Carolina that "witnesses are generally not allowed to testify whether another witness is telling the truth. Similarly, witnesses may not improperly bolster the testimony of other witnesses." *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012). For example, expert reports by forensic interviewers in child abuse cases have been found to be inadmissible where "[t]here is no other way to interpret the language used in the reports other than to mean the forensic interviewer believed the children were being truthful." *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011). Respondent would submit that in this case, too, Dr. Martin's testimony was properly excluded as the conclusion to draw from his testimony was that Appellant was being truthful.

Appellant claims that Dr. Martin's testimony did not simply bolster Appellant's own testimony at trial and cites *State v. Williams*, 386 S.C. 503, 516–17, 690 S.E.2d 62, 68–69 (2010), in support of that proposition. However, that case is inapposite here. In *Williams*, during the sentencing phase of a capital case, the prosecution presented the lay testimony of a forensic psychiatrist, Dr. Pamela Crawford, regarding the defendant's state of mind at the time of crime. 386 S.C. at 506–08, 690 S.E.2d 63–64. On appeal, the defendant challenged the trial judge's refusal "to declare a mistrial because Dr. Crawford's testimony impermissibly bolstered and vouched for the solicitor's decision to seek the death penalty." *Id.* at 516, 690 S.E.2d at 68. The South Carolina Supreme Court found "nothing improper about the solicitor's examination of Dr. Crawford as a lay witness" and further noted, "We have long held that a lay witness may testify as to a defendant's mental state." *Id.*, 690 S.E.2d at 69. Of course, in this case defense counsel did not attempt to have Dr. Martin's testimony admitted as lay testimony. Furthermore, though the Court in *Williams* noted that Dr. Crawford could have testified as an expert, it also tied that testimony to her "professional expertise," *id.*, and, as explained above, Dr. Martin's opinion was not a matter of his professional expertise as a forensic psychiatrist. Additionally, the sort of bolstering referred to in *Williams*—the bolstering of the solicitor's decision to seek the death penalty—is different than the bolstering presented in this case—the bolstering of another witness's testimony.

Lastly, Respondent would note that even if the trial court had admitted Dr. Martin's testimony, Appellant would not be entitled to either a voluntary manslaughter or self-defense charge. Dr. Martin's testimony would have merely been cumulative to Appellant's own testimony that he feared for his life (which highlights the point that Dr. Martin's testimony only bolstered Appellant's testimony).

For all of the foregoing reasons, the trial court did not abuse its discretion in refusing to admit Dr. Martin's testimony.

CONCLUSION

For all the foregoing reasons, Respondent respectfully asserts that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully Submitted,

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

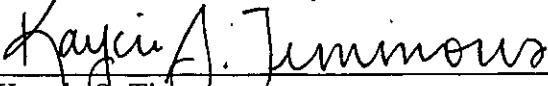
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July 10, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAJERICK LOVELLE KNIGHT,

APPELLANT,

Appellate Case No. 2012-213529.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court, "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



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**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.

Rajerick Knight, Appellant.

Appellate Case No. 2012-213529

Appeal From Beaufort County
D. Craig Brown, Circuit Court Judge

Unpublished Opinion No. 2015-UP-170
Heard January 5, 2015 – Filed April 1, 2015

AFFIRMED

Chief Appellate Defender Robert Michael Dudek and
Appellate Defender Laura Ruth Baer, both of Columbia;
and Kathleen Fowler Monoc, of Pratt-Thomas Walker,
P.A., of Charleston, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, Assistant
Attorney General Kaycie S. Timmons, all of Columbia;
and Solicitor Isaac McDuffie Stone, III, of Bluffton, for
Respondent.

PER CURIAM: Rajerick Knight was convicted of murder and possession of a weapon during the commission of a violent crime. On appeal, Knight contends the trial court erred in (1) failing to charge the jury on the lesser included offense of voluntary manslaughter and (2) excluding evidence of his state of mind, which supported a charge of voluntary manslaughter. We affirm.

1. We find no error in the trial court's refusal to charge the jury on voluntary manslaughter. "For a defendant to be entitled to a voluntary manslaughter charge, there must be evidence of both sufficient legal provocation and heat of passion at the time of the killing." *State v. Smith*, 391 S.C. 408, 413, 706 S.E.2d 12, 15 (2011). Though one's fear immediately following an attack or threatening act may cause that individual to act in a sudden heat of passion, the mere fact that he is afraid "is not sufficient, by itself, to entitle a defendant to a voluntary manslaughter charge." *State v. Starnes*, 388 S.C. 590, 598, 698 S.E.2d 604, 609 (2010). "[I]n 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." *Id.* "Succinctly stated, to warrant a voluntary manslaughter charge, the defendant's fear must manifest itself in an uncontrollable impulse to do violence." *Id.* at 598-99, 698 S.E.2d at 609.

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.

Id. at 599, 698 S.E.2d at 609.

[E]ven when a person's passion is sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would be murder and not manslaughter. Whether an accused cooled off prior to a violent act must be

determined by a review of all the circumstances surrounding the event and the people involved.

State v. Hernandez, 386 S.C. 655, 661, 690 S.E.2d 582, 585 (Ct. App. 2010) (citation and internal quotation marks omitted). Though, "[h]istorically, a question concerning the existence of a cooling-off period fell within the province of the jury," our courts have determined "more recent jurisprudence permits the trial court to make that determination." *Id.* at 662, 690 S.E.2d at 586; *see also State v. Pittman*, 373 S.C. 527, 575, 647 S.E.2d 144, 169 (2007) ("While the law has not defined a bright-line rule for what constitutes a sufficient time for cooling off, this Court has determined that whether the defendant's actions during the intervening time between the provocation and the killing indicates the absence of sudden heat of passion is an appropriate question for the court.").

Even assuming *arguendo*, as Knight contends, that the verbal threat at the restaurant, combined with his belief that Victim had shot at his trailer two months prior to the fatal encounter, satisfies the sufficient legal provocation prong required for a voluntary manslaughter charge, we nonetheless find there is no evidence to support such a charge. While there is evidence Knight was in fear, there is no evidence he "was out of control as a result of his fear or was acting under an uncontrollable impulse to do violence" at the time he shot Victim. *Starnes*, 388 S.C. at 599, 698 S.E.2d at 609. Under Knight's own testimony, after Victim allegedly stated he was going to kill him, Knight walked out of the restaurant and to his car, during which time he discussed with another individual what Victim allegedly said to him. According to Knight, he informed that person of his belief that Victim was going to try to kill him and told her about a previous shooting at his trailer that resulted in the loss of his unborn child. Knight testified that as they reached the car, he felt like he could not live like that anymore — hiding and running from Victim. Knight then turned around and went back into the restaurant, walked up to Victim, placed his gun against Victim and shot him. Accordingly, Knight's testimony reveals he had removed himself from the vicinity of Victim, ruminated on what Victim had said to him and his belief that Victim had shot at his trailer two months previously, made his way to his car, and then made a conscious decision to return to the restaurant and shoot Victim. Essentially, Knight's testimony shows he did not shoot Victim in a sudden heat of passion, but that he did so after reflecting on his situation with Victim, noting he was tired of avoiding Victim and wanted to end the matter between the two of them by killing Victim. Thus, Knight's own testimony in this regard establishes he did not shoot Victim in a sudden heat of passion. Additionally, we note Knight testified he carried the gun concealed under his shirt when he first walked into the restaurant. Thus, had

Knight been under a sudden heat of passion at the time Victim verbally threatened him, he could have shot Victim at that moment. Instead, Knight walked away from the situation. Though Knight may have very well been fearful and afraid when he initially encountered Victim in the restaurant, he did not act "under an uncontrollable impulse to do violence" at which time he was "incapable of cool reflection as a result of fear," but acted "in a deliberate, controlled manner" when he returned to the restaurant and shot Victim. *Starnes*, 388 S.C. at 599, 698 S.E.2d at 609. As previously noted, if a person "act[s] in a deliberate, controlled manner, notwithstanding the fact that he is afraid or in fear," such does not constitute sudden heat of passion. *Id.*

2. Because Knight was not entitled to a voluntary manslaughter charge based upon the fact that there was no evidence he shot Victim in a sudden heat of passion, we need not reach the issues concerning whether the trial court erred in excluding evidence relevant to his state of mind. No matter what his state of mind at the time he encountered Victim in the restaurant, his actions thereafter show he did not shoot Victim in the sudden heat of passion. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues on appeal when its determination of a prior issue is dispositive).

AFFIRMED.

HUFF, SHORT, and KONDUROS, JJ., concur.



The South Carolina Court of Appeals

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April 22, 2015

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: The State v. Rajerick Knight
Lower Court Case No. 2011GS0701673, 2011GS0701674
Appellate Case No. 2012-213529

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.

The exhibit being returned is: State's Exhibit #10 - Disc. Please sign the attached copy of this letter and return to acknowledge receipt of this item.

Very truly yours,

V. Claire Allen, Deputy

CLERK.

Enclosure

cc: Robert Michael Dudek, Esquire
Isaac McDuffie Stone, III, Esquire
Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire
Kathleen Fowler Monoc, Esquire
Kaycie Smith Timmons, Esquire
John W. McIntosh, Esquire
Laura Ruth Baer, Esquire

Receipt Acknowledgement:

Name _____ Date _____

Name: _____
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FORM 5

STATE OF SOUTH CAROLINA)

County of Beaufort)Royrich Knight #353409)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2015-CP-07-1903
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEF2015 AUG -3 PM 2:58
CLERK OF COURT
SOUTH CAROLINA**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
2. Name and location of Court which imposed sentence Beaufort South Carolina
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Sentence Was Imposed,
 - (b) 2011-GS-07-1673

- (c) 2011-GS-07-1674
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 29, 2012
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (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. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed Direct Appeal
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 1, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE Assistance OF Trial Counsel
- (b) Violated 6th and 14th Amendment
- (c) Will Amend later
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction: Appeal
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? None
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? None
- (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. Court of Direct Appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Court of Appeal
- ii. Post office Box 11549
- iii. Columbia South Carolina 29211
- iv. _____

(c) the disposition thereof:

- i. Appeal was Dismissed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. April 1, 2015
- ii. _____
- iii. _____
- iv. _____

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

- i. N / A
- 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. N / A
- ii. _____
- iii. _____

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

- i. N / A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) See ABOVE
(b) _____
(c) _____

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

- (a) your arraignment and plea? NO
(b) your trial, if any? Yes
(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?
N / A

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. None
ii. Arle Bax Beaufort S.C.
iii. Katie Monoc, Pratt-Thomas Gpting & Walker
16 Charlotte st. Charleston S.C. 29403-6331
(b) the proceedings at which each such attorney represented you:
i. ~~Arle Bax~~ N / A
ii. Trial Attorney
iii. Appellate Defender

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

Sentence Vacated

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

None

STATE OF SOUTH CAROLINA)

County of

Beaufort)

VERIFICATION

I, _____, 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.

Rajiv J. Patel

SWORN to and subscribed before me this 29
day of July, 2015.

Lillian S. Glover (L.S.)
Notary Public

My Commission Expires: March 4, 2025

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- ☒ (1) I am the applicant in this action and I believe I am entitled to redress.
- ☒ (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

29 day of July, 2015.


Notary Public

My Commission Expires: March 4, 2025

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2015-CP-07-1903

RETURN

In response to the post-conviction relief application filed on August 3, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The Applicant was indicted by the October 2011 term of the Beaufort County Grand Jury for one (1) count of Murder and one (1) count of Possession of a Weapon During the Commission of a Violent Crime (2011-GS-07-1673, -1674). Arie Bax, Esquire, represented him. On November 26, 2012, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable D. Craig Brown sentenced the Applicant to confinement for life for the count of Murder and five (5) years for the count of Possession of a Weapon During the Commission of a Violent Crime. The sentences run consecutively.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals

affirmed Applicant's conviction and sentence. State v. Knight, Op. No. 2015-UP-170 (filed on April 1, 2015). The Remittitur was issued on April 1, 2015.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
2. "Violated the 6th and 14th Amendment (sic)"

For the purpose of this Return, the Respondent incorporates the application, the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegations as alleging ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent interprets Applicant's second claim as an allegation that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon

which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

[Signature Block on Following Page]

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

May 13, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
RAJERICK KNIGHT, #353409,)
Applicant,)
vs)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS

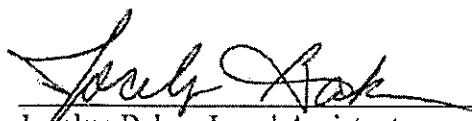
2015-CP-07-1903

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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402-1058

DATED this 13th day of May, 2016.


Joelynn Baker, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
Rajerick Knight, #353409,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2015-CP-07-1903

MOTION FOR DISCOVERY

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 August 3, 2015. The State filed a Return on May 13, 2016. Undersigned was substituted in as counsel via written Order dated January 10, 2018. Thereafter, counsel sent a written request for the file of Arie Bax, Esquire. A response has not been received.

To ensure that Applicant and counsel have 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. A complete copy of the file maintained by Arie Bax, Esquire, to include any reports or records generated by any and all investigators retained on Applicant's behalf.
2. A complete copy of the Beaufort County Solicitor's file. If not contained therein, a complete copy of the Beaufort County Sheriff's Department file.
3. A complete copy of the State Law Enforcement Agency (SLED) file.

2018 MAY 7 7 PM 1:01
JEROME ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

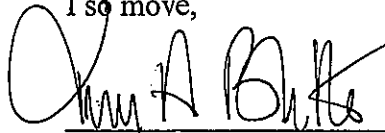
4. A complete copy of all records maintained by the Beaufort County Clerk of Court.
5. The opportunity for Applicant's counsel, private investigator and potential expert(s) to review the evidence maintained with SLED, local law enforcement and/or the Beaufort County Clerk of Court.

Applicant would further request the opportunity for his counsel, private investigator and/or expert(s) to review any and all requested materials that cannot be copied or provided to counsel. Additionally, 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 for counsel, private investigator, and potential expert(s) 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

May 3, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Rajerick Knight, 353409,)
Applicant,)

2015-CP-07-1903

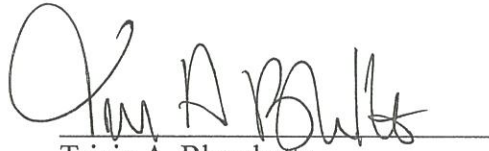
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the mail this 3rd day of May 2018 a Motion for Discovery to Christian Saville of the Attorney General's Office, at:

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



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

May 3, 2018

2018 MAY -7 PM 1:01
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
Rajerick Knight, #353409,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2015-CP-07-1903

ORDER AUTHORIZING DISCOVERY

2018 JUL -2 PM 12:55
CLERK OF COURT
BEAUFORT COUNTY, S.C.
ROSEMARY ADAMS

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on August 3, 2015. The State filed a Return on May 13, 2016. Tricia A. Blanchette was substituted in as counsel for Applicant on January 10, 2018. On May 7, 2018, Applicant, through counsel, filed a Motion for Discovery.

On June 5, 2018, a motion hearing was held at the Beaufort County Courthouse in front of the Honorable Diane S. Goodstein. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Christian Saville, Esquire.

As was addressed in the written Motion, Applicant's counsel explained the basis for her request for discovery. Respondent's counsel explained that the State objected to the request for the Solicitor's file since no specific allegations had been made regarding prosecutorial misconduct. Both parties agreed that discovery be limited to those items discoverable during the underlying criminal case and that trial counsel should not bear the financial burden of producing the file.

Therefore, to ensure that Applicant and his counsel have the case materials needed to properly prepare his case for an evidentiary hearing, this Court finds that Applicant shall be afforded 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. A complete copy of the file maintained by Arie Bax, Esquire, to include any reports or records generated by any and all investigators or experts retained on Applicant's behalf.
2. A complete copy of the Beaufort County Solicitor's file. If not contained therein, a complete copy of the Beaufort County Sheriff's Department file.
3. A complete copy of the State Law Enforcement Agency (SLED) file.
4. A complete copy of all records maintained by the Beaufort County Clerk of Court.
5. The opportunity for Applicant's counsel, private investigator and potential expert(s) to review the evidence maintained with SLED, local law enforcement and/or the Beaufort County Clerk of Court.

If copies cannot be made of items in the file, 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. Applicant is to bear the financial burden of trial counsel producing the file.

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 any party in receipt of a subpoena pursuant to this Order may file a timely objection with the Chief Administrative Judge for the Fourteenth Judicial Circuit.

AND, IT IS SO ORDERED.

6-21, 2018



Honorable Diane S. Goodstein
Judge, Fifteenth Judicial Circuit

Case number 2015-CF-07-1903

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort

Rajerick Knight, #353409,

Plaintiff,

vs.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-07-1903

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

2020 MAR 16 PM 12:38
CLERK OF COURT
BEAUFORT COUNTY, S.C.
JERRI ANN ROSENEAU

Plaintiff's Attorney:
Tricia A. Blanchette, Bar No. 74904
Address:
PO Box 2147
Leesville, SC 29070
Phone: 803-908-3266 Fax _____
E-mail: Blanchettelaw@gmail.com Other: _____

Defendant's Attorney:
Ben Limbaugh, Bar No. _____
Address:
PO Box 11549
Columbia, SC 29211
Phone: 803-734-3737 Fax _____
E-mail: _____ Other: _____

- ☒ **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: Amendment

Estimated Time Needed: 4-6 hours

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

March 12, 2020
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, SCRCP)
☐ 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 BEAUFORT)	FOURTEENTH JUDICIAL CIRCUIT
Rajerick Knight, #353409,)	
Applicant,)	2015-CP-07-1903
v.)	
State of South Carolina,)	AMENDMENT TO APPLICATION
Respondent.)	FOR POST CONVICTION RELIEF

2020 MAR 16 PM 12:38
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

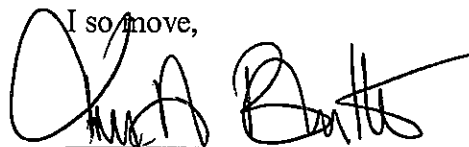
This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on August 3, 2015. The State filed a Return on May 13, 2016. Undersigned was substituted in as counsel via written Order dated January 10, 2018.

Applicant, through counsel, would move to amend his Application, as addressed below. Additionally, Applicant would ask the Court for the relief in the form of having his conviction and sentences vacated to allow for a new trial and/or whatever relief the Court deems proper. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

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 counsel:

1. Ineffective assistance of trial counsel for failure to obtain all necessary information to properly strike jurors, which resulted in the seating of jurors with media exposure and the denial of the motion for change of venue.
2. Ineffective assistance of trial counsel for failure to effectively present Applicant's primary defenses, to include failure to effectively utilize a mental health expert in trial and sentencing.

3. Ineffective assistance of trial counsel for failure to object to improper burden shifting statements to the jury by the court and the State's waiver of first closing argument.
4. Ineffective assistance of trial counsel for failure to offer further testimony regarding the 2011 incident to the jury.
5. Ineffective assistance of trial counsel for opening the door to the Solicitor's cross-examination of Applicant regarding a prior shooting incident.
6. Ineffective assistance of trial counsel for failure to request a proper inferred malice instruction and failure to object to the instruction given to the jury.

I so move,


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

March 12, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
Rajerick Knight, 353409,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

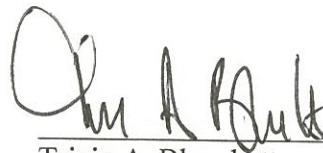
2015-CP-07-1903

CERTIFICATE OF SERVICE

2020 MAR 16 PM 12:38
JERRI ANN ROSE
BEAUFORT COUNTY, S.C.
CLERK OF COURT

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the mail this 12th day of March 2020 an Amendment to Application for Post Conviction Relief to Ben Limbaugh of the Attorney General's Office, at:

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



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

March 12, 2020

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2015-CP-07-1903

)

(

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November 17, 2020
Beaufort, South Carolina
(Via Webex)

1

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

Benjamin H. Limbaugh, Esquire
Attorney At Law
1000 Assembly Street
Columbia, South Carolina 29201
(803) 734-7437

750

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2

3 THE COURT: I understand there's been a little
4 change of circumstance. We need to -- Mr. Limbaugh,
5 you've been speaking with the Defense Counsel?

6 MR. LIMBAUGH: That's correct, Your Honor. The
7 dispatch told me there's been a little bit of a
8 situation come up with her first witness in terms of
9 some of the things we talked about previously.
10 Defense Counsel has reviewed her statement, and my
11 understanding from talking to Ms. Blanchette is that
12 she's essentially going to testify on direct,
13 verbatim to that statement, so I'm perfectly fine
14 just going ahead and getting her out of the way so
15 we can get this in gear and rolling, Your Honor.

16 THE COURT: Okay. Well, let's proceed then.
17 Ms. Blanchette, do you want to call your first
18 witness? Your muted, Ms. Blanchette. We can't --
19 there you go. Now you're unmuted.

20 MS. BLANCHETTE: It would not let me unmute, so
21 I was just smiling and nodding hoping that would
22 make sense. Yes, Your Honor, if I could just let
23 the witness know that we are going to do that,
24 because they were arranging that, and I will just
25 send a quick message saying, please -- I'm going to

1 call her as a witness.

2 THE COURT: Okay.

3 MS. BLANCHETTE: I appreciate this, Your Honor.

4 THE COURT: Sure.

5 THE WITNESS: I'm here.

6 MS. BLANCHETTE: Yes, Your Honor. It's my
7 understanding I'm going to call her as a witness and
8 then we'll get back into introductory statements and
9 things like that, but at this time, on behalf of the
10 applicant who is Rajerick Knight, I would like to
11 call Deshaunaka Allen as a witness.

12 THE COURT: Okay. Where is she?

13 THE WITNESS: I'm here.

14 THE COURT: Okay. Ma'am, if you would please,
15 raise your right hand. I trust that you've done
16 that. Do you swear or affirm to tell the truth, the
17 whole truth and nothing but the truth?

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay. If you would, please state
20 your full name for the record.

21 THE WITNESS: My name is Deshaunaka Allen.

22 THE COURT: Okay. All right.

23 DESHAUNAKA ALLEN,
24 having been duly sworn,
25 testifies as follows:

1 DIRECT EXAMINATION

2 BY MS. BLANCHETTE:

3 Q Ms. Allen, the Court already asked you where you
4 are located. Where are you located today? In what
5 city and state?

6 A I'm in Jacksonville, Florida.

7 MS. BLANCHETTE: And, Your Honor, just for your
8 information and for the record, we have previously
9 discussed this matter with Judge Jefferson and she
10 recommended that our private investigator, Peter
11 Skidmore, go to Florida to prove that the witness
12 was available, and he is there today and can attest
13 to that, too, if needed.

14 THE COURT: All right.

15 BY MS. BLANCHETTE:

16 Q Ms. Allen, I would like to ask you, go back with
17 you to a time around May of 2011, but first I want
18 to ask you, did you recently give a statement to
19 Peter Skidmore on October 24th, 2020, about an
20 incident you witnessed in May of 2011?

21 A Yes, I did.

22 Q Mr. Skidmore is also present with you there
23 today. Is that correct?

24 A Yes.

25 Q Okay. Now, I want to first ask you, before we

1 talk about that incident in any detail, how is it
2 that you know Rajerick Knight, the applicant in this
3 action?

4 A Rajerick Knight is the father of my nephew and
5 the ex-boyfriend of my twin sister.

6 Q What is your twin sister's name?

7 A Lashonika Allen.

8 Q And Ms. Lashonika Allen testified at the trial
9 of Rajerick Knight. Is that correct?

10 A That is correct.

11 Q Were you present at that trial as well?

12 A Yes, ma'am. I was present.

13 Q Were you present because you anticipated needing
14 to testify?

15 A Yes, ma'am.

16 Q At the beginning of the trial, your name is
17 actually listed as a potential witness to the jury,
18 so you were aware that you may be called as a
19 witness in that case?

20 A Yes, ma'am. I was aware.

21 Q Okay. Did you have the opportunity to ever meet
22 with Arie Bax or anyone from his team prior to the
23 trial of Rajerick Knight?

24 A No.

25 Q Okay. But you were there, and you did have

1 knowledge that you potentially may be needed to
2 testify?

3 A Yes.

4 Q Were you aware that you were going to be needed
5 to testify about an event that took place in May of
6 2011?

7 A Yes, ma'am.

8 Q This was an event that took place at the trailer
9 where your sister was living?

10 A Yes, ma'am.

11 Q If you could just walk us through what it was
12 that you witnessed that day that you were willing to
13 testify to at Rajerick Knight's trial?

14 A That day I was with my sister and we were in the
15 living room, and we were discussing and doing a few
16 things. And I was supposed to be leaving that
17 night, and so I was on the -- I was trying to get in
18 contact with my grandmother, which is -- I call her
19 my mother because she raised me, but I was -- we
20 were supposed to leave that night, so I was getting
21 in contact with her as well as spending some time
22 with my sister. And in the middle of that -- in the
23 middle of spending time with her, we heard a knock
24 on the door. And me, as already getting ready to
25 leave, I looked out the blinds and I see the victim,

1 Travie, and he began to bam, like, to a point where
 2 I didn't feel safe or I didn't want to open the
 3 door, just put it like that. I didn't want to open
 4 the door because of how he was bamming, and I began
 5 to go to the window. I seen multiple cars outside,
 6 so I didn't feel comfortable going out of the door
 7 because of the bamming. And eventually, my
 8 grandmother pulled up and I went outside, and as we
 9 were -- I went outside and got in the car and as we
 10 were pulling off, I seen the victim, Travie, he was,
 11 like, under a light pole and he got out of a white
 12 truck, looked like a while SUV, and began firing
 13 into the home of my sister.

14 Q Okay. Did you later have any ability to confirm
 15 that a shooting had taken place, or did you find out
 16 later that a shooting had taken place at your
 17 sister's residence?

18 A Yes, I was trying to get in contact with my
 19 sister, but eventually that night she called and we
 20 spoke, and she did confirm that there was a shooting
 21 in the house.

22 Q At Mr. Knight's trial, it was brought out that
 23 there was a shooting that occurred in May of 2011,
 24 May 30th, to be exact, where your sister then
 25 ultimately lost the baby she was carrying as a

1 result of her -- of that shooting. Is that correct?

2 A Yes, ma'am. That's correct.

3 Q That is the incident that you're talking about,
4 the night where your sister lost her baby?

5 A Yes, ma'am.

6 Q Okay. I think you said it, but I just want to
7 make sure we're clear because we are doing this over
8 an audio connection. You used the name, Travie, but
9 do you know that individual's full name?

10 A Yes, I know his full name. I know him through
11 marriage. He's a part of the family, so I know him
12 through marriage, and I know exactly who I saw and I
13 know him through marriage and through the family, so
14 yes, ma'am, I know his name.

15 Q And that was -- and his full name is what?

16 A Travis Sentell (phonetic) Holmes.

17 Q And that is the person that Mr. Knight was
18 convicted of killing in this case. Is that correct?

19 A Yes.

20 Q Would you have been willing to testify to all of
21 these facts if you were called as a witness at the
22 trial of Mr. Knight?

23 A Yes.

24 Q Were you ever given any reason why you were not
25 called as a witness?

1 A I was not given a reason why, no.

2 Q Okay.

3 MS. BLANCHETTE: Your Honor, this is my first
4 full-fledged virtual hearing. What I had arranged
5 with my client, as typically when I'm sitting at the
6 table, I would lean over and ask if he has any other
7 questions. Is it okay if I do that at this time,
8 and if he does, then we've arranged where he can
9 call me on my phone if there's anything further he
10 needs me to ask a witness.

11 THE COURT: Yes, that will be fine.

12 MS. BLANCHETTE: Mr. Knight, is there anything
13 you need to discuss with me before I conclude my
14 questioning of this witness?

15 THE COURT: He is muted, so for the record, we
16 need him to unmute and speak.

17 MR. KNIGHT: No, ma'am.

18 THE COURT: Okay.

19 MS. BLANCHETTE: Your Honor, that concludes my
20 direct examination of Ms. Allen.

21 THE COURT: All right. Cross-examination,
22 Mr. Limbaugh?

23 MR. LIMBAUGH: May it please the Court, Your
24 Honor?

25 THE COURT: Yes.

1 CROSS-EXAMINATION

2 BY MR. LIMBAUGH:

3 Q Good morning, Ms. Allen. I appreciate you being
4 with us.

5 A Good morning.

6 Q Just briefly, do you know where Mr. Knight was
7 when this incident occurred?

8 A No.

9 Q Okay. Do you know if he was in the residence
10 with your sister at all?

11 A Yes, I did see him in the residence, but at the
12 exact moment when I was leaving, I don't know
13 exactly where he was standing, but he was in the
14 residence, from my understanding, yes.

15 Q What did you do -- who did you talk to
16 immediately after the shooting had occurred?

17 A Who did I speak to?

18 Q Yes.

19 A I didn't speak to anyone. I got in the car with
20 my grandmother and I left.

21 Q Okay. Did you have any conversations with
22 Mr. Knight about who you saw commit the shooting?

23 A No, I haven't spoken to him in a while. Yes.

24 Q So, you saw a man shoot up your sister's house
25 and you didn't tell Mr. Knight that -- who it was?

1 A I didn't saw [sic] a man, I saw Travie shoot up
2 her house, and at the time that I saw Travie, I was
3 to the head of the road.

4 Q So, you're correct, not just some man, you knew
5 exactly who it was and you didn't think to tell
6 Mr. Knight that that was who it was who shot up your
7 sister's house?

8 A No, I didn't have a conversation with him about
9 that, no. And -- no, I did not think -- no.

10 Q Any particular reason why you wouldn't think
11 that would be relevant information for him to know,
12 or just didn't think to?

13 A No, I didn't -- I just believed that that wasn't
14 my place. I just believed that that wasn't my place
15 to go and tell him that, "Hey, this person did" --
16 it was multiple people outside, it was multiple cars
17 outside. Yes, I did see him, but I didn't think it
18 was my place.

19 Q Okay.

20 A And besides, he was already knocking on the door
21 previously. He was already knocking on the door
22 previously, and we all knew he was knocking on the
23 door. So, like, we've never had a conversation
24 about that.

25 Q Did you actually see the victim shooting a

1 weapon at the house?

2 A Did what?

3 Q Did you actually physically see the victim
4 pulling the trigger and shooting a weapon at your
5 sister's house, or did you just see him at the same
6 location?

7 A No, I physically saw him with a weapon in his
8 hand pointing at my sister's house.

9 Q Did you see him shoot the house though?

10 A I saw him pointing a weapon at my sister's
11 house.

12 Q Okay. That's all I have for this witness, Your
13 Honor.

14 THE COURT: Any redirect?

15 MS. BLANCHETTE: Very briefly, Your Honor.

16 THE COURT: All right.

17 REDIRECT EXAMINATION

18 BY MS. BLANCHETTE:

19 Q Ms. Allen, you said you were at the trial and it
20 was your understanding that you could be a potential
21 witness at that trial. Is that correct?

22 A Yes.

23 Q And you would have been willing to testify to
24 this information and to let everyone know that you
25 saw Mr. Holmes shooting a weapon at your sister's

1 house that night?

2 A Yes.

3 Q You said on cross-examination that you didn't
4 think it was your place to tell Mr. Knight, but you
5 did communicate that information prior to his trial.
6 Is that correct?

7 A Can you say that one more time? I'm sorry.

8 Q I'm just summarizing your cross-examination.
9 The State asked you why you didn't tell Mr. Knight,
10 but you had communicated that information prior to
11 his trial, that you saw Mr. Holmes shooting at the
12 trailer. Is that correct?

13 A Yes.

14 Q Who did you tell that to?

15 A I had one conversation in the office with, I
16 believe that was his defense attorney, I mean,
17 defense at that time, and I had no prior
18 conversations with them and -- or anything.

19 Q So, you let the defense attorney know what you
20 knew?

21 A Yes.

22 Q But they didn't ever call you and further
23 interview you or prepare you for trial?

24 A No, they didn't.

25 Q You made his defense attorney aware of this

1 information that you've testified to today?

2 A Yes, he was fully aware of the situation and
3 what happened, yes.

4 Q Okay. I was just trying to connect the dots
5 that you didn't tell Mr. Knight, as came out of
6 cross- examination, how you knew -- how it came to
7 be that you were on the witness list. I have no
8 further --

9 A You don't just go around and say, hey, I saw
10 this person, I saw that person. You don't do that.

11 Q And in his closing argument, the defense
12 attorney talked about the fact that this was a
13 neighborhood where people didn't talk, and is that
14 what you were alluding to in your answer?

15 A Yes.

16 MS. BLANCHETTE: Your Honor, I believe I have no
17 further questions.

18 THE COURT: All right. Anything else,
19 Mr. Limbaugh?

20 MR. LIMBAUGH: Nothing, Your Honor.

21 THE COURT: All right. Ms. Allen, thank you
22 very much and take care of yourself.

23 THE WITNESS: Okay, I will. Thank you.

24 THE COURT: Okay. I guess we're going to wait
25 for defense counsel to show up. Have you heard

1 anything more, Mr. Limbaugh?

2 MR. LIMBAUGH: I have not, Your Honor. I'm
3 going to try and call his office again during this
4 recess.

5 THE COURT: Okay. We will take a short recess.
6 (Whereupon, a brief recess is taken.)

7 THE COURT: Yes, sir?

8 MR. LIMBAUGH: We have some information and
9 things we need to talk to Judge Miller about.

10 THE COURT: Okay. Have at it.

11 MR. LIMBAUGH: Okay, Your Honor. So, if we
12 could do this just briefly off the record, because
13 Ms. Blanchette and I are trying to figure out how in
14 the world to handle this; to be frank?

15 (Whereupon, an off-the-record discussion takes
16 place.)

17 THE COURT: Okay. Ms. Blanchette, call your
18 next witness, please.

19 MS. BLANCHETTE: Your Honor, not to forget the
20 Court's instructions, but do we need to do the call
21 of the case and the introduction at any point or do
22 you want me to go forward with Dr. Maddox first?

23 THE COURT: Well, I guess, yes. Technically,
24 yes, we ought to call the case. Mr. Limbaugh, would
25 you go ahead and tell me about it. This is Rajerick

1 Knight versus the State, and it's 2015-CP-07-1903.
2 This is a post-conviction relief hearing. And do
3 you all want to make opening statements or how do
4 you all want to proceed?

5 MS. BLANCHETTE: Your Honor, very briefly, I had
6 an outline that I had provided and just a short
7 amendment that I needed to make, and then I'm happy
8 to jump right into the testimony of Dr. Maddox. I
9 just wanted to put on the record what I had provided
10 to the Court prior to this hearing.

11 THE COURT: Okay. I am looking at your outline
12 and I have reviewed the other documents, one of
13 which was Dr. Maddox's report, I believe, and right
14 off the top of my head I can't remember the other
15 two. I think there were four separate things. If
16 there's anything you wanted to say, go ahead and
17 then we'll jump right in.

18 MS. BLANCHETTE: Yes, Your Honor. One of the
19 documents I had provided was an amendment that was
20 filed March 16th, 2020. So, it's my understanding
21 Your Honor has a copy of that and I provided that to
22 the court reporter as well. Those are the
23 allegations that we're going forward on today, but I
24 did make an error in one of them, and the State has
25 agreed it's okay for me to verbally amend that

1 today. Claim Number 3 should read, "In effect of
2 assistance of trial counsel for failure to object to
3 improper and burden shifting statements to the jury
4 by the Court and the State and the State's waiver of
5 first closing argument." I just omitted a couple of
6 words in that allegation that make it make a little
7 bit more sense if you added that language there.

8 THE COURT: All right. It's in the record now.
9 Any objections to that, Mr. Limbaugh?

10 MR. LIMBAUGH: No objection, Your Honor.

11 THE COURT: Okay.

12 MS. BLANCHETTE: And then, Your Honor, you
13 already referenced I provided in advance today a
14 four-page outline. I provided that to Mr. Limbaugh
15 and Mr. Bax. My client has a copy as well. Since
16 we're going to virtual and all not in the same
17 place, I just thought that this would be a good
18 reference item for each of us to have. I don't know
19 if the Court wants to mark it as a Court's Exhibit
20 so the record is clear as to what I'm talking about,
21 but I just recorded procedural history, the appeal,
22 the issues raised on appeal and the decision, so the
23 Court could have that as a reference in front of
24 you. Then I went through each of the issues. I
25 gave transcript citations for portions of the

1 transcript that I will reference throughout the
 2 hearing with the witnesses, just so that you have
 3 those. There may be additional citations, but I
 4 just wanted to give the ones that I anticipated
 5 referencing. And then for several of the issues,
 6 I've also listed the cases that I typically would
 7 have handed up either at the beginning or the end of
 8 the case, as references for the Court on those
 9 allegations. If the Court doesn't have any
 10 questions on that, I just wanted to make sure that I
 11 made that part of the record, that I had provided
 12 that information.

13 THE COURT: Okay. It may be that -- it is a
 14 very impressive outline. It may be that we require
 15 you to present one of those in every single PCR you
 16 do from here on.

17 MS. BLANCHETTE: Your Honor, once I'm in front
 18 of a Judge, they tend to ask for one, so I'll note
 19 that you've asked for them from here forward.

20 THE COURT: Okay.

21 MR. LIMBAUGH: Your Honor, the State would just
 22 note that it's, of course, a very helpful reference
 23 from Ms. Blanchette, but it's not a complete
 24 citation at all of the relevant testimony
 25 potentially, and the record would be dispositive,

1 and the State would also just ask that the Court on
2 the record take judicial notice of the documents
3 that the Judge's packet that the State has provided,
4 that those include the direct appeal records in
5 there, Your Honor.

6 THE COURT: Okay. I will do all of that. All
7 right?

8 MS. BLANCHETTE: Your Honor, the final thing is,
9 this is my first full evidentiary hearing in a
10 virtual platform. I understand the orders by the
11 Chief Justice and I understand the global pandemic,
12 but I did want to put on the record that Mr. Knight
13 has been in quarantine for three of the four weeks
14 prior to this hearing due to Covid.

15 THE COURT: Okay.

16 MS. BLANCHETTE: We were able to have a virtual
17 meeting just in this last week and then two phone
18 calls. Prior to that, we were able to virtually
19 meet with Dr. Donna Maddox and prepare him on the
20 platform, and I've done the best that I can, even
21 though I can't go meet with my client to ensure that
22 I am protecting his rights and properly presenting
23 his case. But, if at a later time, he feels that
24 that was not done properly, I just want to put on
25 the record what we have tried to do, but we're

1 obviously limited by this global pandemic, and so I
2 wanted to make sure I made a record of that for him.

3 THE COURT: Okay. Let me ask Mr. Knight, you've
4 heard what your attorney has related to me, and do
5 you have any objection with going forward with the
6 hearing as it is today?

7 MR. KNIGHT: Yes, sir. I understood what she
8 said and, no, sir, I don't have any problem with
9 going forward.

10 THE COURT: Okay. Well, if at any time during
11 the hearing you need to express some dissatisfaction
12 with the limitations of this virtual hearing, please
13 let us know. Okay?

14 MR. KNIGHT: Yes, sir.

15 THE COURT: All right. Very good. Anything
16 else, Ms. Blanchette?

17 MS. BLANCHETTE: No, Your Honor. I think that
18 covers everything that was a concern that I thought
19 needed to be on the record just to make sure we make
20 a record because I know we're not all together.
21 Your Honor, at this time I am prepared to call Dr.
22 Maddox.

23 THE COURT: All right, we will. And Mr.
24 Limbaugh, anything that you would --

25 MS. BLANCHETTE: I apologize.

1 THE COURT: That's all right.

2 MR. LIMBAUGH: Just very briefly, Your Honor,
3 and mostly just for the record. I do always state
4 in my PCR cases where Dr. Maddox arises that I did
5 clerk for Judge Cordell Maddox. I do know
6 Dr. Maddox on a personal level. It has never
7 affected our professional relationship or anything
8 of that nature, and I'd just like to put that on the
9 record just because it's a personal relationship
10 that I've had with Judge Maddox and Dr. Maddox, so
11 just to put it on the record, Your Honor.

12 THE COURT: Well, I would just say that you've
13 recovered remarkably well, Mr. Limbaugh.

14 MR. LIMBAUGH: I appreciate that, Your Honor,
15 and I hear it all too often.

16 THE COURT: Okay. Ms. Blanchette, go ahead.

17 MS. BLANCHETTE: Your Honor, Mr. Limbaugh just
18 reminded me it's my understanding the State is going
19 to stipulate for the qualifications of Dr. Donna
20 Maddox. I can go through that after I call her.

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

22 THE COURT: Okay. All right. Go ahead.

23 MS. BLANCHETTE: Your Honor, I would call
24 Dr. Donna Maddox to the stand.

25 THE COURT: All right. Dr. Maddox, if you

1 would, raise your right hand. Do you swear to tell
2 the truth, the whole truth and nothing but the
3 truth?

4 THE WITNESS: I do.

5 THE COURT: All right. Thank you, ma'am. If
6 you would, state your full name for the record.

7 THE WITNESS: Donna, middle name, Schwartz, S-c-
8 h-w-a-r-t-z, last name, Maddox, M-a-d-d-o-x.

9 THE COURT: Thank you, ma'am.

10 MS. BLANCHETTE: Your Honor, at this time, I
11 would move to qualify Dr. Maddox as an expert in the
12 area of forensic psychiatry. Is that the correct
13 qualification, Dr. Maddox?

14 THE WITNESS: Yes.

15 THE COURT: All right, and I understand that is
16 without objection?

17 MR. LIMBAUGH: Yes.

18 THE COURT: All right.

19 DONNA SCHWARTZ MADDOX,
20 having been duly sworn,
21 testifies as follows:

22 DIRECT EXAMINATION

23 BY MS. BLANCHETTE:

24 Q Dr. Maddox, if you can just first take me
25 through how you got involved in this case and then

1 what you did in this case?

2 A Certainly. Your office contacted me probably in
3 December of 2018. You sent me a packet of
4 information, including the -- his appellate
5 decision, the appellate final brief, Mr. Knight's
6 South Carolina Department of Corrections records. I
7 had a transcript of the hearing from 2012, and I had
8 the sentencing sheets. Then I went to Lieber
9 Correctional Institute on January 23rd, 2019, and I
10 evaluated Mr. Knight. I wrote a report, and then I
11 saw him again on -- because of the mental illness I
12 diagnosed him with and because of Covid and those
13 sorts of things and it had been some period of time
14 since I had seen him, I evaluated him again on
15 September 21st virtually and he was, I believe,
16 probably in the same room that he is today. And I
17 amended the report after I saw him again.

18 Q During these meetings with Mr. Knight, what was
19 the relevant information that you were able to
20 obtain from him?

21 A Well, you would ask for a psychiatric
22 evaluation. Judge Miller, based on the testimony
23 I'd read from the trial transcript -- Dr. Martin, he
24 had been seen by a forensic psychiatrist, Dr. Thomas
25 Martin, whom I am familiar with, and Dr. Martin had

1 testified that Mr. Knight did not have mental
2 illness. I performed just a routine psychiatric
3 evaluation, looking for any diagnosis and anything
4 that was pertinent to these proceedings, and I did
5 diagnose him with mental illness. It's my opinion,
6 to a reasonable degree of medical certainty, he
7 suffers from post-traumatic stress disorder, and
8 that was not -- it was relevant to his proceedings
9 and it was not diagnosed by Dr. Martin.

10 Q Can you take us out to how you reached that
11 diagnosis?

12 A Absolutely. I just know from doing this job for
13 30 years, that PTSD is often undiagnosed in male
14 populations, offender populations, juvenile
15 populations, actually all populations. You have to
16 ask. When people have been traumatized, you have to
17 ask a very specific trauma history. I don't say,
18 "Have you ever, you know, had anything bad happen to
19 you," because people who have been traumatized or
20 exposed to chronic trauma, they don't know whether
21 that's bad or not or whether something is traumatic
22 or not. So, I've learned over the years to ask
23 very, very specific questions. My questions are
24 things like, "Tell me every single time you've ever
25 seen a gun, a gunshot, seen a gun fired." "Describe

1 any time you've seen anyone get stabbed." "Describe
2 if you've ever been in any car wrecks." "Describe
3 if you've ever witnessed any fights between your
4 parents," etc. So, I ask a very specific trauma
5 history, and when I asked that trauma history to Mr.
6 Knight, he certainly gave a history of -- prior to
7 this offense, Your Honor, he had been exposed to
8 domestic violence as child. From ages six through
9 nine, he witnessed -- his mother was married to --
10 he had a stepfather named George, and he would often
11 witness some domestic violence within the household,
12 and that affected him. He has all the symptoms of
13 PTSD, so I thought it was very important in
14 obtaining his history that we know that prior to
15 this offense, he had pre-existing post-traumatic
16 stress disorder. And then, of course, you take the
17 offense that happened, that was a very traumatic
18 time. He had reported being threatened by the
19 victim in this case and there was instances of
20 violence, as, I think, the witness had supplied a
21 little bit earlier, that there had been some prior
22 episodes of violence of the victim towards the
23 Defendant or the applicant in this case. So, I
24 think those things are very important and pertinent
25 to his case.

1 Q You did have the opportunity to review the
2 records from Dr. Martin in this case. Is that
3 correct?

4 A Yes.

5 Q Did you see any notes or any information
6 regarding that trauma history that you just
7 discussed?

8 A No. There was no trauma history reported or
9 that I visualized in his work.

10 Q Okay, and that was significant in you reaching
11 your diagnosis. Is that correct?

12 A Yes.

13 Q Is there anything further from your interaction,
14 any further information that you were able to obtain
15 from your interaction or evaluations of Mr. Knight
16 that you would like to share with the Court before
17 we go into your further findings?

18 A No, other than there was -- there was -- he was
19 certainly abusing marijuana, and I don't recall if
20 Dr. Martin had testified to that. That's very
21 common with PTSD. Very high rates of comorbid
22 substance abuse. People try to self-medicate, so he
23 had had some prior marijuana use. He had also had a
24 prior legal history I was aware of, as well.

25 Q You did indicate about the fact that Dr. Martin

1 addressed kind of the fear or the situation
2 involving the victim, but were you able to get even
3 further information from Mr. Knight regarding that
4 than what Dr. Martin testified to?

5 A Absolutely.

6 Q Can you explain to us what you found out
7 regarding that?

8 A Sure. One of the symptoms of post-traumatic
9 stress disorder, it's called autonomic arousal, and
10 what that means, we know a lot about post-traumatic
11 stress disorder now. It opens up a brain system
12 called our limbic system and it kind of activates
13 it. That's the best way to put it. So, the limbic
14 system is this unique system to our brains that
15 involves -- it has a number of glands, it involves
16 your temporal lobes, it involves your frontal lobes,
17 it's a complex brain system. And what PTSD is, is
18 when someone is exposed to a trigger or some kind of
19 cue that stimulates anxiety, persons with PTSD, that
20 anxiety lasts longer. It doesn't last the same
21 amount of time as someone that doesn't have PTSD.
22 So, the best example I give is if you're almost in a
23 car wreck, if you're driving down the road and
24 someone cuts you off and you almost get in a wreck,
25 everyone knows what -- that's what autonomic arousal

1 is. You become very anxious, your heartrate
2 increases, you're shaken up for a bit. It might be
3 hard to concentrate. But persons with PTSD, those
4 symptoms last longer. Also, with PTSD, that's very
5 significant in this case, is people get paranoid.
6 When they're exposed to something that can remind
7 them of past violence or they have autonomic
8 arousal, you can get very paranoid with those things
9 and fear. So, I think his fear was more intense
10 than someone that doesn't have PTSD, and I think his
11 fear was prolonged compared to someone without PTSD,
12 and I think the autonomic arousal he had lasted
13 longer and was more intense than someone without
14 PTSD. So, the best way to think about it is, his
15 emotional reaction to this was much more intense
16 than someone who is not diagnosed with post-
17 traumatic stress disorder.

18 Q You implicate in your report that there were
19 numerous stressors prior to the shooting, and I
20 believe you go through those on page three of your
21 report. Can you explain to us what you mean by
22 numerous stressors involving the decedent or the
23 victim?

24 A Yes. I'll be glad to. Well, first of all, he
25 was -- one of the stressors was his relationship

1 with the victim. He reported to me he didn't know
2 how he offended the victim, why the victim was upset
3 with him, that he had never had a conversation with
4 the victim, and so, for him to find out that the
5 victim was upset with him and meant him harm was
6 very confusing for him. He described a time that he
7 was shopping at Walmart, and the victim came up to
8 him and threatened him. He also described being at
9 a nightclub where someone came up and told him that
10 the victim was going to kill him on that evening.
11 What his normal -- his response to all of these
12 stressors was to move. That's what you see in post-
13 traumatic stress disorder. People with PTSD, they
14 try to avoid the stress. They run. You fight or
15 you flee. So, in these cases, his history had been
16 that he was trying to relocate to be away from the
17 victim because he was fearful of his life and, then,
18 of course, I think the most important was after the
19 event where the trailer was fired upon, his
20 girlfriend lost her child. So, he was living in a
21 constant state of panic at times, whenever he had an
22 interaction with the victim, or he would hear
23 circuitously that the victim was going to harm him.
24 So, this was going on for a few months, so he was in
25 an agitated state. He was in a heightened state of

1 alert. That's another symptom of PTSD. It's called
2 hyper-vigilance. Once your limbic system is
3 activated, you are very aware of danger. You're
4 looking for it. That's why persons with PTSD, you
5 get -- they startle if you touch them if something
6 unexpected happens. So, he was in a heightened
7 state of anxiety prior to this offense.

8 Q I don't know if you went into this, but he had
9 also become aware that -- or did he inform you that
10 he'd become aware that the victim or decedent knew
11 that they had gotten this trailer and where he was
12 located?

13 A That's correct. He had moved, Your Honor, to --
14 and he told me, to -- for protection, so no one
15 would know where he was, and the victim's aunt ended
16 up moving in the same trailer park, and so the
17 victim found out where he was living.

18 Q Now, when Mr. Knight described the event to you,
19 how did that happen? Did he have -- you indicate in
20 your report that you actually saw that he was
21 perspiring. Can you explain that?

22 A Oh yes, yes. In his mental status exam, Your
23 Honor, he had physiologic arousal when discussing
24 the event with me. He broke out in a sweat, he was
25 very anxious. It was obviously -- it was obvious he

1 had symptoms of panic, so his affect, his outward
2 appearance of his emotions matched him describing,
3 you know, the shooting to me.

4 Q Throughout the trial, specifically on page 538,
5 at the bottom of the page, Dr. Martin agrees that
6 Mr. Knight made a conscious decision to go back into
7 the Subway and shoot the victim. Did you think
8 otherwise in your evaluation of him?

9 A Well, it was a conscious decision, but it was --
10 there was diminished capacity involved. This was
11 not just pure volition, in my opinion. I mean, he
12 perceived a threat, and he was tired of being
13 threatened. He was frightened. So, it certainly, I
14 think -- I would just say that his capacity to make
15 decisions at that time was impaired. So, I don't
16 know if I have an issue with the word "conscious,"
17 but I think he was suffering from mental illness,
18 and that his fear, his panic, those were intensified
19 because of his interactions with the victim, the
20 prior history, and then his prior history of being
21 exposed to violence as a child.

22 Q I'm just directing you to the bottom of page
23 three of your report. Did he recount to you that he
24 didn't make a conscious decision to go back into the
25 Subway?

1 A Sorry, I'm on my computer. I have to look here.
 2 Right, he stated his intention was to just fire a
 3 shot, a warning shot for him to leave him alone.
 4 Again, those are his words that it wasn't conscious.
 5 I mean, he was aware he was going back into the
 6 store, but he said his intention was not to shoot
 7 the victim, but to fire a warning shot.

8 Q I'm just going to kind of take you through some
 9 of the additional testimony and this is my
 10 summation. Obviously, the transcript will speak for
 11 itself. But on page 528, during the testimony of
 12 Dr. Martin, this was a proffer, he agreed that there
 13 was no mental illness, nothing psychiatric
 14 influencing Mr. Knight, that he was criminally
 15 responsible and there was no diminished capacity.
 16 Do you take issue with that testimony?

17 A I do. I think -- it's my opinion he was
 18 mentally ill. He was criminally responsible. He
 19 had capacity to conform, but his capacity was
 20 certainly diminished, and that was information that
 21 should have been presented to the Judge or to the
 22 jury.

23 Q And that's repeated again, but specifically
 24 then, after some time, the Court questions him on
 25 page 544, and he agrees that there's no competency

1 issues, no mental illness, nothing psychological
2 that would impact his actions and he's criminally
3 responsible, and you've already explained why you
4 don't agree with some of those affirmations?

5 A That's correct. If I can add, prior to the
6 question you had asked me, even after he shot the
7 victim, he was still in a state of fear. He thought
8 the victim was still coming after him and, so, yes,
9 his awareness the entire time -- he was frightened,
10 he was very paranoid, he told me, "I knew I was the
11 walking dead," so he was very panicked at this time.
12 He stated -- I don't know if the Judge knew, he went
13 into Subway and had no clue the victim was in there.
14 He was just going in to use the services and, so, he
15 saw the victim and just panicked and was trying to
16 sneak out where the victim would not see him and
17 became extremely paranoid.

18 Q Now, testimony -- he testified as well as Ms.
19 Smalls testified that was with him that day in the
20 Subway. Did you find that the testimony offered was
21 prejudicial without the information that you're
22 providing today, and can you explain that?

23 A I'm not sure I -- I don't know if I can answer
24 -- I think that's a legal matter, but I certainly --
25 I think it's my opinion that he had a mental

1 illness. His mental illness was active at this
2 time. It's influenced all of his behaviors. It
3 influenced how he thought. It influenced his
4 actions. It certainly intensified his emotions.
5 Prior to the DSM 5, we used to think PTSD was an
6 anxiety disorder. We have now totally changed its
7 classification. It's classified as a trauma,
8 another stressor related disorder, and the reason it
9 is, is because it's so much more than an anxiety
10 disorder. If affects your emotions, it affects your
11 cognition. People with PTSD, they think differently
12 than us. They see -- for example, they have a sense
13 of foreshortened future. They blame themselves more
14 than other people do. There are just a whole set of
15 thinking disruption that occurs in this illness as
16 well, and so, it's so much more than an anxiety
17 disorder. So, I think that to present him as
18 someone that was not suffering from mental illness,
19 that went into the store, that saw someone who had
20 threatened him, went out to the car, went back into
21 the store to kill the victim is not an accurate
22 representation. It doesn't account for his mental
23 illness.

24 Q In your report, in your opinions, you address
25 Ms. Smalls' testimony where she testified that he

1 was calm. Can you explain how a person with PTSD
2 could appear calm when they are actually out of
3 control?

4 A Certainly. Certainly. That's a very
5 constricted affect, is kind of what she described
6 clinically, and that just means that his emotions
7 were not full range. And what happens when people
8 are traumatized, they become numb, and that happens
9 to many people. Again, the best example I use is,
10 if you see someone in a car wreck on the side of the
11 road, you'll see some people that are smart and
12 they're standing on the sidewalk with their cell
13 phone calling for the police, and they may appear
14 calm. You see some people that are standing by
15 their car in the road where they could get hit and
16 they're not thinking, and you see some people that
17 stay in the car, where they are still in danger.
18 So, when someone has a history of trauma exposure,
19 they can react in different ways, and it's not
20 uncommon at all to see a numbing of emotions.
21 Certainly -- especially closer to the time of the
22 trauma. So, that's consistent with the illness as
23 well.

24 Q You may have addressed this, but is a person
25 with PTSD, you just said they could appear calm, but

1 is it also harder for them to, kind of, if they hit
2 that peak, to come down and be calm -- to be
3 actually calm?

4 A Well, their anxiety will last longer, yes. When
5 they are triggered to some kind of cue, they are
6 anxious for a much longer period of time.

7 Q Okay. If you already addressed this I
8 apologize, but in your report, you indicated that
9 Mr. Knight still shows evidence of hyper vigilance?

10 A Yes.

11 Q And you saw that during your personal interview
12 with him. Can you explain that, please?

13 A Yes. Where we were, we were in a -- we were in
14 a lobby area, Your Honor. I think it was a
15 cafeteria. They had visitation that day and, so,
16 the Department of Corrections allowed us to sit at a
17 back table to the left corner and there was a
18 monitor there, but there were many other visits
19 going on. And consistently during this interview,
20 he would turn whenever there was a sudden movement,
21 if there was perhaps a child visiting a parent and
22 there was a loud noise, he was very aware of his
23 surroundings. And then, of course, he perspired
24 when I was discussing the actual events with him.

25 Q Dr. Maddox, we've already informed the Court

1 that you and I had a virtual meeting with Mr. Knight
2 to prepare for today. Did you advise me that he
3 would need such preparation before he were to
4 testify in this platform or testify in general?

5 A Yes.

6 Q Okay. If you had the opportunity to meet with
7 him and diagnose him prior to this trial, would you
8 have advised counsel regarding putting Mr. Knight on
9 the stand?

10 A Yes.

11 Q What would you have advised him as far as any
12 concerns or anything that you would have to offer as
13 an expert in this area, regarding putting Mr. Knight
14 on the stand at trial?

15 A I would have gone through his, you know,
16 practiced his testimony with him. Let him know what
17 questions would be asked. For example, today, Your
18 Honor, he's competent. There's not been a question
19 about that, but the concern earlier was because of
20 his anxiety disorder, not being present in Court,
21 would this venue itself cause him further anxiety,
22 and actually, it did just the opposite. This is a
23 great venue for him. By Ms. Blanchette and I
24 meeting with him prior to this hearing, he was able
25 to follow testimony, answer questions, those sorts

1 of things. So, it's actually a better venue. But
2 what we did is, we still -- we had a chance to let
3 him know what the setting would be like. He got to
4 experience it and so that was helpful for him. The
5 other thing that I did today prior to the testimony,
6 I told him to look at me if he was nervous. I often
7 tell defendants or applicants in court, if they have
8 an anxiety disorder, to look at me when I'm on the
9 stand. I give them cues and things to do to manage
10 their anxiety. So, if he's on cross-examination and
11 he becomes anxious, he may need a minute or two to
12 calm down or you might have to repeat the question
13 again. I would have advised his attorney of those
14 sorts of things. I also would have been present
15 during his testimony, so if something were to have
16 happened, that I would be able to confer with his
17 attorney.

18 Q Dr. Maddox, after your testimony today, I'm
19 going to ask that you be released, but you are
20 willing to be on call for his testimony today. Is
21 that correct?

22 A Yes.

23 Q So, I'm following the steps that you essentially
24 would have given his defense team before you put him
25 on the stand?

1 A Yes.

2 Q I kind of alluded to this, but if the defense
3 team would have reached out to you prior to his
4 trial, would you have been willing to evaluate him
5 at that time and do you think these findings would
6 have been the same?

7 A Yes, to both.

8 Q Thank you. I asked a double question. I
9 appreciate you fixing that for me. Were you ever
10 contacted by the defense team prior to his trial or
11 during his trial?

12 A Not that I'm aware of.

13 Q At that time, I know you already said your
14 findings would have been the same, but you would
15 have been willing to review the findings of
16 Dr. Martin and essentially repute those findings
17 with the information that you have shared today?

18 A Yes.

19 Q Okay.

20 MS. BLANCHETTE: Your Honor, if I could beg the
21 Court's indulgence for just one moment while I
22 review the report and my notes to see if there's
23 anything else?

24 BY MS. BLANCHETTE:

25 Q Dr. Maddox, in this case, Dr. Martin was

1 proffered as an expert and was not allowed to
 2 testify as to mental state, is the best I can take
 3 it from the transcript. Have you been allowed to
 4 testify either in a proffer or criminal trial
 5 regarding such findings as you've made today?

6 A Well, there was one occasion, and that case was
 7 appealed. That was State v Santiago. My
 8 understanding is, and again, I'm not a lawyer. I'll
 9 tell you as a psychiatrist that diminished capacity
 10 is not a defense in South Carolina and I'm aware of
 11 that. I've certainly testified to diminished
 12 capacity in the State of North Carolina where it is
 13 allowed, but in my opinion, my testimony would have
 14 been helpful in terms of sentencing before he was
 15 sentenced. I thought that that testimony would have
 16 been particularly helpful.

17 Q And your testimony would have been not in
 18 agreement with the proffer of Dr. Martin in the
 19 questioning by the Court where he said there was no
 20 mental illness or nothing psychiatric influencing
 21 Mr. Knight the day of the incident?

22 A That's correct. Had I been proffered, I would
 23 have given the testimony I did today, and I have
 24 been proffered in those -- I was proffered in the
 25 Santiago case, as I recall, as well.

1 MS. BLANCHETTE: Your Honor, if I could ask --
2 well, let me ask Dr. Maddox first.

3 BY MS. BLANCHETTE:

4 Q Dr. Maddox, you worked on this case for a long
5 time for us. Is there anything additionally that
6 you'd like to offer to the Court regarding your
7 expert opinions or your findings in this case?

8 A No.

9 MS. BLANCHETTE: Your Honor, if I may ask the
10 same of my client, Mr. Knight, is there anything you
11 need to discuss with me before I conclude my
12 questioning of Dr. Maddox?

13 THE COURT: He's muted. Mr. Knight?

14 MR. KNIGHT: No, ma'am.

15 THE COURT: Thank you. All right.

16 MS. BLANCHETTE: Your Honor, that concludes my
17 direct examination.

18 THE COURT: All right. Dr. Maddox, are you
19 ready for cross-examination?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay. Mr. Limbaugh.

22 MR. LIMBAUGH: May it please the Court, Your
23 Honor?

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. LIMBAUGH:

2 Q Good afternoon, Dr. Maddox.

3 A Good afternoon.

4 Q So, is it my understanding that, again, you just
5 testified that diminished capacity is not a defense
6 in South Carolina? Is that your understanding?

7 A Yes, sir.

8 Q Okay. Did I hear your testimony correctly
9 earlier that you still believe that he was
10 criminally responsible? Is that accurate?

11 A Yes, even though he had PTSD, he was not in a
12 dissociative state. He knew what he was doing. He
13 was frightened, he was panicked, he was very
14 paranoid, but he knew -- he was aware of what was
15 going on. He knew what he was doing.

16 Q Okay. I believe you testified earlier that
17 patients with or you believe that are examined to
18 have PTSD, they tend to avoid stress. Was that
19 accurate?

20 A They avoid the triggers that remind them of the
21 trauma. So, they -- you know, no one can avoid
22 stress. If we could do that, we'd all be -- I'd be
23 very rich if I knew that, but what happens, they
24 avoid things that remind them of the trauma. So,
25 for example, if someone go in a wreck on a bridge,

1 they may drive a different route home because every
2 time they drive over the bridge it reminds them of
3 the wreck, those sorts of things. So, they tend to
4 avoid things that they associate with the trauma.

5 Q In this case, Mr. Knight obviously couldn't
6 avoid randomly seeing the victim in the Subway.
7 That didn't happen. But he did leave and get in a
8 vehicle where he could have just driven away. Do
9 you have any expert opinion as to why that may or
10 may not have happened?

11 A Yes, and that's why he, in my opinion, he had
12 the capacity to conform. He was tired. He had been
13 living in a state of chronic fear. He was scared.
14 He just wanted to confront him and tell him to leave
15 him alone. You know, he had been running away for a
16 period of time and he wanted to confront him and
17 just tell him to stop. His opinion, of course,
18 these are his words, but he just wanted to fire a
19 shot to tell him to get away and leave him alone.

20 Q So, with patients with PTSD and, particularly,
21 Mr. Knight, in your evaluation, when he did get in
22 that vehicle, he -- I believe as you testified to,
23 he could have made the decision just to drive away
24 and not kill the victim, correct?

25 A Yes.

1 Q Okay.

2 A There's three responses. I don't mean to -- I
3 don't want to be trite, but in layman's terms, you
4 fight, flight or freeze. People, when they're
5 exposed to trauma, they kind of have three different
6 responses and that's just kind of how we explain it
7 sometimes maybe to patients or those sorts of
8 things. So, some people become very aggressive. If
9 they are confronted with the trauma, at some point
10 they can become very aggressive, and that's seen in
11 PTSD. Some people freeze and can't even move or do
12 anything and then others will avoid. So, those are
13 kind of different concepts. The avoidance is the
14 long-term pattern. Avoidance is more, it becomes
15 part of your personality where you avoid things that
16 deal with it, but when you're actually in the trauma
17 itself, you can fight, flight or freeze. So, for
18 him to turn around and have been aggressive in a
19 situation, that can be seen with the illness. But
20 you're right, because of that, I did -- it would
21 have been my opinion that he had the capacity to
22 conform, but this was clearly an issue of diminished
23 capacity.

24 Q Okay. And he did -- I don't want to keep
25 repeating myself, but he did walk back into the

1 Subway station and deliberately shoot the victim, in
2 his words it might have been a warning shot or
3 however he wants to phrase it, but he deliberately
4 went in to shoot the victim, correct?

5 A Well, the victim was shot, yes. I don't know --
6 again, in his words to me it was not deliberate, but
7 yes, he went in, fired the gun and shot the victim.

8 Q Okay. You said this isn't a matter of or an
9 issue of competency, correct? He is fully
10 competent?

11 A No, and I watched him this morning. He looked a
12 little anxious at first, but he was able to calm
13 down and gave me a thumbs up sign, so I looked at
14 him and, yes, we've -- that's why we did this
15 evaluation via the computer, so if he had any
16 additional anxiety because we were doing something
17 novel, that he was used to it and prepared for it.

18 Q Okay, and again, just to touch back a little,
19 I'm not sure you've actually seen much case law
20 during a competency evaluation on a patient you
21 haven't done at the time of trial, but from your
22 evaluations on his PTSD and things of that nature at
23 the time, do you believe he was competent at trial?

24 I know that's not particularly an issue, but --

25 A Yes, yes. I don't -- in looking at him now --

1 now, he may have been so anxious that at times when
2 he was on cross-examination, because PTSD affects
3 your cognition, he may not have been able to think
4 of all the answers he would have given in a
5 situation where he was calmer. So, I think it could
6 affect his ability to answer questions, but he was
7 competent.

8 Q Okay.

9 MR. LIMBAUGH: That's all I have for this
10 witness, Your Honor.

11 THE COURT: Any redirect?

12 MS. BLANCHETTE: Just briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. BLANCHETTE:

15 Q Since the State asked you about criminal
16 responsibility and diminished capacity, I know that
17 on your direct you kind of touched on mitigation and
18 one way to mitigate this case to try to assist the
19 defense in getting a voluntary manslaughter charge
20 or a plea to voluntary manslaughter?

21 A Absolutely.

22 Q I provided you the appellate records where they
23 found that Judge Brown was correct in not charging
24 voluntary manslaughter, and specifically they say,
25 "While there is evidence Knight was in fear, there

1 is no evidence he was out of control as a result of
2 his fear or was acting under an uncontrollable
3 impulse to do violence at the time he shot the
4 victim." Would you have been able to testify that
5 he was out of control at that time due to his mental
6 illness?

7 A Yes. I would -- well, I would have testified,
8 that's why, that his fear was so intense that it
9 impaired his judgment, and he was paranoid, he was
10 scared, and he was going to confront the victim.

11 MS. BLANCHETTE: Your Honor, I have no further
12 questions.

13 THE COURT: Wait. It looks like Mr. Knight
14 would like to speak with you, Ms. Blanchette.

15 MS. BLANCHETTE: Yes, Your Honor. It is my
16 understanding he has phone available there where
17 he's supposed to call my office phone and I will
18 mute myself and have that conversation with him.

19 THE COURT: Is that what you want to do,
20 Mr. Knight?

21 MR. KNIGHT: Yes, sir.

22 THE COURT: Okay, we'll briefly hold off.
23 (Whereupon, we are off the record.)

24 THE COURT: Okay? Yes, ma'am?

25 MS. BLANCHETTE: Your Honor, I'd like to beg the

1 Court's indulgence for one further question.

2 BY MS. BLANCHETTE:

3 Q Dr. Maddox, when the State was asking you about
4 his capacity to conform, what essentially the State
5 was alluding to is you didn't find that there was an
6 insanity defense in this case. Is that correct?

7 A That's correct, nor was it my opinion that he
8 would have been guilty but mentally ill for this
9 offense.

10 Q Okay. But as far as the testimony that he
11 appeared calm or the questions about whether or not
12 he made a conscious decision to go back in, that is
13 where your findings regarding his mental illness,
14 that you would have testified about that. Is that
15 correct?

16 A Absolutely, and why he went back. You know, at
17 some point he was confronting the danger. He had
18 been avoidant it for such a long period of time, he
19 was tired of living that way, and so that, in
20 addition to being fearful and paranoid and tired,
21 stressed, those were all part of his poor judgment
22 that night.

23 Q Mr. Limbaugh emphasized and so did the State in
24 trial, that he could have -- he had walked out of
25 the Subway. He could have left, but as a result of

1 his mental illness, that wasn't quite the decision
2 that the State portrays it to be. There was much
3 more involved in that. Is that correct?

4 A Absolutely. There's no question. Yes, his
5 judgment was very impaired by his intense emotions,
6 his cognitive distortions, again, that we talked
7 about that you can see in people with PTSD and then
8 all the stressors he had been through. He had been
9 running, he was tired of moving, yet there were a
10 lot of things that contributed to his poor judgment,
11 but they were all secondary to his PTSD.

12 MS. BLANCHETTE: Your Honor, I have no further
13 questions. The only item that I would like to bring
14 up is, I know I have referenced her report. I had
15 provided that to the Court. I didn't know if we
16 needed to mark that for the appellate record or if
17 that was not necessary.

18 THE COURT: Mr. Limbaugh, any objecting to
19 marking it into the record? I think it's included
20 as -- it's in the record; is it not? Do you want to
21 make it an exhibit?

22 MS. BLANCHETTE: Your Honor, I've just never
23 done virtual where I provide items to the Court. I
24 didn't know if I need to move them then as exhibits
25 or how we go about doing that.

1 THE COURT: I'll be perfectly honest with you, I
2 believe we're plowing new ground here. How about it
3 -- or I am. Mr. Limbaugh, do you have any objection
4 to including her report as an exhibit in the record?

5 MR. LIMBAUGH: No, Your Honor. I think it's the
6 simplest way to do it with the appellate record is
7 to move them as exhibits.

8 THE COURT: Okay. Dr. Maddox, I just had a
9 couple of questions. I wanted to ask. You talked
10 about the enhanced diagnosis of PTSD and that it has
11 become more -- it changed designation in the DSM 5,
12 apparently was the first time it was changed from an
13 anxiety disorder to a traumatic disorder. Is that
14 right?

15 THE WITNESS: Yes, it's called trauma and other
16 stressor related disorder, yes.

17 THE COURT: When did that occur? I don't know
18 the date of the -- I don't have the DSM 5.

19 THE WITNESS: I've got it. Hold on. I want to
20 look that up. I beg your indulgence for a minute
21 and I can get that for you. It would not -- in
22 answer to your question, in 2015 -- I think it's
23 been five years since that diagnosis was updated,
24 but let me get the exact -- the DSM 5 was published,
25 again, in 2013.

1 THE COURT: So, it -- change of the designation
2 of PTSD occurred after this case was tried. Is that
3 correct?

4 THE WITNESS: Yes.

5 THE COURT: And then the other -- so, I guess
6 Dr. Martin did not diagnose this, but the actual
7 diagnosis didn't change, just the designation. Is
8 that right?

9 THE WITNESS: That's correct. Yes, sir.
10 There's just been -- it wouldn't have affected my
11 testimony at all. It would have been the same,
12 using old criteria, but what's just so different is
13 that in psychiatry there's just been so much more
14 research and it's such a focus now because we
15 realize it's a lot more complex than initially
16 thought, but the symptoms that he had are the same.
17 They haven't really changed the symptomatology, but
18 what they did is, they added, they made it actually
19 easier to diagnose it since 2013. They loosened
20 some of the criteria and they added some symptoms,
21 but he still, even using the old DSM, he would have
22 had post-traumatic stress disorder.

23 THE COURT: Okay and I'm just curious, you said
24 that now there are physiological changes and is that
25 -- that's relatively new. Is that right?

1 THE WITNESS: No, sir. That's been present the
2 whole time. That's why back in the -- after Vietnam
3 War is the first time that PTSD was recognized.
4 They called it, I think, an unspecified anxiety
5 disorder, but the autonomic arousal, the physiologic
6 arousal, that's always been one of the hallmark
7 symptoms of it. In the old days they called it
8 shell shock, because they recognized that people
9 froze or had physiologic arousal, so those symptoms
10 have been well documented. The ones that changed
11 were the cognitive impairment, that they recognized
12 it actually changes the way that you think, and then
13 the other symptoms are -- it's particularly the
14 negative alterations in your cognition that have
15 been the, in my opinion, the ones that have changed
16 the way we look at it. And let me refer to it for a
17 minute, because there was another area, I'm just not
18 recalling. Yes, sir, just going through the
19 criteria, what they did is, they actually broadened
20 what would qualify as a trauma. In the old days in
21 civil litigation, as you can imagine, there were
22 questions about, "Well, if you weren't present when
23 your trauma occurred, how could you have PTSD," so,
24 they widened the first criteria to make it easier to
25 qualify for having been a victim of trauma. The

1 other -- they kept the intrusion symptoms the same,
 2 they kept the physiologic arousal symptoms the same,
 3 they kept the avoidance the same. The main thing
 4 that they added was, again, these negative
 5 alterations in cognition.

6 THE COURT: Okay. Now, the only other thing
 7 that I believe I heard you say was that your
 8 opinions would not necessarily have gone to the
 9 question of guilt or innocence, but they would have
 10 been very important in sentencing. Is that correct?

11 THE WITNESS: Yes, sir. And then, had I been
 12 proffered like Dr. Martin, I would have been able to
 13 testify that in my opinion he was mentally ill at
 14 the time and his judgment and actions were a product
 15 of that mental illness. I don't know if that would
 16 have affected anything in terms of why Judge Brown
 17 had his testimony proffered, but I would have
 18 testified to those things in proffer as well.

19 THE COURT: Okay. Any other questions from
 20 Counsel based on what I've -- I want to give you
 21 that opportunity. Anything from you,
 22 Ms. Blanchette?

23 MS. BLANCHETTE: No, Your Honor.

24 THE COURT: Mr. Limbaugh?

25 MR. LIMBAUGH: No, Your Honor.

1 THE COURT: Okay. Dr. Maddox, thank you so much
2 and you are released. Is that right?

3 Ms. Blanchette, you said you were going to release
4 her, but she was going to stay on call. Is that
5 correct?

6 MS. BLANCHETTE: Yes, Your Honor, just in case
7 anything comes up with my client that I need to
8 address with her, she said she'd be available.

9 THE COURT: Okay, great. Thank you so much,
10 Doctor.

11 THE WITNESS: Thank you. Bye, bye.

12 THE COURT: Okay, Ms. Blanchette.

13 MS. BLANCHETTE: Your Honor, I see that the
14 defense counsel, it appears, has joined us.

15 THE COURT: I don't see a picture.

16 MR. BAX: I'm here. It won't let me start the
17 video because I think I'm just a panelist, or not a
18 panelist. I'm not really sure. Sorry.

19 THE COURT: You're not a panelist.

20 MR. BAX: I'll start my video then. Sorry.

21 MS. BLANCHETTE: Your Honor, while they're doing
22 that, my client had indicated to me during our phone
23 conversation he needed to use the restroom before we
24 went to the next witness.

25 THE COURT: Okay. Well, let's take a little

1 five-minute break, and how long will it take? Well,
2 that's none of my business. We'll come back in
3 about five minutes or so, okay?

4 MS. BLANCHETTE: Thank you, Your Honor.

5 MR. LIMBAUGH: Thank you, Your Honor.

6 (Whereupon, a brief recess is taken.)

7 THE COURT: All right. Are we ready?

8 MS. BLANCHETTE: Yes, Your Honor.

9 THE COURT: Okay, we're back on the record, and
10 Ms. Blanchette, call your next witness.

11 MS. BLANCHETTE: Your Honor, I would call
12 Mr. Arie Bax to the stand.

13 THE COURT: Mr. Bax, if you would, raise your
14 right hand. Do you swear to tell the truth, the
15 whole truth and nothing but the truth?

16 THE WITNESS: I do, Your Honor.

17 THE COURT: Thank you. If you would, please
18 state your name for the record.

19 THE WITNESS: My name is Arie David Bax, last
20 name is spelled B-a-x.

21 THE COURT: All right, Ms. Blanchette?

22 ARIE DAVID BAX,
23 having been duly sworn,
24 testifies as follows:

25 DIRECT EXAMINATION

1 BY MS. BLANCHETTE:

2 Q Mr. Bax, what is your current profession?

3 A I am still, unfortunately, an attorney.

4 Q That's Covid talking, not literally that you
5 have Covid, sorry, this tough season of Covid. Can
6 you tell us about your experience and how long
7 you've been practicing law?

8 A I was sworn into the bar on May 24th, 2004, so I
9 guess that's about 16 years now. And I still
10 practice and probably about -- I would say about 40
11 to 50 percent of my practice remains criminal
12 practice, so most of that is in federal court.

13 Q Going back to the time of Mr. Knight's trial and
14 his charges in this case -- his trial was held in
15 November of 2012. What did your practice look like
16 at that time?

17 A I was in private practice at that time, though I
18 had just moved my private practice from Columbia to
19 Beaufort, South Carolina, and, so, I was probably
20 about the same 50/50 as far as criminal practice and
21 domestic relations practice and some civil practice,
22 but I also had about 60 percent still going in
23 Columbia, so, you know, it was -- I was on the road
24 a lot at that time.

25 Q Do you remember specifically when you made the

1 move to the Beaufort area?

2 A Yes. I closed on this house, that's been hit by
3 two hurricanes now, in February of 2011.

4 Q Okay. How was it that you became involved in
5 this case?

6 A The Court had appointed an attorney by the name
7 of Don Colongeli, who I know, to represent
8 Mr. Knight. At the time, Mr. Colongeli was in
9 private practice, or was in private practice at that
10 time and was also involved with a case called State
11 versus Preston Oates. You may be familiar with it
12 because it made some fairly large case law impact
13 statewide on the castle doctrine, but he was
14 representing Mr. Oates along with Jared Newman, and
15 he had came to me and asked me if I would take over
16 as appointed counsel because he was overwhelmed with
17 the Oates case and didn't feel like he was going to
18 have enough time to devote to Mr. Knight's case that
19 he thought it deserved, and I agreed to do that.

20 So, we submitted that to -- it might have been Judge
21 Mullen. I can't remember who we submitted that to,
22 but the Court approved that transference and then I
23 was appointed to represented Raj at that time.

24 Q Do you recall approximately how many times you
25 go to meet him or what your interactions with him

1 were like?

2 A Oh gosh. I always felt like Rajerick and I had
3 a good relationship. We met literally, I would say,
4 probably over a dozen times. We met individually
5 and then we also met with my investigator that I had
6 retained on the case, Rich Holbrook, who I am still
7 professionally and personally friends with. Rich
8 still asks about Rajerick. But I would say over a
9 dozen times. I couldn't ballpark it for you, but it
10 was a lot.

11 Q Did you have a chance to review all the
12 discovery and go over that with Mr. Knight?

13 A Yes. I was able to go over the discovery with
14 him on multiple occasions, and we actually -- we
15 kind of created quite a bit of materials ourselves
16 that the State wasn't necessarily privy to all of
17 that, due to the investigation that we conducted.

18 Q You gave me the opportunity to review your file.
19 Is that correct?

20 A It's been a couple of years now, but yeah,
21 that's correct.

22 Q Is it fair to say that a majority of your file
23 actually dealt with the victim in this case?

24 A Well, investigating Travie Holmes was a big part
25 of this case. There's actually two Travie Holmes'

1 in Beaufort County. There's Travis J. Holmes and
 2 Travis S. Holmes. I believe this one was Travis S.
 3 Holmes, if I'm remembering correctly, and that was
 4 important because who Travie Holmes was, I felt was
 5 a big part of the interaction between Mr. Knight and
 6 Mr. Holmes as far as a defense in this case.
 7 Mr. Holmes was a terror on the community. He had
 8 actually been represented in a public defender's
 9 office a couple of times already, including a case
 10 where someone was killed and there was a not-guilty
 11 verdict as a result. So, he had bodies in his past,
 12 and I actually moved to obtain the public defender's
 13 files on Mr. Holmes. They fought me on it, but
 14 ultimately a judge awarded me those files in a
 15 hearing that I had against Mr. Walker.

16 Q You talked about discovery in your meetings with
 17 Mr. Knight, you talked about utilizing a private
 18 investigator, is there anything else that you did
 19 specifically to prepare the defenses in this case?

20 A I also obtained indigent defense funds to retain
 21 a psychiatrist in this case. I retained Dr. Thomas
 22 Martin, who I had worked with many times in the past
 23 and I still respect his opinion as a psychiatrist
 24 and had him examine Mr. Knight for preparation of
 25 the trial.

1 Q Were there any plea offers provided by the State
2 in this case?

3 A He could get life, that was the only thing
4 Duffie would say. Duffie was prosecuting this
5 personally, so there were no offers, other than
6 life.

7 Q So, this was always on a trial track?

8 A Period. Yeah, they actually wanted -- when I
9 got appointed on the case, Duffie tried to push me
10 into trial 35 days after I got the case.

11 Q What happened with that?

12 A I told him I wasn't going to be ready and, so,
13 it got continued.

14 Q Then you proceeded to trial on November of 2012?

15 A Which is still pretty early. We actually had to
16 scramble to get as ready as we were for that because
17 murder cases in general down here, usually it's
18 around a year and a half is your average for when
19 you would go to trial from the time of start, but
20 this was just over a year from the incident; if I
21 recall.

22 Q Was this the first murder case you handled in
23 Beaufort County?

24 A In Beaufort County? Yeah, probably in Beaufort
25 County. I had handled many murder cases before, but

1 I guess they would have all been in the Midlands.

2 Q Now I was going to jump into the trial itself
3 and the specific allegations in the amendment,
4 unless there's anything else you want to offer
5 regarding your preparation for trial.

6 A No, I'm here to answer questions. That's all.

7 Q If I could direct your attention, and it's my
8 understanding you do have a copy of the transcript?

9 A I have a paper copy of the transcript, and it
10 looks like its probably complete, so hopefully we'll
11 be all right.

12 Q Hopefully. The applicant's first allegation
13 deals with the seating of the jurors, and I just
14 want to kind of take you through that a little bit.
15 Pages 28-32, if you did want to turn there. Through
16 that it is determined that there's 24 different
17 jurors that have had media exposure, but none stood
18 when asked about impartiality on page 32. And this
19 is a long question, and I apologize. Then the
20 strikes take place and afterwards, on page 45, you
21 make a motion for a change of venue. And you're
22 saying you're making this motion as discussed at the
23 bench conference. Can you recall or can you let us
24 -- can you recall what happened at that bench
25 conference or let us know why you were making that

1 motion for change of venue?

2 A From my recollection, and I want to preface this
 3 first by, you know, obviously, as everybody's aware,
 4 this was a trial that was eight years ago, so I'm
 5 going to do the best I can, but, you know, my
 6 memory, unfortunately, has faded more each year as
 7 we've gotten away from this, but I think we had
 8 always looked at this as a potential for a change of
 9 venue because there was a decent amount of media
 10 attention on this case. I recall when it actually
 11 happened, it was just down the street from where my
 12 office was at the time in Beaufort, and there was
 13 kind of a big overwhelming response. I mean, SLED
 14 even came in, I think, via helicopter at Beaufort
 15 City Police's request. So, there was some blurbs on
 16 the nightly news, which we get out of Georgia, and
 17 then there were articles in the Island Packet about
 18 it. There wasn't as much concern about social media
 19 at that time, to my recollection, though that's
 20 obviously become a bigger part of these kind of
 21 issues since then. But I had talked to Mr. Knight
 22 as well as everybody that was working with me on
 23 this trial about the fact that change of venue
 24 motions, in my experience, are almost impossible to
 25 win, and you needed to have specific evidence when

1 it came to the jury and, so, I waited until we got
 2 at least what we could out of the jury, as far as
 3 responses, before making the motion. I had let the
 4 Judge know that I was concerned about it from the
 5 very beginning. Judge Brown was not receptive to
 6 that and, so, I made the motion, but I already knew
 7 he was going to deny it because he had told me
 8 before the trial even started he was going to deny
 9 it.

10 Q We'll kind of go to the Judge's ruling on page
 11 49, line 8, though in making that ruling, he points
 12 out that you only used seven of your ten strikes and
 13 you sat two jurors that had media exposure and that
 14 it appears the alternate did as well. And then
 15 there's some discussion back and forth and on page
 16 50, you said you did not have enough information to
 17 strike. Can you explain why you didn't strike the
 18 jurors that had the media exposure as noted by Judge
 19 Brown and what you meant when you said you did not
 20 have enough information?

21 A Well, here's the reason why. I'm well-versed in
 22 this and I'm just going to be frank. My client is
 23 an African-American male. I need, in order for the
 24 jurors to treat him like a human being, to have
 25 other African-American jurors on the jury. Some of

1 the African-American jurors that were available to
2 me as jurors had been exposed to the media. I had
3 to make a decision about whether the media exposure
4 outweighed trying to have a diverse jury, that at
5 least looked like somewhat of his peers. This case
6 had racial overtones. The solicitor argued to the
7 jury that the reason he was mostly upset about this
8 is the fact that these individuals took their black
9 pride into a white area and did it, and he actually
10 argued to the jury that it was a big concern when
11 they start doing this in our area of town. So, race
12 was an issue, and I have gotten a lot more bold
13 about talking about that, you know, openly to juries
14 because I think that's something that should be done
15 more often. But, when I'm picking a jury, trying to
16 get African-American or non-white jury members is an
17 important part of trying to get a fair trial. I
18 don't recall exactly whether each one of those
19 jurors that you mentioned were African American, but
20 they had something that I needed more than not being
21 exposed to media attention. And to some degree, I
22 was trying to also argue for a change of venue
23 without having to specifically state my strategy to
24 the Judge, who, along with Mr. Stone, tried
25 throughout the trial to get me to tell them what my

1 defense was from minute one.

2 Q I appreciate you being candid about that, but
3 specifically, on page 50, beginning at line 15
4 through page 51 at the top, you ask the Court, you
5 say, no disrespect, but you want to provide -- state
6 on the record about the reasons for the defense to
7 accept the people who had responded to that is we
8 felt like we didn't have enough information to make
9 those strikes based on the fact that they responded
10 to it. We didn't know the nature of it. So, at no
11 time you told him that you'd felt that there wasn't
12 a racial, peer racial makeup of the jury. Is that
13 correct, and so you kept those people?

14 A Yeah, I wasn't going to argue the -- I wasn't
15 going to talk to the Judge about that because, well,
16 to a large degree, when I'm going through those
17 kinds of things, I don't necessarily want to state
18 that on the record, especially if the jury can hear
19 it, but even if Mr. Stone can hear it, because
20 that's -- to some degree, that was part of my
21 strategy that I didn't feel like I needed to go into
22 with the Judge. But, that's based on my memory. I
23 don't know -- I don't remember exactly -- when it
24 comes to what information I was talking about, I
25 don't remember exactly what I was referring to

1 there. I think it had to do with the information
2 about their media exposure. If I recall, because
3 I've done this in many trials, I have asked to
4 individually voir dire or at least have the Court
5 individually voir dire the jurors who respond, in
6 order to determine the nature of their media
7 exposure, and it sounds, just from reading the
8 transcript, it may be that Judge Brown did not do
9 that, and that's why I was making that argument, but
10 that's to the best of my recollection.

11 Q I'll move on to issue number two. The applicant
12 has alleged that you failed to effectively represent
13 him in regard to his primary defense, which included
14 the mental health expert, Dr. Martin, and the
15 utilization of him both at trial and sentencing.
16 So, I'm just going to kind of walk through that with
17 you because that's a pretty big allegation. You've
18 already mentioned Dr. Martin. On page 519, you're
19 asked, as you've already alluded to to explain why
20 you want to call Dr. Martin. You were essentially
21 being required to explain the purpose. If you could
22 turn there and look at that, and I'm going to do the
23 same. We all have the transcript in front of you,
24 you explain that he's not there to address
25 competency or mental illness, but mental state. Can

1 you explain to us kind of what the purpose was and
2 why you got what you said was indigent funds to
3 utilize Dr. Martin in this case? What your aim,
4 essentially, was in utilizing him?

5 A My remembrance of that was that in my
6 discussions with Mr. Knight, you know, he was -- Mr.
7 Knight was a competent individual. He was very
8 intelligent. We had intelligent conversations. He
9 understood my conversations. I did not see an issue
10 of competence as far as either, you know, a DDSN
11 issue versus a DMH issue. I didn't see that, but
12 I'm not the professional. What I did see, was when
13 we were discussing what happened and why it
14 happened, I felt like in having a psychiatrist talk
15 to him about his state of mind, which I still argue
16 to this day is always relevant in a case that has an
17 intent element, and murder has an intent element.
18 Not to mean to kill a person and your state of mind
19 is thus relevant. But, his state of mind at the
20 time that he did that, based on what he described to
21 me as a series of events that he underwent in
22 dealing with Mr. Holmes, who was a very scary guy,
23 by any account, is why I thought that having him
24 talk to a psychiatrist might better flesh out his
25 state of mind, potentially allowing us more evidence

1 to allege self-defense. What I wanted was to be
2 able to allege self-defense, but we had issues with
3 self-defense based on timing. Obviously, you know,
4 in a perfect world, self-defense is immediate. If
5 they pull a gun on you, you pull a gun back, and
6 it's a wild west, high noon kind of situation. But
7 not all situations in life work out like high noon
8 in the middle of the cowboy streets. But what was
9 happening there, was a situation where someone felt
10 threatened and had been threatened and had evidence
11 that showed that he was being threatened repeatedly
12 and was responding to it and he had reasons for that
13 response, but it was, in my opinion, something that
14 a psychiatrist would have a better time assessing
15 out and explaining to a jury than me, the lawyer,
16 who doesn't have a degree in that, and that's why I
17 sought him out.

18 Q The Judge notes on page 520 that you had
19 indicated to him that you'd had experts testify in
20 that area before and he asked you to provide law.
21 Were you able to provide cases to support that
22 position?

23 A I don't remember.

24 Q What ultimately happens is, there was a proffer
25 of Dr. Martin and specifically on pages 527-528, and

1 I'm just summarizing, he testifies there's no mental
2 illness, nothing psychiatric influencing him. He's
3 criminally responsible and there is no diminished
4 capacity. Do you know what Dr. Martin did with your
5 client to reach those findings and were you aware of
6 those before putting him on the stand?

7 A Yes, I was aware. He actually had to go through
8 quite a bit because Dr. Martin wanted to have time
9 to sit down with Mr. Knight. And if I'm
10 recollecting this correctly, I think what I was able
11 to do was get Court approval for Beaufort County to
12 transport Mr. Knight actually to Dr. Martin's
13 office, which at the time -- like I said, I'm trying
14 to bring this up from memory because I've worked
15 with Dr. Martin on other cases, but I believe we
16 actually got Mr. Knight transported up to Tom
17 Martin's office. I think it was in Columbia because
18 he had an office on Calhoun Street. It was one of
19 the houses back there on Calhoun Street, back behind
20 where I used to work out of Jack Swerling's office,
21 and I think we actually got Mr. Knight transported
22 up there so he could sit down with Tom Martin in his
23 office versus having Tom Martin come down here and
24 sit in the jail and do all that. I did -- my
25 recollection is that I asked Dr. Martin to examine

1 Mr. Knight for any possible issues, whether it be
2 competency or, you know, a criminal responsibility,
3 though when we talked about it I did tell him, I
4 said, "Rajerick comes off to me as an intelligent
5 individual and his responses are not ones that
6 indicate to me mental illness from the standpoint of
7 criminal responsibility," but I'm not the pro,
8 that's why I left it up to Dr. Martin to figure that
9 out.

10 Q He goes on to talk about kind of the reign of
11 terror, I think, are the words he uses, that Mr.
12 Knight was living under, and he talks a lot about
13 the victim's violent past, but did Dr. Martin ever
14 talk with you about a history of trauma as it
15 relates to Mr. Knight?

16 A I don't recall.

17 Q Throughout his testimony, page 538, he says
18 again, "No diminished capacity. He has the ability
19 to control himself." So, what was really the
20 strategic decision behind putting up an expert to
21 say -- and essentially the State gets him to say on
22 page 538 that he made a conscious decision to go
23 back inside. What was really the strategy behind
24 proffering him to make those statements to the
25 Court?

1 A Well, the strategy was to have him testify to
2 the Jury about the fact that his state of mind was
3 one of paranoia and fear that he was going to end up
4 catching a bullet from Travie's gun at some point or
5 another. And that testimony from a psychiatrist, I
6 think, was going to be helpful because I think the
7 Jury would have added weight to that testimony,
8 because the only other way that that testimony was
9 going to get to the jury, is either through Mr.
10 Knight's testimony and/or my argument. And I felt
11 like coming from Dr. Martin, it was going to carry
12 more weight with the jury when it comes to the idea
13 that he was truly in fear of Mr. Holmes. Do I wish
14 that Mr. Martin felt professionally, or Dr. Martin
15 professionally felt that he could go further? Of
16 course, I do. I wish he'd come in there and said,
17 "Rajerick Knight is stark raving mad. He doesn't
18 know his own name, he can't tell you today is
19 Tuesday," but that's not what happened. Dr. Martin
20 has his own professional ethics. He gave me his
21 professional opinion. I had to work with that
22 opinion.

23 Q You had the opportunity, and I have provided you
24 the report of Dr. Donna Maddox, and were you here
25 for some of her testimony today?

1 A I was here for some of her testimony, and I
2 understand that she's diagnosed him with PTSD. I
3 don't recall if I ever had a discussion with Dr.
4 Martin about PTSD. I don't know if I would have
5 known to ask him about that.

6 Q Can you say at all how that may have affected
7 your defense or your strategy in this case, if you
8 would have had the diagnosis of PTSD in her
9 findings?

10 A I would say any diagnosis would have probably
11 been helpful if it was a diagnosis of a mental
12 illness that impacted any issues in the case. So, I
13 can't say that it wouldn't have been helpful. I
14 don't know that it would have made any difference in
15 the ultimate rulings of the Court, but it may have
16 been useful. I don't know.

17 Q Ultimately, the Court questions Dr. Martin
18 himself on page 544, and I've given the Judge some
19 references just in support of these arguments or
20 where they come up in the transcript, but the Judge
21 goes through and questions him about competency
22 issues, mental illness and essentially gets him to
23 agree that there's nothing psychological that would
24 impact his actions and he's criminally responsible.
25 So, where it appears Judge Brown lands is, he asks

1 you on page 557, "What does Dr. Martin add? He can
2 only testify or regurgitate what the Defendant's
3 going to testify to, that he was in fear." What did
4 you think that Dr. Martin added that was different
5 from what Mr. Knight had to testify to?

6 A What I just answered. I think Dr. Martin would
7 have offered a more professional testimony about his
8 state of mind, which was that he was in fear of
9 somebody that was trying to murder him at the time,
10 and there were circumstances surrounding that day
11 that were reasonable in light of what his fear was,
12 and I tried to argue those things, but I was
13 fighting beyond an uphill battle.

14 Q It's interesting to me this argument regarding
15 Dr. Martin and the proffer pleads right into the
16 Court's saying he needs additional time to consider
17 on page 563, whether or not he's going to allow
18 Dr. Martin to testify. But then he says that he
19 knows the Defense is going to be disappointed, but
20 he's not going to charge manslaughter or self-
21 defense. And at that point, then you argue
22 imperfect self-defense and manslaughter, and say you
23 had sent an email to Dr. Martin explaining your
24 positions. Were you surprised to not get a
25 manslaughter and self-defense charge in this case?

1 A I was. My strategy, and I had discussed this
2 with Mr. Knight, was that our most reasonable and
3 best hope was to be able to get enough evidence --
4 and this was also something that I had called
5 Dr. Martin specifically for, to argue sufficient
6 provocation to get a manslaughter charge. I felt
7 like, with the Jury hearing about who Travie Holmes
8 was and what he did, given the option between murder
9 and manslaughter, that they would choose
10 manslaughter. I always told him that if they were
11 given the choice between murder and nothing, that
12 because this happened on video, like three or four
13 different angles at the Subway sandwich shop where
14 the Jury watched the murder occur, watched the
15 shooting occur, that they weren't likely, no matter
16 who they were, to choose nothing over a conviction.
17 But given the opportunity to mitigate that decision,
18 in light of who the victim was in this case, that
19 they would choose the middle ground, even though
20 that middle ground still carried 30, and there's no
21 doubt in my mind Judge Brown would have given him
22 the full 30 and probably a consecutive 5. But that
23 was the best that we had to work with. I was
24 surprised when Judge Brown -- well, let me say this.
25 I would have been surprised at the beginning of the

1 week if you'd told me I wasn't going to get
2 manslaughter. After having dealt with the Judge and
3 Duffie for a week, I was not surprised.

4 Q Is it fair to say from your answer, that
5 manslaughter was your defense in this case? If
6 you're saying you felt that the Jury wasn't going to
7 say "not guilty," was manslaughter essentially your
8 defense in this case?

9 A It was a big part of my defense. I would like
10 to have -- I argued as hard as I could for self-
11 defense and I didn't ever fully give up on the idea
12 of arguing to the Jury that this was self-defense
13 just because it didn't, you know, fit neatly within
14 the circular peg that self-defense is defined as, it
15 was still self-defense. So, don't get me wrong. I
16 was always going to ask the Jury for a not guilty
17 verdict, but strategically, in light of the
18 evidence, I think having the manslaughter on the
19 table was essential.

20 Q In the State's argument, Mr. Thornton's arguing
21 on pages 566 and 567 in support of the Judge has
22 already indicated he's not going to charge these,
23 but you pushed the argument further; to be fair.
24 That is my summary of it. I think you said that
25 yourself. You kept arguing. The State says on 567,

1 lines 12-20, they're arguing against voluntary
 2 manslaughter and they note, it says on line 17,
 3 "Their own expert just got up and testified that he
 4 made a conscious decision to walk back into the
 5 Subway and gun an unarmed man down." Now, I
 6 understand that Dr. Martin's testimony was a
 7 proffer, but doesn't it appear that the State's
 8 using that in argument to support the manslaughter
 9 not being charged?

10 A I guess.

11 Q So, does it -- it appears from the transcript,
 12 and correct me if I'm wrong, but the State
 13 essentially was utilizing your own expert to support
 14 the position that manslaughter shouldn't be charged
 15 in this case?

16 A Well, if you're saying should I have not called
 17 him because of that? I don't know. I felt like
 18 Dr. Martin had something to offer that I could argue
 19 to the Jury in the end. Dr. Martin never gave me a
 20 specific mental illness, and his professional
 21 opinion was what it was. So, I had the option to
 22 not use him at all or use him and the thing was is
 23 that when you're defending a case like this, you
 24 want to try to offer more than just -- this was not
 25 a case that I looked at as being able to rest after

1 the prosecution's case and then just argue that they
2 hadn't proved their burden. Not when you have a
3 video like that.

4 Q I don't know if you were there when Dr. Maddox
5 testified that this would be essentially a
6 diminished capacity case, but that's not recognized
7 in South Carolina, but we touched on that. When
8 Judge Brown was making his ruling on pages 578-579
9 regarding Dr. Martin, he indicated that -- he says,
10 "I'll emphasize, Dr. Martin didn't say there was any
11 diminished capacity." Was that something you ever
12 discussed with Dr. Martin? The issue of diminished
13 capacity?

14 A I don't recall.

15 Q It appears at the end of trial, the courtroom
16 has potentially been locked and you get to the
17 mitigation phase. This is about page 627 of the
18 transcript. I can give you a second to flip there
19 if you need to.

20 A Okay. I'm there.

21 Q There's some discussion back and forth where you
22 ask that the courtroom be unlocked so that your law
23 partner can come back in and so that Dr. Martin can
24 be allowed to come in, and you say, "Because I know
25 he can offer mitigating testimony as well in the

1 sentencing phase." The Judge indicates that he's
 2 not going to hear any new information, that he's
 3 already heard what he had to say. If you could just
 4 kind of take me through what was happening there,
 5 what your plan was, if it was to further utilize
 6 Dr. Martin, and then what transpired?

7 A I don't recall. I mean, I wouldn't be able to
 8 offer any more than what the transcript has in it.

9 Q So, you don't recall ever discussing
 10 specifically mitigation for sentencing with
 11 Dr. Martin?

12 A I'm sure I did talk to him about it. I don't
 13 recall what our -- if there was a specific strategy,
 14 as far as that's concerned. I don't remember what
 15 specific mitigation discussions we had. I'm sure we
 16 had them, but I don't remember what they were.

17 Q I'm on page 633. Judge Brown indicates that he
 18 wanted to hear Dr. Martin's testimony earlier this
 19 morning. He didn't allow him to testify in the
 20 trial, but it's important to point out for the
 21 record, he says, "I want to say this in sentencing,
 22 he was evaluated, he was determined to be
 23 competent," I'm skipping around a little bit here,
 24 but he says then, "There was no mental illness.
 25 There was no diminished capacity, albeit diminished

1 capacity is not a defense in this State. He knew
 2 the difference and had the ability to determine
 3 right from wrong and that he is criminally
 4 responsible, in his opinion, for his conduct." I
 5 don't know if you need a chance to review that a
 6 little bit more, since you said you don't remember,
 7 but did it appear to you as if Judge Brown was
 8 actually using your expert kind of against you in
 9 fashioning his sentence?

10 A Judge Brown was absolutely using my expert
 11 against me. But like I said before, I was trying to
 12 get the Jury to give me what I needed. I wasn't
 13 going to get it from this Judge, no matter what.
 14 So, my choice was, not call the expert at all and
 15 just leave that hole there, or call him and try to
 16 get that in front of the Jury. I tried to get it in
 17 front of the Jury. It didn't work.

18 Q You keep mentioning that Judge Brown used your
 19 expert against you, that he was trying to do this.
 20 Was there some kind of situation or a bench
 21 conference or something that occurred in chambers
 22 that you would like to testify about? If not, I
 23 just have the transcript to go off of. So, it feels
 24 like you keep alluding to something that may have
 25 occurred in the course of this trial.

1 A I was called back in chambers the moment I got
2 to the courthouse on Monday with Mr. Stone, Mr.
3 Thornton, and Judge Brown, and just me, because they
4 didn't actually even allow my partner to come back
5 there. I was called into chambers about two to
6 three times a day throughout the case and there was
7 a lot of pressure put on me to reveal what my
8 defense was from minute one. I was told that what I
9 was trying to do was going to be denied before I
10 even got a chance to put it up. I was asked
11 repeatedly what the defense was. I had to argue in
12 chambers two and three and four times a day that I
13 did not have to provide my defense, even at this
14 point. I was told that if I did what they thought I
15 was going to do, that I was going to be stopped from
16 doing that, that it was going to be objected to,
17 that it was going to be denied, and that if I
18 continued, I was going to be held in contempt. And
19 that happened two and three and four times a day,
20 during this trial, in chambers, off the record. And
21 I'm saying that under oath right now.

22 Q Thank you for that. I just wanted to be clear,
23 since I felt like there had been several references
24 as to what you were specifically talking about.
25 I'll move on to issue number three. This deals with

1 the applicant's allegation that you failed to object
 2 to some improper and burden shifting statements made
 3 by both the Jury and the State and, as well, I'm
 4 going to get into closing argument a little here
 5 too. In the Court's opening statement, he says on
 6 page 124, line 23, 125, line 2, that there needs to
 7 be a search for the truth, and I'm just giving a
 8 little -- I'm not going to read it all, but he talks
 9 about searching for the truth to make sure justice
 10 is done between the parties. Is there any reason
 11 you did not object to those statements by the Court?

12 A I don't recall.

13 Q Were you aware of the Daniel's case that had
 14 addressed that the Court should not make such
 15 statements, that was decided shortly before your
 16 trial?

17 A I don't remember if I was aware or not.

18 Q Are you aware of a more recent case law, such as
 19 Fortune versus State that deals with -- the Court
 20 comes out and says, "We've been saying for so long
 21 that you shouldn't be making these statements." It
 22 also addressed it in State versus Beaty, which was
 23 the closing argument case as well, that the
 24 statements of "must search for the truth," we just
 25 need to omit these all together. Are you aware of

1 that line in case law?

2 A Are you asking me if I am aware of it now?

3 Q Yes.

4 A Eight years later? Yes, I'm aware of it.

5 Q Is that an objection you make now? If these
6 types of statements are made?

7 A Yeah, obviously.

8 Q Then he went on, and on page 127, and I
9 apologize, I'm just building a record here, he talks
10 about rendering a true and just verdict. As well,
11 on page 131, lines 10-13, he talks about the true
12 facts and a true and just verdict. So, is there any
13 strategic reason, any reason you can recall, why you
14 did not object to those statements by the Court?

15 A No. I don't recall.

16 Q In the State's opening, they go into an argument
17 on page 134 about what a verdict means, and a
18 verdict is to tell the truth. Is there any reason
19 you did not object to that argument being burden
20 shifting?

21 A Well, no. The whole verdict being telling the
22 truth is something I've argued myself. I don't
23 recall having a reason to object to that. That's a
24 line that was used a lot at that time. If that's
25 wrong, then I was not aware of it at that time.

1 Q In the jury instructions, page 599, and I
2 believe it's lines 5-9, the Court instructs the Jury
3 -- and I apologize, yes, it is the Court instructs
4 the Jury, both the State and the Defendant have a
5 right to expect that you'll carefully consider the
6 evidence. Both the State and the Defendant need a
7 fair and impartial trial. He talks about searching
8 for the truth. Is there any reason you did not
9 object to those statements on page 599 in the
10 Court's closing?

11 A I don't recall.

12 Q Do you recall in this case that the State waived
13 their first closing argument?

14 A Not independently. If that's what the
15 transcript shows, then that's what happened.

16 Q Is there any reason you didn't object to the
17 State getting to waive, so that you had to close in
18 full and then they got to close in full as their
19 reply argument?

20 A I typically don't, because strategically, I
21 don't want them to hear from the State twice. Once
22 is enough.

23 Q Essentially, you argue about the community. I'm
24 sorry, not essentially. But you argue about the
25 community in your closing argument and the nature of

1 this community, and then the State turns around and
 2 says that, essentially, you're asking them to ignore
 3 the law and to excuse this because of the
 4 environment in which it happened. What was your
 5 strategy with your closing argument?

6 A Jury nullification.

7 Q Can you explain that?

8 A It's exactly what it sounds like. The problem
 9 was is that they heard testimony from Officer
 10 Frazier, who is now actually a captain over there.
 11 I've known Jeremiah for years. And what he
 12 testified to in the trial that I recall was that
 13 they would show up to these times when Travis Holmes
 14 would shoot at people, would throw bricks at them,
 15 would threaten to kill them. At gas stations he
 16 would try to run them down with his car, and no one
 17 would ever give them a statement, no one would tell
 18 them where Travie went. They would not cooperate
 19 with police and so then they would walk away. And
 20 the problem was is that what I was trying to show is
 21 that there are people in Mr. Knight's community that
 22 felt like the police were not there to protect them
 23 the way they were to other people, that if there
 24 were certain people that committed crimes, that
 25 either people were more scared of that person than

1 the police or they felt that the police weren't ever
 2 going to do anything. So, when you feel like there
 3 is not a lawful way for you to be protected from
 4 someone who is a threat, then you have no choice but
 5 to defend yourself in the way that you think is the
 6 safest way for you to defend yourself. Part of the
 7 issue that got brought out in this case was the fact
 8 that a lot of times, Travie would travel with other
 9 individuals who were usually also packing firearms.
 10 And so, when Mr. Knight saw -- came across this guy
 11 in a setting where the guy made a threat to him, but
 12 he was not surrounded by his usual posse, he was
 13 paranoid and thought this was the only chance he
 14 would ever have of trying to defend himself without
 15 dying in the process, and that's what I was talking
 16 about in my argument. And I had to kind of dance
 17 around the issue because I'd been told repeatedly a
 18 whole laundry list of things that if I mentioned
 19 during my final argument, the Judge would hold me in
 20 contempt for saying them.

21 Q In this case, the Jury rendered a pretty quick
 22 verdict. Is that correct?

23 A I don't know what other choice they had.

24 Q I'm going to move on to allegation number four,
 25 which is ineffective assistance of trial counsel to

1 offer further testimony regarding the 2011 incident.
2 You were not with us this morning for the testimony
3 of Ms. Allen. Is that correct?

4 A No, I'm sorry, I was not. I was in federal
5 court. I apologize.

6 Q But you have reviewed a copy of her statement?

7 A Yeah.

8 Q I'm going to jump back into the trial, but I
9 just wanted to make sure of that before I moved on.
10 You indicated kind of already from the get-go that
11 the State and you felt like the Court was forcing
12 you to show your defense. Beginning on page 53,
13 there's some discussion about Rule 404B evidence,
14 and it appears -- and you specifically say on page
15 59, you thought 404B was going to be about your
16 client, but it turned into you being asked to
17 disclose what you intended to go into about the
18 victim. Do you recall all of that?

19 A Basically, yes.

20 Q You argue on pages 62-63, and I'm just
21 summarizing, that you're not required to reveal your
22 defense. The State can object when appropriate.
23 But from there it continues to follow throughout --
24 into page 114, that you are going to discuss the
25 victim's record and determine what's going to be

1 admissible. Now, there was more than just this
2 incident in 2011 that the State agreed to allow to
3 admit, that you were trying to admit. Is that
4 correct?

5 A Yes, that's correct.

6 Q Specifically, you asked the Court to consider an
7 event that took place in 2008 and 2009. There the
8 individual involved was a Mr. Hodum (phonetic). Do
9 you recall that?

10 A I remember there were several incidents. I
11 don't necessarily recall the names of the other
12 people involved.

13 Q On page 350 is where the Court makes his ruling.
14 The State's already agreed that they'll allow him
15 the 2011 incident, but the Court ruled that the
16 2008-2009 incident can't go forward. You said you'd
17 done a lot of investigation. Were you expecting to
18 be left with only one prior incident that you could
19 address at trial?

20 A It's not that I didn't consider that this was
21 going to be somewhat of a fight, so no, I guess it's
22 not a situation where I didn't consider the idea
23 that the Court would not admit every incident. But
24 I was, after the pushback that I was getting, I was
25 actually relieved I even got that one in, frankly,

1 and it was kind of waffling back and forth.
2 Obviously, it would have made our strategy a lot
3 better if we'd been able to get into all of the
4 things that we were able to bring evidence of.
5 There was actually quite a few other events that we
6 weren't even able to argue to the Court, because
7 people would tell my investigator about it, but they
8 weren't going to be willing to come in and testify
9 about it. Including times when Travie would
10 threaten to beat his own family up with sticks and
11 bricks because they didn't want him dealing crack in
12 their front yard, and we weren't even able to argue
13 some of those incidents. But I had always
14 considered the idea that we wouldn't get everything
15 in, but I can't say I wasn't disappointed that that
16 was the only thing that we got to. I think to some
17 degree that was the most important one, so I was
18 hoping that it would be enough to carry that issue
19 forward, but I continued to get a lot of push-back
20 throughout the entire trial.

21 Q Once the Court did rule and the State conceded
22 or agreed to allow in the 2011 incident, it appears
23 beginning on page 375, you began calling witnesses
24 regarding that incident. You called Sergeant
25 Frazier and discussed that they developed a suspect

1 of Antoine Robinson, and that Ms. Allen, Ms.
 2 Lashonika Allen also gave the name of Travis Holmes.
 3 So, there were two Travis Holmes. He admits that he
 4 neither spoke to either of them and there were other
 5 suspects. Was your intent in calling him to
 6 identify Travis Holmes as a suspect in the 2011
 7 shooting at the applicant's trailer?

8 A No, my intent for calling him was to show that
 9 the police never really followed up or made any
 10 arrests or -- they didn't even talk to Travis
 11 Holmes. He was named as someone who potentially
 12 shot bullets into a home, one of which grazed a
 13 woman and resulted in her miscarrying a child and
 14 they never even spoke to him. And they know who he
 15 is and they know who both of the Holmes' are. Both
 16 Travis Holmes' have been arrested multiple times.
 17 They know who they are and they never went and spoke
 18 to them. That's why I called him to testify in
 19 front of a jury.

20 Q The woman that you're referring to that was shot
 21 at and lost her baby, that would be Lashonika Allen,
 22 who was -- the baby was the applicant's baby. Is
 23 that correct?

24 A Correct.

25 Q You did call Ms. Allen, and she testifies

1 specifically on page 468 that everyone was saying
 2 there was a white SUV, so she knew it was them.
 3 Were you ever able to get her to confirm that she
 4 had direct knowledge that it was Travis Holmes?

5 A I don't recall.

6 Q You also called a neighbor, Mr. Daquan
 7 (phonetic) Cummings, and he testified about he saw,
 8 and then you called the Defendant and he says, on
 9 page 497, line 16, that it was his knowledge that
 10 Travis Sentell Holmes did it. Now, here's my
 11 question, and I apologize for taking a while to get
 12 here, but when the Court was ruling on voluntary
 13 manslaughter on page 576, he notes that no one
 14 testified that they had first-hand knowledge that
 15 the Defendant knew that Travis Holmes was the one
 16 who had shot up the trailer. Had you identified any
 17 victims that had -- sorry, any witnesses that had
 18 first-hand knowledge?

19 A I don't believe that I had because I -- if I had
 20 a witness -- as you can see, I tried to put up
 21 everybody that had any cognizable knowledge of this,
 22 and if I had known about a witness who could say, "I
 23 watched Travis Holmes commit this and I saw his
 24 face," I would have called that person.

25 Q At the beginning of trial, page 19, line 8, they

1 go through the witness list for the jury and they
 2 list Lashonika and then they also list Deshaunaka
 3 Allen, who testified for us today. Ms. Allen
 4 testified that she did have a meeting at your office
 5 and she was there willing to testify. Do you
 6 remember any reason why you did not utilize her
 7 testimony?

8 A No, I don't recall. I don't know why.

9 Q You have reviewed her statement; is that
 10 correct?

11 A I've reviewed her statement, yes.

12 Q Do you find that the information contained in
 13 her statement that she testified to earlier today
 14 would have been helpful regarding this issue?

15 A Yeah, but I also can testify that what she puts
 16 in that statement does not sound familiar to me, and
 17 I don't know, I don't recall, but I don't remember
 18 knowing that -- those facts, when I tried this case.
 19 Maybe I'm wrong. It's been eight years, but I don't
 20 recall that. I feel like if I had had that
 21 information, I would have tried to put it up, but I
 22 can't tell you why I didn't call her.

23 Q I'll move on to the fifth issue, which is an
 24 allegation of ineffective assistance of trial
 25 counsel for opening the door to the solicitor's

1 cross-examination regarding a prior shooting
2 incident. Just for your reference and for
3 everyone's reference, at the conclusion of your
4 closing argument on page 509 -- I'm sorry, at the
5 conclusion of your direct examination of Mr. Knight
6 on 509-510, you asked him to clarify some statements
7 he had made and asked him about stating that he's
8 never done anything like this before. Then you
9 address his pointing and presenting charge. Can you
10 review that and kind of take us through the reason
11 why you were trying to clarify that?

12 A You'll have to give me a minute. You said 509
13 and 510?

14 Q Yes. You begin with on line 10 with, "Now I
15 want to clarify some things."

16 A I see it. My recollection is that I asked those
17 questions because during one of his responses he
18 said he's never done something like this before. I
19 think I was asking those questions because I
20 anticipated that that testimony would be one that
21 would open the door to them questioning him, because
22 I knew he had the conviction that I discuss in
23 there. I also know that we had already discussed
24 what convictions against him would be admissible,
25 and so I anticipated that they were going to ask him

1 about him saying that and I was trying to defuse
2 that bomb before it got set off.

3 Q Maybe as a point of reference, it will help if
4 you flip back to page 504. This may be the instance
5 that you were talking about, beginning on line 21.
6 You say, "Mr. Knight, were you scared through the
7 whole thing," and he answered, "I was very scared.
8 I never did anything like that in my life. I didn't
9 -- I never wanted for that to come to that, and I'm
10 very sorry for what happened." Is that what you
11 were recalling?

12 A Yes.

13 Q So, you were making an attempt there to kind of
14 shut the door that you had opened or that answer had
15 opened or try to clarify before the State pounced?

16 A Like I said, I can only read from the record.
17 This was months and months of preparation and a week
18 of trial, but if a client testifies in that fashion,
19 my guess would be that that was probably not exactly
20 the way I wanted him to phrase that answer, and when
21 he added that into his answer -- because we did do
22 quite a lot of prep in getting him ready to testify,
23 because I don't -- having your client in a murder
24 case testify is not my idea of a fun day because
25 you're nervous the entire time that something like

1 that could happen, that they could go further in an
2 answer than what you think is a good idea. So, the
3 best I can tell you, based on looking at this is
4 that when I heard that answer, it was probably
5 outside of where I wanted him to go and I thought
6 that he was actually the one opening the door and I
7 was trying to, like you said, re-shut said door.

8 Q Jumping back to page 510, right away the State's
9 cross-examination starts in, "When you told the Jury
10 you'd never done anything like this" and starts with
11 that line of questioning and he actually goes into
12 an incident involving Michael Singleton and a drive-
13 by shooting in 2006. Had you prepared Mr. Knight to
14 have to be able to address that situation?

15 A I don't recall specifically, but I know that I
16 had talked to him about the dangers of testimony and
17 that I had gone over his record with him, and I had
18 asked him details about what those things were
19 because I was aware that they were going -- I mean,
20 Mr. Knight was not unknown to law enforcement, so my
21 recollection was that I tried to prepare him for it
22 as best I could. I don't remember the specific
23 conversation or whether it involved a discussion of
24 Mr. Singleton specifically, but I know that I talked
25 to him about what he needed to do if and when they

1 started asking him about prior convictions.

2 Q Then if you look forward to 511, you actually
3 make an objection and it's very brief, and you put
4 on the record that that's not what he was convicted
5 for and then you have the bench conference, so
6 that's all that appears on page 511 as far as the
7 record. Do you recall anything that was discussed
8 at that bench conference or why you didn't make a
9 further record on that issue?

10 A No, I don't recall.

11 Q Would you agree if that bench conference is off
12 the record, that would not be an issue that could be
13 raised on appeal?

14 A Yeah, yeah.

15 Q Mr. Bax, turning to the last allegation,
16 ineffective assistance of counsel for failure to
17 request a proper inferred malice instruction or
18 failure to object to the instruction given to the
19 jury, beginning on page 582, it appears that you all
20 are discussing the malice instruction as if there
21 was some discussion in chambers, and there is an
22 agreement to omit the -- what is now known as the
23 Belcher language or the deadly weapon charge. Do
24 you recall that?

25 A No, I don't recall it.

1 Q Specifically, if I could get you to look at page
2 584. This is during your discussion on charges.
3 And beginning on line 7, the Judge, as it's recorded
4 in the transcript says, "I think looking at the
5 murder charge in its entirety, the jury could
6 certainly find that there was no malice here based
7 upon the testimony that's been presented," and the
8 State says, "Yes, sir." Do you follow that better
9 than I'm following that? I find that to be very
10 confusing, with the Court saying there could be
11 found no malice and that's the only instruction
12 that's being given is the murder -- malice
13 instruction.

14 A I don't recall that conversation outside of
15 whatever is in the transcript.

16 Q Then there's further discussion about what will
17 be in or out of the charge, and then the malice
18 instruction actually is on page 609, if you could
19 look at that for me. The Judge makes a reference to
20 the inference of malice beginning in the charge on
21 line 10 that it could be either expressed or
22 inferred, that it doesn't mean different types of
23 malice. And then on line 23, it says, "Malice may
24 be a conduct showing a total disregard for human
25 life." I assume that should read inferred. Do you

1 assume the same, that that was the inferred malice
2 instruction?

3 A I don't assume anything. It is -- well, I don't
4 know. I don't have any independent recollection of
5 it. I don't know.

6 Q Are you familiar with the case of State vs.
7 Elmore that deals with the inferred malice
8 instruction and finds that no deviations from that
9 case forward, which was 1983, should be made when
10 making the permissive inference portion of the
11 instruction?

12 A I don't know whether I was aware of that case at
13 that time or not. I don't recall.

14 Q And that specific instruction is supposed to
15 typically come after that line there in 23 and say,
16 "if facts are proved beyond a reasonable doubt
17 sufficient to raise an inference of malice to your
18 satisfaction, this inference was to be simply an
19 evidentiary fact to be taken into consideration by
20 you, the jury, along with other evidence in this
21 case and you may give it such weight as you
22 determine it should receive." Is there any reason
23 you didn't ask for that to be included or object
24 when it was not included?

25 A I don't recall.

1 Q Do you find this to be a proper malice
2 instruction?

3 A I can't answer that without starting to do
4 research like I'm getting ready for a trial, and I
5 haven't researched that issue in anticipation of
6 this PCR hearing, so I don't know.

7 Q Are you familiar with the line of cases that
8 have come out recently. Specifically, there's been
9 some cases even in 2020 where the Court has really
10 gotten away from the inferred malice instruction
11 altogether?

12 A I don't think I've had an inferred malice case
13 in the last five years, so I may not have really had
14 the opportunity or the inclination to, you know,
15 brush up on what we're doing with inferred malice.
16 I know that I handled a number of cases in Lexington
17 County prior to this where, you know, I was very
18 familiar with the felony murder inference of malice,
19 if you were in the course of, you know, -- in the
20 middle of some kind of inherently dangerous felony,
21 that they could argue that that was inferred malice
22 from that, even if someone was not intended to be
23 killed. But I don't think I've had a case that
24 involved either of those issues probably in the last
25 five years.

1 MS. BLANCHETTE: Your Honor, at this point I'd
2 beg the Court's indulgence to see if my client has
3 anything he'd like to discuss with me at this point
4 before I conclude my direct examination.

5 THE COURT: All right. Take about five minutes.
6 Thank you.

7 (Whereupon, a brief recess is held.)

8 THE COURT: All right. Anything else?

9 MS. BLANCHETTE: No, Your Honor. I have no
10 further questions.

11 THE COURT: Okay. Cross-examination.

12 MR. LIMBAUGH: May it please the Court, Your
13 Honor?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. LIMBAUGH:

17 Q Good afternoon, Mr. Bax.

18 A Good afternoon.

19 Q I'll just run through it in the same order that
20 Ms. Blanchette did. With the jury issue, you did
21 try and bring out and preserve the issue of your
22 venue change, correct?

23 A Yes, sir.

24 Q There was no actual evidence that came to your
25 knowledge of any juror impartiality or things of

1 that nature after the trial, was there?

2 A Not that I can recall, no.

3 Q Okay. You never received any letters or
4 anything of that nature saying that their media
5 influence affected their decision at all?

6 A No, I mean, I can tell you for sure if I had
7 gotten a letter that would have allowed me to reopen
8 this case, I would have acted on it.

9 Q Okay. All the jurors that did say they were
10 exposed to some level of media exposure did say that
11 it wouldn't affect their decision, they would be
12 impartial; is that correct?

13 A To the best of my recollection, yes.

14 Q With Dr. Martin, you said that you trusted his
15 forensic psychiatric opinion then and you still do.
16 Is that correct?

17 A Yes.

18 Q Okay. You asked him to do a full evaluation of
19 Mr. Knight, including any potential mental illnesses
20 and competency, correct?

21 A That's correct.

22 Q Had you used Dr. Knight on any other cases of
23 yours? Was he a regular expert that you've used in
24 the past?

25 A Dr. Martin, you mean?

1 Q Yes.

2 A I became acquainted with Dr. Martin in federal
3 courts when federal district judge Cameron Currie
4 appointed him to do an evaluation on one of my
5 clients in a very large drug conspiracy that
6 actually involved the sheriff of Lee County who was
7 running or was alleged to have run narcotics through
8 Lee County, and I had a really low lying Defendant
9 in that case who was homeless and had some issues.
10 And additionally, Dr. Martin would regularly testify
11 at the -- or, excuse me, not testify, he would
12 present at the CLE presented by Mr. Parks Smalls,
13 who was a federal public defender at the best
14 practices seminar in Charleston in October every
15 year. I was also familiar with Dr. Martin's wife at
16 the time, unfortunately, I think that they have
17 split up, Dr. Julie Martin, who would assist me in
18 domestic relations cases because she kind of
19 specialized. She was also in the field and
20 specialized more in children. But Dr. Martin had
21 always had a background in forensic psychology, had
22 the degree, and was also really good at testifying.
23 That's one thing that people forget is that finding
24 an expert is one thing, but finding an expert that
25 can communicate to a jury in a way that is

1 convincing is not as easy, and Dr. Martin was very
2 good at testifying.

3 Q So, needless to say that he was more than well
4 qualified for you to hire him as an expert in this
5 case, correct?

6 A That's correct and additionally, I can't -- Mr.
7 Limbaugh, I can't expert shop. Once I have picked
8 one and they have done their evaluation and given it
9 to me, I can't say, "Well, that's not what I wanted.
10 Let me go get another one." When I'm Court
11 appointed and I'm using indigent defense funds in
12 order to pay their fee -- you know, at the time,
13 indigent defense Hugh Ryan was already having an
14 apoplectic seizure at my bill in this case as it
15 was.

16 Q Right, so you don't have an unlimited budget to
17 go searching for an expert that would give you an
18 opinion that would most benefit your defense. Is
19 that correct?

20 A That's correct.

21 Q So, you were using the -- someone that you've
22 used in the past and someone that fit the budget
23 that you had and give a credible expert opinion, in
24 your opinion. Correct?

25 A Well, Dr. Martin is not cheap. Let me make

1 sure. Dr. Martin is actually kind of on the more
 2 expensive side, but everything that I had knowledge
 3 wise at that time was that he was a good expert for
 4 a variety of reasons, so I called him up and said,
 5 "Would you be willing to do this," and he said, "If
 6 you can get the Defendant -- client up to me in
 7 Columbia so that I can do a sit-down in my office,
 8 where I can have a better opportunity to evaluate
 9 Mr. Knight." And my recollection is that we were
 10 able to do that. I believe, even, that at the time
 11 the correctional officer, I think it was Chaplain,
 12 big ole fellow, big, big dude, real nice guy but big
 13 dude, I think it was him or Green that transported
 14 Jared up there. I don't recall. Raj might remember
 15 better than me but I remember even talking to him
 16 afterwards and they told me they had a great time.
 17 They drove him up there, they got to drink coffee in
 18 the waiting room and that Dr. Martin was real nice
 19 to them as the guards.

20 Q Okay. I've heard his testimony, which actually
 21 aligns with Dr. Maddox's testimony earlier, was that
 22 Raj was criminally, or Mr. Knight was criminally
 23 responsible. Do you recall that?

24 A Yes. I did ask for him to give me an opinion on
 25 that and the thing is, is that Dr. Martin is savvy

1 enough to where he will call me and ask me. He will
2 say, "Do you want me to issue a written opinion or
3 not," because you have to be concerned about whether
4 you create something that is discoverable to the
5 other side that will give them more opportunities to
6 prepare their defense to my defense, as it were.
7 And so, Dr. Martin went over his findings with me
8 orally before issuing anything in writing. I don't
9 even recall if he actually issued any kind of
10 written opinion in this case, but he would have if I
11 had asked him to.

12 Q Again, you testified earlier that if he had
13 given a diagnosis of PTSD, that it would more than
14 likely have been helpful, but again, you don't get
15 to go looking around for an expert that's going to
16 give you that opinion, do you?

17 A No. I don't recall him giving me a specific
18 diagnosis of that. I don't know why. I think
19 Dr. Martin, it's my opinion, that Dr. Martin was
20 giving me his honest assessment as a professional,
21 but I can't tell you why he didn't give me a
22 diagnosis of PTSD, whereas Dr. Maddox has. I don't
23 know.

24 Q Thank you. So, kind of going into the strategy
25 a little behind that with -- you said, you'd get

1 murder versus no lesser included. You thought that
2 Mr. Knight was going to be convicted of murder. Is
3 that correct?

4 A I felt like that was the more likely possibility
5 when you take into account that -- and this is
6 something to remember in this case, because we're
7 looking at a cold record here, but there was video
8 surveillance in the Subway sandwich shop there in
9 the Walmart Plaza. It's still there. The sandwich
10 shop is still open. Not many people remember this,
11 but there's obviously, like with any chain
12 restaurant, there were surveillance cameras. I
13 remember one pointed directly at the counter, the
14 checkout or cashier. There was also one just
15 outside of the restaurant, and I believe there was
16 one that kind of showed the small little eating
17 area. You know, the shooting is caught point-blank
18 range, excuse the language, on those cameras and
19 they are not pretty. If we'd heard what was said
20 between the two, that would have been nice for us,
21 because Rajerick had always said that Travie said
22 that Travie said -- made a threat to him. I forget
23 the exact language that Rajerick heard him say to
24 him, but he made a threat to him in passing, but we
25 didn't get to hear that. What we saw was the

1 shooting. And visual impact cannot be underplayed.
 2 And when you have a jury watching this video of this
 3 shooting and then watching Travis Holmes stumble
 4 outside and then slowly crumble to the ground and
 5 die before their very eyes, it's a little hard to
 6 think that given a murder case versus a not guilty,
 7 that we were going to get there unless we were going
 8 to be able to vociferously argue full self-defense.
 9 And the problem is, it's possible that had it been
 10 in front of a different court, they might have ruled
 11 that I could argue self-defense, but this Court did
 12 not rule that I could argue self-defense. So, if I
 13 can't argue self-defense to that jury and they're
 14 watching that video, and the only options they have
 15 is guilty of murder or not guilty of anything,
 16 that's a hard sell in the business. That's a hard
 17 sell.

18 Q Then, I guess, which ties into that directly, is
 19 trying to get the manslaughter instruction and, so,
 20 as you know, it's heat of passion and sufficient
 21 legal provocation. So, could you try and walk me a
 22 little bit through how you were trying to get it
 23 past both of those hurdles in presenting evidence to
 24 get that instruction.

25 A We were trying to argue that if you combined the

1 three different main things, if I'm recalling
2 correctly and I'm having to bring this up from eight
3 years ago.

4 Q Understood.

5 A The problems we had with legal provocation and
6 the sufficient mental state was that there was an
7 immediacy problem. The fact that Travie didn't draw
8 down on him directly in the store, the fact that his
9 gun was not on him, it was in his car, and forgive
10 me if I have mischaracterized evidence, but I
11 believe my memory is that the testimony was he went
12 to the car and left his sandwich and walked back in,
13 and I believe there is at least some intimation that
14 he got the gun at that time. I can't remember if he
15 testified whether he had it already, but he came
16 back and so, the difficulty we were going to have,
17 and we knew this ahead of time, was being able to
18 argue that the things that happened in the past
19 where Travis Holmes shot up my client's home, lost
20 him his baby, added to the threats that he made to
21 him in the Subway restaurant, added to his knowledge
22 of Travis' history with not just him, but with
23 everybody else, created a sufficient legal
24 provocation and a mental state that him walking out
25 of the restaurant and going to his car and coming

1 back was not a sufficient cooling down period, in
2 order for us to argue that it was -- it entitles him
3 to a manslaughter charge. The problem was that I
4 believe that he was entitled to a manslaughter
5 charge because it was a weighing of the evidence
6 issue and even the Judge admitted that the evidence
7 was there, he just was making a determination for
8 the jury, that he didn't want the jury to have to
9 consider it and they used the Hernandez case, which
10 I still disagree with, in order to justify that.
11 And it's one of the few cases out there that in some
12 way agrees that a Judge can take the place of a jury
13 and evaluate the evidence and decide the jury
14 doesn't need to make a determination of that
15 evidence and I recall that I tried to argue as hard
16 as I could against that case, because my argument
17 was that any evidence should go to the jury. It
18 should be a jury decision as to whether that
19 constituted sufficient legal provocation and whether
20 or not he had sufficient time to cool off.

21 Q Are you familiar at all that that was the direct
22 issue taken up on appeal and affirmed, was the --

23 A I am aware -- I remember that it was actually a
24 -- her name is Ms. Monarch (phonetic), I think, and
25 she's very nice and she called me. She was

1 apparently part of a program, because I had actually
2 spoke with Bob Duttick (phonetic) on a number of
3 occasions about Rajerick's case, and I told him,
4 "This is a really good case for appeal," because I
5 think the issue of whether a Judge can take that
6 away from the jury and decide it for them is a
7 really good issue. My remembrance now was, I think
8 that the Hernandez case was only a Court of Appeals
9 decision and not a Supreme Court decision. Now, I
10 may be wrong about that. Like I said, I'm trying to
11 drag this up after a number of years. But not only
12 did I speak to Bob Duttick (phonetic) on the phone,
13 I spoke to him in person at a public defenders'
14 conference that came some time after that in
15 Charleston or maybe it was in Myrtle Beach, about
16 that, and I specifically said, "This is a good
17 issue," and he said, "I'm aware of it, but as part
18 of this program, there are attorneys that are in big
19 practices, mostly civil practices, that are
20 volunteering to take on appeals and this is one that
21 we're giving to this person, but I'm there to help
22 her," and she talked to me on the phone and I think
23 we spent probably close to an hour on the phone at
24 least once talking about that, and they appealed on
25 that issue and they lost. Unfortunately, they did

1 not take it up to the Supreme Court and I don't know
2 why because I would have.

3 Q With that decision, was there -- other than
4 potentially getting a different opinion from a
5 different expert, is there anything else that you
6 could have -- any information you had at the time
7 that you wish you had gotten into evidence to help
8 try and get that charge or did you do everything
9 that you could at the time?

10 A I'll be perfectly frank, and I said this to you
11 and I'll say this again, and I'll say that I'm going
12 to testify to Mr. Knight as well. What I should
13 have done is argued what I meant to argue from the
14 very beginning, even though the Judge threatened to
15 hold me in contempt. I should have just gone ahead
16 and argued that my client had no option but to
17 defend himself because the police wouldn't help him,
18 and that the solicitor's argument that his crime was
19 in the wrong place and that's why he needs to get
20 life was blatantly racist and I should have just
21 risked getting held in contempt by the Judge. I
22 shouldn't have been intimidated by the fact that I
23 was getting told that I should not represent my
24 client as zealously as I thought was necessary. So,
25 if there's one thing I'll say I did wrong, it's that

1 I didn't take it far enough in that closing argument
2 and just damn tell those jurors what really happened
3 and what was really going on, even if it meant me
4 going to jail with Raj, damn it.

5 Q Thank you. I'll move on. I appreciate your
6 being candid, Mr. Bax. We went over the search for
7 the truth conversations and all that with the Judge
8 and you stated you just don't recall why you didn't
9 object to any of that. Is that correct?

10 A I don't have any independent recollection as to
11 whether I had a specific reason, no.

12 Q Okay. And then we get to allegation four, which
13 involves Ms. Allen's statement, which you reviewed.
14 I believe you testified earlier that you said that
15 it didn't seem familiar, but if you had that
16 information at the time, you would have used it. Is
17 that accurate?

18 A That's correct. I don't recall me having that
19 information. I remember that my investigator, Rich
20 Holbrook, had talked with Lashonika, and I remember
21 that he had tried to make contact with the sister on
22 a couple of occasions, but I don't recall if he ever
23 had a direct contact with her other than maybe phone
24 contact and I don't recall him telling me or anybody
25 telling me that she could specifically identify -- I

1 don't recall having that information. I feel very
2 confident that if I had had that information and the
3 ability to call her to the stand, that I would have.

4 Q You did testify earlier that, again, just a
5 second ago, that people were afraid to speak out
6 against Mr. Travie Holmes and that he was a
7 dangerous man. Could that have possibly come into
8 play for someone not telling you his direct name and
9 it's involvement at the time?

10 A It did make it very difficult. There were a lot
11 of people that would not speak to my investigator.
12 I remember that at the time, I had a law clerk who
13 was an African American male who had been born and
14 raised in Beaufort County. And I remember that he
15 and my investigator, Rich Holbrook, who was a white
16 guy from New Jersey, were in some of those
17 neighborhoods and I remember my law clerk calling me
18 and saying, "You need to tell your investigator to
19 stop going up and knocking on doors. He's going to
20 get us shot," and that there were several people,
21 that when the name Travis Holmes was brought up,
22 they would slam their doors and that was that. So,
23 it was not easy is what I'm trying to say.

24 Q Thank you. Just if you thought about opening
25 the door, you said you prepped Mr. Knight thoroughly

1 for his testimony but you believed it was more of
2 him just kind of going longer with an answer. Is
3 that correct?

4 A As best as I can tell from reading that
5 transcript, you know, I think that what I was doing
6 is that line about, "I've never done this before,"
7 probably not a line that I would have told him was a
8 good idea if I'd known he was going to say that.
9 But that's just from me reading the transcript. I
10 don't have an independent recollection of that
11 direct examination.

12 Q Again, you don't have any recollection or any
13 memory for why you wouldn't have objected to the
14 Court's inferred malice instruction. Is that
15 correct?

16 A No, I don't recall.

17 Q Again, that number of the cases that were
18 referred to on direct, they came up afterwards and
19 wouldn't have affected your decision making in this
20 case, obviously, correct?

21 A Right. Don't get me wrong. I did quite a bit
22 of legal research going into this case, and I know
23 that I argues quite a bit of case law vociferously.
24 I remember handing copies around, but as to what
25 cases I was arguing and whether I knew about a case

1 if it was available at the time, I don't have an
2 independent recollection of that.

3 Q Okay. One last thing, there was obviously a
4 clear video of Mr. Knight doing this, but you also
5 testified that, of course, he did shoot the victim.
6 Correct?

7 A Yeah. Mr. Knight, from the very beginning, and
8 this was part of the defense -- it was clear that
9 Mr. Knight was not trying to hide what happened and
10 the thing was, is that when you look at that video,
11 one thing that is clear is that I don't believe that
12 Rajerick Knight was acting rationally, because if
13 you were rational, you would not walk into a
14 restaurant in front of all sorts of witnesses and do
15 that. And, so, from the very beginning, I believed
16 Mr. Knight and expected that Mr. Knight was going to
17 tell me that there were other factors involved with
18 his doing what he did, and that those factors were
19 not factors that really could be considered those of
20 a rational person. There was obviously something
21 acting on his will that created the irrationality of
22 fear. Rajerick and I talked about that at length
23 many times, and that's what I was trying to show
24 this Jury, that Mr. Knight would not just do this,
25 that he would not just go in and shoot someone in

1 front of a bunch of people in cold blood. That was
2 not him. I never believed it was him. Something
3 else caused that, but our ability to try to argue
4 that to the Jury was severely hampered.

5 MR. LIMBAUGH: That's all I have for this
6 witness, Your Honor.

7 THE COURT: Thank you, Mr. Bax. Any redirect?

8 MS. BLANCHETTE: No, Your Honor.

9 THE COURT: All right. Thank you very much.

10 MR. BAX: Thank you, Your Honor. May I be
11 excused, sir?

12 THE COURT: Any objection to that?

13 MS. BLANCHETTE: I intend to call Mr. Knight
14 next, so I just wanted to make sure the State was
15 aware of that before they excused Mr. Bax.

16 MR. LIMBAUGH: I don't have any problem, Your
17 Honor. The State, at the appropriate time, does
18 want to bring something up to the Court, though.

19 MR. BAX: Well, if I can, Your Honor,
20 Mr. Limbaugh, if you need me, you can call me and
21 I'll get back on.

22 THE COURT: All right. Otherwise, you're
23 excused. Thank you very much.

24 MR. BAX: Thank you, Judge.

25 THE COURT: Yes, sir. Okay, ready to call your

1 next witness?

2 MS. BLANCHETTE: I am, Your Honor, and before I
3 forget, just based upon the testimony of Mr. Bax
4 about his closing argument and his testimony on
5 cross, I would ask the Court to consider that under
6 our number two allegation, failure to effectively
7 present his primary defenses. I don't think I need
8 to move under Rule 15B to make a different
9 allegation, but that's not something I specifically
10 stated under number two, but I do believe it falls
11 under it.

12 THE COURT: Okay, without -- any objection to
13 that, Mr. Limbaugh?

14 MR. LIMBAUGH: It's not an objection, Your
15 Honor, however, the State, in light of a number of
16 points that came up during Mr. Bax's testimony that
17 I was not previously aware of, I would request that
18 we do leave the record open so I can get the
19 solicitors to testify and even essentially Judge
20 Brown, I mean, that could be a nightmare, but there
21 have been some --

22 THE COURT: You think you can get a Circuit
23 Judge to testify?

24 MR. LIMBAUGH: I don't think I can make him, but
25 I think with some of the allegations that have been

1 made, he might would like to. At the very least, a
2 solicitor because there have been some testimonies
3 and allegations made that -- as Ms. Blanchette just
4 noted with 15B, she could amend even after the
5 hearing, so if I don't get some testimony out there
6 in the hearing, then I'm kind of stuck with where we
7 are.

8 THE COURT: Well, I'm -- anything from you, Ms.
9 Blanchette on that?

10 MS. BLANCHETTE: Your Honor, I would object just
11 for the mere fact that leading up to today, I was
12 told by the administrative judge, we've got to get
13 this case heard during the August term, and we were
14 told this would not be continued past today and we
15 should have everything prepared. The order is very
16 clear, the continuance order of Judge Jefferson, and
17 we had phone conferences with her to that extent.
18 Our amendment has been filed since March of 2020
19 when we thought we were going forward right before
20 Covid hit, so I do believe the State has had ample
21 time, knowing what our allegations were.
22 Furthermore, Mr. Bax is their witness. I know I
23 called him as my case in chief, but he is listed on
24 the case as their witness and he typically would be
25 under their subpoena. So, this isn't a surprise

1 witness. It just appears that maybe Mr. Limbaugh
 2 did not interview him or discuss these matters with
 3 him or prepare with him for his testimony today, and
 4 I'm not trying to be accusatory, I'm just, you know,
 5 putting this out there, but I do not think that this
 6 should be allowed to open so they can call
 7 additional witnesses, because Mr. Bax essentially is
 8 listed as their witness. So, this is information
 9 that they should have been aware of. This case has
 10 been pending for a very long time, and I didn't
 11 think I would have to be able to call additional
 12 witnesses in response, because there's been no
 13 notice given that the State intended to call those
 14 witnesses.

15 THE COURT: Okay, and you're, I guess, referring
 16 to Mr. Bax's allegations that he was threatened with
 17 contempt? Is that correct?

18 MR. LIMBAUGH: That's correct and then just some
 19 of the conversations in chambers involved the
 20 solicitor with the solicitor's alleged racial
 21 closing arguments and things of that nature. It's
 22 also -- it's not the State's burden here in such
 23 that we're responding to the applicant's case. It's
 24 her burden -- I don't have to tell them that kind of
 25 thing. So, I mean, I was surprised by the testimony

1 and --

2 THE COURT: Okay. Well, we'll take that up at
3 the conclusion. Go ahead. Let's go ahead and get
4 Mr. Knight.

5 MS. BLANCHETTE: Yes, Your Honor, I'm prepared
6 to call Mr. Knight. Could I just need affirmation
7 from him that he is prepared to go forward? Can you
8 hear me?

9 THE COURT: Can you -- Mr. Knight, are you
10 prepared to go forward with your testimony?

11 MR. KNIGHT: Can I have a moment before my
12 testimony or can I have a moment with my attorney
13 before my testimony?

14 THE COURT: All right. We'll take about three
15 or four minutes.

16 (Whereupon, we go off the record.)

17 MS. BLANCHETTE: Your Honor, my client's not
18 back in, but I didn't want to waste any time. He
19 has asked if I can arrange for him to speak to
20 Dr. Maddox before he takes the stand. Your Honor, I
21 apologize, I can't hear you.

22 THE COURT: Go ahead and see if we can get that
23 -- make that happen.

24 MS. BLANCHETTE: All right, thanks. And I
25 didn't know if you would want to recess for a couple

1 of minutes. I just didn't want to keep you all
2 waiting on me, because that was the next phone call
3 that I was going to make.

4 THE COURT: Okay. We'll recess for just a few
5 minutes.

6 MS. BLANCHETTE: Okay. Your Honor, I'll move
7 quickly. Thank you.

8 (Whereupon, a brief recess is taken.)

9 THE COURT: Okay, everybody come on back. Ms.
10 Blanchette? Okay, Ms. Blanchette, call your next
11 witness. You are muted, Ms. Blanchette. There you
12 go.

13 MS. BLANCHETTE: Sorry, Your Honor. I had to go
14 reset to the internet real quick.

15 THE COURT: Okay.

16 MS. BLANCHETTE: Your Honor, I would call
17 Rajerick Knight to the stand.

18 THE COURT: All right, sir. If you would,
19 please raise your right hand. Do you swear to tell
20 the truth, the whole truth and nothing but the
21 truth?

22 THE WITNESS: Yes, sir.

23 THE COURT: Okay, state your full name for the
24 record, please.

25 THE WITNESS: Rajerick Knight.

1 THE COURT: All right. Counselor?

2 MS. BLANCHETTE: Yes, Your Honor.

3 RAJERICK KNIGHT,

4 having been duly sworn,

5 testifies as follows:

6 DIRECT EXAMINATION

7 BY MS. BLANCHETTE:

8 Q Mr. Knight, we're here today and we've been
9 talking all day about the application you filed back
10 in 2015, that's 2015-CP-07-1903. You filed that
11 application. Is that correct?

12 A Yes, ma'am.

13 Q With my assistance, I became your attorney in
14 2018. We did a discovery motion, got an order and
15 then we filed an amendment this year in March?

16 A Yes, ma'am.

17 Q We obviously have been going forward on those
18 allegations, but I just need to ensure that those
19 are the allegations you do want the Court to
20 consider, the allegations set forth in your
21 amendment?

22 A Yes, ma'am.

23 Q Prior to Covid hitting, we had met a number of
24 times in person, we've talked over the phone and had
25 virtual meetings since. And in those meetings, I

1 discussed with you the relief that you could get
2 from the Court and what that meant. So, first I
3 wanted to ask you, what is the relief that you're
4 asking the Court for?

5 A A new trial.

6 Q In our discussions, I've explained to you, that
7 means that the Court can set your convictions and
8 sentences aside and put you in the position you were
9 before you were convicted, and with that comes the
10 risk of getting up to the maximum sentence again.
11 Do you understand that?

12 A Yes, ma'am.

13 Q And based upon our discussions regarding the
14 risks and my question today, you still want to go
15 forward?

16 A Yes, ma'am.

17 Q Okay. Now, Mr. Knight, I'm just going to kind
18 of jump in and ask you about each of the issues as
19 they appear in the amendment. You're not a lawyer,
20 so please don't try to answer legal questions, and
21 if you don't understand my question, please ask me
22 to rephrase it. Okay?

23 A Yes, ma'am.

24 Q First I want to talk with you about the issue
25 involving the jurors. Did you want your attorney to

1 effectively use all the strikes that he had in
2 putting together your jury?

3 A. Yes, ma'am.

4 Q Would you have wanted him to strike all jurors
5 with media exposure?

6 A Yes, ma'am.

7 Q Now, you already heard me ask Mr. Bax about his
8 statement to the Court that he didn't have all the
9 information he needed to strike the jurors. Would
10 you have wanted him to make sure he had all the
11 information he needed to properly strike the jurors?

12 A Yes, ma'am.

13 Q Did he ever explain to you any reason for not
14 striking the jurors with media exposure?

15 A No, ma'am.

16 Q You heard his testimony today about his concerns
17 regarding the racial makeup of your jury. Did he
18 ever discuss that with you?

19 A No, ma'am.

20 Q So, he never told you he was keeping a juror
21 because that juror was similar to yourself in that
22 they were African American?

23 A No, ma'am, I would just say I can't recall. Not
24 to my recollection.

25 Q Is there anything else about the allegation that

1 he was ineffective in the handling of the striking
2 of the jury that you would like to add?

3 A Can you repeat the question?

4 Q Yes. As to issue number one involving how
5 Mr. Bax struck the jury, is there anything else that
6 you would like to add?

7 A No, ma'am.

8 Q Let's move on to issue number two then. That is
9 the issue involving his failure to effectively
10 present your primary defenses, which in his
11 testimony, he talked about self-defense, he talked
12 about manslaughter. Right now I just want to talk
13 to with you because you're not an attorney and you
14 don't understand the intricacies of that. About
15 your interaction with Dr. Martin, do you remember
16 meeting with him and where did that happen?

17 A Yes, ma'am. I left Beaufort County and I went
18 to Columbia, South Carolina, to meet with him.

19 Q Was that meeting in his office as Mr. Bax
20 recalled?

21 A Yes, ma'am. It was inside of his office.

22 Q During that meeting, did you attempt to answer
23 all his questions to the best of your ability?

24 A Yes, ma'am.

25 Q You also had the opportunity, as part of your

1 PCR, to be evaluated and meet in person and
2 virtually with Dr. Maddox. Is that correct?

3 A Yes, ma'am.

4 Q Can you compare the two interactions, your
5 interaction with Dr. Martin and your interaction
6 with Dr. Maddox?

7 A My interaction with Dr. Martin was more of -- he
8 had just wanted to know, like, things about the
9 Subway incident and just trying to ask me, like,
10 prior acts against me from Mr. Holmes, mainly about
11 the day at hand, the day at Subway. And Dr. Maddox
12 was more of a questioning of, like, she asked the
13 questions to more understand me, my childhood,
14 everything that led up to the incident of Subway,
15 but if I stayed two hours with her, she might have
16 asked me -- well, if I spent three hours with her,
17 she might have spent one hour on that and more hours
18 just asking me questions about growing up, where I
19 went to school, things of that nature.

20 Q So, you spent more time with Dr. Maddox talking
21 about your childhood or your background than you did
22 with Dr. Martin?

23 A Yes, ma'am.

24 Q Okay. Was your interaction -- did she seem to
25 ask you questions that were easier to answer or was

1 it more -- was there any difference between the two
2 interactions?

3 A It's hard for me to express myself, so she would
4 ask the questions that made it easier for me to
5 express myself. I'm trying to say, like, she asked
6 questions that were more things that I probably
7 wouldn't be able to get out on my own, but she just
8 asked the questions that helped me express myself
9 better.

10 Q Did you understand or did your attorney explain
11 to you after you met with Dr. Martin what his intent
12 was in using Dr. Martin at trial?

13 A Mainly he would always say the word self-
14 preservation. I remember Mr. Bax saying that he
15 would say something about my state of mind, like,
16 self-preservation state of mind. Just me trying to
17 recall times meeting with Mr. Bax, those are things
18 that I remember.

19 Q Mr. Knight -- okay, you froze for a second on my
20 end. I apologize. Now, he had -- Mr. Bax testified
21 that he couldn't shop around for a better expert,
22 but did he ever give you the opportunity to discuss
23 with him what you talked about with Dr. Martin and
24 what his findings were?

25 A He actually -- one more time, at least.

1 Q I'm not sure if it's my Internet connection or
2 yours, but I'm seeing some freezing, so let me know
3 if you don't. Mr. Knight, after you met with
4 Dr. Martin, did attorney Bax ever talk with you
5 about, "This is what Dr. Martin has found and this
6 is how we're going to utilize that," or raise any
7 concerns about his findings?

8 A No, ma'am. We never really talked about after
9 the meeting with him. We never went in-depth about
10 the findings or what was he actually using
11 Mr. Martin for.

12 Q Okay. I'm going to move on to the next issue
13 and these are kind of some simple questions. Would
14 you have wanted your attorney to make all necessary
15 objections on your behalf?

16 A Yes, ma'am.

17 Q Would you have wanted him to make sure that
18 everything that he needed to put on the record, and
19 I'll give you an example, they go to a bench
20 conference and so that's not on the record, would
21 you have wanted him to put everything on the record
22 that needed to be on the record?

23 A Yes, ma'am.

24 Q I'm just going to ask you this question because
25 of some testimony of Mr. Bax. He testified quite a

1 bit about discussions he had with the solicitor,
2 discussions he had with the Judge, that you may not
3 have been privy to. If that was important to your
4 case, would you have wanted him to make sure that
5 was part of the record?

6 A Yes, ma'am.

7 Q You at no time told him, "Hey, if you feel like
8 you're being bullied, you just need to pull back or,
9 you know, I see that this isn't going well. You
10 don't need to make these arguments." You never
11 asked him to pull back in defending you, did you?

12 A No, ma'am.

13 Q Now, furthermore, would you have wanted him to
14 object to any improper statements such as we pointed
15 out in your amendment the statements to search for
16 the truth and asking the jury to give both the State
17 and the Defendant a fair trial. Those would be
18 considered burden-shifting statements based upon
19 some case law. Would you have wanted him to object
20 to those?

21 A Yes, ma'am.

22 Q Okay. I'm going to ask you a little bit about
23 Ms. Allen. You were present today for her
24 testimony. Is that correct?

25 A Yes, ma'am.

1 Q What did you tell Arie about Deshaunaka Allen
2 leading up to trial?

3 A I don't recall speaking to him or the
4 investigator, I'm not sure, but I know when they
5 would come see me about explaining them that night
6 and I would tell them everything that went on and
7 all the people who were there, and they would ask
8 me, like, oh, who do you think we should speak to.
9 Basically, I would give them names of people they
10 should speak to who were around it. Just people of
11 interest who needed to be spoken to.

12 Q Her name appears when they read the list of
13 potential witnesses, so it was your understanding
14 she was potentially going to testify in your case?

15 A Yes, ma'am.

16 Q You don't know if you specifically recall
17 discussing her with Mr. Bax, but did you have an
18 understanding of what she could testify to?

19 A Yes, ma'am.

20 Q Was that the same as what she testified to
21 today?

22 A Yes, ma'am.

23 Q So, you wanted her called as a witness at your
24 trial?

25 A Yes, ma'am.

1 Q Did Mr. Bax ever explain to you why she wasn't
2 called?

3 A No, ma'am.

4 Q Now, you testified on page 497, line 16, that
5 you knew it was the victim who had shot at your
6 trailer in May of 2011 that led to the loss of your
7 unborn child. Her twin sister, Lashonika, testified
8 that people in the area, essentially, had said it
9 was him, but nobody, as Judge Brown point out,
10 testified that they specifically saw him.

11 A Yes, ma'am.

12 Q You heard her testimony today. You would have
13 wanted that utilized to show that you specifically
14 knew that it was Travis Holmes, the victim?

15 A Yes, ma'am.

16 Q That was a very important factor in your case,
17 as you've reviewed it because, like I said, on page
18 276, the Court even pointed out that no one
19 specifically could say that it was Travis Holmes,
20 but you knew that she could specifically say that?

21 A Yes, ma'am.

22 Q Now, do you have your transcript there in front
23 of you, Mr. Knight?

24 A Yes, ma'am, I do.

25 Q This is a section that I went over with Mr. Bax.

1 I believe it's beginning on page 509. On 509,
 2 beginning at line 10, he asks you to clarify a
 3 statement that you had made prior in your testimony,
 4 and that would be on 504 where you made the prior
 5 statement about never being involved in something
 6 like this before. Had he talked with you and
 7 explained to you how you could open the door to
 8 other bad conduct or bad character if you made such
 9 kind of like vague statements?

10 A No, ma'am.

11 Q Did you understand what he was trying to do
 12 there when he was saying, "We need to clarify this"?

13 A No, ma'am.

14 Q Were you just answering his questions to the
 15 best of your ability?

16 A Yes, ma'am.

17 Q Let's turn to 510, where the cross-examination
 18 starts out. There it's Mr. Stone, Solicitor Stone,
 19 and he asks you, "You've never done anything like
 20 this," and then he starts asking you about the
 21 incident with Michael Singleton. Do you see that on
 22 510 to 511?

23 A Yes, ma'am.

24 Q Did Mr. Bax prepare you to have to testify about
 25 the event with Mr. Singleton?

1 A No, ma'am. Not at all.

2 Q Were you able to properly answer?

3 A Was I able -- repeat that?

4 Q Do you feel like you were able to give a proper
5 answer to those questions?

6 A No, ma'am.

7 Q Now, I'm kind of jumping back a little bit but
8 we've had testimony today and you even took a break
9 to talk to Dr. Maddox. Does testifying make you
10 anxious?

11 A Yes, ma'am.

12 Q Were you anxious at your trial?

13 A Yes, ma'am.

14 Q Would it have been helpful to you to have an
15 expert, such as Dr. Martin or Dr. Maddox, to talk to
16 you before you took the stand?

17 A Yes, ma'am.

18 Q Did you get very flustered and -- well, just
19 describe to me kind of what happened in cross-
20 examination. How you were feeling when the
21 solicitor started by asking you about the Michael
22 Singleton event?

23 A I was just feeling like a tank had been -- not
24 more so a tank, just like -- I'm trying to answer
25 this question to the best of my ability but I really

1 don't know what to say. He's just attacking me and
 2 attacking me and then really making accusations that
 3 I didn't understand. So, it made me just feel real
 4 nervous, I started sweating, my heart was beating
 5 fast. I just was -- I couldn't answer the question.

6 Q Just to be clear, you would have wanted a mental
 7 health expert to either be allowed to proffer or
 8 testify or offer in sentencing information about the
 9 diagnosis that Dr. Maddox reached. Is that correct?

10 A Yes, ma'am.

11 Q And to explain to the Court, you know, these
 12 conditions that you suffer from?

13 A Go into detail what they do to me, I mean --

14 Q I'm sorry. I'm not sure which one of our
 15 connections it is. I said, would you have wanted a
 16 mental health expert there to explain that? I
 17 wasn't asking you to explain it.

18 A Oh. Yes, ma'am. Yes, ma'am.

19 Q Regarding the situation where you had to testify
 20 about the incident with Michael Singleton, was there
 21 also another portion of your testimony where they
 22 really emphasized the fact that you carried a gun
 23 that you didn't feel was properly addressed in your
 24 trial?

25 A Yes, ma'am.

1 Q Can you explain that?

2 A Are we talking about Mr. Bax or the solicitors?

3 Q I can't answer that question, but I can ask you
4 a better question. Throughout trial, it was
5 discussed that you were carrying a gun, and during
6 your direct examination, on page 503, you're asked
7 why you had a gun on you.

8 A Oh.

9 Q Beginning on line 7.

10 A Beginning on line 7?

11 Q Yes, 7-17, you discuss that you carry a gun and
12 Mr. Bax asked you if that's because you are involved
13 in narcotics.

14 A Yes, ma'am. I see that.

15 Q Was that a line of questioning you were prepared
16 for?

17 A No, ma'am.

18 Q Along with or in line with how opening the door
19 to prior conduct, did you feel like that kind of
20 gave the State some ammunition, for lack of a better
21 word, to attack you with as well? This line of
22 questioning?

23 A Yes, ma'am.

24 Q Can you explain that?

25 A Can you ask me the question that you exactly

1 want me to answer?

2 Q Sure. I can ask you a better question. Looking
3 at page 503, lines 7-17, that line of questioning
4 then.

5 A Yes, ma'am.

6 Q And your answers there. Is that something you
7 had really discussed with Mr. Bax, as far as a
8 strategy, trying to say that you had a gun and
9 because you were a drug dealer?

10 A That strategy I never understood, but this was a
11 strategy of Mr. Bax. I don't understand, and I feel
12 like because him saying that, as you look on, or
13 even inside of the closing argument, the solicitors
14 take this, where Arie brought into it and they go on
15 to say that -- in the closing argument, their
16 telling the jury that this wasn't because of my
17 fear, but this was more so behind drugs, which I
18 feel like really wasn't the case. I never
19 understood that strategy. I don't understand that
20 at all.

21 Q Okay. Now, once again, you're not a lawyer, but
22 we have alleged that the malice instruction in your
23 case wasn't proper and that Mr. Bax should have
24 either requested a proper instruction or objected to
25 it. Would you have wanted him to do both of those

1 things on your behalf to make sure there was a
2 proper malice instruction?

3 A Yes, ma'am.

4 MS. BLANCHETTE: Your Honor, if I could beg the
5 Court's indulgence for just a moment.

6 BY MS. BLANCHETTE:

7 Q Mr. Knight, I kind of have two questions for you
8 and then I'll conclude. One is, my characterization
9 of some of Mr. Bax's testimony was that he was
10 trying to shift some of the blame to both the
11 solicitor and the Court. But you were relying on
12 him to properly represent you. Is that correct?

13 A Excuse me. Yes, ma'am.

14 Q And if he was in any way being treated unfairly
15 or had issues with the way the solicitor or the
16 Court were conducting themselves, that is something
17 you would have wanted him to make part of the record
18 in your case?

19 A Yes, ma'am.

20 Q Okay. So that someone else could review that,
21 whether that be an appellate court or whomever would
22 be proper to review that, you would have wanted him
23 to make that part of the record in your case?

24 A Yes, ma'am.

25 Q Now, Mr. Knight, this application has been

1 pending since 2015, and I've only represented you
2 for two of those years. We worked very hard to get
3 prepared for today. I know this isn't the format we
4 ever envisioned. I just want to ask you, is there
5 anything else that you would like to tell the Court
6 that I failed to ask you in support of your
7 allegations that are set forth in your amendment and
8 that we've offered testimony on today?

9 A No, ma'am.

10 MS. BLANCHETTE: Your Honor, I have no further
11 questions.

12 THE COURT: Okay. Cross-examination?

13 MR. LIMBAUGH: May it please the Court, Your
14 Honor.

15 CROSS-EXAMINATION

16 BY MR. LIMBAUGH:

17 Q Good afternoon, Mr. Knight.

18 A Good afternoon.

19 Q So, just briefly, how many -- did you hear
20 Mr. Bax's testimony that you've met probably at
21 least a dozen times. Does that seem accurate to
22 you?

23 A To be honest, I can't recall, but it doesn't
24 seem too accurate. I would like remember vaguely in
25 the beginning of the year, maybe February or March,

1 him getting on my case, and then I'm going to Court
 2 November of that year and he gave his cell phone
 3 number. He's only been my lawyer maybe, if I say
 4 ten months I may be stretching it, to prepare me for
 5 this murder trial and until we found out it was for
 6 sure that I was going to trial, is when I would see
 7 him the most, maybe the beginning of November, but I
 8 can't recall a number.

9 Q That's okay. I appreciate you being honest.
 10 So, Ms. Blanchette covered pretty much everything
 11 you. I do have one question about your carrying of
 12 the firearm. Did you testify or did you have the
 13 firearm with you when you went into the Subway?

14 A Did I testify to already having it with me when
 15 I went into the Subway?

16 Q Yes.

17 A I can't recall, but I think I did. I'm not
 18 sure.

19 Q So, you did have it on you when the initial
 20 complication that you testified about, where the
 21 victim said that statement to you. You had the
 22 weapon on you at that time. Correct?

23 A Yes, sir.

24 Q And again, just like Ms. Blanchette, if you need
 25 me to rephrase anything, I'm more than happy to do

1 that for you.

2 A Okay.

3 Q So, when you were talking about -- what exactly
4 did you want Dr. Martin to testify to about your
5 mental health conditions at trial?

6 A To be honest with you, I can't answer that
7 question. I already didn't, like, I didn't know
8 what was going on. I didn't know it's purpose. I
9 can't really answer that question.

10 Q Okay. Did your attorney, Mr. Bax, in those
11 meetings go over the general strategy, your defenses
12 with you?

13 A Yeah, he talked about a defense called imperfect
14 self-defense, and he would break that down to me and
15 try to explain that to me and he would tell me about
16 voluntary manslaughter, too.

17 Q Okay. Did he go over the discovery for the
18 evidence against you in those meetings, including
19 the video?

20 A I can't recall, but I know just remembering,
21 like, we had a hard time trying to play the video,
22 but he kept telling me about it, but it was hard to
23 get it, like, to play for us, like, it was some kind
24 of system that you had to have, so we had to have,
25 like -- but I think he did show it to me one time,

1 if I'm not mistaken, but I remember him not being
2 able to show it to me a lot of time, because it
3 wasn't working with certain things. He had a hard
4 time getting it to play.

5 Q I certainly understand. We had some trouble
6 trying to get it to play, too.

7 MR. LIMBAUGH: I think that's all I have for
8 this witness, Your Honor.

9 THE COURT: Any redirect:

10 MS. BLANCHETTE: No, Your Honor.

11 THE COURT: All right. Anything else?

12 MS. BLANCHETTE: Your Honor, I have no more
13 witnesses.

14 THE COURT: From the State. Anything to do
15 today?

16 MR. LIMBAUGH: No, Your Honor, just the motion
17 that I had earlier to try and leave the record open
18 to address the potentially newly raised allegations
19 that relate to the solicitor and Judge Brown's
20 conduct. But I'll leave that to the discretion of
21 Your Honor. I just had recent cases where we've had
22 not even formerly amended to allegations that come
23 from evidence that are amended to after a hearing,
24 after some consideration and review of the
25 transcripts that I was alleged to have tried by

1 consent and, so, I'm obligated to represent the
2 State the best I can, and that is to request that I
3 leave the record open to fully develop those issues
4 I perceive to be raised, Your Honor.

5 THE COURT: Okay. Well, I think we want to get
6 it right, so I'm going to leave it open for -- how
7 long is it going to take you?

8 MR. LIMBAUGH: I'm supposed to talk to Solicitor
9 Stone and I think Solicitor Thornton, like, Monday,
10 Your Honor. If I can talk to them sooner than that
11 for this reason, absolutely, for another matter.
12 So, I can get that going asap, Your Honor.

13 THE COURT: Get it going and keep Ms. Blanchette
14 informed of if you intend to -- if there's something
15 there that you intend to try to present. Okay?

16 MS. BLANCHETTE: Your Honor, can we just make
17 one clarification? When I made the prior comment
18 about Rule 15B, I was in no way trying to say that
19 we were including any claims of prosecutorial
20 misconduct. If we were, the State should have the
21 right to have notice and have those refuted. I take
22 those very seriously. I just wanted to be clear to
23 everyone we were not making those claims. I was
24 trying to say that I think his statements came in
25 under ineffective assistance of counsel. So, I just

1 wanted to be clear on that point.

2 THE COURT: Okay. That's fine.

3 All right. Anything else we can do today?
4 Anything further in defense, or no, from the
5 petitioner?

6 MS. BLANCHETTE: Your Honor, I would just ask
7 for the opportunity to potentially respond to
8 whatever this additional testimony may present.

9 THE COURT: Of course, we'll be fair about it,
10 and since we are leaving it open, if you decide not
11 to present anything, Mr. Limbaugh, then I'll give
12 you all an opportunity to submit a short, written
13 closing statement, and let us know something as
14 quickly as you can, okay?

15 MR. LIMBAUGH: Absolutely, Your Honor, and with
16 the quarantine still for the rest of the week, it
17 looks like I'll have time to get started on this,
18 this evening and tomorrow.

19 THE COURT: Okay, great. So, that's all we've
20 got and then I understand we -- what do we have left
21 for the rest of the week?

22 MR. LIMBAUGH: We've got one waiting right now,
23 which was with Mr. Falk. It should be very short,
24 Your Honor.

25 THE COURT: Okay. I think we've got another one

1 on Thursday; is that right?

2 MR. LIMBAUGH: That's correct. I'll check with
3 my colleague, Ms. McAllister, to see if that's still
4 proceeding but I should be able to get back to you
5 as soon as we're done with this.

6 THE COURT: Mr. Falk is on that one, too, so
7 we'll ask him when we get him.

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

9 THE COURT: Okay. Ms. Blanchette and
10 Mr. Knight, you all take care of yourselves. Stay
11 safe.

12 MS. BLANCHETTE: Thank you, Your Honor.
13 Whereupon, the hearing was adjourned at 3:43 p.m.)

14 - - -END OF TRANSCRIPT- - -

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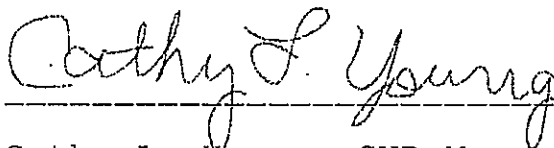
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CERTIFICATE OF REPORTER

I, Cathy L. Young, CVR-M, for the
Fourteenth Judicial Circuit of 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 appear, in
the Circuit Court for Beaufort County, South
Carolina, on the 17th day of November, 2020.

I do further certify that I am neither of
kin, counsel nor interest to any party herein.



Cathy L. Young, CVR-M

Court Reporter and Notary

Public in and for South Carolina

My Commission expires: 3-28-2029

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Case # 2015-CP-07-01903
01903

EXHIBITS

Plaintiff(s) RAJERICK KNIGHT
vs.
Defendant(s) STATE OF SC

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1 Psychiatric Eval	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
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2020 NOV 20 AM 10:39
CLERK OF COURT

Court Reporter EMILY L. Young Trial Judge Edward Miller
Clerk of Court Chappelle
Date 11-17-20

Psychiatric Evaluation
Name: Rajerick Knight
Date of Evaluation: 1/23/19, 9/21/20
Place of Evaluation: Lieber Correctional Institution
Date of Report: 5/28/19
Date of Addendum: 9/21/20

Identifying Information: Mr. Knight is a 32-year-old male convicted of Murder and Possession of a Weapon During the Commission of a Violent Crime in Beaufort County and sentenced to Life. He was represented by Ari Bax.

Reason for Referral: His attorney, Tricia Blanchette is representing him in Post Conviction Relief proceedings and requested a psychiatric evaluation.

Statement of Nonconfidentiality: Mr. Knight understood the undersigned is an agent of his attorney and that all communication would be shared with her and possibly used in his upcoming PCR proceedings.

Sources of Information:

Appellant Decision 4/1/15
Appellants Final Brief filed 7/14/14
SCDC Records
Transcript 11/26-11/29/12
Sentencing Sheets 11/29/12

Pertinent Statements:

Mr. Knight was arrested on July 29, 2011 in Jacksonville Florida for the murder of Travis Holmes which occurred on July 26, 2011. The case was tried before a Beaufort County jury from November 26-29, 2012. The Honorable Craig Brown sentenced him to life in prison.

An appeal was filed alleging Judge Brown should have charged jury with Voluntary Manslaughter instruction and should have admitted evidence about specific acts of violence by the decedent to show he would shoot his enemies in public. During a proffer in the trial, Dr. Thomas Martin testified about Mr. Knight's state of mind.

The conviction was affirmed.

In January 2019, Mr. Knight reported good health. He was not prescribed any medications. He denied any allergies to medications. He denied any surgeries. He did report a head injury with an associated loss of consciousness. He stated he was sucker-punched while playing basketball. He reported right sided headaches with scotomata. He reported "soda and ibuprofen help."

In September 2020, Mr. Knight continued to report good health. He reported some nightmares and insomnia. He does not exercise as much as he used to. He remains focused on his family. He reported he recently witnessed an inmate in the cell next to his die from untreated status epilepticus.

He denied any prior history of treatment for mental health issues. In his trial, Dr. Martin testified that he was not mentally ill but was genuinely frightened of the victim.

He reported he was born in Cherry Point, North Carolina. He reported his parents "split" when he was two or three years old. He reported his "mother's people" resided in South Carolina. He reported he stayed with his grandparents for a period of time, and his grandmother would hit him with switches and a belt. "She was so angry with granddad because the way he treated her. She took it out on us."

He reported he attended school until eleventh grade. He stated he did attend Alternative school. He stated he was in trouble for possessing marijuana at school. He stated his grandmother transported him to alternative school. He denied repeating any grades in school. He reported he moved to Charlotte with his mother in the eleventh grade. He reported playing high school football and basketball. He reported he received his GED while detained in Mecklenberg County. He reported he passed on his first attempt.

He stated he worked for his uncle as a gopher in a brick mason company.

He reported he has been confined since 2013 and has not seen his mother, who is in her 50s. He stated his mother writes him and helps him out financially. He stated she did appear in court. He stated he has a half-brother from his father who is older than him and is a youth counselor in North Carolina. He does have a fiancé, Tameka Floyd who visits him.

He reported a maternal history of hypertension (grandfather).

His legal history is significant for three prior burglaries and two gun charges. He had a resisting arrest in Charlotte, NC. He had a simple possession charge in Georgia.

There is no mention in any of the records of Mr. Knight's trauma history. Mr. Knight reports that he witnessed his mother and stepfather fight from ages six through nine. He stated his stepdad, George often hit his mother until she left when he was nine years old. He stated they would argue and then tell him to go upstairs. He stated his mother was also aggressive and he would run downstairs and tell them to stop. He stated his step father drank. He stated he would cry, and hyperventilate and it would "take a long time for me to calm down." He reported he saw two "guys stab each other" in prison. He denied witnessing any rapes.

He reported he had been shot at prior to his charges.

He reports dreams, flashbacks, panic attacks and autoanomic arousal.

He admitted to using marijuana. He stated he would smoke an ounce of marijuana every week. He does have clubbing of his digits.

On mental status examination, he was pleasant, articulate and cooperative. He was polite. His affect was bright, especially when discussing his visits every Saturday. His cognitive functions were intact. He was not psychotic. He was not suicidal or homicidal. He became anxious when discussing the offense. His mental status did not change on his second interview other than reports of nightmares.

Regarding his relationship to the decedent, Mr. Knight reported he never had a conversation with him. He stated they were in bond court at the same time. He stated the decedent was older. Mr. Knight said he had just come to SC from Jacksonville because his girlfriend's mother died and lived in South Carolina. His girlfriend's aunt had married the decedent's uncle. He stated the first interaction he and the decedent had was at a Walmart when the decedent stared him down. "People talked about a Mexican he killed. He would go to Mississippi and Alabama to kill other people."

He stated the next interaction they had occurred when Mr. Knight was at a club. He stated the decedent's cousin approached him in the club and said "Travy will kill you tonight." He stated his girlfriend's family surrounded him for safety and escorted him from the club.

He stated he saw him again at WalMart, and the decedent told him he would kill him.

He stated he went to Florida to get away and was stopped in Georgia when his friend had a joint. He stated he had to serve 45 days. "45 days broke me. My girlfriend was pregnant. I was anxious. I locked the doors. I would pace back and forth. I was losing control." He described an incident when the decedent and four cars came to his house and wanted him to answer the door to kill him. He stated they returned later and opened fire on his trailer. He stated his girlfriend was hit and was nonresponsive. He stated he thought she was dead. (May 2011).

He stated he and his girlfriend relocated. Mr. Knight stated the decedent's aunt found out their new address. "She rented a trailer near us and saw us." He stated they heard people shooting guns on July 4, and his girlfriend was hysterical. He stated they were "homebodies" at that point. He stated he couldn't change his whole identity because he didn't have the money. He stated during this period of time, he became "so alert." He stated his heart was always beating with "scary adrenaline." He stated he remained worried and on edge.

When Mr. Knight described the following incident to the undersigned, he was perspiring. Mr. Knight stated he did not know or see the decedent was in the Subway when he entered. He stated he noticed him on the way out. He stated he became "super paranoid." He stated: "I knew I was the walking dead." He stated he tried to walk out and did not make eye contact. He stated he did make a conscious decision to go back into the store. He stated his intention was

not to kill him but to fire "a leave me alone shot." He stated after he shot him, Travy was trying to come after him.

Opinions:

1. Mr. Knight was suffering from PTSD at the time of his offense.
2. Mr. Knight has witnessed violence against his mother. He has prolonged psychological distress when he is exposed to cues that symbolize trauma. He also has a marked physiologic reaction (observed by undersigned during both evaluations) to cues that symbolize the trauma. His actions prior to the shooting demonstrated a clear pattern of avoidance. He continues to make attempts to avoid dealing with prior trauma. He continues to have hypervigilance and left the second interview briefly because the door to a room had opened. He had negative cognitions and has difficulty feeling motivated.
3. He has Pretraumatic risk factors for PTSD including witnessing trauma during his childhood, and his parents' separation.
4. He had Peri-traumatic risk factors including his cognition that he perceived the threat from the victim as very serious.
5. He had numerous stressors prior to the confrontation which have been mentioned.
6. There is no evidence that Dr. Martin performed a trauma history.
7. There was testimony provided which was prejudicial because it was not explained.
8. Ms. Smalls (p221) testified that Mr. Knight was calm when he got back into the car. Persons with PTSD often present with a constricted affect. Their emotions are numbed, especially during active symptoms.
9. This information should have been provided to Judge Brown before sentencing even had it not been explained in the trial.
10. His capacity was diminished at the time of the offense and this information should have been presented to Judge Brown prior to sentencing.

Donna Schwartz Maddox, MD
Consulting Forensic Psychiatrist

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

RAJERICK KNIGHT,)
)
 APPLICANT,)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)
 _____)

2015-CP-07-01903

TRANSCRIPT OF RECORD

MARCH 2, 2021
BEAUFORT, SOUTH CAROLINA
VIA WEBEX

B E F O R E:

THE HONORABLE EDWARD W. MILLER

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

ATTORNEY FOR APPLICANT:

TRICIA A. BLANCHETTE, ESQ.

ATTORNEY FOR RESPONDENT:

BENJAMIN H. LIMBAUGH
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX**WITNESS****PAGE NO.**

CERTIFICATE OF REPORTER ----- 18

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(No Exhibits Were Presented During This Hearing)

1 **THE COURT:** Okay. Everybody ready?

2 **MR. LIMBAUGH:** Yes, Your Honor. Good morning.

3 **THE COURT:** All right. Tell me about it. You've got to
4 un-mute. Hang on.

5 **MS. BLANCHETTE:** Sorry, Your Honor.

6 **THE COURT:** That's all right.

7 **MR. LIMBAUGH:** Your Honor, I believe where we left off
8 was -- it was the State's case. And I would rest at this
9 time, Your Honor. And I believe we were notified that you
10 wanted some closing arguments on this matter.

11 **THE COURT:** Yeah. Y'all tell me about it.

12 **MR. LIMBAUGH:** Sure. Who would you like to go first,
13 Your Honor?

14 **THE COURT:** Who's the moving party?

15 **MS. BLANCHETTE:** I am, Your Honor. I would be happy to
16 begin.

17 **THE COURT:** Okay. Thank you. Go ahead.

18 **MS. BLANCHETTE:** Tricia Blanchette on behalf of Rajerick
19 Knight, Your Honor.

20 **THE COURT:** Okay.

21 **MS. BLANCHETTE:** Your Honor, since we had the November
22 hearing, I have really been contemplating mostly Mr. Bax's
23 testimony. I had spoken with him beforehand. I've had him on
24 the stand before. And I was rather surprised by a lot of the
25 statements that he made ~~903~~ the testimony that he offered.

1 **THE COURT:** Okay.

2 **MS. BLANCHETTE:** But what I would submit to this Court,
3 and what I talked with my client about, and he asked that I
4 submit to the Court that his testimony, especially regarding
5 the prosecutor and just the judge, which I believe is the
6 reason that the record was left open, was truly just a blame-
7 shift. It was an attempt to divert this Court's attention
8 away from and/or excuse his obvious failures by lodging
9 accusations against the prosecutor, the trial judge, and the
10 community as a whole.

11 Now in saying that, I'm not speaking to the existence of
12 racial injustice in our State or court system or saying such
13 doesn't exist, but I feel like sadly it was interjected into
14 this case as a diversion away from the apparent ineffective
15 assistance of counsel. If his accusations had merit, he
16 should have made a record of it or he should have filed a
17 complaint. And I think it just further demonstrates his
18 failure to effectively represent the Defendant.

19 It somewhat begs the question, did he incur meaningful
20 adversarial process? Did he act in the role of an advocate?
21 And before I take us down what I think would be another
22 diversion of a chronic analysis, even if the Court -- I submit
23 the Court may think that's proper, I don't think he failed to
24 act as an advocate. I'm not going that far.

25 Because I think the record is full of times when he did

1 push the court, when he did question the court. And I don't
2 think the transcript jives, for lack of a better word, with
3 his accusations, you know, regarding the trial court and the
4 prosecutor, and that he just wasn't able to make a record or
5 the different excuses that he offered during the court of his
6 testimony.

7 One specific example of that was during the 404(b)
8 ruling, he kept pushing the court and pushing the court, you
9 know. And so I don't think it was a situation where he was
10 failing to represent out of fear of what could happen or
11 because of these things that he either alluded to or testified
12 during his testimony. I think it was just matters of
13 ineffective assistance of counsel as to the issues that we
14 have raised, and he was using that merely as an excuse.

15 So with that said, Your Honor, I just wanted to turn to
16 the issues that we did raise. Prior to the hearing I
17 submitted Your Honor a four-page outline that had the
18 procedural history to include the Appellate Court history and
19 then the issues from the amendment with transcript citations
20 and case citations.

21 Unless Your Honor would like me to, I don't want to use
22 your time in going through this. I just wanted to refer back
23 to it. And then I was just going to hit on each issue briefly
24 and add a little bit of what came up at the hearing itself.
25 Then if Your Honor has any questions, I'd be happy to answer

1 those.

2 THE COURT: Well, first of all, would you -- can you --
3 do you have the ability to email that to me?

4 MS. BLANCHETTE: Yes, Your Honor, I can resend that.

5 THE COURT: Yeah, resend it to me, please. I'd like to
6 review it again.

7 MS. BLANCHETTE: I'll be happy to do that, Your Honor.
8 Again, though, I'll just reference it ---

9 THE COURT: Okay.

10 MS. BLANCHETTE: --- and not read it verbatim unless the
11 Court would like me to do that. I just didn't want to waste
12 ---

13 THE COURT: No.

14 MS. BLANCHETTE: --- your time and everybody ---

15 THE COURT: No.

16 MS. BLANCHETTE: --- else's time in doing that.

17 But, Your Honor, as it'll appear on page 2 of this
18 outline that I will resend, we first raised issues regarding
19 the juror strikes. As to that issue, there's transcript
20 citations provided.

21 The only thing that I wanted to add there, it's clear
22 from the record as it came up by pages 49 through 50, Mr. Bax
23 sat two jurors that had media exposure, but then he moved for
24 a change of venue. And the court clearly noted, you know, I'm
25 not going to grant your **906**ion because you sat jurors that had

1 media exposure and you also didn't use all your strikes. And
2 in response Mr. Bax said that he didn't have enough
3 information to strike.

4 I think that in and of itself is an admission of being
5 ineffective. But, Your Honor, I do like to be reasonable.
6 And so I will concede that prejudice may be difficult to show
7 on issue number 1 because we're getting into the world of
8 conjecture, would a different jury have decided differently?
9 And so I will concede, Your Honor, that that will be a tough
10 call as to prejudice on issue number 1.

11 Turning briefly to issue number 2, what I would say that
12 it really boils down to is an unreasonable trial strategy.
13 And I think that's really where Mr. Bax's blame-shift came
14 into play. He was unreasonable in how he pursued the defense
15 in this case.

16 I think the keys there is that his -- his expert, as the
17 court clearly noted when he denied the voluntary manslaughter
18 instruction, when he denied the opportunity for Dr. Martin to
19 testify at trial. His expert said that my client had no
20 mental illness, he was criminally responsible and no
21 diminished capacity. And I'd just ask Your Honor to compare
22 that against the clear testimony and findings of Dr. Maddox
23 that we presented.

24 As I've already mentioned, Dr. Martin wasn't allowed to
25 testify regarding mental state. Mr. Bax failed to establish

1 the elements to receive a voluntary manslaughter charge. And
2 he failed to use a mental health expert in mitigation. And I
3 think Dr. Maddox, also for a viable mitigation, that should
4 have been presented to the court.

5 Regarding that issue, I just want to point out in the
6 Court of Appeals decision citing to Starnes, they said, while
7 there's evidence that Knight was in fear, there's no evidence
8 he was out of control as a result of fear, but was acting
9 under an uncontrollable impulse to do violence at the time he
10 shot victim. And I submit to you, Your Honor, that the
11 testimony that we presented from Dr. Maddox as well as other
12 witnesses would show otherwise.

13 And, Your Honor, I will resubmit you this outline that
14 has the cases, but during Mr. Bax's testimony he referenced
15 State versus Santiago. That was a case involving Dr. Maddox
16 that was handled by Dick Harpootlian.

17 Since he mentioned it, I just wanted to briefly direct
18 the Court's attention to Justice Anderson's dissent in that
19 case. And I think Santiago further shows that there was an
20 unreasonable trial strategy deployed by Mr. Bax with the
21 expert that he utilized.

22 Turning to -- if I can jump around, I'd like to jump to
23 what is issue number 4, ineffective assistance of counsel for
24 failure to offer further testimony regarding the 2011
25 incident. Again, there'll be a number of transcript citations

1 on the outline I'll resubmit to Your Honor.

2 But the primary witness there was Ms. Allen who came to
3 us from Florida. He did -- Mr. Bax did not have a valid
4 reason why he did not utilize her as a witness.

5 And in denying both the voluntary manslaughter charges
6 and at other points throughout the transcript it's noted that
7 there was, especially in closing argument, there was no
8 eyewitness or no witness that could say that my client had
9 firsthand knowledge that the victim was involved in the 2011
10 incident. And I submit to you that Ms. Allen was able to say
11 otherwise. And Mr. Bax provided no reason why she was not
12 utilized at trial. I think the prejudice on that issue is
13 apparent from the transcript.

14 The issue that's listed as number 5 for opening the door
15 to the solicitor's cross-examination of the Applicant, there,
16 Your Honor, I would rely on the transcript citations and the
17 cases that we've submitted. State versus Young is -- pretty
18 much gives a thesis on opening the door. And I believe the
19 transcript reveals that Mr. Bax did exactly that. And at the
20 evidentiary hearing he did not provide any viable explanation
21 to go against the clear ineffective assistance of counsel.

22 Your Honor, I'd go back to issue number 3 now, which
23 deals with the failure to object to improper burden-shifting
24 statements to the jury by the court and the State and the
25 State's waiver for first closing argument. In the outline

1 I'll provide to Your Honor I give all the transcript citations
2 for where these occurred.

3 During Mr. Bax's testimony, I went through each one of
4 those with him. I did not think he provided any type of
5 reasonable strategy for not objecting. And the case law is
6 very clear. I will be submitting Your Honor the citations for
7 State versus Beaty, State versus Patterson, State versus
8 Daniels and Fortune versus State.

9 And kind of -- the paramount case that started these
10 lines of objections in cases being either -- this being
11 addressed or cases being overturned was State versus Daniels.
12 I just thought I'd -- it'd be interesting to note that that
13 case was decided one month prior to the trial. So that was a
14 final decision when this case went to trial.

15 And, Madam Court Reporter, I apologize. When I'm
16 virtual, please give me some type of signal if I'm just
17 running way too fast for this.

18 **MADAM COURT REPORTER:** (Affirmative nod).

19 **MS. BLANCHETTE:** The final issue would be number 6. And
20 that is the issue involving the inferred malice instruction
21 and failure to object. Again, I believe trial counsel gave no
22 explanation or testimony that would refute his clear
23 ineffectiveness for failing to object. In Gibson versus
24 State, which was a case that I handled, the court made it
25 clear that if you do not object, that is ineffective

1 assistance of counsel.

2 And then the court must look at the prejudice. And it's
3 whether there's evidence of malice aside from the inferred
4 malice. And it's kind of a balancing test. And it's
5 explained in the Gibson case. I'll provide the cite to the
6 Court. But I believe in balancing this, and especially
7 keeping in mind Dr. Maddox's testimony and the trial
8 transcript, the inferred malice instruction, one, failure to
9 object to it was ineffective assistance, and, two, there is
10 prejudice.

11 Your Honor, I did briefly mention chronic. If this Court
12 sees fit to do a chronic analysis, I would not object to that,
13 but I do not think we're in a situation where we need
14 prejudice to be presumed. I think but for the one issue that
15 I addressed, the juror issue, we have shown clear prejudice on
16 each of the additional issues raised.

17 Furthermore, Your Honor, I don't think this is a case
18 where even though each of these issues are somewhat cumulative
19 in nature and have some interplay such as the issues regarding
20 the mental health expert, and how that led to not getting a
21 voluntary manslaughter instruction as well as the issue
22 regarding Ms. Allen, and how not calling her led to not
23 getting the voluntary manslaughter instruction, I don't think
24 we need a cumulative error analysis. That kicks in when each
25 issue standing alone cannot show prejudice. And I think here

1 we can show prejudice on each issue standing alone.

2 I do like to note, I think this is an issue of contention
3 between myself and the State, the State likes to say that
4 cumulative error cannot be kicked in. I think our courts just
5 haven't decided one way or another. But again, I don't think
6 this is a case, and I wanted to be clear, that I wasn't
7 arguing cumulative error because I think each issue standing
8 alone requires the granting of relief. And so that's what we
9 would ask the Court to do.

10 **THE COURT:** Okay. I was mistaken. I do have your
11 outline. So you don't need to resend it. So ---

12 **MS. BLANCHETTE:** Okay, Your Honor.

13 **THE COURT:** All right. Mr. Limbaugh, what you want to
14 tell me?

15 **MR. LIMBAUGH:** May it please the Court, Your Honor?

16 **THE COURT:** Yeah.

17 **MR. LIMBAUGH:** So first, as to the first issue about the
18 improperly -- failing to properly strike the jurors, as Ms.
19 Blanchette noted, the prejudice prong there is very difficult
20 to meet. I don't believe there was any evidence presented
21 that there was actual issue with any of the specific jurors
22 that their media exposure, potential media exposure had played
23 any influence on their decision in this case.

24 I've had -- another case that Ms. Blanchette introduced
25 was jury affidavits, the ~~912~~ was none of that here. And

1 even testimony of the jurors, none of that's present, Your
2 Honor. So I believe -- the State believes meeting the
3 prejudice prong for that is extraordinarily hard to do and
4 that Applicant's failed to do so here.

5 In terms of the failing to use a mental health expert,
6 Your Honor, the Applicant's not entitled in his defense to
7 have the best mental health expert or even one that's going to
8 say something that he wants to hear or that's going to be
9 admitted in court, Your Honor. He hired Dr. Martin, who
10 interviewed him, he evaluated him and at that time Dr. Martin
11 said that he was not suffering from any mental health
12 disorders.

13 Just because Dr. Maddox says otherwise, I mean, that
14 happens all the time, Your Honor. If there's competing
15 experts, the experts will say different things on their
16 evaluations. And just because Dr. Maddox says one thing now,
17 that doesn't mean trial counsel proceeding forward with Dr.
18 Martin was ineffective. He tried to get it in.

19 And I would like to point out that Dr. Maddox said the
20 same thing as Dr. Martin in regards to his criminal
21 responsibility and being able to walk away from the
22 altercation. Well, it's not even an altercation.

23 There was a discussion and the Applicant walks out to his
24 car, grabs a weapon, walks back into the Subway, on video, and
25 kills this man. And Dr. Maddox said the same thing, Your

1 Honor, that he could have just gone away.

2 With regards to the 2011 incident, Your Honor, this was
3 raised as an issue on direct appeal, addressed in the final
4 brief or respond to issue 2. And the court affirms that
5 decision that essentially it was just discussing that there
6 was no corroboration of the event in terms of it being
7 directed at the Applicant.

8 And I believe there's testimony on record that it was
9 towards his girlfriend at the time. The incident, the
10 shooting was not directed at him physically. And he was not
11 physically in the residence at the time. So we're not drawn
12 towards the voluntary manslaughter analysis, Your Honor.

13 And then, again, it's more just the inferred malice
14 instruction. I don't think there was prejudice shown on that
15 either. Potentially could have objected, Your Honor, but,
16 again, this case, at least to myself, is more about prejudice.

17 The State's not conceding deficiency on any of these,
18 Your Honor, but I believe the stronger points since the State
19 -- Your Honor can make a ruling on either the prejudice prong
20 or deficiency, whichever is more apparent. You don't have to
21 go through both.

22 And I believe prejudice here is the easiest way for Your
23 Honor to go down. There's video, clear video of the Applicant
24 walking into -- or coming out of the Subway, going to the car,
25 having a discussion, and coming back in and shooting the

1 victim, Your Honor.

2 It's just -- it's hard to imagine a jury, after seeing
3 that, and then not having testimony that the Applicant would
4 want from a mental health expert, but that he's not entitled
5 to, I think Mr. Bax did what he could with the evidence in the
6 State's case that he had before him, Your Honor. I mean, when
7 you have that kind of evidence presented to a jury, I believe
8 finding prejudice or seeing another result would happen is
9 difficult to find without some clear and convincing evidence.
10 I don't believe that clear and convincing evidence was relayed
11 in this case. Thank you.

12 **THE COURT:** Okay. All right. Anything else?

13 **MS. BLANCHETTE:** No, Your Honor. I just wanted to thank
14 you for your time and attention in doing this today and
15 especially doing the prior virtual hearing that we held.

16 **THE COURT:** Okay. Well, ---

17 **MR. LIMBAUGH:** Thank you, Your Honor.

18 **THE COURT:** --- I'm going to take a look at everything
19 and I will get back to you. Y'all stay COVID free, please.
20 All right?

21 **MR. LIMBAUGH:** Thank you, Your Honor.

22 **MS. BLANCHETTE:** I'll do my best.

23 **THE COURT:** Sounds good. Okay. See you.

24 **MR. LIMBAUGH:** Yes, sir.

25 **MS. BLANCHETTE:** ~~T~~**15**k you.

1 **MR. LIMBAUGH:** Thank you.

2 (Hearing Ended at 11:16 am)

3 (End of Requested Transcript of Record)

Certificate of Reporter

I, The undersigned, Susan W. Hudgins, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Beaufort County, South Carolina, on the 2nd day of March 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 28, 2022

Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2015-CP-07-1903

Rajerick Knight, #353409)

Applicant,)

V.)

State of South Carolina,)

Respondent.)
_____)

ORDER OF DISMISSAL

2021 NOV 23 AM 11:47
JERRI ANN ROSEHEAD
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter comes before me by application filed on August 3, 2015 upon Applicant's request for post-conviction relief ("PCR"). The Applicant, Rajerick Knight, made several arguments in support of his claim of ineffective assistance of trial counsel. Those arguments and the Court's findings on each are discussed below.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The Applicant was indicted by the October 2011 term of the Beaufort County Grand Jury for one (1) count of Murder and one (1) count of Possession of a Weapon During the Commission of a Violent Crime (2011-GS-07-1673, -1674). Arie Bax, Esquire, represented him. On November 26, 2012, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable D. Craig Brown sentenced the Applicant to confinement for life for the count of Murder and five (5) years for the count of Possession of a Weapon During the Commission of a Violent Crime. The sentences run consecutively.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals

affirmed Applicant's conviction and sentence. State v. Knight, Op. No. 2015-UP-170 (filed on April 1, 2015). The Remittitur was issued on April 1, 2015.

CURRENT APPLICATION

On September 25, 2018, Applicant filed an initial application for post-conviction relief, as well as an amended application for post-conviction relief, dated September 3, 2019. Applicant's amended application for post-conviction relief alleges that he is being held in custody unlawfully as he received ineffective assistance of counsel for the following reasons that were pursued during the hearing of this matter:

- a. Ineffective assistance of trial counsel
- b. Violated the 6th and 14th Amendment

Applicant subsequently filed an amended application on March 12, 2020 alleging the following:

- a. Ineffective assistance of trial counsel for failure to obtain all necessary information to properly strike jurors, which resulted in the seating jurors with media exposure and the denial of the motion for change of venue.
- b. Ineffective assistance of trial counsel for failure to effectively present Applicant's primary defenses, to include failure to effectively utilize a mental health expert in trial sentencing
- c. Ineffective assistance of trial counsel for failure to object to improper burden shifting statements to the jury by the court and the State's waive of first closing argument
- d. Ineffective assistance of trial counsel for failure to offer further testimony regarding the 2011 incident to the jury
- e. Ineffective assistance of trial counsel for opening the door to the Solicitor's cross-examination of Applicant regarding a prior shooting incident
- f. Ineffective assistance of trial counsel for failure to request a proper inferred malice instruction and failure to object to the instruction given to the jury

STATEMENT OF FACTS ADDUCED AT TRIAL

The State's Case

At Appellant's trial, the State presented evidence, including eyewitness testimony and surveillance video, that Appellant shot Travis Holmes (Victim) in the middle of a Subway restaurant in Beaufort, South Carolina on July 26, 2011.

Sierra Thomas, who worked at the Subway where Victim was killed, testified Appellant came into the restaurant with a female. (R. p. 89, line 1–p. 90, line 25). Thomas testified that she made Appellant's subs and then rang up his order. (R. p. 90, line 25–p. 92, line 9). Around that time, Victim walked into the Subway. (R. p. 92, lines 10–14). Appellant and the female then left the Subway. (R. p. 91, line 19–p. 92, line 14). According to Thomas, her co-worker, Demetria Green, started making a sub for Victim. (R. p. 92, line 10–p. 93, line 16). Thomas then noticed Appellant re-enter the restaurant and walk up to Victim. (R. p. 93, lines 17–24). Thomas heard a gunshot. (R. p. 93, line 24). According to Thomas, at that point Victim jumped on the counter, and Thomas ran away. (R. p. 93, line 24–p. 94, line 2).

Demetria Green also testified about what she witnessed on the day of the shooting. Green knew Victim—they had gone to elementary school together but had not seen each other since then. (R. p. 95, line 20–p. 96, line 6). Green and Victim caught up as she made him a sandwich. (R. p. 95, line 11–p. 96, line 22). Right as Victim was about to pay, Green saw Appellant come back up to Victim. (R. p. 96, line 21–p. 97, line 8). Green thought Appellant was going to greet Victim, but, instead, she heard a gunshot and saw part of a gun. (R. p. 97, lines 9–14). Green then ran to the back of Subway and hid. (R. p. 97, line 14–p. 99, line 11).

Jeannie Salleme, a customer who was in line at Subway when the shooting occurred also testified. (R. p. 100, line 16–p. 104, line 15). Salleme worked at the Golden Corral in Beaufort, and she recognized Appellant on the day of the shooting because she had seen him “a handful of

times” at Golden Corral. (R. p. 100, line 25–p. 104, line 3). When Salleme was going into Subway, Appellant was leaving. (R. p. 103, lines 6–15). But Salleme saw Appellant again when he returned to the restaurant. (R. p. 104, lines 8–19). According to Salleme, Appellant “just goes up to the other gentleman and then I heard a bang and that was it.” (R. p. 104, lines 20–22). Before the shooting, Salleme did not see any argument or words exchanged, nor did she see a fight. (R. p. 104, line 23–p. 105, line 2). Later, Salleme spoke to the police and told them what she had witnessed. (R. p. 106, lines 7–19). She also identified Appellant as the person she had seen in Subway at the time of the shooting. (R. p. 106, line 20–p. 109, line 25).

Shiecarra Smalls, the female who was with Appellant at Subway on July 26, 2011, also testified for the State. (R. p. 111, line 6–p. 114, line 7). According to Smalls, Appellant picked her up from work, and they went to pick up subs from Subway for Appellant and his girlfriend. (R. p. 112, line 15–p. 114, line 15). After Appellant and Smalls got their subs, Victim walked in the door. (R. p. 114, line 24–p. 115, line 8). As Appellant and Smalls were leaving Subway, Smalls spoke to Victim, and he responded, but Smalls did not hear any words exchanged between Appellant and Victim. (R. p. 115, lines 10–20). After Appellant and Smalls left Subway, Smalls got in the car, but Appellant went back in to the restaurant. (R. p. 115, line 25–p. 116, line 16). Smalls testified, “I asked him if he had—if it was something going on and he said that, yeah, he was going back in there.” (R. p. 116, lines 13–14). A short time later, Appellant walked out of Subway and got in the car, and Appellant and Smalls left. (R. p. 116, line 16–p. 117, line 1). Before leaving Smalls saw Victim run out of Subway and fall to the ground. (R. p. 117, lines 2–8). In the car Smalls heard Appellant tell someone on the phone that he had shot Victim. (R. p. 117, lines 13–17).

In addition to the eyewitness testimony of Thomas, Green, Salleme, and Smalls, the State also introduced eyewitnesses who saw Victim come out of Subway and drop to the ground. For example, James Powell testified that he saw Victim collapse, and he called 911 and gave information about a car that was seen leaving the scene. (R. p. 130, line 13–p. 135, line 24). Tanya Terry was also standing outside of Subway at the time of the shooting, and she saw a man come out of Subway right before Victim and jump into a car. (R. p. 136, line 17–p. 138, line 15). Terry then relayed to Powell information about the license tag of the car the man got into. (R. p. 138, line 13–p. 139, line 11).

The State also presented a video recording of the shooting from Subway’s surveillance cameras. (R. p. 77, line 10–p.83, line 20; State’s Ex. 10).

The Defense’s Case

Appellant testified that he believed that Victim had been involved in a shooting of his home that took place on May 30, 2011. (R. p. 311, line 24–p. 321, line 19). Appellant was across the street at a neighbor’s home at the time of the May 30th shooting, but Appellant’s girlfriend, who was pregnant at the time, and his adopted son were at his home when the shooting occurred. (R. p. 313, line 2–p. 315, line 24; R. p. 333, lines 1–9). According to Appellant, the shooting lasted for “two to three minutes” during which there were “too many [shots] to count.” (R. p. 315, lines 10–15). Appellant’s girlfriend miscarried as a result of the shooting. (R. p. 318, line 4–p. 319, line 5). Appellant testified that he learned that Victim and another person were involved in the May 30th shooting. (R. p. 321, lines 14–19).

Appellant also testified that he knew Victim was a dangerous person and that Victim was known to “tote a gun and is a shooter.” (R. p. 321, line 20–p. 322, line 3). Appellant further testified that the shooting scared him and took away his sense of security. (R. p. 322, lines 4–11).

He did not feel safe at home and moved to another residence. (R. p. 322, lines 8–11; R. p. 323, line 25–p. 324, line 10).

Appellant also testified about the shooting on July 26, 2011. According to Appellant, he first noticed Victim after he got his subs and turned to leave. (R. p. 325, lines 8–16). Appellant testified that, as he and Smalls tried to rush out of the store, Victim was staring him down. (R. p. 325, lines 17–21). Smalls said hello to Victim, but, according to Appellant, “he barely acknowledge her. He walk pass me and just was like, [‘]Man, I’m gone kill you boy.[’]” (R. p. 325, line 21–p. 326, line 4). Appellant and Smalls exited the Subway, and, as they were walking to the car, Appellant talked to Smalls about Victim. (R. p. 326, lines 8–18). He testified to the following:

And I was just explaining to her like did you hear what he said just now. Like, man, he just gone keep trying to kill me. You know, Travy, you know what type of guy he is. And I was just keep telling her that. I told her he just shoot up the house. He just took a son from me.

(R. p. 326, lines 11–16). By the time Appellant and Smalls reached the car, Appellant had decided he “couldn’t live like that any more, hiding, running and from Mr. Holmes and just always being a victim to Mr. Holmes.” (R. p. 326, lines 20–23). Appellant then went back into Subway, put a gun right up against Victim, and shot him. (R. p. 327, line 18–p. 328, line 17). Appellant then left Subway and got back into his car. (R. p. 328, lines 18–20). He then dropped Smalls off at her home. (R. p. 329, lines 1–6).

After the shooting, Appellant and his girlfriend fled to Jacksonville, Florida, and Appellant cut his shoulder-length dreadlocks so as “not to be noticed.” (R. p. 329, line 7–p. 330, line 9). In early August of 2011, two officers from the Beaufort City Police Department picked Appellant up from Florida. (R. p. 140, line 9–p. 142, line 18).

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 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 obtain necessary information to strike jurors and failing to change venue

Applicant alleges trial counsel was ineffective for failing to acquire all information needed to strike jurors and for failing to have the venue of the trial changed. However, trial counsel enumerated a valid trial strategy for his handling of the jury voir dire and therefore was not ineffective.

Trial counsel testified that he recalled there being a significant amount of media attention on the case. Trial counsel testified that he always viewed this case as having potential for the venue to be changed. Trial counsel testified that there were some articles in the Island Packet concerning the trial and that social media was not as much of a concern back during this time. Trial counsel testified that he spoke with Applicant and other people working with him on the case about the fact change of venue motions are nearly impossible to have granted and that you need specific evidence when it came to the jury. Trial counsel testified that he informed the judge that he would be making the motion and that Judge Brown was not receptive to the motion, he essentially knew in advance that the motion would be denied. Trial counsel proceeded to elaborate on his strategy for seating jurors, he needed to have African-Americans on the jury. Trial counsel testified that the

only African-American jurors available to him were jurors that had some level of media exposure, so he had to weigh that in his strategy. Trial counsel testified that this case had racial overtones and that having a diverse jury was important to his trial strategy. Trial counsel clarified that he does not remember if all of those jurors were African-American, but they all had something he needed included in the jury.

“Counsel’s performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.’” Strickland, 466 U.S. at 690. There is a strong presumption that counsel’s decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). “Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). “[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include ‘which jurors to accept or strike, which witnesses should be called on the defendant’s behalf, what evidence should be introduced, whether to object to the admission of evidence, [and] whether and how a witness should be cross-examined.’ What motions to file and ‘whether to put on evidence so as to preserve the final word in closing argument’ are also strategic and tactical decisions to be made by trial counsel.” Abney v. State,

408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (internal citations omitted). Trial counsel's strategy is reviewed under "an objective standard of reasonableness." Magazine v. State, 361 S.C. 610, 617, 606 S.E.2d 761, 764 (2004).

Applicant has failed to meet his burden in proving ineffectiveness on the part of trial counsel or any prejudice resulting, therefore this allegation is denied.

Failure to utilize mental health expert in trial and sentencing

Applicant alleges trial counsel was ineffective for failing to effectively present Applicant's primary defenses, to include failure to effectively utilize a mental health expert in trial and sentencing. Applicant failed to meet his burden of proof and this allegation is denied.

Trial counsel testified that he utilized an expert at trial, Dr. Martin. Trial counsel testified that he wanted to use the expert to help Applicant's defense and that this was not the kind of case where you could just rest after the prosecution's case, especially not with the video evidence in this particular case. Trial counsel testified that the expert testified that Applicant knew what he was doing and that he understood that it was wrong. Trial counsel testified that Applicant was criminally responsible for his actions. Trial counsel testified that the expert never provided him with a diagnosis for any mental disorders. Trial counsel testified that he likely discussed potential testimony with the expert for the purposes of sentencing.

"In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis – and the analysis by the appellate court – is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks." Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018) (citing Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 64-65 (2011) (deferring to trial counsel's strategic considerations); Jackson v. State, 329 S.C. 345, 350, 495 S.E.2d 768, 770-71

(1998) (same); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (same)). This Court’s “analysis of [C]ounsel’s strategic decisions must be ‘highly deferential’ to counsel’s judgment, and ‘a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight.’” Id. at 320-21, 815 S.E.2d at 440 (quoting Strickland, 466 U.S. at 689).

“[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include which jurors to accept or strike, *which witnesses should be called on the defendant’s behalf*, what evidence should be introduced, whether to object to the admission of evidence, [and] whether and how a witness should be cross-examined.” Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (internal citations and quotations omitted) (emphasis added).

This Court finds credible Counsel’s testimony as to his strategy and reasoning in attempting to present the testimony of the expert witnesses. This Court further finds Applicant has failed to show any prejudice resulting from the expert’s testimony. Applicant fails to show prejudice in two key ways. First, Applicant has failed to show that the testimony of another expert would have resulted in a different outcome at trial. Applicant had Dr. Maddox testify during the PCR hearing. Dr. Maddox essentially testified to the same key components as Dr. Martin, with the addition of a PTSD diagnosis. Dr. Maddox testified that Applicant was criminally responsible for his actions, that he understood that what he was doing was wrong, and that Applicant had the ability to just walk away from the situation. This testimony is not any more helpful to Applicant than the potential testimony of Dr. Martin. Second, the video evidence in Applicant’s case results in a high bar as to what would be sufficiently prejudicial. Therefore, this Court finds that Applicant has failed to meet his burden and this allegation is dismissed.

**Ineffective assistance of trial counsel for failure to object to improper burden
shifting statements to the jury by the court and the State's waiver of first closing argument**

Applicant alleges trial counsel was ineffective for failure to object comments by the Court referring to seeking the truth and finding the true facts. Further, Applicant alleges trial counsel was ineffective for failing to object to the State waiving first closing argument. This Court finds that Applicant failed to prove any prejudice resulting from trial counsel's failure to object to either the Court's comments on truth or the State's waiver of closing argument, therefore, the allegation is dismissed with prejudice.

In *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d. 248 (2000), the South Carolina Supreme Court held that jury instructions on reasonable doubt which also charge the jury to "search for the truth" run the risk of unconstitutionally shifting the burden of proof to the defendant, but nonetheless found there was no reversible error in the charge given there because the "seek the truth" language was given in conjunction with the credibility charge, and not with either the reasonable doubt or circumstantial evidence charge.

Recently, the South Carolina Supreme Court again considered the use of "truth seeking" language by the trial court in *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018).¹ The *Beaty* Court concluded:

[A] trial court should refrain from informing the jury, whether through comments or through its charge, that its role is to search for the truth, or to find the true facts, or to render a just verdict. These phrases may be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict it believes best serves the jury's perception of justice. We caution trial judges to avoid these terms and any other that may divert the jury from its obligation in a criminal case to determine, based solely on the evidence presented, whether the State has proven

¹ Applicant's trial took place in 2015, well before this *Beaty* decision.

the defendant's guilt beyond a reasonable doubt. Although there was error here, our review of the entirety of the judge's opening comments and the entire trial record convinces us that appellant has not shown prejudice from this error sufficient to warrant reversal.

Id. The *Beaty* opinion signified the first time the Court issued a general and blanket admonishment to the bench and bar that such "truth-seeking" language should be avoided at any point during the trial, but nonetheless found a harmless error analysis applied if such charges or commentary was given by the trial court. Trial Counsel testified the judge made "a mention of the truth" during his jury charges. Trial Counsel testified he did not recall a reason for not objecting to the comments. This Court finds Counsel's testimony as to this issue very credible.

In both *Aleksey* and *Beaty*, the South Carolina Supreme Court determined that while the trial court's use of "truth seeking" language was improper, the error was not significant enough to warrant reversal of the convictions. This Court finds the same holds true in Applicant's case. At the time of Applicant's trial in 2012, the trial court's opening charge included truth-seeking remarks that were widely-used by the bench and was similar to the approved charges as prepared by the Supreme Court and given to the bench for reference. Once again, Applicant's trial took place in 2012, well before the blanket admonishment in 2018 from *Beaty*. To find that trial counsel was constitutionally deficient for failing to object to something that was standard practice at the time of Applicant's trial and which the our appellate courts had not expressly advised the bench and bar not to use goes against the principles of *Strickland* and its progeny that counsel's actions be evaluated based on a standard of reasonableness at the time of an applicant's trial. *See Teamer v. State*, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016) ("This Court has previously held that reasonable representation does not require trial counsel to foresee successful appellate challenges to novel questions of law."); *see also Gilmore v. State*, 314 S.C. 453, 457, 445 S.E.2d 454, 456

(1994) (“We have never required an attorney to be clairvoyant or anticipate changes in the law” (citing *Thornes v. State*, 310 S.C. 306, 309–10, 426 S.E.2d 764, 765 (1993))), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999); *Thornes*, 310 S.C. at 309–10, 426 S.E.2d at 765 (“This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial.”)).

This Court finds Applicant’s reliance on *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012), to argue that our Supreme Court had advised the bench to stop using truth-seeking language in 2012, is not dispositive, as the Court’s admonition in *Daniels* focused on the trial court’s use of language that the jury’s duty was to return a verdict that is “just” or “fair”, a fundamentally different scenario than Applicant’s case. *See Daniels*, 401 S.C. 251, 256, 737 S.E.2d 473, 475 (2012) (“Although the issue is not preserved, we instruct the trial judge to remove any suggestion from his general sessions charges that a criminal jury’s duty is to return a verdict that is “just” or “fair” to all parties. Such a charge could effectively alter the jury’s perception of the burden of proof, substituting justice and fairness for the presumption of innocence and the State’s burden to prove the defendant’s guilt beyond a reasonable doubt. Moreover, to a lay person, the “all parties involved” in a criminal case may well extend beyond the defendant and the State, and include the victim.”).

Moreover, here, when “truth seeking” comments are viewed in conjunction with the record as a whole, the trial court properly advised the jury of the State’s burden of proof and did not impermissibly shift the burden to Applicant. Because the jury instructions as a whole were proper, this Court finds Applicant cannot establish any resulting prejudice. *See Brown v. Stewart*, 348 S.C. 33, 53, 557 S.E.2d 676, 686 (Ct. App. 2001) (“In reviewing jury charges for error, we construe the court’s charge as a whole in light of the evidence and issues presented at trial. If the instructions

of the trial court, construed as a whole, correctly state the law, there is no reversible error. To entitle an appellant to reversal, the trial court's instructions must be not only erroneous, but also prejudicial, and the enumeration of hypercritical exceptions will not suffice to overthrow a jury's verdict." (internal citations omitted)).

Additionally, Trial Counsel repeatedly and effectively reminded the jury in his closing argument that the State firmly held the burden of proof and must establish beyond a reasonable doubt that Applicant was guilty. Based on this, in conjunction with the proper jury instructions on the State's duty to prove Applicant's guilt beyond a reasonable doubt, Applicant cannot establish deficiency of counsel or prejudice. Therefore, This Court denies and dismisses this allegation with prejudice.

Further, Applicant argued counsel was ineffective for failing to object to the State waiving first closing argument. Applicant has argued no law at the time of trial that required the State to close first nor has Applicant proved prejudice resulting from counsel not objecting to the State's waiver. Trial counsel also testified that his strategy for not objecting is that he did not want the jury to hear from the State twice if possible, once was enough. Therefore, this allegation is dismissed with prejudice.

**Ineffective assistance of trial counsel for failure to offer further testimony regarding the
2011 incident**

Applicant alleges trial counsel was ineffective for failing to offer further testimony from additional witnesses in regards to an unrelated shooting incident in 2011. This Court finds that trial counsel was not ineffective for failing to present testimony of which he was not aware and that was wholly irrelevant to any issue at Applicant's trial.

Trial counsel testified that he was not aware of anyone with first-hand knowledge that Travis Holmes committed the shooting that occurred in 2011 and was not related to this incident. Trial counsel testified that if he had someone who was willing to say that they saw Travis Holmes commit that shooting he would have called that person. Deshaunaka Allen, who testified at the PCR hearing, was on the witness list at trial. Allen testified at the PCR hearing that she knew that Travis Holmes committed the shooting and that she would have testified to that. Allen also testified that she never told Applicant that Holmes committed the shooting and he was not directly aware of that fact. Trial counsel testified that Allen's statement, same as her testimony, does not sound familiar and that if he had that information he would have tried to put her up on the stand. Allen also testified that she did meet with trial counsel's office. This Court finds that trial counsel was not ineffective for failing to call a witness who was interviewed at the time of trial, did not provide this information at the time of trial, and whose testimony would not have been dispositive as to any issue at trial. This Court finds that the witness' testimony would not have been helpful to Applicant's claim of voluntary manslaughter, because as the South Carolina Supreme Court found in this case his state of mind did not matter because he did not shoot the victim in a sudden heat of passion. Therefore, this allegation is dismissed with prejudice.

Ineffective assistance of counsel for opening the door in regards to a prior shooting incident

Applicant alleges trial counsel was ineffective for opening the door to the Solicitor's cross-examination of Applicant regarding a prior shooting incident. Applicant alleges trial counsel was ineffective for asking Applicant to clarify a few things about his prior pointing and presenting charge. This Court finds Applicant has failed to meet his burden of proof and trial counsel was effective in his representation as to this allegation.

Trial counsel testified that the reason he asked Applicant to clarify a few things was due to Applicant's own testimony that he had never done something like this before. Trial counsel testified that he anticipated that that testimony would be one that would open the door to the State questioning him on cross-examination as to his prior charge. Trial counsel also testified that he recalled discussing with Applicant what charges would be admissible and so it was anticipated that the pointing and presenting charge would come up. Trial counsel testified that ultimately he was trying to defuse the bomb of his prior charge before the State was able to set it off. This Court finds trial counsel's testimony to be credible and that his strategy was wholly valid. This Court finds that Applicant opened the door on his own and that trial counsel was simply trying to defuse the situation before it was made out worse on cross-examination. Therefore, this Court dismisses this allegation with prejudice.

Ineffective assistance of trial counsel for failure to request a proper inferred malice instruction and failure to object to the instruction given

Applicant alleges trial counsel was ineffective for failing to request a proper inferred malice instruction and for failing to object to the instruction given. Applicant argues that an attorney is always deficient for failing to object to an inferred malice instruction that lacks the general permissive inference instruction. However, an objection to such a charge is only warranted when the instruction's language risks shifting the burden of proof from the State to the defendant. Such was not the case here, and therefore no objection from Petitioner's trial counsel was necessary. Because trial counsel did not need to object, his failure to do so cannot possibly be considered deficient performance under *Strickland*.

The general permissive inference instruction's intent is to prevent the burden shifting effects of inferred malice instructions by clarifying to the jury that it may determine the weight of

such an inference. *Gibson v. State*, 416 S.C. 260, 264, 786 S.E.2d 121, 123 (2016); *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983) (overruled on other grounds). The classic example of the general permissive inference instruction curing the risk of burden shifting is the case where a jury is charged with inferring malice solely from evidence that a defendant used a deadly weapon to commit a homicide. *See State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009) (finding that the general permissive inference instruction must be given when the jury is instructed to infer malice from the intentional use of a deadly weapon.); *But see also State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019) (finding that a deadly weapon malice instruction is improper, even with the general permissive inference instruction). The South Carolina Supreme Court has explicitly found that a “trial judge’s instruction on the presumption of malice from the use of a deadly weapon constituted a mandatory presumption rather than a permissive inference” and therefore necessitates the general permissive inference instruction. *Elmore*, 279 S.C. at 421, 308 S.E.2d at 784. Regardless of whether the court instructs the jury on the use of a deadly weapon, an “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.” *State v. Mattison*, 276 S.C. 235, 238, 277 S.E.2d 598, 600 (1981).

At the time of Applicant’s trial, a jury instruction on implied malice derived from the use of a deadly weapon was prohibited when the defense presented evidence that would reduce, mitigate, excuse, or justify the killing. *Belcher*, 385 S.C. at 610, 685 S.E.2d 809. A Maryland Court has referred to this as a “half-truth” because malice includes the absence of justification, excuse, and mitigation. *Glenn v. State*, 68 Md.App. 379, 511 A.2d 1110 (1986). Since Petitioner’s trial, such an instruction has been explicitly disallowed by this Court. *Burdette*, 427 S.C. at 504, 832

S.E.2d at 583. It was said to be particularly harmful because it amounts to a direct commentary and emphasis on certain facts of the case by the trial court. *Id.* 427 S.C. at 503, 832 S.E.2d at 582.

Specifically, there is no error despite the lack of a general permissive inference instruction where the “instructions on the law of implied malice made it clear that any presumption or inference of malice was rebuttable and whether malice had been proved was an issue of fact for the jury to determine under all of the evidence.” *Mattison*, 276 S.C. at 238, 277 S.E.2d at 600. It is clear that the general permissive inference instruction is not itself a mandatory instruction that must be given every time a jury is instructed on implied malice. Instead, it is necessary to ensure that the presumption of malice, when inferred through evidence other than the defendant’s express actions, may nevertheless be rebutted by other evidence presented by the defense. Since a charge was not given stating that malice could be inferred through evidence other than the defendant’s express actions, the permissive inference instruction was not necessary. Therefore, this Court finds that Applicant has failed to meet his burden of proof and dismisses this allegation with prejudice.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

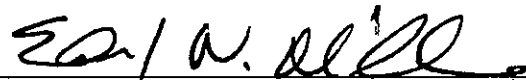
The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel’s receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right 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,

PCR 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 be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this _____ day of NOV 16 2021, 2021.



EDWARD W. MILLER
Presiding Judge
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2015-CP-07-1903

Rajerick Knight, 353409,)
Applicant,)

v.)

State of South Carolina,)
Respondent,)

MOTION PURSUANT TO RULE
59(a) & (e), SCRPC

2021 DEC 16 AM 11:45
CLERK OF COURT

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 August 3, 2015. The State filed a Return on May 13, 2016. Tricia A. Blanchette, Esquire, was substituted in as counsel via written Order dated January 10, 2018.

On March 16, 2020, Applicant, through counsel filed an Amendment to Application for Post Conviction Relief, which alleged 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. Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of counsel:

1. Ineffective assistance of trial counsel for failure to obtain all necessary information to properly strike jurors, which resulted in the seating of jurors with media exposure and the denial of the motion for change of venue.
2. Ineffective assistance of trial counsel for failure to effectively present Applicant's primary defenses, to include failure to effectively utilize a mental health expert in trial and sentencing.
3. Ineffective assistance of trial counsel for failure to object to improper burden shifting statements to the jury by the court and the State's waiver of first closing argument.¹

¹ At the evidentiary hearing, this allegation was amended to include "failure to object to improper burden shifting statements to the jury by the Court and the State and the State's waiver of first closing argument."

4. Ineffective assistance of trial counsel for failure to offer further testimony regarding the 2011 incident to the jury.
5. Ineffective assistance of trial counsel for opening the door to the Solicitor's cross-examination of Applicant regarding a prior shooting incident.
6. Ineffective assistance of trial counsel for failure to request a proper inferred malice instruction and failure to object to the instruction given to the jury.

On November 17, 2020, an evidentiary hearing was conducted via the Webex platform by the Honorable Edward W. Miller. Applicant was present at Lieber Correctional Institution and was represented virtually by Tricia A. Blanchette, Esquire. Respondent was represented by Benjamin H. Limbaugh, Assistant Attorney General. Prior to the evidentiary hearing, Applicant, through counsel, submitted a Memorandum to the Court, which is attached as an exhibit and referenced herein. During the course of the evidentiary hearing, Applicant took the stand, along with Arie Bax, Esquire, Deshaunaka Allen, and Dr. Donna Maddox. At the conclusion of the hearing, the Court left the record open for Respondent to determine if additional witnesses needed to be called.

On March 2, 2021, a virtual hearing was conducted on the Webex platform by the Honorable Edward W. Miller. Applicant was present at Lieber Correctional Institution and was represented virtually by Tricia A. Blanchette, Esquire. Respondent was represented by Benjamin H. Limbaugh, Assistant Attorney General. After hearing from both parties, no additional witnesses were called and the record was closed. The court took the matter under advisement.

On March 5, 2021, the Court notified the parties of his intent to dismiss the application and asked Respondent to submit a proposed Order. On May 21, 2021, Applicant, through counsel, provided the Court a copy of the evidentiary hearing transcript. On July 14, 2021,

Respondent submitted a proposed Order.² Upon receipt, Applicant's counsel asked for the opportunity to address concerns with the proposed Order, and she was given until July 19, 2021 to make an informal response to the Court. The informal response was submitted via email on July 19, 2021 and is addressed in large part herein.

On November 16, 2021, the Court issued an Order of Dismissal, which was filed on November 23, 2021. Due to the Thanksgiving holiday, Applicant, through counsel, received notice of the entry of the Order on November 29, 2021, from which this Motion timely 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. Following *Marlar*, the appellate courts have continued to address the lower courts' repeated failure to adequately address issues raised at an evidentiary hearing in final orders or failure of counsel to file a Rule 59, SCRPC, motion. *See Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992) (Remanding and explaining the Court's concern with PCR orders that fail to address the issues raised at a PCR hearing, which result in depriving parties of rulings on the issues, make review by the appellate court and the workload of the appellate court more difficult, and require remand for new hearings and/or orders.); *Reese v. State*, 425 S.C. 108, 820 S.E.2d 376 (2018) (Granting the request for remand by both parties as result of the "patent inadequacies" of the PCR court's order.); *Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019) (Remanding

² Via the email submitting the proposed Order, Ben Limbaugh, Assistant Attorney General, also notified the Court and opposing counsel that he was leaving the Office of the Attorney General to engage in private practice as of the date of the email.

for the PCR court to make adequate findings of fact and conclusions of law regarding an unaddressed PCR claim despite a Rule 59, SCRCP, motion not being filed.).

In *Reese*, the South Carolina Supreme Court addressed the ruling in *Pruitt* twenty-six years prior regarding the failure of orders to address the issues raised by applicants and noted the following cases that had been decided on this matter in a string cite, as follows:

[S]ee also *Smalls v. State*, 422 S.C. 174, 195, 810 S.E.2d 836, 847 (2018) (holding "the PCR court ... did not make specific findings"); *Ramirez v. State*, 419 S.C. 14, 21 n.6, 795 S.E.2d 841, 845 n.6 (2017) (finding error because "there are no findings of fact contained within the PCR court's order to support its conclusion"); *Simmons v. State*, 416 S.C. 584, 592, 788 S.E.2d 220, 225 (2016) (holding, "The PCR court's general denial of all claims not specifically addressed in the PCR court's order 'does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law.' " (quoting *Marlar*, 375 S.C. at 409, 653 S.E.2d at 266)); *Tappeiner v. State*, 416 S.C. 239, 249 n.5, 785 S.E.2d 471, 476 n.5 (2016) (reiterating "the PCR court is required to 'make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented' " (quoting section 17-27-80)); *Marlar*, 375 S.C. at 408, 653 S.E.2d at 266 (holding, "Pursuant to S.C. Code Ann. § 17-27-80..., the PCR judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented."); *Marlar*, 375 S.C. at 410, 653 S.E.2d at 267 ("reiterat[ing] our admonition" from *Pruitt*); *Hall v. Catoe*, 360 S.C. 353, 364-65, 601 S.E.2d 335, 341 (2004) (repeating our admonition from *Pruitt*); *Bryson v. State*, 328 S.C. 236, 236-37, 493 S.E.2d 500, 500 (1997) ("remand[ing] this matter to the post-conviction relief judge to make specific findings of fact and conclusions of law as to each issue"); *McCullough v. State*, 320 S.C. 270, 272, 464 S.E.2d 340, 341 (1995) (repeating our admonition from *Pruitt*, and finding it "necessary to vacate the order and remand this matter to the circuit court" and further "admonish[ing] all those involved in future PCR matters to be meticulous in preparing and reviewing proposed orders so that the final order sets forth the required findings any reasons for those findings"); *McCray v. State*, 305 S.C. 329, 330, 408 S.E.2d 241, 241 (1991) (finding "[t]he PCR court's conclusions regarding ineffective assistance are insufficient for appellate review and fail to meet the standard set forth in [section 17-27-80]").

Reese, 425 S.C. at 110-111, 820 S.E.2d at 377-378. As addressed by the Court these cases have resulted from the failure of the lower courts to address issues raised at evidentiary hearings in final orders, which has required the appellate courts to remand and/or rule upon issues not properly addressed in a final order or in a Rule 59, SCRCP, motion.

Therefore, pursuant to Rule 59, SCRCP, 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 pursuant to South Carolina Code Section 17-27-80. Additionally, Applicant would respectfully ask that the Court reconsider the Order and find that a new trial should be granted.

On July 14, 2021, Respondent complied with the instructions of the Court issued on March 5, 2021 and submitted a draft Order of Dismissal for the Court's review. On the same date, Applicant's counsel emailed the Court regarding concerns and was given a few days to submit an informal response. It appears the signed and filed Order of Dismissal is unchanged from the draft submitted by the Office of the Attorney General. Therefore, Applicant, through counsel, is formally raising the issues previously brought to the Court's attention, along with additional issues, in support of relief pursuant to Rule 59, SCRCP.

Upon review of the signed and filed Order of Dismissal, Applicant, through counsel, would bring the following issues to the Court's attention:

1. The Order fails to provide a complete procedural history of the PCR filings, reference the hearing dates, attorneys involved or witnesses called.
2. The Order lists the issues as set forth in the amendment on page two, but fails to list or address each issue in its entirety under the streamlined headings in the Findings of Fact and Conclusions of Law Section.³
3. Under the jury strike issue discussion, the Order fails to address questions asked about the trial court's ruling and attorney's response that he did not have enough information to strike the jury. Trial pp. 49-50. The Order fails to properly reflect trial counsel's testimony as reflected in the evidentiary hearing transcript. PCR pp. 62-67.
4. Under the mental health issue, the issue as alleged and addressed at the evidentiary hearing is not addressed fully, specifically, but not limited to the following:

³ Page numbers reference herein were added by hand since the Order does not include page numbers.

- a. The discussion fails to address how the issue was addressed at trial and the following specific portions of the trial transcript as referenced in the outline provided to the Court and at the evidentiary hearing:
 - 1) Discussion of Dr. Martin and purpose for utilizing him as an expert witness (pp. 334, 519-520)
 - 2) Dr. Martin proffer (pp. 526-547)
 - 3) Argument and Discussion with the Court, to include jury charges (pp. 547-572)
 - 4) Court ruling (pp. 572-580)
 - 5) Court charge on criminal intent (p. 607, ln. 19)
 - 6) Sentencing / Mitigation (pp. 627-636)
 - b. The discussion and findings beginning on page thirteen do not sufficiently or fairly address the evidentiary hearing testimony of Dr. Maddox.
 - c. Overall, the discussion and findings fail to address the evidentiary hearing testimony of Applicant.
 - d. The discussion and findings improperly summarize trial counsel's testimony and omit relevant portions of the evidentiary hearing, such as the discussion of the expert being excluded from sentencing and testimony regarding the findings of Dr. Maddox.
 - e. The Order fails to address counsel's failure to properly utilize a mental health expert and its impact on the defense strategy of manslaughter. Trial counsel admitted that his whole strategy of getting to a manslaughter charge failed and the jury had no option but to render a quick verdict. PCR pp. 74-78, 86. The Order fails to address the reasonableness of counsel's defense strategy in light of his evidentiary hearing testimony and the record.
 - f. The Order fails to address the impact the findings and testimony of Dr. Maddox could have had on the appellate record and findings (i.e. no evidence that Applicant was in fear, acting out of control or under an uncontrollable impulse to do violence, no evidence Applicant was acting in a sudden heat of passion).
 - g. The Order fails to address trial counsel's admission that he did not go far enough, due to intimidation, in defending Applicant. PCR pp. 111-112.
5. The Order fails to reflect the verbal amendment of issue number three as reflected in the evidentiary hearing transcript. PCR p. 17. As addressed herein, the issue should read: Ineffective assistance of trial counsel for failure to object to improper and burden shifting statement to the jury by the court and the State and the State's waiver of first closing argument. As a result, the discussion and findings fail to address arguments made by the State in closing and counsel's repeated testimony regarding the racial undertones and unfairness of the trial. The evidentiary hearing testimony and outline provided to the Court addressed the arguments made by the State and issues from closing. Specifically,

the Order fails to address counsel's admission that he did not go far enough in handling closing arguments. PCR pp. 111-112.

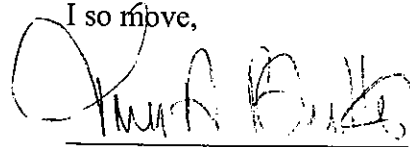
- a. From outline, transcript citations to be considered:
 - 1) Court opening (p. 124, ln. 23 – 125, ln. 2, p. 127 ln. 18-20, p. 131, ln. 10-13)
 - 2) State opening (p. 134, lns. 11-15)
 - 3) State closing (p. 598, ln. 20)
 - 4) Court jury instructions (p. 599, lns. 5-9)
 - 5) State waived first closing without objection (p. 588)
 - 6) Jury deliberations (pp. 613-620)
 - 7) Verdict (pp. 622, 627)
6. Regarding the issue involving Ms. Allen and the 2011 incident, the Order does not properly reflect the testimony of Ms. Allen, Applicant or trial counsel. The Order does not address how the issues came up at trial or trial counsel's testimony that he was forced to show his defense. PCR pp. 87-89. Furthermore, the conclusions reached based upon the appellate decision miss the point of why Ms. Allen's testimony was crucial. Order p. 18. The South Carolina Court of Appeals repeatedly held that there was no evidence that Applicant was acting in fear or sudden heat of passion, and the Order fails to address how Ms. Allen's testimony could have aided the defense at trial and the argument on appeal.
 - a. From outline, transcript citations to be considered:
 - 1) Matters involving the victim's history (pp. 53-63, 109, 114-123, 288-295, 349)
 - 2) 2011 incident: arguments, ruling and testimony (p. 349, ln. 13, pp. 350-367, 404-415, 423, 465-471, 481-483, 497)
 - 3) Court's ruling on voluntary manslaughter with reference to 2011 incident (p. 576, lns. 8-12)
 - 4) Defense closing argument (p. 591, lns. 15-25)
7. Regarding the malice instruction, Applicant has not alleged that "an attorney is always deficient for failing to object to an inferred malice instruction" the inclusion of such in the Order is erroneous. Applicant submits the conclusions of law in the Order are in error and fail to address counsel's testimony on the matter. PCR pp. 96-99, *See State v. Peterson*, 287 S.C. 244, 335 S.E.2d 800 (1985) in conjunction with the cases addressed in the outline.
8. The Order fails to address the hearing held to close the record and final arguments on March 2, 2021, to include but not limited to Applicant's position under *United States v. Cronin*, 466 U.S. 648, 104 S.Ct. 2039 (1984), that counsel's representation amounted to a complete breakdown of the adversarial process as he admittedly failed to act as an advocate and ensure a meaningful adversarial process and Applicant's position that counsel's accusations against the court and prosecution amounted to a blame shift and if credible he should have made a record and/or filed a complaint.

As stated above, Applicant would ask that specific findings of fact and express conclusions of law are made on each issue presented and addressed at the hearings conducted by this Court. Applicant would also ask the Court to review the record, to include the evidentiary hearing transcript, and find that the Order of Dismissal should be reconsidered and relief should be granted as Applicant has shown that counsel rendered ineffective assistance that requires that a new trial be granted.

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), SCRCP.

I so move,



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

December 8, 2021

EXHIBIT 1

Rajerick Knight, #353409 v. State: 2015-CP-07-1903

I. Procedural History

A. PCR

1. Application: August 3, 2015
2. Return: May 13, 2016
3. Substitution of Counsel: January 10, 2018
4. Discovery Order: June 21, 2018
5. Amendment: March 16, 2020

B. General Sessions

1. Indictments
 - a. 2011-GS-07-1673: Murder (Life)
 - b. 2011-GS-07-1674: Possession of a weapon during the commission of a violent crime (5 years, consecutive)
2. Trial: November 26-29, 2012 (Judge D. Craig Brown)
 - a. State: Duffie Stone and Sean Thornton
 - b. Defense: Arie and Naki Bax
 - c. Victim: Travis Holmes

C. Appeal

1. Attorneys: Laura Ruth Baer and Kathleen Fowler Monoc
2. Issues Raised
 - a. The circuit court erred in failing to instruct the jury to consider the lesser included offense of voluntary manslaughter where there was evidence that Petitioner's fear of the decedent resulted from sufficient legal provocation based upon the totality of the circumstances which made him incapable of cool reflection.
3. The circuit court erred when it failed to admit additional relevant evidence which further supported the jury charge for the lesser included offense of voluntary manslaughter.
 - a. The Petitioner was prejudiced by the circuit court's failure to admit additional relevant evidence supporting a voluntary manslaughter charge where evidence of specific instances of violence by the decedent would have shown that the decedent was known to shoot his enemies following chance encounters in public locations.
 - b. The circuit court erred by failing to admit proffered testimony relevant to Petitioner's state of mind
4. Ruling: Affirmed – per curiam (April 1, 2015)
 - a. Issue One:

Even assuming arguendo, as Knight contends, that the verbal threat at the restaurant, combined with his belief that Victim had shot at this trailer two months prior to the fatal encounter, satisfies the sufficient legal provocation prong required for voluntary manslaughter charge, we

nonetheless find there is no evidence to support such a charge. While there is evidence that Knight was in fear, there is no evidence he “was out of control as a result of fear or was acting under an uncontrollable impulse to do violence” at the time he shot Victim. Starnes, 388 S.C. at 599, 698 S.E.2d at 609.

Essentially, Knight’s own testimony shows he did not shoot Victim in sudden heat of passion, but that he did so after reflecting on his situation with Victim, noting he was tired of avoiding Victim and wanted to end the matter between the two of them by killing Victim.

b. Issue Two:

Because Knight was not entitled to a voluntary manslaughter charge based upon the fact that there was no evidence he shot Victim in sudden heat of passion, we need not reach the issues concerning whether the trial court erred in excluding evidence relevant to his state of mind.

II. Issues from Amendment with Transcript and Case Citations

1. Ineffective assistance of trial counsel for failure to obtain all necessary information to properly strike jurors, which resulted in the seating of jurors with media exposure and the denial of the motion for change of venue.

a. Transcript Citations:

- 1) Voir dire (28-32)
- 2) Strikes (33)
- 3) Motion for Change of Venue (45, ln. 17- p. 51)
- 4) Court’s ruling (49-50)
- 5) Defense counsel’s response (50)

2. Ineffective assistance of trial counsel for failure to effectively present Applicant’s primary defenses, to include failure to effectively utilize a mental health expert in trial and sentencing.

a. Transcript Citations:

- 1) Discussion of Dr. Martin and purpose for utilizing him as an expert witness (334, 519-520)
- 2) Dr. Martin proffer (526-547)
- 3) Argument and Discussion with the Court, to include jury charges (547-572)
- 4) Court ruling (572-580)
- 5) Court charge on criminal intent (607, ln. 19)
- 6) Sentencing / Mitigation (627-636)

b. Cases:

- 1) State v. Starnes, 698 S.E.2d 604, 609 (S.C. 2010)

- 1) State v. Sims, Op. No. 5631 (S.C. Ct. App. filed February 27, 2019)
 - 2) State v. Gill, 552 S.E.2d 26, 346 S.C. 209 (2001)
3. Ineffective assistance of trial counsel for failure to object to improper burden shifting statements to the jury by the court and the State's waiver of first closing argument.
- a. Transcript Citations:
 - 1) Court opening (124, ln. 23 – 125, ln. 2, 127 ln. 18-20, 131, ln. 10-13)
 - 2) State opening (134, lns. 11-15)
 - 3) State closing (598, ln. 20)
 - 4) Court jury instructions (599, lns. 5-9)
 - 5) State waived first closing without objection (588)
 - 1) Jury deliberations (613-620)
 - 2) Verdict: (622, 627)
 - b. Cases:
 - 1) State v. Beaty, 813 S.E.2d 502, 423 S.C. 26 (2018): Addresses both closing argument and improper burden shifting statements
 - 2) State v. Patterson, 823 S.E.2d 217, 425 S.C. 500 (Ct. App. 2019)
 - 3) State v. Daniels, 737 S.E.2d 473, 401 S.C. 251 (Oct. 10, 2012)
 - 4) Fortune v. State, 837 S.E.2d 37, 428 S.C. 545 (2019)
4. Ineffective assistance of trial counsel for failure to offer further testimony regarding the 2011 incident to the jury.
- a. Transcript Citations
 - 1) Matters involving the victim's history (53-63, 109, 114-123, 288-295, 349)
 - 2) 2011 incident: arguments, ruling and testimony (349, ln. 13, 350-367, 404-415, 423, 465-471, 481-483, 497)
 - 3) Court's ruling on voluntary manslaughter with reference to 2011 incident (576, lns. 8-12)
 - 1) Defense closing argument (591, lns. 15-25)
5. Ineffective assistance of trial counsel for opening the door to the Solicitor's cross-examination of Applicant regarding a prior shooting incident.
- a. Transcript Citations
 - 1) Applicant's direct testimony (493, lns. 18-21, 495-6, 498, lns. 10-11, 504, lns. 21-25, 509, ln. 10 – 510, ln. 5)
 - 2) Applicant's cross examination (510, ln. 17 – 512, ln. 12, 511-512)
 - a) Defense objections and bench conference (511)
 - b. Cases:
 - 1) State v. Young, 613 S.E.2d 386, 364 S.C. 476 (2005)

6. Ineffective assistance of trial counsel for failure to request a proper inferred malice instruction and failure to object to the instruction given to the jury.
 - a. Transcript Citations:
 - 1) Charge Discussion (582-585)
 - 2) Malice instruction (608-609)
 - b. Cases:
 - 1) State v. Elmore, 308 S.E.2d 781, 784 (S.C. 1983): “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 this case, and you may give it such weight as you determine it should receive. We caution the bench, that hereafter only slight deviations from this charge will be tolerated.”
 - 2) State v. Belcher, 685 S.E.2d 802, 810 n. 9 (S.C. 2009): “The standard implied malice charge remains valid, as does the general permissive instruction: [quoting Elmore instruction above].”
 - 3) Gibson v. State, 786 S.E.2d 121, 123 (S.C. 2016): Finding ineffective assistance of counsel for failing to object to an inferred malice instruction that did not include the general permissive instruction because it “deviates from the suggested Elmore charge as it does not contain the permissive inference language.”
 - 4) State v. Smith, Op. No. 27958, slip op. at 5 (S.C. Mar. 18, 2020): Holding that no implied malice charge should be given if there is evidence presented that a defendant acted in self-defense because “there was no need for the jury to infer his malice from the circumstances surrounding the shooting.” By acting in self-defense, a defendant admits he has the express intent to kill and argues that it was justified—there is no need to venture into inferred malice.

) IN THE COURT OF COMMON PLEAS
) 15TH JUDICIAL CIRCUIT

)
)
) CASE NO.: 2015-CP-07-1903

ORDER DENYING RULE 59 MOTION

2022 AUG -1 PM 1:51
JERRI ANN ROSEHEIM
CLERK OF COURT
COUNTY OF LOS ANGELES
to reconsider

IT IS SO ORDERED!

20 f u. m. R

The Honorable Judge Edward Miller
Presiding Circuit Court Judge

JUL 29 2022

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

Rajerick Knight,

Applicant,

v.

State of South Carolina,

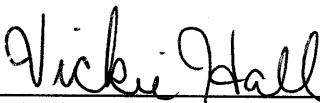
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order Denying Rule 59 Motion has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

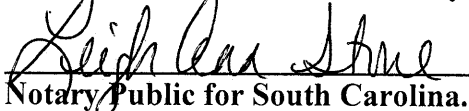
Tricia A. Blanchette, Esquire
Law Office of Tricia A. Blanchette, LLC
Post Office Box 2147
Leesville, SC 29070

This 3rd day of August, 2022.



Vickie Hall
Legal Assistant for Respondent

SWORN to before me this 3rd day of August, 2022.


Notary Public for South Carolina.

My Commission Expires: May 16, 2029