

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable William H. Seals, Circuit Court Judge

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S.C. SUPREME COURT

WAYNE A. SCOTT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001080

APPENDIX

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1 THE COURT: All right.

2 (WHEREUPON, a pause in the proceedings.)

3 BY MR. GROVE:

4 Q You knew Steve?

5 A Yes, sir.

6 Q I mean, y'all might not have been the best of
7 friends, but you knew him, right?

8 A He was a good fellow.

9 Q He came to your house and he fixed your air
10 conditioner. He didn't charge you a nickel?

11 A He fixed mine, my mom's and my sister and didn't
12 charge us a dime.

13 Q You said in your statement that Sunny came back from
14 around the house and he said to you that Steve was still
15 alive and he was gone have to shoot him again, didn't he?

16 A Yes, sir.

17 Q Did he go back over there and shoot him again?

18 A No, sir, he went back around there and then when he
19 came back, he come back with the gun.

20 Q So he didn't go and shoot him again?

21 A No, but he came back with the gun.

22 Q And that's when he came and handed you the gun?

23 A Yes, sir.

24 Q He hand it to you look this?

25 A Uh-uh.

1 Q Like this?

2 A After he was pointing coming after me like this,
3 pointing it towards you as me, walk to me from about
4 30 yards just like that until he got four or five foot
5 from me, then he drop the butt of the gun and got about
6 two foot and told me to get rid of it. I said what you
7 want me to do with it. He said I didn't care, throw it
8 away do whatever you want to with it.

9 Q And you grabbed it by the handle?

10 A No, sir.

11 Q By the strap I mean?

12 A A strap.

13 Q You grabbed it by the strap did you carry it like
14 this?

15 A No, sir.

16 Q How did you carry it?

17 A Like this.

18 Q And you went and put it in the woods?

19 A I went and threw it in the woods, yes, sir.

20 Q Threw it in the woods?

21 A Yeah.

22 Q How far in the woods?

23 A About 10, 15 feet.

24 Q Did you walk into the woods and then throw it some?

25 A No.

1 Q You stood at the edge of the woods and you threw it
2 15 feet into the woods?

3 A Uh-huh.

4 Q Holding it like this?

5 A Well, threw it by the strap.

6 Q How much of this information did you pass along to
7 your fiancé?

8 A She was on the porch when I was running through the
9 yard with the gun.

10 Q Running through the yard with the gun?

11 A Oh, yeah.

12 Q Was she still on the porch when you went back and got
13 the gun later?

14 A No.

15 MR. GROVE: Beg the Court's indulgence.

16 (WHEREUPON, a pause in the proceedings.)

17 BY MR. GROVE:

18 Q George, if you did all of this and he hadn't
19 threatened you, you could be charged in connection with
20 this?

21 MR. OZMENT: Your Honor, I would object to that
22 question.

23 THE COURT: Basis?

24 MR. OZMENT: Your Honor, I think it's
25 speculative. Also asking if he could be charged under a

1 different set of facts, he's not in the position to charge
2 anyone. He's just a lay witness.

3 THE COURT: Sustained unless you can perhaps lay
4 more a firm foundation.

5 BY MR. GROVE:

6 Q Were you ever charged in connection with this?

7 A No.

8 MR. GROVE: I don't have anything further at
9 this time.

10 THE COURT: Mr. Ozment, redirect?

11 MR. OZMENT: Yes, Your Honor. Thank you.

12 REDIRECT EXAMINATION

13 BY MR. OZMENT:

14 Q Mr. Grove asked you about when you had a .45 in your
15 back and you were holding the gun here. How many times
16 after you touch the 30 ought 6 for the first time, how
17 many times had he threatened you and your family at that
18 point?

19 A At least three.

20 Q Did you take those threats to be real or empty?

21 A Real. He's threatened me before in the past.

22 Q Did you see ---

23 MR. GROVE: Objection, Your Honor.

24 THE COURT: Mr. Ozment.

25 MR. OZMENT: Your Honor, I wasn't trying to

1 elicit that testimony.

2 THE COURT: Sustain. Ladies and gentlemen,
3 disregard that testimony.

4 Go ahead.

5 BY MR. OZMENT:

6 Q Did you -- had you already seen the van in front of
7 the house?

8 A Yes, sir.

9 Q Were you scared?

10 A Yes, sir.

11 Q How scared were you?

12 A I was crying and shaking and having a panic attack.

13 MR. OZMENT: No further questions, Your Honor.

14 THE COURT: Mr. Grove.

15 MR. GROVE: Nothing further at this time, Your
16 Honor.

17 THE COURT: All right you may step down. Thank
18 you.

19 (WHEREUPON, the witness leaves the witness
20 stand.)

21 MR. OZMENT: Your Honor, I ask that Mr. Watson
22 be relieved of his subpoena?

23 THE COURT: Mr. Grove.

24 MR. GROVE: I don't have a problem with that,
25 Your Honor.

1 THE COURT: You can leave, sir, or stay
2 whichever you like.

3 GEORGE WATSON: I like to stay please.

4 THE COURT: All right.

5 MR. OZMENT: Your Honor, the State would call
6 Sabrina Hartfield to the stand.

7 MR. GROVE: Your Honor, may we approach briefly?

8 THE COURT: Yes, sir.

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

12 THE COURT: Ladies and gentlemen, if you would
13 please step to your jury room. You may not discuss the
14 case, all right.

15 (WHEREUPON, the jury retire to the jury room.)

16 THE COURT: Okay. You can swear her in please.

17 THE CLERK: Do you swear to tell the truth, the
18 whole truth, and nothing but the truth so help you God?

19 THE WITNESS: Yes, ma'am.

20 THE CLERK: Please be seated in the witness
21 chair and state your full name for the record.

22 THE COURT: All right. Go ahead, Mr. Ozment.
23 The objection is to -- you stated up here is that the
24 defense -- well, the defense objects to some evidence
25 coming in about what this witness will say that Mrs. Scott

1 said to her.

2 MR. OZMENT: Correct.

3 THE COURT: I'll just leave it at that. You can
4 go ahead and proffer the full manner you think is
5 appropriate, so I'll have an idea of what you're talking
6 about.

7 MR. OZMENT: Yes, Your Honor. I'm just going to
8 address part of her testimony.

9 THE COURT: All right.

10 THE WITNESS: Do you want me to say my name?

11 THE COURT: He's going to ask you questions.
12 And by the way, she'll be re-sworn when the jury comes
13 back in, okay.

14 WHEREUPON,

15 Sabrina Hartfield,
16 after first having been duly sworn, testified as follows:

17 DIRECT EXAMINATION IN-CAMERA

18 BY MR. OZMENT:

19 Q What is your name?

20 A Sabrina Denise Hartfield.

21 Q Thank you. How are you related to George Watson?

22 A Me and George Watson are not married, but we been
23 together for 14 years.

24 Q Okay. A couple days prior to Steve's death, did you
25 have a conversation with Gloria Scott?

1 A Yes, sir.

2 Q Tell me what the contents of that conversation was?

3 A She stopped me while I was coming in my driveway and
4 said that her and Steve got into a conflict over at
5 Crystal's house and that she was going -- her plan was she
6 was gone whip his ass or kill him.

7 Q Okay. Did she curse at all during this exchange?

8 A Yeah. She was going off.

9 THE COURT: And how long before the shooting was
10 this?

11 SABRINA HARTFIELD: Probably a couple weeks
12 after that, that's when it happened. I mean, I can't
13 recall exactly the exact dates and exact time but...

14 BY MR. OZMENT:

15 Q But she referenced an incident at Crystal's?

16 A She -- yeah, that Gloria and Steve got into it at
17 Crystal's house.

18 Q Did she tell you anything about that as to what it
19 was?

20 A No.

21 Q Did she make any comment as to her or what she meant
22 by beating him or killing, did she continue on that at
23 all?

24 A She was very upset highly angry and that's all she
25 said. She said they got in a big argument at Steve's -- I

1 mean, at Crystal's house. And she was either gone whip
2 his ass or kill him one.

3 Q Okay. Did she mention Sunny at all?

4 A Yeah.

5 Q How did she mention Sunny?

6 A She mention that Sunny was gonna do it or she was
7 gone do it.

8 MR. OZMENT: Your Honor, I think that's about
9 all the testimony.

10 THE COURT: First of all, do you have any
11 questions of the witnesses?

12 MR. GROVE: No, Your Honor, Mr. Ozment covered
13 exactly what I was referring to at the bar.

14 THE COURT: Your objection?

15 MR. GROVE: My objection, Your Honor, is the
16 same for her as it was with some prior testimony. First
17 of all, I believe Mr. Ozment noted to you that Gloria had
18 said she and Steve -- she had never threatened Steve or
19 she and Steve never gotten into it. And I think that her
20 testimony was that they had had squabbles. And they had
21 disagreement in the past. I don't think that she disputed
22 an incident that occurred at Crystal's house.
23 Furthermore, Crystal's already testified to that. I don't
24 think that that topic ever came up with Gloria on the
25 stand, that's not something that she denied. She was

1 never asked about it.

2 Secondly, as we addressed earlier, a very very
3 large portion of that testimony goes toward some sort of
4 grand conspiracy, that no one has ever charged. That's
5 not an element any of these crimes. They are essentially
6 suggesting that my client's wife put him up to this. I
7 certainly don't think that that's appropriate. I don't
8 find that to be an element of any crime and I don't think
9 that it's relevant.

10 THE COURT: Okay.

11 MR. GROVE: In a situation where he's been
12 charged with murder and not conspiracy and she's been
13 charged with nothing at all.

14 MR. OZMENT: Your Honor, what she's charged with
15 is completely irrelevant whether charges are brought are
16 up to the State.

17 THE COURT: Say that again?

18 MR. OZMENT: I would contend that whether she's
19 charged or not is irrelevant in this case, whether she's
20 charged is up to the State. That has nothing to do with
21 the admissibility of certain things. I would offer this
22 to impeach her testimony as to the state of she and
23 Steve's relationship, that she hadn't threatened him.
24 That she kind of went on about that. Obviously, I think
25 some impeachment was done on the stand with the Facebook

1 comments and that sort of stuff?

2 THE COURT: Are relevance are her threats to
3 Ms. Hartfield or her comments to Ms. Hartfield about what
4 she was going to do to Steve. I'm saying all these first
5 names because is the way the witnesses have said. What's
6 relevant about that to the issue of whether or not with
7 malice aforethought that this defendant unlawfully killed
8 Mr. Springs.

9 MR. OZMENT: Two things, they are husband and
10 wife. And secondly, she said and that was the last
11 question I asked her. Did she mention Sunny? She said
12 yes. She said that either she or Sunny would do it. And
13 Mr. Scott is on trial for doing that very thing right now.

14 THE COURT: All right. So you're saying that
15 that constitutes a second hand admission from Sunny that
16 he was going to do it or what?

17 MR. OZMENT: I think it's evidence of the malice
18 aforethought that it's an indication that Mrs. Scott and
19 Sunny were having some sort of conversation or dialogue
20 among themselves that this might occur and obviously it
21 did occur.

22 MR. GROVE: All right. And, Your Honor, I don't
23 think that that's the case at all. First of all, I
24 don't -- I'm not going to dispute whether or not Gloria
25 denied making a threat to Steve. I don't remember that.

1 If it's in the record, I'm certainly okay with that. None
2 of this testimony is Gloria making a threat to Steve.
3 None of this is Gloria saying to Steve I'm going to kill
4 him. It's Gloria saying to a third party something
5 offhand about how he's going to be taken care of where
6 gone have to kill him. None of that impeaches testimony
7 of her saying that she didn't make a threat to Steve, if
8 that is the statement that she made on the stand.

9 THE COURT: Well, he says it relevant to prove
10 malice aforethought not necessarily for impeachment.

11 MR. GROVE: Your Honor, I don't know that there
12 is an element of either your malice or your wife's malice
13 will satisfy the element of malice aforethought in a
14 murder if she planned it ahead of time. And then you can
15 be guilty of murder. I don't see how that's an
16 appropriate fact for the jury to consider.

17 THE COURT: Okay. Anything else from the State
18 on that point?

19 MR. OZMENT: Briefly. Just the point that she
20 said Sunny may do it and that's really what we're pointing
21 to here.

22 THE COURT: All right. Anything else? Reason,
23 I'm doing this -- it's your objection, so I'm giving you
24 the last word. You can say I don't have anything else to
25 say or you can ---

1 MR. GROVE: None of that testimony said that
2 Sunny said anything. All of the testimony is that Gloria
3 said something to this witness not to Steve. And again,
4 it's reasserted a conspiracy that doesn't exist. It's
5 placing the malice element that's required to be levied
6 against my client on his wife hoping that it will transfer
7 through their husband and wife relationship.

8 THE COURT: Okay. In my view based on the
9 proffer and the arguments that you have made, I do not
10 think that the testimony of Gloria saying if I don't do
11 it, Sunny is going to do it is sufficient evidence of
12 malice aforethought even with any other evidence in this
13 case. Even if it is relevant, I believe that under 403
14 the probative value of that evidence is substantially
15 outweighed by the danger of unfair prejudice or confusing
16 the issues or misleading the jury. So I'm going to not
17 allow that particular part of the testimony and we'll let
18 it sit there. I just want to make sure you have the
19 proffer as fully as you want to make it now.

20 What I'm ruling, ma'am, is that you cannot
21 reference anything Gloria said to you about Sunny having
22 any part in killing Mr. Springs. It's already come out
23 through another witness I thought that she said she was
24 going to do. Hadn't that already come out proffer or that
25 come out in the proffer too?

1 MR. OZMENT: If nothing else it came out when
2 she was on the stand in her Facebook, that she might have
3 to kill him.

4 THE COURT: I guess, you can explore that if you
5 want. And ironically, I guess, you be the one who want
6 explore it. I don't know why all that's really relevant
7 either, but it did come out earlier. And we don't try
8 cases in a vacuum and I understand lots of times things
9 come out that turn out not to be really relevant, but
10 neither side really has a big heartburn about that. What
11 we'll do now is we'll take about a ten minute recess. How
12 many more witnesses do you have?

13 MR. OZMENT: This is the last one. Especially
14 with that out, she's going to be relatively short?

15 THE COURT: Well, we don't need to take a break
16 then.

17 Yes, sir.

18 MR. GROVE: Just very briefly for clarity of the
19 witnesses sake, references to Gloria are okay, references
20 Sunny individually or we, a collective we, would obviously
21 imply Gloria and Sunny?

22 THE COURT: That's my ruling. Now, if you want
23 to split that hair, that's fine, but that's my ruling.

24 MR. GROVE: I just wanted clarity of that ruling
25 on the record to include not just him individually but

1 them as a group.

2 THE COURT: And you understand that, ma'am?

3 SABRINA HARTFIELD: Yes.

4 THE COURT: And when -- why don't you just have
5 a sit in that chair right back there. When the jury comes
6 in, you'll be re-sworn.

7 You can bring the jury in.

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

9 THE COURT: Okay. Ma'am, you can step forward
10 and be sworn. Sabrina Hartfield; is that correct?

11 SABRINA HARTFIELD: Yes.

12 THE COURT: Put your hand on the Bible please
13 and be sworn.

14 THE CLERK: Do you swear to tell the truth, the
15 whole truth and nothing but the truth so help you God?

16 SABRINA HARTFIELD: Yes, ma'am.

17 THE COURT: Okay, Mr. Ozment.

18 WHEREUPON,

19 Sabrina Hartfield,
20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. OZMENT:

23 Q How are you today, Ms. Hartfield?

24 A Doing okay. A little nervous never been in court.

25 Q Where do you live?

1 A [REDACTED] Silver Stone Drive.

2 Q Who do you live there with?

3 A I live there with George and my kids.

4 Q Okay. And who is George?

5 A George Watson.

6 Q Is your husband or fiancé?

7 A He's -- we been together for 14 years. We're not
8 married, but we consider us as married.

9 Q All right. Were you living there back on September
10 24th 2012?

11 A Yes, sir.

12 Q Do you know Wayne and Gloria Scott?

13 A Yes, sir.

14 Q Where do they live in relation to you?

15 A Right behind me.

16 Q How far would you say your houses are?

17 A I'm not good with distance.

18 Q Farther than the courtroom or...

19 A Probably a little bit further than the courtroom.

20 Q Can you see their house from your house?

21 A Yeah.

22 Q On the night of September 24th, did you hear anything
23 that you remember from that night?

24 A Yes, my bedroom is like on the back of our house. I
25 heard a shot. It sound like it was in our bedroom, scared

1 the scrap out of us. It was probably about eight or nine
2 somewhere around there, can't specifically say what time
3 it was I heard a gunshot.

4 Q Where was George when this happened?

5 A George was in the bedroom with me. We're both
6 watching TV.

7 Q Okay. When you heard this gunshot, what did you do?

8 A It scared me because my kids were in the other --
9 their bedrooms and I was scared for my kids. It sound
10 like it was in my backyard.

11 Q All right. What did George do?

12 A George went to the safe, got the gun out and went
13 outside to check things out.

14 Q Okay. Did you watch him out a window or anything?

15 A No, sir.

16 Q How long -- well, how long was he outside?

17 A He was gone for a little while and I couldn't
18 understand what took him so long. So I went outside and I
19 seen him outside. And he told me please hurry up and get
20 in the house, get in the house now. I'll explain to you
21 when I get in there, just please get in the house and get
22 the kids in the room with you and that's what I done.

23 Q What was his demeanor?

24 A He was -- I have never seen George like that my
25 entire life. He was scared. I didn't get a chance to get

1 a good look at him because he was outside, but I could
2 tell he was scared because he was telling me please hurry
3 up and get in the house, get all the kids in the room. So
4 I knew he was scared.

5 Q All right. What did you do when he told you that?

6 A I done exactly what he told me to do. I got my kids,
7 I got in our bedroom and we sat right there until he come
8 back in the house.

9 Q How long was it until he came back in the house?

10 A Maybe three or four minutes at top.

11 Q All right. And when he got back in the house what
12 happened?

13 A He was white as a piece of cotton. I had never seen
14 that and I ask him, George, what is going on. He couldn't
15 even speak.

16 Q Okay. Was he able to tell you what had happened?

17 A Yes, sir. As soon as I got -- I said calm down a
18 little bit, sit down. He was white like I said white as a
19 piece of cotton. I never seen him like that before. He
20 looked very scared. He said he threaten to kill ---

21 Q Let me just cut you off there. How long was he at
22 that house that time before he left again?

23 A Ten minutes at the most.

24 Q Okay. And, I guess, what prompted him to leave the
25 house again?

1 A He was -- after he told me what happened, he stood on
2 his porch to protect us just in case because he did not
3 know where Sunny was at.

4 Q All right. And how long -- do you know how long was
5 he on the porch?

6 A I do not know how long. It went by so fast I can't
7 tell you how long he was on the porch.

8 Q Okay. Did you know what he did after he sit on the
9 porch?

10 A Gloria called and told him to come over there to
11 Carl's.

12 Q Do you know if he went?

13 A Yes, he did.

14 Q Okay. How long after he went over to Carl's until he
15 returned back?

16 A He come back and said the law was on the way.

17 Q What was his demeanor at that point?

18 A He was still scared.

19 Q A little while before this day and this happened, did
20 you have occasion to run into Gloria Scott?

21 A Yes, sir.

22 Q Tell me about that incident?

23 A She stopped me in -- my driveway right beside her
24 house. And she stop me and said that her and Steve got
25 into a conflict at Crystal's house. And that I don't know

1 if I'm suppose to say this or not.

2 MR. GROVE: Your Honor.

3 MR. OZMENT: Your Honor.

4 THE COURT: In accordance with my earlier
5 instructions.

6 SABRINA HARTFIELD: So I can say what she said?

7 MR. OZMENT: I'll leave it up to the Court.

8 THE COURT: Come on up please.

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

12 THE COURT: Please step out, ladies and
13 gentlemen of the jury, you may not discuss the case.

14 (WHEREUPON, the jury retire to the jury room.)

15 THE COURT: Restate question and we'll have a
16 dry run.

17 MR. OZMENT: She may have been referring to the
18 profanity.

19 THE COURT: The profanity even though it's not
20 desirable, you can say the curse words. What I want to
21 make sure is that she understands my ruling that she's not
22 to reference anything in context Gloria saying what Sunny
23 would do. She can say the curse words unless you want her
24 to edit that, that will be up to your judgment.

25 MR. OZMENT: Yes, Your Honor.

1 THE COURT: She can testify to what Gloria said
2 she would do. Just repeat the question so we can have a
3 little practice here.

4 BY MR. OZMENT:

5 Q What did Gloria Scott tell you when you ran into her
6 on the driveway?

7 A She stop in my driveway and told me that her and
8 Steve got in a conflict at Crystal's house. She was
9 highly upset and she said that she was either gone fucking
10 beat his ass or fucking kill him.

11 THE COURT: That will come in.

12 MR. OZMENT: Thank you, Your Honor.

13 MR. GROVE: I don't have an objection to that,
14 Your Honor. I was -- we were tiptoeing a line and I want
15 to make sure it was clear where that line was drawn.

16 THE COURT: All right. And that will either --
17 then you'll either move on or explore that a little bit
18 further.

19 MR. OZMENT: Yes, Your Honor.

20 THE COURT: All right. Bring in the jury.

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

22 MR. OZMENT: Thank you, Your Honor.

23 THE COURT: Okay, Mr. Ozment.

24 MR. GROVE: Thank you, Your Honor.

25 DIRECT EXAMINATION CONTINUED

1 BY MR. OZMENT:

2 Q I think you just said that you ran into Gloria Scott
3 in your driveway. What did she say to you?

4 A She was highly mad because her and Steve got into it
5 at Crystal's house. And she told me she was either
6 fucking gone beat his ass or she was gone fucking kill
7 him.

8 Q All right.

9 MR. OZMENT: Thank you, Your Honor. No further
10 questions.

11 SABRINA HARTFIELD: Sorry for the profanity.

12 THE COURT: All right, Mr. Grove.

13 MR. GROVE: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. GROVE:

16 Q I want keep you long, Ms. Barfield. This
17 conversation that you had with Gloria. I'm not gone hold
18 you to a specific hour of a specific day, but can you tell
19 me when about this happened?

20 A Like I said before, I don't know exactly what period.
21 It could have been two weeks, could have been three weeks
22 I'm not sure.

23 Q Sometime before all of this?

24 A Before all this happened.

25 Q And then you just described September 24th?

1 A Uh-huh.

2 Q And I was making notes over there. You said you
3 weren't exactly sure what time. Did you say that it was
4 either eight or nine or did you say it was 8:09?

5 A 8:09 because we were checking on the TV guide to see
6 when our program come on at nine.

7 Q And you can't specifically say, but it was 8:09?

8 A I mean, I could because looked at my clock it was
9 8:09.

10 Q Okay. And your husband or your fiance, George, was
11 outside for a few minutes came back inside and he was
12 outside for a few more minutes?

13 A He was not outside for a few minutes. I got worried
14 about him because he was outside for a long period of time
15 the first time he went out. I got worried, so I stepped
16 out on my porch. I seen him walking across the yard. I
17 called for him. He said please get in the house, please
18 get in the house now. I done exactly what he told me to
19 do. And probably a couple minutes later he come in the
20 door.

21 Q And all of your information with the exception of a
22 sound and what George told you about going back in the
23 house, all of your information from September 24th comes
24 from George, doesn't it?

25 A I meant, I heard the gunshot.

1 Q Then George came in and told you what he had seen and
2 heard?

3 A And plus the expression on his face I knew something
4 bad had happened.

5 Q At what point did you talk to law enforcement?

6 A I talk to law enforcement I say last week or this
7 week sometime. It was last week excuse me.

8 Q What time that night did you talk with law
9 enforcement?

10 A I didn't talk to law enforcement that night.

11 Q What time the week after that surely you called them
12 the next week?

13 A No, I did not. George had already contacted them and
14 talked to them right after it happened.

15 Q And you didn't have anything to add?

16 A I didn't have anything to add.

17 Q Until now?

18 A The reason why they wanted me to come and testify to
19 testify what kind of state George was in when he come into
20 my house.

21 Q And ---

22 A And gunshot I heard.

23 Q And your first contact was a couple weeks ago?

24 A No, it wasn't a couple weeks ago, probably wasn't
25 even a week ago.

1 Q Would it surprise to say it was on October 17th?

2 A It might have been.

3 Q That been about a week ago?

4 A Yeah. I have kids, it's hard to keep up with time.

5 Q I understand that.

6 MR. GROVE: I don't have any further questions.

7 MR. OZMENT: Nothing further of this witness,
8 Your Honor.

9 THE COURT: Thank you, ma'am. You can step
10 down.

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

13 MR. OZMENT: I ask that Ms. Hartfield be
14 released from her subpoena.

15 MR. GROVE: No objection, Your Honor.

16 THE COURT: Ma'am, you can stay if you like or
17 you can leave.

18 Mr. Ozment.

19 MR. OZMENT: Your Honor, at this time the State
20 rest.

21 THE COURT: Okay. Can I see the lawyers up here
22 for just a minute.

23 (WHEREUPON, a bench conference was held in the
24 presence of the jury, but out of the hearing of the
25 jury.)

1 THE COURT: Ladies and gentlemen of the jury,
2 the State has rested as you heard and what that means is
3 the State has presented all the evidence it was going to
4 present in its case in chief.

5 Under the rules that we operate under even
6 though we have taken a couple of breaks already at least
7 you have, but the rules that we operation under require me
8 to recess at this point any way. So what we're going to
9 do is we're going to break for the day now. You have two
10 early afternoon breaks so far and that is rare for a jury.
11 We're going to get back together tomorrow morning at 9:30
12 right here in the courtroom, so please be in your jury
13 tomorrow room at 9:30. In the meantime, you know what I'm
14 going to tell you. You can't discuss the case amongst
15 yourselves, with anybody else in the world. And you can't
16 read anything about it, listen to anything about it,
17 investigate, gather any information about it in any way
18 whatsoever. So just enjoy the rest of your afternoon, get
19 a good nights sleep and be prepared to go forward at 9:30.
20 And thank you for your time and patience today. All
21 right.

22 (WHEREUPON, the jury was excused for the day.)

23 THE COURT: Does the defendant have any motions?

24 MR. GROVE: Yes, Your Honor. We move for a
25 directed verdict. The State's rested and presented their

1 case in its entirety. I don't think that they have met
2 their burden. Specifically, the malice that's required,
3 that's an element of murder. I don't think that that's
4 been adequately addressed. I'll concede that they have
5 proven Mr. Springs is dead. And I'll concede that they
6 have proven that my client fired the shot that was fatal,
7 but I don't think that they have met all of the elements
8 that are required to make a showing of murder.

9 THE COURT: All right. Mr. Ozment, he's saying
10 you haven't proven malice beyond a reasonable doubt.

11 MR. OZMENT: Yes, Your Honor. I disagree with
12 him obviously. We've heard testimony that Mr. Springs
13 went over to the house that night, that Mr. Springs -- we
14 heard from Crystal Hanna that Mr. Springs was calm. He
15 was just trying to go talk to him. There wasn't any --
16 you know, Mr. Springs wasn't looking for any trouble that
17 night. We have from Mr. Scott's own statements that as
18 soon as Mr. Springs walked out of the car, took one step
19 towards him, he shoot him. We could be inferred from the
20 distances that he was 14 or 13 feet away at that point.
21 And you can't just shoot somebody in your yard if you
22 don't want them in your yard, that certainly would qualify
23 as murder.

24 As far as the circumstantial evidence that
25 Mr. Springs may have been armed, certainly there's also

1 been evidence that both the screwdriver and the knife were
2 planted at the scene by someone else. And with that, I
3 think reviewing the evidence best to the State, certainly
4 you're basically an unarmed man 13 feet away who was shot
5 with a high powered riffle unarmed. As, Your Honor, is
6 aware malice only has to exist in the mind of the
7 defendant for a moment before he squeezes the trigger and
8 that's sufficient, so that would be what the State would
9 rest upon.

10 THE COURT: Mr. Grove.

11 MR. GROVE: I'll stand on my motion, Judge.

12 THE COURT: I think that the evidence is
13 sufficient to send the case to the jury at this stage.
14 I'm not concerned about the weight of the evidence at this
15 point just the existence in taking it in the like most
16 favorable to the State. I have to deny your motion.
17 There is sufficient evidence of malice aforethought. Any
18 other motions at this time?

19 MR. GROVE: No, Your Honor, not at this
20 juncture. I have talked to my client. While we're at the
21 bar you mentioned discussing with my client his Fifth
22 Amendment rights. I'll be happy for you to go over them
23 with him now. It's been two or three days since he and I
24 have spoken about that particular matter. We talked about
25 it at length over the course of the last year.

1 THE COURT: We can bring him up and I can swear
2 him in or he can be sworn and I'll go over it with him.
3 And he doesn't have to make his decision right now.

4 MR. GROVE: That will be fine, Judge.

5 THE COURT: Come on up please, sir, to the
6 microphone. State your name and she'll swear you in,
7 okay.

8 THE CLERK: Raise your right hand.

9 THE DEFENDANT: Wayne Scott, Jr.

10 THE CLERK: Raise your right hand. Do you swear
11 to tell the truth, the whole truth, and nothing but the
12 truth, so help you God?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: You're Wayne A. Scott, Jr.?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You don't need to lean down I can
17 hear you fine, just make sure you do speak loudly enough
18 to project into the microphone. Right now I'm going to
19 explain to you certain rights that you have. And as we go
20 through this exchange, if you don't understand anything
21 that I say or if you want me to explain something or to
22 repeat it at any time, you just let me know. Also, as we
23 go through this exchange, if you want to just talk to your
24 lawyer let me know and we'll stop and you can do that. Do
25 you understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. We reached the stage of
3 the trial now where as you have heard the State has
4 rested. I explain that to the jury. Do you understand
5 what that means?

6 THE DEFENDANT: No, sir.

7 THE COURT: The State has called I think about
8 17 witnesses in what is called its case in chief and what
9 Mr. Ozment has said is that they are done calling
10 witnesses. So there will be no additional witnesses from
11 the State at this stage. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: So that means is we reached the
14 stage of the trial or at least tomorrow morning we'll
15 reach the stage of the trial where you'll be permitted to
16 put up your own defense. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: That includes but is certainly not
19 limited to you having the right to be sworn tomorrow, sit
20 in that witness chair and provide testimony to the jury.
21 Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, the Fifth Amendment to the
24 United States Constitution states in pertinent part that
25 no person shall be compelled in any way in a criminal case

1 to be a witness against himself. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: That's some relatively fancy words
4 from the 1700's that say that nobody can make you testify
5 in this case. You understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Some countries defendants can be
8 forced to testify. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: In the United States, that can't
11 happen because you have the right not to testify. The
12 reason that's important is because under the Fifth
13 Amendment your right to not testify is a personal right
14 that you have. The only person in the world who can give
15 that right up is you. Is that clear?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Ozment, the prosecutor can't
18 make you testify. I can't. Even your own lawyer can't
19 call you to the witness stand against your will. Do you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Also, your own lawyer can't prohibit
23 you from testifying if that's what you want to do. Do you
24 understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, if you decide to testify,
2 you'll be subject to the same rules that govern the direct
3 and cross-examination of any other witnesses who testify
4 in general. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: In other words, your lawyer would
7 ask you questions, you'd answer them. There might be
8 objections back and forth. You seen that a lot. And then
9 after your lawyer finishes, Mr. Ozment will get to ask you
10 questions too. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Does he have any criminal
13 convictions that the State would seek to introduce?

14 MR. OZMENT: Your Honor, he was convicted of
15 possession with intent to distribute marijuana and that
16 has been in the last ten years if you include the
17 probationary period.

18 THE COURT: When was the actual conviction?

19 MR. OZMENT: Your Honor, his court date was
20 September 12th 2002. He was convicted and sentenced to
21 three years in jail, suspended on \$300 and 18 month
22 probationary period.

23 THE COURT: Would seek to introduce that
24 conviction to attack his credibility? I'll just go over
25 with him in general just in case you make that decision

1 later. If you have any convictions that involve
2 dishonesty or false statement and if those convictions
3 occurred within the last ten years, those convictions can
4 be introduced to attack your believability. Do you
5 understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Also, if you have any convictions
8 for crimes that weren't involving dishonesty or false
9 statement but carried a possibly term of imprisonment for
10 more than one year, they can be introduced to attack your
11 believability. If I determine that the probative value of
12 introducing those convictions outweigh any prejudicial
13 affect to you, do you understand that?

14 THE DEFENDANT: No, sir.

15 THE COURT: In other words, I have to make a
16 decision as to whether or not that PWID marijuana comes
17 in. I have to weigh what it proves and I have to weigh
18 what prejudicial impact it have on you. And there's an
19 additional burden the State has if I determine that the
20 conviction is more than ten years old. Do you understand
21 that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Now, if you decide to
24 testify, that decision has to be made on your part freely
25 and voluntarily and with full knowledge of your rights

1 under the Fifth Amendment and with full knowledge of the
2 protections given to you under the Fifth Amendment and
3 with full knowledge of the consequences of your decision
4 to testify. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Now, if you decide not
7 to testify after thinking about all this, I will tell the
8 jury, I will emphasize to the jury that they cannot give
9 the fact that you didn't testify any weight at all. In
10 other words, I tell them they can't think about it. They
11 can't talk about it and the fact that you did not testify
12 is not to be considered in any way on the issue of whether
13 or not you're guilty or not guilt. Do you understand
14 that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Now, in the end, the decision
17 as to whether or not you will testify is left entirely up
18 to you, but in the meantime, you can talk about it with
19 your lawyer, family members anyone else that you think is
20 appropriate. But in the end, I'll be asking you what your
21 decision is. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, so far have you understood
24 everything I've explained to you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Is there anything at all that you
2 want me to go back over?

3 THE DEFENDANT: No, sir.

4 THE COURT: If you talk to your lawyer this
5 afternoon or even in the morning and you make your mind
6 up, that doesn't mean you can't change it. The only time
7 you can't change it, is after your lawyer says the defense
8 rests. You can't change your mind after that, okay.

9 THE DEFENDANT: Okay.

10 THE COURT: So you can go back and forth in your
11 own mind all you want. And in the end, the final decision
12 is yours.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You all need some more time to talk
15 about that?

16 THE DEFENDANT: Yeah.

17 MR. GROVE: Yes, sir.

18 THE COURT: Okay. In the morning, we'll kind of
19 do this in a little summary form again and make sure you
20 understand everything, talk to your lawyer about
21 everything I mention to you. If you don't understand
22 something, you all let me know.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Mr. Grove, what I like
25 to do now is take about five minutes so we can -- over

1 about a period of about ten minutes go over any jury
2 charges so we can kind of get a jump start on that since
3 we do have lot of the afternoon left.

4 MR. GROVE: That will be fine.

5 THE COURT: All right. We'll take about ten
6 minutes.

7 (WHEREUPON, a break was taken.)

8 THE COURT: Is there anything we can -- go
9 ahead, I'm sorry.

10 (WHEREUPON, a pause in the proceedings.)

11 THE COURT: Okay, you all ready?

12 MR. GROVE: Yes, Your Honor, I don't think he's
13 prepared to respond one way or the other at this point
14 obviously about testifying tomorrow. I was talking with
15 him about some jury charges. I'm not prepared to argue
16 one way or the other. I been talking with Mr. Scott about
17 whether or not we would concede a charge to voluntary
18 manslaughter. I don't know what the State's position is
19 on that at this point, that might be something that we
20 oppose. I'm happy to argue that in the morning. I'll be
21 candid with you, I left that in my client hands as to
22 whether he wants me to consent to that or to oppose. I'm
23 prepared to do either.

24 THE COURT: All right. Is the State going to
25 seek a lesser-included?

1 MR. OZMENT: Yes, Your Honor, I would seek
2 voluntary. I don't think involuntary would fly in this
3 case.

4 MR. GROVE: I would concede that involuntary is
5 not appropriate.

6 THE COURT: And you want to talk to your client
7 about whether or not he will go along with the request for
8 a voluntary manslaughter lesser-included option?

9 MR. GROVE: That's correct, Your Honor. I'm
10 prepared to argue against it. I'm also prepared to
11 concede it. I'm leaving that choose in his hands. I'll
12 save that one for the morning if that suits, Your Honor.
13 The rest I'm prepared to hear what Your Honor has in mind.

14 THE COURT: Okay. First of all, does either
15 side have any written charges that they like to hand up?

16 MR. GROVE: I'll defer to the standard charges
17 you have.

18 MR. OZMENT: Not at this time, Your Honor.

19 THE COURT: All right. So I guess we can go
20 ahead and discuss the frame work of why or not voluntary
21 manslaughter may or may not be proper. Of course, it's
22 the defendant taking the life of another in the sudden
23 heat of passion based on sufficient legal provocation, so
24 that will be the basic standard of basic elements the
25 State would have to meet. I haven't given it much thought

1 either today, but as we started yesterday, I was thinking
2 about it. It may be a valid option under the law in this
3 particular case, but I'll give you the right tomorrow to
4 argue either way on that. But you don't have anything in
5 writing does either side have a charge to hand up?

6 MR. OZMENT: No, Your Honor, I just hear what
7 Your Honor plan on charging if we want to modify
8 something, but I'm sure bench book would be sufficient.

9 THE COURT: Okay. Now, there's a new case
10 called State vs. Logan. It think that's the name of it
11 that has the new upon request circumstantial evidence
12 charge. So the defendant has to decide whether or not he
13 wants me to give that or what I would call the former
14 standard circumstantial evidence charge. And I'm trying
15 to think of anything else that might be a little bit of
16 out of the ordinary. I really can't think of -- but just
17 be caution that when you say my standard charge suits you,
18 after I give my charge -- after I go over my charge with
19 you and then give it to the jury, don't say, well, what
20 about so and so because standard is a relative term.

21 MR. GROVE: I agree, Your Honor. The one that
22 immediately comes to mind is implied or inferred malice of
23 use of a deadly weapon. I think that's only appropriate
24 when there is not any information in the record that would
25 suggest a weapon was gathered for any other purpose.

1 THE COURT: State vs. Belcher says that if self
2 defense is a viable defense, that I can't mention that.
3 The State agrees with that?

4 MR. OZMENT: I concur with that, Your Honor.

5 THE COURT: Does the State agree that
6 self-defense will go to the jury?

7 MR. OZMENT: Yes, Your Honor.

8 THE COURT: And I assume both sides will agree
9 that I will not charge any part of the immunity statute
10 that's a pretrial defense. It is not a jury issue.

11 MR. GROVE: I might disagree, but I do agree
12 that that is the law. I might disagree with the principle
13 of it, but obviously being such a relatively new statute
14 it is a pretrial matter. We had a pretrial hearing that
15 obviously being here, that pretrial hearing was denied.
16 The only case law I was able to find about the castle
17 doctrine or the protection against person and property act
18 being submitted to a jury were cases that might have
19 otherwise fallen under the statute, but predated the
20 issuance of the statute. Again, there's not much case law
21 out there nothing is directly on point, but I will concede
22 we been heard on that matter.

23 THE COURT: As a practical matter, the codified
24 common law on self defense is still in the jury charge.
25 The juries just not told anything about the specific

1 content of the statute.

2 MR. GROVE: Certainly.

3 THE COURT: Anything else that you can think of?

4 MR. GROVE: And again, you only saying not to be
5 cautious with taking the bench book. The self defense
6 charge including language that State not only has to prove
7 each element of murder beyond a reasonable doubt or
8 voluntary manslaughter beyond a reasonable doubt if that
9 is an appropriate charge, but also that it has to prove
10 that it was not done in self defense beyond a reasonable
11 doubt.

12 THE COURT: The State has to disprove self
13 defense beyond a reasonable doubt.

14 MR. GROVE: Thank you.

15 THE COURT: There's no doubt about that. There
16 is no question, but that if he's not convicted of murder,
17 he can't be convicted of possession of a weapon during
18 commission of a violent crime. I'm sure both sides would
19 agree with that.

20 MR. GROVE: Yes, Your Honor.

21 MR. OZMENT: Yes, sir.

22 THE COURT: Okay. We'll go over the charge in
23 detail in the morning. Is there a chance, Mr. Grove, that
24 you will not be calling any witnesses at all? Cause if
25 that is the case, we can move immediately -- I would like

1 for you to let me know in the morning. You don't have to
2 let me know now. Let me know that in the morning, so we
3 can immediately go into the review of the jury charge in
4 detail and have the jury sit in the jury room for just a
5 limited time. But if you're going to have some witnesses,
6 we obviously will take a break to review the jury charge
7 in detail.

8 MR. GROVE: Your Honor, realistically, I expect
9 at least two as many as four. I do not anticipate zero.

10 THE COURT: Do you anticipate any evidentiary
11 issues that I'll have to deal with when any of these
12 witnesses are called either side? I know that you wanted
13 to recall Mr. Bruce, both Mr. Bruces or just one?

14 MR. GROVE: I'm considering recalling Mr. Larry
15 Bruce. I'm not sure that this something that I will do or
16 not.

17 THE COURT: He's the father?

18 MR. GROVE: He is.

19 THE COURT: I did notice that maybe two or three
20 times he kind of came back in and out the courtroom. I
21 don't know how much he was in here today, but I really
22 don't know if the State has an issue with him testifying
23 if he was unsequestered sort of speak.

24 MR. GROVE: Your Honor, I address that with Mr.
25 Ozment. I'll allow him to respond to it as well. He

1 knows what it is that I will recall Larry Bruce for the
2 father and neither one of us can think of any testimony
3 that may have come out since no testimony about what I
4 would call him for has yet come out, nothing has come out
5 about what I would recall him for. He was not under
6 subpoena by me. He was under subpoena by Mr. Ozment. He
7 was obviously released from that witness subpoena. I'd be
8 calling him off of Mr. Ozment's witness list. I did not
9 include him on mine.

10 THE COURT: Does he know you might want him
11 here?

12 MR. GROVE: No, not yet. I got my office
13 working on that right now.

14 THE COURT: You may recall the son as well?

15 MR. GROVE: No, sir, earlier today I excused him
16 for the purposes of potentially recalling him tomorrow.
17 At this point in time, I'm not -- I'm leaning against
18 calling Michael Bruce the son.

19 THE COURT: All right. Is there anything that
20 you think we can go over today that might in good faith
21 come up tomorrow or you want to just keep your cards close
22 your vest right now? I don't have a problem either way.

23 MR. GROVE: I don't think -- certainly things
24 will come up tomorrow, I'll concede that. I don't think
25 any of it will -- I don't know how any of it would be

1 objectionable. I certainly think all of it is relevant.
2 I want be long either. I rather save that for the
3 morning, Judge.

4 THE COURT: Anything else?

5 MR. OZMENT: No, Your Honor.

6 THE COURT: We'll just be back 20 after nine.

7 MR. GROVE: That will be fine.

8 THE COURT: Thank you.

9 (WHEREUPON, the proceedings were concluded for
10 the day to be reconvened on October 24, 2013.)

11 (WHEREUPON, Court's Exhibit No. 1 was marked for
12 the record.)

13 THE COURT: Mr. Grove, will you be calling any
14 witnesses?

15 MR. GROVE: I will, Your Honor. I got one of
16 them downstairs. I got an officer that I spoke with
17 yesterday. He said he'll be here a few moments before
18 9:30. And I believe also be very brief calling
19 Investigator Hester.

20 THE COURT: Okay.

21 MR. GROVE: I don't imagine that the defense
22 case will take very long. And I haven't had a chance to
23 see if my client has made up his mind as to whether or not
24 he's going to testify.

25 THE COURT: Mr. Scott, you don't need to stand,

1 but what I wanted to explain to you is that or first of
2 all ask you is do you have any questions about the topics
3 that you and I covered yesterday about your right to not
4 testify or to testify?

5 THE DEFENDANT: No, sir, I have no questions.

6 THE COURT: Okay. I'll ask you when we get
7 ready to begin on when Mr. Grove says he's ready to begin
8 and ask you whether or not you made a decision. You're
9 certainly not bound by the decision if you say you don't
10 want to and he calls a couple of witnesses and you change
11 your mind, you can always do that. Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. All right. Mr. Grove, if he
14 is called, will he be your first witness?

15 MR. GROVE: He will not, Judge. He will be my
16 last.

17 THE COURT: Okay. So you want me to wait until
18 that time or you want me to ask him now?

19 Have you made your decision?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And what is that decision?

22 THE DEFENDANT: I ain't gone testify.

23 THE COURT: Has any one forced you to make that
24 decision?

25 THE DEFENDANT: No, sir.

1 THE COURT: Have you made that with full
2 knowledge of all of your rights and with full knowledge of
3 the consequences of you testifying or not?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you understand that I will
6 instruct the jury they're not to give that any weight
7 whatsoever?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Again, if you do change your mind,
10 you just let your lawyer know or tell him you want to talk
11 about it a little bit more. And then he'll let me know
12 and we'll take a break. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. You ready to...

15 MR. GROVE: Judge, while the jury is out right
16 now, last night I placed up at the bench somewhere it's
17 marked as an exhibit requests to charge after our
18 discussion yesterday.

19 THE COURT: I've got it.

20 MR. GROVE: I did a little digging. I've given
21 a copy to Mr. Ozment. I think he has a few objections. I
22 don't know if now is the right time to take that up. We
23 can certainly do that at the close of my case. If you'd
24 rather do it now ---

25 THE COURT: While you're -- let's do it later

1 since the jury is here. Of course, during -- after you
2 rest, the State's going to have to decide whether or not
3 they want to recall any reply witnesses. We can cover all
4 that at the same time.

5 MR. GROVE: Your Honor, if you'll give me one
6 moment, I'll find out -- I know my third witness is here
7 and my first witness is here. I'll find out if my second
8 witness is here.

9 (WHEREUPON, a pause in the proceedings.)

10 MR. GROVE: I'm sorry, Your Honor. He was
11 waiting for me in the Solicitor's office.

12 THE COURT: I do notice that the last charge
13 you've submitted deals with evidence of the good character
14 of the accused.

15 MR. GROVE: That's correct, Your Honor. And I'm
16 happy to be heard on that. My position is that that
17 evidence was brought forth during the State's case.

18 THE COURT: Well, whether you attempt to
19 introduce it through a witness or not, I wanted to kind of
20 get a jump on it. Are you going to object to that?

21 MR. OZMENT: Yes, Your Honor.

22 THE COURT: All right. What would the objection
23 for your basis be?

24 MR. OZMENT: Your Honor, let me pull out the
25 charge. If you're not going to try to introduce that

1 through a witness, I'll just stop.

2 MR. GROVE: I'm not going to introduce it.

3 THE COURT: You think it's already in?

4 MR. GROVE: Correct. On direct examination
5 during the State's case, Larry Bruce said -- and I've
6 spoken with Mr. Ozment about this. Larry Bruce said and I
7 believe I'm quoting here, Couldn't put Sunny at hurting
8 nobody like that and in reference to committing a murder
9 not capable of doing this.

10 THE COURT: So in other words, it's already in
11 you think. It's not something you're going to attempt to
12 introduce in a minute?

13 MR. GROVE: Correct. And it's something that
14 came in on direct examination during the State's case not
15 something that I brought out through cross.

16 THE COURT: We'll deal with that later then as
17 far as covering the charge. Are you ready to go?

18 MR. GROVE: I am, Your Honor.

19 THE COURT: All right. You ready to go,
20 Mr. Ozment?

21 MR. OZMENT: Yes, Your Honor.

22 THE COURT: You can bring in the jury.

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

24 THE COURT: All right. Ladies and gentlemen,
25 we're ready to move forward. I appreciate your patience.

1 I apologize for getting started a little bit late this
2 morning try to avoid that if I can. As you heard
3 yesterday, the State did rest, that means the defendant,
4 if he chooses, can call witnesses in his case.

5 Mr. Grove, will you be calling any witnesses?

6 MR. GROVE: Yes, Your Honor.

7 THE COURT: You can call your first witness.

8 MR. GROVE: Your Honor, at this time the defense
9 will call Investigator Hester.

10 THE COURT: You're still under oath, sir. Have
11 a seat.

12 WHEREUPON,

13 William Hester,
14 after first having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. GROVE:

17 Q Good morning, Hester. How are you doing?

18 A Good morning.

19 Q You been sitting here for the better part of the
20 trial, right?

21 A That's correct.

22 Q And you had a chance to hear the testimony?

23 A I have.

24 Q You heard George Watson testify yesterday?

25 A I did.

1 Q Based on his testimony, he was not charged as an
2 accessory to this crime, was he?

3 A No, he was not.

4 Q And is it fair to say that he was not charged as an
5 accessory to this crime because he told you he was
6 threatened into doing these things?

7 A That's correct.

8 MR. GROVE: No further questions.

9 THE COURT: Any questions?

10 MR. OZMENT: None, Your Honor.

11 THE COURT: All right. You can step down.

12 Thank you.

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

15 MR. GROVE: At this time the defense will call
16 Kevin Hanna. He's downstairs in the tenth floor waiting
17 room.

18 (WHEREUPON, a pause in the proceedings.)

19 THE CLERK: If you'll go to the witness stand.
20 If you'll stop right in front of the Bible. Place your
21 left hand on the Bible and raise your right hand. Do you
22 swear to tell the truth, the whole truth, and nothing but
23 the truth so help you God?

24 THE WITNESS: Yes, ma'am.

25 THE CLERK: Please have a seat right there in

1 the witness chair and state your name for the record.

2 THE WITNESS: Kevin Hanna.

3 WHEREUPON,

4 Kevin Hanna,

5 after first having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. GROVE:

8 Q Good morning, Kevin. I'm going to ask -- make sure
9 you speak into that microphone, speak clearly and speak up
10 so we'll hear you, okay.

11 A Yes, sir.

12 Q Your name is Kevin Hanna; correct?

13 A Yes, sir.

14 Q How do you know Sunny Scott?

15 A I married his stepdaughter.

16 Q And what's her name.

17 A Crystal.

18 Q How long have y'all been married?

19 A Four years.

20 Q You're currently married?

21 A Yes, sir.

22 Q This trial has been about an incident that took place
23 on September 24th of last year. Are you aware of that?

24 A Yes, sir.

25 Q Do you remember and you're also aware that the

1 deceased -- you're aware of the deceased in this case?

2 A Yes, sir.

3 Q Do you know what his name is?

4 A Yes, sir.

5 Q What's his name?

6 A Steve.

7 Q Do you know his last name?

8 A Springs.

9 Q How do you know Mr. Springs?

10 A He did air conditioning work for Gloria and I also
11 did work like maintaining grass wherever throughout the
12 lots that's how I know him.

13 Q Do you know of any other way?

14 A No, sir.

15 Q Were you aware that he was having a relationship ---

16 MR. OZMENT: I object to the leading question.

17 THE COURT: Overruled.

18 BY MR. GROVE:

19 Q Were you aware that he was having a relationship with
20 your wife?

21 A Eventually, I found out.

22 Q Do you remember an incident -- again, this was
23 September 24th of last year. Do you remember an incident
24 that took place about a week before that?

25 A About what?

1 Q Do you remember filing a police report about a week
2 before that?

3 A Yes, sir, I do.

4 Q Can you tell us about what happened at that incident?

5 A He came to my job and threaten me and wouldn't let me
6 to my car.

7 Q Did he say anything to you?

8 A He threaten excuse my language, he threaten to kick
9 my ass.

10 Q Did you take that seriously?

11 A Yeah.

12 Q What did you do when he threatened you?

13 A I was on -- I was on the phone with my father at that
14 time and my father heard everything that he said. I just
15 stayed in the car until he left. I told him that the
16 police was on the way. He said he didn't care.

17 Q And the police were on the way?

18 A Correct.

19 Q And you filed a police report about this incident?

20 A Correct.

21 Q When were you aware -- when did you become concerned
22 that day about Mr. Springs, was it at your job?

23 A Aware of what as far as him and my wife?

24 Q As far as you and your safety?

25 A That day at work.

1 Q Okay. What had been doing earlier that day?

2 A I had my kids that day and had to go to work that
3 afternoon. And it all started when I seen them two
4 driving down the road and he just got mad at me because I
5 busted them together and that was the reason for him
6 coming to my job.

7 Q Let me stop you right there. You said you had your
8 kids that day. Were you all separated at this time?

9 A Not legally. We just weren't living together.

10 Q How long did you all live separately?

11 A Three, maybe four months at the most.

12 Q At that time how long had y'all been living
13 separately?

14 A I say at least two months, maybe a little bit longer.

15 Q Okay. And you said that you saw them riding in his
16 van?

17 A Yes, sir.

18 Q And I believe you said that he was angry with you
19 because you had busted them. Tell me about that?

20 A Well, like I said, I was coming down Pamplico
21 Highway. I was going to my mom and dad's house and I just
22 happen to see his van. And they always claim they were
23 never together, they were never together. Well, I seen
24 two people in the van. He made a right turn. I seen
25 Crystal turn around and look and I went and waited in my

1 yard. And I seen them ride by, so I left and came back
2 and he pulled up behind me at the stoplight at the
3 baseball field. I went one way and he went the other. I
4 immediately turned around and I seen her get out the car.
5 And that's when she must have called him and told him.
6 And when I got to my job, he was parked there waiting on
7 me.

8 Q And he threatened you at your job?

9 A Yes.

10 MR. GROVE: I don't have any further questions
11 for this witness.

12 THE COURT: Mr. Ozment.

13 MR. OZMENT: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. OZMENT:

16 Q How are you today, Mr. Hanna?

17 A Fine, thank you.

18 Q Good. Where do you work?

19 A I work at Red Lobster.

20 Q Where did this happen?

21 A Longhorn's.

22 Q Same Longhorn you got on your sweat shirt?

23 A Yes, sir.

24 Q How long was Mr. Springs with you at Longhorn?

25 A Probably at least ten, 15 minutes. I know as soon he

1 got there I was on the phone somebody else. They called
2 the police for me. And by the time the police got there,
3 he already left, but the police had past him on the way to
4 my job.

5 Q And how scared were you when he was outside your car?

6 A I was a little scared. Honestly, I didn't feel like
7 he was gone really do anything to me at that time because
8 I know that there was a security camera right there. I
9 didn't think he was like dumb enough to do anything there
10 with a video camera.

11 Q Did you think he was gone kill you right there?

12 A No.

13 Q Did he have a bunch of weapons with him a knife?

14 A No.

15 Q Maybe a screwdriver.

16 A No, not that I knew of.

17 Q So it was a verbal confrontation?

18 A Yes.

19 Q Is he shaking your car about to break a window?

20 A He did try to jerk my door.

21 Q But he didn't -- he try to break through your window?

22 A No, my window was down.

23 Q Your window was down?

24 A Yes.

25 Q Did he ever hit you through the window?

- 1 A No.
- 2 Q So you were arguing through the open window?
- 3 A I really didn't have much to say. I was on the other
- 4 line with my father. He heard everything and I just let
- 5 him talk.
- 6 Q Okay. So the window -- did you ever roll up the
- 7 window?
- 8 A No, my motor was broke. I had to pull it up and down
- 9 by hand, so I couldn't just roll it up.
- 10 Q But you weren't scared -- you didn't think he would
- 11 come through the window actually?
- 12 A I wasn't worry about that.
- 13 Q Okay. You said the police finally came?
- 14 A Yes.
- 15 Q Did he file a charge?
- 16 A I didn't file any charge against him threatening me.
- 17 I just didn't want to cause any more problems than what it
- 18 was.
- 19 Q Okay. So you weren't scared that in the future he
- 20 might come back and do something?
- 21 A No.
- 22 Q Okay. And to your knowledge, he was never arrested
- 23 or anything like that with anything to do with the
- 24 incident you had with him?
- 25 A I never had him arrested.

1 Q Okay.

2 MR. OZMENT: No further questions, Your Honor.

3 THE COURT: Redirect?

4 MR. GROVE: Briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. GROVE:

7 Q Mr. Ozment asking you questions about how scared you
8 were. Were you scared enough to call the police?

9 A Yeah.

10 MR. GROVE: No further questions.

11 THE COURT: Anything else?

12 MR. OZMENT: No, Your Honor.

13 THE COURT: You can step down. Thank you.

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

16 THE COURT: Next witness.

17 MR. GROVE: Thank you, Your Honor. At this time
18 the defense could call Officer Mahafey.

19 THE COURT: Is he downstairs also?

20 MR. GROVE: He is, Your Honor.

21 THE COURT: Any other ones that she can maybe
22 bring on up and have out in the hall?

23 MR. GROVE: He will be my last witness.

24 (WHEREUPON, a pause in the proceedings.)

25 THE CLERK: Raise your right hand. Do you swear

1 to tell the truth, the whole truth, and nothing but the
2 truth so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Please be seated and state your full
5 name for the record.

6 THE WITNESS: My name is Gary Mahafey.

7 WHEREUPON,

8 Gary Mahafey,
9 after first having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. GROVE:

12 Q Good morning, Officer. How are you?

13 A Good morning. I'm all right.

14 Q Where do you work?

15 A With the City of Florence Police Department.

16 Q How long have you been there?

17 A Just under four years.

18 Q What do you do for the police department?

19 A I'm on patrol.

20 Q Have you always been on patrol?

21 A Uh-huh.

22 Q What did you do before you were an officer?

23 A I went to Frances Marion University.

24 Q What did you study there?

25 A Math.

1 Q A mathematician cop?

2 A Yeah.

3 Q Do you remember responding to an incident in
4 September of last year at Longhorn here in Florence?

5 A Yes, I do.

6 Q Do you remember when in September that was?

7 A It was the 18th.

8 Q What was the substance of that call?

9 A It was basically -- it came out as a harassment call.
10 We got a call that a male in a white van was driving
11 around in the parking lot yelling at the victim who
12 called.

13 Q Do you remember who the male subject was?

14 A His name was Steve Springs.

15 Q Do you remember who the victim in the case was?

16 A Yeah, his name was Kevin Hanna.

17 Q Okay. And you were dispatched to the location?

18 A Yeah.

19 Q When you got there, what did you find?

20 A Mr. Springs had already left, so I just spoke with
21 Kevin Hanna. He told me that he had ---

22 MR. OZMENT: Your Honor, object to any hearsay.

23 THE COURT: All right. Repeat the question
24 please.

25 MR. GROVE: I asked him what he found at the

1 scene.

2 THE COURT: What he found physically at the
3 scene?

4 MR. GROVE: Right.

5 THE COURT: You can just answer that question at
6 this time without saying what somebody said. And then
7 we'll go further if we have to.

8 A I found that Mr. Springs had already left the
9 location. Mr. Hanna was still there for work.

10 Q Certainly. And eventually you filed a report on this
11 charge?

12 A Yes, sir.

13 Q In this case, but you did not file a charge?

14 A No, sir, no.

15 Q Was that of the insistence of Mr. Hanna?

16 A Yes, it was.

17 Q And this call went out as -- do you have a copy of
18 your report with you?

19 A I don't, not with me.

20 Q Do you remember specifically at the top of the
21 incident report it has an area for incident types. Do you
22 remember what incident type went out as?

23 A It was an harassment -- came out as harassment and
24 disorderly person.

25 Q Would verbal threats have been included in there?

1 A Uh-huh.

2 Q After you took some information from Mr. Hanna, you
3 obviously documented that and you filed a report?

4 A Yes.

5 Q And then you cleared the scene?

6 A Yes.

7 Q Is that what cops say clear the scene?

8 A Yeah.

9 Q And is it safe to say that that for your purposes
10 ended your involvement with either Mr. Hanna or Mr.
11 Springs?

12 A Yes, that was all I did.

13 MR. GROVE: No further questions at this time,
14 Your Honor.

15 CROSS-EXAMINATION

16 BY MR. OZMENT:

17 Q How you doing today, Officer?

18 A All right.

19 Q You tired?

20 A I'm all right.

21 Q I heard you worked last night?

22 A Yeah.

23 Q Now, this came out as an harassment call?

24 A Yes.

25 Q It was not an assault call, not an assault and

- 1 battery call?
- 2 A No not an salt just harassment.
- 3 Q Okay. And when you got there, Mr. Springs already
- 4 there left?
- 5 A Yes, sir.
- 6 Q Do remember how long it took you from the time you
- 7 got the call to get to the scene?
- 8 A I got -- I was dispatched at 3:56. I got there at
- 9 4:05, so about nine minutes.
- 10 Q About nine minutes from the time you got the call to
- 11 the time you got there.
- 12 A Yeah.
- 13 Q And when you got there Mr. Springs -- you didn't see
- 14 him?
- 15 A He had already left.
- 16 Q All right. How did Mr. Hanna seem really scared?
- 17 A Not to my memory. I can't exactly recall, but I
- 18 don't believe so.
- 19 Q Shaking, crying?
- 20 A No.
- 21 Q Waiver voice?
- 22 A No.
- 23 Q Nothing like that?
- 24 A No.
- 25 Q He seem like relatively just normal just making a

1 police report?

2 A Yeah.

3 Q Okay. And after this, did you feel a need to call an
4 investigator or anything to look into this incident
5 further?

6 A No.

7 Q You feel like this was any big crime had occurred
8 here?

9 A No.

10 Q Okay. And did you ever bring charges?

11 A I didn't.

12 Q And no matter what Mr. Hanna had said it is within
13 your discretion to bring charges or not; is that right?

14 A Ultimately, yes.

15 MR. OZMENT: No further questions, Your Honor
16 redirect.

17 MR. GROVE: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. GROVE:

20 Q It is in your discretion to bring charges, right?

21 A Yes.

22 Q According to Mr. Ozment?

23 A Yes.

24 Q Is it also in your discretion as to whether or not to
25 file a report?

1 A It is.

2 Q You filed a report in this case?

3 A I did.

4 Q Why did you file a report in this case?

5 A Mr. Hanna asked for one and because of the nature of
6 the call. Even if he didn't ask for one, I would have
7 filed one any way.

8 Q What do you mean the nature of the call?

9 A Because of the threats that Mr. Hanna said were made
10 to him.

11 Q So you had some concern that something might happen
12 later based on the nature of the call?

13 A Yes.

14 Q Well, you documented something and said you would
15 have documented it any way. Is that in case something
16 happened later?

17 A Yeah, yeah.

18 MR. GROVE: Nothing further.

19 THE COURT: Anything else?

20 MR. OZMENT: No, Your Honor.

21 THE COURT: Thank you, sir. You can step down.
22 May the witness be excused.

23 MR. GROVE: Absolutely.

24 THE COURT: Thank you, sir. You can stay if you
25 like or leave.

1 (WHEREUPON, the witness leaves the witness
2 stand.)

3 THE COURT: Mr. Grove.

4 MR. GROVE: Beg the Court's indulgence.

5 (WHEREUPON, a pause in the proceedings.)

6 MR. GROVE: Your Honor, at this time the defense
7 would rest.

8 THE COURT: All right. Ladies and gentlemen, we
9 will take a recess at this time, the rules require me to
10 do that to review certain things with the lawyers, so
11 please go to your jury room. You may not discuss the case
12 at all. Thank you.

13 (WHEREUPON, the jury retire to the jury room.)

14 THE COURT: Okay. Will the -- we'll come to
15 motions in just a minute. Find out if the State was going
16 to have any reply?

17 MR. OZMENT: The State will not have any reply.

18 THE COURT: Do you have any motions, Mr. Grove?

19 MR. GROVE: Yes, Your Honor. At this time, I
20 renew my motion for a direct verdict on the same grounds
21 as previously.

22 THE COURT: That's respectfully denied. Okay,
23 let's talk about first of all whether the State wants a
24 voluntary manslaughter lesser-included is that still
25 correct?

1 MR. OZMENT: Yes, Your Honor.

2 THE COURT: How about the defense?

3 MR. GROVE: One moment, Judge.

4 THE COURT: All right. Tell you what, let's
5 take about five minutes you can talk about that.

6 MR. GROVE: Thank you very much.

7 THE COURT: We will begin in just a few minutes.
8 By the way, for those of you who are here, the next part
9 of the trial will be the closing arguments. You will be
10 free to come and go quietly during the arguments, but once
11 the arguments end and I begin to charge to the jury on the
12 law, the back door will be locked. So you can't get in or
13 out once I begin the charge on the law. And I'll
14 certainly -- as soon as the last argument's made, you'll
15 know that that is going to be the case. We'll likely take
16 a brief recess after the last argument, so you will know
17 at that time just want to let you know.

18 (WHEREUPON, a break was taken.)

19 THE COURT: All right. Your motion's denied,
20 Mr. Grove. What's your position on voluntary
21 manslaughter?

22 MR. GROVE: Your Honor, I would opposed the
23 charge to voluntary manslaughter.

24 THE COURT: And the basis for that?

25 MR. GROVE: I don't believe that the State has

1 presented evidence of a voluntary manslaughter. I believe
2 that the evidence is going to be presented as either that
3 of a murder or that of self defense. I'm happy to flesh
4 out ---

5 THE COURT: Well, let me first hear from
6 Mr. Ozment about your position on why a voluntary
7 manslaughter is a viable option.

8 MR. OZMENT: Your Honor in State vs. Heyward,
9 which is a Court of Appeals case 350, S.C. 153. The Court
10 said that to work eliminating a lesser-included charge it
11 must be very clearly appear that there is no evidence
12 whatsoever tending to reduce the crime from the greater
13 offense to the lesser. There's not much of a burden we
14 need to reach here to have a voluntary prove. I think if
15 you listen to Mr. Scott's statements that came in both of
16 them through the law enforcement witnesses. He states
17 that Mr. Springs got out. A verbal altercation ensued.
18 During that verbal altercation, Mr. Springs started moving
19 towards him a step, two steps. And in that verbal
20 altercation, he raised the gun and squeezed it because he
21 felt threatened. I think that would -- a reasonable jury
22 could hear those facts. And if they believe them on their
23 face, could say this was in the heat of passion and with
24 legal provocation of the victim failing to leave the
25 property when he was told to and starting to approach him.

1 If Mr. Scott didn't feel threaten for his life, it's not
2 self-defense, but in the heat of that argument, I think it
3 could reasonably be voluntary manslaughter.

4 THE COURT: All right, Mr. Grove.

5 MR. GROVE: Your Honor, in support of my
6 position, I point you to Dickey. I believe a copy is at
7 the bench. And Justice Pleicones' current opinion said
8 there's no evidence petitioner was angry and fearful that
9 he lost control and was rendered incapable of cool
10 reflection, instead the evidence reflects the petitioner
11 contained his composure despite threats aimed and directed
12 at him. Essentially saying that being in fear and being
13 threatened does not mean that you are acting in the heat
14 of passion. Now, that's what's required for a voluntary
15 manslaughter charge.

16 The State has presented evidence through
17 testimony of Crystal Hanna that Mr. Springs was very
18 relaxed, very calm trying to be soothing. They also
19 presented evidence that there was down time between
20 Michael Bruce driving my client off and Mr. Springs
21 arriving on the scene, which would certainly -- I'm sure
22 that they will argue is a sufficient cooling off period.
23 I don't think that Mr. Springs approaching my client in a
24 threatening manner raises to the level of acting in the
25 heat of passion for my client. Otherwise in every self

1 defense case, we would have a voluntary manslaughter
2 charge and those two things are clearly distinguishable.
3 One does not necessitate the other.

4 There are certainly cases with a murder charge
5 to the jury and nothing else other than self defense. I
6 don't think that because the defense's position is that
7 Mr. Springs was the initiating force here that that
8 necessitates a voluntary manslaughter charge. The State
9 the rest of their testimony involves after the fact. My
10 client was calm and cool and didn't appear to seem like
11 anything was wrong. They have presented the case that
12 this is a cold-blooded murder and not self defense. They
13 haven't presented evidence of a voluntary manslaughter.

14 THE COURT: All right. Mr. Ozment, where is the
15 sudden heat of passion?

16 MR. OZMENT: Your Honor, I think it was ongoing.
17 Mr. Bruce said that for the whole way home, they were
18 calling each other. They were cursing each other and they
19 were in fight -- Michael Bruce. Larry Bruce then said
20 that Mr. Scott called him once that Michael Bruce had
21 dropped him off. Mr. Scott called Larry Bruce and said
22 come over I'm about to get in a fight with Steve Springs.
23 I want you to get over here. Steve Springs got there.
24 The defense elicited from George Watson that he may have
25 heard an argument or a fight going on before the gunshot

1 wound -- I mean, before the gunshot sound. Certainly,
2 that was the statement that Mr. Scott gave law enforcement
3 was that they were sitting there fighting, arguing. And
4 in the middle of that fight and argument, he shot him.

5 THE COURT: Sudden heat of passion may affect
6 the persons self control and temporarily disturb a
7 person's reason. The sudden heat of passion must be the
8 type that would make an ordinary person unable to coolly
9 reflect on his actions and would produce an uncontrollable
10 impulse to do violence. What is that in this case? An
11 uncontrollable impulse that arose because of what?
12 Because he was afraid?

13 MR. OZMENT: No, I think there's in evidence the
14 record that from the time he -- from the time that
15 Mr. Bruce walked out in the woods, they were already
16 arguing on the phone, that lasted ---

17 THE COURT: By the time who walked out of the
18 woods?

19 MR. OZMENT: Michael Bruce walked out of the
20 woods. He said that Sunny was already on the phone
21 arguing with somebody.

22 THE COURT: But he had -- certainly had time to
23 reflect after he got home and was sitting on the stoop for
24 a few minutes.

25 MR. OZMENT: I don't think there's been any real

1 clear testimony how long that period was. We do know he
2 argued the whole way. And we do know in that window he
3 called Larry Bruce and was still talking about fighting
4 Steve Springs and said Steve Springs was coming over
5 here -- come over here, you know, and I think Larry said
6 help me -- I think Larry said kick his butt or something
7 to that I affect. So we know that he was still thinking
8 about it. And then there's been testimony that when
9 Mr. Springs got there their fight picked right back up
10 arguing. And so to me even that sounds to me like that
11 argument went that whole time. When Mr. Springs got
12 there, there's been no testimony that Mr. Springs got out
13 and they just had a casually conversation. The testimony
14 of the officers of what Mr. Scott said was he was
15 threatening. They were arguing. They kept going and then
16 he shot him.

17 THE COURT: Okay. And the sufficient legal
18 provocation must be the type that would make a person of
19 ordinary reason and caution to become enraged and lose
20 control temporarily. Where is that? Your theory has been
21 that he enticed him over there. And I know that it's come
22 in through Mr. Scott's statements that he didn't. He told
23 him not to come. And that he came and he was defending
24 himself. So where in the evidence is there anything that
25 Mr. Scott or that a person of ordinary reason and caution

1 would become enraged and lose control temporarily?

2 MR. OZMENT: I think there was a heightened
3 level of anger going on that afternoon. He called
4 Mr. Bruce. We can assume right before Steve.

5 THE COURT: But what was it at the time? What
6 was the provocation at the time just yammering back and
7 forth?

8 MR. OZMENT: I think it had to be. He told Mr.
9 Bruce I'm going to beat him up. He didn't say I'm going
10 to kill him, he said I'm going to beat him up. What
11 happened, he showed up. They continued arguing. He
12 didn't beat him up. He fired a riffle into his belly.
13 And so obviously and I'm not arguing that -- and I don't
14 think I tried to argue that this is all a planned out
15 scheme for weeks to get Steve Springs to come over there
16 in order to assassinate him with a gun. I don't think
17 I've argued. I don't think that's been my theory of the
18 case. I think my theory of the case it's been an ongoing
19 fight. And when Steve got there that night with his
20 ongoing fight for some period of time, including the call
21 to Larry Bruce said we were going to beat him up. That
22 last argument the two had raised the anger even more and
23 Mr. Scott pulled the trigger and didn't -- it wasn't a
24 fistfight.

25 THE COURT: All right. Anything else?

1 MR. GROVE: Yes, Your Honor. I believe there
2 have been respectfully a couple of misstatements of the
3 testimony as I remember it. I believe Larry Bruce's
4 testimony was he that received a phone call and that Sunny
5 said you come over here and be beat this guy. I don't
6 believe that the testimony ever was that you come here and
7 we will do this. You come over here and do it for me, not
8 that Sunny was going to take any part in it whatsoever.
9 It was -- you come over here and please do this for me and
10 he hung up phone and ended up never coming over.

11 Furthermore, I don't believe that the officer's
12 testimony -- either of the officer's testimony suggested
13 that there was an argument going on according to my
14 client. I believe that their testimony was Mr. Springs
15 got out of his van, continued cursing and threatening my
16 client. My client told him to leave and not come any
17 closer and then he fired shot. That is not an ongoing
18 argument, that is not a heat of passion. That is one
19 person being enraged and the other asking them to leave,
20 that's self defense, that's not voluntary manslaughter.

21 THE COURT: All right. I'm not going to charge
22 voluntary manslaughter. I just don't think that the
23 elements are there. I just don't think that the sudden
24 heat of passion is there at the time of the event. The
25 ongoing part, I'm not convinced that that would rise to

1 the level of a sudden heat of passion. Also, the
2 sufficient legal provocation must be the type that would
3 make a person of ordinary reason and prudence become
4 enraged and lose control temporarily. I don't see any
5 evidence of that in this particular case. So I will just
6 charge murder. All right. There's a August case --
7 August of 2014 State vs. Logan have you looked at that
8 direct and circumstantial evidence charge?

9 MR. GROVE: I have, Your Honor. And I only made
10 one copy of the printout.

11 THE COURT: I've got a copy. Have you seen it
12 Mr. Ozment?

13 MR. OZMENT: Yes, Your Honor.

14 THE COURT: I'm required to give it upon
15 request.

16 MR. GROVE: Then please give it, Your Honor.

17 THE COURT: All right. What I'll do now is go
18 over the charge -- I'll get right to the gist of it.
19 Credibility of witnesses. I'll also give an expert
20 witness charge. I'll give the direct and circumstantial
21 evidence charge requested by the defendant. I will
22 instruct --

23 MR. GROVE: Your Honor, I'm sorry I was making
24 notes. Which one?

25 THE COURT: Say it again?

1 MR. GROVE: Which charge by the defendant?

2 THE COURT: Well, I'm going to tell you what I'm
3 going to charge and then I'll let you. Haven't gone over
4 yours yet. The defendant not testifying, a statement
5 given by the defendant, allegedly given by the defendant.
6 I will charge the jury on murder, but, of course, leave
7 out malice maybe inferred when the deed is done with a
8 deadly weapon required under Belcher to leave that out.
9 Your charges pertaining to self defense we'll go over now.
10 Which ones do you object to, Mr. Ozment? You go by number
11 please.

12 MR. OZMENT: Yes, Your Honor. Let me put --
13 Your Honor, I don't have. Well, before I even start any
14 of this, I think some of these depending on what Your
15 Honor let's in or doesn't let in in combination with our
16 own self-defense charge make it very redundant. And so I
17 would in general ask that the charge not have the same
18 language and same information just repeating itself and
19 plowing the same ground over and over.

20 THE COURT: All right. Let's just go through
21 them one by one. Number one is part of my general charge.

22 MR. OZMENT: I was going to say number one I
23 actually have no objection to it on its own.

24 THE COURT: Number two I'm not going to give,
25 Mr. Grove, the next to the last sentence in considering

1 whether the defendant properly acted upon appearances.
2 You may consider whether the deceased had threatened
3 either the defendant or others during the evening. That's
4 a comment on the facts. I will gave a general charge on
5 intoxication, that's part of the self defense charge.
6 Your number two is couched in terms of what Mr. Scott was
7 thinking the law is when a person of reasonable firmness
8 of courage would think. I'm not saying he's an
9 unreasonable man, but I'm not going couch it in terms of
10 the or this defendant.

11 MR. GROVE: Yes, Your Honor. I would only note
12 that the second sentence if under the circumstances
13 includes and a reasonable prudent man of ordinary firmness
14 would have entertained the same.

15 THE COURT: I'm going to give that because
16 that's part of the standard charge on self defense, but
17 I'm not going to tailer it to where I'm telling the jury
18 anything about the facts of this case. That if they think
19 this happened that night or if they think that happened
20 that night, I'm not going to do it that way.

21 MR. GROVE: Okay.

22 MR. OZMENT: Your Honor, that was my exact
23 objection to that charge.

24 THE COURT: Number three, the first sentence is
25 not the law. In the consideration of whether self defense

1 is applicable, you put yourself in the defendant's
2 situation. Where is that in the law?

3 MR. GROVE: That comes directly from State vs.
4 Rash, Your Honor, that was the proposed charge of the
5 defendant and the Court said it should have been charged.
6 And again, I haven't -- in candor to the Court I haven't
7 shepardized that case. It is from the 30's. And in
8 speaking with Mr. Ozment, he noted that to me. I do think
9 that he indicated taking out that language he didn't have
10 a problem with the rest of the charge.

11 THE COURT: The rest of the charge is in general
12 part of the self defense charge, but the first sentence is
13 not. I'll note your objection to that and we will go on
14 to number ---

15 MR. GROVE: I have two number threes.

16 THE COURT: Two number threes. So the second
17 number three my words alone charge I'll just tell you what
18 it is, Words accompanied by hostile acts may depending on
19 the circumstances establish self defense. So that's what
20 you're asking for there, so in essence I'm giving that.

21 MR. GROVE: Certainly.

22 THE COURT: Any objection to that?

23 MR. OZMENT: No objection, Your Honor.

24 THE COURT: Number four.

25 MR. GROVE: Your Honor, I'll bring to your

1 attention that number four is an expounded version of
2 number one.

3 THE COURT: Right.

4 MR. GROVE: Number four would be my preference.
5 In talking with Mr. Ozment, I think that he has an
6 objection to the specific language that says if the State
7 has failed to prove to your satisfaction that anyone of
8 the four factors of self defense have not been proven,
9 then you are to find the defendant not guilty, that comes
10 from the very end of State vs. Berkhart (sic). I pointed
11 that out to Mr. Ozment this morning. That again it says
12 that is what the defense lawyer said in his closing and
13 that is a correct statement of the law and it should have
14 been charged by the judge in that case. It was not. The
15 judge gave generic self defense charge. And the Court
16 went on to note that the jury charges from the judge would
17 hold more weight than the defense's closing argument, so
18 it should have been charged because it was a correct
19 statement of the law that each and every element of self
20 defense must be disproven beyond a reasonable doubt.

21 THE COURT: Just let me read the sentence loud,
22 it just doesn't make any sense. If the State has failed
23 to prove that any one of four factors of self defense have
24 been proven. It's not a double negative, but it's two
25 negatives use in a way to me that's very confusing.

1 MR. GROVE: I'm certainly Happy for Your Honor
2 to reword that.

3 THE COURT: The State has to disprove self
4 defense. If the jury concludes that one of the four
5 elements of self defense have been -- in other words --
6 that's the kind of cloud that the State having to disprove
7 self defense creates. In the old days, the defendant had
8 to prove self defense, had to prove four things. Now, the
9 State has to disprove self defense beyond a reasonable
10 doubt, so are you telling me that if he fails to disprove
11 one element that they are self defense.

12 MR. GROVE: I am, Your Honor.

13 THE COURT: Well, that means that all four
14 elements might not be there?

15 MR. GROVE: And my argument according to the
16 Court in State vs. Berkhart 350 S.C. 252 ---

17 THE COURT: I've got the case -- I mean, I got
18 your cite.

19 MR. GROVE: Right. On page 264 of the opinion,
20 although the trial judge did charge that the burden was on
21 the State and remains on the State. And we do not believe
22 that charge was adequate similarly. The fact that defense
23 counsel enunciated the proper burden in his closing
24 argument telling the jury quote, You must find the
25 defendant not guilty unless the State proves to you beyond

1 a reasonable doubt that each of the elements of self
2 defense do not exist in this case does not adequately
3 convey the State's burden. Clearly ---

4 THE COURT: But it says each of them. You said
5 your sentence says anyone of them. If you have the case,
6 I like to read it. Does it use the words anyone or does
7 it say each.

8 MR. GROVE: It says you must find the defendant
9 not guilty -- and this is quoting the closing argument.
10 You must find the defendant not guilty unless the State
11 proves to you beyond a reasonable doubt that each of the
12 elements of self defense do not exist in this case. To
13 me, Your Honor, that means the State must prove that each
14 element of self defense does not exist.

15 THE COURT: Well, then why do you use the word
16 each?

17 MR. GROVE: Your Honor, I got ---

18 THE COURT: Because anyone sounds better for
19 you.

20 MR. GROVE: I'm happy to change it to each, that
21 I was given that charge by another defense lawyer.

22 THE COURT: All right. Let me see your copy?

23 MR. GROVE: Certainly. A copy of the case?

24 THE COURT: Yes, sir. Can I have it?

25 MR. OZMENT: You can have it, Your Honor. I

1 think I even have a problem with even the each language if
2 you would hear me out.

3 THE COURT: I'll hear both of you.

4 MR. OZMENT: I think reading the Belcher case
5 that way is taken out of context. What happened in
6 Belcher is the judge never said the State must prove.

7 THE COURT: You mean Berkhart?

8 MR. OZMENT: Sorry, sorry not Belcher sorry.
9 Berkhart. The judge never said the State must prove
10 beyond a reasonable doubt that self defense does exist.
11 All the judge said is that the defense has no burden, that
12 was the issue in Belcher. The judge never said the State
13 has to prove beyond a reasonable doubt. He just says the
14 defendant doesn't have any burden.

15 In the closing argument, the defense attorney
16 uses that each language. And at that point, the Court
17 says this was a correct charge on the law, but it's not
18 harmless error because what the judge said from the bench
19 is the law that the jury should decide the case on. So
20 we're still reversing. I don't think they're endorsing
21 the defense attorney's argument as the exact statement of
22 what self defense is because they already decided the case
23 base on the reasonable doubt language not being in the
24 original charge. So to me even the way that it says with
25 the word each, that each of the four factors of self

1 defense is not present in this case, that kind of implies
2 any of the factors when you say that each is not present.
3 And I agree with Your Honor that's not the law. If any of
4 those factors is proven not to exist, it's not self
5 defense otherwise there are four self defenses. I mean,
6 if you break it up like that, then I have to prove, well,
7 he didn't bring it on himself. And that's not how
8 self-defense works. If any of those elements are proven
9 not to be present beyond a reasonable doubt, then it's
10 not self defense.

11 THE COURT: Isn't that true?

12 MR. GROVE: I don't think that it is, Your
13 Honor.

14 THE COURT: So how could the State ever disprove
15 self defense? Let's say that the victim and the defendant
16 were quarreling and it was totally the defendant's fault
17 and the State proved to the jury beyond a reasonable doubt
18 that it was the defendant's fault in bringing on the
19 difficulty. But the victim did advance on him. The
20 defendant was at his own home didn't have the duty to
21 retreat. And whatever the other element is are you saying
22 that just because he didn't disprove each one, that he's
23 not guilty?

24 MR. GROVE: Yes, Judge. I'm saying ---

25 THE COURT: So it's that an impossible burden.

1 MR. GROVE: I don't think so and the Court in
2 Berkhart didn't think so either. They said that that was
3 a correct statement of the law that that would have to
4 disprove each element. The State doesn't convict a person
5 of a grand larceny by proving beyond a reasonable doubt a
6 couple of the elements. They have to prove each of the
7 elements beyond a reasonable doubt to convince a jury that
8 ---

9 THE COURT: No, don't go down that track. We're
10 talking about disproving four elements.

11 MR. GROVE: I understand that, Your Honor, but
12 to prove it beyond a reasonable doubt that case says you
13 must prove it beyond a reasonable doubt to each element
14 and the Court I think -- I disagree with Mr. Ozment. I
15 think the Court does endorse that language because they
16 say very clearly that's a correct statement of the law.

17 THE COURT: Okay. I will go back there in a
18 minute and read this case. Number five is part of the
19 general charge.

20 MR. GROVE: If that is in a general charge, Your
21 Honor, I don't have an objection to five not being apart
22 of the charge.

23 THE COURT: Let me make sure it's in here. Does
24 the State object to number five?

25 MR. OZMENT: No, Your Honor. And my note on

1 that was that if it's redundant to the other charge, I
2 don't want to be plowing the same field twice. But if
3 it's not in there...

4 THE COURT: Number six.

5 MR. OZMENT: Your Honor, I don't have any
6 objection.

7 THE COURT: That's part of the general charge is
8 that you're on your own premises, you have no duty to
9 retreat to avoid the difficulty. Any objection to number
10 seven?

11 MR. OZMENT: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. OZMENT: I agree with Mr. Grove on exactly
14 what Mr. Bruce said that that was -- and you can correct
15 Mr. Grove. I didn't think Sunny was capable of this and
16 what was the other exact...

17 MR. GROVE: Couldn't put Sunny at hurting nobody
18 like that.

19 MR. OZMENT: So I guess my -- as to whether that
20 goes to his character, that's one thing. I think a
21 reputation -- that does not go to reputation. He's saying
22 based on me being very good friends with Sunny I just
23 didn't think he could do this. That has nothing to do
24 with his reputation.

25 THE COURT: All right. What if it just said

1 good character for -- or character for being nonviolent?
2 Where is it in State vs. Harrison that that was a jury
3 charge?

4 MR. OZMENT: Also, Your Honor, I haven't had a
5 chance to pull that case.

6 THE COURT: Does it say in State vs. Harrison
7 that the judge correctly charged that to the jury?

8 MR. GROVE: That's my understanding, Your Honor.
9 Again, I was given jury charges and I'm happy to argue for
10 or against.

11 THE COURT: Because typically that type of
12 evidence comes in. It has nothing to do with whether or
13 not an element of the crime has been proven.

14 MR. GROVE: Right.

15 THE COURT: It just comes in as evidence as to
16 whether or not the jury thinks based on all the evidence
17 whether or not what these people saying is up to snuff.

18 MR. GROVE: Say that again, Your Honor.

19 THE COURT: Usually, this type of evidence like
20 Mr. Bruce stated comes in obviously under 404 it can or
21 other ways. It doesn't necessarily come in squarely upon
22 an issue of whether or not an element of the crime has
23 been established. So it's a correct statement of the law
24 that evidence can be introduced of the defendant's good
25 character and reputation for being nonviolent. What I

1 have a problem with potentially is the parts as I charge
2 you that such evidence is admissible. Obviously, it's in
3 and maybe considered by you arriving at your verdict. The
4 last sentence. I further charge you that such evidence
5 alone is sufficient to acquit the defendant of the
6 charges. So where is that in the law that is a jury
7 charge?

8 MR. GROVE: I'm happy to pull that case, Your
9 Honor.

10 THE COURT: I'll go pull it right now and read
11 it back there in the office.

12 MR. GROVE: And again, as I said before, a lot
13 of these jury charges were given to me when another
14 defense lawyer was informed I had a self-defense case.

15 THE COURT: Going back to my self defense
16 charge, I will charge the jury first element. The
17 defendant must be without fault in bringing on the
18 difficulty. I'll charge that. I'll also charge that self
19 defense is not available to a person who uses -- was any
20 evidence of contemptuous language used by the defendant at
21 the scene? Okay, I'll skip over that. I don't think
22 there is any evidence of his specific language.

23 Second, element of self defense is that the
24 defendant was actually in eminent danger of death or
25 serious bodily injury or that he actually believed he was.

1 And I'll expound on that. The right to act on
2 appearances, also words accompanied by hostile acts, prior
3 difficulties between the defendant and the victim may be
4 considered, whether -- in deciding whether a threat
5 existed. There is a relative size, ages -- sizes, ages
6 and weights of the defendant and the victim. There's no
7 real evidence of that. Is any side see any need for a
8 charge on that? They about the same age. I don't know
9 how big Mr. Springs was. There is no evidence of that.

10 MR. OZMENT: There's no evidence in the record
11 of his size.

12 MR. GROVE: There's no evidence, Judge, that's
13 fine.

14 THE COURT: There's no evidence of the victim's
15 reputation as a violent person.

16 MR. GROVE: Say it again, Your Honor?

17 THE COURT: There's no evidence of the victim's
18 reputation as a violent person. There's also a component
19 that says prior instances of violence by the victim may be
20 considered in deciding whether the defendant actually
21 believed he was in eminent danger. There's no real
22 evidence of prior violence by the victim is there?

23 MR. GROVE: Your Honor, there's evidence of
24 prior threats.

25 THE COURT: That's the next part, but prior

1 actual violence upon him or anyone else?

2 MR. GROVE: Correct. There has not been -- any
3 of it presented of an actual attack.

4 THE COURT: Threats by the victim will come in,
5 intoxication of the victim may be considered. The third
6 element -- well, the final element is no other way --
7 probably way to avoid the danger of death or serious
8 bodily injury then to act in a way the defendant did. If
9 the defendant is own his own premises, he has not duty to
10 retreat before acting in self defense. The defendant had
11 not duty to retreat. Because he was on his own premises,
12 I don't see a need to retreat if by doing so the danger of
13 being killed or suffering serious bodily injury would
14 increase. Any need for -- I don't see any need for charge
15 on that.

16 MR. GROVE: I suppose not, Your Honor.

17 THE COURT: All right. Person cannot be
18 required to make an exact calculation as to the degree or
19 amount of force which may be needed as the defendant has
20 the right to use the force needed to avoid death or
21 serious bodily injury. And does not have to be limited to
22 the degree or amount of force used by the victim. All
23 right. So I'll go back there and take a look at this
24 Harrison case and also I'll read Berkhart. Anything else
25 before we break?

1 MR. GROVE: Not at this time, Judge.

2 THE COURT: Anything else?

3 MR. OZMENT: Your Honor, one totally unrelated
4 matter.

5 THE COURT: All right.

6 (WHEREUPON, a break was taken.)

7 THE COURT: On the issue of Berkhart, I don't
8 see the logic in the charge that you said that they have
9 to disprove all four elements of self defense. The State
10 has to disprove self defense, that's what I will charge.
11 The case doesn't stand for the proposition and no case
12 stands for the proposition that the State must disprove
13 all four elements. They have to disprove self defense.

14 Now, you are correct however on the Harrison
15 case. The Harrison case about evidence of good character
16 is couched mainly in the terms of reputation. There is no
17 evidence of a general reputation, but there is enough
18 evidence in the case elicited by the State or that came
19 from Mr. Bruce the two points that Mr. Grove has mentioned
20 that the jury can consider that as to whether or not the
21 defendant is guilty or not guilty and that evidence alone
22 could give them sufficient reasonable doubt to find him
23 not guilty. So I will give that in some respect. I'm
24 not going to talk about the evidence being admissible or
25 that they heard that evidence. I will just say in general

1 evidence of a person's character for not being violent can
2 be considered by the jury on the evidence of guilt.
3 Something along those lines.

4 And I will give number five that the State has
5 no objection to and I think that will conclude the review
6 of the jury charges. Do either of you -- are you going to
7 ask him to open in full on the law or you just want to
8 argue first and him argue last?

9 MR. GROVE: I thought about it, Judge. I'm sure
10 he would argue against opening full on the law. I'm not
11 going to require that.

12 THE COURT: Okay. So you'll argue first. The
13 State will argue last?

14 MR. GROVE: Yes, Your Honor.

15 THE COURT: How long do you think you will need?
16 Thirty minutes.

17 MR. GROVE: I try to keep it as brief as
18 possible.

19 THE COURT: I'm not holding you to it. I'm just
20 trying to get an idea.

21 MR. GROVE: Given short attention spans as they
22 are these day 30 minutes maybe.

23 THE COURT: Mr. Ozment.

24 MR. OZMENT: I would say 20 to 30 minutes.

25 THE COURT: All right. You ready for the jury?

1 MR. GROVE: One brief and this may have already
2 been addressed. As far as the charges are concerned, you
3 didn't address possession of a weapon during a violent
4 crime. The actual charges will be in there.

5 THE COURT: And I'll charge them that murder is
6 a violent crime. And if they find him not guilty of
7 murder, they need not go to that inquiry. If they find
8 him guilty of murder, then they go to that question.

9 MR. GROVE: Certainly.

10 MR. OZMENT: Yes, Your Honor. Thank you. All
11 right. You can bring in the jury.

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

13 THE COURT: All right. Ladies and gentlemen,
14 thank you for your patience. I know you been back in the
15 jury room for the longest time yet. I spent an hour,
16 that's my fault. I was reviewing with the lawyers the
17 charge that I'm going to give you and I wanted to make
18 sure that I had a couple things correct. So I took
19 sometime of my own to do that and I apologize. All of the
20 evidence is in. The defendant has rested. The State has
21 rested. And the next phase of the trial will be for the
22 lawyers to give you their closing arguments. As I
23 mentioned to you at the beginning perhaps, this is their
24 opportunity and their obligation to argue to you that the
25 conclusion that they feel you should reach based on the

1 evidence or lack of evidence in the case.

2 They are not witnesses as you know. They are
3 however permitted to refer to evidence that has been
4 introduced. If the evidence does not comport with your
5 collective view of what the evidence actually is. You go
6 with your recollections not with what the lawyers tell
7 you. They're not going to purposely misquote or miss
8 characterize anything, but they do have the opportunity to
9 make these arguments to you. Likewise, during the course
10 of their arguments, they have the right to review or go
11 over with you the law as I am going to charge it to you.
12 Similarly, they will not purposefully misquote or miss
13 characterize the law. But if what they say about the law
14 does not correspond with what I tell you the law is, you
15 go with what I tell you the law is. And as I will tell
16 you during my charge, you are required in this case to
17 accept the law exactly as I give it to you. Even if it is
18 different from what you thought the law was or what you
19 think the law ought to be. I'll cover that more clearly.
20 The defendant through Mr. Grove will argue first. And
21 then the State will present the last argument. After
22 that, we'll likely take a recess and then I'll give you a
23 charge on the law. The recess want be that long. Is
24 everybody okay to go forward?

25 All right, Mr. Grove.

1 MR. GROVE: Thank you, Your Honor. I usually
2 try not to stand in front of a podium and anchored here.
3 I usually try not to have a lot of notes, but I got a lot
4 of things to say so bear with me.

5 Before this trial began, I told you story about
6 a car that I had. My very first car, Ethel. I have a
7 habit of naming cars and I've only had a couple. And all
8 of them have been hand-me-downs by at least one or two
9 different people. The one I've got now has 240 miles on
10 it. No signs of stopping yet and Ethel was no different.
11 And I loved her to death. Seems like I use to wash her
12 every weekend out in the driveway. And again, like I told
13 you, I was told to go one way. And for the most part, I
14 went that way. When it was convenient for me, I went that
15 way. When I had the time, I took a left at that stop
16 light. But one day I decided it wasn't convenient for me.
17 One day I decided I was gone go the other way after being
18 told not to. And unfortunately for me, there were
19 consequences to that. The guy who was stopped in traffic
20 on the down sloop of that hill as I came over it and I
21 plowed into the back of him, wasn't his fault. My parents
22 had told me don't go that way. Go the other way, it
23 wasn't their fault. They didn't bring me down that path.
24 They told me to stay away. I had to go back to riding the
25 bus for the rest of that year and a good portion of my

1 senior year because I didn't have a car. Because I
2 couldn't afford to get it fixed obviously. And like I
3 said fortunately in that situation nobody got hurt. The
4 consequence there was a lesson I learned the hard way.
5 Not a lesson my parents wanted me to learn the hard way,
6 that's they told me ahead of time go the other way. There
7 consequences to every action, ladies and gentlemen. And
8 there were consequence to Steve Springs actions on
9 September 24th of last year.

10 I'm going to rehash a little bit of the
11 testimony only because we've had a lot. It's Thursday a
12 little after 11 o'clock. We been here all week. And I
13 know that you all had been paying attention, but it is
14 almost more than I can stand. And I been over there
15 taking notes pretty feverishly the whole time. We had
16 Deputy Gifford up here testifying. He wasn't the first
17 officer on the scene, but he was the responding deputy.
18 By the time, he got there I think Rollins Rhodes had
19 already placed my client into custody. He was cuffed and
20 Deputy Gifford said he took a statement. Deputy Gifford
21 didn't record a statement. Deputy Gifford made his report
22 a while later and made his reports based on the notes.
23 And he even said from right over there, I didn't take a
24 thorough statement. My only goal as the responding deputy
25 is to get there, figure out what happened, get the nuts

1 and bolt of it, pass that on to somebody else. And then
2 make sure I maintain security at the scene, tape
3 everything off. Everybody that comes and goes comes
4 through me, got to sign this sheet so we know who's here
5 and who ain't. He says in his statement, my client said
6 he put the gun in the house. Obviously, you've heard some
7 testimony that suggest otherwise. That my client's wife
8 sometime later put the gun in the house.

9 Here's what I want to ask you, ladies and
10 gentlemen, Deputy Gifford taking notes, not recording the
11 statement -- I'm not sure what the question was and I'm
12 not sure what the answer was. Was the question where is
13 the gun, it's in the house. Suspect put gun in house.
14 That's not the same thing. Without a recording -- without
15 knowing definitively what the question was and what the
16 answer was, we don't know what actually was said and
17 that's important. And I know it is important to record
18 statements because four other statements got recorded and
19 only five were taken. In the same way, you heard from
20 Investigator Hester. He said he was walking through --
21 here I'll use exhibit 13. He said he parked around here
22 and he walked down the driveway between the screwdriver,
23 between Mr. Steve Springs and the knife and the van, he
24 walked this way and got to my client. And then he took a
25 statement from my client. And he said -- saw that

1 screwdriver before I got there, hadn't been marked. You
2 remember he said they hadn't put up the little tent
3 markers yet number one and two. I saw it laying on the
4 ground. And his report I think he said he made it on the
5 27th, this happened on the 24. He had talked to several
6 witnesses two or three times by then. He already made up
7 his mind as to what had happened by the time he got down
8 scribbling notes on his report. But in his report, he
9 said my client said I saw him with a screwdriver. Ladies
10 and gentlemen, I love for you to hear a recorded statement
11 of my client taken at the scene that said I saw something
12 in my hand or I saw something in his hand or I saw a
13 screwdriver in his hand cause Gifford says he said he saw
14 something in his hand. Now, was that question, did he
15 have a weapon. Yeah, I think so, subject said he saw
16 something in his hand. And was Hester's question did he
17 have something in his hand. Yeah. Was it that
18 screwdriver over there. I guess so. Subject said he saw
19 him it with a screwdriver. Do you see why this is
20 critical. It's absolutely critical. You can't possibly
21 know because they want tell you. And the State is going
22 to present evidence to you that said that it hinges right
23 there. And I absolutely agree that that is a critical
24 factor of evidence that didn't give. What did he say?
25 Gifford would also suggest that a screwdriver

1 and a knife are not weapons. He and I are going to have
2 to agree to disagree on that.

3 Corporal Johnson she now lives down in Columbia.
4 She came, she took a bunch of pictures. She's the one
5 that went around laying tent markers everywhere. She said
6 they swabbed for DNA. They swabbed the screwdriver for
7 DNA. They swabbed the knife for DNA. And then she bagged
8 them up. She didn't do anything with them because she
9 ended up moving to Columbia sometime later. She said we
10 didn't bother fingerprinting them. Why not? I wasn't
11 told. Nobody told her to. They told me to swab, that's
12 it. Didn't bother fingerprinting. When the question is
13 who was the last person to touch this. How is the answer
14 not let's try fingerprinting it, let's give it a shot,
15 let's may be we'll answer our own question. Maybe, we can
16 remove reasonable doubt. If I can tell you who the last
17 person to have their hands on anything is, we know a lot
18 more wouldn't we. They can't tell you because they didn't
19 do their investigation. The way they know they could.
20 They didn't report my client. They didn't even attempt to
21 fingerprint him, but we'll swab around here. Where did
22 she swab? Did she swab a little bit on the bottom. Did
23 she swab every square inch of the handle. She swab any of
24 the shaft of the screwdriver. I believe her testimony was
25 just the handle not sure where. Just the knife on the

1 handle not sure where, not sure how much. You heard a
2 SLED agent testify if you swab here and there's no DNA
3 here, that doesn't mean if you hadn't swabbed here you
4 wouldn't have found something, thoroughness, ladies and
5 gentlemen. Thoroughness is how the State would otherwise
6 convince you beyond a reasonable doubt and that's what
7 they haven't done here, which is why they haven't
8 convinced you beyond a reasonable doubt. Corporal Johnson
9 also testified about a bag of screwdrivers that she found
10 in the back of Steve Springs' car. And in her report, she
11 noted none of them appeared to be missing. Sounds like
12 she had made up her mind as to what had happened said I've
13 never seen this bag. I don't know this fellow. I have
14 know idea what it look like yesterday but nothing looks
15 like it's a miss here. Sounds like I made up my mind. My
16 investigation is over. It is the afternoon of the
17 following day and I have decide, that's what Corporal
18 Johnson will tell you. She says I know what happened even
19 though she didn't get there for another hour. The place
20 was crawling with investigators and forensics people doing
21 this that and the other. She's relying on a little bit of
22 information to make a lot of decisions.

23 Investigator Hester took five statements. If
24 you count the first one that George Watson, he said only
25 lasted a few seconds, he took six. I'm only going to

1 count five because George says the first one wasn't real,
2 took five recorded four. What are the odds? What are the
3 odds that the one, the one that he decided not to record
4 was Sunny Scott. Awfully convenient and I'm telling you,
5 ladies and gentlemen, a lot of questions would be answered
6 if we had a recorded statement. He was at the scene. He
7 had the capability and we know that because four more
8 statements from the scene were recorded, but not Sunny's.

9 Where is the gun? It's in the house. Suspect
10 says he put the gun in the house, not the same.

11 We heard from Hubert Black. Hubert Black is one
12 of the Johnny-come-latelies in this case. Right before
13 hunting season last year, which estimatively would have
14 been two weeks prior to September 24th, Hubert Black says
15 Sunny was telling him he was gone kill about everybody in
16 Florence County. He gone kill this guy. He was gone kill
17 that guy. He was gone do this. And then later Hubert
18 finds out that one of those guys is actually dead. I
19 called, I left a message. They said he was on vacation.
20 I told him he needed to call me because I had some
21 information. When did he call him? He didn't. Ever.
22 Thirteen months later, nothing.

23 Well, your information was so critical surely
24 you followed up with him, couple weeks went by, Hey,
25 hadn't heard from that investigator. He's definitely back

1 from vacation now. I'll give him a call. I'll tell him
2 what I got to say. Didn't do that. Thanksgiving and
3 Christmas and every holiday in between September of last
4 year and September of this year came and went. Hunting
5 season came and went. Man, has it really been a year and
6 I hadn't heard. Maybe, I should call. Nothing, but now,
7 ladies and gentlemen, now he's got something to say. And
8 he's got a sharp memory for an old guy who hadn't gone
9 over that in the last 13 months. And it hadn't been on
10 his mind then enough to bother anybody, but he for 13
11 months didn't think a thing about it and now all of sudden
12 he remembers. Here's what I will tell you, even if it got
13 said -- the other day I walked into my house and my dog
14 chewed up a shoe. I could kill him. I'm going to kill
15 him the next time he does it. I hope he hadn't chewed up
16 a shoe when I come home today because apparently now I'm
17 going to have to kill him because I said that. I've
18 obligated myself to committing to what I have said even if
19 it's an expression. I could eat a horse. I will never
20 say that one again.

21 Investigator Hester using his memory of what the
22 back of the van looked like said, yeah, I think it was
23 secured everything was organized, yeah, that's how I
24 remembered it. The same way I remember that he said the
25 fellow had a screwdriver, that's how I remember the back

1 of the van. And everything was secured and locked down
2 and everything was very well organized. Yet, that's how I
3 remember it, just like what he said. Reasonable doubt
4 ladies and gentlemen.

5 The DNA from the SLED report she said there
6 wasn't any usable information. Hubert Black he doesn't
7 have usable information. If it was that valuable, ladies
8 and gentlemen, he would have done something about it. He
9 would have followed up or they would have followed up with
10 him.

11 Deputy Gifford did his job. He absolutely did
12 it. But he did a cursory job of it, that's the way it's
13 suppose to be. He's not the lead investigator. It's not
14 his job to determine what gets fingerprinted, what gets
15 recorded, what gets done. It's his job to get in there,
16 get a very broad assessment of what's happened and secure
17 the scene.

18 Corporal Johnson same way. It's her job to take
19 pictures. It's not her job to make decisions. She does
20 what she's told. She followed up. She swabbed. She
21 turned it in and never heard from it again.

22 Michael Bruce the State called Michael Bruce.
23 Michael Bruce will tell you Steve Springs was threatening
24 Sunny on the phone. I could hear him, I'm coming over
25 there to get rid of y'all. No, you're not, don't come

1 over here, leave me alone, stay away. I'm coming. Don't
2 worry Sunny he's not coming. I don't know this guy, but
3 he ain't gone follow through with that, he's not coming.
4 You ain't got anything to worry about. Sunny does. When
5 he pulls in that driveway and shines his headlights in
6 Sunny's face, Sunny's got something to worry about.to.

7 Mr. Ozment wants to talk about Facebook, what my
8 client's wife said on Facebook two or three days before
9 this happened. And how she said I could kill him, wait
10 until Sunny finds out, wait until Sunny finds out. And
11 what he's gone do? Nothing. He got upset with her.
12 Well, I'm sorry that he got upset. All she said -- she
13 said all I told him was that he got upset with me and I
14 had to leave. I got to go take care of this. I got to
15 make sure this woman's air gets turned back on. That's
16 going to drive somebody to commit a murder. I'm going to
17 be careful about what I put on Facebook. I'm going to be
18 careful about what I say from now on if that's enough,
19 ladies and gentlemen.

20 Larry Bruce. Larry Bruce has known Sunny 20
21 years. He's worked for Sunny or Sunny's worked for him.
22 They worked together. He lived right down the road. He
23 said I couldn't put Sunny at hurting somebody like that.
24 He knows it, known him for two decades. Murder no way,
25 not a chance. Sunny I believe he said Sunny not capable

1 of doing that, not capable of murder.

2 Dr. Presnell the autopsy report she says that
3 Steve Springs was essentially unsavable at the time of
4 impact, that on the pulling of the trigger with the way
5 the bullet went through his body, I believe she said he
6 could have been at the hospital and I don't think that he
7 would have lived.

8 An enormous portion of Mr. Ozment's case is what
9 happened afterwards. What he would suggest happened
10 afterwards. What Dr. Presnell says, ladies and gentlemen,
11 of what I'm here to tell you is that that doesn't matter.
12 She's saying CPR, surgery on the operating table not going
13 to survive with all that damage and that's a terrible,
14 that's an absolutely awful thing. But what it means,
15 ladies and gentlemen, is that when my client feels
16 threatened in that moment and squeezes that trigger,
17 that's what matters that moment in time. The moments that
18 led up to it and that second, that split second that's the
19 moment that you need to be worried about, that's the
20 moment that you need to be focusing on not the fact that
21 he freaked out later and was in shock and didn't know what
22 to do. Even if you believe the testimony presented by the
23 State couldn't that be all that is. Never shot a man
24 before and doesn't know what to do with himself. Has
25 Mr. Ozment convinced you beyond a reasonable doubt, that

1 that isn't the case. He will probably tell you that this
2 is a murder because Steve Springs wasn't coming over there
3 to cause any trouble.

4 Crystal Hanna Steve's paramour is a legal term
5 for girlfriend and boyfriend. They're both married to
6 other people, but they were having a relationship. She
7 loved him, she's crazy about him. They been together for
8 several months. She'll tell you that her phone was on
9 mute on a three-way conversation and when she says Sunny
10 suggested well let's meet over at Crystal's house. She
11 said that's not a good idea, I'm trying to put my kids to
12 bed oops. We can't hear that. Miraculously the two them
13 somehow agreed, oh, yeah, we'll go somewhere else. And
14 now, Steve's coming over to Sunny house per Sunny's
15 suggestion according to Crystal. What I might agree to,
16 ladies and gentlemen, is that when Steve Springs knew that
17 Crystal Hanna was listening maybe then, maybe then he
18 said, hey, bud everything is cool can you imagine that.
19 One phone call I'm coming over there I'm going to get rid
20 of you, I'm going to kick your ass. And then a few
21 minutes later when his girlfriend was listening. Hey, man
22 everything is cool. I just want you to tell your wife to
23 leave me alone, that's all, that's what I'm coming over to
24 tell you. If that's what you got to say, you don't need
25 to come over. I heard you. You made your point. You

1 said it. When you come over, you got something else to
2 say. You not done talking. You've made your point if I
3 just want you to leave me alone. If you want to be left
4 alone, don't come over, that's the easiest way because I'm
5 at my house. I'm not saying you can't go somewhere else.
6 I'm saying I'm at my house. It's easy for me to leave you
7 alone when I'm sitting on my front stoop. The easy way is
8 you don't come over, that's what should have happened.

9 Crystal was obviously very upset on the stand
10 and I'm not in a position to dispute that either, ladies
11 and gentlemen. It's a terrible thing. A person that she
12 cared about obviously a life is gone. And anything that I
13 have said during this trial, anything that I'm saying now
14 don't ever suggest that any of that to me means I wanted
15 this or that Sunny wanted this. Nobody wants anybody else
16 to get shot. Nobody wants anybody else to die. Worse
17 case scenario, last option, but what did she, well, Mr.
18 Ozment asked her how it's affected her relationship with
19 her mother and her stepfather. She said I hate them. I
20 hate them. How much you hate them Crystal? Hate them
21 enough to come up here say that Sunny say, oh, yeah, come
22 on over to the house because you'll remember she admitted
23 that that wasn't in her statement. Now, she'll say she
24 didn't gave a statement, she just answered some questions,
25 but she left that part out. But I hate him. I can't

1 stand him. Crystal's testimony.

2 Carl Munn didn't have a whole lot to offer.
3 Carl Munn's got his times wrong and that's fine he was
4 only up here for a few minutes.

5 And then we had George Watson. George Watson
6 you heard investigator testify that if George Watson did
7 anything voluntarily accessory after the fact, so maybe he
8 does take the gun. Maybe, he's the one to get the
9 screwdriver and then the cops show up. Oh, man, what if
10 they charge me with murder. Then what if they found out
11 that I did anything afterwards. He was freaked out. He
12 didn't know what to do. I was trying to trying to help.
13 He threatened me. He said he was going to kill me. He
14 said he was going to kill my girlfriend. He said he was
15 going to burn our kids up in our house. And then he
16 handed me a loaded gun. He said I'm going to kill you,
17 I'm a threat to you here take this riffle. Sounds
18 reasonable doesn't it. And then he didn't do anything
19 about it. At one point he admitted that he told them that
20 night, I was going to make a citizens arrest. I was going
21 to take him into custody, but I didn't want to have to
22 shoot him. That doesn't sound like somebody who's very
23 intimidated or somebody that's a threat, sounds like
24 Captain American of the year, just been handed a loaded
25 gun by a person who's told him, I'm going to kill you.

1 He's an accessory to this crime, ladies and gentlemen, if
2 you find a crime was committed and I don't think that one
3 has. But he doesn't know that that night. All he knows
4 is the cops are here and they're asking a lot of questions
5 and I don't want to go. I'm worried about number one
6 right now. Sunny can worry about himself some other day,
7 but today now it's about George. No, no, he forced me to
8 do all that stuff and I say him put the screwdriver there
9 and all that. We're not buying it, ladies and gentlemen.

10 Another thing I thought was peculiar George
11 Watson suppose to be terrified, right, horrified. I'm so
12 scared. I'm so scared that I still live from here to that
13 door frame. I'm so scared that it hadn't changed my life
14 whatsoever. I'm so scared that when I'm done testifying I
15 think I'll stay. I sit right there on the front row,
16 that's how scared I am if I'm George. I'm terrified.
17 Doesn't sound like a guy that's scared to me. His fiancé,
18 his wife whatever you want to call her she comes up here
19 yesterday. What did she say? She basically said, yeah,
20 everything that George said was the truth. Oh, and also
21 I've never spoken to law enforcement ever. I didn't
22 bother talking with them that night. I didn't bother
23 talking with them the next week. In fact, the first time
24 I ever talked with anybody was a week ago today. Maybe,
25 she and Hubert Black have the same cell phone provider. I

1 don't know. Maybe, their phones don't work, but they have
2 all of this information and surely somebody would like to
3 know it. They'll come find me. Didn't so much as -- she
4 didn't even call. She didn't call and leave a message.
5 At least Hubert did that said I got something I might want
6 to tell you. I'm not going to follow up on it. She
7 didn't even bother leaving a message. She did nothing.

8 The judge is gone charge you the law of the case
9 in a little bit. If I tell you anything that he says is
10 otherwise, he's right. And I am absolutely every time.
11 What he's gone tell you is that the State not only is
12 their burden beyond a reasonable doubt for the charge of
13 murder. Their burden is beyond a reasonable doubt to
14 disprove self defense. Because my client said I defended
15 myself. He came. He had threatened me. He came, called
16 me earlier saying he was gone come over there and get rid
17 of it. Those were his words. I'll get rid of him.
18 Michael Bruce heard him say that. I'm coming over there
19 to get rid of him. And everybody told me he wasn't coming
20 and here comes his van.

21 I can't imagine that feeling, ladies and
22 gentlemen, sitting there locked out of my house, nowhere
23 to go, waiting on my wife to get home and here it comes.
24 What am I going to do now? Steve Springs came over there
25 for one reason and it was not to be left alone. And it

1 wasn't to tell anybody leave me alone. He came over there
2 to get rid of Sunny Scott. Judge, like I said, he's gone
3 tell you beyond a reasonable doubt to disprove that my
4 client acted in self defense.

5 I'm a football fan and I'm originally from North
6 Carolina which make me a Tar Heel fan and that's very
7 inconvenient for me especially during football season for
8 any of you who are fans. But I watched a lot of college
9 football, watch pros as well. And they got a new rule in
10 the last few years where if a judge disagrees with a call
11 or a coach disagrees with a call, they can challenge it.
12 And the coach has a couple of red flags as oppose to the
13 yellow flags that a referee would have and throw it out on
14 the field and he'll say didn't happen that way. His foot
15 was -- he was in bound. He was out of bounds. He caught
16 the ball and he made a football move, that's a reception
17 and then a fumble, that's not an incomplete pass. And
18 then referee will walk over to the sideline -- they'll be
19 an original call on the field incomplete pass. He'll walk
20 over to the sideline. He'll watch a few videos of
21 different angles try and decide what happened. If he
22 can't decide what happened, call on the field.

23 The rule in the NFL and the rule in college and
24 if you have seen any of these games with a challenge,
25 you've heard them say it it's indisputable evidence. Now,

1 that's not the same words as beyond a reasonable doubt,
2 ladies and gentlemen. But I put to you that they're
3 basically the same. You got to have indisputable video
4 evidence of the football play to decide that the call on
5 the field is wrong. The call in this courtroom, ladies
6 and gentlemen, is not guilty. And without evidence beyond
7 a reasonable doubt without evidence that's indisputable
8 not up for a dispute that's reasonable, you can't overturn
9 that call. And without evidence to overturn the call of
10 self defense that's indisputable, that's beyond a
11 reasonable doubt, you can't overturn that call either.

12 He's also going to charge you on possession of a
13 weapon during the commission of a violent crime. Ladies
14 and gentlemen, when it's self defense, there is no crime.
15 You want have to answer that question once you found the
16 reasonable doubt in the first charge. You want have to
17 move on to that. Without the finding of a crime, there is
18 no finding on possession of a weapon during a crime.

19 Nothing else matters, ladies and gentlemen, that
20 moment in time. What must have seemed like hours,
21 watching that van come down the road. What am I going to
22 do now? Where can I go? He pulls into the driveway,
23 opens up door, I'm gone get rid of him, comes around the
24 door, comes toward him.

25 The State has not met their burden, ladies and

1 gentlemen, that not proving it beyond a reasonable doubt.
2 If you're looking for the reasonable doubt, it's scattered
3 all over the floor. When you get back there -- before you
4 get back there, the judge will tell you all 12 of you
5 unanimously must agree one way or the other. And I'm
6 confident that all 12 of you unanimously will agree, my
7 client is not guilty of murder. They have not disproven
8 self defense beyond a reasonable doubt. Thank you.

9 THE COURT: Mr. Ozment.

10 MR. OZMENT: Thank you, Your Honor. If it
11 please the Court. Mr. Grove. Mr. Grove gave an excellent
12 analogy in this case, in his opening and then in his
13 closing talking about his car. Talked about if you touch
14 a hot stove, you'll get burned. Talked about if I play
15 with a knife, I'll get cut. Apparently, with Mr. Scott
16 though, you don't cut, you don't get burned, you get belly
17 shot. You get murdered. I told you in my opening that
18 there was a plan, there's a plan, an act and cover up.
19 Every murder has those three things. So I'm going to go
20 through briefly as to where each of those things -- where
21 we saw that in this case. A plan Hubert Black came up
22 about two weeks before. Sunny had been drinking said, you
23 know, I'm going to kill three people one of them was Steve
24 Springs. Mr. Grove talked about, you know, if I say my
25 dog chewed a shoe, now I'm going to kill him if he does

1 that again. Hope, he doesn't chew another shoe. Well,
2 if -- someone walked into Mr. Grove's house sitting, Mr.
3 Grove is sitting there holding a riffle his dog is dead on
4 the floor with a shoe in his mouth, that's what we have
5 here. Well, the last time Mr. Grove said next time my dog
6 chewed a shoe, I'm going to kill him. Mr. Grove, riffle
7 and a dead dog and shoe next to it. I say that's pretty
8 much what he did. Sabrina Hartfield said she had run into
9 Ms. Scott right before this Ms. Scott said this Steve
10 Springs really bothering us. I'm going to have to do
11 something with him. Two days before this, two days before
12 a dead man was in her driveway had on Facebook, it's
13 ashame my grandson F up by this asshole. Yeah, an
14 asshole's going to cause me to kill him. I'll call you
15 tomorrow. Sunny did nothing yet but when he finds out.
16 And we know the rest of that sentence now. You know
17 exactly what happened to Steve Springs. I'm not going to
18 use her word for him again.to.

19 Crystal Hanna, Mr. Scott's own daughter, mother
20 of his grandchildren. Obviously, very very hard for her
21 to testify up here by the end of it basically and crying.
22 What did she say? She said I talked to Steve that day.
23 He was calm. He told Sunny I'm gone come over we're going
24 to talk. They decided where to meet. She didn't say
25 Steve was, you know, in a blinding rage cussing and all

1 that. And I'm not going to say they didn't have words on
2 the phone earlier. I believe Michael Bruce that they had
3 words on the phone earlier. But the fact of the matter is
4 Steve was going over there just to settle this like men,
5 let's talk about it. Let's hash this out. You leave me
6 alone and I'll leave you alone. That's what Crystal said.
7 Crystal said the last time she talked to Steve Springs is
8 at 8:07 according to her cell phone. She said it was 8:07
9 said he was going to the house right then.

10 Let's move on to the act. Crystal talked to him
11 at 8:07. Investigator Hester said on Mr. Scott's cell
12 phone they're calls to his wife 8:07 14 seconds, 8:11
13 seven seconds, 8:12 23 seconds, 8:32 35 seconds. The
14 first thing George saw when he walked outside, Sunny Scott
15 on the cell. When is the first time, Sunny Scott used his
16 cell phone 8:07, 8:07. When was 9-1-1 called, 8:53 46
17 minutes. Right now, I been talking to you about five
18 minutes. Forty-six minutes Steve Springs laid in that
19 front yard propped up in that door wheezing for his life
20 until he was dead. Forty-six minutes before anyone even
21 called 9-1-1. And then who called. Let's think about how
22 9-1-1 was called. Sunny Scott didn't never call 9-1-1.
23 He had time to go to Carl Munn's house. He had time to
24 use Carl's word, watch wrestling and time to drink a
25 couple beers. He didn't have time to dial four buttons

1 9-1-1 send. Didn't have time for that. Forty-six
2 minutes. And then Gloria called once Sunny was already in
3 the car with her. Remember, Sunny's called Gloria and
4 said, hey, I just shot Steve. Somebody's in the yard.
5 Gloria didn't call 9-1-1. She went home. She picked up
6 Sunny. She said and George said put the riffle in the
7 back of the truck. Then she called 9-1-1. Forty-six
8 minutes later with a dead man in her front yard.

9 Also all that time we never heard that anybody
10 checked on Steve. You know, Sunny didn't shoot him and
11 then oh my gosh see what we can do. They heard from
12 George who thinks that he's still alive and have to shoot
13 him again. And that makes since Sunny's deer hunter. In
14 my younger days, there was a time or two that I shot a
15 deer. It would go off in the woods, you follow the blood
16 trail and that deer wouldn't be dead yet. You shoot it
17 again put it out of its misery. That's exactly what Sunny
18 is going to do. He's a deer hunter. Lucky, Steve had
19 passed by that point. So what did Sunny do. He went and
20 watched wrestling and drink a beer.

21 What else do we know about his action. We know
22 about distances. We have right here the van was 14 feet
23 and 10 inches from the stoop or by all accounts Mr. Scott
24 was sitting. I'm going to try not to smack myself in the
25 face with this tape measurement. Right here 178 inches

1 14 feet ten inches where that van is parked. He open the
2 door it's 17 feet right here, 17 feet is where that open
3 door was. So I asked him or listen to what Mr. Scott
4 said. He said that Steve pulled up and took one or two
5 steps. He said you take another step I'm going to shoot
6 you. Well, from 17 feet, we'll say Steve took a big step.
7 He was this far away when he shot him. Ladies and
8 gentlemen, self defense says that Mr. Scott had to be in
9 reasonable fear of his own death with great bodily injury.
10 The evidence shows and this is a big step is how far he
11 was when he was shot, stumbled back a step or two and fell
12 over. He was closer than that, didn't see anything on the
13 ground that indicated he was any closer than that. Dr.
14 Presnell I asked her about gunshot wound. I asked her
15 does small wound penetrating right in the abdomen. She
16 didn't say there were soot marks. She didn't say it was a
17 burn mark like it was shot from six inches. No no, she
18 said it was just a small gunshot wound shot him back here.

19 Now, another element of self defense whether or
20 not Steve was armed because reasonable fear of death,
21 great bodily injury. What did Mr. Grove tell you? He
22 said you can't necessarily believe what Sunny said about
23 if he had something in his hand not at the scene. All
24 right. So Steve may have had nothing in his hand see or
25 he may have had something or it maybe different stories.

1 Because what George said is Sunny got a screwdriver out
2 and planted it. Mr. Grove may be George planted the
3 screwdriver, that again implies Sunny wasn't armed at all
4 -- I mean excuse me not Sunny. Steve wasn't armed at all.
5 I don't think that helps Mr. Scott. I think that helps
6 the case that this was a murder. What about the knife?
7 Nobody saw a knife that night.

8 Let's talk about George for a minute. We're
9 still in the act here. George heard a gun shot left his
10 house. Sunny says, oh, my gun jammed. My gun jammed. He
11 says actually, no, I killed him. George didn't believe
12 him at first. Walked to the side, see's his van. Oh, my
13 gosh Sunny seems to be serious. Threatens George three
14 times, threatens him, threatens his family, threatens to
15 burn his house down, get rid of this gun. You know
16 Mr. Scott may have taken the law into his hand that night
17 and taken care of somebody he didn't like. But George
18 Watson after having his life threatened, his family
19 threatened, living right there next door. I don't blame
20 him at all for being scared. I would have been scared.
21 He did what he was told because he was scared to death.
22 Was he scared? Yeah, think about what his wife said, said
23 that he was white as a ghost. He was freaking out. I've
24 never seen him like that before. When I started talking
25 to him, she was shaky up here. Why would George have

1 anything to cover up? Talk about George might be charged
2 with accessory. George could only be charge with
3 accessory if this is a murder. That's the only reason
4 George would have. George didn't sound like he was
5 getting scared being charged or anything, so I scared I
6 did what I was told. And as soon as I felt safe, at the
7 Waffle House I told the police exactly what happened.

8 So moving on with George, let's talk about the
9 cover up. What did George see? George saw a screwdriver.
10 Remember, I asked George I said George have you seen the
11 screwdriver since that night. No. Is this the
12 screwdriver? Yes. Saw Sunny take this screwdriver out of
13 the boat, which you'll have a picture of back in the jury
14 room and walk around to the front of the house. George
15 didn't say I saw him plant it. No, no, George telling you
16 the truth. He said I saw him just walk around the front
17 of house. When he came back, this screwdriver wasn't
18 there. George is telling the truth.

19 Now, what else did George say. George said talk
20 to Gloria she tells me to go get the gun go back to the
21 woods, come back, put the gun in the back of the truck.
22 Gloria back that up. She said I told George to go get the
23 gun. He put it in the back of the truck. I said you mean
24 the bed of the truck? Yes, the bed of the truck. So we
25 know that George had taken the gun. He taken the gun

1 except for the fact that his life was threatened if he
2 didn't take the gun, so everyone agrees on that.

3 Then George said he heard Gloria talking to
4 Sunny before she called the had police and said you better
5 get your story straight. Because I got a dead man in my
6 yard. Carol Munn said Sunny came over to watch wrestling
7 for about 20 minutes. He wasn't sure about the time, had
8 a beer or so. He said he killed Steve. I didn't really
9 believe him and he left. Didn't seem like Sunny was too
10 concerned.

11 Let's now talk about Larry Bruce. Larry said
12 I'm a good friends with Sunny. I have been. I think he
13 said he worked for him 15 years or more friends a long
14 time. And Larry Bruce said what makes me sad to be up
15 here I'm losing my best fishing buddy. And Sunny's a good
16 guy. I didn't think Sunny would ever do something like
17 this.

18 What else did Larry tell us? Said I went over
19 there the next day saw Gloria and she said I put a screw
20 driver excuse me -- I mean, I move the screwdriver from
21 his hand and I put a knife there. And I'm worried my DNA
22 may be on it. So Larry told us. Why would Larry say
23 that? This is his best fishing buddy, unless it's the
24 truth. Why would he come in here and throw his fishing
25 buddy -- his good friend under the bus unless it's true.

1 You know, Mr. Grove wants you to listen to Mr. Bruce and
2 believe that Sunny is a good guy and wouldn't do something
3 like this. But ignore the rest of his testimony about
4 Gloria moving the screwdriver that Sunny there and putting
5 a knife in his hand.

6 Growing up, my dad had a farm and I spent more
7 Saturdays than I wanted to when I was 14 years old digging
8 fence posts. And for some that, that wouldn't always be
9 with an auger on the back of a tractor, which is usually
10 the ones he wants me to did. And the ones we couldn't use
11 an auger, we use pushed whole diggers. So mid afternoon
12 dad and I would take a break. We go up get like a Snicker
13 bar from the corner store. One day I opened that Snicker
14 bar took a bit tasted good, took another bite it tasted
15 good, pulled the wrapper back some more and the other end
16 of the Snicker bar was covered in mold. Gross, now you
17 want to vomit. I've eaten half this nasty Snicker bar
18 that tasted fine but turns out the other half is covered
19 in mold, that's what Mr. Grove wants you to do with Mr.
20 Bruce's testimony. He doesn't like part of it, but he
21 really likes the other part. Eat this bad half of the
22 moldy Snicker bar, eat this half of it and forget about
23 that mold. He would cut that off and throw it away.
24 Don't eat that the moldy Snicker bar. Larry Bruce came up
25 here and told the truth.

1 Let's talk a little bit about the law. And just
2 like Mr. Grove said don't listen to what I say on the law,
3 the judge tells you something different, he's right.
4 Mr. Scott is charged with murder. He killed a man with
5 malice aforethought. The judge will tell you that malice
6 can just be a split second. The second you decide I've
7 had enough of this. Doesn't have to be planned over a
8 week or months. It can be that long in deciding I've had
9 enough he's going down. That's malice aforethought. Self
10 defense I have a burden of showing this wasn't self
11 defense. In addition, I've already talked about distance
12 whatnot. Some of the elements of self defense are fear of
13 great bodily death or injury, fear of death or great
14 bodily injury. Only testimony we've heard at all, that
15 Mr. Scott was scared, threatened anything like that was
16 from his own statement to law enforcement that night. And
17 he said, yeah, I felt scared. He didn't say this man was
18 about to kill me. He charged me like a bull that was in
19 the process of taking a screwdriver in one hand and a
20 knife in the other hand and killed me. He was two feet
21 away from me. No, no, I'm scared. And the defense wants
22 you to think that is fear of death. You know, I am
23 scared. What else? He didn't bring this on himself.
24 What did Crystal Hanna say? She said they were talking
25 and they decided to meet. What else did Larry Bruce say?

1 Remember that moldy candy bar, part of that moldy part was
2 Larry Bruce said Sunny called me that night and said I got
3 Steve Springs coming over to the house, either I want us
4 to beat him up or I want you to beat him up, that's also
5 what Larry Bruce said. That implies to me that Sunny knew
6 Steve was coming to the house. And Sunny had some idea
7 what he was going to do to him when he got to the house.
8 He brought this at least in part on himself, the trouble,
9 but he ended the trouble.

10 So what are we left with. We know where the
11 screwdriver came from. We know where the knife came from.
12 Even Mr. Grove admits Sunny's first statement on those who
13 knows what he meant. But we have good testimony George
14 Watson and from Larry Bruce on where those two items came
15 from. An unarmed man standing back here in a man's yard.
16 And he's shoot like a dog. He's murdered and he falls
17 over and lays there for 46 minutes. Now, we know from
18 Dr. Presnell that this could have maybe happened in an
19 emergency room and couldn't help him. Nobody knew that
20 that night. Sunny Scott didn't know that. Sunny Scott
21 didn't say based on where I shot him even if this was an
22 emergency room, he's already dead. So, I guess, I'll just
23 go have a beer and watch wrestling. No, no, Sunny went
24 and told George he's still alive I may have to shoot him
25 again. But he passed before he had to shoot him again.

1 And he laid there 46 minutes until the police were called.
2 And laid some more before his body is eventually rolled
3 over. Forensic saw a gunshot wound and he heard what
4 happened to him from there. If I touch a stove, I'm going
5 to get burned. I play with a knife, I will get cut.
6 Sunny Scott doesn't burn, he doesn't cut you. He belly
7 shoots you and let you bleed and wheeze to death in his
8 front yard for 46 minutes. He murders you. That's why I
9 ask when you go back in that jury room, you mark that
10 verdict form guilty. Thank you very much.

11 THE COURT: Mr. Ozment.

12 Ladies and gentlemen, we're going to take a
13 recess. One of the things you're going to do back in your
14 jury room is the clerk is going to take your lunch order,
15 that will take about five minutes or so. Then you'll come
16 back out and I'll give you the charge on the law. You may
17 not yet. You may not yet begin to discuss the case, that
18 time is coming shortly probably within the next 30 minutes
19 or so, but do not begin discussing the case yet. Thank
20 you.

21 (WHEREUPON, the jury retire to the jury room.)

22 THE COURT: Okay. You can come look and take a
23 look at the verdict form. Anything before we recess from
24 the State?

25 MR. OZMENT: No, Your Honor.

1 THE COURT: Defendant.

2 MR. GROVE: No, Your Honor.

3 THE COURT: We'll take about five or ten
4 minutes.

5 (WHEREUPON, a short break was taken.)

6 THE COURT: Mr. Grove, is the State ready for
7 the charge?

8 MR. OZMENT: Your Honor, the State is ready.

9 THE COURT: I'm sorry, Mr. Ozment. I apologize.
10 Mr. Grove, is the ready?

11 MR. GROVE: Yes, sir, Your Honor, we are.

12 THE COURT: You can bring in the jury.

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

14 THE COURT: All right. Thank you. Ladies and
15 gentlemen, I like to have your attention for the next 20
16 minutes or so. I am going to give you what is called jury
17 charge or charge on the law. Before I get into the gist
18 of it, I wanted to let you know that I can guarantee you
19 one primary thing and that is I'm going to repeat myself
20 throughout the charge. That is typically not because I've
21 lost my place or forgotten what to tell you. It's simply
22 that the charge consistent of me explaining to you certain
23 legal principles. And I will necessarily have to refer to
24 those legal principles more than once because they do
25 intertwine with one another. I'll be talking to you about

1 principles such as the presumption of innocence, the
2 burden of proof beyond a reasonable doubt. I'll be
3 talking to you about credibility of witnesses. I'll also
4 be talking to you about direct and circumstantial
5 evidence. And I will talk to you about the elements of
6 the offense of murder. And I'll talk to you about self
7 defense and possession of a weapon during the commission
8 of a violent crime. Again, those principles do have
9 certain components that do refer back to something else,
10 so please forgive me if I do repeat myself. That is -- it
11 is not my intention to overly emphasize one particular
12 principle, but under the law I'm required to give you a
13 correct and complete charge on the law. You will not have
14 a written copy of this jury charge in the jury room with
15 you. And what I like for you to do is just to pay very
16 close attention. This is not an opportunity for you
17 memorize these legal principles, but as I explain them to
18 you, it will probably make a lot of sense and that alone
19 may help you understand that as a whole.

20 Now, ladies and gentlemen, obviously during the
21 course of this trial and you and I have had certain duties
22 to perform. You know by now that you are the judges of
23 the facts. I'm the judge of the law. One particular
24 example of how that is very pertinent in this case is that
25 the witnesses as I explain to you by design sit next to

1 you when they testify, that is because it is up to you and
2 you alone to evaluate the witness testimony as to whether
3 or not you believe it. So that's why courtrooms are
4 designed to put witnesses next to the jury.

5 You will also notice that exhibits that are
6 introduced are put into evidence and they will be back in
7 the jury room for you because it matters what you think
8 about those exhibits. Most of the exhibits -- I cannot
9 think one exhibit in this case that I have actually even
10 seen. And the reason for that is if there's no objection
11 or issue as to admissibility, it doesn't matter if I've
12 seen the exhibit or not. It doesn't matter what I think
13 about the exhibits, that's your responsibility and your
14 responsibility alone. So most of the exhibits that are
15 over there, I have not even seen unless they were even
16 actually shown to you and I happen to see that too. So
17 that is one example of how you are the judges of the facts
18 and I have no responsibility in that particular area.

19 Now, the defendant in this case is charged with
20 two criminal offenses and your deliberations in the case
21 will result in your foreperson's completion and signing of
22 this verdict form. Your verdicts have to be unanimous,
23 that means all of you have to agree. This is not going to
24 be an 11 to one vote, ten to two, nine to three. It has
25 to be absolutely unanimous. And you're not permitted to

1 return a verdict unless it is absolutely unanimous.

2 Now, the defendant is charged with the crime of
3 murder and the crime of possession of a firearm during the
4 commission of a violent crime. I'll explain to you in
5 detail what the State will have had proven to you beyond a
6 reasonable doubt in order for you to return guilty
7 verdicts. The defendant has entered pleas of not guilty
8 to both charges. He does not have to prove or disprove
9 anything. The burden is solely on the State to prove the
10 elements of the crimes charged beyond a reasonable doubt.

11 Now, the evidence as I mention to you at the
12 beginning of the case comes in primarily three different
13 ways. One is by testimony. You seen that firsthand, also
14 exhibits. You've seen that firsthand. And sometimes by
15 stipulation, that's when the two sides agree that a
16 certain fact is true. If evidence has come in by way of
17 testimony or exhibit, you can consider it. If I have
18 instructed you to disregard some evidence that you have
19 seen or heard or any comment made by a lawyer or by anyone
20 else under the oath that you taken to follow the law, you
21 have to disregard what I told you to disregard.

22 Now, the defendant does come into this courtroom
23 clothe with the presumption of innocence and that
24 presumption of innocence is I'll explain in more detail in
25 a moment remains with the defendant unless and until you,

1 the jury, find from the evidence that the State has proven
2 him guilty beyond a reasonable doubt.

3 Now, ladies and gentlemen, the verdict form
4 again will reference the two charges and I'll go over that
5 right now and in detail later. The first inquiry says as
6 to the charge of murder: We, the jury, unanimously find
7 the defendant and there are two choices not guilty and
8 guilty. Number -- and then it says if you found him not
9 guilty of murder, you stop and deliberate no further. And
10 the foreperson would sign the verdict form, date it and
11 tap on the door and let the bailiff know you reached a
12 verdict. If you have found the defendant guilty of
13 murder, then you go to question number two. And it says
14 as to the charge of possession of a firearm during the
15 commission of a violent crime: We, the jury, unanimously
16 find the defendant again there are two choices not guilty
17 and guilty.

18 Now, the fact that a person is arrested or
19 charged or indicted or on trial for any criminal offense
20 is not evidence of guilt. The -- as I mentioned, the
21 defendant's pleas of not guilty put the burden on the
22 State to prove the elements of the crime charged. The
23 indictment is not evidence. It is simply the formal
24 written instrument that walks the case into the courtroom.
25 And as I mentioned in South Carolina, we do have the

1 indictment process, that's how cases where crimes are
2 charged get into the courtroom.

3 Now, necessarily as you know in acting as the
4 finders of fact, you must determine the credibility of the
5 witnesses who have testified in this case. You can
6 believe every word of what a witness has to say. You can
7 disbelieve every word or you can believe parts and reject
8 the rest, that's entirely up to you. Use your common
9 sense, that's the only thing that you can do. And you can
10 take things into account that include but are certainly
11 not limited to how the witness appeared on the stand, was
12 witness hesitant or straightforward when answering
13 questions, what was that witnesses ability to know what he
14 or she claims to know, does it make sense to you that they
15 claim to know something that they claim to know. Also,
16 you can take into account whether or not that witness'
17 testimony been strengthened or weakened by other evidence
18 that is in the record. Also, you can take into account
19 whether or not the witness may have said something the
20 same or different on a prior occasion. You can take into
21 account whether or not that witness has a reason to give
22 testimony that helps or hurts one side over the other. We
23 call that bias or prejudice. Did that witness have a bias
24 or prejudice in giving the testimony that he or she gave.
25 You can believe one witness over many or many over one,

1 that is entirely up to you. And again evidence weighs
2 with you if it convinces you of its truth and that
3 includes testimony.

4 Now, as I mentioned a couple of times during the
5 trial, typically when a witness testifies in a trial they
6 cannot give opinions. There is an exception in the rules
7 for people who are called expert witnesses. If somebody
8 is qualified by education, training or experience in a
9 particular art or science or profession, that witness can
10 give opinions and the reasons for those opinions. You are
11 not bound by the testimony of an expert just because it
12 comes from someone who is labeled as an expert. If the
13 expert's qualifications are not sufficient in your
14 judgment or if the reasons given for the opinion are not
15 sufficient in your judgment, you can disregard the experts
16 opinion entirely if that's what you think is appropriate.
17 In addition, you can and you need not accept the testimony
18 of an expert just because it comes from an expert even
19 though it might be uncontradicted.

20 Now, ladies and gentlemen, I mention to you the
21 different ways that evidence comes in, that's testimony
22 exhibits and so forth. Just to switch gears for a moment,
23 there are generally two types of evidence that come in are
24 generally presented during a trial. These are called
25 direct evidence and circumstantial evidence. Direct

1 evidence is evidence that proves the existence of a fact
2 directly and does not require deduction. Circumstantial
3 evidence is proof of a chain of facts and circumstances
4 that indicate the existence of a fact. Crimes may be
5 proven by circumstantial evidence and the law makes
6 absolutely no distinction between the weight or value to
7 be given to either direct or circumstantial evidence.
8 However to the extent the State relies on circumstantial
9 evidence, all of the circumstances must be consistent with
10 each other and when taken together point conclusively to
11 guilt of the defendant beyond a reasonable doubt. If the
12 circumstances merely portray the defendant's behavior as
13 suspicious, the proof has failed the State has the burden
14 of proving the defendant guilt beyond a reasonable doubt.
15 And that burden rests with the State regardless of whether
16 the State relies on direct evidence, circumstantial
17 evidence or some combination of the two.

18 As I mention to you, the defendant has pled not
19 guilty to the charges in the indictment and that plea puts
20 the burden on the State to prove guilt beyond a reasonable
21 doubt. A person who is charged with a criminal offense in
22 South Carolina is never required to prove himself not
23 guilty. It is never required to prove himself innocent.
24 It's a very important rule of law that the defendant in
25 any type of criminal trial no matter what the charge is

1 always presumed to be innocent of the crime for which the
2 indictment was issued unless guilt is proven by evidence
3 satisfying you of guilt beyond a reasonable doubt.

4 The presumption of innocence remains around the
5 defendant shoulders or some describe it like a cloak of
6 righteousness and robe or that cloak stays around his
7 shoulders throughout the trial and even when you begin
8 your deliberations. The presumption of innocence remains
9 with the defendant until that robe is figuratively
10 stripped away by evidence that satisfies you of guilt
11 beyond a reasonable doubt. So those words the presumption
12 of innocence, there's not a mere legal theory or a simple
13 catch phrase that we toss around. The presumption of
14 innocence is a substantial right to which every defendant
15 is entitled unless and until a jury is satisfied of guilt
16 beyond a reasonable doubt.

17 Now, ladies and gentlemen, I've used the words
18 reasonable doubt. I would say probably 15 times already.
19 So I am going to tell you now what is a reasonable doubt
20 in the law. A reasonable doubt is the kind of doubt that
21 would cause a reasonable person to hesitate to take
22 action. Again, the State does have the burden of proving
23 the defendant guilty beyond a reasonable doubt. Some of
24 you may have been a juror in a civil case and you are told
25 to imagine a set of scales that are even. And if a party

1 has the burden of proof in a civil case, it's by the
2 greater weight of the evidence. And the party having the
3 burden has to tip those scales ever so slightly in his or
4 her favor.

5 Now, in a criminal cases, the State's proof must
6 be more powerful than that. The State must present proof
7 beyond a reasonable doubt. Proof beyond a reasonable
8 doubt is proof that leaves you firmly convinced of the
9 defendant's guilt.

10 Now, obviously there are very few things on this
11 earth that we know with absolute certainty. And the law
12 does not require the State to present proof that overcomes
13 every possibly doubt, but the State does have to present
14 proof that overcomes reasonable doubt. If based on your
15 consideration of the evidence, you are firmly convinced
16 that the defendant is guilty of the crime charged. You
17 must find him guilty. If on the other hand, you believe
18 based on your view of the evidence that there is a real
19 possibility that the defendant is not guilty, you must
20 give him the benefit of the doubt and find him not guilty.

21 Now, ladies and gentlemen, I further charge you
22 that the evidence of good character may in and of itself
23 create a doubt as to guilt and should be considered by
24 you, the jury, along with all the other evidence in
25 determining whether or not the defendant is guilty or not

1 guilty. The good character of the accused if proven may
2 be taken into consideration by you in determining whether
3 or not he is guilty of the crime charged. I further
4 charge you, ladies and gentlemen, that a statement alleged
5 to have been made by the defendant has been admitted into
6 evidence in this case.

7 While the Court or I have determined that the
8 State is admissible, I instruct you that you make the
9 ultimate decision of whether or not the defendant made the
10 statement. If the defendant did make the statement in
11 your judgment, you must determine whether the statement
12 was made by the defendant voluntarily and of his own
13 freewill. And that means that the statement was not
14 caused induced by pressure, force, fear, threat, coercion
15 or intimidation or by hope or a promise of leniency or a
16 reward of any kind. In determining whether or not the
17 statement was voluntary, you should consider both the
18 characteristics of the defendant and the details of the
19 questioning. Some of the factors that you may consider
20 are the age of the defendant, the defendant's education or
21 lack of education. The defendant's mental ability or
22 capacity. The defendant's intelligence. The defendant's
23 background and environment. The place and length of
24 detention. The nature of questioning and the advice or
25 lack thereof to the defendant of his Constitutional Rights

1 including but not limited to the right to remain silent at
2 any statement could be used against him in court. The
3 right to have a lawyer present. And that if he could not
4 afford a lawyer, one would be appointed to represent him
5 without cost, that he could stop making a statement at any
6 time. You carefully consider all the surrounding
7 circumstances before you give any weight to an alleged
8 statement of the defendant.

9 Now, the State has the burden of proving beyond
10 a reasonable doubt that the alleged statement was
11 voluntary. If you determine it was voluntary, you can
12 give it the weight or any consideration that you think is
13 proper. You must decide what weight, if any, should be
14 given to the alleged statement. And if you determine that
15 it was not the free and voluntary statement of the
16 defendant, you should not consider the statement at all.

17 Now, ladies and gentlemen, I also instruct you
18 and I emphasize to you that the fact that the defendant
19 did not testify is not a factor to be considered by you in
20 any way in your deliberations and in your consideration on
21 the question of the guilt or non-guilt of the defendant.
22 The fact that the defendant did not testify is not to be
23 considered by you in any manner whatsoever, simply put you
24 cannot think about it. You cannot talk about it and the
25 fact that he did not testify is not to be considered by

1 you in any way in the course of your deliberations. And
2 under your oath, I repeat that you're to draw no
3 conclusions whatsoever from the fact that he did not
4 testify.

5 Now, ladies and gentlemen, as I mentioned to
6 you, the burden is always on the State to prove guilt
7 beyond a reasonable doubt and the defendant is not
8 required to prove anything.

9 All right. Ladies and gentlemen, I get more
10 specific now. The defendant is charged with the offense
11 of murder. I am going to talk to you about that now. The
12 State must prove beyond a reasonable doubt that the
13 defendant killed another person with malice aforethought.
14 Malice in that respect is hatred, ill will or hostility
15 towards another person. It's the intentional doing of a
16 wrongful act without just cause or excuse and with an
17 intent to inflict an injury or under circumstances that
18 the law will infer an evil intent. Malice aforethought
19 does not -- or the element of malice aforethought does not
20 require that malice exist for any particular time before
21 the act is committed, but malice must exist in the mind of
22 the defendant just before and at the time the act is
23 committed. So there has to be a combination of the
24 previous evil intent and the act itself.

25 Now, malice aforethought may be expressed or

1 inferred. Those two terms expressed and inferred don't
2 mean different kinds of malice, but simply the manner in
3 which the malice may have been proven to exist. And
4 that's either by direct evidence or by circumstantial
5 evidence from the facts and circumstances which have been
6 proven. Expressed malice is shown when a person speaks
7 words, which express hatred or ill will for another or
8 when the person prepared beforehand to do the act which
9 was later accomplished. Now, ladies and gentlemen, malice
10 may be inferred from conduct, facts and circumstances
11 surrounding the events in question.

12 Now, ladies and gentlemen, I am going to talk to
13 you now about the principles of self defense. Self
14 defense is a complete defense. And the State must
15 disprove self defense beyond a reasonable doubt. The
16 defendant does not have to prove self defense. Again, the
17 State must disprove self defense. If you have a
18 reasonable doubt of the defendant's guilt after
19 considering all of the evidence including evidence of self
20 defense, you must find the defendant not guilty. If on
21 the other hand, you have no reasonable doubt of the
22 defendant's guilt after considering all the evidence
23 including evidence of self defense, then you must find the
24 guilty.

25 Now, the following or what I'm going to talk to

1 you about now are the elements of self defense. First the
2 defendant must have been without fault in bringing on the
3 difficulty. If the defendant's conduct was the type which
4 was reasonably calculated to and did provoke a deadly
5 assault, the defendant would be at fault in bringing on
6 the difficulty and would not be entitled to acquittal
7 based on self defense.

8 Now, that's the first element of self defense
9 and that is the defendant must be without fault in
10 bringing on the difficulty. Another element of self
11 defense is that the defendant was actually in imminent
12 danger of death or serious bodily injury or that defendant
13 actually believed he was in eminent danger of death or
14 serious bodily injury. If the defendant was actually in
15 eminent danger, it must be that the circumstances would
16 have warranted a person of ordinary firmness and courage
17 to strike the fatal blow to prevent death or serious
18 bodily injury. If the defendant believed he was in
19 eminent danger of death or serious bodily injury, it must
20 be that a reasonably prudent person of ordinary firmness
21 and courage would have had the same belief. In deciding
22 whether the defendant actually was or believed he was in
23 eminent danger of death or serious bodily injury, you
24 should consider all the facts and circumstances
25 surrounding the events.

1 The defendant does not have to have actually
2 been in danger. It is enough if the defendant believed he
3 was in eminent danger and a reasonably prudent person of
4 ordinary firmness and courage would have had the same
5 belief. The defendant has the right to act on appearances
6 even though the defendant's beliefs may have been
7 mistaken. It is for you to decide whether the defendant's
8 fear of eminent danger of death or serious bodily injury
9 was reasonable and would have been felt by an ordinary
10 person in the same or similar circumstances.

11 I further charge you, ladies and gentlemen, that
12 the words of a victim accompanied by hostile acts may
13 depending on the circumstances establish self defense.
14 Evidence of prior difficulties between the defendant and
15 the victim may be considered in deciding whether a threat
16 existed, whether the defendant has a reason to believe the
17 threat existed and how serious that threat might be.
18 Threats made by a victim may be considered in determining
19 whether a defendant actually was or believed he was in
20 eminent danger. The intoxication of the victim may be
21 considered in deciding whether the defendant's fear of
22 death or bodily harm was reasonable.

23 Also, ladies and gentlemen, another element of
24 self defense is that the defendant had no other probable
25 way to avoid danger of death or serious bodily injury than

1 to act in the way that he did in this particular instance.
2 You are to consider whether the defendant made a choice of
3 ordinary -- you may consider whether the defendant made
4 the choice a person of ordinary prudence in a similar
5 position would have made. You are not to consider whether
6 the defendant made the wisest or best choice, but instead
7 whether or not he made a reasonable one under the
8 circumstances.

9 I further charge you, ladies and gentlemen, that
10 if the defendant is on his own premises, the defendant has
11 no duty to retreat before acting in self defense.

12 Further, ladies and gentlemen, on the issue of
13 self defense, a person cannot be required to make an exact
14 calculation as to the degree or amount of force which may
15 be needed to avoid death or serious bodily harm.
16 Therefore, in self defense, the defendant has the right to
17 use the force needed to avoid death or serious bodily harm
18 and the force used does not have to be limited to the
19 degree or amount of force used by the victim. The
20 defendant has the right to use so much force as appeared
21 to be reasonably necessary for complete self protection in
22 which a person of ordinary reason and firmness would have
23 believed to have been needed to prevent death or serious
24 bodily harm to himself. Now, ladies and gentlemen, as I
25 mention to you, that is the charge on the offense of

1 murder.

2 I'm now going to talk to you about the offense
3 of possession of a firearm during the commission of a
4 violent the crime. The defendant is charged with that
5 offense. The State must prove beyond a reasonable doubt
6 that the defendant was in possession of a firearm during
7 the commission of a violent crime. A firearm is a gun,
8 riffle, revolver, pistol or any weapon, which is design to
9 or may be readily converted to expel a projectile.

10 Now, in order to find the defendant guilty of
11 possession of a firearm during the commission of a violent
12 crime, you must first find the defendant guilty of
13 committing a violent crime. And I charge you, ladies and
14 gentlemen, that murder is a violent crime.

15 Also, ladies and gentlemen, in order to prove
16 guilt beyond a reasonable doubt whatever the crime might
17 be, the State must also prove the element of criminal
18 intent. Criminal intent is a mental state. It's a
19 conscious wrongdoing. And criminal intent may be shown by
20 direct evidence or it may be shown by circumstantial
21 evidence. Now, there's no way that medical science can
22 dissect a person's brain, look in the brain and determine
23 what, if anything, that person intended to do at any given
24 time. So the law says that criminal intent may be
25 established by circumstances surrounding the situation.

1 If the State has not proven the element of criminal
2 intent, the State will have failed to meet his burden of
3 proof.

4 Now, ladies and gentlemen, you will have the
5 evidence with you back in the courtroom. No other
6 evidence is going to be provided to you other than your
7 collective memory of the testimony and the exhibits that
8 have been introduced. You will have a weapon marked as
9 Exhibit 16, that is in that tall box. Do not take that
10 out of the box. And do not unclip or cut the ties of the
11 plastic ties that hold it to the box. Do not open the
12 chamber. Do not manipulate the trigger or otherwise
13 handle the weapon without my specific permission.

14 Now, ladies and gentlemen, I am not so much
15 concerned with what your verdicts are going to be in this
16 case, but I do want to make sure that you understand that
17 your job in many respects is just beginning. The State of
18 South Carolina and the defendant both expect and they
19 certainly are entitled to a fair and impartial trial and
20 that includes on your part giving all these issues to
21 complete an honest discussion that they deserve. And your
22 verdict or your deliberations should culminate in verdicts
23 which speak the truth.

24 If you have any questions, madam forelady,
25 during the course of your deliberations, they'll be a note

1 pad for you to write the question down. The law just --
2 write the question out, sign it, date it, tap on the door
3 and let the bailiff know that you have a question. She'll
4 pass it to me. I'll share it with the lawyers. And the
5 law dictates number one if I can respond and how I can
6 respond. But any question that you have, I'll certainly
7 be happy entertain. But again, no additional evidence is
8 going to be introduced that has not already been
9 introduced. If you have a question about any testimony,
10 that's certainly arrangements can be made to have that
11 played back for you. If you have a question about my jury
12 charge, you can write that down and I will try to help you
13 out that with that too.

14 Please keep in mind that your verdict has to be
15 unanimous. Also keep in mind that if anyone needs to
16 leave the jury room for any reason, first you have to get
17 my permission. If you do that, please stop deliberations
18 until everyone is back in the deliberation area. If
19 someone excuses himself or herself to even use the
20 restroom, please wait for that person to come back before
21 you resume your deliberations.

22 You'll have several things in the jury room with
23 you. Most importantly, your good common sense. That's
24 what you use. You take your common sense view of the
25 evidence, the law as I given it to you. You put those

1 things together and I'm confident that you'll reach
2 verdicts that speak the truth.

3 Lunch will be here probably within the next 30
4 minutes or so. And you can deliberate during the time
5 that you eat lunch. If anybody has any concerns during
6 the course of deliberations about anything in the outside
7 world, relay those to your forelady. And she will relay
8 those to me and we will try to accommodate you as best we
9 can.

10 The next order of business will be for you to go
11 to your jury room and I'm telling you can't start
12 deliberating yet. And that is because these rules that we
13 have require me ask the lawyers if I left anything out or
14 said anything incorrectly. So if you would please go to
15 your juror room and do not begin deliberating yet. One
16 final thing some of you have taken notes. You can take
17 those back into the jury room with you. Some are better
18 note takers than others. I take notes not because I think
19 something terribly important, but I write down times when
20 somebody took the stand, when direct started, when cross
21 started and so forth and what time an exhibit may have
22 been introduced. I'm not writing anything down because I
23 think its particularly important factually. I'm writing
24 it down to have a time log.

25 Now, don't take from anything that I've said or

1 done during the course of the trial that make you think I
2 favor one result over another. I don't. My rulings are
3 based on the law and not on who I think should prevail.
4 So please don't gather from anything that I've said or
5 done that you should find in a certain way. All right.
6 If you would please go to your jury room. If you took
7 notes, you can take those back there with you. But your
8 notes do not necessarily take precedence over someone's
9 memory, who did not take notes, so everyone's input in the
10 deliberations are very important whether you did or did
11 not take notes. You can go to your jury room, ladies and
12 gentlemen, but don't start talking yet.

13 (WHEREUPON, the jury retire to the jury room.)

14 THE COURT: Any objections or additions from the
15 State other than what you previously mentioned?

16 MR. OZMENT: No, Your Honor.

17 THE COURT: Any from the defendant?

18 MR. GROVE: Not already that I haven't been
19 raised, Your Honor. I would renew my position on the
20 State's burden of disproving self defense.

21 THE COURT: Okay. I think I did charge that
22 twice.

23 MR. GROVE: You did. The each and every element
24 obviously portion was obviously admitted. I'd renew on
25 those grounds.

1 THE COURT: All right. That's respectfully
2 denied. All right. What I typically do I think the law
3 requires me to release the alternates.

4 MR. GROVE: Yes, Your Honor.

5 THE COURT: I don't hold them in separate rooms.
6 Any objection to that?

7 MR. OZMENT: No, Your Honor.

8 MR. GROVE: None, Judge.

9 THE COURT: Would ask Mr. Jones and Ms. Riley to
10 come out.

11 THE BAILIFF: Yes, sir.

12 THE COURT: In the mean time, could you
13 gentlemen make sure all the exhibits are in order.

14 Investigator Hester, if you could confirm for me
15 on the record that the firearm is disabled and not capable
16 of being fired. Hand him that box.

17 Mr. Grove, would you come up and take a look at
18 the exhibits. I think you had one exhibit. Is that
19 correct?

20 MR. GROVE: I do, Judge.

21 (WHEREUPON, the two alternate jurors came into
22 the courtroom.)

23 THE COURT: Mr. Jones and Ms. Riley, only 12 can
24 deliberate. Frankly, it's a little bit unusual for one
25 juror not at least fallen by the waist side by illness or

1 some responsibility that popped up, but in this case, it
2 didn't happen. Since only 12 can deliberate, your
3 services are concluded. Obviously, in this trial and also
4 for the week. Do either of you need a work excuse? Do
5 either of you have any questions?

6 (WHEREUPON, both alternate jurors responded in
7 the negative by shaking of head.)

8 THE COURT: You can leave or stay whichever you
9 like. You can talk about the case all that you want after
10 today, but don't talk about it within the courthouse as
11 you're leaving that will do two things. It will keep the
12 pressure off you. And it will keep things on an even keel
13 as far as all the participants are concerned. So if would
14 like to stay, you can certainly remain and wait for the
15 verdict or you can go on about your business. Any
16 questions?

17 (WHEREUPON, no response.)

18 THE COURT: Thank you. She did order lunch for
19 you if you want to wait for that. You can do that. If
20 you do want your lunch, just let her no. If you don't,
21 just tell her the same thing.

22 (WHEREUPON, alternates are dismissed.)

23 THE COURT: Anything before I release the jury
24 to deliberate?

25 MR. OZMENT: No, Your Honor. All the evidence

1 looks to be in order by the State.

2 THE COURT: Investigator Hester, have you
3 examined the weapon?

4 INVESTIGATOR HESTER: Yes, sir.

5 THE COURT: Is it capable of being fired?

6 INVESTIGATOR HESTER: No, sir.

7 THE COURT: Is there a trigger guard in it?

8 INVESTIGATOR HESTER: No, sir, it's zip tied
9 back to the firearm.

10 THE COURT: All right. Okay. You have a copy
11 of the verdict form.

12 THE BAILIFF: Judge, one of the jurors that says
13 it's his son's birthday. He would like make a phone call
14 to wish his son a happy birthday.

15 THE COURT: One of the jurors says it's his
16 son's birthday and he would like to be excused to make a
17 phone call to wish his son a happy birthday. Any
18 objection from the State?

19 MR. OZMENT: No, Your Honor. I would ask that
20 Ms. Olivia or somebody just go with him to make sure.

21 MR. GROVE: That will be fine.

22 THE BAILIFF: We have a phone in the other room.
23 I usually take them back there and I stay there while they
24 make the phone call.

25 THE COURT: I can instruct him when he comes out

1 not talk about the case with his son.

2 MR. OZMENT: That will be fine.

3 THE COURT: Just ask him to step out.

4 THE BAILIFF: Yes, sir.

5 THE COURT: And tell the jury not to begin
6 deliberating yet until that juror rooms back.

7 THE BAILIFF: Okay.

8 (WHEREUPON, juror number 158 George Yiannikouros
9 comes into the courtroom.)

10 THE COURT: It's your son's birthday?

11 JUROR: Yes, today, 24.

12 THE COURT: You can go give him a phone call,
13 just don't talk about the case, okay.

14 JUROR: No.

15 THE COURT: Thank you, sir. And tell them they
16 can begin deliberating when the juror comes back in.

17 THE BAILIFF: Yes, sir.

18 THE COURT: We'll be at ease. I would like to
19 say that I'm extremely impressed by the way the case was
20 tried. I don't say that unless I mean it. I think that
21 both sides knew -- know the rules. They know the
22 procedure. I'm very pleased with how the case was tried
23 both sides should be very satisfied. If you do want to be
24 around when there is a verdict or a question, just be
25 close at hand. Of course, the lawyers will not leave the

1 courthouse. Hopefully, they want go far beyond this
2 floor, but I'll certainly wait a reasonable time for the
3 audience if you will to be back for a question or verdict.
4 But you may want to give someone a cell number so you can
5 be called. Because I'm not going to keep the jury waiting
6 terribly long.

7 (WHEREUPON, a pause in the proceedings.)

8 (WHEREUPON, the jury began deliberations at
9 12:52.)

10 THE COURT: I just marked cross-examination
11 Court's Exhibit 2, 3 and 4.

12 (WHEREUPON, Court's Exhibit Nos. 2, 3 and 4 were
13 admitted into evidence.)

14 THE COURT: All right. I have three questions
15 from the jury and no particular order. One says can we
16 have copies of phone logs please, another one says copy of
17 Scott's statement and third question can we have the self
18 defense statute. First, let's address the question can we
19 have copies of phone logs please. Mr. Ozment.

20 MR. OZMENT: Certainly, Your Honor, they've
21 heard all the evidence. I would just ask that they be
22 instructed that they have all the evidence in front of
23 them what they're going to have or hear and that they
24 please refer to that.

25 MR. GROVE: I can't really argue with that,

1 Judge. No phone logs have been entered into evidence to
2 begin with.

3 THE COURT: Okay. All right. The next question
4 I reference copy of Scott's statement.

5 MR. OZMENT: I think that would be the same
6 answer, Your Honor.

7 MR. GROVE: I have no objection to that, Judge.
8 Again, it's not in there, so they got all the evidence.

9 THE COURT: Obviously, they are asking for
10 physical copies neither of which is in evidence. I will
11 not unless both sides agree tell them that they can hear
12 testimony pertaining to the phone logs or hear testimony
13 referring to Scott's statement, but unless they
14 specifically ask for that testimony, I don't intend to
15 call any attention to it myself unless you all both agree.

16 MR. OZMENT: Your Honor, I would just say that
17 if they ask for that, they can ask for that. But at this
18 point, I'm going to say it's not in front of them.

19 MR. GROVE: I agree with, Your Honor. It sounds
20 like they're looking for a physical copy of things don't
21 exist.

22 THE COURT: Lastly, can we have the self-defense
23 statute. First of all, it's not a statute. Second of
24 all, I'm not going to give them just a photo copy of one
25 part of the charge that would be improper. I will tell

1 them that in response to that question that they cannot
2 have a copy of the self-defense law, but that if they want
3 me to recharge them on the law of self defense, I'll do
4 that. Any objection from the State?

5 MR. OZMENT: No, Your Honor.

6 MR. GROVE: No, Judge. Thank you.

7 THE COURT: You can bring out the jury.

8 (WHEREUPON, the jury came into the courtroom at
9 2:06 p.m.)

10 THE COURT: Okay. Thank you for your questions,
11 ladies and gentlemen, I'll cover those in no particular
12 order. One question says can we have copies of phone logs
13 please? The answer to that question is that you have
14 physically in evidence the exhibits that were introduced.
15 No other materials, no other physical materials such as
16 copies of any phone logs are going to be introduced or
17 provided to you.

18 Another question you have is copy of Scott's
19 statement? Same answer to that question. As I mentioned
20 to you earlier, all of the physical evidence in the way of
21 exhibits is going to be introduced has been introduced and
22 there will be no other additional items physically
23 introduced for you.

24 The third question can we have the self-defense
25 statute. I will not send back to the jury room a copy of

1 the self-defense law that I charged you. However, I can
2 if you can like for me to recharge you on the law of self
3 defense, if that's what like. Is that what you, ladies
4 and gentlemen like?

5 FOREPERSON: Yes.

6 THE COURT: It will not be given to you in
7 writing, but if you want your note pad, she can get that
8 for you. Is there anyone else need their note pad? Is
9 that what the jury want?

10 JUROR: Yes, sir.

11 THE COURT: Madam forelady is that what the jury
12 wants?

13 FOREPERSON: Yes, sir.

14 THE COURT: Okay. Everybody have what they
15 need? And I don't mean to alarm by locking the door,
16 that's just customarily what's done during any part of a
17 jury charge. All right. Ladies and gentlemen, I will
18 recite to you or refer to you to the law of self defense.
19 Self defense is a complete defense and the State must
20 disprove self defense beyond a reasonable doubt. The
21 defendant does not have to prove self defense. Rather,
22 the State must disprove self defense. And you must -- if
23 you do find that the State has not disproven self defense
24 beyond a reasonable doubt, you must find the not guilty.
25 If you have a reasonable doubt of the defendant's guilt

1 after considering all the evidence including evidence of
2 self defense, you must find him not guilty. But if you
3 have no reasonable doubt of the defendant's guilt after
4 considering all evidence including evidence of self
5 defense, you must find him guilty.

6 The following are the elements or components of
7 self defense: First, the defendant must be without fault
8 in bringing on the difficulty. If the defendant's conduct
9 was the type which was reasonably calculated to and did
10 provoke an assault, the defendant would be at fault in
11 bringing on the difficulty and would not be entitled to a
12 verdict of not guilty based on self defense. Another
13 element of self defense is that the defendant was actually
14 in imminent danger of death or seriously bodily injury or
15 that the defendant actually believed he was in eminent
16 danger of death or seriously bodily injury. If the
17 defendant was actually in eminent danger, it must be that
18 the circumstances would have warranted a person of
19 ordinary firmness and courage to strike the fatal blow to
20 prevent death or serious bodily injury. If the defendant
21 believed he was in eminent danger of death or serious
22 bodily injury, it must be shown that a reasonable doubt
23 prudent person of ordinary firmness and courage would have
24 had the same belief.

25 In deciding whether the defendant actually was

1 or believed he was in eminent danger of death or seriously
2 bodily injury, you should consider all the facts and
3 circumstances surrounding the events. The defendant does
4 not have to have actually been in danger. It is enough
5 if the defendant believed he was in eminent danger and
6 that a reasonably prudent person of ordinary firmness and
7 courage would have had the same belief.

8 The defendant has the right to act on
9 appearances even though the defendant's beliefs may have
10 been mistaken. It is for you to decide whether the
11 defendant's fear of immediate danger of death or seriously
12 bodily injury was reasonable and would have been felt by
13 an ordinary person in the same situation.

14 The words of a victim accompanied by hostile
15 acts may depending on the circumstances establish self
16 defense. Evidence of prior difficulties between the
17 defendant and the victim may be considered in deciding
18 whether a threat existed and whether the defendant had a
19 reason to believe that a threat existed and how serious
20 the threat was. Threats made by the victim may be
21 considered in determining whether the defendant actually
22 was or believed he was in eminent danger. The
23 intoxication of the victim may be considered in deciding
24 whether the defendant's fear of death or bodily harm was
25 reasonable.

1 Another element of self defense is that the
2 defendant had no other probable way to avoid the danger of
3 death or serious bodily injury than to act as the
4 defendant did in this particular instance. You are to
5 consider whether the defendant made a choice that a person
6 of ordinary prudence in a similar position would have
7 made. You are not to consider whether the defendant made
8 the wisest choice or the best choice, but rather whether
9 he made a reasonable one under the circumstances.

10 If the defendant was on his own premises, the
11 defendant had no duty to retreat before acting in self
12 defense. Further, a person cannot be required to make
13 exact calculation as to the degree or amount of force
14 which may be needed to avoid death or serious bodily
15 injury. Therefore, in self defense, the defendant has the
16 right to use the force needed to avoid death or seriously
17 bodily harm. The force used does not have to be limited
18 to the degree or amount of force used by the victim. The
19 defendant has the right to use so much force as appeared
20 to be necessary for complete self protection and which a
21 person of ordinary reason and firmness would have believed
22 to have been needed to prevent death or serious bodily
23 injury. That does conclude the charge on self defense.
24 If you have additional questions or want me to repeat that
25 or any other portion of the charge, you can relay those

1 just like you have and I'll be happy to address them. And
2 again, the law dictates and if and how I can respond to
3 your questions. All right. Thank you.

4 (WHEREUPON, the jury retired to the jury room to
5 continue deliberations at 2:15 p.m.)

6 THE COURT: All right. You can come up and take
7 a look at those questions, Mr. Grove. You can show them
8 to the defendant if you like.

9 At this time any exceptions from the State?

10 MR. OZMENT: No, Your Honor.

11 THE COURT: The defendant.

12 MR. GROVE: No, Judge, thank you.

13 THE COURT: Court's Exhibits two, three and
14 four. We'll continue to wait. Perhaps, they'll have a
15 question or a verdict some time this afternoon.

16 (WHEREUPON, court at ease awaiting a verdict.)

17 THE COURT: Mr. Grove, Mr. Ozment, why don't you
18 all come up and get a copy -- I asked her to make copies
19 of these two questions because they're a little bit
20 involved. Question four because the other questions were
21 one, two and three. Clarification on element one, if both
22 parties are at fault in bringing on the difficulty, can
23 self defense be claimed? Question five, for self defense
24 elements do they all have to apply and then in parenthesis
25 are they quote and close quote statements in close

1 parenthesis or does only one or some of the elements need
2 to be met? Okay. State's input on question four?

3 MR. OZMENT: Your Honor ---

4 THE COURT: We know what the answer is, but how
5 do you want me to ---

6 MR. OZMENT: I'm trying to think how best
7 because obviously we read to them at this point the self
8 defense charge twice. And they're still asking this
9 question. And it is -- you are not -- the State's not
10 proving a negative, but you are disproving a positive, I
11 guess, is what you're doing if that makes sense.

12 THE COURT: Well, element number one is that the
13 defendant cannot have been at fault in bringing on the
14 difficulty. Contrary to Mr. Grove's interpretation of the
15 Berkhart case in my mind if the State proves -- look at it
16 one of two ways, if the State proves that the defendant
17 brought on the difficulty or disproves that he did not,
18 however you want to look at it, then self defense does not
19 apply. I know Mr. Grove maintains that under Berkhart you
20 have to disprove all of the elements of self defense and
21 that cannot be possibly be the law. So how do you propose
22 that I answer question four?

23 MR. OZMENT: Your Honor, perhaps having a
24 general statement of the State's burden to disprove self
25 defense beyond a reasonable doubt. And then I'm not sure

1 if this is in the current charge or any form of something
2 to the effect. And we could be happy to take a minute and
3 find an actual quote somewhere rather case, but something
4 to the effect of if the State disproves self defense
5 beyond a reasonable doubt, it cannot apply something to
6 that effect.

7 THE COURT: Mr. Grove. You want to push forward
8 with your Berkhart claim that they have to disprove all
9 the elements I assume.

10 MR. GROVE: Again, Your Honor, I would obviously
11 make note of that. Question five seems to fall right in
12 line with my interpretation to Berkhart. Outside of that,
13 you've charged them on the law. They have to prove self
14 defense. They have to prove -- disprove self defense
15 beyond a reasonable doubt. Aside from that, it becomes
16 vicarious position to make comments on the facts of the
17 particular case.

18 THE COURT: In my view, the answer to question
19 four would be this see if I can walk through it in my real
20 simple mind. The State has to disprove self defense which
21 to me means the State has to prove that self defense does
22 not apply. For self defense to apply, those elements have
23 to be in existence. It use to be that you would say the
24 following elements are required to establish self defense
25 can't say that any more. Because that indicates burden

1 shifting to the defendant. But to go back to my
2 progression, the State has to disprove self defense, so
3 therefore the State has to prove it does not apply. For
4 self defense to apply, those elements that I've charged
5 them on have to apply. If anyone of those elements is not
6 in existence, then the State has disproven self defense.
7 That is a logical progression of what the law is and what
8 the burden of proof is. However, I don't know if that's
9 what I should tell the jury. I think what I should tell
10 the jury is that to answer the question specifically if
11 both parties are at fault in bringing on the difficulty
12 can self defense be claimed. The very basic answer is no.
13 But in this case, they've said can self defense be
14 claimed. If I was on the jury, I would think of it the
15 same way, but our Supreme Court has said that that's not
16 they way you look at it. Not whether it can be claimed,
17 but whether its been disproven. So if both parties are at
18 fault in bringing on the difficulty, they may have
19 necessarily concluded that the State has proven that the
20 defendant played a part in bringing on the difficulty.
21 I'm not going to talk them into a guilty verdict that
22 seems to me to be where they're headed. I don't want to
23 prompt it or push them in that way overtly or implicitly.
24 MR. OZMENT: Your Honor, I'm just kind of
25 talking out loud here, but I don't know if it would help

1 to take a step back. You can start your charge with the
2 defendant in this case has claimed self defense or has put
3 forth defense. Therefore, the burden's on the State to
4 disprove self defense by a reasonable doubt and then
5 essentially what you just said, but maybe -- I would have
6 certainly no objection to taking a step back and
7 clarifying that for them, that he has claimed it. And so
8 therefore the burden's on the State to disprove it, that
9 might clear up that.

10 THE COURT: Mr. Grove, anything else on that
11 question?

12 MR. GROVE: I guess not, Your Honor. My
13 position will be that they've been charged on the law.
14 I'll leave it in your discretion as to a response.

15 THE COURT: Okay. Question five for self
16 defense elements. Do they all have to apply or does only
17 one or some of the elements need to be met? That's an
18 easier question academically, but again how I tell the
19 jury. In order for self defense to apply, there has to
20 be -- all those elements must exist and the State must
21 disprove self defense. An easy answer contrary to what
22 you say is if the State disproves one of those, the State
23 is disproving self defense. They kind of asked the
24 question backwards but much clearer manner than our
25 Supreme Court has required us to address it. I'm chasing

1 my tail. Okay, any input on question five?

2 MR. OZMENT: In some ways the same question as
3 question four, but I think the same type language say the
4 State must -- defendant's claim of self defense, therefore
5 the State must disprove self defense. And in doing so, if
6 the State has disproven any element of self defense beyond
7 a reasonable doubt, the defendant's self defense claim is
8 imperfect.

9 MR. GROVE: I stand on my previous objection.

10 THE COURT: Here's what I'm going to tell that,
11 I'm going to answer question five first. I'm going to
12 tell them that I've instructed them on the elements of
13 self defense and that the State must disprove self
14 defense. In order for self defense to apply, all of those
15 elements must exist in the case. Again for self defense
16 to be a defense, that is not say that the defendant has to
17 prove it. The State has to disprove it. I worked my way
18 into it in that fashion just listen carefully to my
19 explanation. If it doesn't seem clear or if you think
20 it's erroneous, you let me know. And I'll bring them back
21 out and try again. All right.

22 MR. GROVE: Yes, Your Honor.

23 MR. OZMENT: That's fine with me, Your Honor.

24 MR. GROVE: Again, I maintain my objection. My
25 other concern in the back of my mind and, I guess, this

1 isn't necessarily prudent because it's not one of their
2 questions. There is certainly a possibility where they
3 don't find the self defense applied, but they also don't
4 find that a murder has been committed because the State
5 hasn't met their burden on each of those elements. My
6 concern one of them being if they decide that self defense
7 does not apply, they will interpret that as a default
8 murder conviction.

9 THE COURT: But I can't anticipate that.

10 MR. GROVE: I understand that you obviously
11 can't address that unless it is a question. I maintain my
12 previous objection, Your Honor. Thank you.

13 THE COURT: Okay. All right. Let me just look
14 at it for just a moment. Anything else?

15 MR. GROVE: Is Your Honor going to recharge on
16 bringing on the difficulty?

17 THE COURT: I'm going to -- I'm not going to
18 recharge it except to say that you have asked if both
19 parties are at fault in bringing on the difficulty can
20 self defense be claimed. I'm going to tell them that, of
21 course, another element or one of the elements of self
22 defense is that the defendant must be without fault in
23 bringing on the difficulty. I'm not going to recharge
24 them on that whole paragraph, but I'm refer to that as an
25 element because they've asked about it. So it's a

1 recharge take it however you think, but I am going to
2 repeat that to them to put their question in context.

3 MR. GROVE: Thank you, Judge.

4 THE COURT: We ready?

5 MR. OZMENT: Yes, Your Honor.

6 THE COURT: You can bring in the jury.

7 (WHEREUPON, the jury came into open court at
8 3:09 p.m.)

9 THE COURT: Okay. Ladies and gentlemen, I do
10 have your last two or your next two questions. I'm going
11 to refer to these or address these in reverse order. And
12 perhaps it will clarify some things for you. And again,
13 if my answers don't help you, don't hesitate to let me
14 know. You got question five it says for self defense
15 elements do they all have to apply. And you got in
16 parenthesis are they and parenthesis excuse me -- in
17 quotes statements. Then it says or does only one or some
18 of the elements need to be met. And then question four
19 if both parties are at fault in bringing on the
20 difficulty, can self defense be claimed? As I mentioned
21 to you in the charge on self defense, self defense is a
22 complete defense. And the State must disprove it. The
23 defendant need not prove it. For self defense to apply as
24 I mentioned to you first of all, it must be that the
25 defendant was without fault in bringing on the difficulty.

1 And the defendant was actually in eminent danger of death
2 or serious bodily injury or actually believed he was. And
3 that the defendant had no other probable way to avoid the
4 danger of death or serious bodily injury than to act as he
5 did. So those three things element number one and element
6 number two and element number three in order for self
7 defense to apply.

8 Your question as to if both parties are at fault
9 in bringing on the difficulty, can self defense be
10 claimed. The State in disproving self defense must prove
11 that self defense does not apply. In order for self
12 defense to apply, the defendant must have been with
13 without fault in bringing on the difficulty. And the
14 defendant was actually in eminent danger of death or
15 serious bodily injury or reasonably believed he was or the
16 defendant excuse me -- and the defendant had no
17 probable -- other probable way to avoid the difficulty.
18 Again, those three elements must be present in order for
19 self defense to apply. And the State must disprove the
20 defense of self defense. I believe that's the clearest
21 way I can answer that question. And if you would please
22 retire to your jury room. If can make it any clearer,
23 I'll try do that, but I believe that answers your
24 questions as clearly as I possibly can. All right.

25 (WHEREUPON, the jury retire to the jury room

1 3:13 p.m. to continue deliberations.)

2 THE COURT: Anything from the State? Any
3 objections or additions from the State?

4 MR. OZMENT: No, Your Honor..

5 THE COURT: The defense.

6 MR. GROVE: Renew my previous objection.

7 THE COURT: I'm very tempted to answer question
8 four with a simple no.

9 MR. OZMENT: For what it is worth from the look
10 on the jurors faces, they appeared very confused still
11 when they left the courtroom.

12 THE COURT: I agree. And again, it goes back
13 Justice Pleicones' concurrence in the -- I guess, the
14 Berkhart case. He says that instruction about the State
15 having to disprove it is confusing and it requires the
16 State to prove a negative or disprove a negative. It is
17 cumbersome. I'm going to give some serious consideration
18 if they come back with additional questions on it. If
19 they ask question four again, I may just say the answer to
20 that question, ladies and gentlemen, is no. Because that
21 would presuppose they have concluded that the defendant as
22 one to have parties was at fault in bringing on the
23 difficulty. If the State has proven that he was, they
24 have disproved one of the elements of self defense.
25 Therefore, self defense can't apply.

1 MR. OZMENT: The State's position would be that
2 would probably answer their question very accurately and
3 clear up that confusion. We have no objection to that
4 being given.

5 THE COURT: Anything else?

6 MR. GROVE: Not at this time, Your Honor.

7 THE COURT: You got question, you all just think
8 about it.

9 (WHEREUPON, Court's Exhibit No. 5 was marked for
10 the record.)

11 (WHEREUPON, court as ease awaiting a verdict.)

12 (WHEREUPON, Court's Exhibit No. 6 was marked for
13 the record.)

14 THE COURT: You all want to take a look at this
15 question. The question which is Court's Exhibit Number 6
16 is please confirm the requirements for murder verdict i.e.
17 malice aforethought. We do not need further explanation
18 of self defense.

19 Any input from the State?

20 MR. OZMENT: Your Honor, I would just ask that
21 you recharge the murder portion of your charge.

22 MR. GROVE: I don't see why that wouldn't be
23 appropriate, Your Honor.

24 THE COURT: All right. What I'll do is give the
25 charge on murder. Of course, I'll include the charge on

1 criminal intent, which is a requirement of proof as well.

2 MR. GROVE: Thank you, Your Honor.

3 THE COURT: Okay. You can bring in the jury.

4 (WHEREUPON, the jury came into open court at
5 3:50 p.m.)

6 THE COURT: Okay. Ladies and gentlemen, I have
7 your question, it says please confirm the requirements for
8 murder verdict i.e. malice aforethought. Also says we do
9 not need further explanation of self defense. What I will
10 do is confirm or recharge to you the elements of the
11 charge of murder, that the State must prove beyond a
12 reasonable doubt. And I'll just start from the beginning
13 of that charge. Of course, as you know, the defendant is
14 charged with murder. The State must prove beyond a
15 reasonable doubt that the defendant killed another person
16 with malice aforethought. Malice is hatred, ill will, or
17 hostility towards another person. It is the intentional
18 doing of a wrongful act without just cause or excuse. And
19 with an intent to inflict an injury or under circumstances
20 that the law will infer an evil intent.

21 Malice aforethought does not require that malice
22 exist for any particular time before the act is committed,
23 but malice must exist in the mind of the defendant just
24 before and at the time the act is committed. Therefore,
25 there must be a combination of the previous evil intent

1 and the act itself. Malice aforethought or those two
2 words may be expressed or inferred. These terms express
3 and inferred do not mean different kinds of malice, but
4 merely the manner in which malice may be proved to exist.
5 And that is either by direct evidence or from
6 circumstantial evidence derive from the facts and
7 circumstances that are proved. Expressed malice can be
8 shown when a person speaks words which express hatred or
9 ill will for another or when the person prepared
10 beforehand to do the act which was later accomplished.
11 Malice may be inferred from conduct, facts and
12 circumstances surrounding the events in question.

13 Now, further, ladies and gentlemen, one of
14 elements of the crime of murder is the element of criminal
15 intent. And as I mentioned to you earlier, criminal
16 intent is an element of every crime and it is a mental
17 State. It's a conscious wrongdoing. And it is up to you
18 to determine what, if anything, the defendant intended to
19 do based on circumstances shown to have existed.

20 I did you tell that criminal intent is always a
21 matter that a jury must determine from the circumstances
22 surrounding the situation. You can't proven intent or
23 criminal intent to a mathematical certainty. You cannot
24 dissect a person's brain and determine what, if anything,
25 the defendant intended to do at any given time. So the

1 law says that criminal intent may be inferred from the
2 circumstances shown to have existed and that is how you
3 would make a determination as to whether or not the
4 element requiring criminal intent has been proven to you
5 beyond a reasonable doubt. Again, the elements of the
6 crime of murder must be established by the State beyond a
7 reasonable doubt. I believe that does conclude an answer
8 to the question that you gave. And certainly if you have
9 any additional questions, we'll certainly be happy to
10 address those for you. Okay. Thank you.

11 (WHEREUPON, the jury retire to the jury room
12 3:54 p.m to continue deliberations.)

13 THE COURT: Objection or additions from the
14 State?

15 MR. OZMENT: No, Your Honor.

16 THE COURT: From the defendant?

17 MR. GROVE: No, Judge. Thank you.

18 (WHEREUPON, court at ease.)

19 THE COURT: I understand the jury has reached a
20 verdict. Is the State ready?

21 MR. OZMENT: Yes, Your Honor.

22 THE COURT: The defendant ready?

23 MR. GROVE: Yes, Your Honor.

24 THE COURT: One instruction to everybody in the
25 courtroom, the circumstances behind the events in question

1 and the overall scenario, I understand is extremely
2 upsetting and understandably so. Having said that, if
3 there is anyone in the audience who feels they are not
4 able to remain completely silent when the verdict is read,
5 I'll go ahead and let you leave the courtroom now. I do
6 want any verbal or nonverbal outburst at all. And if you
7 do -- if you feel like you can't comply with that, you can
8 go ahead and go. I understand that the verdict is going
9 to be very emotional and I understand that some reaction
10 will be given but nothing verbal and nothing physical at
11 all. All right. Anybody who feels they cannot follow
12 that instruction you can go ahead and go now. All right.
13 You can bring in the jury.

14 (WHEREUPON, the jury came into the courtroom at
15 4:12 p.m. with a verdict.)

16 THE COURT: Okay. Madam forelady, I understand
17 you have reached a verdict?

18 FOREPERSON: Yes, sir.

19 THE COURT: Is it unanimous?

20 FOREPERSON: Yes, sir.

21 THE COURT: You can hand the form to the clerk.
22 Thank you. All right. You can publish the verdict.

23 Mr. Scott, please stand and face the jury.

24 THE CLERK: The State of South Carolina vs.
25 Wayne A. Scott, Jr., indictment 2013-GS-21-0391. As to

1 the charge of murder, we, the jury, unanimously find the
2 defendant guilty. As to the charge of possession of a
3 fire arm during the commission of a violent crime, we, the
4 jury, unanimously find the defendant guilty. I certify
5 this to be an unanimous decision of the jury. Sign
6 Michelle Hayes dated October 24th 2013. Members of the
7 jury if this is your verdict, please raise your right
8 hand?

9 (WHEREUPON, all jurors hands were raised.)

10 THE CLERK: That is every one, Judge.

11 THE COURT: All right. You can have seat, Mr.
12 Scott.

13 Mr. Ozment, anything from the State before the
14 jury is released?

15 MR. OZMENT: No, Your Honor.

16 THE COURT: Anything from the defendant before
17 the jury is released?

18 MR. GROVE: No, Your Honor.

19 THE COURT: All right. Okay. Ladies and
20 gentlemen, that does conclude your service in this case
21 and obviously concludes your service for the week. We're
22 going to now or in just few minutes, I'm going to discuss
23 with the attorneys any particular motions they may have.
24 And I'll give the defendant ten days to file those
25 motions. We will also potentially go into the sentencing

1 portion of this trial. If you would like to leave, you
2 can certainly do so. You do have -- if you do leave at
3 this time, you certainly leave with my thanks. You paid
4 particularly close attention. I been around in my 28 or
5 30 years in this business a lot of juries. And I can tell
6 you very sincerely that you paid very close attention.
7 There was not one of you who let your attention wonder.
8 And I realize that you had a tremendously difficult task
9 and I appreciate your patience and your service in every
10 respect. I certainly appreciate that.

11 If any of you are curious, you certainly can't
12 serve on a jury in the circuit court this year. Since,
13 it's October almost November, it wouldn't happen any way.
14 During the years 2014 and 2015, you will have an exemption
15 from jury service in the circuit court. That does not
16 apply to magistrate's court or to federal court, but you
17 do have an exemption and service in this type of court.
18 So if you have anything in the jury room, you can go ahead
19 get that now. If any of you need a work excuse? Where
20 can they get that?

21 THE CLERK: It will be in the check.

22 THE COURT: You'll be getting a check in the
23 mail. It should be in that envelope with the check. The
24 check is not nearly what your services are worth, but the
25 check will represent what the county is allowed by law to

1 pay you. If you would like to stay behind for the
2 remaining proceedings that we have today, you can do that.
3 You can just have a seat in the back of the courtroom, but
4 if you want to go you can.

5 Now, one final thing, you can talk about this
6 case now all the you want. If however someone wants to
7 talk to you about the case and you don't want to, simply
8 tell the person that. The person should comply with your
9 wishes. If they do not, you call the clerk of court's
10 office, let someone know and that information will be
11 relayed to me. And I'll convene a hearing and do
12 something about it. No one can quarrel with your verdict.
13 And I want to make sure that you understand that. I will
14 request that you not talk about the case. You can talk
15 about amongst yourselves but not with anyone else until
16 you leave this building. That will let you clear this
17 property without feeling like you might be met with some
18 questions from someone wanting to know what you thought
19 about so and so or what was the basis for your verdict.
20 So again, you go with my thanks. And if you would like to
21 leave, you can. If you want to leave the immediate jury
22 box, get your personal belongings and then go out and have
23 a seat in the back, that's perfectly fine to. I'll give
24 you a couple of minutes to make that decision. Can I see
25 the lawyers up here for just a minute.

1 (WHEREUPON, the jury was dismissed.)

2 (WHEREUPON, a bench conference was held in the
3 presence of the jury, but out of the hearing of the
4 jury.)

5 THE COURT: We're back on the record. The jury
6 having returned a verdict of guilty, I'll now proceed the
7 State's prepared to the sentencing portion of the trial.
8 Mr. Ozment, I'll be glad to hear from you. If law
9 enforcement desires and from anyone in Mr. Springs family,
10 I'm not going to limit it to anyone in particular. The
11 only thing that I will request is that if anyone has any
12 comments to make that they make the comments to me. And
13 if there's anything that anyone wants to say to the
14 defendant, my preference is you direct your comments to
15 me. Okay.

16 Anything, Mr. Ozment?

17 MR. OZMENT: Yes, Your Honor. Obviously, the
18 jury has spoken. The State would ask that Your Honor
19 sentence accordingly. As far as a record, Mr. Scott has a
20 simple possession in '84, a DUI in '89, unlawful weapon
21 in 2000, a manufacturing marijuana in 2002, a breach of
22 peace in 2009 and a simple assault in 2012. Obviously, he
23 would be also considered a convicted felon for federal
24 purposes of carrying a firearm. Obviously, a firearm was
25 involved in this case, that would concern the State

1 greatly. I do know that several members of the victim's
2 family are here and would like to address the Court at the
3 appropriate time. I don't think law enforcement has
4 anything specific to say other than to say obviously they
5 would ask that justice be served with your verdict excuse
6 me -- with your sentence as it was with the verdict.

7 THE COURT: Okay. Who would like to talk first?
8 I just need your name first of all and then I'll be glad
9 to hear from you.

10 JANICE SPRINGS: My name is Janice Springs. I'm
11 Steve Springs' wife. My life has been ripped apart because
12 of this. Nobody will ever know the endurance that I went
13 through. The change I've had to pick up and move. I've
14 lost my husband, I buried him. I lost a stepson that I
15 cared so much about. I had to tell my own grandson,
16 Steve's step grandchild looked at me and he says, Momma,
17 where is my Poppa Steve at. I said, Baby, I said you see
18 that star up there. I said that's where Poppa Steve is
19 at.

20 THE COURT: Yes, ma'am, your name.

21 KAREN CARPENTER: My name is Karen Carpenter.

22 THE COURT: Carpenter?

23 KAREN CARPENTER: Carpenter. Steven was my
24 brother. I have mine wrote.

25 THE COURT: Yes, ma'am.

1 KAREN CARPENTER: Please bear with me. Steven
2 Bruce Springs born [REDACTED] 1962, stolen from us on
3 September 24th 2012. Our family stands before you today
4 to ask for the only thing that we can ask for and that is
5 justice. We know you cannot give us what we truly desire
6 or want and need is Steven's life back. Our lives were
7 forever changed on that date and sadly it will be in our
8 hearts and minds forever.

9 Let me recount this past year for my family. We
10 learned of my brother's death via phone call on Monday,
11 September 24th at 10:04 p.m. My family had to travel 350
12 miles from Stanton, Virginia to Florence knowing minimal
13 details about the tragedy that claimed my brother's life.
14 Prior to burying Steven, we attended a bond hearing for
15 Wayne Scott, the accused killer for a weapons charge on
16 Wednesday, September 26th. That evening we had visitation
17 at the funeral home where we had an overwhelming crowd to
18 show up and pay respects for our lost. All night long we
19 were blessed to hear amazing stories of what a wonderful
20 man Steven was from family, friends and colleagues.

21 We buried Steven on Thursday, September 27th,
22 where again the funeral many stood to share memories of
23 Steven and all the kind deeds he had done for many people
24 from all walks of life. These four days will never be
25 forgotten for any of us. We have now survived our first

1 year without Steven. A year of emotions, of sadness and
2 loneliness, anger and bitterness, pain and despair.

3 Our first holiday without Steven was
4 Thanksgiving. There was a feeling of gloom amongst us all
5 Each of us tiptoed around each other as we were all
6 feeling the same pain but trying to stay strong for each
7 other. As the night ended, we went our separate ways,
8 tears flowed from us all. The next holiday was Christmas.
9 This was an extremely hard holidays as this is momma's
10 favorite time of year. Christmas Eve we did our ritual of
11 piling into one vehicle to go look at Christmas lights.
12 We recanted stories of our memories of Steven bringing
13 tears and stirring up many emotions of sadness over our
14 lost. On Christmas day, we opened gifts as usually. My
15 daddy got my momma a locket that we put a picture of
16 Steven in. My momma broke down as we all did. Her
17 sadness and grief seems to be much more than ours. Before
18 dinner that evening, we all wrote love notes. We did a
19 ballon launch in honor of Steven. This will be the only
20 way he can be apart of our family traditions at Christmas.
21 Then came New Year's Eve no phone call from Steven at
22 midnight to wish us happy new year. Again, the feelings
23 of gloom and despair, anger and sadness with a bucket of
24 tears ended our evening not exactly how to start out a new
25 year.

1 March brought another bond hearing for Wayne
2 Scott. My family traveled again from Virginia to South
3 Carolina with hopes of bond being denied for the accused
4 killer. For me, it was the first panic attack I'd ever
5 experienced. I thought my heart was going to pound out of
6 my chest as Wayne Scott stood so smug thinking he would
7 get out on bond. Thank God justice prevailed and he was
8 kept behind bars. I, myself, left the courtroom feeling
9 nauseous and like my body was going to collapse.

10 Our next holiday was Easter, which rolled around
11 without Steven. He missed out on our yearly dieing of egg
12 dieing festivities and annual Easter egg hut. There were
13 no stupid bunny jokes to laugh at this year. Once again,
14 dinner time brought on a solemn and sober atmosphere as we
15 missed Steven's presence.

16 May would bring another change for our family.
17 Adam, Steven's son, would move to Virginia to live with my
18 parents. Keep in mind, my parent are 67 and 72. Now,
19 raising a 19 year old. We all know times have changed and
20 what an undertaking this is for my parents and a lifestyle
21 stile change for Adam. Don't get me wrong, we're all
22 grateful to have him but not at the expense of losing
23 Steven. You see Adam has no means to incomes with the
24 lost of Steven, the family business was closed.

25 Life in Virginia is different and Adam is

1 starting to adjust with many changes he has experienced in
2 the last eight months.

3 June would bring my daughter's graduation from
4 high school. Steven made his presence known by bring a
5 thunderstorm and a downpour of rain just hours before her
6 party. As we dried everything off for the party, we all
7 know Steven was just laughing from heaven at us. As much
8 as the pain it was to clean up from the rain, it was
9 actually a comfort to know he was watching over us.
10 Morgan, my daughter, stated she was glad Uncle Steve could
11 make it to the party.to.

12 Our family vacation was in July, our annual
13 beach trip to Nags Head. The one week of every year that
14 we spent together. We arrived on Sunday, got the call on
15 Monday morning that the next bond hearing for Wayne Scott
16 would be that Friday. This changed the whole tone of our
17 vocation. We had the thoughts of the bond hearing
18 lingering in our minds all week. And again, my parents
19 and my brother-in-law would travel from Nags Head this
20 time for the bond hearing.

21 Once there, they found out the bond hearing was
22 canceled because the accused was pursuing the castle
23 doctrine hearing would be scheduled for September. This
24 brought total fear and anxiety to my whole family. We
25 would walk on egg shells for two months. [REDACTED]

1 Steven birthday, he would have been 51. Instead, we
2 wished him happy first day in heaven. September 19th
3 arrived, the day of the castle trial. A day of total
4 heartbreak as the defense's side of the details of
5 Steven's death were recanted. A day of tears. A day of
6 more questions. We would leave feeling grateful that
7 immunity was denied for the accuse.

8 This day closed with us picking up what
9 belongings Steven's wife let us have. Steven was 51.
10 Adam and my parents are left with two cardboard boxes of
11 photos and small items and his guitar. It was just day of
12 gloom for my family.

13 September 24th this marked one year of Steven
14 Springs being gone. It was strange that at 10:10 p.m.
15 each one of our individual families had vivid memories of
16 what we had experienced at this time just one year prior.

17 Here we are today, my family sat through a
18 murder trial. We have listened to testimony about Steven
19 being shot, asking for help and being left to die. Wayne
20 Scott intentionally killed my brother. If it wasn't
21 intentional, he would have called 9-1-1 to try to save
22 him. Instead, he ran like a quack coward from the scene.
23 Steven is survived by his mother and father, a son, two
24 sisters, a brother-in-law, two nieces and a nephew and his
25 immediate family.

1 There is a tremendous void in all of our lives.
2 This void affects each and every one of us each and every
3 day. My mother and Adam had been impacted the most this
4 void. Steven was my mother's first born. It was a
5 special bond between Steven and my mom. I often tease my
6 mom about Steven being the golden child, but my momma is
7 not the same and she never will be. She was the strongest
8 willed and determined woman I have ever known, but now she
9 is broken.

10 This week and the week leading up this to this
11 trial have taken such an emotional and physical toll on my
12 momma. Her heart is in a continual broken state. She is
13 extremely impatient and on edge all the time. Some one
14 can mention Steven and it brings her to tears. She's an
15 emotional train wreck.

16 I pray that this guilty verdict will bring some
17 relief to my momma. As a child growing up, my brother use
18 to get on my last nerve at times as brothers often do.
19 Picking me up and poking me in the side. He had this
20 silly habit of picking me and my sister up from floor with
21 both of his arms wrapped around us giving us bear hugs.
22 Sometimes this brought laughter other times annoyance. He
23 did this even as we were adults. Steven and I were
24 partners in crime at picking on Angie, our sister. I'm so
25 very thankful for these memories, but I would give

1 anything to have Steven walk in this courtroom today and
2 give me a big old bear hug.

3 As for Adam, most days you'll find him trying to
4 hide his tears when something triggers the memory of
5 Steven. My momma hears him crying during the night. He
6 puts on a front like he is tough, but he is in constant
7 struggle with this lost. He lost his father, his best
8 friend and his mentor September a year ago. He moved away
9 from his mother in May just trying to get a new start on
10 life and away from the tragedy that lingers here in
11 Florence for him. I knew normalcy is hopefully on the
12 horizon when life settles after this trial.

13 So where we are now, still heart broken. This
14 will be with us. We will live with this forever. Steven
15 will be forever missed but forever loved. Still
16 devastated, devastated at the lost of Steven. A man so
17 full of life and live life to the moment. A life that
18 would be taken away at the hands of Wayne Scott. Still
19 lost, still sad, feelings I pray will ease as we put this
20 trial behind us, still angry. How do you not hate a man
21 who killed Steven. The man, my brother, that never met a
22 stranger. I try to be mindful and respectful of how we
23 were raised and how Steven would wants us to handle this
24 situation. We have to put aside the anger and contempt we
25 feel for Mr. Scott and try to move on and we will.

1 Snuffing out the life of a human being is a crime and just
2 like any other crime, it has to be punished.

3 Having to make memories without our beloved
4 Steven is a crime in and of itself. Trust me, we were
5 punished every single day -- we are punished every single
6 day we live without Steven. We are punished for a crime
7 we had nothing to do with. What can be done to compensate
8 for this incredible loss we suffer? Absolutely nothing.
9 However, you can punish the man who committed the crime.
10 While we feel sorry for the Scott family who has been
11 affected by this horrendous act, he will still have
12 conversations with his loved ones and he will still be
13 able to see his family. Steven is lost forever. Today,
14 my family would ask that you punish Mr. Scott for the
15 crime he has committed. We respectfully ask that you put
16 him behind bars for the maximum time the law will allow.
17 We ask this on behalf of Steven, a son, a brother, and a
18 father who was taken far too soon on September 24th 2012.

19 THE COURT: Thank you. Anyone else, Mr. Ozment?

20 MR. OZMENT: I think that's all.

21 THE COURT: Anything else from the State?

22 MR. OZMENT: Not at this time, Your Honor.

23 THE COURT: Mr. Grove.

24 MR. GROVE: Thank you, Your Honor. May I
25 approach, Your Honor.

1 THE COURT: Yes, sir.

2 MR. GROVE: I've got with me sufficit to say a
3 stack of letters of people who wanted to be here and
4 weren't able to be here, that's actually those were
5 prepared for a bond hearing sometime ago that wasn't held.
6 I'd ask that you take a few moments and look through
7 those. They have -- very good things to say about Sunny.
8 It was -- before I -- I need to make sure what today's
9 date is 396 days of credit is what I believe he's entitled
10 to. He was obviously arrested September 24th of last
11 year. September 23rd of this year would make 365 days.
12 Then we've another month and a day on top of that. I'm
13 doing that math in my head. If I can approach again, Your
14 Honor, I've got some copies of certificates that Sunny's
15 received while he has been in the detention center since
16 September of last year. He hadn't been sitting there
17 languishing over his situation. He's been trying to
18 improve himself and put himself in the best situation he
19 can. I certainly ask that you take note of that.

20 You've sat here, Your Honor, all week and heard
21 this trial and you've heard the evidence and you heard the
22 things the State has put, things the defense has put up.
23 I'll ask my client not to speak at this point not because
24 he doesn't have anything to say, but because I certainly
25 intend on filing appeals. We disagreed with the verdict.

1 And we know that a record is being kept and obviously that
2 would have consequences for him one way or the other. I
3 haven't spoken to Gloria very much today. His wife is
4 standing with him. She may like to address Your Honor at
5 the appropriate time. We're looking at a mandatory
6 minimum of 30 years. Sunny's 47 years old I believe.
7 Thirty years is a long time. We'd ask that consider the
8 minimum.

9 THE COURT: All right. Mrs. Scott, anything you
10 like to say?

11 GLORIA SCOTT: I lost that day too. He work for
12 me. I thought a lot of him. Since, this happen my
13 grandchildren know where their granddad is. My daughter
14 choose to tell them. They did come to church with me.
15 One of the guys at church told me the other day my
16 grandson had prayed in church to please just let his
17 grandad come home. And he wrote a letter to the judge
18 because he asked what all those letters were for. And I
19 told him we were going to be giving them to the judge. So
20 that he could read them and he would know how good of a
21 person granddaddy was. And he wrote one and he wrote says
22 Jay, please let my granddaddy come home, Judge. I didn't
23 put in with those letters.

24 THE COURT: Thank you, ma'am.

25 Anything else, Mr. Grove?

1 MR. GROVE: I think that will be all, Your
2 Honor.

3 THE COURT: You all can have a seat and I'll
4 read these. I'll just stay right here and read these.
5 You folks can stay there if you like or you can go back to
6 your seats.

7 (WHEREUPON, a pause in the proceedings.)

8 THE COURT: Yes, sir, you can stay seated for
9 just a moment. Before it slips my mind, I want to make
10 sure that law enforcement officers in here will escort
11 members of both families out separately. I don't know who
12 all of the folks are to my right seated behind prosecutors
13 table, but I will tell you that I certainly don't expect
14 and nor does law enforcement expect any difficulty in
15 these hallways or in these elevators, in the lobby or
16 anywhere else on the courthouse property.

17 I also will tell you that in many instances
18 after a verdict -- in this type of case whatever the
19 verdict might be, there is sometimes some hereafter
20 spilled out into the community. And it would do everyone
21 very well to keep in mind that if you do fall into that
22 situation, you will be dealt with very swiftly by the law.
23 So just steer clear of one another. Let's everyone be
24 calm even though you may disagree with the verdict,
25 disagree with the sentence whatever you may disagree with.

1 You have to put it aside or there will be some hereafter
2 on that.

3 All right. Mr. Scott, you please stand. As I
4 mentioned earlier the case in my opinion was tried
5 extremely well by both attorneys, very well prepared,
6 organized and the case was put in front of the jury in a
7 very orderly fashion. The jury had a tough job. A very
8 tough job.

9 The claim of self defense was certainly valid or
10 else I wouldn't have let it go to the jury. The jury did
11 speak. The jury had several questions about self defense
12 and they answered the question that the State had
13 disproven that defense beyond a reasonable doubt. My
14 sentence is what I think is appropriate under the
15 circumstances. Nobody can say whether it is the perfect
16 sentence nobody knows. The Lord only knows whether or not
17 this sentence is appropriate.

18 Under the murder statute, you're facing a
19 minimum of 30 years to a maximum life in prison. In my
20 view, a just sentence is that you be committed to the
21 South Carolina Department of Corrections for the balance
22 of your natural life. Concurrently with that, you will
23 receive a sentence of five years for possession of a
24 weapon during the commission of a violent crime. All too
25 often this day my guns, I guess, since guns were invented,

1 people deal out their frustrations with open end of a gun
2 instead of talking about it like men should do. So those
3 are the two sentences. I'll mark on sentencing sheet that
4 he'll get credit for the time he has served. That will
5 conclude these proceedings.

6 I will ask the deputies to confer with one
7 another. And in my view, the two families if you will
8 should leave the courthouse property separately. If you
9 would in your judgment post somebody outside in the
10 parking lot to make sure that everything peace is
11 maintained. All right. Thank you.

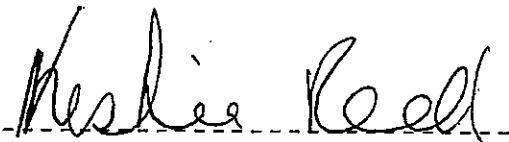
12 END OF REQUESTED TRANSCRIPT
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CERTIFICATE OF REPORTER

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 579, 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 21-24 day of
October, 2013.

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 20th
day of May 2014.


Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WAYNE ALBEON SCOTT,

APPELLANT

APPELLATE CASE NO. 2013-002365

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
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STATEMENT OF ISSUE ON APPEAL

1. Did the circuit court err in not granting Appellant Scott immunity from prosecution for the murder charge pursuant to S.C. Code Section 16-11-410, the Protection of Persons and Property Act, when Appellant was at his own home; the victim was on Appellant's property although he had been asked not to come; Appellant asked the victim to leave; and the victim continued to advance?
2. Did the trial court err in not charging the jury on S.C. Code Section 16-11-410 when standing his ground was a valid defense, which the jury should have been able to consider in their deliberations, in conjunction with self-defense which the trial judge had emphasized was a valid defense?

STATEMENT OF THE CASE

On March 28, 2013, the Florence County Grand Jury indicted Wayne A. Scott, Jr. on the charges of murder and possession of a firearm during the commission of a violent crime. On September 19, 2013, Scott appeared before the Honorable Howard King for a hearing on the defense motion for immunity pursuant to S.C. Code Section 16-11-410 entitled the Protection of Persons and Property Act, and the case law of State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). Scott was represented by William E. Grove, and the state was represented by Matthew R. Ozment. R. 1 - 4. Judge King denied the motion following testimony by three witnesses including Scott. R. 104, ll. 18 – R. 109, ll. 3.

On October 21-24, 2013, Appellant Scott proceeded to trial before the Honorable George C. James and a jury. Scott was represented by William Grove, and the state was represented by Matthew Ozment. R. 111. The jury returned a verdict of guilty on both charges of murder and the possession of a weapon during a crime of violence. R. 441, ll. 16 – R. 442, ll. 9. Judge James sentenced Scott to the maximum sentence of life imprisonment. R. 456, ll. 9 – 24. Scott's attorney filed a notice of appeal. This appeal follows.

STATEMENT OF FACTSIMMUNITY HEARING

Wayne Scott was charged with murder after he shot and killed a long time friend, Steve Springs, on September 24, 2012. R. 25, ll. 8 – 25; Indictment 2013-GS-21-0391. Defense counsel made a motion to the court pursuant to S.C. Code Section 16-11-410, entitled the Protection of Persons and Property Act, for immunity for Appellant Scott. R. 4, ll. 1 – 16. A hearing on the motion was held before The Honorable Howard King on September 19, 2013. R. 1.

Three witnesses testified for the defense: Gloria Scott, wife of Appellant; Michael Bruce; and Wayne Scott. R. 2. Gloria Scott's testimony was that she had known Steve Springs for years because he was the heat and air repairman for her boss. She managed rental properties for her boss so Springs did work for her. Springs was also a friend outside work who came to their home. R. 18, ll. 4 – 23; R. 25, ll. 8 – 25; R. 27, ll. 18 – R. 28, ll. 4.

In March or April of 2012, Gloria learned that Springs was in a relationship with her married daughter who had two small children. Springs was also married to someone else. Gloria did not approve of the relationship especially because of her two young grandchildren. She told her daughter and Springs of her feelings which became an ongoing dialogue. R. 26, ll. 1 – R. 27, ll. 23. She and Springs had verbal fights about his relationship with her daughter who was Appellant Wayne Scott's step-daughter. Scott did not approve of the relationship either. She and Scott had given up on the situation although it made them angry. Gloria said it made her husband a "little bit angry." R. 28, ll. 1 – R. 29, ll. 13.

On September 24, 2012, Gloria had taken her grandson to Skateland for the school sponsored night from 5:30 to 8:00. Then she took him home. R. 18, ll. 1 – R. 19, ll. 24. On

the way to her home, she received a phone call from her husband, Appellant, whom she knew had been hunting with Michael Bruce. When she answered, Scott told her that he shot Springs. She called 911 and said her husband had gotten into an altercation with a gentleman. Gloria checked Springs for a pulse but he did not have one. R. 21, ll. 1 – R. 23, ll. 24.

When she arrived home, she went to her neighbor Carl's house because Scott was there. She then took Scott home. Scott had asked another neighbor, George Watson, to do something with the gun, a Remington .06. While Gloria was at Carl's house, Watson told her he had the gun. She asked him to bring the gun to her. She put the gun in her house on her bed. R. 29, ll. 14 – R. 30, ll. 15; R. 33, ll. 15- R. 35, ll. 22.

Scott told her that Springs had come to their house, and they got into a verbal argument. Springs then threatened Scott. Springs got out of his vehicle and was approaching Scott. Scott asked him to leave. Scott was sitting on the front porch of her office which was attached to the end of their trailer home. R. 30, ll. 1 - R. 33, ll. 14. Scott still had the Remington gun with him because he had taken it hunting that day. R. 35, ll. 8 – 22.

When the police arrived, Gloria talked with them, and they talked with Scott. Springs' van was parked in front of her office, and his body was in the doorway of his van. R. 35, ll. 23 – R. 37, ll. 25.

Michael Bruce testified that he knew Wayne Scott because he had been "buddies" with Michael's father, Larry Bruce, for many years. Also, Scott was a painter. He and Michael worked together painting houses almost every day. R. 7 - R. 8, ll. 24.

On September 24, 2012, he and Scott had been painting, and then went hunting after work. They hunted until almost dark. Michael had to take Scott home then. When Michael

came out of the woods, Scott was on the phone with Springs. Michael did not know who originated the call. The two were arguing with each other steadily. Michael was not sure what they were arguing about. Michael told Scott to just hang up the phone on the 'joker.' Springs heard Michael say that and then wanted to talk to Michael although Michael did not know Springs. When Michael took the phone, Springs was cursing him, and told him he was going to beat his butt. Michael hung up. Springs called right back and Scott answered. They continued to argue. Scott hung up and Springs called right back. This happened multiple times. Michael knew that Springs told Scott he was coming to Scott's house and beat his "butt." Michael told Scott not to worry because Springs was not coming to his house. Michael had to leave Scott outside on his porch because he was locked out, and he had to wait for Gloria to get home. Michael found out the next morning that Springs was dead. R. 8, ll. 25 – R. 16, ll. 22.

Appellant Scott testified that he went hunting with Michael Bruce after work on September 24, 2012. They went by Scott's house to see if his grandson wanted to go, but the boy decided to go skating with Gloria. After hunting, Scott called Springs to see if Springs could obtain some items to cool the houses they were painting. Springs started talking about his relationship with Scott's stepdaughter. On the way to Scott's house with Michael driving, Springs kept calling and Scott kept hanging up on him because Springs was cursing him and threatening to beat Scott and Michael. This happened at least two times or more times. Scott was surprised as Springs did not seem like that kind of guy. Scott did not know what was wrong with Springs. R. 50, ll. 14 – R. 57, ll. 15.

Michael dropped Scott at his house and then left. Scott tried to get in to put his gun away. He was locked out because he left his keys in his truck and his wife drove his truck to

the skating rink. He just sat on the small platform porch in front of the office. He saw a white van coming down the road and realized it was Springs who drove in very fast, and stopped close, only five to seven feet, from Scott. Springs jumped out and started cursing Scott. Scott told him he thought they were friends and asked why he was doing this. Scott told him to get back in his van and please leave. He asked him several times. Scott had asked Springs not to come to his house. Springs then became enraged and Scott told him that he wanted nothing to do with the "situation" as long as his grandkids were fine. R. 56, ll. 11 – R. 61, ll. 17.

Springs just kept getting more irate, and Scott told him again to just leave as that was the best thing. Springs said no, and told Scott he would "show him." Springs told Scott that he would take Scott's gun and wrap it around his neck. Springs then stepped around the van door in a threatening way. Scott felt highly threatened. Scott then picked up his gun, pointed at Springs, and pulled the trigger one time. Springs was about six feet away. He was not sure that he hit Springs, but Springs fell on the ground and said help me. R. 61, ll. 16 – R. 62, ll. 25.

Scott was then in shock, and did not know what to do. He walked away and tried to call his wife. He finally reached her and told her he was going to Carl's house. She was going to call 911. His neighbor, George Watson then appeared. He finally told Watson that he shot Springs. R. 63, ll. 1 – R. 66, ll. 13.

On cross examination, Scott said he drank a beer at Michael's and had two beers while sitting on his porch when he arrived at home. He took Springs' threats as real. He had previously asked Springs not to come to his house because he was dating Scott's step daughter. He thought Springs was coming to hurt him. Scott could not get up and run and

could not get in the house. When the law officers arrived, Scott talked to them and told them the truth. He believed Springs was trying to attack him. Springs was a big man: 240 to 260 pounds and taller than Scott. Scott was five feet eight to ten inches tall and 131 pounds. He just wanted to stop Springs. R. 66, ll. 14 – R. 84, ll. 20. Scott did not see a weapon on Springs but then he really could not tell. R. 89, ll. 1-25. Scott admitted to a conviction in 2000 or 2001 for manufacturing marijuana. R. 80, ll. 1 – 25.

Defense counsel argued that Section 16-11-410, the “Stand your Ground Law,” applied in Scott’s case, and he should be granted immunity from prosecution. Scott was in his home and had a reasonable fear for his life or of being seriously injured. Section 16-11-440 (C) provides that the Act applied to a person who was not engaged in unlawful activity and was in a place where he had a right to be. The judge stated that the statute provided applied only to a person who was being attacked. Defense counsel argued that a person need not be assaulted to a particular degree before he could defend himself. Counsel stated that if there was a reasonable expectation that a violent crime was about to occur, any reasonable force could be used. The judge then noted that counsel was relying on subsection (C) of 16-11-440. R. 85, ll. 1 – R. 88, ll. 3.

The state argued that Scott was a convicted felon in possession of a gun. Therefore, he was not engaged in lawful activity when the incident occurred. Scott could not tell if Springs had a weapon or not but did not actively see one. R. 88, ll. 4 – R. 89, ll. 12.

Defense counsel replied that by citing State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999), where McCaskill and Goodson¹ stood for the proposition that a person could be acting lawfully even if he was in unlawful possession of a weapon if he were entitled to arm himself in self-defense at the time of the shooting. Counsel argued that the Legislature did not intend for a person to wait until he was being assaulted if he were threatened. R. 89, ll. 25 – R. 92, ll. 6.

The judge replied that the intent of the Legislature was to prevent people from being attacked in their homes or businesses or vehicles. It had nothing to do with preventing people from being attacked on the street or anywhere else. Defense counsel argued that Scott had no where else to go and wanted to avoid the attack. The judge ruled the statute required a physical attack and not just an assault because the word attack was used in the statute. Defense counsel respectfully disagreed, and argued that the word attack encompassed an assault without a battery. R. 92, ll. 7 – R. 104, ll. 15.

The judge ruled that he was relying on Section 16-11-410 and State v. Duncan, 392 S.C. 404, 7-9 S.E.2d 662 (2011), in making his decision. He was not making a decision on whether the unlawful activity, the possession of a weapon, precluded Scott from raising the immunity granted by the statute. The judge's ruling relied on the second prong of 16-11-440 (C). The legislature could have clearly used the word assault if that was their intent. He held that the Legislature's "plain and unequivocal" meaning meant a physical contact attack. Therefore, the judge denied Scott's motion for immunity under the Stand Your Ground Law. R. 104, ll. 18 – R. 109, ll. 3.

¹ State v. McCaskill, 300 S.C. 256, 387 S.E.2d 268 (1990); State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994).

TRIAL TESTIMONY

The jury trial was held October 21-24, 2013 before a different judge, the Honorable George C. James. R. 111-116.

Michael Burch testified that on September 24, 2012, he and Scott had been painting. They then went hunting after work until almost dark. Michael had to take Scott home. When Michael came out of the woods, Scott was on the phone with Springs. Michael did not know who originated the call. The two were arguing with each other steadily. Michael was not sure what they were arguing about. Michael told Scott to just stop arguing with the man, and Michael took the phone and hung up. Springs had told Michael that he was going to “beat Michael’s butt.” Springs called right back and they continued to argue. Scott did not really threaten Springs but both said they were going to “beat each other’s butt.” Michael could hear the conversation and knew that Scott was being threatened. Springs told Scott he was coming to Scott’s house and beat his “butt.” Michael told Scott not to worry because Springs was not coming to his house. Michael left Scott outside on his porch because he was locked out. Michael found out the next morning that Springs was dead. R. 229, ll. 14 – R. 242, ll. 10.

Gloria Scott testified as a state’s witness. She and Scott had been married eighteen years and had no children together. Gloria had a daughter, Crystal Hanna, who was twenty-seven, married with two small children. R. 244, ll. 1 – R. 245, ll. 20.

Gloria knew Steve Springs because he did heat and air repair for her boss’s rental houses, and she managed the rentals. She knew Springs was married also. When she learned of the relationship between her daughter and Springs, she did not approve. She did not want

Springs around her grandkids. Before their affair, Gloria's relationship with Springs had been friendly. He used to come to her house weekly but stopped when he the affair began with Crystal. R. 245, ll. 21 – R. 248, ll. 25.

The weekend before Springs died, Gloria called him about a need in a rental unit for air service. She could not reach him but her daughter told her to call Springs' son. However, Gloria had poor phone service and could not reach him. She did post a message on Facebook about taking her grandson and what fun they were having. Springs called irate cursing her because she could post on Facebook but could not call his son. Gloria then posted a message on Facebook that "that asshole is going to cause me to kill him." She did not tell Scott about Springs' call. R. 248, ll. 21 – R. 252, ll. 17.

She took her grandson to Skateland on September 24, 2012. Scott was going hunting. Scott called her on her way home, and she picked him up at her neighbor, Carl's, house. She called 911 as she was taking Scott home. She asked another neighbor, George, to get the gun and put in her truck. Gloria took the gun in her house and put it on the bed. She checked on Springs when 911 operator told her to, but there was no sign of life. She denied telling Larry Bruce that she had put a knife on the ground next to Springs, and that she was worried her DNA may be on it. R. 252, ll. 18 – R. 261, ll. 12.

Investigator William Hester talked to Scott at the scene the night of the incident. Scott agreed to talk to Hester. Deputy Michael Gifford had told Hester that he talked to Scott earlier in the evening and had Mirandized him. Hester did not read the Miranda rights again to Scott. Hester did not record Scott's statement. Scott told him that he had gone hunting that afternoon with a co-worker. He had verbal altercations with the deceased on the way home from hunting. He started getting phone calls from Springs talking about issues

with his personal life. Springs was cursing Scott and screaming at him so Scott hung up the phone. This happened multiple times. Hester checked their telephones and confirmed there were numerous calls between the two. R. 191, ll. 21 – R. 196, ll. 19.

When Scott arrived at home, he realized that he did not have his keys as his wife had taken the kids skating. He decided to sit on the porch and drink a beer and wait for her. The lights were not on. It was dark. Scott saw the white van coming down the driveway and realized it was Springs. Springs turned the van lights off and turned the vehicle off. He got out of the van. Scott told him that he needed to just leave. Springs then stepped out from around the van door. Scott told him that if he took another step, he would shoot him. Springs took a step out and Scott fired the gun. R. 196, ll. 20 – R. 199, ll.8.

Scott saw a screwdriver in Springs' left hand. Springs fell to the ground, and said "help me." That scared Scott and went around to the back of the mobile home. Scott told Hester that Springs had advanced towards him one step. Scott told him that he put the gun in the house. Then he went to his neighbor Carl's house. Scott drank a few beers there and called his wife. Scott did not call 911 but his wife, Gloria, did. Hester found a screw driver about five to seven feet from the deceased, and a open-blade lock knife where the deceased's hand was dropped. Hester transported Scott to jail, and obtained warrants for murder and possession of a weapon during a violent crime. R. 199, ll.9 – R. 209, ll. 24.

Catherine Leisy, a forensic scientist with SLED, analyzed the screwdriver and knife for DNA. R. 210, ll. 7 – 212, ll. 16. She also analyzed Scott's DNA for comparison, but was not able to develop DNA profiles from the screwdriver or knife. R. 212, ll. 1 – R. 217, ll. 6.

George Watson was a neighbor of Scott, and they were good friends who saw each other almost daily. On September 24, 2012, he heard a gunshot which he thought was in his

backyard. He went to investigate and saw Scott in his backyard. Scott was talking on his cell phone. Watson heard him say that he shot him. Scott told Watson that he fired the shot. Watson did not believe him at first. Scott threatened to shoot Watson and burn his house down if Watson told anyone. Watson then saw Springs' van and realized that Scott was telling the truth. R. 319, ll. 8 – R. 323, ll. 22.

Scott told Watson he killed Springs because he did not want his grandkids calling Springs daddy. When Watson asked if Springs have anything in his hands, Scott said no. Scott went to his boat and got a screwdriver and went to put it in Springs' hand. When Scott returned, he told Watson that Springs was still alive and he may have to shoot him again. But he did not. Scott asked Watson to get rid of the gun so Watson threw it into the woods. He retrieved the gun and put it in Gloria's truck when she called and asked him to do that. R. 323, ll. 24 – R. 329, ll. 3.

Watson talked to the police at the scene very briefly but did not tell them the truth because he was afraid. After the police took Scott, Watson asked to go somewhere else to talk. He met Investigator Hester at the Waffle House and told him what really happened. R. 329, ll. 6 – R. 331, ll. 24.

Sabrina Hartfield, Watson's girlfriend, testified that about two weeks before the shooting, Gloria told her of a conflict Gloria had with Springs at Crystal's house. Gloria was going to "whip Spring's ass or kill him." R. 332, ll. 15- R. 350, ll. 6.

Hubert Black knew Scott from installing hardwood floors. Sometime in September 2012, they left work early because they got into a liquor cabinet and then smoked a joint. Black, Scott, Carl Munn, and another man were riding in the truck together. Black said Scott was a "good fellow" when he was not drinking. He never thought Scott would hurt anyone.

But that day, Scott said he was going on a killing spree. There were three people he wanted to kill: Larry Bruce, Black's half brother, and this other "boy" who was messing with Scott's step daughter who was making phone threats to Scott and "putting his grandchildren through that stuff." R. 218, ll. 9 – R. 223, ll. 19.

Crystal Hanna, Gloria's twenty-seven year old daughter, had known Scott about twenty-five years. She became involved with Springs at work Springs and her mother had an altercation at Crystal's house four days before the shooting where Gloria pushed Springs down the steps. On Monday, the day of the shooting, she was on a three way call with Springs and Scott. Her story was that Scott was upset and Springs was saying he not trying to fight Scott and had no beef with him. Scott said they needed to talk. The first plan was for them to talk at Crystal's house, but she said no because she was putting her children to bed. They decided to meet at Scott's house. She heard no threats from Springs. Crystal admitted that she hated Gloria and Scott. R. 300, ll. 1 – R. 318, ll. 14.

Kevin Hanna was Crystal's husband. About a week before Springs was shot, Springs showed up at Kevin's job and threatened him. He would not let Kevin out of his car. Springs threatened to "kick Kevin's ass." Kevin took this seriously and the police were called. Kevin filed a police report but did not file a charge because Kevin did not want to cause any more problems. R. 357, ll. 1 – R. 363, ll. 25.

Larry Burch was a good friend of Scott. Gloria told him that she put the knife in Springs' hand. Bruce was shocked that Scott would do this because Scott would not hurt anyone. Bruce knew Scott real well and Scott was not capable of doing this on his own. R. 267, ll. 1 – R. 283, ll. 7.

Dr. Erin Presnell, a forensic pathologist with MUSC, performed the autopsy on Springs. Due to the extent of damage from the single gunshot, Springs would not survived no matter how long it took EMS to arrive or even if he had been in the hospital. R. 285, ll. 11 – 25; R. 288, ll. 15 – R. 298, ll. 24.

At the close of the testimony, the judge requested for jury charges. All parties agreed that self defense would be charged. The judge said he assumed all parties would agree that he would not charge any part of the immunity statute because it was a pretrial defense and was not a jury issue. Defense counsel said that he might disagree. He agreed that it was the law, but he might disagree with the principle of it. The only cases he could find regarding the statute being submitted to the jury on the castle doctrine predated the statute. He argued that there was not any case law directly on point. But he conceded that it was heard in pretrial. The judge stated that the codified common law on self defense was still in the jury charge. R. 355, ll. 1 – 25.

The judge charged n self defense. R. 407, ll. 12 – 410, ll. 25. During deliberations, the jury sent three questions to the judge. One question asked for a copy of the self defense statute. Judge agreed to recharge the jury on self defense since there was no statute. After further deliberation, the jury asked two additional questions. One asked for clarification on element one of self defense: if both parties are at fault can self defense be claimed. The second question asked if all of the elements of self defense had to apply or if only one was needed. The judge explained to the jury that all of the elements must be present and the defendant had to be without fault in bringing on the difficulty. The jury sent another question on the requirements for a murder conviction to which the judge repeated the charge on murder. R. 420, ll. 14 – R. 440, ll. 19.

The jury returned a verdict of guilty on the murder and gun charge. R. 441, ll. 14 – R. 442, ll. 10.

During sentencing, the judge stated that the claim of self defense was valid or he would not have charged it. He allowed it to go to the jury for that reason. But he said, the jury had spoken. The judge sentenced Scott to life in prison. R. 455, ll. 8 – R. 457, ll. 11.

ARGUMENT

I

The circuit court erred in not granting Appellant Scott immunity from prosecution for the murder charge pursuant to S.C. Code Section 16-11-410, the Protection of Persons and Property Act, when Appellant was at his own home; the victim was on Appellant's property although he had been asked not to come; Appellant asked the victim to leave; and the victim continued to advance.

S.C. Code Section 16-11-440 (C) provides:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Section 16-11-440(A) provides:

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended likely to cause death or great bodily injury to another person if the person: (1) against whom the force is used is in the process of unlawfully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence or occupied vehicle; and (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Section 16-11-440(B) explains that subsection (A) does not apply if the person against whom the force is used has a right to be in the place; is trying to remove a

child or grandchild who is in the custody of the person against whom the force is used; if the person who uses the deadly force is engaged in an unlawful activity; and if the deadly force is used against a law enforcement officer.

S.C. Code Section 16-11-440 is entitled: Presumption of reasonable fear of imminent peril when using deadly force against another unlawfully entering residence, occupied vehicle, or place of business.

In State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), the Supreme Court ruled that immunity under the Protection of Persons and Property Act was to be determined pretrial by a preponderance of the evidence.

In State v. Issac, 405 S.C. 177, 747 S.E.2d 677 (2013), the Supreme Court held that an order granting a request for immunity under the Protection of Persons and Property Act was immediately appealable because it was a final order in the case. However, an order denying immunity under the Act was not a final order but interlocutory, and therefore was not immediately appealable.

In State v. Duncan, *supra*, Gregory Kirk Duncan shot his friend, Chris Spicer, one time as Spicer, who was intoxicated, attempted to re-enter Duncan's dwelling after having been ejected from the premises for making crude sexual comments about Duncan's teenaged daughter. The State indicted Duncan for murder.

Defense counsel filed a motion to dismiss the prosecution pursuant to S.C. Code §16-11-450 of the Protection of Persons and Property Act, which provides in relevant part, "A person who uses deadly force as permitted by the provisions of this article ... is justified in using deadly force and is immune from criminal prosecution." On March 24, 2009, Judge Edward W. Miller heard arguments on Duncan's motion and limited testimony and received

a number of written statements concerning the incident. By subsequent order, the judge found Duncan immune from prosecution under the statute and dismissed the indictment.

The trial judge here relied on State v. Duncan, Id. and Section 16-11-410 in reaching his decision to deny immunity to Scott. However, the trial court in Duncan relied on 16-11-440 (A) because the victim continued to force his way into the defendant's home. Even so, there was no evidence Duncan himself was being attacked.

Section 16-11-420(E) provides that:

The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of **intrusion** [emphasis added] or attack.

Section 16-11-440(C) provides that a person has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he **reasonably believes it is necessary** [emphasis added] to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime.

The evidence at the immunity hearing demonstrated clearly that Scott reasonably believed that he was in danger of death or great bodily harm when Springs appeared unexpectedly. Springs had threatened Scott numerous times on the phone as corroborated by the witness Michael. Scott had no duty to retreat. Springs was intruding on Scott's property which included his residence as the wife's office was physically attached to the residence. Scott was also sitting on the porch of his wife's business. He was locked out.

The word "attack" was not defined in Section 16-11-430 which provided the definitions for words in the statutes. Nor was "attack" defined in any other section of the statute from 16-11-410 through 16-11-450.

It was unreasonable, as defense counsel argued, that the General Assembly meant for a person to wait until he was attacked to defend himself as the first blow could be fatal.

Although the trial judge did not rule on the issue of Scott acting unlawfully because he was in possession of a weapon as a convicted felon, the Supreme Court ruled in State v. Burriess, 334 S.C. 256, 513 S.E.2d 104 (1999), that a person who shoots another can be acting lawfully even if he is in unlawful possession of a weapon, if he was entitled to arm himself in –self-defense at the time of the shooting.

ARGUMENT

II

The trial court erred in not charging the jury on S.C. Code Section 16-11-410 when standing his ground was a valid defense which the jury should have been able to consider in their deliberations, in conjunction with self-defense which the trial judge had emphasized was a valid defense.

The Supreme Court held in State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999), that the law to be charged is determined from the evidence presented at trial, and if any evidence exists to support a charge, it should be given.

The Supreme Court ruled in State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), that the trial court erred in instructing the jury in accordance with the Protection of Persons and Property Act as the trial court had denied immunity under the Act to Curry, and the error was beneficial to the defendant.

The Court also wrote in Curry, Id. that: “The full reach of the Act and whether the statutory provisions in the Act extend beyond the common law Castle Doctrine are questions for another day. Under the Castle Doctrine, one is not required to retreat from his dwelling place.” The Court cited State v. Gordon, 128 S.C. 422, 425, 122 S.E.2d 501,502 (1924) which held that one attacked without fault on his part, **on his own premises**, [emphasis added] has the right in establishing his plea of self –defense, to claim immunity from the law of retreat which is ordinarily an essential element of that defense. Section 16-11-420 codified the Castle Doctrine.

In Curry, the Supreme Court wrote that a valid case of self-defense must exist consistent with the Castle Doctrine and the Act. Curry’s case is distinguished from Scott’s in

several ways as Curry was decided in a different context. Curry was a social guest and visitor in the home where the shooting occurred. The Supreme Court ruled that his claim of self-defense was a “quintessential” jury question. There was no pretrial hearing to determine immunity as this case was before State v. Duncan, *supra*. Therefore, the same trial judge determined immunity as he conducted the trial. Here, there was a pretrial hearing but immunity was decided by a different judge from the trial judge. The trial judge here ruled that immunity was a pretrial issue exclusively.

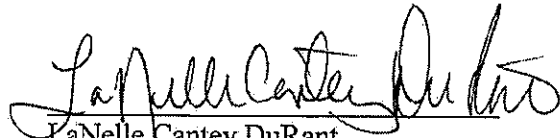
Section 16-11-420 through 16-11-450 did not provide a process to follow if immunity was denied. Although the Supreme Court in State v. Duncan, *supra*, wrote that the “legislature intended to create a true immunity, and not simply an affirmative defense,” the Court did not rule that it could not be considered a defense at trial if immunity was denied since immunity was granted in Duncan’s case.

The trial judge in Scott’s case should have charged the jury on 16-11-440 (C) as an affirmative defense since immunity was denied. The jury was confused on the issue of self-defense. During jury deliberations, the jury sent questions to the trial judge on two occasions for clarification on self-defense. If the jury had been given the charge on Section 16-11-440 (C) or the Act, the result of the trial very reasonably could have been different as it would have clarified self-defense. Immunity was a different issue from an affirmative defense although the two were correlated. If self-defense was required for immunity under the Act, then a consideration of the protection of persons and property should be considered along with self-defense.

CONCLUSION

Based on the above, Scott's conviction and sentence should be reversed and his case remanded for a new trial.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

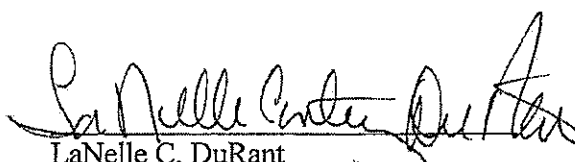
ATTORNEY FOR APPELLANT

This 1st day of April, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

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

April 1st, 2015



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

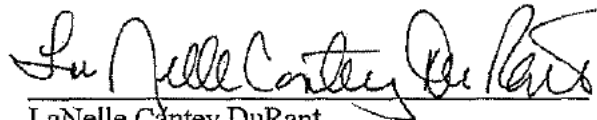
V.

WAYNE ALBEON SCOTT,

APPELLANT

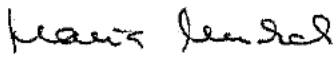
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Kayce S. Timmons, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of April, 2015.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of April, 2015.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

George C. James, Jr. Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WAYNE ALBEON SCOTT, JR.,

APPELLANT,

Appellate Case No. 2013-002365.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Did the circuit court err in not granting Appellant Scott immunity from prosecution for the murder charge pursuant to S.C. Code Section 16-11-410, the Protection of Persons and Property Act, when Appellant was at his own home; the victim was on Appellant's property although he had been asked not to come; Appellant asked the victim to leave; and the victim continued to advance?
- II. Did the trial court err in not charging the jury on S.C. Code Section 16-11-410 when standing his ground was a valid defense, which the jury should have been able to consider in their deliberations, in conjunction with self-defense which the trial judge had emphasized was a valid defense?

RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

- I. Whether the pretrial court erred in denying immunity under the Protection of Persons and Property Act where the court found Appellant did not meet its burden of proof.
- II. Whether the trial court erred in failing to charge language from the Protection of Persons and Property Act where no request was made to charge such language and where immunity had been denied.

RESPONDENT'S STATEMENT OF THE CASE

A Florence County Grand Jury indicted Appellant, Wayne Albeon Scott, Jr.,¹ in March 2013 for the murder of Steve B. Springs (Victim) and for possession of a weapon during commission of violent crime. (R. p. 458 – 459).

Appellant sought immunity under the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq.*, and on September 19, 2013, the Honorable Howard King conducted a pretrial hearing to determine whether Appellant was entitled to immunity. (R. pp. 1–110). Appellant was represented by Assistant Public Defender William Grove during the hearing. (R. p. 1). The State was represented by Assistant Solicitor Matthew Ozment. (R. p. 1). After hearing from three witnesses, including Appellant, and after hearing argument from both sides, Judge King denied the motion. (R. p. 104, line 18–p. 109, line 3).

On October 21, 2013, Appellant's case was called to trial before the Honorable George C. James. (R. p. 111). Appellant was represented by Assistant Public Defender Grove during the four-day trial. (R. p. 111). Assistant Solicitor Ozment represented the State. (R. p. 111). On October 24, 2013, the jury returned a verdict of guilty on all counts as charged. (R. p. 441, line 24–p. 442, line 10). Judge James sentenced Appellant to life imprisonment for murder and to five (5) years incarceration for possession of a weapon, the sentences to run concurrently. (R. p. 456, lines 18–24).

Thereafter, Appellant served a timely notice of appeal, which he filed with the South Carolina Court of Appeals on November 4, 2013. (R. p. 460 – 461).

¹ Appellant also goes by the name "Sunny" and is sometimes referred to as such in the testimony.

RESPONDENT'S STATEMENT OF THE FACTS

Tensions Rise

Victim worked as a heating and air repairman for Appellant's wife's company, and, prior to June 2012, he would come to Appellant's house to pick up his check every week from Appellant's wife, Gloria Scott. (R. p. 245, lines 21–p. 247, line 25). Scott testified that she learned in April or May of 2012 that Victim and Scott's daughter (Appellant's stepdaughter) were having an affair. (R. p. 246, lines 11–21). Both Victim and Scott's daughter, Crystal Hanna, were married. (R. p. 244, line 15–p. 246, line 17). Scott disapproved of the relationship, and according to Scott, Victim knew that she disapproved, and that is why he stopped coming to her house to pick up his check. (R. p. 246, line 18–p. 248, line 3). Instead, Victim would send someone else to pick it up, or he would meet Scott at one of the properties she managed. (R. p. 248, lines 4–9).

Scott testified that she and Victim had very heated exchanges about his relationship with Hanna. (R. p. 248, line 10–20). Hanna testified to an exchange that she witnessed on the Thursday before Victim's death, September 20, 2012:

[H]e was at my house to pick me up and we were leaving. And my mom showed up unannounced and him and her exchanged words. And he went to go walk out the front door to sit in the truck and wait on me to finish getting my stuff and, you know, leave and she pushed him down the steps. He didn't fall, but I mean she just put her hands on him, pushed him down the steps and a police report was made.

(R. p. 303, line 25–p. 304, line 13).

On Saturday, September 22, 2012, Scott was on an overnight camping trip with her grandson's cub scouts troop when she learned that one of her properties was having problems with their air conditioning unit. (R. p. 248, line 21–p. 249, line 12). She tried to call Victim about the issue, but she did not reach him. (R. p. 249, lines 9–16). Scott

then called Hanna and told her she was trying to get in touch with Victim. (R. p. 249, lines 16–22). Hanna told Scott to call Victim’s son. (R. p. 249, lines 20–22). According to Scott, she tried multiple times to call Victim’s son but was unable to reach him. (R. p. 249, line 22–p. 250, line 3). However, Scott was able to post on Facebook about the camping trip. (R. p. 250, lines 3–10). Sometime later that evening, Scott received a call from Victim, who was “upset because [Scott] had gotten on [her] phone and was able to make a post, but [she] wasn’t able to get through to his son.” (R. p. 250, lines 10–18).

Scott ended up having to leave the camping trip early, and she posted on Facebook something to the effect of “it is ashame [sic] that my grandson’s night got F up by this asshole” (R. p. 250, line 19–p. 252, line 11). Later in that conversation on Facebook, Scott said “yeah, and the asshole is going to cause me to kill him.” (R. p. 251, lines 4–7). At trial Scott explained, “[M]y sister-in-law asked me what had happened and I told her that I would call her tomorrow and explain that just because I didn’t want to put on Facebook that my daughter was messing with a married man.” (R. p. 251, lines 7–10). Scott also posted that “[Appellant] did nothing yet, but when he finds out” (R. p. 251, line 13–p. 252, line 3). Scott affirmed that the “asshole” she was referring to was Victim. (R. p. 251, lines 7–11).

Two days later, on September 24, 2012, Appellant went hunting with Michael Bruce² on Bruce’s property in Pamplico. (R. p. 229, line 14–p. 231, line 9). They finished right before dark. (R. p. 231, lines 10–13). When Michael Bruce came out of the woods, he found Appellant on the phone arguing and cussing. (R. p. 231, line 21–p.

² Both Larry Michael Bruce and Larry Michael Bruce, II, testified at Appellant’s trial. The senior Bruce goes by Larry Bruce, and the junior Bruce goes by Michael Bruce, and Respondent will refer to them as such in this brief.

234, line 8). Michael Bruce drove Appellant home that night, and according to Bruce's testimony, Appellant and the man on the phone were arguing for almost the entire fifteen minute drive. (R. p. 234, lines 1–24). Though Michael Bruce could not tell what the two were arguing about, he heard them threaten to “beat each others butt.” (R. p. 235, lines 14–20). At some point, Michael Bruce took the phone from Appellant and ended the call, but the man on the other line called back. (R. p. 235, lines 1–13). Appellant and Michael Bruce had a couple beers on the way home. (R. p. 236, lines 2–9). By the time Michael Bruce dropped Appellant off at his house that night, Appellant had hung up the phone, but Appellant was locked out of his house because he did not have his keys. (R. p. 236, line 10–p. 237, line 9).

Hanna testified that she was on the phone calls between Appellant and Victim that Monday. (R. p. 307, line 1–p. 308, line 7). According to Hanna,

[Victim] called me because he said that he had a really bad feeling about it. Something just didn't sit right with him about [Appellant] calling him so persistently about the air condition situation. So he wasn't going to go down there and called him back to let him know that and had me on three way when he called [Appellant] back.

(R. p. 307, lines 19–25). According to Hanna, Appellant threatened to “beat [Victim's] mother[,]” and Victim responded that he did not want to fight Appellant. (R. p. 308, lines 8–19). Appellant told Victim that he could meet him at Appellant's house if Victim wanted to talk. (R. p. 308, line 8–p. 309, line 1). Victim later called Hanna and told her that he was almost to Appellant's house and that he would see her when he left. (R. p. 309, lines 15–21).

Appellant Shoots Victim

Appellant's neighbor, George Watson, was watching television the night of September 24, 2012, when he heard a gunshot. (R. p. 319, line 10–p. 320, line 21). The gunshot sounded like it was in Watson's backyard, so he grabbed his fiancé's .45 and went outside to see what was going on. (R. p. 320, line 22–p. 321, line 3). Watson saw Appellant in his backyard talking on a cell phone. (R. p. 321, lines 9–14). Watson heard Appellant say, "I shot him." (R. p. 321, line 15–16). Once Appellant was off the phone, Watson called out to Appellant and asked if that was him shooting a gun. (R. p. 321, lines 17–20). Appellant responded yes and told Watson that the gun went off, and the bullet jammed in the gun. (R. p. 321, lines 20–22). Appellant and Watson then walked to Watson's property line and started talking about hunting. (R. p. 322, lines 6–11). Appellant confessed to Watson that he had shot Victim. (R. p. 322, lines 12–13). Watson did not believe Appellant because he was acting totally normal. (R. p. 322, line 19–p. 323, line 3). Appellant then threatened Watson, saying "if you tell anybody, I will shoot you or you gone have to shoot me or I'm going to burn your house down with your kids in it." (R. p. 323, lines 4–9). Watson looked towards Appellant's house and saw Victim's van there with the door open and the cab light on, and he realized that Appellant was telling the truth. (R. p. 323, lines 4–22).

Appellant instructed Watson to put Victim's body in the van and take it down the road, but Watson refused, and Appellant threatened him again. (R. p. 323, line 23–p. 324, line 4). Appellant told Watson that he had killed Victim because he was not going to have his grandkids call Victim "daddy." (R. p. 324, lines 9–14). Watson then testified to the following:

Q. What did you say to that?

A. I said, well, did he have anything in his hand Sunny. He said no. I said, well, you know that's plan [sic] out cold-blooded murder. I said if he didn't come after you with something, it was murder.

Q. What did Sunny say to that?

A. He said that he didn't have nothing in his hand, so that's when he proceeded over to his boat and he got a screwdriver out, a black one red tip about this long whipped it off with his jacket and went around there to put it in his hand. I stayed around back. I never went around towards the front of the house. I stayed around back, that's when he come back and told me that Steve was still alive.

(R. p. 324, line 15–p. 325, line 3). Appellant told Watson that he was going to shoot Victim again, but instead, he handed his gun to Watson and told him to get rid of it. (R. p. 326, line 8–p. 327, line 1). Appellant said, “I don't care what you do with it, throw it woods [sic] for all I care.” (R. p. 326, line 25–p. 327, line 1). So Watson took the gun and tossed it into the woods across the street. (R. p. 327, lines 15–18).

Shortly thereafter, Scott called Watson and asked what Appellant had told him. (R. p. 328, lines 11–18). Scott then pulled up in her truck, asked where the gun was, and instructed Watson to retrieve it from the woods. (R. p. 328, line 18–p. 329, line 3). Watson testified that he did so and put the gun in the bed of Scott's truck. (R. p. 329, lines 6–12). At that point, the truck was parked at the home of Carl Munn, another neighbor and Watson's brother-in-law. (R. p. 329, lines 2–12). Watson then went in Munn's house. (R. p. 329, lines 14–15). Inside he saw Appellant on the couch drinking a beer and watching wrestling. (R. p. 329, lines 14–16). Scott tried to get Appellant off the couch and told him “you better get your story straight because we got a dead man in the front yard. We got to get our story straight before we call the law.” (R. p. 329, lines 14–

18). Everyone then went outside, and Scott told Watson, if he was asked, to tell the cops that all he heard was arguing and a gunshot. (R. p. 329, line 23–p. 330, line 2).

Watson then went back to his place and waited on the police. (R. p. 330, lines 3–8). Police arrived about twenty minutes later. (R. p. 330, lines 9–11). When the police first talked to Watson, he told them exactly what Scott had told him to say. (R. p. 330, line–p. 331, line 2). However, after the police took Appellant away, Watson asked one of the officers to meet him down the road at Waffle House. (R. p. 331, lines 4–11). There, he told Investigator William Hester and another officer what really happened. (R. p. 331, lines 12–17).

Scott's testimony about the evening of September 24th differed from Watson's testimony. Scott testified that she had just dropped her grandson off at his home when she received a call from Appellant that caused her to rush home. (R. p. 253, line 4–p. 254, line 4). Scott saw Watson at some point and asked him to get the gun for her. (R. p. 255, lines 8–12). She went to Munn's where Appellant had told her he was headed. (R. p. 254, line 25–p. 255, line 4). While Appellant was at Munn's house, Watson put the gun in the bed of Scott's truck. (R. p. 255, line 23–p. 256, line 14). Scott and Appellant then got in her truck to go home. (R. p. 256, lines 15–21). Scott testified that she called 9-1-1 as soon as they got in the truck. (R. p. 256, lines 15–18). Scott testified that she did not remember telling Appellant to get his story straight and that she did not tell Watson what to tell the police. (R. p. 256, line 22–p. 257, line 11).

When Scott and Appellant got home, she took the gun into the house and laid it on her bed. (R. p. 258, lines 1–4). Scott checked on Victim at the 9-1-1 operator's

direction but found no signs of life. (R. p. 258, line 20–p. 259, line 2). Scott testified that it only took police about three minutes to get there. (R. p. 259, lines 3–5).

Police Arrive

Investigator Rollins Rhodes, the first police officer on the scene, arrived and found Victim laying on the ground near the driver's side doorway of his van. (R. p. 162, lines 5–13). Appellant was sitting on the porch. (R. p. 162, lines 13–18). Rhodes asked Appellant who did the shooting, and Appellant responded, "I did." (R. p. 163, lines 14–20). Rhodes then handcuffed Appellant. (R. p. 163, line 21).

Once other police officers arrived at the scene, Appellant was given his *Miranda* warnings, and he made statements to police. (R. p. 167, line 18–p. 173, line 11). Appellant told Deputy Michael Gifford that Victim had come to his house uninvited and unannounced and that they had a verbal altercation. (R. p. 169, lines 2–6). Gifford testified that Appellant told him that Victim approached him with something in his hand and that he then shot Victim. (R. p. 169, line 6–p. 170, line 11). Appellant told Gifford that after he shot Victim, he threw the cartridge casing in a burn pile, put the gun inside, went to a friend's house, and called his wife. (R. p. 171, line 8–p. 172, line 3). Gifford noticed the smell of alcohol on Appellant's breath but noted that Appellant did not seem to have any problem answering Gifford's questions. (R. p. 172, line 22–p. 173, line 8).

Appellant also gave a statement to Investigator William Hester. (R. p. 191, line 21–p. 203, line 16). Appellant described the phone calls he had gotten from Appellant when he was on his way home from hunting. (R. p. 195, line 15–p. 196, line 19). When Appellant arrived home, he realized he was locked out of his house, so he decided to sit on his porch, drink a beer, and wait for his wife to get home. (R. p. 196, line 20–p. 197,

line 2). Appellant told Hester that Victim pulled into his driveway, turned his van headlights off, and opened the door. (R. p. 198, line 20–p. 199, line 2). Appellant told Victim that he needed to leave, but Victim stepped out from behind the car door. (R. p. 199, lines 2–5). Appellant told Victim, “Steve if you take one more step, you know, I’m going to shoot you.” (R. p. 199, lines 5–7). Victim took another step, and Appellant shot him. (R. p. 199, lines 7–8). Appellant told Hester that Victim was holding a screwdriver in his hand at the time. (R. p. 199, line 21–p. 200, line 4). Appellant told Hester that he heard Victim “say help me[,]” but Appellant did not go to help Victim. (R. p. 201, lines 15–20). Appellant told Hester that after he shot Victim, he put the gun in his home, took the cartridge out of the gun and dropped it in the burn pile, went to Carl Munn’s house, and drank a few beers there before calling his wife. (R. p. 201, line 2–p. 202, line 13).

Larry Bruce testified that on the night of September 24, 2012, he got a couple of calls from Appellant asking him to come over to beat up Victim. (R. p. 266, line 18–p. 270, line 4). Larry Bruce refused. (R. p. 270, lines 4–7). The next day, Larry Bruce found out through Scott that Appellant had shot Victim. (R. p. 270, lines 8–12). Scott also told Larry Bruce that she was in “trouble” because she had “put a knife in his hand and [she was] worried about the DNA coming back matching [her].” (R. p. 270, lines 14–21). Scott told Larry Bruce that there was a screwdriver in Victim’s hand, and she replaced it with a knife.³ (R. p. 270, line 24–p. 271, line 3).

Police collected a red and black screwdriver five to seven feet from Victim’s body and a silver lock-back hinge knife about a foot from Victim’s hand. (R. p. 184, line 8–p. 187, line 15; R. p. 204, lines 6–23). Victim’s body was located approximately seventeen

³ Scott denied telling Larry Bruce such things. (R. p. 259, line 15–p. 261, line 6).

feet from the porch. (R. p. 189, line 17–p. 190, line 4). Though officers searched the burn pile, they were not able to locate the shell casing. (R. p. 188, lines 2–21).

ARGUMENT

I.

The pretrial court did not err in denying Appellant's motion for immunity under the Protection of Persons and Property Act because the court found Appellant did not meet his burden of proof.

Introduction

The statutory scheme under which Appellant sought pretrial immunity is the Protection of Persons and Property Act (the Act or Stand Your Ground), S.C. Code Ann. § 16-11-410 (2006) *et seq.* The Act provides, “It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person’s home is his castle” S.C. Code Ann. § 16-11-420(A) (2006). The South Carolina Supreme Court has concluded “that the legislature intended defendants be shielded from trial if they use deadly force as outlined under the Act. Immunity under the Act is therefore a bar to prosecution and, upon motion of either party, must be decided prior to trial.” *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). In this case, the pretrial court did not abuse its discretion in denying Petitioner’s request for immunity because the denial was based on a proper interpretation of the statute and on factual findings, which were supported by the evidence presented. The pretrial court denied immunity based on two separate findings—first, that Appellant was not being attacked at the time he shot Victim and, second, that Appellant did not have a reasonable fear of death or great bodily injury when he shot Victim.

How the Issue Was Raised

Three witnesses testified at the pretrial hearing—Michael Bruce, Scott, and Appellant. (R. pp. 7–85). Michael Bruce testified about the phone calls between

Appellant and Victim that night. (R. p. 10, line 7–p. 16, line 19). On direct examination Scott testified about what she did when she found out Victim had been shot. (R. p. 21, line 16–p. 25, line 1). On cross-examination she testified regarding her history with Victim. (R. p. 25, line 8–p. 29, line 13). Scott also testified that Appellant told her that he and Victim had gotten into a verbal argument and that he had shot Victim. (R. p. 30, line 10–p. 32, line 8).

Appellant also testified at the hearing about the events of September 24, 2012. Appellant testified that on the phone that night Victim threatened to beat him. (R. p. 56, line 17–p. 57, line 13). Appellant testified that he was waiting on his porch for his wife to get home when he saw Victim's white van come down the road. (R. p. 58, line 13–p. 59, line 25). According to Appellant, Victim pulled in Appellant's yard—only five to eight feet from Appellant. (R. p. 60, lines 2–11). Appellant testified to the following:

He had his headlights on and he jumps out of the van. He cuts the van off and jumps out of the van and goes to cussing me and stuff about what I was going to do and what I was going to tell my wife and all this, and I was like, man, I thought we was friends, you know. Why are you doing this? Oh, this, that and the other and all this here, and I—I was like, man, the best thing for you to do is—and we'll talk about it later, is get back in your van and please leave. Several times I asked him to please leave

. . . .

Then he got more or less outrageous about it I reckon because I—I didn't want nothing to do with the situation though he was getting mad with me because I told him I didn't care what happened between them, you know. I didn't want nothing to do with the situation that they was having.

. . . .

He kept getting more irate and irate and irate, and he was standing there with his hand on the door and then eventually he said—I said the

best thing for you to do is leave and he said no. He said better than me telling you, he says, I'll show you. And I was like, man—

....

And then like, man, you know, go on and just leave me alone, you know, and he said, no, just because you've got that gun laying in your lap, you think I'm f'ing scared of you. He said I'll take it and wrap it around your f'ing neck. And I said, Steve, you know, we're supposed to be friends. Come on now, you know, it ain't got to go to this, and then he come around the door at—you know, in a—what I would say in a threatening way.

....

I just picked the gun up, pointed it at him, and pulled the trigger.

(R. p. 60, line 13–p. 62, line 16). Appellant testified that he believed Victim was five feet from him when he fired the shot. (R. p. 62, lines 22–24).

On cross-examination, Appellant testified that Victim came “around the door in a lunge.” (R. p. 72, lines 12–16). Appellant testified that he did not see a weapon and that it was dark. (R. p. 72, lines 6–11). Appellant also testified that Victim was not running but was swinging his arms “how people are when they're angry.” (R. p. 74, lines 16–23). Appellant affirmed that he was a convicted felon. (R. p. 80, line 20–p. 82, line 14).

At the conclusion of the testimony, Judge King heard argument from both sides. Defense counsel argued that the Act was applicable. (R. p. 85). Defense counsel indicated that he was specifically seeking immunity under S.C. Code Ann. § 16-11-440(c)—not S.C. Code Ann. § 16-11-440(a). (R. pp. 85–86). When the court questioned whether Appellant was attacked, as required by the statute, defense counsel articulated his position “that this defense was done in an effort to prevent a violent crime from occurring.” (R. p. 86). Defense counsel further argued that it was not necessary that someone seeking immunity under the Act “be assaulted and to any particular degree

before you can defend yourself. If there is a reasonable expectation that a violent crime is about to occur, this statute by my interpretation affords protection to any reasonable force that is extended.” (R. p. 87).

In response, the State first pointed out that Appellant was a convicted felon, and therefore, it was unlawful for him to possess a firearm, and thus, he was not engaged in lawful activity when he shot Victim. (R. pp. 87–88). As to the issue of whether Appellant was being attacked when he shot Victim, the State noted,

Mr. Scott said he came at him. He said he didn’t see any weapons. He said he didn’t—well, he said he couldn’t tell, but he certainly didn’t affirmatively see any weapons. He said that Mr. Springs was standing back from him and was coming towards him, but he said he wasn’t running. He just said he was moving quickly. He said he was flinging his arms, but certainly the right to meet force with force, no force had been exerted at this point and certainly deadly force was then exerted by Mr. Scott. So that would be the State’s position on the application of subsection (c).

(R. pp. 88–89).

Defense counsel disagreed that Appellant was in unlawful possession of a weapon, arguing that someone can be acting lawfully even if in unlawful possession of a weapon because he can arm himself in self-defense under state law. (R. pp. 89–91). Defense counsel also again argued that the legislature intended “attack” to encompass assault and did not necessarily require a battery. (R. pp. 91–94).

The State again argued that Appellant was in unlawful possession of the weapon and that Victim’s actions that night did not constitute an attack. (R. pp. 94–96). He then summarized the State’s position, stating,

I would argue that kind of three points, the first being unlawful activity; next, that he was not attacked; and lastly, that even if you somehow say he was attacked, he was not in—he, by his own testimony, was not in fear of

death or great bodily injury. He was merely in fear that he was about to be attacked by a man who had no weapons.

(R. pp. 96-97).

After taking some time to review the cases that both sides had handed up during argument, the court ruled as follows:

Scott had already through his attorney already indicated that he is not relying on subsection (a) granting him a presumption of reasonable fear or imminent peril or death entitling him to use deadly force because there's no evidence that there was anyone in the process of unlawfully or forcefully entering a dwelling or a residence. And so subparagraph (a) of the statute does not apply.

Rather, according to Scott's own argument, he is relying on section—subsection (c), which states as follows: a person who is not engaged in unlawful activity or who is attacked in another place where he has a right to be, including but not limited to his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

That being the case and relying on that statute, there are three things that I think that the person asserting the right to the immunity must prove by the greater weight or preponderance of the evidence. First, that a—he's not a person who is engaged in an unlawful activity; second, who is attacked in another place where he has a right to be; and third, reasonably believes it necessary to prevent death or bodily injury to himself or another.

The State contends that he was engaged in an unlawful activity, i.e. the possession of a weapon because he was a convicted felon, and relies upon the federal law which prohibits a convicted felon from being in possession of any kind of a firearm. The defendant contends unconvincingly that that is federal law and not what the statute meant to apply or not meant that that statute should not apply. I disagree with that. I think if it's an unlawful activity, it's an unlawful activity, whether it's a violation of a state statute or a federal law.

But it is not necessary for this Court to reach a decision on whether the unlawful activity in this case, that is the possession of the violent—of the weapon, precludes the defendant from asserting the immunity under the Stand Your Ground law. I've reviewed Slater and Burris, and I'm

making no finding with regard as to whether the unlawful activity, i.e. the possession of the weapon, precludes him from raising the unlawful—or raising the immunity granted by the Stand Your Ground Act or any other defenses that he might have in this case.

In my view, the defendant does not meet the second prong of—of subparagraph (c), that he be attacked. Had the legislature meant a threat of attack or an assault, accompanied or unaccompanied by a battery, it very clearly could have said so.

It is the duty of this Court to give to the acts passed by the General Assembly their plain and unequivocal meaning and to me attacked means a physical contact attack. As I said, the legislature could have used the term assault and battery. It could have used the term a threat of assault, but it did not, or threat of attack. It did not. It used the word who is attacked. And in my view, the defendant has not met that prong of the requirement of subparagraph (c).

Furthermore, Scott has not proven by the greater weight or a preponderance of the evidence that he could reasonably believe that he was in fear of death or great bodily injury. The testimony is clearly—the only testimony in the record is that the victim in this case was unarmed, that he came—he was behind the door of the vehicle originally. He came no closer than four or five feet to an armed man who was sitting there with a weapon in his lap at least. In my view, the testimony of reasonable fear is simply not credible.

For those reasons, the Court denies the motion under the Stand Your Ground Act and finds that the defendant is not entitled to immunity granted by that Act.

(R. p. 106, line 8–p. 109, line 3).

Standard of Review

“A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which [an appellate court] reviews under an abuse of discretion standard of review.” *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (citing *Duncan*, 392 S.C. 404, 709 S.E.2d 662). An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *State v. Pittman*, 373 S.C. 527, 570,

647 S.E.2d 144, 166–67 (2008) (citing *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)).

Analysis

In *State v. Curry*, our Supreme Court clarified that the Act does not require a trial court to accept a defendant’s version of the underlying facts. 406 S.C. at 371, 752 S.E.2d at 266. Rather, “[c]onsistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant’s entitlement to the Act’s immunity. This includes all elements of self-defense, save the duty to retreat.” *Id.* The four elements required by law to establish self-defense are as follows:

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

Id. at 371 n.4, 752 S.E.2d at 266 n.4.

The pretrial court did not have the benefit of the Supreme Court’s decision in *Curry* at the time it denied Appellant’s motion for immunity as *Curry* was decided a few months after the pretrial hearing. Nevertheless, the court’s analysis is consistent with the procedure our Supreme Court set forth both in *Curry* and in previous cases dealing with the Act. The pretrial court denied Appellant’s immunity for two separate reasons—first,

because Appellant was not being attacked at the time he shot Victim, and second, because Appellant's testimony regarding his "reasonable fear" was not credible.

Appellant Was Not Being Attacked

The pretrial court interpreted the word "attack" in the Act to require some sort of physical contact, rejecting the idea that the term encompassed a mere assault or threat of an attack. "Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning." *Duncan*, 392 S.C. at 408, 709 S.E.2d at 664 (citing *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996)). The verb "attack" means "to act violently against (someone or something): to try to hurt, injure, or destroy (something or someone)" according to Merriam-Webster's definition. *Attack Definition*, Merriam-Webster, <http://merriam-webster.com/dictionary/attack> (last visited Mar. 6, 2015). The pretrial court's interpretation of the word "attack" is consistent with the ordinary meaning of that word. The pretrial court further found that Appellant's description of Victim's acts prior to the shooting did not constitute an attack based on the pretrial court's understanding of that term. Respondent submits that the pretrial court did not abuse its discretion in denying immunity on that basis because the record supports the pretrial court's findings and because the court's decision was not based on an error of law.

Testimony of "Reasonable Fear" Was Not Credible

However, even if this Court finds that the term "attack" is ambiguous and further determines that the pretrial court abused its discretion in denying immunity on that basis, Appellant is still not entitled to relief because the pretrial court denied Appellant's immunity on a separate, alternate ground. In particular, the pretrial court concluded that

Appellant had not met his burden of showing by a preponderance of the evidence that he was reasonably in fear of death or great bodily injury when he shot Victim. As outlined above, this is clearly a relevant inquiry as established by *Curry*. And the record supports the pretrial court's determination. The pretrial court noted that the testimony was that Victim was unarmed (and that Appellant did not see any weapons in Victim's hands though he noticed Victim's hands were "swinging . . . how people are when they're angry[,]") (R. p. 74, lines 11–24)) and that Victim came toward Appellant, who was armed with a rifle, and got no closer than four or five feet from Appellant before Appellant shot him. (R. p. 108, lines 17–25). The pretrial court further concluded that Appellant's testimony as to his "reasonable fear" was "not credible." (R. p. 108, lines 24–25). *See State v. Douglas*, Appellate Case No. 2013-000148, 2014 WL 7273646, *3 (S.C. Ct. App. Dec. 23, 2014) ("[T]he abuse of discretion standard of review does not allow this court to reweigh the evidence or second-guess the trial court's assessment of witness credibility."), *rehearing denied* Feb. 19, 2015. The pretrial court's ruling could go to either the second or third prong of self-defense depending on how one interprets it—presumably, the pretrial court found that Appellant's testimony that he was in "fear" was not credible, and thus, the second prong was not satisfied, but the pretrial court's ruling could also mean that the court found that the "fear" Appellant claimed to have felt when he shot Victim was not reasonable, and thus the third prong was not satisfied.⁴ Either way, based on the pretrial court's factual findings, Appellant was not entitled to

⁴ Again, the pretrial court did not have the benefit of *Curry* where the Supreme Court clearly announced that a court must necessarily consider the prongs of self-defense in an immunity determination.

II.

The trial court did not err in failing to charge language from the Protection of Persons and Property Act as no request was made to charge such language and such a charge would have been improper under South Carolina law.

Introduction

Appellant asserts that the trial court erred in failing to charge the statutory language of the Act. This issue has not been preserved. However, even if this issue had been properly preserved, Appellant is not entitled to relief because our Supreme Court has directed that a charge of the statutory language of the Act is not proper.

How the Issue Was Raised at Trial

Appellant submitted eight requests to charge: (1) burden of proving self-defense, (2) appearances to defendant, (3) appearances – perspective of defendant, (4) words and hostile acts,⁵ (5) burden of proving self defense, (6) defendant not required to make best choice, (7) duty to retreat, and (8) reputation of good character. (R. p. 462). None of these requests included specific language from the Protection of Persons and Property Act. (R. p. 462).

The trial court brought up the Act during the charge conference:

THE COURT: And I assume both sides will agree that I will not charge any part of the immunity statute that's a pretrial defense. It is not a jury issue.

MR. GROVE: I might disagree, but I do agree that that is the law. I might disagree with the principle of it, but obviously being such a relatively new statute it is a pretrial matter. We had a pretrial hearing that obviously being here, that pretrial hearing was denied. The only case law I was able to find about the castle doctrine or the protection against person

⁵ The numbering on the requests to charge is off because there were two requests entitled "Defendant's Request to Charge #3." (See R. p. 462).

and property act being submitted to a jury were cases that might have otherwise fallen under the statute, but predated the issuance of the statute. Again, there's not much case law out there nothing is directly on point, but I will concede we [sic] been heard on that matter.

THE COURT: As a practical matter, the codified common law on self defense is still in the jury charge. The juries [sic] just not told anything about the specific content of the statute.

MR. GROVE: Certainly.

(R. p. 355, line 8–p. 356, line 2).

Consistent with its indication during the trial conference, the trial court charged the jury on the principles of self-defense, including “that if the defendant is on his own premises, the defendant has no duty to retreat before acting in self defense.” (R. p. 410, lines 9–11). The court later recharged the portion of its instructions that dealt with self-defense at the jury’s request. (R. p. 420, line 14–p. 427, line 3; R. p. 471). The court also clarified some of its self-defense instructions for the jury after they asked specific questions regarding self-defense. (R. p. 427, line 6–p. 437, line 10; R. p. 473).

Standard of Review

As this Court has stated, “[t]he 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)). “A jury charge which is substantially correct and covers the law does not require reversal.” *State v. Zeigler*, 364 S.C. 94, 105, 610 S.E.2d 859, 865 (Ct. App. 2005) (citing *State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996); *State v. Hoffman*, 312 S.C. 386, 440 S.E.2d 869 (1994)).

Analysis

Jury Charge Issue Not Preserved for Appeal

As an initial matter, Respondent asserts that the issue Appellant now raises has not been properly preserved. It is a well-settled rule in this state that an issue is not preserved for appellate review unless it is both presented to and passed upon by the trial judge. *See, e.g., State v. McKnight*, 352 S.C. 635, 646, 576 S.E.2d 168, 174 (2003) (noting that an argument must be raised and ruled upon by a trial court to be preserved for appellate review); *State v. Watts*, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct. App. 1996) (“To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court.”). None of Appellant’s requests to charge included a request that the trial court charge specific language from the Act. Also, when the trial court broached the subject of charging language from the Act and indicated its understanding that the Act was only for a pretrial immunity determination and not an appropriate jury charge, defense counsel conceded that was the case, stating, “I do agree

that that is the law.” (R. p. 355, lines 8–12). Respondent fails to see how this issue has been properly preserved in light of these facts. Appellant abandoned this issue at trial.

The Act Is Not a Proper Jury Charge

Appellant asserts that the trial court “should have charged the jury on 16-11-440(C) as an affirmative defense since immunity was denied.” (Final Br. of Appellant, p. 23). However, *State v. Curry* directly contradicts that notion—*Curry* states, “the trial court had denied Appellant immunity, and section 16-11-440(C) should not have been charged to the jury.” 406 S.C. at 373, 752 S.E.2d at 267. Though Appellant attempts to distinguish the instant case from *Curry* because in this case immunity was determined pretrial and a different judge presided over the pretrial hearing than presided over trial (and in *Curry* the request for immunity was not made pretrial but was made at the directed verdict stage, thus the same judge determined both issues), Respondent sees no reason for such a distinction. *Curry* establishes that when immunity is denied, a charge on § 16-11-440(C) is not proper. The opinion by Justice Pleicones, concurring in part and dissenting in part, makes this principle even more clear:

I agree with the majority that the Protection of Persons and Property Act (Act) creates a statutory immunity but leaves intact the common law defenses of habitation, of others, and of self-defense. While a criminal defendant is entitled to have the issue of statutory immunity decided prior to trial by a judge, once the case goes to trial a defendant’s right to a jury charge on these defenses is determined under common law principles. I therefore agree that appellant was not entitled to a jury charge on the presumption created by S.C. Code Ann. § 16-11-440(C) (Supp. 2012).

Id. at 375, 268. Justice Pleicones further described the Stand Your Ground charge given in addition to the common law self-defense charge as “hopelessly confusing.” *Id.* Here, too, a charge of the statutory language of § 16-11-440(C) in addition to the common law self-defense charge would have been confusing to the jury. And the trial court properly

declined to so charge the jury though it did not have the Supreme Court's clear directive from *Curry* as a guide.⁶

⁶ Even if this Court disagrees, Respondent submits that the substance of the trial court's jury charge is substantially correct and properly covers the law. (R. p. 394, line 14–p. 415, line 12). As such, Appellant is not entitled to reversal.

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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April 20, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

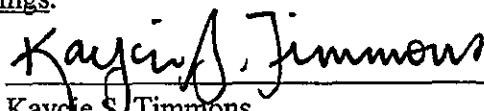
WAYNE ALBEON SCOTT, JR.,

APPELLANT,

Appellate Case No. 2013-002365.

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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April 20, 2015
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WAYNE ALBEON SCOTT, JR.,

APPELLANT,

Appellate Case No. 2013-002365.

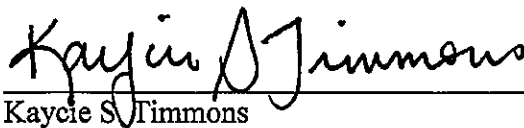
PROOF OF SERVICE

I, Kaycie S. Timmons, counsel for Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record at:

LaNelle Cantey Durant
Appellate Defender
SCCID/Division of Appellate Defense
P.O. Box 11589
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I further certify that all parties required by Rule to be served have been served.

This twentieth day of April, 2015.



Kaycie S. Timmons
Assistant Attorney General
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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.

Wayne Albeon Scott, Jr., Appellant.

Appellate Case No. 2013-002365

Appeal From Florence County
George C. James, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-513
Submitted October 1, 2015 – Filed November 12, 2015

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, and
Assistant Attorney General Kaycie Smith Timmons, all
of Columbia; and Solicitor Edgar Lewis Clements, III, of
Florence, for Respondent.

PER CURIAM: Wayne Scott appeals his convictions for murder and possession of a weapon during a violent crime, arguing the trial court erred in failing to (1) grant him immunity from prosecution for the murder charge pursuant to section 16-11-410 South Carolina Code (Supp. 2014), the Protection of Persons and Property Act (the Act), and (2) charge the jury on the Act. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in failing to grant immunity under the Act: *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) ("A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which [the appellate] court reviews under an abuse of discretion standard of review."); *State v. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 238 (Ct. App. 2014) ("[T]he abuse of discretion standard of review does not allow this court to reweigh the evidence or second-guess the trial court's assessment of witness credibility."); *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); *Curry*, 406 S.C. at 371, 752 S.E.2d at 266 ("Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity."); *id.* ("This includes all elements of self-defense, save the duty to retreat."); *id.* at 372, 752 S.E.2d at 267 ("[I]mmunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence.").

2. As to whether the trial court erred in failing to charge the jury on the Act: *State v. Dunbar*, 356 S.C. 138, 141, 587 S.E.2d 691, 694 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *State v. Rios*, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) (stating failure to contemporaneously object to jury charges fails to preserve the issue for appellate review); *State v. Babb*, 299 S.C. 451, 455, 385 S.E.2d 827, 829 (1989) ("[A] party cannot complain of an error which his own conduct has induced.").

AFFIRMED.

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

HUFF, WILLIAMS, and THOMAS, JJ., concur.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

George C. James, Jr., Circuit Court Judge

Opinion No. 2015-UP-513 (S.C. Ct. App. filed 11/12/2015)

2013-GS-21-00391

THE STATE,

RESPONDENT,

V.

WAYNE ALBEON SCOTT,

PETITIONER

PETITION FOR WRIT OF CERTIORARI
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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on 12/16/2015.

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in affirming the trial court's refusal to grant Appellant Scott immunity from prosecution for the murder charge pursuant to S.C. Code Section 16-11-410, the Protection of Persons and Property Act, when Appellant was at his own home; the victim was on Appellant's property although he had been asked not to come; Appellant asked the victim to leave; and the victim continued to advance?
2. Whether the Court of Appeals erred in affirming the trial court not charging the jury on S.C. Code Section 16-11-410 when standing his ground was a valid defense, which the jury should have been able to consider in their deliberations, in conjunction with self-defense which the trial judge had emphasized was a valid defense?

STATEMENT OF THE CASE

On March 28, 2013, the Florence County Grand Jury indicted Wayne A. Scott, Jr. on the charges of murder and possession of a firearm during the commission of a violent crime. On September 19, 2013, Scott appeared before the Honorable Howard King for a hearing on the defense motion for immunity pursuant to S.C. Code Section 16-11-410 entitled the Protection of Persons and Property Act, and the case law of State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). Scott was represented by William E. Grove, and the state was represented by Matthew R. Ozment. R. 1 - 4. Judge King denied the motion following testimony by three witnesses including Scott. R. 104, ll. 18 – R. 109, ll. 3.

On October 21-24, 2013, Appellant Scott proceeded to trial before the Honorable George C. James and a jury. Scott was represented by William Grove, and the state was represented by Matthew Ozment. R. 111. The jury returned a verdict of guilty on both charges of murder and the possession of a weapon during a crime of violence. R. 441, ll. 16 – R. 442, ll. 9. Judge James sentenced Scott to the maximum sentence of life imprisonment. R. 456, ll. 9 – 24. The South Carolina Court of Appeals affirmed Scott's conviction and sentence on November 12, 2015. State v. Scott, Op. No. 2015-UP-513 (Ct. App. filed November 12, 2015). App. 1-3. Appellant counsel filed a petition for rehearing which was denied on December 16, 2015. App. 4-12. This petition for a writ of certiorari to the Court of Appeals follows.

ARGUMENT

The Court of Appeals erred in affirming the trial court's refusal to grant Appellant Scott immunity from prosecution for the murder charge pursuant to S.C. Code Section 16-11-410, the Protection of Persons and Property Act, when Appellant was at his own home; the victim was on Appellant's property although he had been asked not to come; Appellant asked the victim to leave; and the victim continued to advance.

IMMUNITY HEARING

Wayne Scott was charged with murder after he shot and killed a long time friend, Steve Springs, on September 24, 2012. R. 25, ll. 8 – 25; Indictment 2013-GS-21-0391. Defense counsel made a motion to the court pursuant to S.C. Code Section 16-11-410, entitled the Protection of Persons and Property Act, for immunity for Appellant Scott. R. 4, ll. 1 – 16. A hearing on the motion was held before The Honorable Howard King on September 19, 2013. R. 1.

Three witnesses testified for the defense: Gloria Scott, wife of Appellant; Michael Bruce; and Wayne Scott. R. 2. Gloria Scott's testimony was that she had known Steve Springs for years because he was the heat and air repairman for her boss. She managed rental properties for her boss so Springs did work for her. Springs was also a friend outside work who came to their home. R. 18, ll. 4 – 23; R. 25, ll. 8 – 25; R. 27, ll. 18 – R. 28, ll. 4.

In March or April of 2012, Gloria learned that Springs was in a relationship with her married daughter who had two small children. Springs was also married to someone else. Gloria did not approve of the relationship especially because of her two young grandchildren. She told her daughter and Springs of her feelings which became an ongoing dialogue. R. 26, ll. 1 – R. 27, ll. 23. She and Springs had verbal fights about his relationship with her daughter who was Appellant Wayne Scott's step-daughter. Scott did not approve of the relationship either. She and Scott had

given up on the situation although it made them angry. Gloria said it made her husband a “little bit angry.” R. 28, ll. 1 – R. 29, ll. 13.

On September 24, 2012, Gloria had taken her grandson to Skateland for the school sponsored night from 5:30 to 8:00. Then she took him home. R. 18, ll. 1 – R. 19, ll. 24. On the way to her home, she received a phone call from her husband, Appellant, whom she knew had been hunting with Michael Bruce. When she answered, Scott told her that he shot Springs. She called 911 and said her husband had gotten into an altercation with a gentleman. Gloria checked Springs for a pulse but he did not have one. R. 21, ll. 1 – R. 23, ll. 24.

When she arrived home, she went to her neighbor Carl’s house because Scott was there. She then took Scott home. Scott had asked another neighbor, George Watson, to do something with the gun, a Remington .06. While Gloria was at Carl’s house, Watson told her he had the gun. She asked him to bring the gun to her. She put the gun in her house on her bed. R. 29, ll. 14 – R. 30, ll. 15; R. 33, ll. 15- R. 35, ll. 22.

Scott told her that Springs had come to their house, and they got into a verbal argument. Springs then threatened Scott. Springs got out of his vehicle and was approaching Scott. Scott asked him to leave. Scott was sitting on the front porch of her office which was attached to the end of their trailer home. R. 30, ll. 1 - R. 33, ll. 14. Scott still had the Remington gun with him because he had taken it hunting that day. R. 35, ll. 8 – 22.

When the police arrived, Gloria talked with them, and they talked with Scott. Springs’ van was parked in front of her office, and his body was in the doorway of his van. R. 35, ll. 23 – R. 37, ll. 25.

Michael Bruce testified that he knew Wayne Scott because he had been “buddies” with Michael’s father, Larry Bruce, for many years. Also, Scott was a painter. He and Michael worked together painting houses almost every day. R. 7 - R. 8, ll. 24.

On September 24, 2012, he and Scott had been painting, and then went hunting after work. They hunted until almost dark. Michael had to take Scott home then. When Michael came out of the woods, Scott was on the phone with Springs. Michael did not know who originated the call. The two were arguing with each other steadily. Michael was not sure what they were arguing about. Michael told Scott to just hang up the phone on the ‘joker.’ Springs heard Michael say that and then wanted to talk to Michael although Michael did not know Springs. When Michael took the phone, Springs was cursing him, and told him he was going to beat his butt. Michael hung up. Springs called right back and Scott answered. They continued to argue. Scott hung up and Springs called right back. This happened multiple times. Michael knew that Springs told Scott he was coming to Scott’s house and beat his “butt.” Michael told Scott not to worry because Springs was not coming to his house. Michael had to leave Scott outside on his porch because he was locked out, and he had to wait for Gloria to get home. Michael found out the next morning that Springs was dead. R. 8, ll. 25 – R. 16, ll. 22.

Appellant Scott testified that he went hunting with Michael Bruce after work on September 24, 2012. They went by Scott’s house to see if his grandson wanted to go, but the boy decided to go skating with Gloria. After hunting, Scott called Springs to see if Springs could obtain some items to cool the houses they were painting. Springs started talking about his relationship with Scott’s stepdaughter. On the way to Scott’s house with Michael driving, Springs kept calling and Scott kept hanging up on him because Springs was cursing him and threatening to beat Scott and Michael.

This happened at least two times or more times. Scott was surprised as Springs did not seem like that kind of guy. Scott did not know what was wrong with Springs. R. 50, ll. 14 – R. 57, ll. 15.

Michael dropped Scott at his house and then left. Scott tried to get in to put his gun away. He was locked out because he left his keys in his truck and his wife drove his truck to the skating rink. He just sat on the small platform porch in front of the office. He saw a white van coming down the road and realized it was Springs who drove in very fast, and stopped close, only five to seven feet, from Scott. Springs jumped out and started cursing Scott. Scott told him he thought they were friends and asked why he was doing this. Scott told him to get back in his van and please leave. He asked him several times. Scott had asked Springs not to come to his house. Springs then became enraged and Scott told him that he wanted nothing to do with the “situation” as long as his grandkids were fine. R. 56, ll. 11 – R. 61, ll. 17.

Springs just kept getting more irate, and Scott told him again to just leave as that was the best thing. Springs said no, and told Scott he would “show him.” Springs told Scott that he would take Scott’s gun and wrap it around his neck. Springs then stepped around the van door in a threatening way. Scott felt highly threatened. Scott then picked up his gun, pointed at Springs, and pulled the trigger one time. Springs was about six feet away. He was not sure that he hit Springs, but Springs fell on the ground and said help me. R. 61, ll. 16 – R. 62, ll. 25.

Scott was then in shock, and did not know what to do. He walked away and tried to call his wife. He finally reached her and told her he was going to Carl’s house. She was going to call 911. His neighbor, George Watson then appeared. He finally told Watson that he shot Springs. R. 63, ll. 1 – R. 66, ll. 13.

On cross examination, Scott said he drank a beer at Michael’s and had two beers while sitting on his porch when he arrived at home. He took Springs’ threats as real. He had previously

asked Springs not to come to his house because he was dating Scott's step daughter. He thought Springs was coming to hurt him. Scott could not get up and run and could not get in the house. When the law officers arrived, Scott talked to them and told them the truth. He believed Springs was trying to attack him. Springs was a big man: 240 to 260 pounds and taller than Scott. Scott was five feet eight to ten inches tall and 131 pounds. He just wanted to stop Springs. R. 66, ll. 14 – R. 84, ll. 20. Scott did not see a weapon on Springs but then he really could not tell. R. 89, ll. 1-25. Scott admitted to a conviction in 2000 or 2001 for manufacturing marijuana. R. 80, ll. 1 – 25.

Defense counsel argued that Section 16-11-410, the "Stand your Ground Law," applied in Scott's case, and he should be granted immunity from prosecution. Scott was in his home and had a reasonable fear for his life or of being seriously injured. Section 16-11-440 (C) provides that the Act applied to a person who was not engaged in unlawful activity and was in a place where he had a right to be. The judge stated that the statute provided applied only to a person who was being attacked. Defense counsel argued that a person need not be assaulted to a particular degree before he could defend himself. Counsel stated that if there was a reasonable expectation that a violent crime was about to occur, any reasonable force could be used. The judge then noted that counsel was relying on subsection (C) of 16-11-440. R. 85, ll. 1 – R. 88, ll. 3.

The state argued that Scott was a convicted felon in possession of a gun. Therefore, he was not engaged in lawful activity when the incident occurred. Scott could not tell if Springs had a weapon or not but did not actively see one. R. 88, ll. 4 – R. 89, ll. 12.

Defense counsel replied that by citing State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999), where McCaskill and Goodson¹ stood for the proposition that a person could be acting

¹ State v. McCaskill, 300 S.C. 256, 387 S.E.2d 268 (1990); State v. Goodson, 312 S.C. 278, 440 S.E.2d 370 (1994).

lawfully even if he was in unlawful possession of a weapon if he were entitled to arm himself in self-defense at the time of the shooting. Counsel argued that the Legislature did not intend for a person to wait until he was being assaulted if he were threatened. R. 89, ll. 25 – R. 92, ll. 6.

The judge replied that the intent of the Legislature was to prevent people from being attacked in their homes or businesses or vehicles. It had nothing to do with preventing people from being attacked on the street or anywhere else. Defense counsel argued that Scott had no where else to go and wanted to avoid the attack. The judge ruled the statute required a physical attack and not just an assault because the word attack was used in the statute. Defense counsel respectfully disagreed, and argued that the word attack encompassed an assault without a battery. R. 92, ll. 7 – R. 104, ll. 15.

The judge ruled that he was relying on Section 16-11-410 and State v. Duncan, 392 S.C. 404, 7-9 S.E.2d 662 (2011), in making his decision. He was not making a decision on whether the unlawful activity, the possession of a weapon, precluded Scott from raising the immunity granted by the statute. The judge's ruling relied on the second prong of 16-11- 440 (C). The legislature could have clearly used the word assault if that was their intent. He held that the Legislature's "plain and unequivocal" meaning meant a physical contact attack. Therefore, the judge denied Scott's motion for immunity under the Stand Your Ground Law. R. 104, ll. 18 – R. 109, ll. 3.

TRIAL TESTIMONY

The jury trial was held October 21-24, 2013 before a different judge, the Honorable George C. James. R. 111-116.

Michael Burch testified that on September 24, 2012, he and Scott had been painting. They then went hunting after work until almost dark. Michael had to take Scott home. When Michael came out of the woods, Scott was on the phone with Springs. Michael did not know who originated

the call. The two were arguing with each other steadily. Michael was not sure what they were arguing about. Michael told Scott to just stop arguing with the man, and Michael took the phone and hung up. Springs had told Michael that he was going to “beat Michael’s butt.” Springs called right back and they continued to argue. Scott did not really threaten Springs but both said they were going to “beat each other’s butt.” Michael could hear the conversation and knew that Scott was being threatened. Springs told Scott he was coming to Scott’s house and beat his “butt.” Michael told Scott not to worry because Springs was not coming to his house. Michael left Scott outside on his porch because he was locked out. Michael found out the next morning that Springs was dead. R. 229, ll. 14 – R. 242, ll. 10.

Gloria Scott testified as a state’s witness. She and Scott had been married eighteen years and had no children together. Gloria had a daughter, Crystal Hanna, who was twenty-seven, married with two small children. R. 244, ll. 1 – R. 245, ll. 20.

Gloria knew Steve Springs because he did heat and air repair for her boss’s rental houses, and she managed the rentals. She knew Springs was married also. When she learned of the relationship between her daughter and Springs, she did not approve. She did not want Springs around her grandkids. Before their affair, Gloria’s relationship with Springs had been friendly. He used to come to her house weekly but stopped when he the affair began with Crystal. R. 245, ll. 21 – R. 248, ll. 25.

The weekend before Springs died, Gloria called him about a need in a rental unit for air service. She could not reach him but her daughter told her to call Springs’ son. However, Gloria had poor phone service and could not reach him. She did post a message on Facebook about taking her grandson and what fun they were having. Springs called irate cursing her because she could post on Facebook but could not call his son. Gloria then posted a message on Facebook that “that asshole is

going to cause me to kill him.” She did not tell Scott about Springs’ call. R. 248, ll. 21 – R. 252, ll. 17.

She took her grandson to Skateland on September 24, 2012. Scott was going hunting. Scott called her on her way home, and she picked him up at her neighbor, Carl’s, house. She called 911 as she was taking Scott home. She asked another neighbor, George, to get the gun and put in her truck. Gloria took the gun in her house and put it on the bed. She checked on Springs when 911 operator told her to, but there was no sign of life. She denied telling Larry Bruce that she had put a knife on the ground next to Springs, and that she was worried her DNA may be on it. R. 252, ll. 18 – R. 261, ll. 12.

Investigator William Hester talked to Scott at the scene the night of the incident. Scott agreed to talk to Hester. Deputy Michael Gifford had told Hester that he talked to Scott earlier in the evening and had Mirandized him. Hester did not read the Miranda rights again to Scott. Hester did not record Scott’s statement. Scott told him that he had gone hunting that afternoon with a co-worker. He had verbal altercations with the deceased on the way home from hunting. He started getting phone calls from Springs talking about issues with his personal life. Springs was cursing Scott and screaming at him so Scott hung up the phone. This happened multiple times. Hester checked their telephones and confirmed there were numerous calls between the two. R. 191, ll. 21 – R. 196, ll. 19.

When Scott arrived at home, he realized that he did not have his keys as his wife had taken the kids skating. He decided to sit on the porch and drink a beer and wait for her. The lights were not on. It was dark. Scott saw the white van coming down the driveway and realized it was Springs. Springs turned the van lights off and turned the vehicle off. He got out of the van. Scott told him that he needed to just leave. Springs then stepped out from around the van door. Scott told him that

if he took another step, he would shoot him. Springs took a step out and Scott fired the gun. R. 196, ll. 20 – R. 199, ll. 8.

Scott saw a screwdriver in Springs' left hand. Springs fell to the ground, and said "help me." That scared Scott and went around to the back of the mobile home. Scott told Hester that Springs had advanced towards him one step. Scott told him that he put the gun in the house. Then he went to his neighbor Carl's house. Scott drank a few beers there and called his wife. Scott did not call 911 but his wife, Gloria, did. Hester found a screw driver about five to seven feet from the deceased, and a open-blade lock knife where the deceased's hand was dropped. Hester transported Scott to jail, and obtained warrants for murder and possession of a weapon during a violent crime. R. 199, ll. 9 – R. 209, ll. 24.

Catherine Leisy, a forensic scientist with SLED, analyzed the screwdriver and knife for DNA. R. 210, ll. 7 – 212, ll. 16. She also analyzed Scott's DNA for comparison, but was not able to develop DNA profiles from the screwdriver or knife. R. 212, ll. 1 – R. 217, ll. 6.

George Watson was a neighbor of Scott, and they were good friends who saw each other almost daily. On September 24, 2012, he heard a gunshot which he thought was in his backyard. He went to investigate and saw Scott in his backyard. Scott was talking on his cell phone. Watson heard him say that he shot him. Scott told Watson that he fired the shot. Watson did not believe him at first. Scott threatened to shoot Watson and burn his house down if Watson told anyone. Watson then saw Springs' van and realized that Scott was telling the truth. R. 319, ll. 8 – R. 323, ll. 22.

Scott told Watson he killed Springs because he did not want his grandkids calling Springs daddy. When Watson asked if Springs have anything in his hands, Scott said no. Scott went to his boat and got a screwdriver and went to put it in Springs' hand. When Scott returned, he told Watson that Springs was still alive and he may have to shoot him again. But he did not. Scott asked Watson

to get rid of the gun so Watson threw it into the woods. He retrieved the gun and put it in Gloria's truck when she called and asked him to do that. R. 323, ll. 24 – R. 329, ll. 3.

Watson talked to the police at the scene very briefly but did not tell them the truth because he was afraid. After the police took Scott, Watson asked to go somewhere else to talk. He met Investigator Hester at the Waffle House and told him what really happened. R. 329, ll. 6 – R. 331, ll. 24.

Sabrina Hartfield, Watson's girlfriend, testified that about two weeks before the shooting, Gloria told her of a conflict Gloria had with Springs at Crystal's house. Gloria was going to "whip Spring's ass or kill him." R. 332, ll. 15- R. 350, ll. 6.

Hubert Black knew Scott from installing hardwood floors. Sometime in September 2012, they left work early because they got into liquor cabinet and then smoked a joint. Black, Scott, Carl Munn, and another man were riding in the truck together. Black said Scott was a "good fellow" when he was not drinking. He never thought Scott would hurt anyone. But that day, Scott said he was going on a killing spree. There were three people he wanted to kill: Larry Bruce, Black's half brother, and this other "boy" who was messing with Scott's step daughter who was making phone threats to Scott and "putting his grandchildren through that stuff." R. 218, ll. 9 – R. 223, ll. 19.

Crystal Hanna, Gloria's twenty-seven year old daughter, had known Scott about twenty-five years. She became involved with Springs at work Springs and her mother had an altercation at Crystal's house four days before the shooting where Gloria pushed Springs down the steps. On Monday, the day of the shooting, she was on a three way call with Springs and Scott. Her story was that Scott was upset and Springs was saying he not trying to fight Scott and had no beef with him. Scott said they needed to talk. The first plan was for them to talk at Crystal's house, but she said no

because she was putting her children to bed. They decided to meet at Scott's house. She heard no threats from Springs. Crystal admitted that she hated Gloria and Scott. R. 300, ll. 1 – R. 318, ll. 14.

Kevin Hanna was Crystal's husband. About a week before Springs was shot, Springs showed up at Kevin's job and threatened him. He would not let Kevin out of his car. Springs threatened to "kick Kevin's ass." Kevin took this seriously and the police were called. Kevin filed a police report but did not file a charge because Kevin did not want to cause any more problems. R. 357, ll. 1 – R. 363, ll. 25.

Larry Burch was a good friend of Scott. Gloria told him that she put the knife in Springs' hand. Bruce was shocked that Scott would do this because Scott would not hurt anyone. Bruce knew Scott real well and Scott was not capable of doing this on his own. R. 267, ll. 1 – R. 283, ll. 7.

Dr. Erin Presnell, a forensic pathologist with MUSC, performed the autopsy on Springs. Due to the extent of damage from the single gunshot, Springs would not survive no matter how long it took EMS to arrive or even if he had been in the hospital. R. 285, ll. 11 – 25; R. 288, ll. 15 – R. 298, ll. 24.

The jury returned a verdict of guilty on the murder and gun charge. R. 441, ll. 14 – R. 442, ll. 10.

During sentencing, the judge stated that the claim of self defense was valid or he would not have charged it. He allowed it to go to the jury for that reason. But he said, the jury had spoken. The judge sentenced Scott to life in prison. R. 455, ll. 8 – R. 457, ll. 11.

Discussion

The Court of Appeals ruled, citing State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), that a valid case of self-defense consistent with the Castle Doctrine and the text of the Act, must exist, and the trial court must necessarily consider the elements of self-defense in determining a

defendant's entitlement to the Act's immunity which must include all the elements of self-defense except the duty to retreat. App. 2. The Court of Appeals continued to rule that "immunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence." *Id.* App.2.

The Court of Appeals misapprehended the issue.

In *State v. Curry, supra*, the South Carolina Supreme Court listed the elements of self-defense as: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant was actually in imminent danger of death or serious bodily injury, or the defendant actually believed he was in imminent danger of death or bodily injury; (3) a reasonably prudent man of ordinary firmness and courage would have entertained the same belief, or circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; (4) and the defendant had no other probable means of avoiding danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance. The Supreme Court held that in order to be granted immunity under the Act, a defendant had to demonstrate all the elements of self-defense save the duty to retreat.

S.C. Code Section 16-11-440 is entitled: Presumption of reasonable fear of imminent peril when using deadly force against another unlawfully entering residence, occupied vehicle, or place of business.

S.C. Code Section 16-11-440 (C) provides that if a person **reasonably** [emphasis added] believes deadly force is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60, then he has no duty to retreat if he is in a place where he has a right to be.

S.C. Code Section 16-11-440(A) provides that a person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended likely to cause death or great bodily injury to another person if the person: (1) against whom the force is used is in the process of unlawfully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence or occupied vehicle; and (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended likely to cause death or great bodily injury to another person if the person: (1) against whom the force is used is in the process of unlawfully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence or occupied vehicle; and (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

The evidence at the immunity hearing demonstrated clearly that Scott reasonably believed that he was in danger of death or great bodily harm when Springs appeared unexpectedly. Springs had threatened Scott numerous times on the phone as corroborated by the witness Michael. Scott had no duty to retreat. Springs was intruding on Scott's property which included his residence as the wife's office was physically attached to the residence. Scott was also sitting on the porch of his wife's business. He was locked out.

The word "attack" was not defined in Section 16-11-430 which provided the definitions for words in the statutes. Nor was "attack" defined in any other section of the statute from 16-11-410

through 16-11-450. It was unreasonable, as defense counsel argued, that the General Assembly meant for a person to wait until he was attacked to defend himself as the first blow could be fatal.

Although the trial judge did not rule on the issue of Scott acting unlawfully because he was in possession of a weapon as a convicted felon, the Supreme Court ruled in State v. Burriss, 334 S.C. 256, 513 S.E.2d 104 (1999), that a person who shoots another can be acting lawfully even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting.

The Supreme Court also wrote in Curry, *supra*, that: "The full reach of the Act and whether the statutory provisions in the Act extend beyond the common law Castle Doctrine are questions for another day. Under the Castle Doctrine, one is not required to retreat from his dwelling place." The Supreme Court cited State v. Gordon, 128 S.C. 422, 425, 122 S.E.2d 501,502 (1924) which held that one attacked without fault on his part, **on his own premises**, [emphasis added] has the right in establishing his plea of self –defense, to claim immunity from the law of retreat which is ordinarily an essential element of that defense. Section 16-11-420 codified the Castle Doctrine.

Curry's case is distinguished from Scott's in several ways as Curry was decided in a different context. Curry was a social guest and visitor in the home where the shooting occurred. The victim was also a social guest in the home. There were eyewitnesses to the shooting in Curry's case. There were no eyewitnesses in Scott's case. The Supreme Court ruled that his claim of self-defense was a "quintessential" jury question. There was no pretrial hearing to determine immunity as this case was before State v. Duncan, *supra*. Therefore, the same trial judge determined immunity as he conducted the trial. In Scott's case, there was a pretrial hearing but immunity was decided by a different judge from the trial judge. The trial judge here ruled that immunity was a pretrial issue exclusively.

The trial judge in Scott's case believed that the claim of self-defense was valid. That was the reason he instructed the jury on self-defense. This was after he had heard all of the evidence. R. 455, ll. 8 – R. 457, ll. 11. The state agreed that self defense was appropriate to charge to the jury. R. 355, ll. 5-7.

It was clear from the record that Scott believed he was in danger based on the argumentative history between Scott and the deceased. Springs, the deceased, had made numerous threats against Scott just shortly before this incident. Any reasonable man would have believed his life was in danger if the man threatening him suddenly showed up at his home.

ARGUMENT

II

The Court of Appeals erred in affirming the trial court not charging the jury on S.C. Code Section 16-11-410 when standing his ground was a valid defense, which the jury should have been able to consider in their deliberations, in conjunction with self-defense which the trial judge had emphasized was a valid defense.

At the close of the testimony, the judge requested for jury charges. All parties agreed that self defense would be charged. The judge said he assumed all parties would agree that he would not charge any part of the immunity statute because it was a pretrial defense and was not a jury issue. Defense counsel said that he might disagree. He agreed that it was the law, but he might disagree with the principle of it. The only cases he could find regarding the statute being submitted to the jury on the castle doctrine predated the statute. He argued that there was not any case law directly on point. But he conceded that it was heard in pretrial. The judge stated that the codified common law on self defense was still in the jury charge. R. 355, ll. 1 – 25.

The judge charged n self defense. R. 407, ll. 12 – 410, ll. 25. During deliberations, the jury sent three questions to the judge. One question asked for a copy of the self defense statute. Judge agreed to recharge the jury on self defense since there was no statute. After further deliberation, the jury asked two additional questions. One asked for clarification on element one of self defense: if both parties are at fault can self defense be claimed. The second question asked if all of the elements of self defense had to apply or if only one was needed. The judge explained to the jury that all of the elements must be present and the defendant had to be without fault in bringing on the difficulty. The jury sent another question on the requirements for a murder conviction to which the judge repeated the charge on murder. R. 420, ll. 14 – R. 440, ll. 19.

The jury returned a verdict of guilty on the murder and gun charge. R. 441, ll. 14 – R. 442, ll. 10.

During sentencing, the judge stated that the claim of self defense was valid or he would not have charged it. He allowed it to go to the jury for that reason. But he said, the jury had spoken. The judge sentenced Scott to life in prison. R. 455, ll. 8 – R. 457, ll. 11.

Discussion

The Court of Appeals ruled that “in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.” *State v Dunbar*, 356 S.C. 138, 587 S.E.2d 691 (2003). App. 2.

The Court of Appeals misapprehended the issue.

Defense counsel’s colloquy on the correctness of charging the Act as a defense when the judge asked for jury charges on R. 355, did adequately preserve this issue for appellate review. At the close of the testimony, the judge requested jury charges. All parties agreed that self defense would be charged. The judge said he assumed all parties would agree that he would not charge any part of the immunity statute because it was a pretrial defense and was not a jury issue. Defense counsel said that he might disagree. He agreed that it was the law, but he might disagree with the principle of it. The only cases he could find regarding the statute being submitted to the jury on the castle doctrine predated the statute. He argued that there was not any case law directly on point. But he conceded that it was heard in pretrial. The judge stated that the codified common law on self defense was still in the jury charge. R. 355, ll. 1 – 25.

Defense counsel did raise the issue of the jury charge at trial. The judge ruled on the issue by not charging it. At the close of the jury charges, the judge asked for any objections:

Court: Any objections or additions from the state other than what you previously mentioned?

State: No, Your Honor.

Court: Any from the defendant?

Defense: Not already that I haven't raised, Your Honor. I would renew my position on the state's burden of disproving self defense.

Section 16-11-420 through 16-11-450 did not provide a process to follow if immunity was denied. Although the Supreme Court in State v. Duncan, *supra*, wrote that the "legislature intended to create a true immunity, and not simply an affirmative defense." A fair reading is that an affirmative defense was also created.

In Curry's case, Curry had argued that the trial court erred in charging the jury on both the Act and self defense because the two were inconsistent. In State v. Curry, *supra*, the Supreme Court held that the trial court did err in charging the jury on the Act because the trial court had denied Curry immunity under the Act. Curry's case was prior to the Act which required a pretrial hearing on the immunity issue. However, the Supreme Court wrote:

The full reach of the Act and whether the statutory provisions in the Act extend beyond the common law Castle Doctrine are questions for another day. Yet, in this context, the error in the jury charge, and any resulting ambiguity caused no prejudice to Appellant. Under the castle Doctrine, one is not required to retreat from his dwelling place.

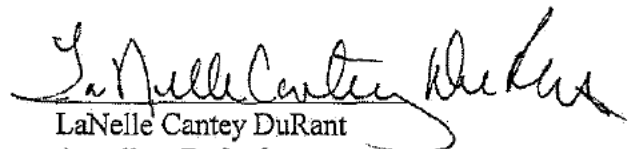
The Supreme Court cited State v. Gordon, 128 S.C. 422, 425, 122 S.E. 501, 502 (1924) which held that "One attacked, without fault on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which is ordinarily an element of that defense."

The trial judge in Scott's case should have charged the jury on 16-11-440 (C) as an affirmative defense since immunity was denied. The jury was confused on the issue of self-defense. During jury deliberations, the jury sent questions to the trial judge on two occasions for clarification on self-defense. If the jury had been given the charge on Section 16-11-440 (C) or the Act, the result of the trial very reasonably could have been different as it would have clarified self-defense. Immunity was a different issue from an affirmative defense although the two were correlated. If self-defense was required for immunity under the Act, then a consideration of the protection of persons and property should be considered along with self-defense.

CONCLUSION

Based on the above, certiorari should be granted; the Court of Appeals' decision should be reversed; the conviction and sentence should be reversed; and the case remanded for a new trial.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER.

This 14th day of January, 2016

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

George C. James, Jr., Circuit Court Judge

Opinion No. 2015-UP-513 (S.C. Ct. App. filed 11/12/2015)
2013-GS-21-00391

THE STATE,

RESPONDENT,

V.

WAYNE ALBEON SCOTT,

PETITIONER

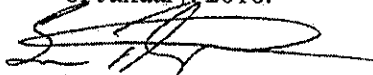
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Kaycie S. Timmons, Esquire, Wayne Scott, #357576, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, and the S.C. Court of Appeals this 14th day of January, 2016.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 14th day
of January, 2016.

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

The Supreme Court of South Carolina

The State, Respondent,

v.

Wayne Albeon Scott, Jr., Petitioner.

Appellate Case No. 2016-000067

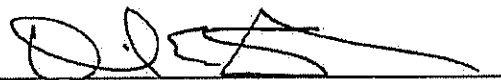
Lower Court Case No. 2013-GS-21-00391

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is granted as to Petitioner's Question I, but denied as to Petitioner's Question II. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

November 9, 2016

cc:

LaNelle Cantey DuRant, Esquire

Alan McCrory Wilson, Esquire

Donald J. Zelenka, Esquire

THE SECRETARY OF THE ARMY

WASHINGTON, D. C.

TO THE SECRETARY OF THE ARMY

FROM THE SECRETARY OF THE ARMY

SECRET

TO THE SECRETARY OF THE ARMY
FROM THE SECRETARY OF THE ARMY
SUBJECT: [Illegible]

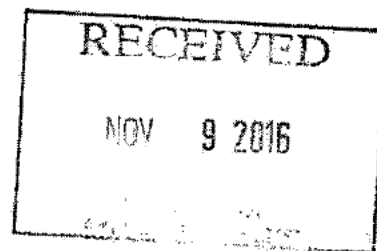
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Edgar Lewis Clements, III, Esquire
The Honorable Connie Reel-Shearin
The Honorable Jenny Kitchings



**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 Supreme Court**

The State, Respondent,

v.

Wayne Albeon Scott, Jr., Petitioner.

Appellate Case No. 2016-000067

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Florence County
Howard King, Circuit Court Judge

Memorandum Opinion No. 2017-MO-010
Heard May 2, 2017 – Filed May 31, 2017

**CERTIORARI DISMISSED AS IMPROVIDENTLY
GRANTED**

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Petitioner.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General J. Robert Bolchoz, and Senior Assistant
Deputy Attorney General Donald J. Zelenka, all of

Columbia; Solicitor Edgar Lewis Clements, III, of
Florence, all for Respondent.

PER CURIAM: We granted Wayne Albeon Scott, Jr.'s petition for a writ of certiorari to review the Court of Appeals' decision affirming the circuit court's refusal to grant Scott immunity under the South Carolina Protection of Persons and Property Act. *State v. Scott*, Op. No. 2015-UP-513 (S.C. Ct. App. filed Nov. 12, 2015). We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED.

**BEATTY, C.J., KITTREDGE, HEARN, FEW, JJ., and Acting Justice
DeAndrea Benjamin, concur.**

RECEIVED
MAY 31 2017
APPELLATE DEFENSE

STATE OF SOUTH CAROLINA)

County of Florence)Wayne Alban Scott 3575716)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

20 17 CP 21 2992

APPLICATION FOR

POST-CONVICTION RELIEF

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

2007 OCT 30 PM 2:40

FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Florence County Detention Center
2. Name and location of Court which imposed sentence Twelfth Circuit (Florence County) Honorable: George C. James (Judge)
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) 2013- GS- 21 -0391
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 24, 2013
- (b) sentenced to life on murder plus 5 years for
- (c) possession of weapon
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty yes
- (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. State of S.C. in the Supreme Court
- ii. S.C. Court of Appeals
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. (see) opinion No. 2015-UP-513 (S.C. Ct. App. Filed
- ii. 11-12-15
- iii. _____
- (c) the date of each such result:
- i. December 16, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. (See) Appellate case No. 2013-002365 Order
- 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) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) (see) Transcript of Record in State of South Carolina
- (b) vs. Wayne A. Scott in hold
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- 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) My Attorney never informed me of any of the
 (b) available to me
 (c) _____

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

(a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

See TRANSCRIPT of Record

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. Will Grove
City County Complex Room 703
180 N. Inby Street, Florence, S.C. 29501

iii. Lanelle Cantey Durant / Division of Appellate Defense
P.O. Box 11589, Columbia, SC 29211-1589

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

i. Will Grove - Bond Hearing, Motion, Trial, Sentencing

ii. Lanelle Durant - Appeal to Supreme Court

iii. _____

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

N/A
N/A
N/A

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

N/A

STATE OF SOUTH CAROLINA)

County of Florence)

VERIFICATION

I, Wayne Albeon Scott #357676, 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.

Wayne Scott

SWORN to and subscribed before me this 13
 day of Oct., 2017.

Dorinda Eastman (L.S.)
 Notary Public

My Commission Expires: 3/3/2021

2017 OCT 30 PM 2:40
 DORIS POWLOS O'HARA
 CCLP & GS
 FLORENCE COUNTY, SC

FILED

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Wayne Albeon Scott #357576, 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.

Wayne Scott
Applicant

SWORN or affirmed to and subscribed before me this
13 day of Oct, 2017.

Diana Eastman
Notary Public

My Commission Expires: 3/3/2024

2017 OCT 30 PM 2:40
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

Answer Question (10)

My Defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case and failed to give me his complete loyalty, and failed to act as my diligent conscientious advocate.

A lawyer is an officer of the Court... and is bound to work for the advancement of Justice while "faithfully" protecting "The Rightful Interests" of his Client and to his entitled of his freedom from unnecessary intrusion by opposing parties and their Counsel. And to research all facts of the Nature of the Law of his clients case.

Because of my Attorney's gross neglect and his many legal errors. No Defense at all was put into issues for "Me" during the Court proceedings. He failed to pursue any of the legal recourse that were available to him at the time or get any options from other attorneys that handled cases of the "Stand Your Ground Law" section 16-14-410 or argue in any options for my defense.

Counsel did not research all of his Recourse that were available to him from other lawyers to research more representation of this range and scope of competence demanded by Strickland and its progeny in Petitioner's case a Convicted Defendant's claim that Counsel Assistance was so defective as to requires that a evidentiary

Hearing be held to section 17-27-80 and 17-27-90-120 and 17-27-130.

His Defense Attorney never explained to him or discussed with him how the elements of the Crime Charge and the evidence that the Prosecution planned would be done.

especially as it related to the elements.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEA
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
Wayne Albeon Scott., #357576	)	Case No.: 2017-CP-21-2992
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR
v.	)	MORE DEFINITE STATEMENT
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The State (Respondent), making its Return to the Application for Post-Conviction Relief filed on October 30, 2017, would respectfully show this Court:

I.

Wayne Albeon Scott (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In March 2013, the Florence County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2013-GS-21-0391). These charges resulted from an ongoing family dispute between the Applicant and the victim. Applicant lured the victim to his residence and shot a rifle into his chest, resulting in his death. Assistant Public Defender Will Gove, Esquire, represented Applicant. Assistant Solicitor Matthew Ozment, Esquire, prosecuted the case. Applicant proceeded to trial before the Honorable George C. James. On October 24, 2013, the jury found Applicant guilty as indicted. Judge James sentenced Applicant to imprisonment for concurrent terms of life without parole for murder and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. LaNelle Cantey Durant, Esquire, of the South Carolina Commission on Indigent Defense - Office of Appellate Defense perfected the appeal.

The South Carolina Court of Appeals affirmed Applicant's conviction on November 12, 2015. State v. Scott, Op. No. 2015-UP-513 (S.C. Ct. App. filed November 12, 2015). Applicant subsequently filed a petition for writ of certiorari in the South Carolina Supreme Court. The Court denied the petition on May 31, 2017. The remittitur was issued on June 2, 2017.

Attached to this Return and incorporated by reference are the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective Assistance of Counsel," in that:
 - a. "My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case and failed to give me his complete loyalty, and failed to act as my diligent conscientious advocate."
 - b. "Because of my attorney's gross neglect and his many legal errors, no defense at all was put into issues for 'me'."
 - c. "Counsel did not research all of his recourse that were available to him from other lawyers."
 - d. Never explained to him or discussed with him how the elements of the crime charge and the evidence that the prosecution planned would be done."

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing.

Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

III.

Applicant alleges ineffective assistance of counsel, but has wholly failed to set forth any facts to support this allegation. Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his 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, 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 v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove 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 the 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). 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 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. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent also hereby moves for a more definite statement. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Applicant has failed to set forth facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. Respondent respectfully submits it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

V.

Respondent therefore requests this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

VI.

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

VII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

March 12, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

2017-CP-21-2992

WAYNE ALBEON SCOTT, #357576,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

Jonathan D. Waller, Esquire
 Waller Law Group, LLC
 1116 Blanding Street, Suite 2B
 Columbia, South Carolina 29201

DATED this 12th day of March, 2018.


 Caroline Collins, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

) COURT OF COMMON PLEAS
) 2017-CP-21-02992
)
)
)
)
)
)

Wayne A. Scott
vs.
State of South Carolina

) TRANSCRIPT OF RECORD
)
)

) June 25, 2019

DEFENDANT) Florence, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR.

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

JONATHAN D. WALLER, ESQ.
Attorney for the Applicant

SAMUEL L. KEY, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

KESHIA REED
Official Court Reporter

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I N D E XWITNESSDIRECTCROSSREDIRECTRECROSS

Wayne Scott

Mr. Waller

5

36

Mr. Key

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William Grove

Mr. Waller

38

70

Mr. Key

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72

Certificate of Reporter 78

1 THE COURT: I am ready when you are.

2 MR. KEY: May it please the Court.

3 THE COURT: Yes, sir.

4 MR. KEY: This is Wayne Albeon Scott vs. The
5 State of South Carolina case number 2017-CP-21-2992.
6 Mr. Scott is presently confined in the South Carolina
7 Department of Corrections pursuant to orders of commitment
8 of the Florence County Clerk of Court. In March 2013, the
9 Florence County grand jury indicted Mr. Scott for murder
10 and possession of a weapon during the commission of a
11 violent crime. He was represented on these charges by
12 Will Grove and Assistant Solicitor Matt Ozment prosecuted
13 the case.

14 Mr. Scott proceed to trial before The Honorable
15 George C. James, Jr., on October 24th of 2013. And the
16 jury found applicant guilty as indicted. Judge James
17 sentenced applicant to imprisonment for concurrent terms
18 of life without parole for murder and five years for a
19 possession of a weapon during the commission of a violent
20 crime.

21 Mr. Scott filed a timely notice of appeal which
22 was perfected by Lanell Canty Durant of the Office of
23 Appellate Defense. The Court of Appeals affirmed
24 Mr. Scott's conviction on November 12th 2015. He
25 subsequently petitioned for writ of certiorari in the

1 South Carolina Supreme Court. And after briefing an oral
2 argument, the South Carolina Supreme Court dismissed the
3 writ as granted.

4 Mr. Scott is present here today and represented
5 by Mr. Jonathan Waller. Last week, the State received
6 some amendments to his application and I just like for
7 Mr. Waller to clarify if he's going forward on the
8 amendments or on -- if it's inclusive these are the
9 allegations.

10 THE COURT: Mr. Waller.

11 MR. WALLER: Thank you, your Honor. May it
12 please the Court.

13 THE COURT: Yes, sir.

14 MR. WALLER: Judge, it's -- the amendments were
15 in addition. There really more specifics and
16 clarification. Judge, his application while it had a
17 two-page attachment on the back, it was more of a general
18 since. I think he cited some case law in there. So,
19 Judge, we have -- I filed a three-page amendment last week
20 actually which kind of specifies the issues we're going to
21 go forward on, so it is in addition, but it's really the
22 specifics of our issues.

23 THE COURT: All right. I'm ready when you are.

24 MR. WALLER: Thank you, your Honor. I would
25 call Wayne Scott.

1 THE CLERK: Place your left hand on the Bible
2 and raise your right hand as much as you can, if you'll
3 face this way. Do you swear to tell the truth, the whole
4 truth, and nothing but the truth so help you God?

5 THE DEFENDANT: I do.

6 MR. WALLER: Thank you, your Honor.

7 WHEREUPON,

8 Wayne A. Scott,
9 after first having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. WALLER:

12 Q Good morning, Mr. Scott. How are you today?

13 A I'm fine.

14 Q All right. Mr. Scott, I want to if I can take you
15 back a little ways to when you were first arrested in this
16 case. Do you recall that?

17 A Somewhat, yes, sir.

18 Q Okay. When you were -- well, the time period, all
19 right, when you were arrested, what were you charged with,
20 what crimes?

21 A When I was arrested?

22 Q Yes, sir.

23 A Firearm under the influence of alcohol.

24 Q Okay. Ultimately were you charged with additional
25 crimes?

1 A Yes, sir.

2 Q Okay. You were charged with murder, is that right?

3 A Yes, sir.

4 Q Okay. Who was your attorney from the get go?

5 A Mr. Will Grove.

6 Q Okay. When -- how long after you were arrested, did
7 you have a chance to meet with Mr. Grove?

8 A It was probably a month or so.

9 Q Okay. And were you in the detention center or were
10 you able to make bond?

11 A I was in the detention center.

12 Q Okay. When you and Mr. Grove met the first time, do
13 you recall what y'all talked about?

14 A Yeah, he said this is -- they probably offer you 30
15 years day for day.

16 Q Okay. Did y'all talk about your constitutional
17 rights at all?

18 A No, sir.

19 Q Okay. Did y'all talk about your right to remain
20 silent?

21 A No, not that I remember.

22 Q Okay. You given a statement to law enforcement, is
23 that right?

24 A Well, I explain to him that night what happened as
25 far as giving them a statement, but with my signature and

1 everything on it, no, sir.

2 Q But you talk to the police?

3 A Yes, I talk to the police that night.

4 Q Either right before or right after you were arrested,
5 is that right?

6 A Right.

7 Q Okay. Did you and Mr. Grove have a chance to talk
8 about the statement that you gave to the police or talking
9 to the police?

10 A Not really.

11 Q Okay. Did y'all discuss your right to a trial?

12 A Yes, sir, he told me if I didn't take the 30-year
13 plea, that I'd go to trial.

14 Q Okay. Did y'all discuss how, you know, kind of the
15 procedures of a trial and what would take place?

16 A No, sir, I brought up the castle doctrine. My sister
17 brought it up to me. And I brought it up to him and he
18 ask me is that what I want to do. I say I don't know I'm
19 not the lawyer. He said, well, let me see. And the next
20 thing I know he had a hearing.

21 Q Okay. Now, we're going to come back to that in just
22 a minute. When you and Mr. Grove met, do you recall --
23 the first time at least, if he had discovery at that time?
24 Do you remember?

25 A No.

1 Q He did not or you don't remember?

2 A No, he didn't have it. I never got my whole
3 discovery.

4 Q Okay. When did you start getting pieces of it?

5 A Well, I got a few pictures here and arrest warrants
6 and a couple of statements from the State witnesses.

7 Q Okay. Do you remember when you got that?

8 A He probably sent that after the second time he came.

9 Q Okay. Now, when you and Mr. Grove were talking --
10 let me back up. There was no question or y'all weren't
11 challenging that you shot and killed Mr. Springs, is that
12 right?

13 A Yes.

14 Q Okay. The argument was what led to that and why that
15 happened, is that right?

16 A Right.

17 Q Okay. So the -- who actually killed him wasn't a
18 question?

19 A No.

20 Q Okay. Did you give Mr. Grove any information you
21 wanted him to investigate?

22 A Yes.

23 Q Okay. What did you ask him to look into?

24 A I asked him to look into like a gun specialist
25 because Mr. Springs was shot with a large caliber riffle

1 and the bullet didn't even go all the way through him, but
2 the statement that the police said I give them is that I
3 shot him at 17 to 20 feet away. And I know that that
4 wasn't true, but for the reason of the bullet, the bullet
5 never went all the way through Mr. Springs.

6 Q Okay.

7 A It never hit a bone. At 20 foot, I own that gun for
8 almost 20 years. At 20 foot away, I would have blown half
9 his back out.

10 Q Okay. You had been deer hunting that day, is that
11 right?

12 A Yes, sir.

13 Q Okay. And that's why you had your riffle with you?

14 A That's the reason I had the riffle.

15 Q You were locked out of your house on the front porch,
16 is that right?

17 A Right. I was sitting on my office porch.

18 Q Okay. Describe that to me? How's the -- you say
19 your office porch, was it connected to your house?

20 A No.

21 Q Right there next?

22 A Right next door.

23 Q Okay. On the same piece of property though, is that
24 right?

25 A Yeah, if you looked at it, you couldn't tell that it

1 wasn't connected, you know.

2 Q Okay. So it was...

3 A That close.

4 Q It was almost two buildings touching each other?

5 A Yeah.

6 Q And it was on the same piece of property?

7 A Right.

8 Q Was it -- did you own that piece of property? Do you
9 own that piece of property?

10 A Yes.

11 Q Okay. If we were -- if we went down to the register
12 of deeds down somewhere in this courthouse, would it show
13 us one piece of property or two different ones?

14 A You mean for the shop and the house?

15 Q Yes, sir.

16 A One.

17 Q Yes, sir, I mean, is it deeded as one piece of
18 property?

19 A Yes.

20 Q Okay. All right. What else did you and Mr. Grove
21 talk about? You just testified about the weapon. What
22 else did you and Mr. Grove talk about?

23 A Well, he told me that him and Detective Mr. McFadden,
24 I think, went out to the house took some pictures. And as
25 far as anything else, he wrote me a letter saying that he

1 had some great evidence of an audio videotape, which I
2 never received. And a 9-1-1 call that I never heard and
3 some stuff off of Facebook. I never was -- I never seen
4 it, never got a copy of it, never got a copy of none of
5 that stuff.

6 Q Okay. Did you and Mr. Grove have a chance to talk
7 about the autopsy report of Mr. Springs?

8 A Say it again?

9 Q The autopsy report did y'all have a chance to talk
10 about that?

11 A I brought it to his attention about I never seen
12 Mr. Springs act that way that day. And if he didn't mind,
13 would he please run an alcohol blood test.

14 Q Okay. So you asked him to try to obtain that
15 information?

16 A Yeah.

17 Q Do you know if he ever did or not?

18 A I don't know if he recommended it, but it was ran,
19 yes, sir.

20 Q Okay. So part of the discovery you received or you
21 were made aware of had Mr. Springs blood alcohol level?

22 A I don't even know if I received that.

23 Q Okay. But you became aware of his blood alcohol
24 level at some point?

25 A In the courtroom.

1 Q Okay. Do you recall what that was?

2 A 19, 19-9 I think.

3 Q Okay. All right. I want back up again briefly. You
4 knew Mr. Springs, is that right?

5 A Yes, sir, we were friends for like ten years.

6 Q Okay. So you known him for about ten years?

7 A Uh-huh.

8 Q Did you and Mr. Grove talk about Mr. Springs
9 drinking?

10 A I didn't know Mr. Springs started back drinking until
11 after this, until after the incident. I didn't even know
12 he started back drinking.

13 Q Okay. So when you knew him was he a drinker?

14 A No, sir, he was a church going. Him and his wife as
15 far as I know for the fact the ten years I knew him. He
16 went to church and everything. You know, he was church
17 going and he didn't drink.

18 Q Okay. And then had you known that he was drinking
19 prior to this day?

20 A That day?

21 Q No, sir, prior -- you know, in a short amount of time
22 prior, but not specifically that day had he started back
23 drinking six months before this?

24 A No, sir.

25 Q Okay. So all you knew was he was drinking that day?

1 A That's all I can tell you. I didn't even know it. I
2 mean, I knew something was wrong, but I didn't know what.

3 Q Okay. Was he acting funny?

4 A Yeah, very aggressive.

5 Q Did you tell Mr. Grove about that?

6 A Yes, sir.

7 Q Okay. All right. How tall are you, Mr. Scott?

8 A About five maybe ten.

9 Q 5'10, okay. At the time of this incident, how much
10 did you weigh?

11 A Probably about 130, 35 pounds.

12 Q Okay. You were a skinny guy?

13 A Yeah, a small guy.

14 Q How about Mr. Springs how tall was he?

15 A Six foot maybe.

16 Q Okay. And how much did he weigh if you knew?

17 A I know he was over the 225 mark. Mr. Springs was a
18 big guy.

19 Q He was bigger a than you?

20 A Oh, yeah, a lot bigger 225, 250 I would say.

21 Q Okay. Did you and Mr. Grove discuss any potential
22 defenses that you might have to these charges?

23 A Yeah, we come up with self-defense.

24 Q Okay. Did you and Mr. Grove have a chance to talk
25 about what the elements of self-defense were?

1 A No, sir, we never did that.

2 Q Okay. So did you understand going into your trial
3 what self-defense was or what it consisted of?

4 A Well, the first thing we went and done was an
5 immunity hearing and that was the Protections of Persons
6 Property Act. And, no, I didn't understand none of it,
7 which it was a new law that had just come out like in
8 2011.

9 Q Okay. You testified during that immunity hearing, is
10 that right?

11 A Yes, sir.

12 Q Okay. You did not testify during your trial?

13 A No, sir.

14 Q Okay. What led to that decision to not testify
15 during the trial?

16 A Not to?

17 Q Yes, sir.

18 A Because I had to prove to the State that I wasn't
19 guilty.

20 Q Okay. Why did you think you had to prove anything?

21 A That's what I'm saying so if I had got up on the
22 stand and didn't know who or what I was trying to prove, I
23 could sunk myself in worse.

24 Q Okay. Did you and Mr. Grove discuss potentially
25 testifying before you got to your trial?

1 A He told me that was left up to me.

2 Q Okay. Did he discuss what would happen if you did
3 testify? What the State could use against you or what you
4 think to cross-examine you?

5 A He said the State could use anything I said against
6 me.

7 Q Okay. Did you and Mr. Grove -- going back to the
8 immunity hearing, did you and Mr. Grove discuss, you know,
9 the Protections of Persons and Property Act before the
10 hearing started and what y'all would have to show?

11 A No, sir, we didn't.

12 Q Okay. What was your -- and what did you think when
13 you were going into it? I mean, what did y'all think
14 y'all were going to do?

15 A I didn't know.

16 Q Okay. When you got to that hearing, had y'all
17 discussed the actual act itself, the law of the
18 Protections of Persons and Property Act and which
19 categories you might fit into and which category you might
20 not fit into?

21 A I think he picked one and I think it was like C, I
22 think, was it C.

23 Q And that's okay if you don't remember. I just want
24 to know if y'all had discussed that, so you had an idea
25 before you got there?

1 A Right. We never discussed it. He just come up with
2 it once we had gotten there.

3 Q Okay. I want to go back a little bit to -- and
4 discuss -- you and Mr. Springs had talked on the phone
5 prior to the incident where he was killed, is that right?

6 A Only led to the incident.

7 Q That's what I'm talking about. The day of the
8 incident y'all had talked on the phone -- several phone
9 calls, is that right?

10 A I wouldn't say several because he got real nasty with
11 me and I didn't want to argue with him because I didn't
12 know what was going on with the situation or nothing like
13 that, so I was pretty much wanting to stay out of it. I
14 knew what was going on and it wasn't right, but I stayed
15 out of it.

16 Q Okay. Let me back you up so Judge Seals has an
17 understanding kind of a background. When you say the
18 situation you were trying to stay out of, what situation
19 are you talking about?

20 A Mr. Springs and my wife's daughter.

21 Q Okay. What about the two of them?

22 A Well, one thing they were both married. My wife
23 didn't like it because of the grand babies.

24 Q They had a relationship, is that right?

25 A Yeah, I mean, I really didn't know they was having a

1 relationship. I've heard bits and pieces, but I was the
2 type that work, hunt, fish come home and take care of my
3 family. So I just -- what somebody said I just let it
4 blow up over because I knew it wasn't gone last, so I
5 just -- you know, what I mean.

6 Q So you were trying to stay out of it, is that right?

7 A I did stay out of it.

8 Q So the day of the incident you and Mr. Springs had
9 talked on the phone, is that right?

10 A Uh-huh.

11 Q Did you and Mr. Grove did y'all talk about those
12 phone calls? Did you ask him to get any phone records or
13 anything like that?

14 A Yes, sir.

15 Q Okay. You asked him to get those records?

16 A Yes, sir.

17 Q And to your knowledge did he do so?

18 A No, sir.

19 Q Okay. Did you ask him or follow up with him and ask
20 him about getting them?

21 A Yeah, every time I seen him. I told him that was the
22 main part of my trial because it could prove that I wasn't
23 the one doing the calling to Mr. Springs.

24 Q Okay. He was calling you?

25 A I call Mr. Springs to ask him a simple question as a

1 friend not having nothing to do with no relationships
2 nothing like that like I told him. He started, see, I
3 don't want no part of it. Y'all grown leave me out of it.
4 I got too much. I got work going on and I don't want no
5 part of it.

6 Q Okay. What was Mr. Grove's response when you asked
7 him or you kept asking him about getting the records?

8 A He said it wasn't none.

9 Q Said there wasn't any records?

10 A Uh-huh.

11 Q Your cell phone was in police custody, is that right?
12 They took your cell phone from you?

13 A Yeah. They still have it.

14 Q Did you and Mr. Grove ever talk about that cell phone
15 getting it tested or anything like that?

16 A I don't even know if he ever looked at it.

17 Q Okay. Do you know if the -- if law enforcement ever
18 got a search warrant for your phone?

19 A No, sir.

20 Q Okay. You don't know or you did not?

21 A As far as I know they didn't because they took it
22 that night.

23 Q Okay. The State theory's of the case, the State's
24 allegations were that you kind of lured Mr. Springs over
25 to your house with these phone calls, is that your

1 understanding?

2 A Yes.

3 Q What do you think the phone records would have shown?
4 Why did you want Mr. Grove to get the phone records?

5 A To show that I wasn't the one doing the calling. And
6 the State pulled some witnesses in and they testified that
7 me and Mr. Springs had been having an ongoing issue for
8 several months that Mr. Springs coming by my job. He was
9 calling me trying to get me to go down the road and all
10 this, that and the other and arguing back and forth on the
11 phone. And I knew this wasn't true. So I asked him would
12 he please get the phone to show that all they had to do is
13 look at the numbers, you know, back a few months and it
14 would have showed that the witnesses made that up.

15 Q Okay. But y'all really weren't talking that much a
16 couples month before, is that right?

17 A No, not really not like we use to. It was just kind
18 of my wife asking me, you know, just to -- we work the
19 same job, you know. If I seen him on the job, I talk to
20 him. I seen him at the store I spoke to him.

21 Q Okay. Your wife had a business dispute with
22 Mr. Springs, is that right, in addition to the personal
23 dispute?

24 A I recon. I didn't get involve with her business. I
25 had -- you know, I had work for her as well.

1 Q Okay.

2 A And I work for a couple other people. I had like
3 four jobs going. You know, so I didn't have time for
4 somebody else's relationship, you know.

5 Q So weren't aware of any business disputes your wife
6 might have had with Mr. Springs?

7 A Not at the time, no.

8 Q Okay. You found out later on?

9 A Uh-huh.

10 Q Okay.

11 A In the courtroom.

12 Q Yes, sir. Did you and Mr. Grove ever discuss the
13 knife or the screw driver that was found?

14 A Well, he said what the -- I got the statement from
15 the police, it says I told them that Mr. Springs had a
16 screwdriver in his hand, which was a lie. I never told
17 the police that. I said he had something in his hand and
18 never stated what it was because I never could identify
19 because it was dark that night.

20 Q Okay. About what time did this take place?

21 A Like I said, it was -- I come out of hunting a few
22 minutes early, but by the time I got home, it was already
23 getting dark.

24 Q Okay. You wanted to stay in the woods 'til close to
25 dark because that's the good time?

1 A Well, matter of fact, I come out the woods a little
2 bit early..

3 Q Okay. So not quite dark when you came out, but it
4 was dark about the time ---

5 A Where I was hunting was, you know, 30 minutes away.

6 Q Okay. Okay. The screwdriver or the knife or the
7 any -- anything found in proximity to Mr. Springs, did you
8 and Mr. Grove talk about having that tested or how law
9 enforcement had it in their custody, did y'all discuss
10 that at all?

11 A He said something about they wanted my DNA.

12 Q Okay.

13 A And the judge ordered me to give it, which I didn't
14 have no problem with that. I was gone -- I mean, I didn't
15 have a problem with it. I'd give it to them whether a
16 judge ordered it or not, but he went ahead and got an
17 order and they come down to the county and swab my mouth.

18 Q Took a swab of your cheek?

19 A They done that touch DNA on the screwdriver not the
20 knife.

21 Q Okay. And had you and Mr. Grove or law enforcement
22 talked about the screwdriver before?

23 A No.

24 Q Okay. Did you have a chance to see any of the
25 statements from some of the witnesses before the trial

1 started?

2 A Yes, sir.

3 Q Okay. Did you and Mr. Grove have a chance to talk
4 about what was contained in those statements and if it
5 didn't match up with what you remember happening?

6 A He told me George Watson was full of it.

7 Q Okay.

8 A And his statement was just full of it. It didn't
9 really mean too much because you could actually see the
10 way it was telling the truth in the statement. I mean, he
11 was contradicting himself in his own statements. He made
12 about three statements I think.

13 Q Okay. So Judge Seals understands, George Watson was
14 your neighbor, is that right?

15 A Right.

16 Q And he saw you kind of in the short time right after
17 the incident?

18 A He come up while I was trying to call my wife after
19 the incident.

20 Q Okay. All right. How about had you seen any
21 statements before the trial stated from Hubert Black or
22 Sabrina Hartfield?

23 A No, sir.

24 Q Okay. And they also live in kind of a close
25 proximity to y'all?

1 A Sabrina Hartfield lives right in my backyard, that be
2 George Watson's fiancé at the time.

3 Q Okay.

4 A Hubert Black lives 15 miles.

5 Q That's right, I apologize. So I'm taking them one at
6 a time. So Sabrina Hartfield lived close to you, is that
7 right?

8 A Yeah.

9 Q Okay. She gave a statement to law enforcement. Had
10 you -- when did you find out about that?

11 A I don't think she ever give a statement.

12 Q She testified against you at trial, is that right?

13 A Yes, sir.

14 Q Okay. When did you find out that she was going to be
15 a witness against you?

16 A About 11 hours before my trial.

17 Q Okay.

18 A That's when Mr. Grove told me those two witnesses
19 would be showing up.

20 Q How about Hubert Black had he give a statement to law
21 enforcement prior that you knew of?

22 A No, sir.

23 Q Okay. And he was also called as a witness against
24 you, is that right?

25 A Right.

1 Q Okay. When did you find out that he was going to be
2 testifying against you?

3 A Around the same time.

4 Q Okay. All right. Mr. Scott, you have raised an
5 allegation that Mr. Grove was ineffective for not having
6 you evaluated for competency. Why do you think he needed
7 to do that?

8 A First of all, from the beginning, I went to one bond.
9 My wife was there. I was suppose to have a second bond
10 hearing before the immunity hearing. They come and got
11 me, took me. I looked around in the courtroom and my wife
12 and nobody I knew was there. All the Springs people was
13 there, but my wife and nobody was there. And I asked him
14 why was that. He said, well, oh, I tried to call him one
15 time. I mean, my wife lives 15 minutes from here and
16 Mr. Springs people lives what three hours from here or
17 further. And it's funny that, you know, his people showed
18 up, but mine didn't know nothing about it.

19 Q Okay. What is that -- I just wanted to kind of bring
20 you back. What is that have to do with your competency to
21 stand trial?

22 A Competency to stand trial?

23 Q Yes, sir.

24 A I mean, Mr. Springs had people to stand up for him.
25 I had no one stand up for me, to talk for me, to say

1 anything good about me, to say anything bad about me.

2 Q Mr. Scott, is there anything that you asked Mr. Grove
3 to do in preparation for your immunity hearing or your
4 trial that he didn't do?

5 A I asked him what he thought about the immunity trial
6 and he told me he had it under control.

7 Q Okay.

8 A What he meant by that I don't know because when I
9 went in the courtroom the judge was looking for a motion
10 and found nothing but a bond hearing motion. He didn't
11 even have a written motion for the hearing and that -- I
12 mean, it really upset me, but the motion went on. He said
13 he verbally done it.

14 Q Okay. So he hadn't made a formal written motion
15 filed with the clerk of court for asking for that immunity
16 hearing?

17 A Like I said, he just pops up and tells me we got an
18 immunity hearing such and such date.

19 Q Okay. How much notice did you have of that?

20 A Maybe a week if that.

21 Q Okay. Is there anything that you needed to talk to
22 him about between, you know, when he told you and when the
23 hearing actually was? Is there anything y'all needed to
24 go over before that took place?

25 A Well, all he told me was the --- we was going to

1 subpoena some witnesses and the State was going to be
2 there. And that we get up there and tell the judge what
3 happened.

4 Q Okay. All right, just a couple more things. Back to
5 your trial and not the immunity hearing, what was your
6 understanding of how you could present a self-defense
7 without testifying?

8 A All I was told about self-defense was we go in the
9 courtroom and sit down and the State's got to disprove
10 self-defense nothing about no evidence, nothing about me
11 testifying, you know, but he stated that you he testify if
12 you want to. I mean, I can't tell you to do it, and I
13 can't tell you not to do it. He did say is that, but that
14 was as far as I knew. I didn't know what to do. I'd
15 never been in any courtroom or no serious situations. I
16 mean, I didn't know. I had know idea. I was letting him
17 run the show and because I knew no better.

18 Q Okay. Mr. Scott, I've asked you all the questions
19 that I think I have for you. Is there anything that you
20 think I've neglected to ask you or anything that Judge
21 Seals needs to be aware of Mr. Grove's representation of
22 you?

23 A Yes, sir. During my trial, he done another verbal
24 motion to the judge and it was about the two witnesses
25 Hubert Black and Sabrina Hartfield. And he stated that if

1 the judge allowed them to testify, that it would erode
2 his ability to give me the Sixth Amendment to give me a
3 fair trial. And the judge offered him a continuance and
4 he told the judge that no we didn't want no continuance.
5 We was prepared to -- me and his client was prepared to go
6 ahead with the trial.

7 MR. WALLER: Okay. Judge Seals that's on page
8 50 of the transcript of the trial portion of the
9 transcript.

10 BY MR. WALLER:

11 Q And, Mr. Scott, your understanding is that these two
12 witnesses were kind of offered up at the last minute and
13 Mr. Grove said that he -- that would hinder his ability to
14 defend you these surprise witnesses?

15 A He stated that to the judge. What he stated to me
16 that they can't say nothing that's gone hurt you.

17 Q Okay. But he did not want a continuance is what he
18 said, is that right?

19 A Right, he stated he did not want a continuance, that
20 he was prepared -- after he stated that it would erode his
21 ability with the Sixth Amendment to give me a fair trial.

22 Q Okay. Is there anything else you think the Court
23 needs to be aware of?

24 A Yeah, we talked earlier about the screwdriver and
25 there was a DNA run on it. My DNA wasn't on this object.

1 Q Okay.

2 A It wasn't found on this object.

3 Q Okay.

4 A On the knife, I don't think they run a DNA on it. If
5 they did, they didn't say nothing to me about it.

6 Q Okay. Did you and Mr. Grove have a chance to talk
7 about the results of the DNA?

8 A No, sir. Only thing I was aware of was he popped up
9 one day and told me that he had just left the Solicitor's
10 office and listen to an audio videotape of Larry Bruce
11 and my wife Gloria and that Larry Bruce was trying to get
12 her to say that she staged putting the knife in the man --
13 in Steve's hand and staged the scene to keep me out of
14 trouble all, this, that and the other. And I asked him is
15 that evidence. I mean, I didn't know is that gone help
16 us. And later on I got a letter saying that the 9-1-1
17 call and the audio videotape was gone be great evidence.

18 Q Okay. The letter came from Mr. Grove?

19 A Mr. Grove.

20 Q Okay. All right. And just for clarification to your
21 knowledge, your wife was never charged with a crime or
22 anything like that related to this?

23 A No, sir.

24 Q Okay. All right. I don't have anything further for
25 you.

1 A Well, I have one more thing because when ---

2 Q Yes, sir.

3 A Yeah, the audio videotape I'm not sure about the
4 9-1-1 call, but I know for sure that the audio videotape
5 and the phones and, you know, the two main things that
6 never showed up in the courtroom, I never heard them,
7 never seen them to this day, still don't know they even
8 exist because I never seen them.

9 Q The audio video was of Larry Bruce, is that right?

10 A Larry Bruce and Gloria, yeah.

11 Q Okay.

12 A But like I say, I never got my full -- he told me it
13 wasn't a good time for me to have my Rule 5 because I was
14 in the county like I wasn't responsible for -- I don't
15 know whether he was trying to keep it from me or, you
16 know, he -- but I never received my whole Rule 5 ---

17 Q Okay.

18 A Still to this day I never received it.

19 Q Okay. Anything else that the judge needs to be aware
20 of?

21 A Yes, sir. I know he mention something about my wife
22 had said on Facebook about Mr. Springs and about me, but
23 it never was. I asked him for a copy of it while I can
24 hear it or at least, you know, print out. I never got
25 that. The more I heard about it was when I went in the

1 courtroom at my trial and I still don't have a copy of it.
2 The only thing I have is what was said at trial.

3 Q Did y'all discuss how it would help you or hurt you
4 or how it would affect your case before the trial started?

5 A No, because I didn't know nothing about it.

6 Q Okay. You just knew something existed on Facebook.

7 A That's right and which what was said on Facebook. It
8 shouldn't have hurt me because me and my grandson we
9 stayed at Lynch's River in the yard that's it. If it
10 messed up anybody's weekend, it would have messed up her's
11 not mine. Me and him slept under the stars that night.

12 Q So it wasn't something you wrote, it was somebody
13 else wrote, your wife wrote it?

14 A Yeah.

15 Q Yes, sir.

16 A The only time me and Mr. Springs had any conversation
17 at all was that day of the incident.

18 MR. WALLER: Okay. Please answer any questions
19 Mr. Key has for you.

20 THE COURT: State.

21 MR. KEY: Just one second.

22 THE COURT: Sure.

23 (WHEREUPON, a pause in the proceedings.)

24 MR. KEY: May it please the Court.

25 THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. KEY:

Q Okay. Mr. Scott, you did have a stand your ground
Protections of Persons and Property Act hearing, correct?

A Yes, sir.

Q Okay. And what was the result of that hearing?

A It was denied.

Q Okay. And you testified at that hearing?

A Yeah.

Q Okay. But you did not testify at trial?

A No.

Q Okay. Did there's -- now, in the transcript there's
two Larry Bruces. There's Larry Bruce, Sr. and Larry
Bruce, Jr.?

A Right.

Q And one of them is referred to as Michael Bruce?

A Right.

Q Okay. Which one is Michael Bruce?

A The young one.

Q The young one, okay. Which -- did Michael Bruce
testify at your immunity hearing?

A Yes, sir.

Q Okay. And did your wife testify at your immunity
hearing?

A Yes, sir.

1 Q Okay. But only Michael Bruce testified at trial?

2 A Right.

3 Q As a State's witness?

4 A Right.

5 Q Okay. Now ---

6 A No, as a state witness that was the daddy.

7 Q Okay. Okay. Now, did you know about the toxicology
8 report on the victim? Did you know that there was a
9 toxicology report done?

10 A I asked about it, and if I'm not mistaken, I think he
11 did get married.

12 Q There was one.

13 A I think when Sara Johnson sent me -- well, when I got
14 the autopsy -- I didn't get the autopsy report, I just got
15 where -- what was took as evidence crime scene took.

16 Q Right.

17 A I think it was on there.

18 Q Did Mr. Grove ever discuss that with you?

19 A He said it wasn't a big deal.

20 Q Okay. I believe you testified that a forensic
21 testing was never done on the knife found at the scene?

22 A I don't know if it was or not.

23 Q Okay. But it was done on the screwdriver?

24 A Yes, sir.

25 Q Okay. And did Mr. Grove explain to you the results

1 of the tests that were done on the screwdriver?

2 A He did mention it to me right before we went into the
3 trial that my DNA was not on it and that was a good thing.

4 Q Okay. So your DNA wasn't on the screwdriver that was
5 a good thing he told you that?

6 A Uh-huh.

7 Q Okay.

8 A He said it wasn't enough DNA on the screwdriver to
9 say that I touched it.

10 Q Okay. On the night you were arrested, do you recall
11 the officers -- did the officers read you your Miranda
12 rights?

13 A Part of them.

14 Q Part of them. Did you make any statements to the
15 officers?

16 A I spoke with Mr. Gifford when he came to the house
17 that night. I spoke with Mr. Gifford briefly. And like I
18 told him, I was going to be under arrest. I wouldn't have
19 nothing else to say, but I just briefly told him that
20 Springs come to my home and, you know, and what happened.

21 Q You told him the situation that happened?

22 A Not all the way through. I mean, I didn't go into no
23 details just briefly and that's what happened. Mr.
24 Springs showed up very aggressive and I had never seen him
25 that way. And I didn't know what was wrong with him.

1 Q Now, did you ---

2 A Wait a minute. And I seen something in his hand,
3 never stated what it was because it was dark.

4 Q Did you tell the officers about you and Mr. Springs
5 talking on the phone several times that day?

6 A Yeah, I've even let him go through my phone and look
7 at it.

8 Q Okay. So you let him go through your phone?

9 A I let him on the scene.

10 Q Okay.

11 A That was Mr. Gifford. I said you can see right here.
12 Well, I actually didn't let him go through it, I just
13 flipped through it and showed him.

14 Q So you showed him on your phone that you and
15 Mr. Springs had been calling or you had been on the phone
16 multiple times that day?

17 A Yeah.

18 Q Okay.

19 A But when Mr. Hester come on the scene, he took my
20 phone. I asked him why he was taking it, he said it was
21 going into evidence.

22 Q They also had the victim's phone, the police?

23 A From my understanding, they didn't get it that night
24 out the van. They got a search warrant the next day and
25 went down to the impound yard and -- I don't think they

1 said Johnson bagged the phone. I think Mr. Hester bagged
2 the phone. I have a print out where she stated that.

3 MR. KEY: Beg the Court's indulgence.

4 (WHEREUPON, a pause in the proceedings.)

5 BY MR. KEY:

6 Q Very briefly. So at trial, did you and Mr. Grove
7 discuss presenting self-defense?

8 A How it was going to be presented?

9 Q Not how it's going to be presented, whether it was
10 going to be presented?

11 A Yes, the Solicitor and the judge and Mr. Grove
12 recommended it to be ---

13 Q Okay.

14 A --- presented.

15 Q So you knew going into trial that your defense was
16 going to be self-defense?

17 A All I was told when I went to court is that I got
18 that one letter from him stating that it's audio
19 videotape. These pictures he took. And he was going over
20 a lot of evidence, that it look good on my behalf. And
21 all I had to do was go in there with him and sit down and
22 let the State disprove self-defense. It wasn't no how he
23 was gone present me or nothing else. It was just go in
24 there and sit down. I didn't know no better, so you know
25 what I did, I went in there and sat down.

1 MR. KEY: No further questions, your Honor.

2 THE COURT: Redirect.

3 MR. WALLER: Just very briefly.

4 REDIRECT EXAMINATION

5 BY MR. WALLER:

6 Q Mr. Scott, you -- this isn't a case of, you know, who
7 did this and this was a -- whether the jury believed you
8 were defending yourself or not, is that right?

9 A Right.

10 Q And that was always your understanding?

11 A Yeah, the jury -- the State was going to put up
12 evidence that showed I was guilty, and that's practically
13 what they did.

14 Q Okay. And you and Mr. Grove discussed that the State
15 would have to disprove self-defense if you raised that?

16 A That's all he told me. If I feel that if he would
17 have told me what I know today that I had -- I could get
18 up and represent and put up evidence to the jury instead
19 of the State, today I would do it, but back then, I can't
20 say. I mean, maybe if he'd explained what we was going
21 into that was just like Protection Persons Property Act, I
22 didn't know nothing about it, and particularly he didn't
23 either.

24 Q Did you not think you were allowed to put it in
25 evidence?

1 A He didn't really put up -- I think he put up a
2 picture or something. And I was in the dark when I went
3 in the courtroom, I was scared. I was facing a lot of
4 time and I know that I wasn't guilty. And Mr. Grove told
5 me to go in there and sit down and the State had to prove.

6 MR. WALLER: Thank you, Mr. Scott, nothing
7 further.

8 THE COURT: All right. Any recross?

9 MR. KEY: No, Your Honor.

10 THE COURT: All right. You may step down.

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

13 THE COURT: Let's take a ten minute break and
14 we'll come back and wrap it up.

15 (WHEREUPON, a break was taken.)

16 THE COURT: Mr. Waller, you have any other
17 witnesses?

18 MR. WALLER: Thank you, your Honor. I'll call
19 Will Grove.

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

22 THE WITNESS: I do.

23 MR. WALLER: Thank you, your Honor.

24 WHEREUPON,

25 William Grove,

1 after first having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WALLER:

4 Q Good morning, Mr. Grove. How are you today?

5 A I'm doing well. Hope you are.

6 Q Yes, thank you for asking. Mr. Grove, how did you
7 come to represent Wayne Scott?

8 A When he was arrested and charged, I was an assistant
9 public defender in the Florence County Public Defender's
10 office, and I was appointed through that process.

11 Q Okay. If you can, what were the general allegations
12 against Mr. Scott?

13 A I guess, the elevator version is that he shot a
14 person that he knew and they charged him with murder based
15 on that conduct.

16 Q Okay. When you met with Mr. Scott, what was kind of
17 y'all's theory or your defense?

18 A It was a self-defense case. I suppose procedurally
19 it would have started as a castle doctrine or a
20 Protections Against Person and Property Act case and were
21 that not successful, it would have gone to trial as a
22 self-defense case and it did.

23 Q Prior to the immunity hearing, prior to the trial,
24 what investigation did you do and to the facts and
25 circumstances surrounding the allegations?

1 A Like most cases, the primary form of investigation
2 at least from my perspective is if I were to review and
3 have a study of the evidence that has already been
4 collected. In his case, there was a little additional
5 independent investigation that would have been limited to
6 going out to the scene, taking a few pictures of our own,
7 that sort of investigation. We didn't do any supplemental
8 forensic testing or anything like that if that's what
9 you're asking.

10 Q Okay. What -- did Mr. Scott give you any information
11 he wanted you to follow up on or any witnesses he wanted
12 you to talk to?

13 A Quite frankly, I mean, it's been maybe five and a
14 half years ago now. I don't remember if he gave me any
15 specific witnesses to follow up on, if he had, and he very
16 well may have, they would have been family members or
17 friends or local people that either were included in the
18 discovery and he wanted me to get additional information
19 from them or they would have been people not included in
20 the discovery. And he would have given me a brief
21 assessment of what his version of what they would tell me
22 would be.

23 Q Okay. With respect to the immunity hearing under the
24 Protections of Persons and Property Act, what preparation
25 did you do prior to that hearing started?

1 A Most of it was research. It was a relatively new law
2 at the time at least for South Carolina probably less than
3 two years old maybe, maybe a little less than that. And
4 so a lot of it was strategic assessment of how to proceed
5 based on the evidence that we had ourselves, but, again,
6 there wasn't much independent investigation or independent
7 forensic testing or anything like that.

8 Q Okay. What was your understanding of what y'all
9 would have to prove at that hearing?

10 A At a Protections Against Persons and Property Act
11 hearing, we would have the standard of proving that it's
12 more likely than not that Wayne defended himself or Sonny,
13 I suppose, defended himself in a place where he had the
14 right to be more or less.

15 Q Okay. And what was the judge's ruling if you recall?

16 A He denied the motion. I think that he said we didn't
17 make a prima facie showing of either an imminent threat or
18 that he was within the curtilage of his home or something
19 like that. I don't specifically remember.

20 Q The judge found that act didn't apply, is that right?

21 A That sounds right, yes, sir.

22 Q He never went to the whether self-defense was even --
23 was proved or not because he said the act didn't apply?

24 A Correct.

25 Q Okay. When you're doing your research into the act,

1 I mean, what did you look at in order to try to argue to
2 the judge that not only was it inapplicable, but that
3 Mr. Scott should be entitled to immunity?

4 A Duncan, I believe, was the -- sort of the only case
5 where the act had really been put forth at the time, I
6 think that's right. So there was study of that case which
7 involve self-defense and I believe that that was a
8 security guard on a sidewalk outside of an apartment
9 building. So relative to the proximity of where Sonny was
10 in relation to where he had a right to be, I found a lot
11 of similarities that he wasn't literally inside of his
12 home, but he was on the property and he was -- I think he
13 was sitting on the front steps of that adjacent building
14 that he testified about earlier.

15 Q Okay.

16 A So that coupled with just the general allegations of
17 being confronted by another person and feeling threatened,
18 those things in my opinion would have made the act apply.

19 Q Okay. You conceded to the judge that Section A did
20 not apply and that y'all were proceeding under Section C
21 of a person in another place where they have a right to be
22 not inside their home facing an intrusion. Do you recall
23 that?

24 A I don't remember, but I'll take your word for it
25 sure.

1 Q Okay. Did you -- why did you think that that was the
2 section to proceed under and why did you concede that the
3 other sections of the statute did not apply?

4 A I suppose that would have been a strategic decision
5 on my part. If you have a copy of the statute in front of
6 you, that might help me differentiate between A and C.

7 MR. WALLER: Your Honor, may I approach the
8 witness?

9 THE COURT: You may.

10 A Oh, sure. As written section A appears to only apply
11 when a person is in the process of physically entering or
12 has already entered a home and that those weren't the
13 allegations in our case. He was 15, 20, 40 feet from the
14 home.

15 Q Okay. And I wasn't trying to trick you.

16 A Oh, sure.

17 Q I'm just trying to clarify as to what was going
18 through your mind. All right. So in your opinion section
19 C applied, is that right?

20 A Yes.

21 Q Okay. The judge at the immunity hearing ruled that
22 there Mr. Scott had not been attacked because he had not
23 physically been touched. Had you done any research into
24 the word attack, how the attack had been -- how attack had
25 been defined or used else where because it's not defined

1 in the act itself?

2 A I don't remember doing that. And having not done
3 that, would have just been not appreciating that that
4 would be a ruling from the bench, that a threat of an
5 attack could be distinguished from an actual battery. I
6 suppose it wasn't prepared for a judge to rule that a
7 person who's being approached and says that they felt
8 threatened and says that they saw a weapon or something
9 like it, but hadn't been physically touched, that they
10 wouldn't be considered under attack for that purpose.

11 Q Okay. You use the example in your argument to the
12 judge that if someone is standing in your yard, you're in
13 your yard and someone shoots at you but misses, under the
14 judge's standard, that would not have been an attack. Had
15 you done any other research or was that just kind of off
16 the cuff example to counteract what the judge was arguing?

17 A As I remember, that would have been an off the cuff
18 example, simply because as you pointed out that's not
19 something I would have anticipated the judge -- that line
20 of logic would allow for that kind of a ruling to stand
21 where a person could shoot at me as long as they don't
22 actually touch me. I'm not under attack at that moment,
23 and I just wasn't prepared for that type of a ruling in
24 that hearing.

25 Q Okay. You testified earlier that at the time the act

1 the Protections of Persons and Property Act was relative
2 new, there wasn't a lot of case law on it. Had you done
3 any research into the common law doctrine -- the castle
4 doctrine and kind of reviewing those cases to see that
5 they might be able to assist you?

6 A Yes, I don't remember the case off hand. I think
7 there was a case out of Florida that I had relied on at
8 least in terms of preparation of how to craft a defense.
9 But, yes, the short answer is yes because there wasn't
10 very much available case law in South Carolina on the
11 subject, I looked outside of South Carolina to try and
12 find something comparable. Off the top of my head, I
13 don't remember.

14 Q Okay. And maybe I didn't ask a very good question.
15 Did you look at any South Carolina cases about the castle
16 doctrine from the common law back prior to the
17 codification that might have assisted you?

18 A I'm not sure that I did.

19 Q Okay. Did you -- how far in advance were you
20 provided with who the witnesses would be in this case?

21 A Like a specific witness list?

22 Q Not a specific witness list, but did you have enough
23 time to conduct a formal background check on some of the
24 witnesses had you so chosen to do?

25 A Not all of them. There were a couple that came up

1 sort of at the last minute. I say last minute maybe a
2 week ahead of trial, maybe a week and a half. I don't
3 remember the exact time frame. And I wouldn't of had much
4 of an opportunity to give what you might consider a
5 thorough investigation of those people.

6 Q Excluding those people, did you perform a formal
7 background check or more thorough investigation on any of
8 the other witnesses in the case?

9 A Not in a formal since, but as you might imagine given
10 the fact that Sonny knew the deceased in this case almost
11 all of the witnesses, if not all of the witnesses, who
12 weren't law enforcement were also people that he knew.
13 And so we were able to gain more information about friends
14 or family members, neighbors through him and through his
15 wife, Gloria, and other people that could provide insight
16 as to what we might expect from those people, and if there
17 was something worth investigating.

18 Q Okay. Did you and Mr. Scott ever discuss his cell
19 phone records from his phone calls with Mr. Springs?

20 A We absolutely discussed that they had conversations
21 on the phone, and that they had back and forth. If I
22 remember correctly, I think the last conversation that
23 they had on the phone -- at least Sonny's testimony would
24 have been or maybe was at the castle doctrine hearing
25 essentially telling him not to come over, you know, and to

1 stay away if I remember correctly, but in terms of getting
2 the cell phone records or doing what they call a data dump
3 now, no, we didn't do any of that.

4 Q Okay. The State's theory of the case was that
5 Mr. Scott kind of lured Mr. Springs over to the house.
6 Was there any additional information that you could have
7 gotten from the phone records that would have helped you
8 disprove that or otherwise aided in Mr. Scott's case?

9 A I suppose it depends. Cell phone records would have
10 either shown one of three things, that a phone call was
11 placed from Sonny to Mr. Springs. The other way around or
12 that no phone call took place or potentially whether or
13 not there had been a text message, but those phone records
14 wouldn't have shown what the substance of the conversation
15 was. It would have shown how long the conversation
16 lasted, and so that kind of evidence I wasn't certain
17 would be definitive. You know, I called another person
18 doesn't mean that they can't get through that
19 conversation, you know like convince me to come over, sort
20 of re-enforce the State's case. And out of concern for
21 that, I didn't know that that type of evidence would
22 actually proved valuable.

23 Q Okay. With respect to Mr. Scott's phone, do you know
24 if law enforcement obtained a search warrant to go into
25 that phone?

1 A I don't remember if they did or not.

2 Q Did you have any reason to challenge any of the
3 information they would have obtained from looking through
4 his phone?

5 A I suppose it would have been determined based on what
6 the results of that were, whether they were good or bad
7 for us, but I can't remember off the top of my head.

8 Q Okay. Was there a strategy decision behind not
9 moving to suppress anything that would have been obtained
10 if a warrant had not been obtained by law enforcement?

11 A In a case -- yes, is the short answer. In a case
12 like this, sometimes lack of evidence or the failure of
13 the State to introduce that evidence can be good for the
14 defense. And in this type of a scenario, I suppose that
15 would have been the strategy.

16 Q Okay. Do you have a copy of the transcript with you?

17 A I do.

18 Q Talk with me about the two witnesses that were kind
19 of introduced at the last minute? You told the Court that
20 these surprise witnesses that, you know, it was 13, 14
21 months after the incident would, you know, inhibit your
22 ability to give a complete defense to Mr. Scott. Why
23 didn't you ask for a continuance when the judge -- I don't
24 know if he offered it to you, but when he inquired about
25 it, why did you tell him you did not want a continuance?

1 A Can you point me to the ---

2 Q I apologize.

3 A That's all right.

4 Q Page 50 of the transcript of the trial portion.

5 A If you'll give me just a second. If memory serves
6 in a situation like that, I would talk with the client
7 about if you want a -- it seems like the judge would have
8 been willing to offer a continuance. And if you want a
9 continuance, sounds like we can have one or we can
10 continue going forward. And I think when Sonny was up
11 here testifying earlier, the substance of my remarks to
12 him would have been even if they do testify, I don't think
13 that they're going to hurt us that much and it would
14 surprise me. I don't remember saying that, but that
15 wouldn't surprise me if that were a thing to say. My
16 general approach would have been to keep their statements
17 out all together, but if they're going to testify, that
18 we're still ready to go forward.

19 Q Okay. So you were prepared if they were going to be
20 allowed to testify?

21 A Sure. At least I felt like I was.

22 Q Okay. In the trial -- and I'm going to refer you to
23 page 118, but from your recollection, was there ever any
24 testimony that there was a struggle between Mr. Scott, a
25 physical scuffle so to speak?

1 A I don't think so.

2 Q Okay. If you can look at page 118, line nine I
3 believe.

4 A Okay.

5 Q Do you have any recollection of where Mr.
6 Gifford would have come up with that?

7 A No.

8 Q Okay. Did you -- was there a reason for not
9 objecting to it or making some sort of -- requesting some
10 sort of limiting instruction or anything like that?

11 A I realistically I really don't remember. In the
12 course of a trial, sometimes questions get asked that
13 either take you by surprise and you don't have an
14 opportunity to object in the moment. Sometimes you're mid
15 conversation with a client who wants to draw your
16 attention to something that happened ten seconds ago, and
17 in the course of that, you miss a question. Other times,
18 you just don't see the value of an objection when it might
19 have otherwise been appropriate.

20 Q But you don't recall anything about any evidence to
21 suggest a physical struggle between the two?

22 A No, sir, I don't remember that.

23 Q Okay. If I get you to turn to page 193, this is the
24 testimony of Investigator Hester. Question begins on line
25 seven and the answer begins on line ten. Was there any

1 sort of reason for not objecting to Investigator Hester
2 comments there?

3 A No, strategic reason other than I just failed to
4 object.

5 Q Okay. Those -- so Judge Seals understands, did those
6 in your opinion did that kind of encroach on the jury's
7 finder of fact status?

8 A It does. There's actually case law about that. The
9 specific remarks about it if it's all right I'll read the
10 line from page 193. Line seven says, okay, and, I guess,
11 explain to me the significance what is the warrant, what
12 purpose do they have in our system. Answer, you have to
13 have probable cause in front of a magistrate. You give
14 the magistrate all the facts of the case you have up to
15 that point. She determines if there's enough probable
16 cause to issue an arrest warrant. I don't know if the
17 right term is burden shifting, but it erodes the ability
18 of the jury to make a fair and impartial determination as
19 to what the evidence actually says. That kind of a remark
20 suggest to the jury that a certain burden has already been
21 met, and that they need not assess that kind of a burden.
22 Exactly your words sort of reduces their ability as the
23 finder of fact.

24 Q A judge has already signed off on issuing a warrant
25 already said that a probable cause exist?

1 A Correct. It's a remark that can certainly have an
2 impact on what a jury understands their role to be and how
3 seriously they take that.

4 Q Okay. Thank you. Do you recall -- and I know it's
5 been a long time. The testimony of Larry Bruce during the
6 trial. If I can get you to turn to page 297 begins at
7 line 13 and continues on to the next page. The very
8 bottom of 297 and on to 298 is really what I'm asking you
9 about.

10 A Okay.

11 Q Was there a strategy behind or trial strategy behind
12 not objecting to Mr. Bruce testifying to what Ms. Scott
13 had told him?

14 A No, just a failure to object.

15 Q Okay.

16 MR. WALLER: Beg the Court's indulgence please.

17 (WHEREUPON, a pause in the proceedings.)

18 BY MR. WALLER:

19 Q All right. Mr. Grove, when the pathologist
20 testified, had you received in advance copy of the autopsy
21 report?

22 A Yes, through discovery.

23 Q Okay. As part of that report, was the toxicology of
24 the -- of Mr. Springs was in that report, is that right?

25 A It was. It is, yes.

1 Q You asked Dr. Presnell on cross-examination about his
2 blood alcohol content. Did you think to ask Dr. Presnell
3 about the height and weight of Mr. Springs?

4 A I did and I did not do that. And that was -- I don't
5 know if I have it in notes or not, but that was -- those
6 were questions that I intended to ask him to create the
7 physical disparity between Sonny and the deceased. And I
8 don't remember if it was after he had been excused or
9 later that day that I realize -- or maybe it was in
10 preparing for closing that I realize that I had not
11 elicited that testimony.

12 Q Okay. At the time of the incident about what size
13 do you recall Mr. Scott was?

14 A My height half my size maybe, a slight guy.

15 Q Okay. How about Mr. Springs if you recall?

16 A I remember him being much larger and that's why it
17 would have been important I suppose in a self-defense case
18 to present the implication that at the least of
19 intimidation or feeling threatened by a person who is
20 twice your size maybe four or five inches taller than you
21 are and maybe 100 pounds heavier than you are.

22 Q Okay. The State in their case and chief recalled
23 Investigator Hester -- I don't know the page number asking
24 you to turn to, but was there a reason behind not
25 objecting to them recalling some of the chance to, you

1 know, examine and then redirect?

2 A No, just a failure to object.

3 Q Okay. If you could turn to page 399. This is the
4 in-camera testimony of Sabrina Hartfield?

5 A Okay.

6 Q Was there a reason your objection was not -- that it
7 was hearsay testimony not covered by an exception?

8 A No, sir.

9 Q Okay. All right. Turn toward the latter stages of
10 the trial, did you have any propose jury charges you
11 wanted the judge to consider?

12 A I feel like I remember proposing a specific
13 self-defense charge.

14 Q Okay. Do you recall the nature of the charge you
15 requested or why you requested one specifically?

16 A There was one that essentially asserted that each and
17 every element of self-defense must be disproven. And I
18 think Judge James, Justice now James and I had a
19 discussion about whether that was what the law actually
20 said, if each and every element of self-defense must be
21 disproven or if only one must be disproven to successfully
22 disprove self-defense.

23 Q Okay. Do you recall if that discussion was on the
24 record or not?

25 A I don't recall, but I remember having it because I

1 remember him obviously not agreeing with me.

2 Q Okay. If I can get you to turn to page 427, line 16.

3 A Yes, sir.

4 Q Is there another charge conference that y'all would
5 have had on the record or is that ---

6 A I suppose not if we -- we absolutely had a conference
7 about a case and whether or not every element must be
8 disproven or if only one, but line 16 I'll defer to the
9 standard charge you have seen if that's the only record
10 conversation we had, then that's the only one in the
11 record.

12 Q Okay. What conversations did you and Mr. Scott have
13 about him testifying in trial?

14 A If at all possible and this is true in almost every
15 case, I do my best in terms of trying to protect my client
16 from cross-examination. So if we can present our case
17 without subjecting them to the risks that come along with
18 them testifying at trial, I try and do that and present
19 the case as best I can without the need of a client's
20 testimony and the client ultimately has that choice at the
21 very end if we haven't covered everything, that they can
22 testify at that time. We had that conversation and he
23 decided not to testify. His was a little trickier because
24 he had testified at the immunity hearing, and he had also
25 provided a statement prior to that. And so he not only

1 has to navigate cross-examination from the prosecutor, but
2 also ensuring that doesn't run into inconsistent
3 statements from two prior testimonies that he's had or two
4 prior statements I suppose you could say.

5 Q Okay. In a self-defense case, what preparation do
6 you look at as far as proving your defense or raising your
7 defense in defending Mr. Scott without his testimony?

8 A Well, size disparity is one that obviously I failed
9 to bring into the record. The scene itself was another
10 one that was critical for us because he was at his home,
11 the positioning of the decease versus the positioning of
12 Mr. Scott. Those sorts of factors can play towards a
13 self-defense case even without the testimony of a
14 defendant.

15 MR. WALLER: Beg the Court's indulgence please.

16 THE COURT: Yes, sir.

17 (WHEREUPON, a pause in the proceedings.)

18 BY MR. WALLER:

19 Q Mr. Grove, do you recall a recording of Mr. Larry
20 Bruce discussing the incident or what took place after the
21 incident with Mrs. Gloria Scott?

22 A I vaguely remember that. I've looked through my
23 file. I have a letter that I sent to Sonny about it and
24 that's about all I can tell you.

25 Q Okay. Do you recall -- how you would have looked at

1 that video or audio or video and would it have helped you
2 at all?

3 A I would have viewed it. They either would have
4 provided me with a recording or I would have viewed it at
5 the Solicitor's office. What I remember mostly comes from
6 promptings from a letter that's in my file that I sent to
7 Sonny about what the substance of that video and audio
8 was. And it was essentially Larry trying to get Gloria to
9 say that she had planted evidence and her saying she had
10 not done any of that. And I suppose that would have
11 been -- is helpful information especially if a
12 contradictory testimony is presented at trial.

13 Q Okay. And what you just spoke of Mr. Bruce talking
14 to Mrs. Gloria Scott is what he testify to, is that
15 correct, that she had planted -- she had taken the
16 screwdriver out of his hand and put a knife or vice versa,
17 is that right?

18 A That's right something like that.

19 Q And, again, there was no strategy behind not
20 objecting to Mr. Bruce making those comments at trial?

21 A If I remember correctly, he requested himself to be
22 wired up to go get a statement. I believe his position
23 was those statements had already been made, and he now
24 wanted to take a second attempt at documenting them. So
25 in theory, that contradictory video wouldn't necessarily

1 contradict the testimony that he had, but would
2 potentially present an inconsistency, but one that
3 wouldn't definitively refute his statements I suppose.

4 Q But his testimony at trial was that Mrs. Gloria Scott
5 had already had told him that she had done these things?

6 A That's correct.

7 MR. WALLER: Nothing further. Thank you.

8 THE COURT: All right, cross-examination.

9 CROSS-EXAMINATION

10 BY MR. KEY:

11 Q Mr. Grove, there was a castle doctrine hearing in
12 this case, correct?

13 A That's correct.

14 Q And Judge King ruled that the act did not apply?

15 A That's correct.

16 Q Okay. Do you know if that issue was raised on
17 appeal?

18 A I don't know. I didn't follow in the trial. I
19 didn't really follow closely the subsequent history of the
20 case.

21 Q Okay. But if it was raised on appeal if it's in the
22 record on appeal?

23 A That's right.

24 Q Okay. Now, just a minute ago, there was a discussion
25 of charge conferences on the record?

1 A Yes, sir.

2 Q Do you have the transcript in front of you?

3 A I do.

4 Q Could you turn to page 456.

5 A I'm there.

6 Q Okay. And the State had requested a charge on
7 voluntary manslaughter?

8 A That's correct.

9 Q And you opposed that charge being given?

10 A Yes, sir.

11 Q Okay. And so from 456 to 469, the record would
12 reflect a second charge conference?

13 A I'll take your word for it on the page numbers, but,
14 yes, sir, we had a lengthy discussion. Sonny and I first
15 talked about whether or not we wanted to concede to a
16 voluntary manslaughter charge, and then on the record
17 opposing a voluntary manslaughter charge. Essentially,
18 our strategy was this is -- this case was either a
19 self-defense not guilty case or a murder. The evidence
20 didn't allow for a heat of passion. The State presented
21 evidence that or their theory generally was that the
22 deceased had been lured there and been plotted against and
23 that doesn't support a voluntary manslaughter charge. Our
24 other concern was that the jury might split the baby so to
25 speak and that any conviction for voluntary manslaughter

1 would carry with it an equivalent life sentence.

2 Q Okay. Was a self-defense charge given in this case?

3 A Yes, sir, I believe so.

4 Q Okay. And in the self-defense charge, the judge
5 reiterated that the State had the burden of disproving
6 self-defense?

7 A That's correct. I think there was actually a
8 question from the jury about that.

9 Q Or multiple questions?

10 A Yes, they had multiple questions. One about bringing
11 the harm upon them -- if both parties bring the harm upon
12 themselves maybe. And the other question was oddly enough
13 whether or not each element of self-defense had to be
14 disproven or if just one element had to be disproven.

15 Q And your argument was that the State had disprove all
16 four elements?

17 A That's correct.

18 Q But the judge ruled that the State only had to
19 disprove one element?

20 A That's correct.

21 Q Was that the law at the time?

22 A I believe so, I suppose so. I'll take Justice James'
23 word for it when it comes to he and I having disagreements
24 about the law.

25 Q Okay. Were there times at trial where you and the

1 State told the jury that anything said other than what the
2 judge says to disregard that the judge charges the law?

3 A I don't remember specifically, but I include that at
4 some point in almost every closing that I've ever given
5 that if I say something about the law and the judge says
6 something differently that listen to what the judge says
7 and not what I say.

8 Q Okay. But the charge was given that the State had to
9 disprove every element of self-defense?

10 A That's right.

11 Q And had to prove the State had the burden of proving
12 every element of murder also?

13 A Yes, sir.

14 Q Okay. I believe you discussed on direct your
15 investigation into the witnesses?

16 A Yes, sir.

17 Q Mr. Scott knew all of the witnesses except for law
18 enforcement?

19 A I think that's right. I don't think that there were
20 any third-party witnesses that he didn't know or have a
21 relationship with.

22 Q And was he able to -- were y'all able to discuss how
23 that witness testimony might go?

24 A Yeah. I suppose maybe with the exception of the last
25 two where the information was provided so close to trial,

1 but all of the other statements as I remember would have
2 been included either through an actual statement or
3 through a summary in law enforcement incident report. And
4 so we would have had an opportunity to discuss who that
5 person is, how are they related to you or how are you
6 intertwined with them, how do you know them, and here is
7 the essence of the statement they provided to law
8 enforcement. And we can essentially rely on that to be a
9 good predictor of what their testimony at trial will be.

10 Q So were you able to work with Mr. Scott in preparing
11 your cross-examination of witnesses?

12 A Yes, sir. Not necessarily sitting down with a note
13 pad and bouncing questions off of one another, but in
14 terms of discussing the evidence and evaluating who the
15 witnesses were gave me the ability to better prepare for
16 cross-examination.

17 Q Okay. When it comes to the forensic testing of the
18 knife, did you ever receive any results from testing of
19 the knife?

20 A Not sure if I did or not. I don't remember one way
21 or the other.

22 Q Okay. Did you bring that out in cross-examination?
23 I could refer you to page 200 of the transcript. I'm
24 sorry 202.

25 A Yes, sir.

1 Q You asked Officer Hester if a swab was done on the
2 knife?

3 A Yes, sir, it looks like I did.

4 Q Okay. And you also asked Investigator Hester if he
5 was in control of the case?

6 A Yes, sir.

7 Q Could Investigator Hester give you an answer as to
8 why the forensic testing was ever done on the knife --
9 never done on the knife?

10 A On page 203, it looks like his answer is I can't
11 answer that.

12 Q Okay. But you were able to bring out that the
13 testing was never done on the knife through
14 cross-examination?

15 A Yes, sir.

16 Q Okay. Was there ever any dispute that Mr. Scott and
17 the victim had been talking on the phone back and forth
18 the day of the incident?

19 A I don't think so.

20 Q Was there any need to get phone records in that
21 situation?

22 A Not really. In my opinion, no, that's one of those
23 bits of evidence that because it wasn't in dispute and
24 essentially was in our favor the gathering of the evidence
25 and having it not be what we thought it was would only

1 hurt us. So if we got the records and there weren't as
2 many phone calls or there weren't any phone calls,
3 obviously that's a big negative for us and I'm limited by
4 the rules of ethics as to whether or not I can present
5 evidence about phone calls that I now know didn't exist
6 and because the fact that there were phone calls was never
7 in question, it didn't seem like that was a worthwhile
8 thing to continue investigating I suppose.

9 Q Okay. Did you move to have the two witnesses who
10 came up a week before trial, did you move to suppress
11 their testimony?

12 A I believe so, yes, sir.

13 Q Okay. And the judge ruled against you?

14 A That's correct.

15 Q Okay. And then did you ask for a continuance?

16 A No, sir, I don't believe so.

17 Q You actually did not want a continuance?

18 A That's correct.

19 Q Because you were ready and prepared?

20 A We were ready and prepared for the case that we knew
21 of two weeks before that. We were asking for the
22 witnesses to be not allowed to testify, but otherwise they
23 weren't going to testify an hour from then. We had time
24 to prepare for them I suppose, but we were not interested
25 in a continuance at that time.

1 Q Okay. And you were -- and you prepared
2 cross-examination of those witnesses?

3 A Yes, sir.

4 Q Okay. You had planned to elicit testimony regarding
5 the size of the victim and the size of Mr. Scott?

6 A That's right.

7 Q Okay. How far away was it allege that the victim's
8 body was from Mr. Scott?

9 A I don't remember specifically, but you and me 20 feet
10 to 40 feet maybe, maybe less than that.

11 Q Okay. And he shot the victim?

12 A That's correct.

13 Q Okay. Was there ever any testimony that he was
14 charging Mr. Scott?

15 A I don't think so. I don't remember there being
16 testimony of that nature just that he felt threatened that
17 he had shown up unannounced, that he had something in his
18 hand which was later identified as either a screwdriver or
19 a knife, but that he got out from the van and maybe
20 stepped forward. But I don't believe there was any
21 testimony about him running forward or charging or
22 anything like that.

23 Q Okay. And was there testimony on how Mr. Scott was
24 holding the riffle?

25 A I believe his original statement to law enforcement

1 was that it was lying in his lap when Mr. Springs
2 approached. When the deceased pulled up into the
3 driveway, I think the testimony was that it was lying in
4 his lap. I'm not positive of that.

5 Q So the gun was lying in his lap when the victim
6 pulled up into the car. He said don't take another step.
7 The victim took another step and he shot?

8 A That's my recollection.

9 Q But he didn't raise the gun up or anything?

10 A I mean, I suppose obviously it would have to either
11 shouldered it or turned it on his waist. I don't
12 remember.

13 Q Okay. Did you ever see a need to challenge, I guess,
14 law enforcement getting Mr. Scott's phone?

15 A No, I suppose that sort of a thing didn't occur to me
16 as something that would be available. Again, like I
17 mentioned before the fact that there were phone calls back
18 and forth was never really disputed by anybody. Everybody
19 seem to agree on that. So gathering information from his
20 phone or challenging information that was gathered didn't
21 seem like it would have gone anywhere.

22 Q Was there any evidence from -- presented from the
23 phones other than they had called each other back and
24 forth?

25 A I don't think so.

1 Q Okay. Just -- how many times did you and Mr. Scott
2 meet to prepare for this case?

3 A I couldn't tell you. I represented him for 14, 15,
4 maybe 16 months, I don't remember exactly how long ten, 12
5 times maybe. I don't know.

6 Q And did you discuss with him defenses going forward
7 at trial?

8 A Yes, sir. I think it would surprise me -- I don't
9 have an independent recollection of this. It would
10 surprise me if our very first conversation wasn't about
11 how this was a self-defense case and remained that way for
12 the duration of my representation.

13 Q Okay. Did the autopsy reveal the victim's, I guess,
14 toxicology report?

15 A Yes, sir.

16 Q Did you receive that in discovery?

17 A Yes, sir.

18 Q Did you go over that with Mr. Scott?

19 A Yes, sir, I believe I did.

20 Q Okay. So he knew the results?

21 A Yes, sir, I think it was a .199.

22 Q The recording of Larry Bruce that would be Larry
23 Bruce, Sr.?

24 A That I believe's right, yes, sir.

25 Q Okay. Did that support your theory of self-defense?

1 A I am not sure if I follow you.

2 Q The recording of Mr. Bruce do you recall what the
3 recording contained?

4 A You referring to when he recorded a conversation
5 between him and Mrs. Scott?

6 Q Yes.

7 A Yes. I recall the nuts and bolts of it, yes, sir.

8 Q And would that information support your theory of
9 self-defense in this case?

10 A No, sir.

11 Q Okay. So would there be a need to present that
12 evidence?

13 A I suppose to challenge as an inconsistent statement
14 something that Mr. Bruce had said at trial, but in terms
15 of advancing our defense of self-defense, no.

16 Q Okay. On page 301 of the transcript, there is a
17 question about -- there was a question earlier about why
18 you didn't object to that hearsay testimony of Larry
19 Bruce. If I could refer you to lines 13 through 17, does
20 that give you any indication as to why you wouldn't have
21 objected to the hearsay testimony?

22 A Yeah, I suppose that it was his testimony was more --
23 it was bad for Mrs. Scott more than it was bad for Sonny
24 Scott I suppose, and so that would have been a reason not
25 to have an objection with the testimony.

1 Q Did you request a good character evidence charge in
2 this case?

3 A I don't remember.

4 Q If it's in the record?

5 A Yes, sir.

6 Q Okay. If you had requested a good character evidence
7 charge, would Mr. Bruise's testimony have gone towards
8 evidence in the record to support that charge being given?

9 A Yes, I suppose so.

10 Q Okay.

11 MR. KEY: Beg the Court's indulgence.

12 (WHEREUPON, a pause in the proceedings.)

13 BY MR. KEY:

14 Q I believe you testified earlier you told Mr. Bruce
15 that it was up to him whether or not he wished to testify?

16 A Mr. Scott.

17 Q Mr. Scott sorry.

18 A Yes, sir, that's a routine conversation I've been
19 having for almost nine years now with clients.

20 Q And you gave him the dangers of testifying at trial
21 being subject to cross-examination?

22 A Yes, sir, and given that he had provided statements
23 to law enforcement that evening, and I think that some or
24 most of those statements came in. Our version of his set
25 of facts, his version of events would have already been in

1 the record for the jury to consider and so there wasn't a
2 need to necessarily for him to testify for essentially a
3 third time.

4 Q Okay. And you just mentioned that he made statements
5 that came in. Was there a Jackson v. Denno hearing in
6 this case?

7 A Yes, sir.

8 Q Okay. But ultimately the judge ruled that the
9 statements would come into evidence?

10 A That's correct.

11 Q Okay. Back to your prep for the castle doctrine
12 hearing, you said you reviewed cases from other states on
13 point?

14 A Yes, sir, I believe so.

15 Q Okay. But really there wasn't much South Carolina
16 case law at the time?

17 A That's correct.

18 Q Okay.

19 A I think the law was only a couple of years old, so
20 any and all most cases that would have been presented
21 under the act wouldn't have gone through all of their
22 appeals and had published opinions by then.

23 Q Okay. Did Mr. Scott's competency to stand trial ever
24 come into question?

25 A No, sir, I've represented lots and lots of people

1 over my career. I know what the competency standards are
2 as to whether or not he understands who I am, what my role
3 in the process is, who the judge is, who the prosecutor
4 is, and what the charges are that he was facing. I was
5 never remotely concerned as to whether or not he was
6 competent under Blare. And it didn't seem -- the facts
7 didn't support it. And our version of events didn't
8 support M'Naughten criminal responsibility evaluation
9 either.

10 MR. KEY: I don't believe I have any more
11 questions.

12 THE COURT: All right.

13 MR. WALLER: Just briefly.

14 REDIRECT EXAMINATION

15 BY MR. WALLER:

16 Q Just very briefly, Mr. Grove. You testified about
17 the -- you had a specific self-defense charge you wanted
18 you had asked for?

19 A I think that's right, yes, sir.

20 Q And on the record you objected to a voluntary
21 manslaughter charge?

22 A That's correct.

23 Q Okay. Did you place any objection to the judge not
24 charging your specific self-defense charge on the record
25 that you recall?

1 A I don't recall. And if it's not in there, obviously
2 I didn't do that.

3 Q Okay. One of the questions the jury had, I believe,
4 it was question number five asked about the specifics of
5 self-defense and the judge recharged them. Do you recall
6 that?

7 A I don't recall, but I'll take your word for it.

8 Q Could you turn to page 524 please.

9 A I'm there.

10 Q Is that charge the one you requested or the other
11 one?

12 A I suppose obviously that would have been his that did
13 not include the language of disproving -- I think the
14 language was disproving every element of self-defense
15 which I took to interpret as each element of self-defense.
16 I think, if I remember correctly, I think that's what our
17 discussion was about.

18 Q Okay. And that's the one that was charged to the
19 jury was that the State has to disprove self-defense, but
20 that was the extent of it?

21 A Okay. Correct. If I remember correctly, our
22 discussion was that Justice James found it essentially
23 illogical -- impossible theoretically for the State to be
24 able to disprove every element depending on the facts of
25 the case.

1 MR. WALLER: Beg the Court's indulgence please.

2 (WHEREUPON, a pause in the proceedings.)

3 MR. WALLER: Thank you, Mr. Grove. Thank you
4 nothing further.

5 THE COURT: All right. Anything further?

6 MR. KEY: Just very briefly, your Honor.

7 RECROSS-EXAMINATION

8 BY MR. KEY:

9 Q Mr. Grove, could you turn to page 469 please.

10 A I'm there.

11 Q Now, do you believe it's line 15 through the end of
12 that page onto the next page. Do you recall in support
13 of your argument of your jury charge citing State vs.
14 Berkheart?

15 A I'm sorry which case?

16 Q State vs. Berkheart?

17 A Yes.

18 Q Okay. So you did argue that State vs. Berkheart
19 supported your jury charge?

20 A Yes, sir.

21 Q Okay. And that was -- and the judge ruled not to
22 give that charge?

23 A That's correct. I think that this portion of the
24 transcript references our conversations, so I may have
25 misremembered a challenge of my specific jury charge as

1 oppose to charge conference. On 470, it goes into the
2 difference between each and every, and I believe that's
3 the substance of the conversation I was referring to
4 earlier.

5 Q So you did ask for each and every to be charged and
6 the judge ruled not to charge that?

7 A That's correct.

8 MR. KEY: No further questions, your Honor.

9 THE COURT: All right. Anything further?

10 MR. WALLER: Nothing further, your Honor.

11 THE COURT: You may step down. Thank you.

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

14 THE COURT: You'll call your next witness.

15 MR. WALLER: Your Honor, nothing further from
16 the applicant.

17 THE COURT: All right. How about the State?

18 MR. KEY: No witnesses from the State.

19 THE COURT: Thank you very much. I'll take it
20 under advisement and let you know something this week.

21 MR. WALLER: Your Honor, I have a couple cases
22 I'd like for you to consider.

23 THE COURT: Sure, go ahead.

24 MR. WALLER: Your Honor, these are specifically
25 for the Protections of Persons and Property Act. Judge,

1 the first and this is -- I like to hand up a copy if I
2 can. Judge, this is a 2018 case and certainly not -- not
3 saying that Mr. Grove should have been able to fast
4 forward and know what's going to happen in 2018. Judge,
5 with State vs. Scott, a different Scott. Essentially,
6 this case or similar facts to the situation with Mr. Wayne
7 Scott. Judge, in that case a person's house was shot
8 into. No one was actually touched. Man ran out into his
9 front yard and returned fire killing one. I think he was
10 actually killing a third party.

11 However, the reasoning the Court goes into and
12 the same section Section C of the Protections of Person
13 Property Act section 16-11-440 applies that the reason --
14 the reasoning that the Court goes into is from old cases,
15 Judge. So that's what I believe should have been argued.
16 So if your Honor will take a look at State vs. Scott two
17 cases in there -- that are cited in there that I believe
18 Mr. Grove should have research our castle doctrine cases
19 both from South Carolina. The first is State vs. Grantham
20 at 77 Southeastern 2nd 291. It's a 1953 case, as well as
21 State vs. Wiggins. It's 500 Southeastern 2nd 489. It's a
22 1998 case. Judge, I think those two cases along with the
23 fact that section 16-11-420 subsection E of the
24 Protections and Persons and Property Act would have
25 controlled. We're talking about this attack, Judge. I

1 think those are the arguments that should have been made,
2 so I ask your Honor to consider that along with the
3 transcript and testimony from today.

4 THE COURT: Good. I'll hear from the State.

5 MR. KEY: Okay. Your Honor, clearly the facts
6 of State vs. Scott the Supreme Court case are different
7 from the case at hand because in Scott there was a
8 drive-by shooting where there were two cars that pulled up
9 into his yard, in front of his yard basically. Well,
10 there were gunshots actually fired. He returned fire at
11 both cars. He struck the defendant in that case, struck
12 someone in a car that did not fire any shots.

13 The Supreme Court found that he was entitled to
14 immunity because he was acting in self-defense because he
15 was being shot at and he returned fire, hit someone other
16 than who was directly shooting at him. In this case,
17 there was -- the facts are clearly distinguishable in this
18 case where the defendant or the victim had either a knife
19 or a screwdriver. It was contested testimony at trial
20 whether he had one of those in his hand or not. And
21 essentially State vs. Scott came down to an abuse of
22 discretion standard whether there was any evidence to
23 support the castle doctrine hearing judge's ruling finding
24 that Mr. Scott in that case was immune from prosecution.

25 Here the standard would be if there's any

1 evidence to support the judge's finding, that he was not
2 entitled. And the judge at a castle doctrine hearing
3 reviews the evidence by a preponderance of the evidence.
4 He here found that Mr. Scott was not entitled to immunity,
5 that has gone up, been ruled on by the Court of Appeals
6 and then dismisses and granted by the Supreme Court. So
7 the State would just say that the facts of that case in
8 this case are very distinguishable and that's all.

9 THE COURT: All right.

10 MR. WALLER: Your Honor, just briefly the facts
11 certainly are distinguishable, and I'm not trying to argue
12 that 2018 case is binding precedent on this trial that
13 took place, you know, five years prior. Judge King ruled
14 that he didn't even get to the second prong of immunity of
15 whether self-defense actually exist. He actually
16 specifically declined to rule on that issue. He found
17 that the -- that Mr. Scott because of where he was and
18 where he had not been physically touched in an attack and
19 battery had not taken place, that he wasn't even
20 applicable to seek immunity.

21 The only reason I presented the Court with State
22 vs. Scott is because of the -- just as good -- it's a good
23 discussion of it, and so that's the only reason. I'm
24 certainly not saying it's binding precedent, but I would
25 argue that State vs. Grantham and State vs. Wiggins, I

1 think are more -- would have certainly been precedent at
2 the time, and it's certainly something that Mr. Grove
3 should have reviewed. Thank you, Judge.

4 THE COURT: All right. Thank you very much.
5 I'll think about it this week and let you know something
6 by Friday.

7 MR. WALLER: Thank you, Your Honor.

8 MR. KEY: Thank you, your Honor.

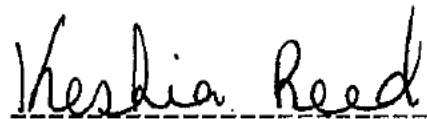
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter 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 pages, numbered 1 through 78, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Florence County, South Carolina, on the 25th day of June, 2019.

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 3rd day of May 2022.



Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Wayne A. Scott, #357576,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE TWELFTH JUDICIAL CIRCUIT

) CASE NO. 2017-CP-21-2992

) **ORDER OF DISMISSAL**

2022 JUL 28 PM 2:09
DONIS POULOS O'HARA
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

FILED

The matter before the Court is an action for post-conviction relief (PCR) commenced by Wayne Albeon Scott (Applicant) on October 30, 2017., asserting various allegations of ineffective assistance of counsel. The State submitted its return on March 12, 2018, requesting an evidentiary hearing.

An evidentiary hearing was convened on June 25, 2019, at the Florence County Courthouse before this Court. Applicant was present and represented by Jonathan D. Waller, Esquire, and Assistant Attorney General Samuel L. Key represented the State. Applicant and his Trial Counsel testified at the hearing. After hearing the testimony at the PCR hearing and a full review of the record, the Court finds that Applicant's allegations are without merit, denies relief, and dismisses the action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). In March 2013, the Florence County Grand Jury indicted Applicant for murder and possession of a weapon during the commission of a violent crime (2013-GS-21-0391). Applicant was represented by Assistant Public Defender Will Grove,

Esquire (Plea Counsel). The case was prosecuted by Assistant Solicitor Matthew Ozment of the Twelfth Circuit Solicitor's Office.

On September 19, 2013, a hearing pursuant to the Protection of Persons and Property Act was held before the Honorable Howard King. Judge King denied Applicant's motion finding the Act was inapplicable. On October 21–24, 2013, Applicant proceeded to a jury trial before the Honorable George C. James, Jr., then circuit court judge. The jury convicted Applicant as indicted. Judge James sentenced Applicant to serve concurrent terms of life without parole for murder and five years' imprisonment for the weapons charge. Applicant appealed his sentences and convictions.

Appellate Defender LaNelle Cantey Durant perfected Applicant's appeal and briefed the following issues to the Court of Appeals:

- I. Did the circuit court err in not granting [Applicant] immunity from prosecution for the murder charge pursuant to S.C. Code Section 16-11-410, the Protection of Persons and Property Act, when [Applicant] was at his own home; the victim was on [Applicant's] property although he had been asked not to come; [Applicant] asked the victim to leave; and the victim continued to advance?
- II. Did the trial court err in not charging the jury on S.C. Code Section 16-11-410 when standing his ground was a valid defense, which the jury should have been able to consider in their deliberations, in conjunction with self-defense with the trial judge emphasized was a valid defense?

The Court of Appeals affirmed Applicant's conviction on November 12, 2015. State v. Scott, Op. No. 2015-UP-513 (S.C. Ct. App. filed November 12, 2015). Applicant subsequently petitioned the South Carolina Supreme Court for a Writ of Certiorari presenting the above-stated issues.

The South Carolina Supreme Court granted certiorari as to Applicant's issue I but denied certiorari as to issue II. State v. Scott, S.C. Sup. Ct. Order dated Nov. 9, 2016. However, after

briefing and oral argument, the South Carolina Supreme Court ultimately dismissed the writ as improvidently granted. State v. Scott, Op. No. 2017-MO-010 (S.C. Sup. Ct. filed May 31, 2017). The case was remitted back to the circuit court on May 31, 2017. Applicant timely commenced this PCR action on October 30, 2017.

SUMMARY OF RELEVANT FACTS

Applicant's charges stem from an ongoing family dispute between Applicant and Steve Springs. Springs was having an affair with Applicant's stepdaughter. Springs arrived at Applicant's office and exited his vehicle. Applicant was on his office front porch when he shot Springs in the chest with a hunting rifle. Springs's body dropped where he stood in Applicant's yard, and he died as a result of the shooting.

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. Failure to conscientiously discharge his professional responsibilities while he was handling Applicant's case and failed to give Applicant his complete loyalty, and failed to act as Applicant's diligent conscientious advocate;
 - b. Because of Counsel's gross negligence and many legal errors, no defense at all was put into issues for Applicant;
 - c. Counsel did not research all of his recourse that were available to him from other lawyers; and
 - d. Counsel never explained to or discussed with Applicant the elements of the crime charged and the evidence that would be presented.

On June 21, 2019, Applicant, through PCR counsel, amended his application as follows:

1. Ineffective Assistance of Counsel:
 - a. Failure to properly argue that Applicant was entitled to immunity through the Protection of Persons and Property Act;
 - ~~b. Failure to properly preserve issues of immunity under the~~

- Protection of Persons and Property Act;
- c. Failure to obtain and present the toxicology report of the victim;
 - d. Failure to conduct a formal background check on witnesses for potential impeachment evidence;
 - e. Failure to enter recording of Larry Bruce into evidence;
 - f. Failure to obtain phone records of calls between Applicant and the victim prior to the incident;
 - g. Failure to obtain forensic testing of the knife found in close proximity to the victim;
 - h. Failure to object to hearsay testimony during the testimony of Larry Bruce;
 - i. Failure to properly impeach the testimony of George Watson;
 - j. Failure to move for competency evaluation of Applicant;
 - k. Failure to object to impermissible comments during the State's closing argument;
 - l. Failure to properly respond to issue regarding jury questions;
 - m. Failure to move to suppress the testimony of Hubert Black and Sabrina Hartfield or move for a continuance based upon the late disclosure of evidence;
 - n. Failure to elicit testimony and evidence of the difference in size between Applicant and the victim;
 - o. Failure to object to impermissible comments during the testimony of William Hester; and
 - p. Failure to move to suppress any evidence related to Applicant's cell-phone as a result of a warrantless search and any information derived from such search as a fruit of the poisonous tree.

At the evidentiary hearing, PCR Counsel stated that the amendments were in addition to the original PCR allegations, but the amended allegations were more specific, and they intended to move forward on those.

SUMMARY OF RELEVANT TESTIMONY

APPLICANT'S TESTIMONY

Applicant testified he was initially arrested and charged with using a firearm while under the influence of alcohol and was later charged with murder. Applicant testified Trial Counsel represented him for his entire case. Applicant stated he first met with Trial Counsel about a month

after his arrest while in the detention center. Applicant recalled that during their first meeting, Trial Counsel told him the State would probably offer for him to plead to murder with a thirty-year day-for-day sentence. Applicant stated Trial Counsel did not talk to him about his constitutional rights or his right to remain silent at their initial meeting.

Applicant recalled speaking to law enforcement the night of the incident when he explained what happened, but he did not give a statement with a signature. Applicant recalled speaking to law enforcement again around the time of his arrest. Applicant testified Trial Counsel did not talk to him about his statements to law enforcement. Applicant testified Trial Counsel explained to Applicant his right to trial and told him if he did not accept the State's plea offer, his case could go to trial. However, Applicant asserted Trial Counsel did not explain the procedures of a trial. Applicant testified he brought up pursuing immunity from prosecution under the Castle Doctrine to Trial Counsel, and Trial Counsel said he would look into that possibility. Applicant recalled there was a Castle Doctrine hearing in his case.

Applicant stated he and Trial Counsel did not review the discovery at their first meeting because Trial Counsel had not received the discovery at that time. Applicant testified he never received all the discovery in his case. However, Applicant recalled receiving a few pictures here and there, the arrest warrant, and the statements from the State's witnesses. Applicant testified he received these items of discovery from Trial Counsel after their second meeting.

Applicant admitted he shot Springs, but the issue in his case revolved around why he shot Springs and the events leading up to the shooting. Applicant testified he asked Trial Counsel to consult with a gun specialist because he shot Springs with a high caliber rifle, and the bullet did not go through Springs's body. Applicant stated law enforcement claimed Applicant stated he was seventeen-to-twenty feet away from Springs when he shot him, but that was not true. Applicant

stated the bullet never hit bone, and at twenty feet away, the bullet should have blown Springs's back out.

Applicant testified he had been deer hunting earlier that evening, which is why he had the rifle. Applicant testified he was on his office porch when he shot Springs, and his office is a separate building but very close to his trailer on the property. Applicant testified Trial Counsel told him the detective went out and took pictures of the scene, and the State had strong evidence against him in the form of an audio and video recording; however, Trial Counsel never provided him a copy of the recording. Applicant claimed he never listened to the 911 call, and there was some evidence pulled from Facebook, but he never got a copy of that evidence.

Applicant testified he told Trial Counsel he had never seen Springs act the way he was acting the night of the incident, and he requested Trial Counsel to conduct a blood alcohol test on Springs. Applicant testified he knew a blood alcohol test was done on Springs, but he did not know if it was done at Trial Counsel's request. Applicant could not recall whether he became aware of Springs's blood alcohol level before trial but knew it was brought up during the trial that Springs had a blood alcohol level of 0.199.

However, on cross-examination, Applicant thought Trial Counsel did give him Springs's toxicology report, but Trial Counsel told Applicant the results of the report were not a big deal. Applicant testified he knew Springs for about ten years prior to the incident and spoke to Trial Counsel about Springs's drinking habits.

Applicant testified he told Trial Counsel he did not know Springs had started drinking again until after the incident. Applicant testified he told Trial Counsel that when he knew Springs, Springs was a churchgoer and did not drink. Applicant stated he told Trial Counsel he did not know when Springs started drinking again, but Applicant could tell something was wrong with

Springs the night of the incident because Springs was acting funny—very aggressive. Applicant testified Springs was bigger than himself. Applicant testified he was five-foot ten-inches tall and weighed about 130 to 135 pounds at the time of the incident. Applicant testified Springs was about six-foot tall and weighed about 225 to 250 pounds.

Applicant testified that through his discussions with Trial Counsel, they came up with a theory of self-defense; however, Applicant testified Trial Counsel never explained to him the elements of self-defense. Applicant testified the first time they pursued self-defense was at the immunity hearing. Applicant testified he did not understand the Protection of Persons and Property Act because it was a new law that had just come out in 2011. Applicant recalled he testified at the immunity hearing but not at trial.

Applicant stated he did not testify at trial because he thought he had to prove he was not guilty by acting in self-defense. Applicant testified he thought it would have been harmful to testify at trial without knowing what he needed to prove or who needed to prove he acted in self-defense. Applicant testified Trial Counsel told him the decision of whether or not to testify was Applicant's decision. Applicant recalled Trial Counsel told him if he testified, the State could use anything he had previously said against him.

Applicant testified Trial Counsel never discussed the Protection of Persons and Property Act before the immunity hearing. Applicant testified he did not know what he needed to prove to be granted immunity. Applicant claimed he did not know what the immunity hearing was even about. However, Applicant testified Trial Counsel discussed with him on the day of the immunity hearing that Trial Counsel would focus on part (C) of the Protection of Persons and Property Act. Applicant also recalled he testified at the immunity hearing but did not testify at trial. Applicant

testified Larry "Michael" Bruce, Jr., testified on his behalf at the immunity hearing but did not testify at trial. However, Michael's father, Larry Bruce, Sr., did testify at trial.

Applicant testified he talked to Springs on the telephone the day of the incident. Applicant recalled talking to Springs a few times on the phone, but their conversations got nasty, and Applicant did not want to argue because Applicant wanted to stay out of the situation. Applicant described the situation as Springs and Applicant's stepdaughter were both married but were romantically involved. Applicant stated his wife did not like the situation because of his wife's grandchildren. Applicant stated he knew the affair would not last, and he was trying to stay out of the confrontation.

Applicant testified he discussed the situation and phone calls between himself and Springs with Trial Counsel, and he asked Trial Counsel to get his phone records from the day of the incident. However, Applicant testified Trial Counsel did not get his phone records. Applicant testified he told Trial Counsel the phone records were a crucial part of his trial because Springs was calling him. Applicant stated he called Springs' wife that day to ask her a question. Applicant testified Trial Counsel told him there were no records of the phone calls. Applicant stated the police took his cell phone, but he did not know if Trial Counsel ever looked at the cell phone. Applicant testified he did not know if the police ever got a search warrant for his cell phone, but his phone was taken from him the night of the incident.

Applicant testified he wanted his cell phone records to rebut the State's theory that Applicant lured Springs to his house. Applicant wanted to be able to show that Springs was the one who called him. Applicant recalled the State's witnesses testified there was an ongoing issue between himself and Springs, that Springs kept coming by Applicant's job, and the two were arguing over the phone. Applicant testified he knew that was not true, so he asked Trial Counsel

to look into the phone records a few months before the incident. Applicant stated the phone records would show the witnesses were making things up because he and Springs were not talking much. Applicant testified he would only talk to Springs at work or when they ran into each other at the store.

Applicant stated his wife had a business dispute with Springs regarding their personal issues. However, Applicant claimed he did not get involved in his wife's business and only focused on her relationship with himself. Applicant testified he did not even become aware of any business disputes between his wife and Springs until he heard about them when it came out in court.

Applicant stated he told the police he saw "something" in Springs's hand before he shot him, but the police report stated he saw a screwdriver in Springs's hand. Applicant claimed the police only read him part of his Miranda rights before giving his statement.

Applicant recalled it was not quite dark when he finished hunting, and he was hunting on a property about thirty minutes away from his home. Applicant stated he could not see what was in Springs's hand because it was dark outside. Applicant testified Trial Counsel told him the State wanted his DNA to test the knife or screwdriver, and the State got an order for Applicant to provide a DNA sample. Applicant stated he had no problem with the State getting his DNA. Applicant recalled the State tested for touch DNA on the screwdriver but not the knife. Applicant testified he never spoke to law enforcement about the screwdriver.

However, on cross-examination, Applicant admitted he voluntarily offered his cell phone to law enforcement the night of the incident. Then, Applicant testified that he did not give them the phone, he just flipped through the phone to show law enforcement the calls. Applicant testified that law enforcement then took his phone and said it was going into evidence. Applicant also

claimed the police obtained Springs's phone from the vehicle the following day pursuant to a search warrant.

Applicant testified he did see some of the State's witnesses' statements before trial. Applicant stated he told Trial Counsel that George Watson was "full of it," and Trial Counsel felt Watson's statement did not mean much because there were obvious contradictions throughout the statement. Applicant testified Watson was his neighbor, and he saw Watson shortly after the incident. Applicant testified he did not see the statements from Hubert Black or Sabrina Hartfield before trial. Applicant stated that Hartfield lived behind his house and was Watson's fiancé. Applicant stated he found out Hartfield and Black would be called as a State's witness eleven hours before trial.

Applicant stated when he had his first bond hearing, his wife was there, and she was supposed to have been at the second bond hearing before the immunity hearing. Applicant stated that at his second bond hearing his wife nor anyone he knew was there. However, Applicant testified all of Springs's supporters were there, and he asked Trial Counsel why none of his supporters were present. Applicant stated Trial Counsel tried to call his wife. Applicant claimed that because Springs had people to stand up for him at the hearing, but Applicant did not have anyone to stand up for him and say good things about him, shows that Trial Counsel should have had Applicant evaluated for competency to stand trial.

Applicant testified he asked for Trial Counsel's thoughts on the immunity hearing, but Trial Counsel told him he had it under control. Applicant testified that at the motion hearing, the judge was looking for a written motion, but there was not a written motion, only a bond motion. Applicant testified that not having a written motion really upset the judge, but the motion hearing proceeded anyway. Applicant testified the only thing Trial Counsel told him leading up to the

motions hearing was the defense would subpoena witnesses and the State would be present. Trial Counsel told Applicant he could testify at the motions hearing and tell his version of events.

Applicant testified that all Trial Counsel told him about the trial: "We go in the courtroom and sit down, and the state has to disprove self-defense." Applicant testified Trial Counsel did not explain anything to him about evidence or about him testifying other than it was Applicant's decision whether or not to testify; however, Applicant did know they would present a self-defense theory at trial. Applicant stated he did not know what to do because he had never been in a courtroom or in a serious situation before. Applicant testified he was letting Trial Counsel run the show. Applicant testified he knew the State had to disprove self-defense, but in hindsight, he thinks he would have chosen to testify at trial. Applicant admitted he was scared in court because he was facing a lot of time and thought he was not guilty.

Applicant testified that during the trial, Trial Counsel made a verbal motion about the two last-minute State witnesses. Trial Counsel argued that if the trial court allowed the two witnesses to testify, it would contradict the Sixth Amendment right to a fair trial. Applicant recalled the trial court offered continuance, but Trial Counsel declined a continuance. (Trial Tr. 50). Applicant testified that Trial Counsel further argued the witnesses offered at the last minute would hinder his ability to defend Applicant. Still, Trial Counsel did not want a continuance and was prepared to proceed with the trial. Applicant stated Trial Counsel told him the witnesses could not say anything that would hurt his case.

Applicant stated he did not know if his DNA was ever found on anything, and he did not think the State tested for DNA on the knife. Applicant testified Trial Counsel never told him about the DNA results.

However, on cross-examination, Applicant testified Trial Counsel told him the State had tested the screwdriver for Applicant's DNA, and Applicant's DNA was not found on the screwdriver. Applicant stated Trial Counsel told him that his DNA not being on the screwdriver was a good thing. Applicant stated he was only aware of a video of his statement, and Trial Counsel told him he had listened to it. Applicant recalled that Larry Bruce was trying to get Applicant's wife to testify she staged the scene. Applicant stated he asked Trial Counsel if that was evidence that could help his case, and Trial Counsel told him the 911 call and videotape of the interview would be great evidence. Applicant testified his wife was never charged with a crime concerning the incident. Applicant stated the video and phone records never came up in court, he has never heard them, and he still does not know if they exist.

Applicant testified Trial Counsel told him it was not a good idea to have his discovery while he was in the detention center. Applicant stated he did not know if Trial Counsel was trying to keep the discovery from him, but he has never received all of the discovery. Applicant also testified Trial Counsel mentioned something about what his wife had said on Facebook about Springs, and he asked Trial Counsel for a copy but never got it. Applicant stated the next time he heard about his wife's Facebook post was at trial. Applicant claimed Trial Counsel did not discuss the Facebook post before trial because Applicant did not know anything about it, and it was something someone else wrote. Finally, Applicant testified the only time he and Springs talked about the affair was the day of the incident.

TRIAL COUNSEL'S TESTIMONY

Trial Counsel recalled he was appointed to represent Applicant when Applicant was arrested. Trial Counsel recalled the general allegation against Applicant at that time was Applicant shot a person he knew and was charged with murder. Trial Counsel testified the case started as a

self-defense / Protection of Persons and Property case. Trial Counsel stated if the immunity hearing were not successful, the case would go to trial as a self-defense case, and it did.

Trial Counsel testified that his primary form of investigation is to review the files and study the collected evidence. Trial Counsel stated he also did some independent investigation of the scene and took pictures of it. Trial Counsel stated he did not do supplemental forensic testing or anything like that in this case. Trial Counsel could not recall if Applicant gave him specific witnesses to investigate. Still, if Applicant had, the witnesses would have been family members or friends already mentioned in the discovery. If not, then Applicant would have told Trial Counsel what their testimony would be.

Trial Counsel recalled his preparation for the immunity hearing was mostly research because the Protection of Persons and Property Act was a relatively new law in South Carolina at the time—less than two years old. Trial Counsel stated he argued the standard he had to prove for Applicant to receive immunity was that Applicant more likely than not defended himself in a place where he had the right to be. Trial Counsel recalled the judge denied immunity by finding Applicant did not make *prima facie* showing of imminent threat or that Springs was within the home's curtilage. Trial Counsel stated the immunity court ruled the Protection of Persons and Property Act did not apply, so Trial Counsel never got to self-defense because the immunity court ruled the Act was inapplicable.

Trial Counsel stated he researched State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), which was the only case involving the Protection of Persons and Property Act at the time of Applicant's trial. Trial Counsel recalled Duncan was a self-defense case where a security guard was outside on the sidewalk when he acted in self-defense. Trial Counsel felt there were a lot of

similarities between Duncan and Applicant's case because Applicant was not in his home but was on his property, was confronted, and felt threatened.

Trial Counsel stated he strategically argued subsection 16-11-440(C) applied to Applicant's case because Applicant was in another place he had a right to be. Trial Counsel testified that, as written, subsection 16-11-440(A) only applies when the person is in the process of entering or has already entered the home. Trial Counsel testified those were not the allegations in this case because the victim was twenty to forty feet away from Applicant's home. Trial Counsel believed subsection 16-11-440(C) applied, and he chose to argue only subsection 16-11-440(C) at the immunity hearing.

However, the immunity court ruled Applicant was not attacked because Applicant was not physically touched. Trial Counsel stated he did not research "attack" even though it was not defined in the Act. Trial Counsel stated he probably did not research "attack" because he did not think the immunity court would differentiate attack from the threat of attack—there was no physical touch. Still, Applicant saw a weapon and felt threatened. Trial Counsel stated he argued off the cuff that if someone had shot at and missed, then there would be no attack based on the immunity court's definition. Trial Counsel reiterated that at the time of Applicant's trial, the Act was new, and there was not much case law on the subject. Trial Counsel stated he researched cases from other jurisdictions because there was not much South Carolina case law available on the subject. Trial Counsel looked to other jurisdictions for something comparable. Trial Counsel could not recall if he researched common law Castle Doctrine cases.

Trial Counsel recalled he did not have enough time to run background checks on all the State's witnesses because a couple of witnesses came up at the last minute—maybe a week ahead of trial. Because of the late notice, Trial Counsel testified he would not have had much opportunity

to investigate those witnesses thoroughly. Trial Counsel testified he did not do a formal background check on all the non-law enforcement witnesses because those witnesses were also people Applicant knew. Trial Counsel stated he first got information on the witnesses through Applicant and Applicant's wife to see if it would be worth investigating anyone's background. Trial Counsel stated he discussed with Applicant who the witnesses were, Applicant's relationship to the witnesses, and advised Applicant of what the witnesses told law enforcement. Trial Counsel stated he relied on what Applicant told him about the witnesses to predict their testimony at trial. Trial Counsel stated he did work with Applicant in prepping cross-examination, and Applicant was able to help Trial Counsel prepare for those witnesses.

Trial Counsel recalled arguing to the trial court the surprise witnesses limited his ability to defend Applicant fully. Trial Counsel recalled the trial court seemed willing to grant a continuance, but Trial Counsel did not think the substance of the witnesses' remarks would hurt the defense much. Trial Counsel stated his general approach was to try to keep the statements out, but if they were going to be allowed to testify, he was prepared to go forward. Trial Counsel testified he did not want a continuance because he was ready and prepared for trial. He knew the two witnesses would not testify immediately and had time to prepare for them.

Trial Counsel stated he discussed with Applicant that Applicant and Springs had phone conversations back and forth. Applicant testified at the immunity hearing that he told Springs not to come over. However, Trial Counsel did not get a "data dump" of Applicant's phone records.

Trial Counsel recalled that the State's theory was Applicant lured Springs to the house. Trial Counsel stated the phone records would have only shown who called who but would not have provided any substance regarding the conversations. Trial Counsel reasoned he did not think the

phone records would have been helpful because someone calling another person does not mean the other person cannot convince the caller to come over during the conversation.

Trial Counsel articulated his strategy for not moving to suppress the contents of Applicant's cell phone because sometimes the lack of evidence, or failure of the State to introduce that evidence, can be good for the defense. Further, Trial Counsel testified Applicant never disputed he and Springs talked on the phone multiple times the day of the incident. However, Trial Counsel stated that if the phone records did not show what the defense thought they would, evidence could limit the defense and what evidence could be presented. Trial Counsel did not see a need to challenge law enforcement's taking of Applicant's cell phone because he did not think anything harmful would come from the cell phone. Trial Counsel stated that the evidence did not seem worthwhile to continue investigating.

Trial Counsel could not initially recall whether the knife was forensically tested, but Trial Counsel did cross-examine Hester about law enforcement's failure to test the knife.

Trial Counsel could not recall if there was any evidence suggesting a struggle, and he could not recall why he did not object to Michael Gifford testifying to not seeing signs of a struggle at the scene.¹ Trial Counsel explained that in the course of the trial, sometimes questions are asked that take him by surprise, sometimes, he is in conversation with his client, and he can miss an objection. Still, other times he just does not see the value of objecting, even if appropriate.

Investigator William Hester testified he got a murder and weapons warrant for Applicant's arrest by going in front of a magistrate to show there was probable cause for Applicant's arrest. (Trial Tr. p. 193). Hester testified the magistrate issued the warrants for Applicant's arrest. (Trial

¹ Trial Tr. p. 118.

Tr. p. 193). Trial Counsel admitted he should have objected to Hester's testimony, but Trial Counsel claimed he just missed the objection. Additionally, Counsel admitted he did not have a strategy for failing to object to the State recalling Hester to testify at trial.

Larry Bruce testified he went to Applicant's residence the day after the incident, and Applicant's wife "told me [Applicant] killed [Springs]." (Trial Tr. p. 297). Larry Bruce then testified Applicant's wife told him she was in trouble because "[she] put a knife in [Springs] hand and [she was] worried about the DNA coming back matching [her]." (Trial Tr. p. 297). Trial Counsel admitted he failed to object to this hearsay testimony. However, on cross-examination, Trial Counsel stated he thought this testimony was bad for Applicant's wife, not Applicant, and he did not object because of this reasoning.

Trial Counsel testified he intended to cross-examine witnesses on the size differential between Applicant and Springs, but he forgot to do so at trial. Trial Counsel testified he intended to elicit such testimony because Springs was much larger, and that information would have been important to present for an implication of intimidation. However, Trial Counsel recalled that Springs was about twenty-to-forty feet away from Applicant. Trial Counsel did not recall any evidence suggesting Springs was charging Applicant, but Applicant felt threatened because Springs showed up unannounced, had something in his hand, and got out of the van. Springs may have walked forward; however, there was nothing about Springs charging Applicant. Trial Counsel recalled Applicant's original statement was that the gun was lying in his lap when Springs pulled into the driveway. Springs got out of his van, and Applicant told Springs not to take another step, but Springs did so Applicant shot him.

Trial Counsel recalled asking for a specific self-defense charge that asserted each and every element of self-defense must be disproven by the State. Trial Counsel testified he opposed the

State's voluntary manslaughter charge request because the strategy was self-defense, and he was not guilty of murder. Trial Counsel opposed the charge because there was no evidence of heat of passion. The State's evidence showed Applicant lured and plotted against Springs, which does not support voluntary manslaughter, and Trial Counsel chose not to "split the baby." Trial Counsel stated the self-defense charge was given, and the trial court reiterated that the State had to disprove self-defense. Trial Counsel recalled the jury asking multiple questions about self-defense and asked at least one question about how many elements had to be disproven. Trial Counsel recalled he argued the State had to disprove all four elements of self-defense, but the trial court ruled the State only had to disprove one element. Trial Counsel recalled that the trial court found it illogical for the State to disprove every element of self-defense.

Trial Counsel testified he does his best to protect his clients from cross-examination, and if he can present the case without subjecting his clients to the risks of testifying, he tries to do so. However, Trial Counsel testified that whether to testify is ultimately up to his client. Trial Counsel recalled having that conversation with Applicant, who decided not to testify. Trial Counsel testified Applicant testifying, in this case, would have been trickier than in most cases because Applicant gave a statement to the police and testified at the immunity hearing. Trial Counsel stated he warned Applicant his testimony would need to be consistent with his prior statements. Trial Counsel testified he was able to show Applicant's version of the facts without Applicant testifying because his prior statement came into evidence, and Applicant did not need to testify for the jury to know what Applicant alleged happened.

Trial Counsel testified he prepared to show self-defense by showing the size disparity between Applicant and Springs, but he missed that. Trial Counsel also recalled the scene itself was critical because Applicant was at his home, and the positioning of Springs and Applicant was

important. Trial Counsel testified he could have shown those factors without Applicant's testimony.

Trial Counsel testified he vaguely recalled a recording of Larry Bruce discussing the incident with Applicant's wife, and he sent a letter notifying Applicant about the recording. Trial Counsel testified that what he remembered most about the recording was Larry Bruce was trying to get Applicant's wife to say she had planted evidence, but Applicant's wife refuted that accusation. Trial Counsel stated that recording would have been helpful to contradict the evidence of Applicant's wife planting evidence at trial. Trial Counsel recalled Bruce testifying to Applicant's wife planting evidence, but in his opinion, the recording did not necessarily contradict Bruce's testimony and could potentially introduce inconsistencies. Further, Trial Counsel stated the recording would only be helpful to impeach Larry Bruce, and the recording did nothing to support the theory of self-defense.

Trial Counsel recalled he represented Applicant for fourteen months and met with Applicant between ten-to-twelve times. Trial Counsel also testified he probably discussed pursuing self-defense in his first meeting with Applicant, and the defense strategy was always self-defense. Trial Counsel recalled receiving the toxicology report indicating Springs had a 0.199 blood alcohol level, and Trial Counsel testified he reviewed the results with Applicant.

Trial Counsel testified he never doubted Applicant's competency, and he has represented a lot of defendants. Trial Counsel testified he was never remotely concerned if Applicant was competent to stand trial or conform his actions to the law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court further had the opportunity to observe the witnesses at the

evidentiary hearing and evaluate their credibility, and the Court has weighed their testimony accordingly in its discussion below. This Court finds the combined record of the plea transcript, and the testimony and evidence presented at the evidentiary hearing establishes Applicant received effective assistance of counsel. Accordingly, this Court denies relief and dismisses this application with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Applicant alleges that he received ineffective assistance from his Trial Counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was

deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. 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." Harrington, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential[, as] it is all too tempting for a defendant to second-guess counsel's assistance after conviction or [an] adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 8 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of

hindsight."). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, 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. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort to be made to eliminate the distorting effects of hindsight, reconstruct the circumstances of counsel's challenged conduct, and evaluate the conduct from counsel's perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed [at] the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

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. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under de novo review, the standard for judging counsel's

representation is a most deferential one. Harrington, 562 U.S. at 105.

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. At 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance 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. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. Thus, it is not enough "to show that the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 693 (emphasis added).

The performance and prejudice standards, however, "do not establish mechanical rules . . . [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Id. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

Applicant alleges Counsel was ineffective for: (a) failure to properly argue that Applicant was entitled to immunity through the Protection of Persons and Property Act; (b) failure to properly preserve issues of immunity under the Protection of Persons and Property Act; (c) failure to obtain

and present the toxicology report of the victim; (d) failure to conduct a formal background check on witnesses for potential impeachment evidence; (e) failure to enter recording of Larry Bruce into evidence; (f) failure to obtain phone records of calls between Applicant and the victim prior to the incident; (g) failure to obtain forensic testing of the knife found in close proximity to the victim; (h) failure to object to hearsay testimony during the testimony of Larry Bruce; (i) failure to properly impeach the testimony of George Watson; (j) failure to move for competency evaluation of Applicant; (k) failure to object to impermissible comments during the State's closing argument; (l) failure to properly respond to issue regarding jury questions; (m) failure to move to suppress the testimony of Hubert Black and Sabrina Hartfield or move for a continuance based upon the late disclosure of evidence; (n) failure to elicit testimony and evidence of the difference in size between Applicant and the victim; (o) failure to object to impermissible comments during the testimony of Williams Hester; and (p) failure to move to suppress any evidence related to Applicant's cell-phone as a result of a warrantless search and any information derived from such search as a fruit of the poisonous tree.

This Court finds Applicant cannot meet his burden as to his claims of ineffective assistance of trial counsel. The specific claims are addressed below:

Allegation 1(a): Failure to Properly Argue That Applicant Was Entitled to Immunity Through the Protection of Persons and Property Act²

Applicant alleges Trial Counsel was ineffective for failing to properly argue Applicant was entitled to immunity pursuant to the Protection of Persons and Property Act (the Act). This Court finds this allegation is without merit.

² For the purpose of reference in this Order of Dismissal, all of the enumerated allegations refer to Applicant's amended PCR allegations.

Applicant averred Trial Counsel was deficient for arguing Applicant was entitled to immunity pursuant to S.C. Code Ann § 16-11-440(C), rather than § 16-11-440(D), which Applicant asserted was more applicable to his case. This Court finds Trial Counsel articulated a valid trial strategy in pursuing immunity under the Act, and the denial of immunity was preserved for appellate review.

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689.

The General Assembly declared its intent in creating the Protection of Persons and Property Act was "to codify the common law Castle Doctrine which recognizes that a person's home is his

castle and to extend the doctrine to include an occupied vehicle and the person's place of business." S.C. Code Ann. § 16-11-420(A). The General Assembly further found that "it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others." S.C. Code Ann. § 16-11-420(B). Section 16-11-440 sets forth scenarios in which a person is presumed to use deadly force in reasonable fear of imminent peril. Specifically, § 16-11-440(C) provides:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

Subsection 16-11-440(D) provides:

A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.

Finally, a person who uses deadly force as permitted by the Act or other provision of law "is justified in using deadly force and is immune from criminal prosecution . . . for the use of deadly force." S.C. Code Ann. § 16-11-450(A).

In State v. Curry, decided approximately two months after Applicant's trial, our Supreme Court stated, "Section 16-11-450 provides immunity from prosecution if a person is found to be justified in using deadly force under the Act." 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013) (emphasis in original). The Court further clarified, "[w]hile the Act may be considered 'offensive' in the sense that the immunity operates as a bar to prosecution, such immunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the

preponderance of the evidence." *Id.* at 372, 752 S.E.2d 267. Therefore, for Applicant to receive immunity from prosecution, he would have had to satisfy all the elements of self-defense, except for the duty to retreat, by a preponderance of the evidence. *See Curry*, 406 S.C. at 371, 752 S.E.2d at 263 (stating a defendant seeking immunity under the Act must satisfy "all elements of self-defense, save the duty to retreat").

There are four elements that must be established to justify the use of deadly force in self-defense. *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). The defendant bears the burden of proving these elements of self-defense by a preponderance of the evidence in seeking immunity from prosecution. *State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011). A person is justified in using deadly force in self-defense when:

1. The defendant was without fault in bringing on the difficulty;
2. The defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
3. If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and
4. The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Wiggins, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998).

In the instant case, as stated *supra*, Trial Counsel recalled his preparation for the immunity hearing was mostly research because the Protection of Persons and Property Act was relatively new law in South Carolina at the time—less than two years old. Trial Counsel stated he argued the standard he had to prove for Applicant to receive immunity was that Applicant more likely than not defended himself in a place where he had the right to be. Trial Counsel recalled the

immunity court denied immunity by finding Applicant did not make a *prima facie* showing of imminent threat or that Springs was within the curtilage of the home. Trial Counsel stated the immunity court ruled the Protection of Persons and Property Act did not apply, so Trial Counsel never got to self-defense because the judge ruled the Act was inapplicable.

Trial Counsel stated he researched State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), which was the only case involving the Protection of Persons and Property Act at the time of Applicant's trial. Trial Counsel recalled Duncan was a self-defense case where a security guard was outside on the sidewalk when he acted in self-defense. Trial Counsel felt there were a lot of similarities to Applicant's case because Applicant was not in his home, but was on his property, was confronted by another person, and felt threatened.

Trial Counsel stated he strategically argued S.C. Code Ann. § 16-11-440(C) applied to Applicant's case because Applicant was in another place, he had a right to be. Trial Counsel testified that as written, S.C. Code Ann. § 16-11-440(D) only applies when the person is in the process of entering or has already entered the home. Trial Counsel testified those were not the allegations in this case because the victim was twenty-to-forty feet away from Applicant's home. Trial Counsel believed S.C. Code Ann. § 16-11-440(C) applied, and he chose to argue only S.C. Code Ann. § 16-11-440(C) at the immunity hearing. However, the immunity court ruled Applicant was not attacked because Applicant was not physically touched.

Trial Counsel stated he did not research "attack" even though it was not defined in the Act. Trial Counsel stated he probably did not research "attack" because he did not think the judge would differentiate attack from the threat of attack—there was no physical touch, but Applicant saw a weapon and felt threatened. Trial Counsel stated he argued off the cuff if someone had shot at and missed, then there would be no attack based on the immunity court's definition. Trial Counsel

reiterated that at the time of Applicant's trial, the Act was new, and there was not much case law on the subject.

The Court finds credible Trial Counsel's above-referenced testimony. Trial Counsel was correct in his belief that Applicant needed to show he acted in self-defense by a preponderance of the evidence to be immune from prosecution. However, Trial Counsel did not get to present Applicant acted in self-defense because the immunity court ruled the Protection of Persons and Property Act was inapplicable, and the immunity court's ruling was upheld on appeal.

The Court finds Trial Counsel's strategy to pursue immunity under subsection 16-11-440(C) reasonable. Because Trial Counsel articulated a reasonable strategy for pursuing immunity under the Protection of Persons and Property Act, Trial Counsel was not deficient. See Whitehead, 308 S.C. at 122, 417 S.E.2d at 531 (where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel). Further, this Court finds Applicant has failed to establish Trial Counsel's deficiency or prejudice.

Thus, this allegation must be denied and dismissed with prejudice.

**Allegation 1(b): Failure to Properly Preserve Issues of Immunity
Under the Protection of Persons and Property Act**

Applicant alleges Trial Counsel was ineffective for failing to properly preserve the issue of immunity under the Act for appellate review. This Court finds this allegation is without merit.

Trial Counsel argued and preserved for appellate review whether Applicant was entitled to immunity under S.C. Code Ann. § 16-11-440(C) of the Act. The Court of Appeals ruled on the merits the trial court did not err in denying Applicant immunity. State v. Scott, Op. No. 2015-UP-513 (S.C. Ct. App. filed Nov. 12, 2015). As this Court found *supra*, Trial Counsel's strategy for pursuing immunity under the Act was reasonable. Because the merits of this issue were ruled on in Applicant's direct appeal, Trial Counsel cannot be deficient for failing to preserve the issue. See

McLaughlin v. State, 352 S.C. 476, 485, 575 S.E.2d 841, 845 (2003) (finding the PCR court erred in granting relief for failure to preserve issues for appeal when the merits of the issue was determined on direct appeal). Further, Applicant cannot show prejudice because this issue was adequately preserved for appeal and affirmed on the merits—conclusively showing Applicant was *not* entitled immunity under the Act.

Thus, allegation 1(b) must be denied and dismissed with prejudice.

Allegation 1(c): Failure to Obtain and Present the Toxicology Report of the Victim

Applicant alleges Trial Counsel was ineffective for failing to obtain and present the victim's toxicology report at trial. The Court finds this allegation lacks merit.

This Court finds credible Applicant's testimony that Trial Counsel showed him the results of the toxicology report before trial. Further, the toxicology report and the victim's blood alcohol level were brought up at trial. (Trial Tr. 313; 321). Therefore, Applicant has failed to show how Trial Counsel was deficient for failing to obtain and present the victim's toxicology report. This Court finds Trial Counsel was not deficient because direct testimony was provided at trial as to the contents of the report.

Accordingly, this Court finds Applicant has failed to establish Trial Counsel's deficiency or prejudice. Thus, this allegation must be denied and dismissed with prejudice.

Allegation 1(d): Failure to Conduct a Formal Background Check on Witnesses for Potential Impeachment Evidence

Applicant alleges Trial Counsel was ineffective for failing to conduct formal background checks on witnesses for potential impeachment evidence. The Court finds this allegation lacks merit.

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689.

Here, the Court finds credible Trial Counsel's testimony as to this issue. As noted *supra*, Trial Counsel stated he did not have enough time to run formal background checks on all the State's potential witnesses because those witnesses came up at the last minute. Trial Counsel testified he did not do a formal background check on all the non-law enforcement witnesses because those witnesses were people Applicant knew. Trial Counsel stated he first got information on the witnesses through Applicant and Applicant's wife to see if it would be worth investigating anyone's background. Trial Counsel stated he discussed with Applicant who the witnesses were, Applicant's

relationship to the witnesses, and advised Applicant of what the witnesses told law enforcement. Trial Counsel stated he relied on what Applicant told him about the witnesses to predict their testimony at trial. Trial Counsel stated he was able to work with Applicant in preparing cross-examination, and Applicant was able to help Trial Counsel prepare for those witnesses.

The Court also finds credible Trial Counsel's testimony he did not want a continuance due to the late witnesses because he, in his professional judgment, did not think the substance of the witnesses' remarks would hurt the defense strategy, and he felt he had time to prepare for them because he knew they would not testify until later in the trial.

This Court finds Trial Counsel's investigation into the State's witnesses reasonable. Trial Counsel spoke to Applicant about all non-law enforcement witnesses on the State's potential witness list, and Applicant knew all the potential witnesses well. Trial Counsel used his discussions with Applicant to prepare his cross-examinations of the witnesses to attack their credibility. Therefore, Trial Counsel was not deficient for failing to conduct formal background checks on the State's witnesses because Trial Counsel reasonably relied on the information Applicant provided him about the witnesses to prepare his cross-examinations.

Further, Applicant has failed to show prejudice resulting from Trial Counsel's alleged deficiency of failing to get formal background checks on all the State's potential witnesses. Hubert Black and Sabrina Hartfield were late additions to the State's potential witness list. However, Applicant has failed to produce any evidence showing how background checks of Black or Hartfield could have aided Trial Counsel in impeaching their testimony. This Court can only speculate how Trial Counsel could have impeached Black and Hartfield without evidence showing a background check of either Black or Hartfield would have produced grounds for impeachment. However, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark v. State,

315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice); see also Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992) (finding prejudice from trial counsel's failure to interview or call witnesses could not be shown where witnesses did not testify at PCR hearing).

For the reasons stated *supra*, Trial Counsel was not constitutionally ineffective. Trial Counsel articulated a reasonable strategy for handling the State's witnesses through cross-examination and, therefore, was not deficient. Further, Applicant failed to meet his burden of showing prejudice because no evidence presented at the evidentiary hearing or in the record shows how Trial Counsel could have used the witnesses' background checks to impeach the witnesses.

Thus, this allegation is denied and dismissed with prejudice.

Allegation 1(e): Failure to Enter Recording of Larry Bruce into Evidence

Applicant alleges Trial Counsel was ineffective for failing to introduce the recording of Larry Bruce into evidence. This Court finds this allegation is without merit.

Initially, this Court finds Applicant has failed to meet his burden proving Trial Counsel's alleged deficiency prejudiced him. Larry Bruce's recorded statement is not in the record before this Court and was not entered in evidence at the PCR hearing. Therefore, whether the recording would have changed the trial's outcome is mere speculation. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

Accordingly, this allegation must be denied and dismissed with prejudice.

Allegation 1(f): Failure to Obtain Phone Records of Calls Between Applicant and the Victim Prior to the Incident

Applicant alleges Trial Counsel was ineffective for failing to obtain phone records between Applicant and the Victim prior to the incident. This Court finds this allegation is without merit.

Applicant testified that he asked Trial Counsel to obtain the phone records in order to show that the witnesses were lying about him calling the Victim. Applicant averred that the records would show that the Victim was the one calling him and not the other way around. Trial Counsel testified that he and Applicant discussed the back-and-forth conversations Applicant had with the Victim. Trial Counsel was asked if the phone records could help Applicant when the State's theory of the case was that Applicant lured the Victim over to the house. Trial Counsel credibly testified that it would depend on and that the records would show one of three things: (1) who made the call; (2) whether a phone call occurred; and (3) whether a text message was sent. However, Trial Counsel noted that it would not have shown the substance of the conversation. Trial Counsel credibly testified that out of concern for evidence that may come from those records and may reinforce the State's case, he did not request the phone records.

For the reasons stated above, Trial Counsel was not constitutionally ineffective. Trial Counsel articulated a reasonable strategy for why he did not request the Applicant's phone records and, therefore, was not deficient. Further, Applicant failed to meet his burden of showing prejudice because no evidence was presented that shows how Trial Counsel could have used the phone records to impeach the witnesses. While Applicant did testify that it would show that the Victim was calling him, mere speculation cannot satisfy Applicant's burden of proving prejudice. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (1993) (concluding pure conjecture fails to establish prejudice).

Accordingly, this allegation must be denied and dismissed with prejudice.

**Allegation 1(g): Failure to Obtain Forensic Testing of The Knife
Found in Close Proximity to the Victim**

Applicant alleges Trial Counsel was ineffective for failing to obtain forensic testing of the knife found in close proximity to the Victim. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant could not recall if forensic testing was ever done on the knife or not.

Trial Counsel stated that he was not sure if he received any results of forensic testing of the knife. Trial Counsel further stated that at trial, he was able to bring out in cross-examination of Investigator Hester that the knife was not tested and there was no reason given for why the knife was not tested.

Initially, this Court finds Applicant has failed to meet his burden proving Trial Counsel's alleged deficiency prejudiced him. Applicant has presented no evidence or testimony as to how not having the forensic testing of the knife prejudiced him or how Trial Counsel was deficient. Therefore, whether the knife being forensically tested would have changed the trial's outcome is mere speculation. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

Accordingly, this allegation must be denied and dismissed with prejudice.

**Allegation 1(h): Failure to Object to Hearsay Testimony During the
Testimony of Larry Bruce**

Applicant alleges Trial Counsel was ineffective for failing to object to hearsay testimony during the testimony of Larry Bruce. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant did not provide any testimony regarding this allegation. However, Trial Counsel was asked about the following trial testimony of Larry Bruce:³

Solicitor: How did you come into contact with her that next day?

Mr. Bruce: Well, the first thing I did I went over there and I went to his house the next morning. And I met Gloria and she said he did it. I said did what. She told me that he killed Steve. And I was in shock because I couldn't put Sunny hurting nobody or doing anything like that. And she said I'm in trouble. I said, how are you in trouble if he killed him. She said I put a knife in his hand and I'm worried about the DNA coming back matching me. I said, Gloria, why you tell me that. I said, I wish you hadn't told me that.

Solicitor: When she told you that, what did you do?

Mr. Bruce: Well, I kind of asked her about it all. She said something about it was a screwdriver or something in his hand to begin with. She took the screwdriver out of his hand and put a knife in it is what she told me.

Trial Counsel indicated that it was a failure to object to this hearsay testimony.

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Rule 801(c), SCRE. Trial counsel may be deficient for failing to object to hearsay testimony without a valid trial strategy. Thompson v. State, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018). However, trial counsel's deficient failure to object to such testimony does not remove an applicant's burden to prove prejudice. Id. 423 S.C. at 246, 814 S.E.2d at 493. Relevant considerations are the strength of the State's case apart from the inadmissible evidence to which trial counsel deficiently failed to object. Id. 423 S.C. at 246, 814 S.E.2d at 493-94.

³ Trial Tr. pp. 297, l. 13 – 298, l. 3).

This Court finds Trial Counsel credibly testified that it was a failure to object to the hearsay testimony of Larry Bruce. Mr. Bruce testified to out-of-court statements made by Gloria Scott which were hearsay and inadmissible. Hearsay is inadmissible except as provided by statute, the Rules of Evidence, or other court rules. See State v. LaCoste, 347 S.C. 153, 553 S.E.2d 464 (S.C. App. 2001). While Trial Counsel may have been deficient for failing to object to the hearsay testimony, Applicant has failed to meet his burden of proving how this failure to object prejudiced him. Therefore, whether the objection to this instance of hearsay testimony would have changed the outcome of the trial is mere speculation. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

Accordingly, this allegation must be denied and dismissed with prejudice.

Allegation 1(i): Failure to Properly Impeach the Testimony of George Watson

Applicant alleges Trial Counsel was ineffective for failing to properly impeach the testimony of George Watson. This Court finds this allegation is without merit.

At the PCR hearing, the following colloquy occurred:

PCR Counsel: Okay. Did you have a chance to see any of the statements from some of the witnesses before the trial started?

Applicant: Yes, sir.

PCR Counsel: Okay. Did you and Mr. Grove have a chance to talk about what was contained in those statements and if it didn't match up with what you remember happening?

Applicant: He told me George Watson was full of it.

PCR Counsel: Okay.

Applicant: And his statement was just full of it. It didn't really mean too much because you could actually see the way it was telling the truth in the statement. I mean, he was contradicting himself in his own statements. He made about three statements I think.

This Court finds Applicant has failed to meet his burden proving Trial Counsel's alleged deficiency prejudiced him. Applicant has presented no evidence or testimony as to how Trial Counsel's failure to properly impeach the testimony of George Watson prejudiced him or how Trial Counsel was deficient. The only testimony regarding George Watson is that he was "full of it" and gave three statements. Those statements were not presented to this Court for consideration. Therefore, whether impeaching the testimony of George Watson would have changed the trial's outcome is mere speculation. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

Accordingly, this allegation must be denied and dismissed with prejudice.

Allegation 1(j): Failure to Move for Competency Evaluation of Applicant

Applicant alleges Trial Counsel was ineffective for failing to move for a competency evaluation of Applicant. This Court finds this allegation is without merit.

At the evidentiary hearing, Applicant was asked why he thought he needed a competency evaluation, and the following colloquy occurred:

PCR Counsel: Mr. Scott, you have raised an allegation that Mr. Grove was ineffective for not having you evaluated for competency. Why do you think he needed to do that?

Applicant: First of all, from the beginning, I went to one bond. My wife was there. I was suppose to have a second bond hearing before the immunity hearing. They come and got me, took me. I looked around in the courtroom and my wife and nobody I knew was there. All the Springs people was there, but my wife and nobody was there. And I asked him why was that. He said, well, oh, I tried to call him one time. I mean, my wife lives 15 minutes from here and Mr. Springs people lives what three hours from here or further. And it's funny that, you know, his people showed up, but mine didn't know nothing about it.

PCR Counsel: Okay. What is that -- I just wanted to kind of bring you back. What is that have to do with your competency to stand trial?

Applicant: Competency to stand trial?

PCR Counsel: Yes, sir.

Applicant: Springs had people to stand up for him. I had no one stand up for me, to talk for me, to say anything good about me, to say anything bad about me.

As an initial matter, this Court finds Applicant's testimony as to why he needed a competency evaluation meritless. Applicant's competency is not measured by the number of supporting people in the courtroom gallery.

In order for a defendant to be competent to stand trial, he must have "sufficient present ability to consult with his lawyer with a reasonable degree of relational understanding" and must have a "rational as well as factual understanding of the proceedings against him." Ramirez v. State, 413 S.C. 351, 366, 776 S.E.2d 101, 110 (S.C. Ct. App. 2015) (citing Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992)), rev'd on other grounds, Ramirez, at 22, 795 S.E.2d at 845; Dusky v. United States, 362 U.S. 402 (1960) (per curiam) (internal quotations omitted). A defense attorney may reasonably rely upon his own perceptions in determining whether a mental competency evaluation is required. Jeter, at 233, 417 S.E.2d at 596.

If an applicant for post-conviction relief establishes that his counsel's performance was deficient due to counsel's failure to request a mental competency evaluation when one was warranted, the applicant must then demonstrate that there is a reasonable probability he was incompetent at the time of trial in order to be entitled to relief. See Ramirez, at 22, 795 S.E.2d at 845 (applying this prejudice standard in a case in which applicant pleaded guilty but mentally ill after one mental evaluator concluded he was competent to stand trial, but another concluded applicant was severally mentally retarded) (citation omitted).

This Court finds Applicant has failed to show any deficiency in Trial Counsel not requesting a mental competency evaluation because Applicant has not introduced evidence that Trial Counsel's decision fell below an objective standard of reasonableness. At the evidentiary hearing, Applicant did not testify that he was not competent to stand trial; rather, the competency evaluation should have been ordered because not enough people were at court to support him. In fact, Applicant produced no evidence to substantiate his claims other than self-serving testimony.

Trial Counsel testified that he never questioned Applicant's competency to stand trial. Trial Counsel further testified that he knows what the competency standards are, and it requires Applicant to know who the judge is, who the prosecutor is, and what the charges are that he was facing. Importantly, Trial Counsel stated he was not remotely concerned about Applicant's competency under Blair⁴ and their version of events did not support a M'Naughten⁵ criminal responsibility evaluation either.

This Court finds Trial Counsel reasonably relied upon his own perception that Applicant's mental competency was not disputed and did not warrant a request for an evaluation. See Garren v. State, 423 S.C. 1, 13, 813 S.E.2d 704, 710 (2018) (finding that counsel reasonably relied upon his own perceptions of his client's competency because, based on counsel's interactions with his client, he believed that a competency evaluation was not needed, believed that his client was competent, and continued to believe that his client was competent at his plea hearing). Simply put, Applicant has failed to show any deficiency in Trial Counsel's representation because Applicant has provided no evidence Trial Counsel should have questioned his mental competency at the time of his trial.

⁴ State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981).

⁵ M'Naughten's Case, 8 Eng. Rep. 718 (1843).

Furthermore, this Court finds Applicant has failed to show any resulting prejudice from Trial Counsel's not having Applicant's mental competency evaluated. Applicant has not demonstrated that there was a reasonable probability that he would have been found incompetent if his competency had been evaluated before and during his trial. Applicant's testimony did not establish that he lacked the sufficient ability at the time to consult with Trial Counsel with a reasonable degree of relational understanding about his criminal case or the consequences of proceeding with his trial. Applicant's assertion that he suffered prejudice from the lack of a competency examination is purely speculative. See Garren, at 13, 813 S.E.2d at 711 (finding that there was no evidence to support the PCR court's finding that Garren suffered prejudice from his defense attorney's failure to have Garren's mental competency evaluated because Garren did not introduce evidence at his PCR hearing that there was a reasonable likelihood that he would have been found incompetent if the evaluation had been conducted).

This Court finds that Applicant has failed to show that Trial Counsel was constitutionally ineffective for not having Applicant's mental competency evaluated because he has failed to show any deficiency in Trial Counsel's performance and resulting prejudice. This claim for post-conviction relief must be denied and dismissed with prejudice.

**Allegation 1(k): Failure to Object to Impermissible Comments
During the State's Closing Argument**

Applicant alleges Trial Counsel was ineffective for failing to object to impermissible comments during the State's closing argument. This Court finds this allegation is without merit.

Initially, this Court finds Applicant has failed to meet his burden proving Trial Counsel's alleged deficiency prejudiced him. Applicant has presented no evidence or testimony as to how Trial Counsel's failure to object to impermissible comments during the State's closing argument prejudiced him or how Trial Counsel was deficient. Therefore, whether Trial Counsel objected to

impermissible comments during the State's closing argument would have changed the trial's outcome is mere speculation. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

Accordingly, this allegation must be denied and dismissed with prejudice.

Allegation 1(l): Failure to Properly Respond to Issue Regarding Jury Questions

Applicant alleges Trial Counsel was ineffective for failing to properly respond to issue regarding jury questions. This Court finds this allegation is without merit.

At the evidentiary hearing, there are two instances of testimony from Trial Counsel and none from Applicant regarding anything surrounding the jury questions. Both questions involved the topic of the jury charge on self-defense and which elements the State had to disprove.

At trial, jury questions were presented to the court and the following occurred:⁶

The Court:	All right. I have three questions from the jury and no particular order. One says can we have copies of phone logs please, another one says copy of Scott's statement and third question can we have the self-defense statute. First, let's address the question can we have copied of phone logs please. Mr. Ozment.
Mr. Ozment:	Certainly, Your Honor, they've heard all the evidence. I would just ask that they be instructed that they have all the evidence in front of them what they're going to have or hear and that they please refer to that.
Mr. Grove:	I can't really argue with that Judge. No phone logs have been entered into evidence to begin with.
The Court:	Okay. All right. The next question I reference copy of Scott's statement.
Mr. Ozment:	I think that would be the same answer. Your Honor.
Mr. Grove:	I have no objection to that. Judge. Again, it's not in there, so they got all the evidence.
The Court:	Obviously, they are asking for physical copies neither of which is in evidence. I will not unless both

⁶ Trial Tr. pp. 539, l. 14 – 541, l. 6.

sides agree tell them that they can hear testimony pertaining to the phone logs or hear testimony referring to Scott's statement, but unless they specifically ask for that testimony, I don't intend to call any attention to it myself unless you all both agree.

Mr. Ozment: Your Honor, I would just say that if they ask for that, they can ask for that. But at this point, I'm going to say it's not in front of them.

Mr. Grove: I agree with, Your Honor. It sounds like they're looking for a physical copy of things don't exist.

The Court: Lastly, can we have the self-defense statute. First of all, it's not a statute. Second of all, I'm not going to give them just a photo copy of one part of the charge that would be improper. I will tell them that in response to that question that they cannot have a copy of the self-defense law, but that if they want me to recharge them on the law of self-defense, I'll do that. Any objection from the State?

Mr. Ozment: No, Your Honor.

Mr. Grove: No, Judge. Thank you.

The trial judge recharged the law on self-defense. (Trial Tr. pp. 542, l. 14 – 545, l. 23). Thereafter the jury sent the following:⁷

The Court: Mr. Grove, Mr. Ozment, why don't you all come up and get a copy -- I asked her to make copies of these two questions because they're a little bit involved. Question four because the other questions were one, two and three. Clarification on element one, if both parties are at fault in bringing on the difficulty, can self-defense be claimed? Question five, for self-defense elements do they all have to apply and then in parenthesis are they quote and close quote statements in close parenthesis or does only one or some of the elements need to be met? Okay. State's input on question four?

Mr. Ozment: Your Honor - - -

The Court: We know what the answer is, but how do you want me to - - -

Mr. Ozment: I'm trying to think how best because obviously we read to them at this point the self-defense charge

⁷ Trial Tr. pp. 546, l. 17 – 553, l. 3.

twice. And they're still asking this question. And it is -- you are not -- the State's not proving a negative, but you are disproving a positive, I guess, is what you're doing if that makes sense.

The Court: Well, element number one is that the defendant cannot have been at fault in bringing on the difficulty. Contrary to Mr. Grove's interpretation of the Berkhart case in my mind if the State proves -- look at it one of two ways, if the State proves that the defendant brought on the difficulty or disproves that he did not, however you want to look at it, then self-defense does not apply. I know Mr. Grove maintains that under Berkhart you have to disprove all of the elements of self-defense and that cannot be possibly be the law. So how do you propose that I answer question four?

Mr. Ozment: Your Honor, perhaps having a general statement of the State's burden to disprove self-defense beyond a reasonable doubt. And then I'm not sure if this is in the current charge or any form of something to the effect. And we could be happy to take a minute and find an actual quote somewhere rather case, but something to the effect of if the State disproves self-defense beyond a reasonable doubt, it cannot apply something to that effect.

The Court: Mr. Grove. You want to push forward with your Berkhart claim that they have to disprove all the elements I assume.

Mr. Grove: Again, Your Honor, I would obviously make note of that. Question five seems to fall right in line with my interpretation to Berkhart. Outside of that, you've charged them on the law. They have to prove self-defense. They have to prove -- disprove self-defense beyond a reasonable doubt. Aside from that, it becomes vicarious position to make comments on the facts of the particular case.

The Court: In my view, the answer to question four would be this see if I can walk through it in my real simple mind. The State has to disprove self-defense which to me means the State has to prove that self-defense does not apply. For self-defense to apply, those elements have to be in existence. It use to be that you would say the following elements are required to establish self-defense can't say that any more. Because that indicates burden shifting to the defendant. But to go back to my progression, the State has to disprove

self-defense, so therefore the State has to prove it does not apply. For self-defense to apply, those elements that I've charged them on have to apply. If anyone of those elements is not in existence, then the State has disproven self-defense. That is a logical progression of what the law is and what the burden of proof is. However, I don't know if that's what I should tell the jury. I think what I should tell the jury is that to answer the question specifically if both parties are at fault in bringing on the difficulty can self-defense be claimed. The very basic answer is no. But in this case, they've said can self-defense be claimed. If I was on the jury, I would think of it the same way, but our Supreme Court has said that that's not the way you look at it. Not whether it can be claimed, but whether it's been disproven. So if both parties are at fault in bringing on the difficulty, they may have necessarily concluded that the State has proven that the defendant played a part in bringing on the difficulty. I'm not going to talk them into a guilty verdict that seems to me to be where they're headed. I don't want to prompt it or push them in that way overtly or implicitly.

Mr. Ozment: Your Honor, I'm just kind of talking out loud here, but I don't know if it would help to take a step back. You can start your charge with the defendant in this case has claimed self-defense or has put forth defense. Therefore, the burden's on the State to disprove self-defense by a reasonable doubt and then essentially what you just said, but maybe -- I would have certainly no objection to taking a step back and clarifying that for them, that he has claimed it. And so therefore the burden's on the State to disprove it, that might clear up that.

The Court: Mr. Grove, anything else on that question?

Mr. Grove: I guess not, Your Honor. My position will be that they've been charged on the law. I'll leave it in your discretion as to a response.

The Court: Okay. Question five for self-defense elements. Do they all have to apply or does only one or some of the elements need to be met? That's an easier question academically, but again how I tell the jury. In order for self-defense to apply, there has to be -- all those elements must exist and the State must disprove self-defense. An easy answer contrary to what you say is if the State disproves one of those, the State is

disproving self-defense. They kind of asked the question backwards but much clearer manner than our Supreme Court has required us to address it. I'm chasing my tail. Okay, any input on question five?

Mr. Ozment: In some ways the same question as question four, but I think the same type language say the State must -- defendant's claim of self-defense, therefore the State must disprove self-defense. And in doing so, if the State has disproven any element of self-defense beyond a reasonable doubt, the defendant's self-defense claim is imperfect.

Mr. Grove: I stand on my previous objection.

The Court: Here's what I'm going to tell that, I'm going to answer question five first. I'm going to tell them that I've instructed them on the elements of self-defense and that the State must disprove self-defense. In order for self-defense to apply, all of those elements must exist in the case. Again for self-defense to be a defense, that is not say that the defendant has to prove it. The State has to disprove it. I worked my way into it in that fashion just listen carefully to my explanation. If it doesn't seem clear or if you think it's erroneous, you let me know. And I'll bring them back out and try again. All right.

Mr. Grove: Yes, Your Honor.

Mr. Ozment: That's fine with me, Your Honor.

Mr. Grove: Again, I maintain my objection. My other concern in the back of my mind and, I guess, this isn't necessarily prudent because it's not one of their questions. There is certainly a possibility where they don't find the self-defense applied, but they also don't find that a murder has been committed because the State hasn't met their burden on each of those elements. My concern one of them being if they decide that self-defense does not apply, they will interpret that as a default murder conviction.

The Court: But I can't anticipate that.

Mr. Grove: I understand that you obviously can't address that unless it is a question. I maintain my previous objection, Your Honor. Thank you.

The Court: Okay. All right. Let me just look at it for just a moment. Anything else?

Mr. Grove: Is Your Honor going to recharge on bringing on the difficulty?

The Court: I'm going to -- I'm not going to recharge it except to say that you have asked if both parties are at fault in

bringing on the difficulty can self-defense be claimed. I'm going to tell them that, of course, another element or one of the elements of self-defense is that the defendant must be without fault in bringing on the difficulty. I'm not going to recharge them on that whole paragraph, but I'm refer to that as an element because they've asked about it. So it's are charge take it however you think, but I am going to repeat that to them to put their question in context.

Mr. Grove: Thank you. Judge.

This Court finds Applicant's allegation that Trial Counsel failed to properly respond to issues in the jury questions is refuted by the record. Trial Counsel argued and renewed his objections during the colloquy surrounding the jury questions. Furthermore, this Court finds Applicant has failed to meet his burden proving Trial Counsel's alleged deficiency prejudiced him. Applicant has presented no evidence or testimony as to how Trial Counsel's failure to respond to the issue regarding jury questions properly prejudiced him or how Trial Counsel was deficient. Therefore, whether Trial Counsel properly responded to the issue regarding jury questions would have changed the trial's outcome is mere speculation. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice). Accordingly, this allegation must be denied and dismissed with prejudice.

Allegation 1(m): Failure to Move to Suppress the Testimony of Hubert Black and Sabrina Hartfield or Move for a Continuance Based Upon the Late Disclosure of Evidence

Applicant alleges Trial Counsel was ineffective for failing to move to suppress the testimony of Hubert Black and Sabrina Hartfield or move for a continuance based upon the late disclosure of evidence. This Court finds this allegation is without merit.

Applicant testified that Trial Counsel verbally motioned the trial court to exclude the testimony of Hubert Black and Sabrina Hartfield because of the lateness in a notice to the defense.

Applicant recalled that Trial Counsel argued that allowing testimony from these late witnesses would erode his ability to fully represent Applicant. Applicant recalled that the trial court offered a continuance, and Trial Counsel declined the continuance. Further, Applicant recalled Trial Counsel stating he was prepared to move forward.

Trial Counsel testified that he did not think the testimony of these late witnesses would hurt them much and he was prepared to move forward. Trial Counsel recalled even if they testify, they were still ready to proceed. Trial Counsel credibly testified that he knew the witnesses would testify later in the trial and that he had time to prepare for their testimony. Furthermore, Trial Counsel recalled they were not interested in a continuance.

As an initial matter, Trial Counsel motioned the trial court to exclude the testimony of Hubert Black and Sabrina Hartfield; this was by Applicant's own admission in his testimony. This Court finds Applicant's own testimony refutes this allegation, and this allegation must be denied and dismissed with prejudice.

Furthermore, this Court finds Trial Counsel credibly testified that he did not need a continuance because he was ready to move forward. Trial Counsel credibly testified he knew Black and Hartfield's testimony would be later on in the trial and he had time to prepare for their testimony. Also, this Court finds Applicant has failed to meet his burden proving Trial Counsel's alleged deficiency prejudiced him. Applicant has presented no evidence or testimony as to how Trial Counsel's failure to move for a continuance prejudiced him or how Trial Counsel was deficient. Therefore, whether Trial Counsel moved for a continuance would have changed the trial's outcome is mere speculation. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

Accordingly, this allegation must be is denied and dismissed with prejudice.

**Allegation 1(n): Failure to Elicit Testimony and Evidence of the
Difference in Size Between Applicant and the Victim**

Applicant alleges Trial Counsel was ineffective for failing to elicit testimony and evidence of the difference in size between Applicant and the Victim. This Court finds this allegation is without merit

Trial Counsel recalled that he intended to cross-examine witnesses on the size differential between Applicant and Springs, but he forgot to do so at trial. Trial Counsel testified he intended to elicit the size disparity between Applicant and Springs because Springs was much larger, and that information would have been important to present for an implication of intimidation. However, Trial Counsel recalled that Springs was about twenty-to-forty feet away from Applicant and did not recall any testimony about Springs going after Applicant.

This Court finds Applicant has failed to meet his burden proving Trial Counsel's alleged deficiency prejudiced him. Applicant has presented no evidence or testimony of how Trial Counsel's failure to elicit testimony and evidence of the difference in size between Applicant and the Victim prejudiced him or how Trial Counsel was deficient. Therefore, whether Trial Counsel eliciting testimony and evidence of the difference in size between Applicant and the Victim would have changed the outcome of the trial is mere speculation. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

Accordingly, this allegation must be is denied and dismissed with prejudice.

**Allegation 1(o): Failure to Object to Impermissible Comments
During the Testimony of William Hester**

Applicant alleges Trial Counsel was ineffective for failing to object to impermissible comments during the testimony of William Hester. This Court finds this allegation is without merit.

At trial, the following testimony was given by Mr. Hester:⁸

Solicitor: What warrants did you get?
 Mr. Hester: I got a murder warrant and use of a weapon during a violent crime.
 Solicitor: Okay. And I guess explain to me the significance what is the warrant? What purpose do they have in our system?
 Mr. Hester: You have to have a probable cause in front of a magistrate. You give the magistrate all the facts of the case that you have up to that point. She determines if there's enough probable cause to issue an arrest warrant.
 Solicitor: And that's then how you could arrest someone?
 Mr. Hester: That's correct.
 Solicitor: Okay. And you did that in this case?
 Mr. Hester: Yes, sir.

At the PCR hearing, Trial Counsel testified to the following regarding his not objecting to Mr. Hester's testimony:⁹

PCR Counsel: Okay. If I get you to turn to page 193, this is the testimony of Investigator Hester. Question begins on line seven and the answer begins on line ten. Was there any sort of reason for not objecting to Investigator Hester comments there?
 Trial Counsel: No, strategic reason other than I failed to object.
 PCR Counsel: Okay. Those -- so Judge Seals understands, did those in your opinion did that kind of encroach on the jury's finder of fact status?
 Trial Counsel: It does. There's actually case law about that. The specific remarks about it if it's all right I'll read the line from page 193. Line seven says, okay, and, I guess, explain to me the significance what is the warrant, what purpose do they have in our system. Answer, you have to have probable cause in front of a magistrate. You give the magistrate all the facts of the case you have up to that point. She determines if

⁸ Trial Tr. p. 193, ll. 4 – 17.

⁹ PCR Tr. pp. 49, l. 23 – 51, l. 3.

there's enough probable cause to issue an arrest warrant. I don't know if the right term is burden shifting, but it erodes the ability of the jury to make a fair and impartial determination as to what the evidence actually says. That kind of a remark suggest to the jury that a certain burden has already been met, and that they need not assess that kind of a burden. Exactly your words sort of reduces their ability as the finder of fact.

PCR Counsel: A judge has already signed off on issuing a warrant already said that a probable cause exist?

Trial Counsel: Correct. It's a remark that can certainly have an impact on what a jury understands their role to be and how seriously they take that.

"Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and [Applicant] has the burden of proving he did not receive a fair trial because of the alleged improper argument." Vasquez v. State, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010).

In this case, prior to opening statements, the trial court instructed the jury on the process of a trial, including the giving of opening statements and closing argument. The trial court stated that the "jury is the body that makes finding of fact in a particular case." (Trial Tr. p. 91). The trial court stated that "the fact that a person has been arrested or charged or indicted for any criminal offense literally from A to Z is not evidence of anything." (Trial Tr. p. 92).

This Court finds Applicant has failed to meet his burden proving Trial Counsel's alleged deficiency prejudiced him. Applicant has presented no evidence or testimony of how Trial Counsel's failure to object to a single instance of impermissible testimony from William Hester at the beginning of a multi-day trial prejudiced him. While Trial Counsel testified that it was impermissible and had no strategic reason for not objecting, Applicant has failed to prove how he was prejudiced. Therefore, whether Trial Counsel objecting to William Hester's impermissible testimony would have changed the trial's outcome is mere speculation. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

Accordingly, this allegation must be is denied and dismissed with prejudice.

Allegation 1(p): Failure to Move to Suppress Any Evidence Related to Applicant's Cell Phone as A Result of a Warrantless Search and Any Information Derived From Such Search As A Fruit Of The Poisonous Tree

Applicant alleges Trial Counsel was ineffective for failing to move to suppress any evidence related to Applicant's cell phone as a result of a warrantless search and any information derived from such search as a fruit of the poisonous tree. This Court finds this allegation is without merit

At the evidentiary hearing, Applicant testified that law enforcement took his cell phone the night he was arrested, and he was not sure if they got a search warrant for the cell phone.

Trial Counsel testified that he and Applicant discussed the cell phone. Trial Counsel testified that he could have moved to suppress any evidence obtained from the cell phone if a warrant had not been issued. Still, sometimes the lack of evidence or the failure of the State to introduce the evidence can be good for the defense. Trial Counsel stated in this scenario, he supposed that was the trial strategy.

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C.

292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689.

This Court finds Applicant has failed to show prejudice resulting from Trial Counsel's alleged deficiency of failing to suppress any evidence related to Applicant's cell phone as a result of a warrantless search. Further, this Court finds Applicant has failed to produce evidence showing how suppressing the cell phone evidence could have aided Trial Counsel in his defense of Applicant. This Court can only speculate how Trial Counsel could have defended Applicant better without the cell phone evidence. However, speculation cannot satisfy Applicant's burden of proving prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

For the reasons stated *supra*, Trial Counsel was not constitutionally ineffective. Trial Counsel articulated a reasonable strategy for not moving to suppress the cell phone evidence and, therefore, was not deficient. Further, Applicant failed to meet his burden of showing prejudice because no evidence presented at the evidentiary hearing or in the record shows how the suppression of the cell phone evidence could have resulted in a different outcome at trial.

Thus, this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds Trial Counsel's representation was neither deficient nor prejudicial. Therefore, this application for post-conviction relief **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 pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). 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 Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Post-conviction relief is denied, and the application for post-conviction relief be dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 21 day of July, 2022.


 WILLIAM H. SEALS, JR.
 Presiding Judge
 Twelfth Judicial Circuit

CERTIFIED: A TRUE COPY


 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

Page 54 of 54

Wayne A. Scott | Order of Dismissal | 2017-CP-21-2992

DOCRIS POULOS O'HARA,
 C.C.P. & G.S.,
 FLORENCE COUNTY, SC

2022 JUL 28 PM 2:09

FILED

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP2102992

Wayne Albeon Scott

2022 JUL 28 PM 2:21 South Carolina State Of

PLAINTIFF(S)

CORIS POULOS O'BARA

Submitted by:

CCCP & GS Attorney for: ☐ Plaintiff ☐ Defendant
FLORENCE COUNTY, SC ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

7/28/2022
Date

For Clerk of Court Office Use Only

CERTIFIED: A TRUE COPY

Donna L. O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This judgment was entered on July 28th, 2022, and a copy mailed first class or placed in the appropriate attorney's box on July 29th, 2022, to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan D Waller 210 Newberry Street, NW Aiken, SC
29801

D Russell Barlow II PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

WITNESSES

William Hester

Florence County Sheriff

DOCKET NO. 2013-GS-21-00391

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

TERM 2013

THE STATE

vs.

WAYNE ALBEON SCOTT, JR.

E. L. Clements, III

ARREST WARRANT NUMBER

2012A2110200379

2012A2110200380

ACTION OF GRAND JURY

TRUE BILL

Christopher Murphy
Foreperson of Grand Jury
Date: 3/28/13

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

MURDER
AND
POSSESSION OF WEAPON DURING
COMMISSION OF VIOLENT CRIME

FILED
2013 MAR 28 PM 1:07
CORRIE REEL-SHEARIN
CLERK & AS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR

MURDER, AND POSSESSION OF WEAPON DURING
 COMMISSION OF VIOLENT CRIME

At a Court of General Sessions, convened on MARCH 28, 2013 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- MURDER

CDR: 0116 16-03-0010, 0020, 16-01-0060

That WAYNE ALBEON SCOTT, JR. did in Florence County on or about September 24, 2012, feloniously, willfully and with malice aforethought kill one Steve B. Springs, by means of shooting him with a rifle, and that the said Steve B. Springs did die as a proximate result thereof, in violation of Sections 16-03-0010, 0020, and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT TWO-

CDR: 0549 16-23-0490

That WAYNE ALBEON SCOTT, JR. did in Florence County on or about September 24, 2012, was in possession of a firearm, or did visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: a rifle, during the commission of a violent crime, to wit: Murder, in violation of Section 16-23-0490, S.C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR