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VOLUME II of II

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Colleton County

Honorable Eugene C. Griffith, Circuit Court Judge

TEQUAN L. BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001337

APPENDIX

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1 A Yes, ma'am.

2 Q And what do you do in the Firearms Department?

3 A Our main responsibility is the examination of firearms,
4 ammunition, ammunition components, tools, and tool marks.

5 This is the area of forensic science which is known as

6 firearm and tool mark identification. Our main

7 responsibility is the examination of ammunition components,

8 to try to determine if a particular firearm fired an

9 ammunition component such as a bullet or cartridge case.

10 Sometimes, we also do tool mark cases where we try to

11 identify a specific tool mark back to a tool, such as a

12 crowbar or wrench or something like that.

13 Q Okay. Mr. Smith, please tell us about your education

14 and background and training as it relates to firearm

15 identification and tool marking examiner.

16 A I attended Clemson University where I earned Bachelors

17 in Science degree in Biological Sciences. Then I came on

18 board at SLED in November of 2008 and began my training as a

19 firearm and tool marking examiner. This program is a really

20 long training program that lasts between three to five years

21 and is supervised by the court-qualified examiners of the

22 firearms department. There's extensive reading and studying

23 involved. I also attended various classes and seminars on

24 the subject. There were numerous examinations that I had to

25 take.

1 Later in my training, I was able to help the other
2 examiners prepare their own case work. At the end of the
3 training program I received my own comprehensive multipart
4 examination, which I successfully passed, and then I began
5 to receive my own case work.

6 Q And Mr. Smith, have you ever been qualified as an
7 expert in the area of firearms identification and tool
8 marking?

9 A Yes, ma'am. Fourteen times.

10 Q And you testified in Court as well?

11 A Yes, ma'am.

12 ASST. SOL. LEGETTE: At this, Your Honor. I would
13 offer Mr. Chad Smith as an expert in the area of firearms
14 identification and tool marking.

15 THE COURT: Any objections to his qualifications?

16 MR. WALKER: No objection.

17 THE COURT: Ladies and gentlemen of the jury, recalling
18 my earlier instruction to you concerning expert witness
19 testimony, the witness is qualified without objection. You
20 may proceed, Solicitor.

21 ASST. SOL. LEGETTE: Thank you, Your Honor.

22 Q Mr. Smith, what is firearms identification?

23 A Firearms identification is the process of trying to
24 identify a fired ammunition component, such as a fired
25 bullet or a cartridge case back to the firearm that actually

1 fired it. And how we're able to do that is during the
2 manufacturing process of the firearm there are many
3 microscopic defects that are placed in the surfaces of the
4 firearm parts themselves. This occurs during the
5 manufacturing, the machine process. These are totally
6 random and unique markings that are placed, it's just
7 incidentally during the process of manufacturing. So what
8 happens is when a firearm fires a cartridge, the bullet in
9 the cartridge case itself get marked by these defects and
10 place individual markings on those ammunition components.
11 So what we do is we're able to microscopically observe those
12 markings and compare those markings with test fired
13 cartridge cases and bullets from a known firearm to try to
14 make an identification if that firearm fired that particular
15 fired ammunition component.

16 Q And is that what makes tool marking identification
17 possible?

18 A Tool marking -- basically, firearms identification is a
19 subset of tool mark identification. We usually specify tool
20 marks being hand held tools, such as pliers or a wrench or a
21 crowbar, something like that. But, a firearm is actually a
22 tool itself, so it would be the same thing.

23 Q Mr. Smith, did you receive any evidence before the
24 Court today?

25 A Yes, ma'am. I received two fired bullets, two lead

1 fragments, a revolver, and five fired cartridge cases, and
2 one unfired cartridge.

3 Q And can you tell us who you received this evidence
4 from?

5 A Specifically, the fired bullet I received from our
6 evidence control department in our laboratory. What happens
7 is when evidence is submitted into our laboratory it goes
8 through evidence control department. They issue a SLED case
9 number for the agency that's bringing the evidence in and
10 then the evidence gets stored in the evidence control
11 department until it's ready to be picked up by an examiner
12 to be worked.

13 In this instance, I received the fired bullet from one
14 of the forensics technicians that worked in the evidence
15 control departments, as well as the fragments I received
16 from her. Now the actual firearm itself and the fired
17 cartridge cases and unfired cartridge I received from
18 another examiner directly who actually had those items
19 before me. There was a latent prints request on those
20 items, so they were trying to get fingerprints off of those
21 items of evidence. So after he was done with it, he just
22 actually transferred the evidence directly to me since our
23 departments are next door to each other.

24 Q And what was the condition of the evidence when you
25 received it?

1 A As far as?

2 Q As far as it being in a sealed condition. Was it in a
3 sealed condition when you received it?

4 A Yes, ma'am. All the containers that the evidence was
5 in were sealed by the previous examiner or by the submitting
6 agency that submitted the evidence itself.

7 Q And in this case, what agency submitted the evidence to
8 SLED?

9 A It would have been Colleton County Sheriff's Office.

10 Q Mr. Smith, I'm going to hand you what's been previously
11 marked, or entered into evidence, as State's Forty and
12 State's Thirty-three. Please take a moment and tell me if
13 you recognize these items. State's Forty does contain
14 State's Forty-A, State's Forty-B, Forty-C and Forty-D, which
15 have also been entered into evidence.

16 ASST. SOL. LEGETTE: May I approach the witness, Your
17 Honor?

18 THE COURT: You may. Have him identify which is which
19 for the record.

20 ASST. SOL. LEGETTE: Thank you, Your Honor.

21 Q And we do have gloves, Mr. Smith, to your left.

22 A Okay. The State's Exhibit Forty was A through D -- A
23 and B, I assume, would be my items Fourteen and Fifteen,
24 which ---

25 THE COURT: Hold on just a second. It ought to be on

1 the back.

2 A Yes, sir. Let's start over. Forty-A is actually a
3 lead fragment, it's my item Seventeen, that's here, and the
4 packaging that I sent the items back has not been tampered
5 with, it still has my initials and the sealed date, which
6 are on the packaging itself. Item Forty-B is a fired
7 bullet; it's my item Fifteen. Again, the packaging has not
8 been opened. Forty-C is another fired bullet; it's my item
9 Fourteen. And Forty-D would be the last lead fragment; my
10 item Sixteen.

11 Ladies and gentlemen, if you feel comfortable, this
12 firearm is safe to handle. It has a cable tie going through
13 the barrel and a lock going through the cylinder, so it's
14 safe and unloaded. This would be the item, State's Exhibit
15 Thirty-three, which is the firearm; my item Eighteen, which
16 I received. And then along with that would be the fired
17 cartridge cases and the unfired cartridge that was also
18 received with the revolver, and those items were said to
19 have been removed from the revolver by law enforcement
20 personnel.

21 Q Thank you, Mr. Smith. And are State's Exhibit Forty-A,
22 B, C and D as substantially in the same condition today as
23 when you last saw them?

24 A Yes, ma'am.

25 Q Have they been changed or altered in any way?

1 A No, ma'am.

2 Q Additionally, with regards to State's Exhibit Thirty-
3 three, is it, too, in substantially the same condition today
4 as when you last saw it?

5 A Yes, ma'am.

6 Q Has State's Exhibit Thirty-three been changed or
7 altered in any way?

8 A No, it has not.

9 Q Mr. Smith, can you tell us what examinations you made
10 with regards to State's Forty A, B, C and D along with
11 State's Thirty-three?

12 A What I would have done is when I received -- I probably
13 would have worked the firearm first. As soon as I open it
14 from the box, I make sure that it's unloaded and then I
15 examine it to make sure that there's no obvious signs of
16 defect or mechanical problems that I might encounter, which
17 there were none in this particular instance. The revolver
18 was in proper working condition. Then, I would have noted
19 all this stuff on my worksheets. I would have also marked
20 the condition that the revolver was received in.

21 As far as projectiles, I would have done the same
22 thing. Open it up, inspect them for any sort of trace
23 materials such as any sort of biological material, which
24 these were actually taken from autopsy, so they did contain
25 material that was consistent with body tissue or blood on

1 them, and then I would have decontaminated them so they
2 would have been safe to handle.

3 Then I would weigh them, measure the diameter if they
4 had any, the two bullets did, whereas the two fragments did
5 not have a certain shape or angle to them. Then, I would
6 try to determine what particular caliber those projectiles
7 would have been. The two-fired bullets, State's Exhibit
8 Forty B and C, I determined to be most consistent with a .32
9 Smith and Wesson, long caliber, which is the same caliber as
10 the .32-revolver. I would have test fired the revolver to
11 get suitable cartridge cases and bullets for examination
12 purposes.

13 What we're looking for in the projectiles is the marks
14 that the rifling of the barrel impart onto the projectile.
15 Now, rifling is a process that manufacturers put in their
16 barrels to impart a spin onto the bullet itself. What
17 happens is the bullet spinning actually stabilizes it once
18 it leaves the barrel and makes it more accurate and gives it
19 more velocity towards its target.

20 The rifling is actually made of a series which is
21 called lands and grooves, so it's raised portions and then
22 lowered portions inside the barrel itself. As the bullet
23 travels down the barrel, it picks up the markings of the
24 rifling and we can use those markings that are microscopic
25 in nature, remember when I was talking about the defects

1 that are placed during the manufacturing process, that's
2 what we're looking for. Those markings that are placed on
3 the bullet by the land and groove impressions. We can
4 examine test fires that are known to have come from the
5 firearm with the submitted evidence using what we call
6 comparison microscopes. Basically, it's two microscopes
7 that are connected together using an optical bridge system
8 so we can compare two specimens simultaneously. So that's
9 how we try to match up those markings and the test fires to
10 the evidence to determine if it was fired by that particular
11 firearm. And so after test firing it, and actually going
12 through and making microscopic examinations, I was able to
13 determine that the two fired bullets, which are State's
14 Exhibits Forty-B and Forty-C, were fired by the submitted
15 firearm.

16 Now, the cartridge cases that were removed from the
17 firearm did not do a microscopic comparison with test fires
18 because they were said to have been removed from the actual
19 cylinder of the firearm itself, so we don't normally do
20 those sorts of comparisons for ammunition components that
21 are removed from a firearm just to save time. But the
22 unfired cartridge that was also removed from the cylinder
23 was the correct caliber for use in the firearm, as well as
24 the fired cartridge cases were correct for use.

25 Q Were you able to make any determination with regards to

1 State's Forty A and State's Forty D?

2 A The two lead fragments. I was not able to determine
3 the origin of these fragments. They didn't really show any
4 signs of rifling impressions, so I can't say for sure that
5 they were from a fired bullets. They did have some
6 microscopic markings on them, but again I couldn't determine
7 the nature of those markings, whether it was from damage,
8 hitting bone, or some other sort of material, or they could
9 have actually been some markings from the rifling; I just
10 could not tell. So, these compared with each other and with
11 the firearm were inconclusive as to whether they were
12 actually fired by the firearm or not. I couldn't determine
13 any sort of caliber in relation to these two fragments
14 because they were so small and so damaged.

15 Q But the main conclusion you reached in this case is
16 that State's Thirty-three actually fired State's Forty-B and
17 Forty-C fired bullets?

18 A Yes, ma'am that's correct.

19 Q Thank you.

20 ASST. SOL. LEGETTE: I have no further questions.

21 THE COURT: Cross-examination.

22 MR. WALKER: No questions, Your Honor.

23 THE COURT: As to this witness, Solicitor?

24 ASST. SOL. LEGETTE: We ask that he be excused, Your
25 Honor.

1 THE COURT: Hold on a second. Counsel approach.

2 (Whereupon, a bench conference is held off the record
3 and out of the hearing of the jury.)

4 THE COURT: Thank you. You are excused from the trial
5 of this case. You may leave the courtroom. Obey the speed
6 limit on your way back to Columbia.

7 MR. SMITH: Yes, sir.

8 THE COURT: Call your next witness.

9 ASST. SOL. LEGETTE: Your Honor, at this time the State
10 rests, subject to the conference at the bench that we
11 discussed.

12 THE COURT: All right. Mr. Foreman, and ladies and
13 gentlemen of the jury, I need to take up a matter of law
14 real quick. It won't take long. I'll be right back with
15 you. Please retire to your jury room.

16 (2:15 p.m., whereupon the jury enters the courtroom and
17 the following is held on the record.)

18 THE COURT: Let the record reflect the jury is in the
19 jury room. What has gone on since last night when it
20 started, was an attempt by the State to redact three video
21 statements of the defendant to comply, first, with the
22 State's opinion as to what they wanted to show and then with
23 my ruling in my chambers this morning when I was confronted
24 for the first time with objections by counsel for the
25 defendant. Unfortunately for us, the J drive on the

1 computer has crashed. And although Mr. Walker has been able
2 to review two of the videos, right?

3 MR. WALKER: One of two, Your Honor.

4 THE COURT: Are there three videos or just two?

5 ASST. SOL. LEGETTE: There were just two we were going
6 to put in, Your Honor, but there are three.

7 THE COURT: All right. He's reviewed one of the two
8 that the State seeks to put into evidence and because the J
9 drive has crashed, we're unable to get a copy yet, although
10 they're working on it, of the video for Mr. Walker to
11 review.

12 Mr. Walker agrees the State can rest subject to being
13 able to reopen and put in the videos with the right of Mr.
14 Walker, once he reviews the video, to make any objection he
15 sees necessary on behalf of his client. Have I accurately
16 stated the agreement insofar as the State is concerned?

17 ASST. SOL. LEGETTE: Yes, sir. And that we're entering
18 videos by stipulation that the actual content, along with
19 the video, are actually going to be published, but not
20 published.

21 THE COURT: He can't stipulate to the content until he
22 sees it, Solicitor.

23 ASST. SOL. LEGETTE: Yes, Your Honor.

24 THE COURT: Mr. Walker, have I accurately stated these
25 stipulations, insofar as the defendant's concerned?

1 MR. WALKER: Yes, Your Honor.

2 THE COURT: All right. Now, with that stipulation the
3 State has now rested. Mr. Walker, I'm going to ask you and
4 your client to come around and be sworn by the Clerk.

5 (Whereupon, Mr. Taquan Brown is duly sworn by the Clerk
6 of Court.)

7 THE COURT: Speak up for me if you would, please.
8 State your full name for the record.

9 MR. BROWN: Taquan Brown.

10 THE COURT: Mr. Brown, at this time I am going to
11 explain to you certain of your rights. If you do not
12 understand anything that I say, please let me know.

13 MR. BROWN: Yes, sir.

14 THE COURT: If you want me to explain anything in
15 further detail, please let me know. Do you understand?

16 MR. BROWN: Yes, sir.

17 THE COURT: We've now reached the stage of the trial
18 where you may present your defense. You have the right to
19 testify on your own behalf. However, no one can make you
20 testify. In the event you have a record for any conviction
21 involving dishonesty or false statement, or for a crime
22 punishable by imprisonment of more than one year, and this
23 Court determines as a matter of law that the probative value
24 of admitting this evidence outweighs it's prejudicial effect
25 to you, the Solicitor would be able to introduce your record

1 for impeachment purposes to attack your credibility or
2 believability. Solicitor, does Mr. Brown have a prior
3 record?

4 ASST. SOL. LEGETTE: Yes, Your Honor.

5 THE COURT: Is it the State's position that the record
6 involves dishonesty, false statement, or for a crime
7 punishable by more than one year?

8 ASST. SOL. LEGETTE: Yes, Your Honor.

9 THE COURT: Do the crimes occur within the previous ten
10 years?

11 ASST. SOL. LEGETTE: Yes, Your Honor.

12 THE COURT: And what is his record?

13 ASST. SOL. LEGETTE: Your Honor, he has a 2008 grand
14 larceny, more than 1,000 less than \$5,000. He has an
15 obtaining goods by false pretenses from 2006. He also has a
16 breach of trust, more than 1,000 less than \$5,000 from 2006,
17 and forgery greater than \$5,000 from 2006, and another
18 forgery from 2006 greater than 5,000. In addition, Your
19 Honor, he is currently on federal probation for conspiracy
20 to commit check fraud.

21 THE COURT: Very well. You've heard your record. You
22 agree that that is your record, Mr. Brown?

23 MR. BROWN: No, sir.

24 THE COURT: All right. Well, your lawyer and the
25 Solicitor --- I'm being told it is and of course I can't

1 rule on that unless you take the witness stand. What I want
2 you to understand is they believe that's your record.
3 They've got certified copies of the convictions. What is it
4 that you differ with?

5 MR. BROWN: The actual amount of the forgery charges.

6 THE COURT: Solicitor, he says he disagrees with the
7 amount of forgery charges. Did you list two or same ones?

8 ASST. SOL. LEGETTE: Your Honor, perhaps I transposed
9 the less than or greater than. So it's forgery less than
10 \$5,000, but it's two counts of forgery less than \$5,000.

11 THE COURT: Rather than greater than \$5,000?

12 ASST. SOL. LEGETTE: Yes, sir.

13 THE COURT: Do you agree with it now, Mr. Brown?

14 MR. BROWN: Yes, sir.

15 THE COURT: Now. if you elect not to take the witness
16 stand, I will charge the jury that they are not to give the
17 fact that you did not testify any consideration whatsoever,
18 and there is to be absolutely no legal prejudice to you
19 because you did not testify. The decision as to whether you
20 testify will be left entirely up to you. You may talk with
21 your attorney, but it is not your attorney's decision. It
22 is your decision. The ultimate decision as to whether or
23 not you testify is solely yours. Have you understood that I
24 just told you?

25 MR. BROWN: Yes, sir.

1 THE COURT: Have you made a decision to whether or not
2 you wish to testify in the trial of this case?

3 MR. BROWN: Yes, sir.

4 THE COURT: And you had enough time to make the
5 decision?

6 MR. BROWN: Yes, sir.

7 THE COURT: And this is your decision and not anyone
8 else's?

9 MR. BROWN: Yes, sir.

10 THE COURT: No one forced you into this decision?

11 MR. BROWN: No, sir.

12 THE COURT: No one promised you anything in order to
13 get you to testify or not testify in this case?

14 MR. BROWN: No, sir.

15 THE COURT: And what is your decision?

16 MR. BROWN: To not testify.

17 THE COURT: You're not going to testify?

18 MR. BROWN: No, sir.

19 THE COURT: Very well. Is that your understanding as
20 well, Mr. Walker?

21 MR. WALKER: Yes, Your Honor.

22 THE COURT: And you believe that's the free and
23 voluntary decision of your client after being advised of the
24 law concerning testifying?

25 MR. WALKER: Yes, sir.

1 THE COURT: And you've also advised him of that?

2 MR. WALKER: Yes, sir.

3 THE COURT: And that's his decision and not anyone
4 else's?

5 MR. WALKER: Yes, sir.

6 THE COURT: Thank you. You may return to your seats.
7 Mr. Walker, I'd be happy to hear from you on any matters of
8 law since the State has rested, conditionally, upon us
9 obtaining the copies of the video statement that they seek
10 to introduce.

11 MR. WALKER: Your Honor, at this time we'd move for a
12 directed verdict on charges of murder and the possession of
13 a weapon during the commission of a violent crime. We
14 believe the testimony is uncontroverted that Mr. Brown was
15 in his yard of his residence. There is no testimony that he
16 was -- though he was armed with a weapon, there is no
17 testimony from anyone that he threatened, provoked, or
18 caused any sort of disturbance toward Mr. Kemp, the
19 deceased. Rather, the testimony and all the results are
20 uncontroverted that Mr. Kemp was at his car adjacent to a
21 public driveway outside of Mr. Brown's yard. That Mr. Kemp,
22 who is 350 pounds, six-feet tall, and with a reputation for
23 violent and aggressive behavior, and who Mr. Brown knew to
24 carry -- or knew to own a firearm, advanced on him in a
25 threatening manner and we believe in light of that

1 uncontroverted testimony there would be no basis to proceed
2 as to the murder and the possession of a weapon during the
3 commission of a violent crime.

4 THE COURT: So your motion is on murder and possession
5 of a weapon?

6 MR. WALKER: Yes, sir.

7 THE COURT: Thank you very much. Solicitor, I'd be
8 happy to hear from you.

9 ASST. SOL. LEGETTE: Thank you, Your Honor. Your
10 Honor, with respect to the motion of the defendant, I would
11 respectfully ask the Court to deny the motion. When ruling
12 on a motion for a directed verdict, as the Court is aware,
13 you are concerned with the existence of evidence and not its
14 weight, Your Honor.

15 At this point, we believe that the State has submitted
16 the burden to prove that there is murder and malice
17 aforethought. Based on the testimony, Your Honor, according
18 to Mr. Taquan Brown, there had been some previous issues
19 with Mr. ---

20 THE COURT: The testimony of who?

21 ASST. SOL. LEGETTE: I'm sorry, not testimony, but the
22 statement, as elicited from the Solicitor's Office by
23 Detective Eltzroth that there had been some issues between
24 the defendant and the victim, Mourice Kemp. Additionally,
25 Your Honor, the victim himself was said to have been going

1 to the car and was said to have been getting inside the car
2 when Mr. Brown exited his home with a gun in hand, and
3 actually, there was testimony that there had become some
4 verbal ---

5 THE COURT: I recall the witness saying there was some
6 -- I don't know if she used the term "ya-ya." She couldn't
7 tell us what was said, but there was discussion going on.
8 And then another witness described it as "trash talking"
9 back and forth.

10 ASST. SOL. LEGETTE: Yes, Your Honor. There was trash
11 talking and ya-ya, and verbal animates just going on between
12 the victim and Mr. Brown, when Mr. Brown having exited the
13 house with a gun in hand and then there were three parties
14 inside that yard, Your Honor. Additionally, the testimony
15 is that the victim himself is at the car and that he,
16 according to Detective Eltzroth, he was either walking,
17 charging, or running towards Mr. Brown and Mr. Brown, at
18 this point, shoots him.

19 Additionally, Your Honor, there is testimony that the
20 GSR would have gotten on the victim, but would have traveled
21 no more than two to three feet indicating that Mr. Brown was
22 close to the victim than we initially believed from the
23 testimony from the witness stand, Your Honor.

24 If you will look at the actual photograph that was
25 submitted into evidence, the victim appears to be just off

1 the sidewalk and given his length of 72 inches, meaning six
2 feet, if you stand him up, Your Honor. Based thereon, Mr.
3 Brown is closer to the sidewalk than he is to his own home.
4 And so, Your Honor, we believe that there is malice
5 aforethought with Mr. Brown having armed himself after Mr.
6 Kemp asked him to come back to his house and he closed the
7 door -- at one point, in his statement I believe, he said he
8 was going to close the door and turn off the lights, Your
9 Honor.

10 Unfortunately, he does not close the door and turn off
11 the lights, he actually comes outside, having armed himself
12 with a firearm, at which point, he did walk down the
13 sidewalk, according to our measurements, Your Honor, and
14 according to the pictures that the State has submitted, Mr.
15 Brown would have had to be within two to three feet of the
16 actual victim for him to get GSR on his hands. At least,
17 that is the State's position with regards to the evidence,
18 Your Honor.

19 We believe that the defense motion for the directed
20 verdict on the murder charge should fail. In addition, Mr.
21 Brown according to testimony from the witness stand from
22 Detective Eltzroth and according to testimony from Nayronne
23 Holmes, and Ms. Barbara Mays, Mr. Brown himself is the
24 person who's armed with the firearm, making it a possession
25 of a weapon during the commission of a violent crime, which

1 murder is defined as a violent crime. At this point, Your
2 Honor, we would ask the Court to respectfully deny the
3 motion of the defense to direct a verdict for both the
4 murder charge and the possession of a weapon during the
5 commission of a violent crime.

6 THE COURT: Very well. What is standard and I am
7 required to apply at the directed verdict stage is the
8 existence or non-existence of evidence, and certainly not
9 its weight. Mr. Walker, I feel like I am extremely familiar
10 with the evidence in this case, because you are aware, I've
11 heard it as you have, twice, during the Castle Doctrine
12 hearing, as well as during the trial of this case.
13 Although, I'm anticipating I'm going to hear evidence again
14 from the defendant, which I've heard during the Castle
15 Doctrine hearing, and I certainly don't consider that for
16 the purposes of this motion, just what was presented by the
17 State subject to them being able to put in their video.

18 Your motion for directed verdict is respectfully
19 denied. It is my intention, Mr. Walker, to charge self
20 defense. It is my intention to charge the lesser included
21 offense of voluntary manslaughter, and I thought I'd make
22 you aware of that now that I've heard all of the State's
23 case, except for viewing the video in its entirety.

24 All right. Is the defendant ready to proceed?

25 MR. WALKER: Before I begin, Your Honor, and again this

1 is something I've never done. I just want to procedurally,
2 I want to make sure the Court is comfortable with it. It
3 would be the defense's intention to enter the transcript of
4 the guilty plea of Lawrenzer Walker into evidence.

5 THE COURT: Counsel approach. I understand that. You
6 told me about that and I appreciate it. Come on up here, we
7 need to take a look at it. Do you have the whole thing?

8 MR. WALKER: Yes, sir.

9 (Whereupon, a bench conference is held off the record
10 and out of the hearing of the jury.)

11 THE COURT: Let the record reflect that I conferred
12 with the attorneys in my chambers, and again just now at the
13 bench. The parties will stipulate, the State and the
14 defendant, to the admission of the entire guilty plea
15 transcript being offered by the defendant in this case, the
16 guilty plea transcript of record of Lawrenzer, L-A-W-R-E-N-
17 Z-E-R, Walker, dated January 20th, 2015, before the
18 Honorable Thomas W. Cooper, Judge. And they agreed to
19 stipulate to the entire transcript, which consists of
20 sixteen pages, plus a certificate of the court reporter,
21 Joyce Reuger, on page seventeen. It goes through line nine
22 on page sixteen. And the parties agree to stipulate that it
23 is admissible for purposes of this case. Is that correct
24 from the State?

25 ASST. SOL. LEGETTE: That's correct, Your Honor.

1 THE COURT: From the defendant?

2 MR. WALKER: Yes, Your Honor.

3 THE COURT: Very well. That will be your first matter
4 that you want to put in, because you've pre-marked it as
5 Defendant's One; is that correct?

6 MR. WALKER: That will probably be our only actual
7 entrance, yes, sir. Yes.

8 THE COURT: Is the State ready to proceed, now?

9 ASST. SOL. LEGETTE: Yes, Your Honor.

10 THE COURT: Is the defendant ready to proceed?

11 MR. WALKER: Before the jury comes in, I believe our
12 first witness is in the holding cell downstairs from SCDC.

13 THE COURT: All right. Where's my Major? Will you go
14 get me -- what's his name?

15 MR. WALKER: Jermaine Brown.

16 (Whereas, Mr. Jermaine Brown is brought into the
17 courtroom.)

18 THE COURT: Is the State ready to proceed?

19 ASST. SOL. LEGETTE: Yes, Your Honor.

20 THE COURT: Is the defendant ready to proceed?

21 MR. WALKER: Yes, Your Honor.

22 THE COURT: Bring us the jury, please.

23 (2:40 p.m., whereupon, the jury enters the courtroom
24 and the following is held on the record.)

25 THE COURT: Mr. Foreman, ladies and gentlemen of

1 the jury, you have now heard the evidence from the State.
2 You will now hear from the defendant. Mr. Walker, you may
3 call your first witness.

4 MR. WALKER: Thank you, Your Honor. The Defense calls
5 Jermaine Brown.

6 THE COURT: Mr. Brown, come around and be sworn by the
7 Clerk of Court.

8 (Whereupon, the witness, Mr. Jermaine Brown, is duly
9 sworn.)

10 THE COURT: I need you to speak into the microphone.
11 State your full name and spell your last name for the court
12 reporter.

13 MR. BROWN: Jermaine Brown, B-R-O-W-N.

14 THE COURT: Very good, Mr. Brown. Your witness,
15 counsel.

16 DIRECT EXAMINATION.

17 BY MR. WALKER:

18 Q Good after, Jermaine.

19 A Good afternoon.

20 Q Where are you from?

21 A Jacksonboro.

22 Q Is that where you live now?

23 A No, sir.

24 Q Where do you live now?

25 A I'm incarcerated right now, but before incarceration, I

1 was living in Walterboro.

2 Q Okay. Where are you incarcerated at?

3 A In Aiken.

4 Q Okay. Why are you incarcerated?

5 A A lot of things.

6 Q Okay. Would it be for burglary and breaking into a
7 motor vehicle?

8 A Yes, sir.

9 Q Okay. And those instances that you're incarcerated for
10 are not related at all to the incident of a shooting on
11 November 20th, 2013, correct?

12 A No, no relation.

13 Q Are you aware of the shooting that occurred that night?

14 A Yes, sir.

15 Q How are you aware of it?

16 A I was there.

17 Q All right. Where were you?

18 A I was present in the house.

19 Q Who's house?

20 A Taquan's apartment.

21 Q When you say Taquan, you mean the defendant, Taquan
22 Brown?

23 A Yes, sir.

24 Q Well, tell us what you remember about that evening?

25 A Well, when I got there, I came for other purposes, but

1 it took so long, I eventually fell asleep and woke up to a
2 big man around the house causing all kinds of chaos. And he
3 just left out the back door. When he left, I took it upon
4 myself to try to leave the house. So I left out, and in the
5 midst of me trying to leave, the defendant, Taquan Brown,
6 and a couple other guys came outside the house saying the
7 big man came in the house raising all kinds of chaos. He
8 came in the door and he eventually was, I guess, he was
9 about to leave, and he started talking all crazy things.
10 Saying all type of things to Taquan. Eventually, he charged
11 Taquan like he was in the process of wanting to harm him.
12 Taquan shot him. After he shot him, I just left.

13 Q Okay. Thank you. And I'm going to go back to that
14 narrative and we're going to slow it down a little bit.
15 Okay? You say when you got there, do you remember about
16 what time you got there?

17 A About 2, 2:45, something like that.

18 Q And you said you were there for other purposes. Why
19 did you come over?

20 A For sexual purposes of a female that was supposed to be
21 over there.

22 Q Was that Coco, or Courtney?

23 A Yeah, they said her name was Coco.

24 Q Okay. And you had come because you heard that she
25 might have sex with you?

1 A Yes, sir.

2 Q But that didn't happen?

3 A No, sir.

4 Q Did you ever interact at all with Coco that night?

5 A No, sir.

6 Q And then you said that that didn't happen, you fell
7 asleep, and you woke up. What woke you up?

8 A A big man -- well, really noise woke me up. I hear
9 people, loud talking. When I woke up, there was somebody
10 raising a lot of chaos.

11 Q Was he raising chaos outside or inside?

12 A Inside.

13 Q When you say "raising chaos," and again, I'm trying to
14 get you to be a little more specific, was he being loud?

15 A Yes, sir.

16 Q Was he cursing?

17 A Yes, sir.

18 Q Was he making threats towards anyone?

19 A Yes, sir.

20 Q Okay. What kind of threats was he making?

21 A He was -- I guess he was looking for the girl that had
22 came over and he was threatening if he couldn't find her, he
23 would do things, I guess.

24 Q Okay. And where were you when this -- where did you
25 fall asleep at when you woke up?

1 A I was in the living room in a chair.

2 Q All right. And he was in the living room when you woke
3 up?

4 A Yes, sir.

5 Q Okay. And so from the living room, is that by the
6 front door?

7 A Yes, sir.

8 Q So he is in the living room when you wake up, you see
9 him. And where does he go next?

10 A He went around from room to room, checking rooms, and
11 then he left out the back door.

12 Q Okay. Did you follow him around and see him or?

13 A No, I didn't follow him around.

14 Q Were you able to hear him?

15 A Yes, sir.

16 Q All right. Was he raising chaos, to use your phrase,
17 the whole time?

18 A Yes, sir.

19 Q And after he left out the back door, what did you do?

20 A I left out the front.

21 Q Where did you go when you left out the front?

22 A I went to the street to try and get in my vehicle to
23 leave.

24 Q So you were at the street when you observed the
25 shooting?

1 A Yes, sir.

2 Q And you said that you saw Mr. Kemp -- did you know the
3 big man?

4 A No, sir.

5 Q You didn't know his name or hadn't had any dealings
6 with him?

7 A No, sir.

8 Q So you just know him as "the big man" and you saw him
9 leave from next door?

10 A Yes, sir.

11 Q And went to his car?

12 A Yes, sir.

13 THE COURT: Counsel, I'm giving you some latitude, but
14 this is direct examination. Let him testify, not you.

15 MR. WALKER: Yes, sir, Your Honor.

16 Q And so you say you saw him go to his car. Were you
17 able to hear what he was saying?

18 A I couldn't make out exactly everything he was saying.

19 Q Were you able to hear what anyone else was saying?

20 A Really, he was doing all the yelling.

21 Q So from your vantage point, he seemed to be producing
22 the most noise?

23 A Yes, sir.

24 Q Who else did you see out in the yard?

25 A It was a guy. I guess he stayed next door. Taquan.

- 1 There was a couple other people in the yard.
- 2 Q Did you know their names?
- 3 A No, sir.
- 4 Q Did you see a woman?
- 5 A Yes, sir.
- 6 Q How many women did you see?
- 7 A Well, in Taquan's yard was one of them.
- 8 Q Okay. Was she an older woman?
- 9 A Yes, sir.
- 10 Q Tell us again where were you in relation to the yard,
- 11 the car, where the big man was. Where were you in your car?
- 12 A On the street. Well, really, I probably was doing --
- 13 distance, well, really, I can't measure it out. I was a
- 14 couple feet away from everything.
- 15 Q I'm holding up the State's Exhibit Forty-four. Can you
- 16 see that?
- 17 A Not all the way from over here.
- 18 MR. WALKER: Would it be all right if I came closer?
- 19 THE COURT: Absolutely. You may approach.
- 20 Q Can you see that there?
- 21 A Yes, sir.
- 22 Q All right. Does that look like the apartments you were
- 23 at that night?
- 24 A Yes, sir.
- 25 Q All right. Does that appear to be where the white car,

1 the big man was at, where you saw him?

2 A Supposed to be the white car?

3 Q Let me come closer. Can you see that white?

4 A Yes, sir.

5 Q Does it appear to be a car to you?

6 A Yes, sir.

7 Q All right. Is that where the big man was?

8 A Yes, sir.

9 Q So from that white car, the way we're looking at it,
10 where was your car?

11 A Excuse me. I do need glasses.

12 Q I see you squinting. Do you want me to bring it
13 closer?

14 A Yes, sir.

15 THE COURT: Hand it to him, counsel.

16 Q (Hands exhibit to witness.)

17 THE COURT: Bring it back so the jury can see what he
18 did. Put your finger where you just did so the jury can
19 see.

20 Q So you were parked on Poor Farm Road next to the
21 apartments?

22 A Yes, sir.

23 Q Thank you. And that's where you viewed the events
24 from?

25 A Yes, sir.

1 Q And what did you do after the shooting?

2 A I left.

3 Q Which way did you go? Well, where did you go after you
4 left?

5 A I was intending to go back to Jacksonboro.

6 Q Okay. Did you ever contact -- well, I'll stop here.
7 Was anyone else with you?

8 A Yes, sir.

9 Q Who was with you?

10 A Jerome Hall and Wylie James.

11 Q Were they in the same place you were during the
12 shooting?

13 A Yes, sir.

14 Q They were with you in your car?

15 A Yes, sir.

16 Q I don't have any further questions.

17 THE COURT: Cross-examination.

18 ASST. SOL. LEGETTE: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY ASST. SOL. LEGETTE:

21 Q Good afternoon, Mr. Brown.

22 A Good afternoon.

23 Q Mr. Brown, you've been convicted of common law robbery?

24 A In the past.

25 Q You've been convicted of common law robbery?

- 1 A Yes, ma'am.
- 2 Q Okay. And that's basically stealing, right?
- 3 A If you label it that.
- 4 Q Okay. You've also been convicted of shoplifting and
- 5 also burglary? Stealing, right?
- 6 A If you label it that way.
- 7 Q Okay. Mr. Brown, you said you saw two women out there
- 8 that night?
- 9 A In the yard?
- 10 Q Wherever. I mean, what all did you see?
- 11 A I mean, I saw one woman in the yard when I was leaving.
- 12 Q Okay. Now, you said you came over for sexual purposes
- 13 with Coco. Did you ever see Coco?
- 14 A I seen her when she was about to leave.
- 15 Q Can you describe Coco?
- 16 A She was red.
- 17 Q She was what?
- 18 A She is red, like light-skinned.
- 19 Q She's light skinned?
- 20 A Yes, ma'am.
- 21 Q Okay. So when you said you came over for sexual
- 22 purposes with Coco, who called you over there?
- 23 A Well, people be talking about her, so I came, too.
- 24 Q Well, who was talking about her? You said somebody
- 25 called you and told you she was there.

- 1 A They said they had a female over.
- 2 Q I'm sorry. Who was "they," Mr. Brown?
- 3 A The defendant and other people. I really don't know
- 4 their names like that.
- 5 Q So what was your intention with Coco? Were you going
- 6 to, I guess, just woo her and convince her to sleep with you
- 7 or were you going to pay her?
- 8 A No, I really wasn't trying to pay her.
- 9 Q Well, what was your purpose, Mr. Brown? Were you going
- 10 to rape her?
- 11 A No.
- 12 Q Okay. So you planned on having sex with Coco?
- 13 A Yes.
- 14 Q Okay. Now, you said some people came with you. Who
- 15 came with you?
- 16 A Wylie and Jerome.
- 17 Q And why did they come? You said it was 2:00 in the
- 18 morning, so why did they come with you?
- 19 A Same reason. I hope they had the same reason on their
- 20 mind.
- 21 Q They had the same reason on their mind, too?
- 22 A Yes, ma'am, should have.
- 23 Q Were they going to pay Coco or they was just going to
- 24 convince her?
- 25 A Word of mouth, convince her.

1 Q Convince her?

2 A Yes, ma'am.

3 Q The three of y'all?

4 A Yes, ma'am.

5 Q Okay. Now, you said that when you were trying to

6 leave, you and Wylie James and Jerome Hall -- Jerome Hall,

7 right?

8 A Yes, ma'am.

9 Q That y'all were parked on Poor Farm Road?

10 A Yes, ma'am.

11 Q Did y'all see any other cars out there when y'all were

12 out there?

13 A Well, a couple of cars.

14 Q What cars did you see?

15 A I seen a couple cars. Really, I mean, it's not really

16 different to the day.

17 Q Was it three cars? Four cars?

18 A I can't remember.

19 Q Okay. But you saw the big man's car?

20 A Yes, ma'am.

21 Q Now, you sent a statement to the detective, right?

22 A Yes, ma'am.

23 Q A letter?

24 A Yes, ma'am.

25 Q And when you sent that letter, had you had any contact

1 with Mr. Brown prior to sending that letter?

2 A I seen him while I was in the county.

3 Q Okay. But you didn't come to law enforcement before
4 you sent the letter? You just sent the letter and then you
5 came to law enforcement when they came to see you?

6 A Yes, ma'am.

7 Q Okay. Now, did all y'all leave together?

8 A Me, Jerome and Wylie.

9 Q Yes, sir. And what direction did y'all travel in?

10 A To the left.

11 Q To the left? So you were already on Poor Farm Road and
12 you turned left again?

13 A Yes. I mean, shoot, I was just confused. I was trying
14 to get back to Jacksonboro.

15 Q Okay. Well, how well do you see? Because just now you
16 acted like you couldn't see?

17 A Well, really, I'm supposed to wear glasses, but I
18 don't.

19 Q Did you have on glasses that night?

20 A No, ma'am.

21 Q Now, you said you were asleep on the couch. And you
22 said Wylie James was there, and whose apartment were you in
23 by the way?

24 A Taquan's.

25 Q You were asleep on the couch. Where was Wylie James?

- 1 A He was on the couch, too.
- 2 Q And where was Jerome Hall?
- 3 A He was on the couch when I went to sleep.
- 4 Q The same couch?
- 5 A Yes, ma'am.
- 6 Q Tell me how big this couch is?
- 7 A It was big enough to where enough people could sit on
- 8 it.
- 9 Q Could you stand up? Well, no, no. How tall are you?
- 10 A I think I'm about six, one.
- 11 Q Six, one, okay. And all three of y'all are on the same
- 12 couch?
- 13 A Yes, ma'am.
- 14 Q Where was Taquan Brown?
- 15 A I don't know where he was at?
- 16 Q And was there another person there?
- 17 A Not to my knowledge.
- 18 Q So it was just you, Wylie, Taquan and Jerome?
- 19 A Well, thinking about it ---
- 20 Q Think about it, Mr. Brown.
- 21 A In the living room, on the chairs, and when I got
- 22 there, there was somebody else, but I don't believe -- I
- 23 didn't really pay attention if he was still there when I was
- 24 about to leave.
- 25 Q Okay. Well, since you can't remember that, Mr. Brown,

1 how about this shooting. When you said you saw this
2 shooting and you were over on Poor Farm Road. Who was
3 outside?

4 A Taquan and Coco. He was in his yard.

5 Q Okay. So you can see all the way back over there?

6 THE COURT: Refer to the exhibit number you're holding
7 for the record, counsel.

8 ASST. SOL. LEGETTE: I'm sorry, Your Honor. This is
9 State's Forty-four.

10 Q Mr. Brown, you said you were supposed to wear glasses?

11 A Yes, ma'am.

12 Q Do you know how far this distance is on State's Forty-
13 four from Poor Farm Road to Bright's Court?

14 A I can see a face.

15 Q I'm saying you were there, so can you give me a
16 distance, an estimated distance?

17 A Not really.

18 Q Not really? Okay. Was anything obstructing your view?

19 A In the way?

20 Q Yes, sir. Was there anything causing you not to be
21 able to see that particular night?

22 A No, not really.

23 Q Okay. Not really. Other than needing glasses. How
24 much lighting is over there on that side, Mr. Brown?

25 A There was quite a few lights.

1 Q Quite a few lights?

2 A Yes, ma'am.

3 Q Okay. How many times did Mr. Taquan Brown shoot?

4 A I think about two times.

5 Q Two times?

6 A I think.

7 Q Two times, okay.

8 A I know the first shot was trying to blow.

9 Q You only heard two shots?

10 A Yes.

11 Q All right. Now, Mr. Brown, I noticed that you gave the

12 statement to the detective in May and you didn't write the

13 letter until March of 2014. How well do you know Mr. Brown,

14 Mr. Taquan Brown that is?

15 A I know of him.

16 Q You know of him? Why did it take you so long to come

17 forward and give this information to the police?

18 A I'm not well with the police.

19 Q You're not well with the police?

20 A Yes, ma'am.

21 Q Okay. Are you well with Mr. Brown, Taquan Brown?

22 A He's all right.

23 Q Have you been promised anything for your testimony here

24 today, Mr. Brown?

25 A No, ma'am.

1 Q You've been paid any money to come in here and tell
2 this tale to the Court?

3 A No, ma'am.

4 ASST. SOL. LEGETTE: Begging the Court's indulgence.

5 Q Mr. Brown, I have no further questions. Thank you

6 THE COURT: Redirect?

7 MR. WALKER: Nothing further, Your Honor. We would ask
8 that this witness be excused.

9 THE COURT: Any objection, Solicitor?

10 ASST. SOL. LEGETTE: None, Your Honor.

11 THE COURT: You may step down. Major, you can help him
12 down the stairs and take him out. Call your next witness.

13 MR. WALKER: Your Honor, at this time, we would seek to
14 publish portions of the transcript of the guilty plea of
15 Lawrenzer Walker.

16 THE COURT: I understand that there is no objection; is
17 that right, Solicitor?

18 ASST. SOL. LEGETTE: That's correct, Your Honor.

19 THE COURT: Has it been previously marked by the court
20 reporter?

21 MR. WALKER: Yes, Your Honor. It's been marked as
22 Defendant's Number One.

23 THE COURT: All right. Solicitor, he wants to publish
24 a portion of Defendant's Number One, which is the transcript
25 of the guilty plea of Lawrenzer Walker dated January 20th,

1 2015. Do you have a copy?

2 THE COURT: I do, Your Honor. You may proceed without
3 objection from the State.

4 MR. WALKER: Thank you, Your Honor. We would ask Jake
5 McKinsey, the intern in our office, to take the witness
6 stand.

7 THE COURT: Any objection, Solicitor?

8 ASST. SOL. LEGETTE: No, Your Honor.

9 THE COURT: Come around.

10 (Whereas, Mr. Jake McKinsey, takes the witness stand.)

11 THE COURT: This gentleman, ladies and gentlemen of the
12 jury, will read the answers that are in the transcript. We
13 will have to identify the person who is speaking for you. We
14 will also have to identify the person who is asking the
15 questions, because it is not Mr. Walker. This is a guilty
16 plea transcript of Lawrenzer Walker, dated January 20th,
17 2015, in which he entered a plea to obstruction of justice
18 before Judge Thomas Cooper. Identify who is speaking.

19 MR. WALKER: Thank you, Your Honor.

20 Can you tell us who you are, sir?

21 MR. MCKINSEY: My name is Jacob McKinsey.

22 THE COURT: Hold it. First, tell us who you are, since
23 you are going to read the question. Or do you just want him
24 to introduce himself to the jury?

25 MR. WALKER: I want him to introduce himself and

1 explain who the parties are.

2 THE COURT: No speech to the jury. You can introduce
3 yourself, give them your name.

4 WITNESS: My name is Jake McKinsey.

5 THE COURT: Mr. McKinsey is not going to make any
6 statement to you. Mr. McKinsey is only going to read what
7 is in this transcript and nothing else. Identify the
8 questioner and you identify whoever is speaking in the
9 transcript. Proceed.

10 MR. WALKER: I will read starting in the plea
11 transcript of Lawrenzer Walker, beginning page 8, line 4.
12 The speaker is Ms. Legette. Reading through line 12.

13 THE COURT: Hold on now. You are speaking for Ms.
14 Legette at line 4. Read it to the jury.

15 As read by Mr. Walker:

16 Q Thank you, Your Honor. As to the facts
17 at this time, Your Honor, I would ask that Mr.
18 Walker, himself, allocute on the record as I will
19 with a short colloquy ask him some questions about
20 what happened on the night of November 20th, 2013.

21 MR. WALKER: At line 9, the Court:

22 THE COURT: All right. Mr. Walker, let me
23 hear from you. You're under oath, of course. Let
24 me hear from you in regards to your involvement in
25 this matter. Then, Ms. Legette will ask you some

1 additional questions.

2 MR. WALKER: If Mr. McKinsey will read line 24,
3 the response
4 of Mr. Lawrenzer Walker.

5 MR. MCKINSEY: Mr. Walker:

6 A You want me to tell the whole story?

7 THE COURT: Identify who's speaking to the jury.

8 MR. MCKINSEY: This is Mr. Walker:

9 A You want me to tell the whole story?

10 MR. WALKER: Ms. Legette:

11 Q That's fine. Yes.

12 MR. MCKINSEY: Mr. Walker:

13 A Well, about four-something in the
14 morning, we had got a bang on the door. By that
15 time, I just got finished using the phone and
16 asked if I could use the phone. So told -- I told
17 Taquan somebody's banging on his door.

18 MR. WALKER: The Court:

19 THE COURT: I need you to slow down just a
20 bit for the court reporter. You said you told
21 Taquan somebody was banging on the door.

22 MR. MCKINSEY: Mr. Walker:

23 A Yes, sir.

24 MR. WALKER: The Court:

25 THE COURT: Pick up at that point and just

1 kind of slow down.

2 MR. MCKINSEY: Mr. Walker:

3 A I go to the door to answer the door.
4 Mourice Kemp is just about to walk in so I stopped
5 him and was like, "What you doing? You can't just
6 be coming in here."

7 MR. WALKER: The Court:

8 THE COURT: Mourice who?

9 MR. MCKINSEY: Mr. Walker:

10 A Kemp. Big Mo.

11 MR. WALKER: Ms. Legette:

12 Q The victim.

13 THE COURT: Okay.

14 MR. MCKINSEY: Mr. Walker:

15 A So when he sees Taquan, he automatically
16 was just getting on him saying oh, he's going to
17 do this and do that. Well, basically saying he's
18 going to kill him. If he finds that Coco, which
19 is Courtney, is in the house. So he's looking at
20 him like what's going on. So he done walk through
21 and he done did his own little look around.

22 MR. WALKER: The Court:

23 THE COURT: Who did the looking around?

24 MR. MCKINSEY: Mr. Walker:

25 A Mo, Big Mo. Nobody let, like, allowed

1 him to come in. He just come in the house all he
2 wanted to, and then he went toward the back door.

3 MR. WALKER: Ms. Legette:

4 Q Slow down some. She can't keep up.

5 THE COURT: She has to write down what you're
6 saying, so you have to talk a little bit slower.

7 MR. MCKINSEY: Mr. Walker:

8 A So he come in and he goes toward the
9 back door. So he told him that she's not here.
10 She's next door. He leaves and we lock the back
11 door. He go and bang on the back door, or the
12 back window, then he come back saying asking
13 Taquan can he let him come in so he can go through
14 the front to the car. Taquan told him no. He
15 started threatening him again as he was going
16 around. But by the time he was leaving to go like
17 toward the living room, EB, that's the next door
18 neighbor, he was coming in the house. He had a
19 gun in his hand, the revolver, the one I had threw
20 over the field. Taquan took it from him. He
21 asked him, no, give it to me. I need it. And
22 Taquan say, "You don't need the gun. For what?"
23 I look out the door. I see Courtney walking
24 toward the car and I see Big Mo walking toward the
25 car. And Ms. Barbara was behind them in the

1 walkway. So we all go outside and that's when
2 everything took place from there. Big Mo got out
3 of his car talking stuff to Taquan. Taquan told
4 him to get off his property. Big Mo said that
5 what he was going to do was kill him and then he
6 just started charging him, and that's when Taquan,
7 you know, pulled the trigger and he shot him until
8 he fell.

9 MR. WALKER: The Court:

10 THE COURT: He shot Big Mo?

11 MR. MCKINSEY: Mr. Walker:

12 A Yes, sir. And then he came in the house
13 and I took the gun from him and I ran across the
14 field and threw it in the field and then I called
15 the police.

16 MR. WALKER: The Court:

17 THE COURT: Okay. You threw it in the field.
18 What is that?

19 MR. MCKINSEY: Mr. Walker:

20 A Right across the street.

21 MR. WALKER: The Court:

22 THE COURT: The field?

23 MR. MCKINSEY: Mr. Walker:

24 A Yeah.

25 MR. WALKER: The Court:

1 THE COURT: Okay. Ms. Legette?

2 MS. LEGETTE: Thank you, Your Honor.

3 MR. WALKER: Questioning by Ms. Legette beginning
4 at line 24, page 11.

5 Q At a point, did you ever talk to the
6 police about your involvement in this case?

7 A Yes, I had lied to them at first. I
8 told them I didn't know what happened. I told
9 them I didn't see nothing and I just told them
10 that I seen like headlights leaving, which was a
11 lie. Like I said, that was my first statement.

12 Q And you talked to them again. And what
13 did you tell them?

14 A I told them partially what happened at
15 the time. I told them that I didn't get rid of
16 the gun, and you know, what I'm saying, that I
17 didn't, you know what I'm saying, I just didn't
18 want no involvement in it period. That's my
19 basically my thing. I didn't want to be involved
20 and involve anybody else in it.

21 Q At a certain point, did you take police
22 to the location of the gun?

23 A I sure did. I showed them the night of
24 when they came and got me and arrested me. And
25 you know, I thought about my kids, so I just told

1 them exactly where I threw the gun at and
2 everything. And I took them out there to the
3 scene.

4 Q And did you locate the gun?

5 A Yes, sir -- yes, ma'am.

6 Q Ms. Legette, was anyone else present
7 when this happened?

8 A Yes. It was Ms. Barbara, E.B., Taquan,
9 myself, Coco, Mourice, Jermaine, Jerome, and
10 little Wylie.

11 MR. WALKER: The court reporter:

12 COURT REPORTER: What was the last name you
13 said? Little who?

14 A Little Wylie.

15 MR. WALKER: Ms. Legette continues at line 9:

16 Q Do you know any of their last names?

17 A Wylie's name is James. Wylie James.
18 Jermaine is Brown, and Jerome is Hall, H-A-L-L.

19 Q Do you know what E.B.'s real name is?

20 A Nayronne, N-A-Y-R-O-N-N-E.

21 Q Do you know his last name?

22 A I want to say Holmes, but I'm not quite
23 sure.

24 Q Okay.

25 A And Ms. Barbara's last name is Mays.

1 Q To your knowledge, did all of these
2 people that you just named, did they witness what
3 happened?

4 A To my knowledge, I mean besides Wylie,
5 Jermaine, and Jerome, because they was already in
6 their whip getting ready to leave.

7 Q What's a whip?

8 A Car, a vehicle.

9 Q Okay.

10 A They was in their vehicle getting
11 ready to leave and so I can't really call it or
12 not if they seen exactly the shooting. But I know
13 that their car was on the scene.

14 Q You said Ms. Barbara?

15 A She was right there in the field
16 with us.

17 Q And what about that person,
18 Nayronne Holmes, did he?

19 A He was like close to her. He was
20 out there, too.

21 Q To your recollection, did Big Mo
22 have a weapon? Did you see a weapon?

23 A No. I didn't see nothing, no.

24 Q Okay. What's Ms. Barbara's last
25 name? Do you know?

1 A Mays.

2 Q Mays? Where does she live?

3 A On Bright Court.

4 Q Was she a neighbor of Taquan's?

5 A Yes. She lived on -- if you come
6 in his house, she stayed on the left hand side.

7 Q Before the shooting, where did
8 Taquan have the gun?

9 A Taquan didn't have the gun.
10 Taquan, before the shooting, Nayronne came into
11 the house with the gun.

12 Q Okay. And then?

13 A Taquan took it from him.

14 Q Okay. And where did he have it
15 before the shooting started?

16 A Taquan, he had it in his back
17 pocket, I believe.

18 Q Okay. I have no further questions.

19 THE COURT: Anything else?

20 MR. WALKER: At this time, I would like to read the
21 calling of the case by Ms. Legette, beginning on page 3 at
22 line 5 down to line 20. Identify yourself as Ms. Legette
23 and then read from 5 to 20.

24 MR. MCKINSEY: Ms. Legette:

25 MS. LEGETTE: Your Honor, before the

1 Court is Mr. Lawrenzer Walker, L-A-W-R-E-N-Z-E-R,
2 Walker. He is before the Court on indictment
3 number 2013-GS-15-01044, for the offense of
4 obstruction of justice. He will be entering a
5 plea of guilty to the offense as indicted. And
6 Your Honor, we are actually going to hold his
7 sentencing in abeyance until after the trial of
8 the case of his co-defendant, Mr. Taquan Brown.
9 And for this plea, he is going to -- as part of
10 the plea, he is going to testify truthfully and
11 voluntarily in that trial, and when he does, he
12 will come back before the Court and ask that he be
13 sentenced, Your Honor. At that, we will be making
14 -- depending on what his testimony has been,
15 making a recommendation of a time served sentence,
16 Your Honor, at that time. If not, then we will be
17 making a different recommendation.

18 MR. McKINSEY: The Court:

19 THE COURT: Thank you.

20 MR. WALKER: Stop there. You may step down.

21 THE COURT: Call your next witness.

22 MR. WALKER: The defense calls Jessica Fulks.

23 (Whereupon, Ms. Fulks enters the courtroom and is duly
24 sworn by the Clerk of Court.)

25 THE COURT: Watch your step on my stairs.

1 Have a seat. Pull your chair up. Adjust the microphone to
2 your height. Speak up for me. State your full name and
3 spell your last name for the record.

4 MS. FULKS: Jessica Fulks, F-U-L-K-S.

5 THE COURT: Your witness. Direct examination, counsel.

6 MR. WALKER: Yes, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. WALKER:

9 Q Good afternoon, Ms. Fulks. Where do you live?

10 A In Walterboro, South Carolina.

11 Q Did you know Mourice Kemp?

12 A Yes, sir.

13 Q Did you know him by a different name?

14 A Yes, sir.

15 Q What did you know him by?

16 A As Big Mo.

17 Q And do you remember when he was killed?

18 A Yes, sir.

19 Q Did you see him that day?

20 A I seen him that night, yes, sir.

21 Q Where did you see him?

22 A He had came to my house.

23 Q All right. Why did he come to your house?

24 A He was looking for a girl named Coco.

25 Q Okay. Was he looking for her at your house?

1 A Yes, sir. He had asked me did I know where she was at?

2 Q So he was hunting for her?

3 A I guess, if that's what you want to call it. I'm not
4 sure.

5 THE COURT: You got to speak up, now.

6 A If that's what you want to call it.

7 Q While he was at your house, did you observe him
8 drinking?

9 ASST. SOL. LEGETTE: Objection, leading.

10 THE COURT: Sustained. Rephrase your question,
11 counsel. Direct examination. Don't ask questions that
12 suggest a yes or no answer.

13 Q Did Mr. Kemp do anything else while he was at your
14 house?

15 A Yes, sir.

16 Q What was that?

17 A He was drinking and smoking.

18 Q What was he smoking?

19 A Marijuana.

20 Q And after he could not find -- and then what did he do?

21 A He told me he was going to leave because his phone was
22 about to go off. He told me he was going to get him a phone
23 card and then he was going to leave.

24 Q And did he leave?

25 A Yes, he did leave.

1 Q And that was the last time you saw him?

2 A Yes.

3 Q He wasn't being mean to you, was he?

4 A No, sir.

5 MR. WALKER: I don't have any further questions.

6 THE COURT: Cross-examination?

7 CROSS-EXAMINATION

8 BY ASST. SOL. LEGETTE:

9 Q Ms. Fulks?

10 A Yes, ma'am.

11 Q You said he was looking for a girl named Coco?

12 A Yes, ma'am.

13 Q How did he seem when he was looking for her?

14 A Calm.

15 Q Calm? Okay. Thank you. I have no further questions.

16 THE COURT: Redirect?

17 MR. WALKER: No, Your Honor. We ask that this witness
18 be excused.

19 THE COURT: Any objection?

20 ASST. SOL. LEGETTE: None from the State.

21 THE COURT: Ms. Fulks, you may step down from the
22 witness stand and you are excused from the trial of this
23 case. You may leave the courtroom. Call your next witness.

24 MR. WALKER: The defense calls Larry Council.

25 (Whereupon, Mr. Council enters the courtroom and is

1 duly sworn by the Clerk of Court.)

2 THE COURT: Watch your step. Have a seat. Pull that
3 seat up. Adjust the microphone. Speak up so everybody can
4 hear you. State your full name and spell your last name for
5 the court reporter.

6 MR. COUNCIL: Larry Council, C-O-U-N-C-I-L.

7 THE COURT: Your witness, counsel.

8 DIRECT EXAMINATION

9 BY MR. WALKER:

10 Q Mr. Council, good afternoon.

11 A Good afternoon.

12 Q Where do you live?

13 A [REDACTED] Rhode Drive, Cottageville.

14 Q Did you know Mourice Kemp?

15 A I know of him.

16 Q You had met him?

17 A That's right.

18 Q Did you know a woman named Coco, or Courtney?

19 A Yes, I do.

20 Q Which name did you know her by?

21 A I known her as Coco.

22 Q Do you remember when Mourice Kemp, or did you know him
23 by any other name?

24 A That's right.

25 Q What names did you know Mourice Kemp by?

1 A I known him as Big Mo.

2 Q So you knew Mourice and Courtney as Big Mo and Coco?

3 A Beg your pardon?

4 Q You knew Mourice and Courtney as Big Mo and Coco?

5 A Right.

6 Q Do you remember when Big Mo, or Mourice, was killed?

7 A Yes, I do.

8 Q Were you present when he was killed?

9 A No, I didn't.

10 Q Do you remember -- let me direct your attention to a

11 time approximately a week before he was killed and ask you

12 do you recall an incident involving Mourice Kemp, or Big Mo,

13 at the Southern Inn?

14 A Yes.

15 Q Can you tell us what you remember about the incident at

16 the Southern Inn?

17 A Well, I remember we was at the Southern Inn in the

18 parking lot.

19 Q Let me stop you. You said "we." Who was "we"?

20 A Well, it was me, Ron, and Mr. Taquan Brown.

21 Q Please continue.

22 A Beg your pardon.

23 Q Please continue to tell us what you remember.

24 A Well, I remember when we was in the parking lot, you

25 know, he did went in the room.

1 Q Again, who is "he"?

2 A Big Mo.

3 Q Okay. Continue.

4 A Well, he went in the room, he got his gun and told us
5 we better leave the parking lot before he drop one of us in
6 the parking lot, and I also remember I had a room up there
7 during the time, and he had came to my room door and he did
8 told me out of his own mouth if anybody was to knock on his
9 door again looking for Coco, he was gonna drop them right in
10 their tracks at the room, because he don't care nothing
11 about the police. That was his words to me.

12 Q Well, let me go back to the first incident you just
13 spoke about where he told you to leave.

14 A Beg your pardon?

15 Q When he told you to leave with a gun, why were you
16 there?

17 A Well, I had a room out there during that time and you
18 know, the only reason why Ron he had wanted to go out there,
19 because he used to date Courtney, too, when ---

20 Q Let me stop you. You're saying "Ron". Is Ron,
21 Nayronne Holmes?

22 A Yeah, right. Everybody know him on the street as E. B.
23 And he used to date Courtney, too, and you know, Coco, she
24 was like with Big Mo, and Ron ran out there, the only thing
25 he had wanted to do was just tell Big Mo that, you know, if

1 Coco with him, just tell Coco to quit calling him and just
2 leave him alone and just stay there with him, but Big Mo, he
3 was the one that went off the handle, flip off the handle.

4 Q And so the confrontation was primarily between Big Mo
5 and Nayronne?

6 A Beg your pardon?

7 Q So the confrontation, what started the argument, was
8 that primarily between Big Mo and Nayronne, or E.B.?

9 A Well, actually what started the argument when Ron knock
10 on Big Mo's door and that's why Big Mo said what he did to
11 me that if anybody knock on his door again for Coco, he was
12 gonna drop them right in their tracks. He don't care
13 nothing about the police. During the time he went in the
14 room to get the gun and told us to leave the parking lot
15 before he drop one of us out there, you know, I didn't see
16 him pointing a gun at anything, but he did that and we just
17 got in the car and left.

18 Q And who was in the car when you left?

19 A It was me, Ron and Mr. Brown.

20 Q Were all three of you in a position to have seen the
21 gun that Big Mo had?

22 A Yes.

23 Q Were you all standing fairly close together when Big Mo
24 told you to leave?

25 A Beg your pardon?

1 Q Were y'all all close together when Big Mo told y'all to
2 leave?

3 ASST. SOL. LEGETTE: Objection, Your Honor, leading.

4 THE COURT: Sustained.

5 Q You said that you knew Coco. What does Coco do for a
6 living?

7 A She was a prostitute.

8 Q Did you -- other than the two incidents that you just
9 told us about, did you have any other interaction with Big
10 Mo between what you've described and the time he was killed?

11 A Repeat your question.

12 Q Did you have any other problems with Big Mo between the
13 time you've just described and when he was killed?

14 A Oh no. I didn't have any problems with him at all, not
15 me, to my knowledge. I didn't have no problems with him,
16 but you know, the only reason why Ron went out there to let
17 him know that Coco was calling him and if Coco was there
18 with him to quit calling him and to leave him alone.

19 Q So Ron wasn't trying to start an argument with Big Mo?

20 A Hmmm?

21 Q Was Ron trying ---

22 ASST. SOL. LEGETTE: Objection, Your Honor.

23 THE COURT: Sustained. Rephrase your question.

24 Q Who started the argument between Big Mo and Nayronne?

25 A Well, Big Mo started the argument because he the

1 one flipped off the handle.

2 Q Thank you. I don't have any further questions.

3 THE COURT: Cross-examination.

4 ASST. SOL. LEGETTE: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY ASST. SOL. LEGETTE:

7 Q Mr. Council, good afternoon, sir. You said that
8 Courtney worked as a prostitute?

9 A Yeah, she was.

10 Q How did you know that? Did you ever see her
11 prostitute?

12 A Beg your pardon?

13 Q Did you ever see her prostitute herself?

14 A Well, I known her through Ron.

15 Q But did you, Mr. Council, ever see her prostitute
16 herself?

17 A Yes, I did.

18 Q You did?

19 A Yes.

20 Q Did she prostitute herself with you?

21 A Beg your pardon?

22 Q Did she prostitute herself with you? Did you pay her
23 to have sex with you?

24 A No, ma'am.

25 Q Okay. Now, Mr. Council, do you recall talking to Mr.

1 Eltzroth?

2 A I recall talking.

3 Q Yes, sir. And do you recall when you talked to him
4 that you said that Big Mo put the gun in his waistband but
5 he didn't point it at anybody?

6 A Well, I didn't see him point it at nobody, but he did
7 have the gun in his hand.

8 Q And do you recall telling Detective Eltzroth that he
9 just had it in his waistband?

10 A That's right.

11 Q Is that what you said?

12 A That's right.

13 Q Now, you didn't have any problems with Big Mo you said?

14 A Who me?

15 Q Yes, sir. You didn't have any problems with him?

16 A No, I didn't have no problems with him.

17 Q Okay. Now, Mr. Council, when you talked to Detective
18 Eltzroth, you never told him anything about Big Mo coming to
19 your apartment and saying anything about dropping y'all in
20 your tracks if they come knocking on the door about
21 Courtney?

22 A Repeat the question.

23 Q When you talked to Detective Eltzroth, did you tell him
24 about the part where Big Mo came over to your apartment and
25 said he would drop anybody who came looking for Coco again?

1 A Well, you talking about at Southern Inn?

2 Q Yes, sir. Did you ever tell Detective Eltzroth that?

3 A (NO RESPONSE.)

4 Q Did you ever tell the detective when you talked to him

5 about Big Mo coming to your hotel room door about what Big

6 Mo said?

7 A Oh, what did he say?

8 Q No, sir. When you talked to the detective, remember?

9 A Uh-huh (affirmative).

10 Q Detective Eltzroth, did you tell him then what you just

11 told the attorney today about Big Mo coming over about

12 dropping anyone who came looking for Courtney?

13 A I'm pretty sure I did.

14 Q Okay. But you never actually saw Courtney? She never

15 prostituted herself with you? You never paid Courtney to

16 have sex with her?

17 A Well, I didn't understand the question.

18 Q Okay. I want to make sure you understand. You never

19 actually paid Courtney to have sex with you?

20 A With me?

21 Q Yes, sir.

22 A No.

23 Q Okay. Thank you, Mr. Council.

24 THE COURT: Redirect?

25 MR. WALKER: None, Your Honor. We ask that this

1 witness be excused.

2 THE COURT: Any objection, Solicitor?

3 ASST. SOL. LEGETTE: None, Your Honor.

4 THE COURT: Mr. Council, you may step down from the
5 witness stand. You're excused from the trial of this case.
6 You may leave the courtroom. Call your next witness.

7 MR. WALKER: Thank you, Your Honor. The defense calls
8 Charles Horton.

9 (Whereupon, the witness, Charles Horton, enters the
10 courtroom and is duly sworn by the Clerk of Court.)

11 THE COURT: Watch your step right there. Pull your
12 chair up.

13 MR. HORTON: Charles Horton, H-O-R-T-O-N.

14 THE COURT: Your witness, counsel. Direct examination.

15 DIRECT EXAMINATION

16 BY MR. WALKER:

17 Q Where do you live, Mr. Horton?

18 A Walterboro, South Carolina.

19 Q Where are you employed?

20 A Colleton County Public Defender's Office. Fourteenth
21 Circuit Public Defender.

22 Q Did you go out to the crime scene in this case?

23 A I did on June the 19th of this year, 2015.

24 Q All right. At whose direction did you do so?

25 A Your direction, sir.

1 Q What did you do while you were there?

2 A Took measurements from a photograph that was provided
3 from the Solicitor's Office to us.

4 Q Did you talk to anyone while you were there?

5 A I talked to a Barbara Mays who lives at Bright's Court.
6 She was in a wheel chair.

7 Q Did she observe the incident in question?

8 A She did.

9 Q Did she indicate to you where she believed both the
10 deceased and Mr. Brown were standing when the shooting
11 occurred?

12 A She did.

13 Q Did you take measurements from that?

14 A I did.

15 Q And what was the measurements you took?

16 A Based upon her observation or mine?

17 Q Based upon both. Tell me how you took that
18 measurement.

19 A I used a paralegal that works at our office, Wanda
20 Caldwell. Normally when I have to go out by myself, I
21 normally take somebody with me for safety reasons. I used
22 her as a point of reference for Ms. Mays. And the
23 measurement she walked off that I measured was 10 feet from
24 Taquan Brown where he should have been standing and the
25 victim, Big Mo, Mourice Kemp.

1 Q Thank you. I don't have any further questions.

2 THE COURT: Cross-examination?

3 CROSS-EXAMINATION

4 BY ASST. SOL. LEGETTE:

5 Q Good afternoon, Mr. Horton.

6 A Hey.

7 Q Mr. Horton, you didn't go to the crime scene the night
8 that this happened on November 20th, 2013?

9 A No, I did not.

10 Q And you didn't take Taquan Brown with you when you went
11 out to do these measurements, did you?

12 A No.

13 Q Thank you. I have no further questions.

14 THE COURT: Redirect?

15 MR. WALKER: Nothing further. We ask that this witness
16 be excused.

17 THE COURT: Any objection, Solicitor?

18 ASST. SOL. LEGETTE: No, Your Honor.

19 THE COURT: Lightning, you may step down and you are
20 excused from the trial of this case. Call your next
21 witness.

22 MR. WALKER: Your Honor, at this time, the defense
23 rests.

24 THE COURT: Counsel approach.

25 (Whereupon, a bench conference is held off the record

1 and out of the hearing of the jury.)

2 THE COURT: Is there any reply testimony from the State
3 of South Carolina?

4 ASST. SOL. LEGETTE: Yes, Your Honor. The State would
5 call Nyle Eltzroth.

6 THE COURT: Mr. Eltzroth, you are still under oath,
7 having previously been sworn as a witness in the trial of
8 this case. Please take the witness stand. I remind you
9 that you're still under oath and I remind you, Solicitor,
10 this has to be in reply to the defense's case.

11 ASST. SOL. LEGETTE: Thank you, Your Honor.

12 REPLY EXAMINATION

13 BY ASST. SOL. LEGETTE:

14 Q Detective Eltzroth, you were present at the reading of
15 Lawrenzer Walker's allocution?

16 A Yes, ma'am.

17 Q Agent Eltzroth, you mentioned earlier that you had
18 talked to and interviewed Lawrenzer Walker?

19 A Yes, ma'am.

20 Q Was his allocution that was read into the record today,
21 was it different than when you had previously talked to him?

22 A In many points of his the new one, a lot of it was
23 different from what he had previously told me.

24 Q And you had previously mirandized him prior to talking
25 to him?

1 A Yes, ma'am, on each occasion.

2 Q Okay. How many occasions did you talk to Lawrenzer
3 Walker?

4 A Not counting the one where I did not Mirandize him at
5 the scene, because at that point, there were witnesses. I
6 did Mirandize him at the Annex when he came from the scene.
7 I also Mirandized him again on the night of his arrest,
8 which if I recall correctly, was November 21st, and then
9 again a third time after allegations were made that he had
10 taken a firearm off of the victim.

11 Q So Mr. Eltzroth, tell us in what way, detail for us the
12 differences between the statements he made originally ---

13 THE COURT: Just a moment. Yes, sir?

14 MR. WALKER: I have an objection, Your Honor.

15 THE COURT: Counsel approach.

16 (Whereupon, a bench conference is held off the record
17 and out of the hearing of the jury.)

18 THE COURT: Objection overruled.

19 Q Mr. Eltzroth, tell us the differences between when you
20 talked to Mr. Walker originally, the second time, the third
21 time, and the allocution.

22 A The second time as in the first Mirandized interview?

23 Q Yes, sir.

24 A On the first Mirandized interview, which was November
25 21st, not too long after the incident, after being

1 Mirandized, Mr. Walker stated that he was awoken by three or
2 four shots. When he looked out the window, he saw tail
3 lights leaving Bright's Court going towards Poor Farm
4 towards making a left towards Cook's Hill. In that
5 interview, I asked him specifically who all was there at the
6 incident location. He stated himself, Mr. Taquan Brown, the
7 defendant, and Mr. Nayronne Holmes and Ms. Barbara Mays next
8 door at their residence at ■ Bright's Court. I indicated
9 to him throughout the investigation if he would be
10 indicating anything else, and he stated no.

11 As far as the second interview, which he was
12 apprehended for the obstruction of justice charge, which was
13 the night of November 21st. He was again Mirandized at the
14 Colleton County Sheriff's Office. At that time, he stated
15 the leading up that Courtney Boulware came over there and he
16 intended to have sex with her. Her belongings were in
17 Taquan Brown's residence. He stated that eventually she
18 went over to Nayronne Holmes's residence next door and he
19 fell asleep on the couch. He was then awoken by a loud
20 banging on the door, at which time he opened it and saw that
21 it was Mourice Kemp. He stated Mourice Kemp came inside the
22 residence, started asking for Courtney. He never indicated
23 any threats were made. He was just asking where Courtney
24 was.

25 They indicated to him it was next door. He went out

1 the back door at which time he heard him banging on the
2 window next door asking for Coco. Then, he came back to the
3 back door of the residence and asked to come in to go
4 through the front to get Coco and leave. He was told, "No,
5 they closed the door and locked the back door." He then
6 indicated to me that he could see Mourice Kemp walking to
7 his car along with Courtney, or Coco, and going to leave.

8 At that time, he was about to close the front door when
9 Taquan Brown came with the revolver that he threw in his
10 hand and walked outside. He stated he then followed Taquan
11 Brown to see what was going on and at that time is when
12 Mourice Kemp and him had a confrontation and Mourice came
13 towards him and Taquan shot him. He stated at that time
14 because of his past, he panicked, he grabbed the firearm and
15 threw it across the road at Poor Farm into the, I guess you
16 would call it a field type area. He indicated he was
17 willing to ride with me to go point out the area where he
18 threw the firearm.

19 The third time, I can't remember a specific date. I
20 want to say it might have been November 25th. It was after
21 I interviewed Taquan Brown on November 24th. He was again
22 Mirandized and confirmed the fact that allegations were made
23 that he took a firearm off of the victim, Mourice Kemp. He
24 informed me he never touched the victim. I could test the
25 victim for his DNA fingerprints and they would not be on

1 him. He only panicked and threw the firearm.

2 Q Did he ever mention anyone else being present?

3 A No, ma'am. I asked him, of course, on the second
4 interview if anybody else was present, and he stated the
5 only thing he changed of who else was present was Courtney,
6 Coco.

7 Q Did you also actually interview Coco?

8 A Yes, ma'am, I did.

9 Q And what race is Coco?

10 THE COURT: Just a moment. Do you have an objection?

11 MR. WALKER: Well, not at this time, Your Honor.

12 THE COURT: Okay. I thought you were trying to stand
13 up.

14 MR. WALKER: I was. I got confused. And I would
15 object.

16 THE COURT: Counsel approach.

17 (Whereupon, a bench conference is held off the record
18 and out of the hearing of the jury.)

19 Q Tell us again about what Mr. Walker said regarding who
20 was present?

21 A He informed me that, like I said it was initially
22 himself, Lawrenzer Walker, Taquan Brown, and Courtney
23 Boulware, also known as Coco, at Taquan Brown's residence.
24 However, she left when Nayronne Holmes, also known as E. B.
25 or Ron got home and she ended up going over to Nayronne's,

1 or Barbara Mays' residence and stayed there.

2 Q And did he describe for you the demeanor of Big Mo in
3 this interview?

4 A He never indicated any threats or threat to kill him,
5 harm him, or anybody. He just said he was looking for
6 Courtney Boulware or Coco.

7 Q And tell us again about what he said was happening when
8 Courtney Boulware and Big Mo were headed to the car.

9 A He stated he was in the room closest to the front
10 doors. We as law enforcement officers call it the common
11 area. Just the common area of the house where any guest or
12 anybody would be sitting, most people, like a TV room, which
13 is where he fell asleep on the couch at. He stated he was
14 sitting there. He could see through the window and door
15 that Big Mo and Courtney Boulware were going to the vehicle.
16 He said that he was about to get up and close the door and
17 turn the light off. At that time, he said that Taquan Brown
18 passed by him with the revolver that he threw in his hand,
19 and exited the residence to the front porch towards where
20 the car was and that he followed behind him to see what was
21 going on.

22 Q Did he say anything about them going over to the side
23 towards the left, towards Poor Farm Road?

24 A Him and Taquan Brown? No, the only time he went
25 towards Poor Farm Road, whereas he stated that Courtney

1 Boulware ran that way and that when he grabbed the gun, he
2 ran that way and threw it across the fence, across from Poor
3 Farm Road.

4 Q And did he indicate how soon after this shooting
5 happened that he had that gun?

6 A He didn't give an exact estimated time, but he said
7 that it was within a few seconds to minutes, because he
8 panicked because of his past.

9 Q And is Courtney Boulware a white woman?

10 A Yes, ma'am. She's a fair skinned white woman.

11 Q Thank you. I have nothing further.

12 THE COURT: Cross-examination.

13 MR. WALKER: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. WALKER:

16 Q All of these discussions you had with Lawrenzer Walker
17 were in November 2013, correct?

18 A Yes, sir.

19 Q And was he -- the ones you've just been referencing,
20 was he in custody during those?

21 A Not the initial one, the morning of the incident. The
22 one, I believe it was on November 21st, the night of, he was
23 in custody for obstruction of justice.

24 Q Same obstruction of justice charge he pled to in
25 January of this year?

1 A Yes, sir.

2 Q And did you threaten him while you were taking those
3 statements?

4 A No, sir, absolutely not.

5 Q Did you promise him anything while you were taking
6 those statements?

7 A No, sir.

8 Q So you didn't promise to give him a time served prison
9 sentence for truthful testimony?

10 A No, sir, I do not have authority to do that.

11 Q The Solicitor's Office does that?

12 A Yes, sir.

13 Q No further questions.

14 THE COURT: Redirect?

15 ASST. SOL. LEGETTE: Briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY ASST. SOL. LEGETTE:

18 Q Agent Eltzroth, why isn't Lawrenzer Walker here?

19 A He is currently incarcerated on, I'm not sure of the
20 exact location in Maryland, but in Maryland.

21 Q Okay. Thank you. Nothing further.

22 THE COURT: Recross, limited to redirect.

23 MR. WALKER: None, Your Honor.

24 THE COURT: You may step down, Mr. Eltzroth. Any
25 further reply evidence from the State of South Carolina?

1 ASST. SOL. LEGETTE: May we approach, Your Honor?

2 THE COURT: Counsel approach.

3 (Whereupon, a bench conference is held off the record
4 and out of the hearing of the jury.)

5 THE COURT: Mr. Eltzroth, you're still under oath. I
6 understand the State has an additional matter in reply to
7 you; is that right, Solicitor?

8 ASST. SOL. LEGETTE: That's correct, Your Honor.

9 FURTHER REPLY EXAMINATION

10 BY ASST. SOL. LEGETTE:

11 Q Briefly, Detective, with regards to Jermaine Brown who
12 testified earlier that he was parked on Poor Farm Road, is
13 there anything that would obstruct his view?

14 A Yes, ma'am. When I arrived on scene, there was a white
15 Ford Explorer that was parked on, if you're facing the
16 apartment, the right driveway, which is closest to Poor
17 Farm.

18 Q And would there be any trees in the area?

19 A There is a large tree on the front right portion of the
20 apartments. There is also a smaller wood fence.

21 Q And with regard to Mr. Council, you spoke to him as
22 well, didn't you?

23 A Yes, ma'am.

24 Q And was his testimony different than when you talked to
25 him?

1 A Yes, ma'am, it varied.

2 Q Well, can you tell us how it varied?

3 A He never mentioned anything as to Coco's involvement in
4 prostitution. He also stated that they went over there to
5 pick up Coco and that is when Mourice became irate. He
6 stated that he went back in and simply had a gun in his
7 waistband, never pointed it or had it in his hand at any
8 point in time. He also never informed me of any future
9 conversations with Mourice Kemp about dropping people if
10 they knocked on his door.

11 Q Okay. I have nothing further. Thank you, Mr.
12 Eltzroth.

13 THE COURT: Cross-examination?

14 MR. WALKER: None, Your Honor.

15 THE COURT: You may step down. Any additional reply
16 testimony from the State of South Carolina?

17 ASST. SOL. LEGETTE: None, Your Honor.

18 THE COURT: Very well. Mr. Foreman, ladies and
19 gentlemen of the jury, I'm going to let you go today. We
20 will finish this trial in the morning. I'm going to ask you
21 to be in your jury room prior to 10:00. You have not heard
22 the closing arguments of the attorneys, nor received my
23 charge on the law. I want you to start fresh in the
24 morning.

25 I will try to start as close to 10:00 as possible.

1 Please be in your jury room prior to 10:00. Please do
2 not discuss the case with anyone tonight. Thank you very
3 much. You may leave the courtroom at this time.

4 (4:00 p.m., whereupon, the jury exits the courtroom and
5 the following is held on the record.)

6 THE COURT: All right. First of all, I want to put on
7 the record a matter that occurred in chambers, so it's
8 clear. I've had a number of discussions with the lawyers in
9 chambers in this case, and one came up when Mr. Walker,
10 during the middle of the State's case, wanted to inform me
11 that he wanted to put in what is now in evidence as Defense
12 Exhibit Number One. When he did so, I told him I had
13 concerns because there wasn't an opportunity to judge the
14 credibility of a witness from a transcript and I had
15 concerns because the Solicitor could not cross examine, nor
16 could he examine the witness from a transcript. However,
17 the State said they wouldn't object to it, provided they
18 wanted to call Officer Nyle Eltzroth to contradict what they
19 believe Officer Eltzroth was told by Mr. Lawrenzer Walker
20 that was inconsistent with the transcript testimony. An
21 agreement was reached and the State wouldn't object to the
22 introduction of the transcript with the understanding that
23 Mr. Eltzroth would be called in reply to contradict the
24 statement of the allocution.

25 There was also a stipulation that even though the State

1 has rested in this case, Mr. Walker has never seen a
2 finished video that the State wanted to introduce in their
3 case in chief, and neither has this Court. Mr. Walker has
4 seen one, but he hasn't seen two. I've put on the record
5 earlier when the State rested that we were waiting on the J
6 drive to be fixed, and as far as I know, it still isn't
7 fixed, and it's now 4:00 in the afternoon.

8 I will expect you, Solicitor, if you're going to try to
9 introduce this exhibit, which Mr. Walker agreed to let you
10 rest conditional upon that, but he's absolutely entitled to
11 review that exhibit before you attempt to introduce it
12 tomorrow when we conclude this trial. I will expect you to
13 give him the opportunity to do so, otherwise, Solicitor, I
14 am not going to allow you to introduce the exhibit, because
15 we've had enough time. I don't think it's fair to Mr.
16 Walker who has now rested his case. He saw -- and in
17 fairness I want to say this.

18 Mr. Walker just didn't see your version of what you
19 wanted to put up. He saw the entire video before trial and
20 then when you told him what you wanted to show of it, then
21 he had three pages worth of objections that he brought to me
22 this morning for the first time. And I ruled on them in
23 chambers, not on the record, to try to redact it so that
24 none of the defendant's record would be disclosed from the
25 showing of the video. We just never saw a finished product

1 at this point to confirm that if the jury chooses to view
2 the video that it will not reveal information that protects
3 the defendant's right to remain silent. And I wanted there
4 to be a record of what was going on.

5 I'm going to need to see the lawyers. I've prepared a
6 proposed charge and a verdict form. I want to see the
7 lawyers in chambers briefly. This Court stands in recess
8 until 10:00 a.m. tomorrow morning.

9 (Whereupon, the trial in this case is adjourned for the
10 evening of Wednesday, June 24, 2015.)

11 (10:05 a.m., Thursday, June 25, 2015, whereupon, the
12 following is held on the record.)

13 THE COURT: Becky, let the record reflect that I had a
14 charge conference last night and this morning with the
15 attorneys. I've also conferred with them at the bench this
16 morning, and in my chambers, as well as in my chambers last
17 night. The parties have agreed to a verdict form, which
18 I've prepared in this case.

19 I have been over my entire charge with both sides.
20 They are both completely familiar with every paragraph of my
21 charge. I have considered all of their requests and
22 incorporated those that I thought were raised by the
23 evidence into the charge and they are aware of what the
24 Court intends to charge. Mr. Walker has requested that he
25 be given 45 minutes to argue. The Solicitor has requested

1 that she be given 30 to argue, which would put us at an hour
2 and fifteen minutes if you use all of the time. When you
3 get within five minutes of your request, you will hear the
4 familiar tapping to let you know to wrap it up. I don't sit
5 anybody down, but I will tell you my rule. Mr. Walker,
6 you've heard this. I teach a Sunday School class and I've
7 learned, because they read their lesson, and hopefully this
8 jury has listened, they don't listen after 20 minutes. So I
9 hope you will try to be concise, but I will give you all the
10 time you need. I realize this has been a serious case and I
11 realize that it has taken a while, although I'm not sure
12 that the length of closing arguments is the successful
13 ingredient. I think that covers everything. The issue,
14 Becky, of the video, which has been redacted, re-redacted,
15 and then re-redacted with a J drive being broken which held
16 up this Court yesterday has now become a moot issue because
17 the Solicitor has just decided not to put the video into
18 evidence. Therefore, all of the evidence has now been
19 submitted to the jury and when we bring them back, it will
20 be time for closing arguments and then my charge.

21 Have I accurately stated everything that occurred in
22 chambers and at the bench insofar as the State is concerned?

23 ASST. SOL. LEGETTE: Yes, Your Honor.

24 THE COURT: Insofar as counsel for the defendant is
25 concerned?

1 MR. WALKER: Yes, Your Honor.

2 THE COURT: Very good. All right, bring us the jury,
3 please.

4 MR. WALKER: Before the jury comes in, Your Honor, I
5 would just renew my motion for directed verdict for the
6 record.

7 THE COURT: Very well. Let the record reflect that Mr.
8 Walker, now that the Solicitor does not wish to put the
9 video in into evidence, that Mr. Walker is renewing his
10 motion made at the close of the State's case for directed
11 verdict on the same grounds and for the same reasons that I
12 placed on the record at the close of the State's case. The
13 motion for directed verdict is respectfully denied. Mr.
14 Walker presented evidence. Therefore, Mr. Walker will argue
15 first, followed by the closing argument of the State. Mr.
16 Walker will have up to 45 minutes per his request. The
17 State will have up to 30 minutes per their request. I do
18 not allow anyone to walk in or out of the courtroom during
19 closing argument or charge. If you feel that's a problem
20 for you, stand up and walk out now. Otherwise, nobody in or
21 out of the courtroom during closing argument. Do you
22 understand, Coach?

23 COACH: Yes, sir.

24 THE COURT: Marcus, Paul is not in here. You make sure
25 that other door is handled.

1 Is the state ready to proceed?

2 ASST. SOL. LEGETTE: Yes, Your Honor.

3 THE COURT: Is the defendant ready to proceed?

4 MR. WALKER: Yes, sir.

5 THE COURT: Bring us the jury, Coach.

6 (10:15 a.m., whereupon, the jury enters the courtroom
7 and the following is held on the record.)

8 THE COURT: Good morning, Mr. Foreman, ladies and
9 gentlemen of the jury. I hope everybody had a pleasant
10 evening. Anybody have any problems since you were last with
11 me? Anybody trying to talk to you or contact you?

12 (NO RESPONSE.)

13 THE COURT: Let the record reflect no hands were
14 raised. Ladies and gentlemen of the jury, you've heard the
15 evidence in this case. You will now hear the final
16 arguments of the attorneys, followed by my charge to you on
17 the law. I ask that you give the attorneys your careful
18 consideration. Mr. Walker.

19 MR. WALKER: Thank you, Your Honor. May it please the
20 Court?

21 THE COURT: Proceed.

22 CLOSING ARGUMENT

23 BY MR. WALKER:

24 Taquan Brown is charged with murder, possession of a
25 weapon during the commission of a violent crime, and

1 obstruction of justice. Murder and possession of a weapon
2 during the commission of a violent crime are dependent
3 charges, they go together and you should enter a not guilty
4 verdict because Taquan Brown was acting in self-defense.
5 You should find Taquan Brown guilty of obstruction of
6 justice, because it's clear from the testimony that his
7 statements to the police after the shooting were not true
8 and hindered them as they were conducting their
9 investigation.

10 Ms. Legette said when we began this case that truth
11 crushed to the earth shall rise again, quoting the poet
12 William Cullen Bryant. Famous words that are a basis for a
13 hymn text, quoted by Martin Luther King. If you're a person
14 of faith, and you believe that's true on an eternal time
15 scale. Unfortunately, in the courtroom here today, we will
16 never know in every detail what the truth of the events that
17 happened that night are.

18 I can say that because the only people that know that
19 are the people that were there. And every single one of
20 them told lies about that night. They all came in and told
21 you this happened, this happened, this happened, this
22 happened, and in the back of your mind, you would always
23 know they haven't told the truth about it before, and you
24 would never be a hundred percent certain they were telling
25 the truth.

1 Unfortunately, your job is not to send a report to the
2 judge about the truth of the matter that happened on the
3 20th of November, 2013, and these are the true facts that
4 happened. That's not why you're sitting there. The judge
5 doesn't need to read that report. You're here to see if the
6 State has done their job, of proving their accusations
7 against Taquan Brown beyond a reasonable doubt.

8 A jury is the right of a citizen to have his peers sit
9 between him and the power of the State and put the State to
10 the test when they say somebody did something, to label them
11 in this case a murderer, one of the most heinous crimes that
12 we envision as a society.

13 I talked to you a little bit before about criminal
14 charges have building blocks, or what we call elements, and
15 that the State has to prove every element beyond a
16 reasonable doubt. Murder is the most serious of what we
17 call the assault crimes, starting all the way down to what
18 is called assault and battery, third degree, which is what
19 you would think of as a fist fight.

20 Assault and battery, and battery being the unlawful
21 touching of another person. Then, it goes to second degree,
22 which adds an element. It goes to first degree, it adds an
23 element. It goes to high and aggravated nature, it adds an
24 element. Assault with intent to kill, involuntary
25 manslaughter, voluntary manslaughter, murder. So there's a

1 range, and all of those are sub-crimes that are contained
2 within the larger.

3 The judge will also be charging you in that format of
4 what's called voluntary manslaughter. Murder being the
5 unlawful killing of another person with malice aforethought,
6 or what we think of as premeditation. Then, involuntary
7 manslaughter is still an unlawful killing, but without that
8 malice or premeditation, instead, a sudden heat of passion.
9 So the judge will be asking you to decide between those two
10 charges on your verdict form. Self defense applies to both
11 of those charges and is a defense to both of those charges.

12 Possession of a weapon during the commission of a
13 violent crime, as I said, is a dependent crime. You will
14 hear from the evidence and it's clear that he possessed a
15 weapon, so if you find that he was guilty of murder or
16 voluntary manslaughter, then he would automatically be
17 guilty of that.

18 Likewise, if he's not guilty of murder or manslaughter,
19 then he's automatically not guilty of that. So I'm not
20 going to talk a lot about that, because it kind of depends
21 on your larger decision in which I will be speaking about.

22 And of course, I've talked to you about the evidence.
23 It's pretty clear that he hindered the officers in the
24 investigation, obstructing justice. And he admits that and
25 you will find him guilty on your verdict form when he gives

1 it to you.

2 So in addition to proving every element of the crime
3 that they want you to find him guilty of, and they will go
4 through the elements, and they have to prove every one.

5 They also have to disprove every element of self defense.

6 They have to prove he wasn't acting in self defense at the
7 same high standard. When we talk about they must disprove
8 it, it's beyond a reasonable doubt.

9 You heard it a little bit at the beginning of the trial, and
10 you'll hear it throughout the judge's charge.

11 What is a reasonable doubt? You may have sat on a jury
12 before and served in a case in a civil trial where the
13 standard was the preponderance of the evidence, or one side
14 has a little more evidence than the other. And that's kind
15 of the weight of the evidence standard and the scales of
16 justice are balanced, and whichever side is a little lower,
17 that's the side that wins in civil court.

18 But beyond a reasonable doubt is a much higher
19 standard. It's the standard that says it's the kind of
20 doubt where you wouldn't have a reasonable -- where a
21 reasonable man wouldn't have any hesitation about their
22 decision. They wouldn't hesitate to act in making
23 important-like decision based on the firmness of their
24 belief. That's the standard the State has to convince you
25 of, not only that Taquan Brown committed the acts they

1 accuse him of, but that he wasn't justified in doing so
2 because he was acting in self defense.

3 We started on a trial and you sit through this long
4 process, they ask you all these questions, where you from?
5 Do you know me? Do you know Ms. Legette? Do you know Mr.
6 Brown? We're wanting to get people who are impartial, who
7 don't have a bias. They don't have a dog in the fight.
8 Then we sit you in a jury box and we swear you in under the
9 oath, and the oath immediately puts them on one side. When
10 you start a trial and now under your oath, you're to
11 consider Taquan innocent until proven guilty beyond a
12 reasonable doubt. So if you have a question about any of it
13 or some facts are open to multiple interpretations, your
14 default position is the interpretation that would support
15 Taquan's defense.

16 The State is trying to build a bridge for you. There's
17 a large chasm. You're on one side. You're in the position
18 now that Taquan is innocent. And they have sought through
19 the introduction of evidence and every piece of evidence and
20 every fact that comes out, they have tried to build a bridge
21 for you that he can walk across this chasm and get to the
22 side they want you on, which is guilty, but you have to look
23 and see if they've built a solid bridge and that your
24 footing is firm.

25 As you deliberate, watch out for not guilty words.

1 What do I mean by that? You might hear words from the
2 solicitor when she is speaking to you. You might hear words
3 in your jury room from your other jurors. You might, in
4 your own mind, be thinking to yourself about the facts and
5 you might think of words like maybe this happened, or this
6 probably happened, or this could have happened, or that
7 might have happened. And those are not words that support a
8 guilty verdict. If you cannot determine what did happen,
9 then you can't use that information to base a conviction on,
10 and if you're not sure, then very obviously the definition
11 of reasonable doubt.

12 I spoke to you earlier when I had the chance to speak
13 to you on Tuesday that all one very large series of events.
14 In my opinion, you should focus really on it as two separate
15 time periods. With the testimony you've heard, you can look
16 at and try and deduce and ascertain what happened that led
17 up to the shooting of Mourice Kemp; and that was a tragic
18 event. Nobody went looking for Mourice Kemp that night.
19 It's never a good thing when anyone passes. And when we're
20 arguing to you that in contradiction to what the solicitor
21 argues is an unlawful killing, that this is in fact a lawful
22 killing because of the law of self defense. The fact that
23 it is a lawful killing does not make it any good killing.
24 But you can look up to the facts that led up to that
25 shooting in determining how to enter your verdict on murder

1 or manslaughter.

2 But what happened after that shooting really shouldn't
3 have any bearing on the decision that you make, because it
4 doesn't tell you anything about those events. Of course, a
5 lot of people acted improperly after this shooting happened,
6 and did not handle it well, and did not handle it,
7 certainly, as probably you and I would. But because they
8 made those errors after the shooting does not invalidate the
9 decision process that made that shooting necessary.

10 The State is going to argue to you, or is arguing to
11 you really through this whole trial that they want you to
12 tell yourself this is all Taquan Brown's fault. If he had
13 only stayed inside, locked the door, called the police, all
14 of this could have been avoided; maybe that's true. But the
15 law doesn't say he has to run away and cower behind closed
16 doors. He is at his house in his yard. Failure to do that
17 probably the best thing would have been to try and put as
18 much distance between himself and someone that he knew to be
19 dangerous, but because he didn't do the best thing doesn't
20 mean that what he did is a crime.

21 It's also important to keep in mind that when people
22 say, "Well, if he would have just stayed inside, none of
23 this would have happened." But everybody else was outside.
24 Everybody was out there on that lawn. It's not like
25 everybody else is inside and he said to anyone, "I'm going

1 to go out there and get Mourice Kemp." There were a number
2 of people out there on that lawn with him.

3 We talked about self defense. I'm going to speak about
4 kind of what the elements of that are in more general terms,
5 the judge will give you certainly a very specific charging.
6 Any difference you will notice between what he says and I
7 say, absolutely pay attention and follow what the judge
8 says. I'm going to try to paraphrase some.

9 Of course, the first element the State would have to
10 prove beyond a reasonable doubt, disprove beyond a
11 reasonable doubt is that Taquan Brown was without fault in
12 bringing on the incident. That's the first element of self
13 defense and that's the first thing they would have to
14 disprove. We would maintain that it wasn't Taquan's fault.

15 To summarize that, generally a person can't start a
16 fight, get on the bad end of it, and then all of a sudden go
17 "Oh, I had to defend myself" when they hurt or kill
18 somebody. That wouldn't be right.

19 The next element is the person has to be or believe
20 they are in imminent danger. And in this case, I would
21 submit to you that the evidence shows he was in imminent
22 danger from Mourice Kemp, and certainly was justified in
23 believing so.

24 The next element is that he has to respond as a
25 reasonable person would respond to a threat. And a

1 ridiculous example is we talked about assault and unlawful
2 touching and self defense is a defense at any level of an
3 assault crime. If you start a fist fight with me and I get
4 back in a fist fight with you, I can defend myself if you
5 started it. But if you're someone is chasing you with a
6 feather and you know that is the most horrible thing in the
7 world to you and you shot them, that wouldn't be reasonable.

8 A reasonable person of normal firmness and courage
9 would not react in such a way. So you have to decide
10 whether the force used was reasonable under the
11 circumstances.

12 There's another element of self defense as to the
13 ability of the person claiming it being able to avoid the
14 difficulty, but that doesn't apply if they're at their own
15 home or in their own property, and of course, Taquan was.
16 He had no duty to retreat or go away because that's where he
17 lived. It was his yard, his house. He has every right to
18 be there, anywhere.

19 And the evidence, I believe, shows that Taquan, under
20 the circumstances, meets all of those. And if you have a
21 question about it, I don't believe they will be able to
22 prove beyond a reasonable doubt that he did. There's no
23 evidence to the contrary, so the State has spent a lot of
24 time introducing evidence so it will look like they've
25 proved their case, when in fact, they haven't. They've

1 attempted to make up for lack of quality through volume or
2 quantity. They're going to direct you to items that have
3 been testified to that don't really speak to the issues or
4 the elements that I've just discussed. Ms. Legette, for
5 instance, might talk about Coco being white instead of
6 light-skinned, like Jermaine Brown said. But what does that
7 prove? I guess she would argue that he wasn't there and
8 doesn't know, but of course, we all see that he doesn't see
9 that well. So just a distraction from what Mourice Kemp and
10 Taquan Brown were doing.

11 You heard evidence about a footprint. Went into great
12 detail about that. There's four pictures of a footprint,
13 which they matched to Mourice Kemp. But no one is saying
14 that Mourice Kemp wasn't standing by his car. In fact,
15 everyone said that he was at his car and then ran at Taquan
16 in Taquan's yard. But it's something we can put in and show
17 you we are proving our case. Well, it doesn't prove it.

18 You might say oh, how many shots were fired? He was
19 really trying to show that depraved state of mind, that
20 premeditation, that malice by just unloading the revolver.
21 Well, if we get in a fist fight and I'm defending myself, I
22 don't have to punch you once and stop and see if that's
23 enough and then do another one. You use the force you've
24 got to use until the threat is done. And that's what Taquan
25 did. And it's a good thing he fired as many times as he

1 did, because he only hit him twice.

2 We had to have a whole bunch of testimony that oh,
3 these are the bullets that came from the gun. Of course
4 those are the bullets that came from the gun. Taquan shot
5 him. It's not an argument, but you know, they get to put an
6 expert up and look how good our case is. But it doesn't
7 prove anything about the elements of self defense or the
8 elements of murder.

9 We heard a lot of testimony about gunshot residue and
10 how Taquan had gunshot residue and Lawrenzer Walker had
11 gunshot residue and the victim, Mourice Kemp, had gunshot
12 residue. Okay, Taquan Brown shot him, we'd expect that.
13 Lawrenzer Walker threw the gun away; we'd expect that.
14 Mourice Kemp was around the gun that was discharged, and
15 owned his own gun. So we would probably expect him to have
16 some. No bearing on the issues we're deciding. They might
17 say, oh, he was close together, well, only within two or
18 three feet before he was shot. Well, we're not trying to be
19 callous, but I guess it's fortunate for Taquan that he got
20 that last shot off. If Mr. Kemp was that close and coming
21 at him, Mr. Kemp is 350 pounds, six feet tall, drunk, high
22 on cocaine, and manic. He's just supposed to stand there
23 and don't hurt me?

24 They say, "Oh, he wasn't really raising cane out
25 there." Ms. Mays says that he was nice to her, talking

1 about Mourice Kemp, Big Mo. I mean you could be a not very
2 nice guy, and still not yell at a little old lady in a
3 wheelchair. It doesn't mean you weren't yelling and
4 hollering and threatening and raising a storm next door to
5 guys your age. It doesn't prove anything. It's just a
6 distraction.

7 Like I say, "Oh, the bullet path wasn't straight on.
8 It was slightly right." What does that prove? You know, he
9 shot him. There's no inconsistent testimony that he was
10 charging toward Taquan and Taquan shot him. Try and
11 downplay everything that everyone agrees on. They put Sgt.
12 Edwards up, "Oh, Big Mo, he's big and fat and slow and he's
13 a nice guy. He just kind of waddles around." Sgt. Edwards
14 wasn't there that night; well, he was after the fact, but he
15 didn't see a living, mad, high, drunk, angry Big Mo running
16 towards Taquan Brown.

17 We heard lots and lots of talk from Agent Eltzroth
18 about these conflicting statements. And of course, that
19 proves the case against obstruction of justice; that's part
20 of that. And you know, it's a valid use, but what you need
21 to watch out for is the State discussing the case about
22 referencing things in people's statements and wanting you to
23 use evidence in two different ways. They want to have it
24 out of both sides.

25 For instance, like I said, Jermaine Brown, you know

1 their contention is that he wasn't there or he was too far
2 away to see anything, because he was in his car on Poor
3 Farm, and there was a truck, and he doesn't wear his glasses
4 and he squints, so how could he see anything and how can you
5 believe him when he says he saw the big guy charging toward
6 the people on the lawn.

7 But then they want him to have perfect eyesight and be
8 able to tell you that Coco, who he doesn't know, is white
9 instead of light skinned. They want you, you know, to
10 believe them when it's good for them or not believe them
11 when it's bad or they will say, well, so-and-so said in
12 their statement that this happened, but we all know that
13 everybody is lying in their statements, so why would you
14 necessarily believe anything, which is a good question.

15 So let's talk about a little bit about those
16 statements. One level of this is that Taquan lied about
17 this case and that's a reason that you should find him
18 guilty of murder. Right? But if lying about this case is
19 proof of murder, then everybody that was at Bright's Court
20 that night should be sitting over at the defense table.

21 Lying is absolutely the wrong way to handle this. Ms.
22 Mays said this is Walterboro. Nobody wanted to have
23 involvement with the police. You know, they didn't have a
24 good relationship with the police obviously. Nobody wanted
25 to be involved. And then it was kicking and screaming all

1 the way to get what really happened. And we you're looking
2 at statements, I think when you can look at what everybody
3 said, there's two general rules you can apply to their
4 statement when you're trying to decide what might be true
5 and what might be false. One, the idea that everyone is
6 trying to minimize their involvement. And two, they're
7 trying to place -- well, that's probably the same rule,
8 minimize their involvement and put themselves in the best
9 light. Then, to some extent not get anyone else involved or
10 in trouble that isn't already.

11 But then when confronted with inconsistencies, that's
12 when the pieces come out that needs to come out. So how can
13 you evaluate that when one person's statement differs from
14 this and one person's is -- Nayronne Holmes came in, I
15 believe he said he saw Taquan with the gun when he went
16 over. But then Lawrenzer Walker's testimony that he swore
17 to in a guilty plea said Nayronne brought it over, and then
18 at one point, Taquan said that Lawrenzer had the gun that
19 night. So they're all -- but at the end of the day, who
20 cares? We all know that Taquan Brown had the gun out on the
21 lawn when he was being charged by Mourice Kemp. It doesn't
22 matter who had it to start with. Each person can be giving
23 that statement to say well, I don't want to claim the gun,
24 because they're wanting to make themselves, distance
25 themselves somewhat from it. We don't know who had the gun.

1 So how do you evaluate all of these different statements
2 where there are inconsistencies and what can you glean from
3 that because they're not as valuable as they necessarily
4 could be to you.

5 So you can look at how do you evaluate statements from
6 people who haven't told the truth and how do you give those
7 statements credibility? Well, the first thing you can do is
8 look at all the statements and say, well, what did none of
9 them say? None of them say that Taquan Brown started the
10 argument with Big Mo. None of them say that Taquan Brown
11 threatened Big Mo. None of them say that Taquan Brown ever
12 left his yard. On the flip side of that, you can look at
13 all of those statements and go, well, what do they all say?
14 What is consistent from everybody who is looking out for
15 their own interest and trying to put themselves in the best
16 light and trying to stay as disinvolved as possible?

17 What is consistent in all of those statements? If
18 everybody is saying that, then there's a good chance that
19 that probably happened. They all say that Big Mo showed up
20 at Taquan Brown's unexpectedly and uninvited. After the
21 events at Taquan's house, that he found Coco, or Courtney,
22 got her out to the car, that he would -- everybody says that
23 Big Mo was out at the street or the dirt area by his car.
24 And what does every statement say? That Big Mo left his
25 car, advanced into Taquan Brown's yard, and toward Taquan

1 Brown in a threatening manner. So those are two ways you
2 can look and evaluate some of those statements to see that
3 you have some confidence that certain facts may or may not
4 be true.

5 Then, of course, you can look at individualized
6 statements and what you saw, demeanor, or if you know about
7 the conditions and the circumstances that statement was
8 given and try to evaluate its credibility in that manner to
9 give one person more or less weight than another.

10 I will tell you one person I think you can do that with
11 in gauging credibility and maybe have a little bit of an
12 idea or have a little bit of confidence that it's fairly
13 accurate was the testimony of Lawrenzer Walker before the
14 Court. Well, why is that testimony more credible than some
15 of the others?

16 Well, you heard the other statements that they say
17 disagree with this were given right after the incident to
18 Detective Eltzroth when Lawrenzer was still trying to get
19 out of things and help himself out. But Eltzroth said,
20 well, he really didn't have the power to help him out. But
21 then in January of this year, and like Taquan, Lawrenzer was
22 charged with obstruction of justice for lies and things in
23 this case.

24 The State said, "Lawrenzer, we want you to tell us the
25 truth. We believe what you're saying. We're going to give

1 you a plea deal if you tell us the truth. If you tell the
2 truth, we're going to recommend a time served jail sentence
3 for you and that will be it. If you come to this trial of
4 Taquan Brown and tell the truth." That's the deal he was
5 offered and he took it. He came before the Court and he was
6 sworn in to tell the truth and Ms. Legette asked him what
7 happened. It's unfortunate for the State's position what
8 happens is what they're asserting happened.

9 In the transcript on page 11, Lawrenzer tells the Court
10 and Ms. Legette that Taquan told him, referring to Big Mo,
11 to get off his property and Big Mo said that what he was
12 going to do was kill him and then he just started charging
13 him. "And that's when Taquan, you know, pulled the trigger
14 and shot him until he fell."

15 It's pretty clear. He's got to reason to tell the
16 truth. He's got a liberty interest in telling the truth,
17 staying out of jail. Not only that, January 2015, he's
18 giving this statement, another reason you could speculative
19 make it more credible, in January of 2015, he knows Taquan
20 threw him under the bus back in January of 2015 when Taquan
21 was talking to Mr. Eltzroth. Remember Mr. Eltzroth said
22 Taquan went from denying anything to basically saying what
23 was happening and blaming Lawrenzer Walker. Then, he
24 finally got him to say yeah, it happened, but it was really
25 me. In January, he knew that, but he still came out and

1 said he threatened to kill Taquan, charged him, and that's
2 when he shot him. He didn't have any reason to be doing
3 Taquan any favors after that.

4 There some testimony -- well, you've got direct
5 testimony that Mourice threatened to kill Taquan and charged
6 him. You've got testimony that there was ya-ya or back and
7 forth, and I'm sure that leading up to a shooting, there
8 probably was. But there is no testimony that Taquan Brown
9 started that ya-ya or argument. And from what we know about
10 Mourice Kemp, I submit that it's much more likely that he
11 started the back and forth and ya-ya and it continued to
12 escalate.

13 We might say well, even if Mourice started it, Taquan
14 should have gone out in his yard with a gun. But think
15 about it, it's his yard. He's got a right to be in it. So
16 if it doesn't matter that once he's there that Mourice is
17 the one starting the argument, well then, it must be their
18 theory that standing in your yard where you have a right to
19 be with a gun is in and of itself a provocation. I don't
20 think that's true.

21 He has every right to be outside of his house.
22 Everybody else is outside. Mourice Kemp is out there making
23 a big hullabaloo and everybody is watching. And then
24 Mourice flips out and starts to attacks Taquan.

25 Let's talk about Mourice Kemp for a minute. He is

1 called Big Mo for a reason. He's six feet tall, 350 pounds.
2 See Taquan over there. He's bigger than Taquan. The
3 State's version of events, what they want you to believe is
4 true is they want you believe he wasn't stopped until he was
5 within two to three feet of Taquan. Although, Ms. Barbara
6 said, if you remember her testimony was actually more about
7 ten feet. In talking about those feet, what else did Sgt.
8 Edwards tell you? He trains police officers and if someone
9 is considered a threat don't let them get within 30 feet,
10 because they can cover the distance like that (thumb snap.)
11 If someone is within 30 feet of you, you are justified in
12 drawing your weapon and applying deadly force, because
13 that's how fast it happens.

14 If the 30-foot rule is good for the police, shouldn't
15 it be good for Taquan Brown? Not only is he bigger than
16 Taquan, he's a big guy. He's high on cocaine and he's very
17 drunk, .137 blood alcohol level. A 350 pound guy doesn't
18 get a .137 blood alcohol from drinking a couple beers after
19 dinner. He's been hitting it hard for a while and then he
20 showed up at 5:30 in the morning at Bright's Court. Is it
21 reasonable for Taquan Brown to fear -- well, let me back up
22 there. Was Mourice Kemp a dangerous person? Yes, he was.
23 You heard testimony from Nayronne Holmes, from Larry
24 Council, that a little over a week before he was killed,
25 Mourice Kemp was at the Southern Inn, they went over there,

1 not to start a fight, not to do anything, but he flipped
2 out. Told them to take off, got a gun, brandished it to
3 them. Made sure they saw it and said, "You better get out
4 of here. I will kill you." So they left. He's a dangerous
5 guy. He's so dangerous that the Colleton County Sheriff's
6 Department has a warning for their officers in the computer
7 when you put in his name, "Caution - violent behavior."
8 He's gonna fight anybody he sees, including the cops.

9 Does he have a right to believe he's in danger?
10 Absolutely. He saw Big Mo with that gun at the Southern Inn.
11 He knows how dangerous he is and he knows he's bigger than
12 him, and he's coming like a bull in a china shop.
13 Absolutely reasonable.

14 Of course, when someone threatens to kill you and
15 starts charging, a reasonable response to that is to protect
16 yourself with a weapon. That's why we have the second
17 amendment to defend ourselves and preserve our right to self
18 defense and that's what he did.

19 The State wants you to say, no, Taquan is angry.
20 There's no evidence to that. No one has testified to that.
21 He went out there to get -- he went out of that house with
22 pre-meditation. He was gonna maliciously go and get Mourice
23 Kemp. If you decide to go out in your yard in clear some
24 brush or something and clean up, you might grab a big stick.
25 You might slip a pistol in your pocket, because you might

1 run into a snake out there and snakes are dangerous. The
2 fact that you put a pistol in your pocket doesn't mean you
3 went snake hunting; it just means you're ready in case
4 something bad happens. You're being prudent in preparing
5 for potential, but unsought danger.

6 The State will say this is all Taquan Brown's fault.
7 If he had just stayed in the house. But he doesn't have to
8 stay in the house. It's his house. It's his yard. And
9 that's probably true, but not necessarily true. Taquan knew
10 he had a gun in the past. Forbid he goes out to the car and
11 gets his gun out of the car, comes back and starts busting
12 through Taquan's door again. Maybe he better keep an eye on
13 the situation as it develops. Who knows? But there's no
14 testimony at all to that. No testimony at all other than
15 the aggressor was Mourice Kemp.

16 But probably yes, if he had just stayed inside, Mourice
17 Kemp probably would have gotten in the car at some point and
18 finally gone off with Coco, who confirms for us that he's a
19 dangerous dude by the way. What did Ms. Mays say when he
20 finally left from raising a ruckus over at Taquan's house,
21 he got to Barbara's house, she went in and found Coco curled
22 up, shaking, scared of Mourice Kemp. He got her to go with
23 him and they were gone.
24 I'm sure everyone wishes that's what happened, but that's
25 not what happened.

1 The State wants you to think well, what if Taquan had
2 stayed in the house. That's a valid question, but I don't
3 really think that ultimately it has much impact on the issue
4 of whether he's acting in self defense. There's some other
5 "what-ifs" you can ask. What if Big Mo hadn't been drinking
6 all night? Ms. Fulks says he would come over there drinking
7 and smoking marijuana. Chapman said he had seen a video of
8 him buying alcohol at the gas station earlier that night,
9 where he was gonna go take care of some girl problems or
10 girl -- I don't remember the word. What if Big Mo hadn't
11 been using cocaine and smoking marijuana? What did Dr.
12 Presnell say? Cocaine, he was high on cocaine and it
13 increases risk-taking behavior, leads to aggression.

14 What if Big Mo had come over at a reasonable time of
15 day instead of busting on the door at 4:30 in the morning?
16 What if he said I'm not going to get Coco at 4:30 in the
17 morning? I'm gonna go at 8, 9:00 when people expect people
18 to be knocking on their doors. What if he hadn't barged in
19 like a crazy person making threats, cursing? What if Big Mo
20 hadn't threatened Nayronne Holmes and Larry Council and
21 Taquan Brown at the Southern Inn a week before? Letting
22 them know he had a gun and was willing to use it. Giving
23 them ample reasons to be fearful. What if Big Mo hadn't
24 threatened Taquan Brown that night? What if Big Mo had just
25 stayed in his car? What if they just ya-ya'd some more?

1 What if Big Mo had just gotten into his car and left,
2 because he didn't live there. He had what he came for. But
3 he had to keep going. He had to threaten to kill Taquan
4 Brown and he had to threaten and then charge towards him in
5 an effort to carry out that threat. The State wants you to
6 call Taquan Brown a murderer. I don't see it. I trust
7 y'all will mark your jury verdict form not guilty. Thank
8 you.

9 THE COURT: Solicitor.

10 ASST. SOL. LEGETTE: Thank you, Your Honor.

11 THE COURT: Mr. Walker, you may come around so you can
12 see the easel as well as the board during her argument, if
13 you so desire.

14 MR. WALKER: Thank you, Your Honor.

15 CLOSING ARGUMENT

16 BY ASST. SOL. LEGETTE:

17 Good morning. *Truth crushed to the earth shall rise*
18 *again.* Mr. Walker wanted to take my words, but that's fine,
19 *too. The Road Not Taken.* "Two roads diverged in a yellow
20 wood, and sorry I could not travel both. And be one
21 traveler, long I stood, and looked down one as far as I
22 could, to where it bent in the undergrowth. Then took the
23 other, as just as fair, and having perhaps the better claim,
24 because it was grassy and wanted wear; though as for that
25 the passing there had worn them really about the same, and

1 both that morning equally lay, in leaves no step had trodden
2 black, Oh, I kept the first for another day! Yet knowing
3 how way leads on to way, I doubted if I should ever come
4 back. I shall be telling this with a sigh, somewhere ages
5 and ages hence: two roads diverged in a wood, and I -- I
6 took the one less traveled by, and that has made all the
7 difference."

8 Ladies and gentlemen, the road not taken. The road not
9 taken on November 20th, 2013, is what has led us here when
10 Taquan Brown took the other road, the other road that led to
11 the death of Mourice Kemp. And that's why we're here,
12 because truth has been crushed to earth, the road that was
13 not taken.

14 Now, ladies and gentlemen, let's talk about what Mr.
15 Walker wanted to talk about, self defense. We're gonna deal
16 with the case of the State, because the State has no enemies
17 to punish. We have no friends to reward. The intention of
18 the State of South Carolina is to try those who are guilty
19 and to make certain that the innocent are set free. So we
20 want to try this case. And ladies and gentlemen of the
21 jury, understand this, a reasonable doubt is the kind of
22 doubt that would cause a reasonable person to hesitate to
23 act, and as you try this case, if it does not fit, to quote
24 a great man, then you must acquit, and I'm just going to go
25 ahead and open that door. If it does not fit this morning,

1 ladies and gentlemen, then acquit Taquan Brown, but until
2 that time, let us discuss the matter at hand.

3 Self defense. Let's talk about why Taquan Brown is
4 guilty of murder. This is not self defense. Self defense,
5 it means four elements. Four elements. The State must
6 disprove self defense. Because if self defense is
7 established, then you must acquit Taquan Brown; simple as
8 that. If you decide that he was defending himself, that he
9 had the absolute right to kill Mourice Kemp, then you walk
10 out of here today and so does Taquan Brown. We all go home.

11 But if you decide that one of those elements has been
12 disproved by the State, then Taquan Brown does not get self
13 defense. What is self defense? Being without fault in
14 bringing on the difficulty. The defendant must have been in
15 imminent danger of death or bodily injury or believed he was
16 in such danger. A reasonable person would have entertained
17 the same belief. No other means of avoiding the difficulty.
18 The judge is going to charge you basically that because he
19 was on his own premises, we think, perhaps, that he had no
20 duty to retreat. But let's move past it, what does it mean
21 to be without fault in bringing on the difficulty?

22 Mr. Walker would have you believe that it's alright to
23 walk out of your house with a gun and shoot a man down in a
24 yard just because you feel like it, just because you're
25 going out to shoot some snakes, just because you're going

1 out to take out the trash and you happen to have a gun in
2 your hand. He thinks it's just alright.

3 Ladies and gentlemen of the jury, it's not just alright
4 to walk out of the house with a gun in your hand and gun
5 down an unarmed man who was leaving with a woman. It's not
6 just alright. So who tells us that Taquan Brown had the
7 gun? That he goes out of the house with the gun? Because
8 Mr. Walker said to y'all, now, he wants you to disbelieve my
9 science, but he himself had to admit, "Oh, well, Taquan went
10 out with the gun. Yeah, he went out with the gun, and
11 that's alright." Taquan Brown had the gun, Nayronne Holmes.
12 Taquan Brown had the gun, Barbara Mays. Taquan Brown had
13 the gun while standing in the doorway, and that's Lawrenzer
14 Walker in his first statement.

15 Now, yes, everybody in this whole thing has lied.
16 Everybody. All the lay witnesses. They've all lied. And
17 Mr. Walker, at the beginning of this case, told you there's
18 one thing that Ms. Legette and I agreed on, we agreed on the
19 science, y'all, the physical evidence. But what did he
20 stand here this morning and tell you about this science?
21 Oh, just disregard it. Just disregard it, y'all. Don't
22 believe the witnesses? Then, don't believe science. We're
23 going to get to that.

24 "Now, I was about to close the door," that's what
25 Lawrenzer Walker said in his first -- I'm sorry, second --

1 no, third statement. He was about to close the door. "Then
2 Taquan Brown took the gun from Nayronne Holmes," that's what
3 Lawrenzer Walker said in his plea. Yet, he didn't come to
4 testify to y'all either, by the way.

5 But nonetheless, Taquan Brown had gunshot residue on
6 his hands. He's got gunshot residue on his hands. Who is
7 gonna add it up, y'all? Taquan Brown came out of the house
8 with the gun. He came out of the house with a gun. "Quan
9 was standing in the grass; they all were. Quan had the
10 gun." Think about it. Out of the house with a gun. Who
11 brought on the difficulty? Now, for him to actually get
12 self defense, he had to be without fault in bringing on the
13 difficulty.

14 Now, Mr. Walker wanted to talk all about how it's okay
15 to come out of the house with a gun. It may be okay to come
16 out of the house with a gun for Taquan Brown in Mr. Walker's
17 eyes, but what about Mourice Kemp? They wanted to make a
18 big deal about him being a violent man, y'all. Oh, he's a
19 violent man. He came out of the house with a gun in his
20 waistband because he came looking for Courtney. That made
21 him a violent man. That was the only instance of violence
22 they showed you about Big Mo, Mourice Kemp. So if Big Mo is
23 a violent man for coming out of his house with a gun in his
24 waistband, because he came looking for his girlfriend, his
25 woman, disrespected his house, what's this make Taquan

1 Brown? The one thing about Big Mo that day, he didn't point
2 the gun, he didn't shoot the gun, and he sure enough didn't
3 kill Taquan Brown. Because if Big Mo had killed Taquan
4 Brown that day, y'all would be trying Big Mo for killing
5 Taquan Brown. Oh, yeah, y'all, Taquan Brown brought on the
6 difficulty. They began to have words. Who started it? I
7 don't know, but all the witnesses say that Big Mo was going
8 to the car. Had his back turned. Coco, Courtney, was
9 following behind him. And let's talk about that, y'all.
10 Yeah, I asked Jermaine Brown, or Nyle Eltzroth, was she a
11 white woman? You know why I asked that question? Not to
12 offend anyone, but to show you that Jermaine Brown is a
13 liar, he's a thief, and he was not there. But we're going
14 to get to that, too.

15 They were getting in their car. They started ya-
16 ya'ing. We don't know who started the ya-ya. But what we
17 do know is that Mourice Kemp asked to come back through that
18 door. "Hey man, can I come back through here?" "No, you
19 can't come back through here. Shut my door." Cut off the
20 light. Okay, and rather than Big Mo kicking the door,
21 everybody want to see how big and bad he is, he goes around
22 to Ms. Barbara (knocks on podium four times) "Hey, ma'am,
23 can I come back through here?" She let him walk through her
24 house. Oh, he was nice to me. He run to the car, y'all,
25 and you notice, every time we see Big Mo acting up or acting

1 a little bit manly, he is looking for Courtney. It's about
2 Courtney. These men come to his house about Courtney,
3 "Y'all get out of here. Don't be coming over here looking
4 for Courtney. Don't be coming over here looking for
5 Courtney." Hey, y'all, where's Courtney? Where's
6 Courtney?"

7 Y'all when I closed my door, he was getting in the car.
8 They were all standing out in the yard ya-ya'ing. Big Mo
9 was walking to his car. He was getting in the car. Taquan
10 is not without fault in bringing on the difficulty. He
11 brought it on. If Taquan -- Mr. Walker wanted to say "what
12 if", yeah what if. What if, because you know what, Taquan
13 Brown stays in the house, Big Mo and Courtney get in the car
14 and they drive away, like a Romeo and Juliet tragedy is what
15 this is. You got Big Mo coming and looking for his
16 girlfriend. The same woman he's having trouble with these
17 men about. He's trying to protect her. Girl, where you at?
18 They get in the car and he can't even leave. He is killed.
19 Then, she is killed. Tragedy.

20 If Taquan Brown stayed in the house, there is no
21 murder. Big Mo knocked on the door, they let him in. In
22 one of Taquan Brown's statements he said, "Me and Big Mo, we
23 ain't never had no problems. Man, ask these people. We
24 ain't never had no problems." Let's talk about that. Now,
25 Mr. Walker wants to make a big deal about the pictures. He

1 doesn't want to really acknowledge the science in these
2 pictures. He went and had an investigator go out and his
3 investigator wanted to tell you what he talked to Ms.
4 Barbara about and how much Barbara said approximately here,
5 approximately there. We didn't do any approximates, ladies
6 and gentlemen. We didn't do approximates. We actually
7 pulled from pole to pole. It took painstaking measures to
8 pull and bring you scientific CSI, ladies and gentlemen.
9 That's what we're trying to do here for you, because you
10 know what, we couldn't rely on the eyewitnesses, because
11 everybody lied. "9-1-1, what's your emergency?" "Oh, a man
12 laying outside dead." "You know who did it?" "No, didn't
13 see nothing."

14 Ladies and gentlemen, Taquan Brown was 35 feet from his
15 door. Look at the measurements. They testified to blood
16 spots of Mourice Kemp was 38 feet from the front door, 38
17 feet. If you stand him back up, he's actually six feet
18 tall. You add six to 38, a little adding here. My daddy
19 loves math, and I'm not really a math person, but anyway,
20 you add it all up and 38 plus 6 equals what? That's 44
21 feet. Where is Taquan? Taquan is almost 40 feet from his
22 front door, because you know why he's 40 feet from his front
23 door, because Whitney Berry told you that it takes that
24 muzzle of that gun, a .32-caliber, three feet, the muzzle,
25 three feet from the muzzle of that gun. And where does that

1 put Taquan Brown? Where does that put Taquan Brown? The
2 victim was rolled from here to here? Taquan Brown is
3 standing where this paramedic is. That's how close Taquan
4 Brown is. Taquan Brown not only comes out of his house, he
5 comes down the sidewalk with the gun in hand, pointing it at
6 Big Mo. "If you gonna point it, shoot it." Pointing the
7 gun at Big Mo. What stopped Big Mo? Oh, he was gonna pull
8 a gun. Oh, you gonna pull a gun now. It wasn't even like
9 that. It ain't even that serious. For Taquan Brown it was
10 that serious, ladies and gentlemen. He is not without fault
11 in bringing on the difficulty.

12 He brought on the difficulty. That's what Taquan Brown
13 did. Big Mo had no gun. He had no gun, because if he had a
14 gun, hey, we don't know what would have happened; but he
15 didn't have a gun. Taquan Brown is the one who had the gun.

16 Imminent danger of serious bodily injury. Again, we
17 never get there if Taquan Brown had stayed inside the house.
18 We never get to this point if he stayed inside the house.
19 Because you know what, Big Mo knocked on the door.
20 Remember? No, I'm not letting you come in. Did he kick it
21 in? No, he kept on moving. Taquan Brown stays in the house,
22 he is not in imminent danger. Now, when you step back out
23 of your house with a gun, what are you going out there for?
24 You going for trouble. At 4:30 in the morning, are you
25 going to rake leaves, cut grass? Ms. Barbara said they

1 don't cut the grass out there. It's a big old yard. Mr.
2 Bright owns that place. What's he going out there for? You
3 trying to tell me you ain't had no problems with this man?
4 You shook this man's hand and then you come back and you
5 say, "Oh, well, you know, he had pulled that gun on us and
6 everything." Oh, he pulled a gun on y'all? Oh, you mad.
7 You mad. He done been to your house. He done disrespect
8 you. We all been woken -- I been woken up by a strange
9 telephone call at 4:00 in the morning. I get a little
10 agitated waking me up out of my big sleep. I didn't get my
11 gun and go outside and shoot nobody.

12 Ladies and gentlemen, he didn't pose a threat to them.
13 He was getting in the car. Taquan Brown closes that door,
14 goes back to bed, turns out the light, we are never, ever
15 here. Never here. But he cant' stay in his house. He just
16 won't stay in his house. Forty feet from his front door.
17 How long is 40 feet? You just keep walking, and walking,
18 and walking, and walking, and walking, and walk up on a man.
19 Just walk up on a man. And shoot. Right here. You can't
20 even make that shot. Lucky shot. Raggedy gun. Raggedy,
21 y'all. Just ragged. You heard Sgt. Edwards tell you about
22 this gun. Y'all can see it. It's a Smith and Wesson. It
23 still works, but it's raggedy. It don't even have grips on
24 it. He was not in imminent danger. And a reasonable man
25 would not have believed that. A reasonable person would

1 have called 9-1-1. Oh, yeah, and guess what, y'all? Didn't
2 Taquan call 9-1-1 before? Didn't he call 9-1-1? Don't
3 y'all remember? Remember that day? Larry Council said it
4 right here. Taquan called 9-1-1. Y'all remember that time
5 he told us that. A reasonable person would have called 9-1-
6 1. They wouldn't go outside to a big 357 pound, six-foot
7 man, who "I ain't had no problem with, y'all". Come on,
8 now.

9 What is it about Big Mo? The evidence we have says he
10 was calm. Ms. Fulks, he was depressed, looking for a girl.
11 The store video. Jessica Fulks, he was nice to me. Yeah,
12 they drink and smoke. Yeah, okay, drinking and smoking.
13 Okay, drinking and smoking.

14 MR. WALKER: Your Honor, I have an objection at this
15 point.

16 THE COURT: Counsel approach.

17 (Whereupon, a bench conference is held off the record
18 and out of the hearing of the jury.)

19 THE COURT: Objection overruled. Proceed.

20 CLOSING ARGUMENT CONTINUED

21 BY ASST. SOL. LEGETTE:

22 Where were we? Okay. He was nice as he could be.
23 Barbara Mays, he was knocking on the door. "Ma'am, can I
24 come in?" He asked to come back in, shut the door. He
25 didn't kick it in. He asked to -- here's the thing, y'all.

1 He asked. He asked. He asked. We in the south and a
2 southern man will ask. A southern man will ask. Now,
3 Jermaine Brown -- I don't know about Jermaine Brown.
4 Something about Jermaine Brown yesterday when we talked
5 about Courtney and how all three of them were supposed to go
6 over there to her and something about when I asked him about
7 what they planned to do, it just kind of rubbed me the wrong
8 way.

9 Nevertheless, Big Mo asked to come back in and Taquan
10 Brown said he shook his hand. We ain't never had no
11 problem. That's Mourice Kemp. But the defense wants you to
12 believe he's a violent man. Well, we talked about this.
13 But you know, they haven't shown you anything. They just
14 asked Mr. Eltzroth about something in a report, but he
15 couldn't show you any one thing. And the one thing they
16 tried to bring you is the same thing Taquan did. So if Mo
17 is a violent man by trying to protect the girl he loves and
18 has gone looking for her, and told them don't come over here
19 looking for her no more, what does that make Taquan Brown?
20 If Mo is a violent man because he showed them a gun, Taquan
21 Brown, too, is a violent man. We gonna make that moot.

22 Who is really the evil man here? Taquan Brown. The
23 only thing that seemed to bother Big Mo was Coco. They said
24 he was calm, not depressed. The variable that changed
25 everything was the gun. That one thing. That's what

1 changed everything. A true person has self defense, self
2 defense. "9-1-1 what's your emergency?" "There's a big ole
3 dude over here. I had to shoot him. He was coming at me.
4 Someone was running at me. I had to shoot him. He was in
5 my yard. He was trying to break in. I had to shoot him."
6 That's two separate things. When you're calling 9-1-1, you
7 tell the operator "I had to do this. I had no choice. I was
8 afraid for my life." When the officers arrive, you tell
9 them, you tell it, and you continue to tell it, and you
10 stand by that. You stand on it, because that's your word.
11 Your word is your bond. You stand on that word. Because if
12 Taquan Brown had of stood on that word, we might not even be
13 here. Stand on that word. I did it because I had no
14 choice, but not Taquan Brown. Truth does not hide behind
15 lies. They have crushed the truth under lies. Under lies,
16 people. Under lies. You don't tell 9-1-1, "I don't know
17 what happened." You don't tell 9-1-1, "He's just laying out
18 here." You don't tell 9-1-1, "I don't know who that is." I
19 don't know how he got here. I saw headlights leaving." You
20 don't do that, ladies and gentlemen. That's not true self
21 defense. True self defense says, "Hey, shot from the
22 rooftop. This man tried to kill me." And you stand by
23 that. Not in your first statement you don't say, talking
24 about I don't know. And not in your second statement you
25 don't throw your friend under the bus. Your friend you've

1 known since 1999. You throw him under the bus. "Oh, it's
2 him." And then when the officer gives you a way out. He
3 tells you, "Man, was it self defense?" Two days later you
4 come up with it. Two days later you come up with it. That
5 is not self defense. That is not a man who had a true self
6 defense. That is a man who has lied and lied to get away
7 with what he knows is murder; how to get away with murder of
8 Mourice Kemp. That's what has brought us here today, y'all,
9 because Taquan Brown has tried to get away with murder.
10 It's told every time, it was told the first time, and it's
11 told the last time, that's what true self defense is, ladies
12 and gentlemen. That's what you stand on.

13 Now, self defense in this case is defeated by science.
14 I told you earlier about the 44 feet. Stand that man up, he
15 is 44 feet away. He's a step off the sidewalk. He didn't
16 run toward Taquan Brown. Taquan Brown came toward him. He
17 walked 40 feet out of his front door with the gun in hand.
18 Stopped him. Talking to him. Ya-ya'ing him. I don't know
19 what was said. We don't know what was said. But something
20 was said that stopped him. He had the woman he loved. He
21 was going to the car with her. They were getting in that
22 car. They were getting in that car. Everybody said that.
23 They were getting in that car. The gun changed everything.

24 My daddy loved Math. Woo-hoo! That's why I couldn't be
25 a doctor. Me and math. But anyway, we are going to do a

1 little subtraction. Without fault in bringing on the
2 difficulty, subtract. Being in imminent danger or believing
3 he was, subtract. A reasonable person would have believe
4 the same, subtract. And what does that equal, y'all? What
5 does that equal? I made it real simple, because me and
6 equations don't do very well. It was not self defense.

7 Ladies and gentlemen, let's talk about the actual
8 charges. I know this case was rather long telling you all
9 how it really ain't self defense. Let me know if everybody
10 can see this. Ladies and gentlemen, murder, let's talk
11 about it. Murder. Murder is a willful or unlawful killing
12 of a person with malice aforethought, express or implied.
13 Simple as that. Let's go through it.

14 Willful, meaning intentional. It wasn't an accident.
15 In this case, it was not an accident. How many bullets this
16 little raggedy gun holds? It still shoots. I call it
17 raggedy, but it is still obviously a murder weapon. It
18 carries six bullets, six. Five fired, I believe, perhaps one
19 misfired, but one was in there. Five fired casings. He
20 kept shooting, shooting, shooting, shooting, shooting.
21 Willful.

22 Mourice Kemp, just told you he died from gunshot
23 wounds, cerebral disruption, gunshot wound to the head. In
24 and back of a person, Mourice Kemp.

25 Malice aforethought. What is malice? Malice is

1 wickedness, evil, reckless disregard for a human life.
2 Taquan Brown, let's talk about this Taquan Brown. Was it
3 malicious in what he did? Was it malicious? Was it evil?
4 Was it a reckless disregard? Was it wicked? Well, let's
5 think about it.

6 So Mourice Kemp comes over. You ain't got no problem
7 wtih Mourice Kemp. He comes over, knocks on the door, and
8 you shake his hand in one version. In another version, he
9 is, well, kind of bombastic. But then he goes out, and he
10 wants to come back in. Let's talk about it right here. He
11 wants to come back in, but you won't let him back in. So
12 right now, you kind of angry. You kind of agitated right
13 now, because you won't let him back in. You let him in the
14 first time. And now you kind of aggravated. "No, you
15 can't come back in this way." He goes around. Well, at
16 this point, close the door, turn off the lights, pull down
17 the blinds, and go back to sleep. Nope. Not gonna be able
18 to do it. Get my gun, go outside. Malice. Malice can be
19 either expressed or implied. Express meaning words, "I'm
20 going to kill you. Or implied, meaning use of a deadly
21 weapon. Use of a deadly weapon. Obviously, Mr. Kemp is
22 dead. This gun is that deadly weapon. Implied. So we have
23 malice, implied. And it has to be a forethought. It can't
24 be, well, as I begin to shoot you, then I say, well, I'm
25 just going to finish you off. It has to be before you

1 actually begin to kill him.

2 So basically, Mr. Brown, arming himself with that
3 pistol. There is no threat, ladies and gentlemen.
4 Understand there is no threat. Nayronne Holmes told you
5 that there is no threat. There was never a threat. He said
6 there was no threat. They weren't threatening each other.
7 It was trash talk. But there was my man, Mr. Brown, with
8 the gun. Implied malice. That is murder, ladies and
9 gentlemen.

10 Possession of a weapon during the commission of a
11 violent crime. This one right here basically says that a
12 person is in possession of a weapon, a firearm, while
13 committing a violent crime. Murder is a violent crime.
14 Involuntary manslaughter is a crime.

15 There's a little wrinkle we got to tell you about. The
16 judge in this case is also gonna charge you on the law of
17 involuntary manslaughter. We're gonna get to that. But I'd
18 rather go ahead and put you on notice about it. The judge
19 himself will ultimately tell you what the true law in South
20 Carolina is, but until that time, I'm just trying to give
21 you a roadmap, what to look for. A person, that's Taquan
22 Brown, in possession of -- we got that, in his hand, a
23 firearm, a weapon, while committing a violent crime. A
24 violent crime either being murder or voluntary manslaughter.
25 And they're both defined in the State of South Carolina as

1 violent crimes.

2 So if you find him guilty of murder or voluntary
3 manslaughter, then you can consider this charge. But if you
4 find that he has self defense. If somehow you make that
5 leap in faith, Mr. Walker says I'm trying to build a bridge.
6 I ain't trying to build no bridge. I ain't trying to build
7 no bridge. I'm taking off the layers of lies in helping you
8 find the truth.

9 If you find him guilty of either murder or voluntary
10 manslaughter, then you can consider this charge. Oh, by the
11 way, a checkmark means it's done. We've proved it. But of
12 course, you are the trier of the facts.

13 Obstruction of justice. This one ain't hard, y'all.
14 We ain't even got to go through it. I'll just go ahead and
15 put a checkmark in the bottom, because guess what? Ding,
16 ding, Ding! Mr. Walker has done told y'all that Taquan
17 Brown is guilty of obstruction of justice. He went ahead
18 and just went on and told you.

19 But I'm just going to go ahead and tell you what it
20 says. A person willfully impede, stop, or hinder or prevent
21 the furtherance administration of justice. That's what he
22 did, y'all.

23 And ladies and gentlemen, voluntary manslaughter. The
24 unlawful killing of another without malice in a sudden heat
25 of passion upon sufficient legal provocation. This one, you

1 will have to just decide. Is it this or is it murder? It
2 can't be both. It's either one or the other. Or it's self
3 defense, is it not? But y'all have to do what y'all to do.
4 So ladies and gentlemen, the unlawful killing of another
5 without malice, in a sudden heat of passion, upon sufficient
6 legal provocation.

7 Ladies and gentlemen, a guilty man. A guilty man does
8 some of the things that Taquan Brown did. A guilty man will
9 lie to you. A guilty man will continue with those lies.
10 Taquan Brown is a guilty man. He lies to the police after
11 he commits murder. He is sitting on his bed calm, cool and
12 collected as a cucumber. Is that a man who just killed a
13 man in self defense that he was afraid of? He continues to
14 lie. "I know nothing. I was awakened by Quick." And
15 continues to lie. "I know nothing. I was asleep." A
16 guilty man.

17 Then, he changes his lies whenever he's confronted with
18 the facts. It was Lawrenzer Walker. No, no, I wasn't
19 asleep. It was my boy, Lawrenzer. Hey, bo, it was
20 Lawrenzer. He did it. Throwing a friend under the bus.
21 Accusing an innocent man. A guilty man will accuse an
22 innocent man. Why accuse your friend? It's self defense,
23 bo. If his lie had stuck, y'all, we would be trying
24 Lawrenzer Walker. We'd have been trying Lawrenzer Walker,
25 y'all. He would have been in here sitting at the table

1 wearing a robe of righteousness. That same robe of
2 righteousness that Taquan Brown is now wearing. He sticks
3 with the second lie until he gets the opportunity and hears
4 about a third lie. And who planted the seed? Detective
5 Eltzroth. "Hey, man, oh, you're saying it's Lawrenzer
6 Walker? Man, it could have been self defense." Plants the
7 seed. And guess what is born two days later? Ha ha ha, had
8 time to think about it, send for the detective. Hey, bo,
9 guess what? It's self defense. No, I wasn't asleep. It
10 wasn't Lawrenzer Walker. It was self defense. I thought
11 about what you said. I thought about it overnight, and
12 guess what? It was self defense, just like you said, it was
13 self defense. Try to bury the truth, a guilty man.

14 But truth crushed to earth shall rise again. It shall
15 rise again, ladies and gentlemen. And the truth, the truth
16 is rising. You may have to dig, pull up all those layers,
17 and the truth, the verdict, to speak the truth, and that's
18 what I ask you to do here today, ladies and gentlemen, speak
19 the truth as only you can do it. As only you can do it.

20 I thank you for listening, ladies and gentlemen, and I
21 ask you for a true and a just verdict. Find Taquan Brown
22 guilty of murder of Mourice Kemp. Find Taquan Brown guilty
23 of possession of a weapon during the commission of a violent
24 crime. And find Taquan Brown guilty of obstruction of
25 justice. Thank you.

JURY CHARGE

1
2 All right. Ladies and gentlemen of the jury, Mr.
3 Foreman, it is now my duty to charge you the law of this
4 case. The State of South Carolina has charged the
5 defendant, as I told you in the beginning, with these
6 documents -- the defendant being Taquan Brown, which we call
7 indictments. One indictment charges the defendant with
8 murder. One indictment charges the defendant with the
9 offense of possession of a weapon during the commission of a
10 violent crime. And one indictment charges the defendant
11 with the offense of obstruction of justice. Those are the
12 three charges in this case in the indictments brought by the
13 State.

14 I remind you, first of all, that the fact that the
15 defendant was arrested, the fact that the defendant was
16 indicted in this case is not evidence in this case, nor does
17 it create any presumption or inference of guilt.

18 These indictments, these documents, are simply the
19 formal written instruments which contain the charges made
20 against the defendant, Taquan Brown. They are the formal
21 documents by which the case is brought into this Court. To
22 these indictments, the defendant has entered a plea of not
23 guilty. This plea of not guilty places the burden of proof
24 on the State of South Carolina to prove the guilt of the
25 defendant to you, the jury, beyond a reasonable doubt.

1 A person charged with committing a criminal offense in
2 South Carolina is never required to prove himself or herself
3 innocent. I charge you, ladies and gentlemen, that it is an
4 important rule of the law that the defendant in a criminal
5 trial, no matter what the seriousness of the charge may be,
6 will always be presumed to be innocent of the crime for
7 which the indictments were issued, unless guilt has been
8 proven by evidence satisfying you of that guilt beyond a
9 reasonable doubt.

10 This presumption of innocence does not end when you
11 begin your deliberations, but it accompanies every defendant
12 throughout a trial until you, the jury, reach a verdict of
13 guilt based on evidence satisfying you of that guilt beyond
14 a reasonable doubt.

15 The presumption of innocence is not a mere legal
16 theory. It's not just a legal phrase. It is a substantial
17 right to which every defendant is entitled, unless you, the
18 jury, are satisfied from the evidence of the defendant's
19 guilt beyond a reasonable doubt.

20 What is a reasonable doubt in the law? A reasonable
21 doubt is the kind of doubt that would cause a reasonable
22 person to hesitate to act. The State has the burden of
23 proving the defendant guilty beyond a reasonable doubt.
24 Some of you may have served as jurors in civil court, where
25 in civil court, unlike a criminal case, you were told that

1 it is only necessary to prove that a fact is more likely
2 true than not true. We call that in civil court by the
3 greater weight or the preponderance of the evidence in a
4 civil case.

5 In a criminal case, ladies and gentlemen of the jury,
6 the State's proof must be more than that. It must be beyond
7 a reasonable doubt. Now, proof beyond a reasonable doubt is
8 proof that leaves you firmly convinced of the defendant's
9 guilt.

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

20 I remind you, ladies and gentlemen, that during this
21 trial, you and I have had certain duties to perform. As a
22 trial judge, it's been my responsibility to preside over the
23 trial of the case, and I also have the duty as the trial
24 judge to rule on the admissibility of evidence offered
25 during the trial of this case.

1 You are only to consider the competent evidence before
2 you as a jury. If there was any testimony ordered stricken
3 from the record in this case during this trial, you should
4 disregard that testimony. You are to consider only the
5 testimony which has been presented from the witness stand,
6 any exhibits which have been made a part of the record in
7 this case, which in part, I'll have in your jury room; some
8 I'll have to keep here, ladies and gentlemen, because you
9 have to have equipment in order to use it. And if there were
10 any stipulations between the parties that a fact is true.

11 I, also, as the presiding judge have the additional
12 duty to charge you the law that applies to this case. As
13 the presiding judge, I am the sole judge of the law, and it
14 is your duty as jurors to accept and apply the law exactly
15 as I now state it to you.

16 If any of you walked into this courtroom, and you
17 already had any idea as to what you think the law is or what
18 the law ought to be, and it does not agree with what I'm now
19 telling you what the law is, you must abandon any of your
20 preconceived ideas, because you are sworn in that oath which
21 each of you took, to accept and apply the law exactly as I
22 state it to you now.

23 In every case tried in this Courtroom before a jury,
24 the jury becomes the sole and exclusive judges of the facts
25 in the case. A trial judge, such as myself, cannot

1 intimate, state, comment on, or make any statement
2 whatsoever to a trial jury, such as yourself, about the
3 facts in a case.

4 You are not to infer from what I have said during the
5 progress of this trial, in ruling upon the admissibility of
6 evidence, or otherwise, or anything that I now say during
7 this instruction to you on the law, that I have any opinion,
8 whatsoever, about the facts in this case. The law does not
9 allow me to have an opinion about the facts in this case.
10 This is a matter solely for you, ladies and gentlemen of the
11 jury, to determine.

12 As jurors, then, you remember that it is your duty
13 under your oath, to determine the effect, the value, the
14 weight, and the truth of the evidence presented during the
15 trial of this case.

16 Now, I instruct you and I charge you, ladies and
17 gentlemen, that the fact that the defendant did not testify
18 in this trial is not a factor to be considered by you in any
19 way in your deliberations and in your consideration on the
20 question of the guilt or the innocence of the defendant. It
21 must not be considered by you in any manner whatsoever. A
22 defendant has the constitutional right to remain silent and
23 the assertion of this right must not be considered by you in
24 your deliberations as a jury.

25 You're to draw no conclusion whatsoever from the fact

1 the defendant did not, in this case, did not testify. The
2 fact that the defendant did not testify should not even be
3 discussed in your jury room. The burden of proof is on the
4 State of South Carolina. The defendant is not required to
5 prove his innocence. The burden of proof remains on the
6 State to prove guilt beyond a reasonable doubt.

7 Now, in a trial, ladies and gentlemen, there are two
8 types of evidence that are generally presented during a
9 trial, and like many things in the law, ladies and gentlemen
10 of the jury, we have names for those types of evidence. We
11 call the two types of evidence, direct evidence and
12 circumstantial evidence.

13 Direct evidence is the testimony of a person who claims
14 to have actual knowledge of a fact, such as an eyewitness to
15 an event. It is evidence which immediately establishes the
16 main fact to be proved.

17 Circumstantial evidence, as contrasted with direct
18 evidence, is proof of a chain of facts and circumstances
19 indicating the existence of a fact. Circumstantial evidence
20 is evidence which establishes collateral facts, from which
21 the main fact may or may not be inferred. Circumstantial
22 evidence is based on inference and not on personal knowledge
23 or personal observation.

24 The law makes absolutely no distinction between the
25 weight or value to be given to either direct or

1 circumstantial evidence, nor is a greater degree of
2 certainty required of circumstantial evidence than of direct
3 evidence. You, as a jury, should weigh all of the evidence
4 in this case, both direct and circumstantial. After weighing
5 all of the evidence, if you are not convinced of the guilt
6 of the defendant beyond a reasonable doubt, you must find
7 the defendant not guilty.

8 On the other hand, after weighing all of the evidence
9 in this case, both direct and circumstantial, if you are
10 convinced of the guilt of the defendant beyond a reasonable
11 doubt, you must find the defendant guilty.

12 Now, ladies and gentlemen, I remind you that the
13 burden of proof in the trial of this case, and as I told
14 you, is on the State of South Carolina. This burden of
15 proof which I have described as beyond a reasonable doubt
16 extends to every element of the crimes charged and it
17 specifically includes the burden of proving beyond a
18 reasonable doubt the identity of the defendant as the person
19 who committed the crime.

20 Identification testimony, ladies and gentlemen, is an
21 expression of belief or impression by a witness. You as a
22 jury must determine the accuracy of the identification of
23 the defendant. You must determine the believability, which
24 I told you we call the credibility of each identification
25 witness in the same way as you would any other witness. You

1 must be satisfied, ladies and gentlemen of the jury, beyond
2 a reasonable doubt of the accuracy of the identification of
3 the defendant before you may find the defendant guilty.

4 On the other hand, if after examining the testimony,
5 you have a reasonable doubt as to the accuracy of the
6 identification, you must find the defendant not guilty.
7 Necessarily, ladies and gentlemen, as I've told you in the
8 beginning and I'll repeat again, you're going to have to
9 determine the credibility or the believability of the
10 witnesses who have testified from that witness stand during
11 this trial.

12 It becomes your duty by listening to analyze, it
13 becomes your duty to evaluate the evidence and decide and
14 determine which evidence convinces you of its truth. In
15 determining the believability of the witnesses who have
16 testified during this trial, you may believe one witness
17 over several, or several witnesses over one.

18 You may believe part of a testimony of a witness and
19 reject the remaining part of a testimony of that same
20 witness. You may believe the testimony of a witness in its
21 entirety, or you may reject the testimony of a witness in
22 its entirety. You may consider whether any witness has
23 demonstrated to you any interest, bias, prejudice or any
24 other motive in the case. And as I told you at the outset
25 of the trial, you may even consider what we call the

1 demeanor of the witness, the appearance and manner of the
2 witness while the witness is on the witness stand.

3 Anything that is in evidence, ladies and gentlemen of
4 the jury, you, as a jury, have the right to consider in
5 determining the credibility or the believability of the
6 witnesses who have testified during the trial of this case.

7 Now, I charged you during the trial, and I repeat, the
8 rules of evidence ordinarily do not allow a witness to get
9 on the witness stand and take the oath and say, "Let me tell
10 you my opinion." Because opinion testimony is normally
11 inadmissible, or conclusions. An exception to our opinion
12 rule in the rules of evidence exist for witnesses who I told
13 you we call expert witnesses.

14 A witness who claims by education, training, or
15 experience, claims to have become an expert in some art,
16 science, or profession, may, if qualified by the Court, as a
17 matter of law, give an opinion as to the subject a witness
18 claims to be an expert in and may also give the reasons for
19 his or her opinion. You should consider any expert opinion
20 given by any witness, and like any other evidence in this
21 case, you give it the weight you think it deserves as a
22 jury.

23 If you decide that an expert witness's opinion is not
24 based on sufficient education and experience, or if you
25 decide that the reasons given in support of the opinion are

1 not sound, or that the opinion is outweighed by other
2 evidence, you may disregard the opinion entirely. An expert
3 witness's testimony is to be given no greater weight than
4 that of any other witness simply because the witness is an
5 expert.

6 A stipulation is an agreement, an admission, a
7 concession made in a judicial proceeding by the parties or
8 their attorneys. Stipulations, if there were any in this
9 trial, are binding upon those who make them. Stipulation is
10 an agreement or an understanding that the jury must accept
11 stipulations as binding upon the parties. If counsel for
12 the parties have stipulated any fact or any fact that has
13 been admitted by counsel, you will regard that fact as being
14 conclusively proved as to the party or parties making the
15 stipulation.

16 Now, I charge you, ladies and gentlemen, that a
17 statement alleged to have been made by the defendant has
18 been admitted into evidence. While the Court has determined
19 as a matter of law that the statement is admissible, I
20 instruct you that you, the jury, make the ultimate decision
21 of whether the defendant made the statement. If the
22 defendant did make the statement, you must determine whether
23 the statement was made by the defendant voluntarily and of
24 his own free will. This means the statement was not caused
25 by any pressure or force or fear or threats or coercion, or

1 intimidation, or by hope or a promise of leniency, or a
2 reward of any kind.

3 In determining whether the statement was voluntary, you
4 as a jury, based on evidence introduced during the trial of
5 this case, should consider both the characteristics of the
6 defendant and the details of the questioning. Some of the
7 factors that you should consider are the age of the
8 defendant, the defendant's education, the defendant's mental
9 ability or capacity, the defendant's intelligence, the
10 defendant's background or environment, the place and length
11 of detention, the nature of the questions, and the advice or
12 lack thereof to the defendant of his constitutional rights,
13 if in evidence during the trial of this case.

14 His constitutional rights would include that any
15 statement could be used against him in a court of law, the
16 right to have a lawyer present, that if he cannot afford a
17 lawyer, a lawyer would be appointed to represent him without
18 any cost, and that he could stop making the statement at any
19 time.

20 You must consider, as a jury, from the evidence all of
21 the surrounding circumstances before you give any weight to
22 an alleged statement. The State has the burden of proving
23 beyond a reasonable doubt that the alleged statement was
24 voluntary. If you determine that the statement was
25 voluntary, you may give the statement any further

1 consideration that you deem proper.

2 You must decide what weight, if any, is to be given to
3 the alleged statement. If you determine that the alleged
4 statement was not a free and voluntary statement of the
5 defendant, you should not consider the statement at all.

6 Now, we have in the law the doctrine of criminal
7 intent. In order to establish criminal liability in the
8 law, criminal intent is required. Now, let me explain to
9 you a little bit about criminal intent. I'm going to give
10 you some examples; it's the mental state that may be
11 required for any crime, and let me show you some examples of
12 criminal intent. It may be purpose, intent, knowledge,
13 recklessness, criminal negligence; those are examples of
14 criminal intent. Criminal intent must be proven by the
15 State beyond a reasonable doubt. Criminal intent is always
16 a matter that must be determined by the jury from the
17 circumstances surrounding the situation based on evidence
18 introduced during the trial of the case.

19 Now, ladies and gentlemen, there is no way to prove
20 intent to a mathematical certainty. There is no way that
21 medical science can dissect a person's brain and tell you
22 what that person had in mind. So the law says, ladies and
23 gentlemen, that criminal intent may be inferred from the
24 circumstances shown to have existed based on evidence
25 introduced during the trial of the case. This, ladies and

1 gentlemen, is how you as a jury make a determination of
2 whether or not any element in any crime requiring intent was
3 present.

4 It is not necessary to establish criminal intent by
5 direct evidence, but intent may be established by inference
6 in the same way as any other fact taking into consideration
7 the acts of the parties and the facts and circumstances of
8 the case based on evidence introduced during the trial of
9 this case.

10 Criminal intent is a mental state. It is a conscious
11 wrongdoing. It is up to you, as a jury, to determine what
12 the defendant intended to do, based on the circumstances
13 shown to have existed, from evidence introduced during the
14 trial of the case.

15 I charge you, ladies and gentlemen, in this case, the
16 defendant is charged in one indictment with the offense of
17 murder. For the offense of murder, the State must prove
18 beyond a reasonable doubt that the defendant killed another
19 person with malice aforethought. Malice is hatred. Malice
20 is ill-will, hostility towards another person. It is the
21 intentional doing of a wrongful act without just cause or
22 excuse, and with an intent to inflict harm or injury.

23 Malice aforethought does not require that malice exist
24 for any particular time before the act is committed, but
25 malice must exist in the mind of the defendant just before

1 and at the time the act is committed. Therefore, there must
2 be a combination of the previous evil intent or hostility
3 towards another and the act itself.

4 Malice aforethought may be expressed or inferred.
5 These terms, express or inferred, do not mean different
6 kinds of malice. Malice is still hatred, ill-will, or
7 hostility toward another person. These terms, express or
8 inferred, are simply the manner in which malice may be shown
9 to exist from evidence introduced during the trial of the
10 case. That is either by direct evidence or by inference
11 from the facts or circumstances which are proved.

12 Express malice is shown when a person speaks words
13 which express hatred or ill-will or hostility for another.
14 Or when a person prepares beforehand to do the act, which
15 was later accomplished. For example, lying in wait for a
16 person or any other act of preparation going to show that
17 the deed was within the defendant's mind would be examples
18 of express malice. Malice may also be inferred from conduct
19 which shows a total disregard for human life.

20 I charge you, ladies and gentlemen, that the lesser
21 included offense to the offense of murder is the offense of
22 voluntary manslaughter. Included within the offense of
23 murder is the lesser included offense of voluntary
24 manslaughter. If you find that the State has failed to
25 prove beyond a reasonable doubt that the defendant committed

1 murder, you may consider whether the State has proved beyond
2 a reasonable doubt that the defendant committed voluntary
3 manslaughter.

4 To prove voluntary manslaughter, the State must prove
5 beyond a reasonable doubt that the person took the life of
6 another in a sudden heat of passion, based on sufficient
7 legal provocation. Both heat of passion and sufficient
8 legal provocation must be present at the time of the killing
9 to constitute voluntary manslaughter.

10 Sudden heat of passion may for a time affect a person's
11 self control and temporarily disturb a person's reason. The
12 sudden heat of passion must be the type that would make an
13 ordinary person unable to calmly reflect on his or her
14 actions, and would produce an uncontrollable impulse to do
15 violence.

16 Sufficient legal provocation must be the type that
17 would make a person of ordinary reason and caution become
18 enraged and to lose control temporarily. Provocation needed
19 for voluntary manslaughter must come from some act of or
20 related to the victim.

21 Words alone, however vulgar or insulting, are not
22 enough to be legal provocation for the offense of voluntary
23 manslaughter. When death is caused by the use of a deadly
24 weapon, words must be accompanied by some overt threatening
25 act, which could have produced the heat of passion.

1 The exercise of a legal right, no matter how offensive
2 it is to another, is never sufficient legal provocation for
3 voluntary manslaughter. If the heat of passion has cooled
4 or if there was enough time between the provocation, if any,
5 and the killing for the passion of a reasonable person to
6 cool, the killing would not be voluntary manslaughter.

7 In deciding whether a reasonable person would have had
8 enough time to cool off, you as a jury should consider all
9 of the circumstances surrounding the killing, based on
10 evidence introduced during the trial of this case.

11 You may consider the nature of the provocation, if any,
12 the defendant's mental and physical state, based on evidence
13 introduced during the trial of this case, and the
14 circumstances and relationships between the parties in
15 deciding the issue of voluntary manslaughter and legal
16 provocation.

17 To the charges of murder and voluntary manslaughter,
18 and I'll also say predicated on that is possession of a
19 weapon during the commission of a violent crime, and I'll
20 explain that in a moment. The defendant has raised the
21 defense of self defense. Self defense is a complete
22 defense, and if established, you must find the defendant not
23 guilty.

24 The State has the burden of disproving self defense by proof
25 beyond a reasonable doubt. If you have a reasonable doubt

1 of the defendant's guilty after considering all of the
2 evidence, including the evidence of self defense, then you
3 must find the defendant not guilty.

4 On the other hand, if you have no reasonable doubt of
5 the defendant's guilt after considering all of the evidence,
6 including the evidence of self defense, then you must find
7 the defendant guilty.

8 The following evidence are required to establish self
9 defense, with some exceptions. Let me explain. In all self
10 defense cases, the first element, number one, is without
11 fault. First the defendant must be without fault in
12 bringing on the difficulty. If the defendant's conduct was
13 the type which was reasonably calculated to and did provoke
14 a deadly assault, the defendant would be at fault in
15 bringing on the difficulty and would not be entitled to an
16 acquittal based on self defense.

17 The second element of self defense concerns imminent
18 danger. And that is the defendant was either actually in
19 imminent danger of death or serious bodily harm or that the
20 defendant actually believed he was in imminent danger of
21 death or serious bodily injury.

22 If the defendant was actually in imminent danger it
23 must be also shown from the evidence that the circumstances
24 would have warranted a person of ordinary firmness, a person
25 of ordinary courage, to strike the fatal blow to prevent

1 death or serious bodily injury. If the defendant just
2 believed rather than actually was in imminent danger, if the
3 defendant believed he was in imminent danger of death or
4 serious bodily injury, it must be shown from the evidence
5 that a reasonably prudent person of ordinary firmness, of
6 ordinary courage would have had the same belief.

7 In deciding whether the defendant actually was in
8 imminent danger or believed he was in imminent danger of
9 death or serious bodily injury, you should consider all of
10 the facts and circumstances surrounding the crime, including
11 the physical condition and the characteristics of the
12 defendant and the victim.

13 The defendant does not have to show that he was
14 actually in imminent danger. It is enough that the defendant
15 and a reasonable person would have believed he was in
16 imminent danger, and a reasonable person or ordinary
17 firmness and courage would have had the same belief. The
18 defendant has the right to act on appearances, even though
19 the defendant's belief may have been mistaken. It is for
20 you, the jury, to decide whether the defendant's fear of
21 immediate death or serious bodily injury was reasonable and
22 would have been felt by an ordinary person in the same
23 situation.

24 Evidence of prior difficulties between the defendant
25 and the victim may be considered by you in deciding whether

1 a threat existed. Whether the defendant had a reason to
2 believe that a threat existed, and how serious that threat
3 was.

4 The relative sizes, ages, and weights of the defendant
5 and the victim may be considered in deciding the apparent or
6 actual need for force in self defense and the amount of
7 force needed.

8 Threats made by the victim may be considered in
9 determining whether the victim actually was or believed he
10 was in imminent danger.

11 Now, there's another element of self defense which
12 exists under certain circumstances, and that is the
13 defendant had no other probable way to avoid the danger of
14 death or serious bodily injury than to act as the defendant
15 did in this particular incidence. If you should find that
16 the defendant was not on his own premises, then he would
17 have the element of proving there was no other probable way
18 to avoid the danger of death or serious bodily injury. If
19 the defendant was on his own premises, the defendant had no
20 duty to retreat before acting in self defense. A
21 person cannot be required to make an exact calculation on
22 the degree of amount of force which may be needed to avoid
23 death or serious bodily injury. Therefore, in self defense,
24 the defendant has the right to use the force needed to avoid
25 death or serious bodily injury. The force used in self

1 defense does not have to be limited to the degree of amount
2 of force used by the victim. The defendant has the right to
3 use so much force as appeared to be necessary for complete
4 self protection, and which a person of ordinary reason,
5 ordinary firmness, ordinary courage, would have believed to
6 be needed to prevent death or serious bodily injury.

7 I charge you, ladies and gentlemen, that the defendant
8 is also charged with the offense of possession of a weapon
9 during the commission of a violent crime. The State, for
10 this offense, must prove beyond a reasonable doubt that the
11 defendant used a weapon during the commission or attempted
12 commission of a violent crime. The statute actually says a
13 firearm. A firearm means any machine gun, automatic rifle,
14 revolver, pistol, or any weapon which will, or is designed
15 to, or may be converted to, expel a projectile.

16 In order to find a defendant guilty of possession of a
17 weapon during the commission of a violent crime, you must
18 first find the defendant guilty of committing a violent
19 crime or attempting to commit a violent crime. I charge
20 you, ladies and gentlemen, that under the laws of the State
21 of South Carolina, the offenses of murder and voluntary
22 manslaughter are both violent crimes.

23 Now, ladies and gentlemen, if you find the defendant in
24 this case not guilty of murder, you must find the defendant
25 not guilty of possession of a weapon during the commission

1 of a violent crime, because you must be guilty of a violent
2 crime in order to be guilty of the offense of possession of
3 a weapon during the commission of a violent crime. The
4 State must prove beyond a reasonable doubt that the weapon
5 furthered, advanced, or helped in the commission of the
6 violent crime.

7 I charge you, ladies and gentlemen, that the defendant
8 is also charged in an indictment for the offense of
9 obstruction of justice. The State must prove for this
10 offense, beyond a reasonable doubt, that the defendant
11 committed an act which prevented obstructed, impeded, or
12 hindered the administration of justice. The State must also
13 prove beyond a reasonable doubt that the defendant did the
14 act with the intent to obstruct justice.

15 The defendant does not have to succeed in the effort to
16 obstruct justice. It is enough if some act is done in
17 furtherance of the attempt to obstruct justice.

18 Now, Mr. Foreman, I told you I would prepare a verdict
19 form for you and I have done so. The first thing I want to
20 tell everyone on the jury: pay absolutely no attention to
21 the order in which I wrote the forms of verdict. The order
22 has no significance whatsoever. I obviously had to write
23 one before the other.

24 I've placed the title of the case on the first page of
25 your verdict form. It says State of South Carolina v.

1 Taquan Brown, defendant. It has the indictment numbers and
2 it has the word verdict. There are four questions on your
3 verdict form. Let me explain.

4 Question one is, we, the jury, by unanimous consent,
5 find the defendant, Taquan Brown, in Indictment 2013-GS-15-
6 01041, and the first verdict form under Question One is
7 guilty of murder. Mr. Foreman, if that be the jury's
8 verdict, you would check on the line beside that form of
9 verdict.

10 The second form of verdict under Question One is not
11 guilty of murder. If that be the form of verdict for the
12 entire jury, you would check on the line beside not guilty
13 of murder. You must find one form of verdict or the other
14 under Question One, you cannot find both.

15 Then, I wrote you some instructions under Question One.
16 If you find the defendant guilty of murder, you do not have
17 to answer Question Two, which is the offense of voluntary
18 manslaughter. If you find the defendant not guilty of
19 murder, you must answer Question Two, which is the lesser
20 included offense of voluntary manslaughter.

21 Question Two, if you reach this question, says, by
22 unanimous consent, find the defendant, Taquan Brown, in the
23 first form of verdict under Question Two, is guilty of the
24 lesser included offense of voluntary manslaughter. If that
25 be your form of verdict, Mr. Foreman, you would check on

1 that line beside that form of verdict. Or the second form
2 of verdict under Question Two is not guilty of the lesser
3 included offense of voluntary manslaughter. If that be your
4 form of verdict, Mr. Foreman, you would check on the line
5 beside that form of verdict for the entire jury.

6 Then, I wrote you more instructions. If you find the
7 defendant not guilty of murder and not guilty of voluntary
8 manslaughter, you must find the defendant not guilty in
9 Question Three, which is possession of a weapon during the
10 commission of a violent crime. Because in order to find a
11 person guilty of possession of a weapon during the
12 commission of a violent crime, you must find a person guilty
13 of a violent crime. And only murder and voluntary
14 manslaughter are violent crimes for purposes of this case.

15 So if you find the defendant not guilty of murder and
16 not guilty of voluntary manslaughter, you must find the
17 defendant not guilty of possession of a weapon during the
18 commission of a violent crime.

19 If you find the defendant either guilty of murder or
20 guilty of voluntary manslaughter, then you must answer
21 Question Three, which is we, the jury, by unanimous consent,
22 find the defendant, Taquan Brown, in Indictment number 2013-
23 GS-15-01042. The first form of verdict under Question Three
24 is guilty of possession of a weapon during the commission of
25 a violent crime. If that be your form of verdict, Mr.

1 Foreman, you would check on the line beside that form of
2 verdict if you reach Question Three.

3 Or the second form of verdict under Question Three is
4 not guilty of possession of a weapon during the commission
5 of a violent crime. If that be your form of verdict, you
6 would check on the line beside that form of verdict under
7 Question Three. I caution you again, you must find the
8 defendant guilty of a violent crime in order to find the
9 defendant guilty of possession of a weapon during the
10 commission of a violent crime.

11 Finally, you must answer Question Four regardless of
12 your other verdicts. We, the jury, by unanimous consent,
13 find the defendant, Taquan Brown, in Indictment 2013-01040,
14 and that is the indictment for obstruction of justice.
15 There are two forms of verdict under Question Four. The
16 first form is guilty of obstruction of justice. If that be
17 your form of verdict, you would check on the line beside
18 that form of verdict. The other form of verdict under
19 Question Four is not guilty of obstruction of justice. If
20 that be your form of verdict, you would check on the line
21 beside that form of verdict.

22 When you have filled out the appropriate blanks by
23 putting the checkmarks for the entire jury, Mr. Foreman, you
24 will sign your name as foreperson. I've already put in
25 today's date for you. Of course, you'll have the verdict

1 form with you. Then, you will inform the bailiff by
2 knocking on the door when the jury has reached a verdict.

3 Now, Mr. Foreman, you will remember, you can't go
4 anywhere because you know I'm handing these indictments to
5 Thomas and he's going to be looking for you, because
6 whatever you write on the verdict form, he's going to want
7 you to write the exact same words on the indictments before
8 you leave the courtroom today. He will come to you.

9 Ladies and gentlemen of the jury, your verdict must be
10 unanimous. That is, it must be the verdict of each and
11 every one of you. All twelve of you must agree on a
12 verdict.

13 Now, Mr. Foreman, ladies and gentlemen of the jury,
14 I've now charged you on the law in order to help guide you
15 to a fair and a just result in this case. You're the judges
16 of the facts in this case, and based on your determination
17 of the facts in this case and the law as I've explained it
18 to you, you will soon begin your deliberations.

19 You have been selected as fair and impartial jurors.
20 You took an oath to fairly and impartially try and determine
21 the facts in this case. And when you comply with that oath,
22 no one can criticize your verdict. You are to decide this
23 case based solely on the testimony from the witness stand,
24 any exhibits which have been introduced into evidence in
25 this case, and if there were any stipulations between

1 counsel of the parties in this case.

2 You must decide the issues in this case, ladies and
3 gentlemen, without any bias or prejudice, for or against
4 either party. You cannot allow yourself to be governed by
5 prejudice for or against any person. You can't allow
6 yourself to be governed by public opinion, what you think
7 others might do, or by any other arbitrary factor such as
8 emotion. You must base your decision only and solely on the
9 evidence which has been presented during the trial of this
10 case.

11 Both the defendant and the State of South Carolina have
12 the absolute right to expect that each of you on the jury
13 will carefully and each of you will impartially consider all
14 of the evidence in this case and that you will follow the
15 law as I have instructed you to be in reaching your verdict
16 in this case.

17 Now, ladies and gentlemen of the jury, I'm going to
18 send you to your jury room. I want you to understand that
19 when it's time for you to begin your deliberations, I will
20 send your verdict form in, along with most of the exhibits.
21 The ones that you cannot view without equipment out here --
22 and we have one exhibit that you have only video and not
23 audio; so I will keep those out here. If the jury wants to
24 see them, we will bring you out here and show you anything;
25 there's just no reason for you to take it back in your jury

1 room because you don't have the equipment to utilize it.

2 Please do not begin your deliberations until I send the
3 verdict form in, along with all of the other exhibits which
4 do not require equipment, and I will have the bailiff
5 instruct you that you may then commence your deliberations.
6 When you have reached the verdict, you've filled out the
7 verdict form, knock on the jury room door and inform the
8 bailiff that you've reached a verdict. We will then bring
9 you back into the courtroom to publish your verdict when the
10 time comes.

11 Please retire to your jury room, now. My alternate
12 jurors, please remain with me in the courtroom.

13 (12:16 P.M., WHEREUPON, THE JURY EXITS THE COURTROOM
14 AND THE FOLLOWING IS HELD ON THE RECORD.)

15 THE COURT: First of all, on behalf of Colleton County
16 and this Court, all a judge can ask is that you listen. I
17 watched you and you did. Thank you for that. This
18 completes your service. Not only for this case, but for the
19 week. You are now exempt from jury duty, if you choose to
20 claim your exemption, for three years.

21 If any of you need a work excuse from serving on the
22 jury, all you need to do is go downstairs to General
23 Sessions. We will be happy to provide you one. We will be
24 sending you that exorbitant check that we pay jurors, \$20 a
25 day. We realize it's inadequate, but we appreciate so much

1 your service.

2 Thank you for taking the time to serve on the jury.
3 The Coach will see to it that you get served your lunch in
4 either to-go plates or you can have it here, but I can't let
5 you go back into the jury room. You're welcome to come back
6 and have a seat in the courtroom if you would like to stay
7 and see what happens in the case. I realize you've listened
8 to all of the evidence. I thank you for your service, or
9 you're excused for the balance of the week. I send you back
10 to your home and your families now. Thank you very much.

11 (12:20 p.m., whereupon, the alternate jurors are
12 released from the courtroom.)

13 THE COURT: Any exceptions or additions to the Court's
14 charge, from the State?

15 ASST. SOL. LEGETTE: None from the State.

16 THE COURT: From the defendant?

17 MR. WALKER: No, Your Honor.

18 THE COURT: I'd ask that counsel come forward certify
19 to me that you're satisfied that the court reporter has all
20 the exhibits. And that you have no objection to me sending
21 the exhibits and the verdict form into the jury by the
22 bailiff and telling the bailiff to inform the jury that they
23 may now commence their deliberations. Counsel, please come
24 forward.

25 (Brief pause as counsel go through exhibits.)

1 THE COURT: Is the State satisfied the court reporter
2 has all the exhibits?

3 ASST. SOL. LEGETTE: The State is satisfied.

4 THE COURT: Does the State agree that exhibits one and
5 two will remain in the courtroom?

6 ASST. SOL. LEGETTE: I agree, Your Honor.

7 THE COURT: All right. Matt, do you agree?

8 MR. WALKER: Yes, sir, I do.

9 THE COURT: All right. Now, Major, it will be your job
10 to tell that as to State's Exhibits One and Two, the 9-1-1
11 call and the L3 Video/In-car camera -- how long is it
12 Angela? I don't know if we saw the whole thing?

13 ASST. SOL. LEGETTE: We didn't see the whole thing.

14 THE COURT: Do you have any objection to the bailiff
15 taking the verdict form and the remaining exhibits other
16 than the ones we are leaving in the courtroom into the jury
17 and the bailiff informing the jury they may now commence
18 their deliberations?

19 ASST. SOL. LEGETTE: No objection from the State.

20 THE COURT: Is the defendant satisfied that the court
21 reporter has all the exhibits?

22 MR. WALKER: Yes, sir.

23 THE COURT: I don't think either one of them are long,
24 Matt. I don't want you to make any comment on the evidence,
25 but so they will understand what we are keeping in here by

1 agreement of counsel is the 9-1-1 call and the video from
2 the officer's car. And if they want to see or listen to
3 either one, they need to let us know. Now, is the State
4 satisfied that the court reporter has all of the exhibits?

5 ASST. SOL. LEGETTE: Yes, sir, Your Honor.

6 THE COURT: Do you have any objection to the Major
7 taking the verdict form and the exhibits into the jury and
8 telling the jury they may now commence their deliberation?

9 ASST. SOL. LEGETTE: No Objection, Your Honor.

10 THE COURT: Is the defendant satisfied that the court
11 reporter has all of the exhibits?

12 MR. WALKER: Yes, sir.

13 THE COURT: Do you have any objections to the Major
14 taking the verdict form and the remaining exhibits, other
15 than the ones you agree will remain in the courtroom, as to
16 State's One and Two, into the jury and having the Major tell
17 the jury they may now commence their deliberation?

18 MR. WALKER: No objection.

19 THE COURT: Very well. We will be at ease while we
20 await the jury's verdict.

21 (Whereas, at 12:30 p.m., the exhibits and verdict form
22 are taken into the jury. Other non-jury matters are taken
23 up after the lunch recess and then a note is received by the
24 Court from the jury.)

25 THE COURT: Let the record reflect, Becky, that at

1 approximately 2:40, I received a note delivered to me by my
2 Major from the jury. I have shown the note to counsel for
3 the State and the defendant. Counsel for the defendant
4 waives the defendant's appearance having seen the note now
5 and has agreed, along with the Solicitor, on a response. I
6 understand both sides have no objection to making the note
7 form the jury a court's exhibit; is that correct, from the
8 State?

9 ASST. SOL. LEGETTE: That's correct, Your Honor.

10 THE COURT: Correct from the defendant?

11 MR. WALKER: Yes, Your Honor.

12 (Whereupon, Court's Exhibit Number two, jury note
13 requesting definitions, is received into evidence.)

14 THE COURT: The note says can we have a written point
15 of law between murder and voluntary manslaughter? It's
16 signed by the foreman and dated today. It will be Court's
17 Exhibit Number Two without objection.

18 After conferring with the lawyers in chambers, they
19 both agreed that I can give my charge on the crime of murder
20 and on the crime of voluntary manslaughter to the jury, have
21 my bailiff take the actual written charge into the jury. My
22 bailiff is also authorized by both sides to ask the jury if
23 this does not answer your question, that you may write Judge
24 Buckner any further questions on a piece of paper and give
25 it to the bailiff. Both sides have agreed to this as an

1 appropriate response to the jury's question, which is now
2 Court's Exhibit Number Two; is that correct, from the State?

3 ASST. SOL. LEGETTE: Yes, Your Honor.

4 THE COURT: From the defendant?

5 MR. WALKER: Yes, Your Honor

6 THE COURT: Major, you know what to tell them.

7 MAJOR HAAS: Yes, sir.

8 (Whereupon, the Court continues with non-jury matters,
9 until the bailiff informs the Court that the jury has
10 reached a verdict. Thereafter, at 3:12 p.m., the following
11 is held on the record.)

12 THE COURT: All right. I've been informed the jury has
13 reached a verdict. Let me say this to those people who want
14 to stay in the courtroom for the publication of the verdict.
15 I do not allow any outbursts, emotional or otherwise, when a
16 verdict is published. The jury is owed the respect of the
17 public for their service. There will be no clapping. There
18 will be no moaning.

19 There will be no outbursts, and I will enforce that
20 with the contempt powers of this Court. If you can't
21 control that, step out of the courtroom now. The jury
22 deserves the respect of their service and I do not allow any
23 emotional outbursts. Now is the time to leave the courtroom
24 if you can't control your emotions. I need the defendant
25 brought up.

1 (3:17 p.m., whereas the defendant, Taquan Brown, enters
2 the courtroom and takes seat at defense table.)

3 THE COURT: Is the State ready to publish the verdict?

4 ASST. SOL. LEGETTE: Yes, Your Honor.

5 THE COURT: Is the defendant ready?

6 MR. WALKER: Yes, Your Honor.

7 THE COURT: Bring us the jury.

8 (3:18 p.m., whereupon the jury enters the courtroom and
9 the following is held on the record.)

10 MADAME CLERK: Mr. Foreman, have you reached a verdict?

11 MR. FOREMAN: Yes, we have.

12 (Clerk retrieves verdict form from the foreman.)

13 THE COURT: Will the defendant and counsel please rise.
14 Madame Clerk, you may publish the verdict in the presence of
15 the juries and the parties.

16 MADAME CLERK: The State of South Carolina v. Taquan
17 Brown. Indictment numbers 2013-GS-15-1040, 2013-GS-15-1041,
18 2013-GS-15-1042, We, the jury, by unanimous consent, find
19 the defendant, Taquan Brown, in Indictment 2013-GS-15-1041,
20 not guilty of murder. We, the jury, by unanimous consent,
21 find the defendant, Taquan Brown, guilty of the lesser
22 included offense of voluntary manslaughter. We, the jury,
23 by unanimous consent find the defendant, Taquan Brown, in
24 Indictment number 2013-GS-15-1042, guilty of possession of a
25 weapon during the commission of a violent crime. We, the

1 jury, by unanimous consent, find the defendant, Taquan
2 Brown, 2013-GS-15-1040, guilty of obstruction of justice,
3 signed by the foreman, Charles R. Pierce, Jr.

4 Ladies and gentlemen of the jury, if this is your
5 verdict, please raise your right hand.

6 (Jury complies.)

7 MADAME CLERK: Thank you.

8 THE COURT: Let the record reflect, twelve hands were
9 raised. Mr. Walker, anything from the defendant for the
10 jury before I excuse the jury

11 MR. WALKER: I would like the jury polled, Your Honor.

12 THE COURT: Madame Clerk, I'm going to ask that you
13 poll the jury. Ladies and gentlemen, let me tell you what's
14 going to happen. The Clerk will call your name. When your
15 name is called, I'm going to ask you to stand. She is going
16 to ask you two questions. The questions will be, "Was that
17 your verdict?" and "Is that still your verdict?" And you
18 will answer yes or no. Please be seated Mr. Walker and your
19 client.

20 Madame Clerk, please poll the jury.

21 MADAME CLERK: Janice Doyle, was this your verdict?

22 JUROR: Yes.

23 MADAME CLERK: Is it still your verdict?

24 JUROR: Yes.

25 MADAME CLERK: Nancy Blocker, was this your verdict?

1 JUROR: Yes.

2 MADAME CLERK: Is it still your verdict?

3 JUROR: Yes.

4 MADAME CLERK: Aaron Lockwood, was this your verdict?

5 JUROR: Yes.

6 MADAME CLERK: Is it still your verdict?

7 JUROR: Yes.

8 MADAME CLERK: LaTarsha Kinsey, was this your verdict?

9 JUROR: Yes.

10 MADAME CLERK: Is it still your verdict?

11 JUROR: Yes.

12 MADAME CLERK: Brenda Byrd, was this your verdict?

13 JUROR: Yes.

14 MADAME CLERK: Is it still your verdict?

15 JUROR: Yes.

16 MADAME CLERK: Sherrill Fralix, was this your verdict?

17 JUROR: Yes.

18 MADAME CLERK: Is it still your verdict?

19 JUROR: Yes.

20 MADAME CLERK: Charles R. Pierce, was this your

21 verdict?

22 JUROR: Yes

23 MADAME CLERK: Is it still your verdict?

24 JUROR: Yes.

25 MADAME CLERK: Sammie Henderson, was this your verdict?

1 JUROR: Yes.

2 MADAME CLERK: Is it still your verdict?

3 JUROR: Yes.

4 Ronald Nettles, was this your verdict?

5 JUROR: Yes.

6 MADAME CLERK: Is it still your verdict?

7 JUROR: Yes.

8 MADAME CLERK: Robert Neal Avant, was this your
9 verdict?

10 JUROR: Yes.

11 MADAME CLERK: Is it still your verdict?

12 JUROR: Yes.

13 MADAME CLERK: Joshua Jones, was this your verdict?

14 JUROR: Yes.

15 MADAME CLERK: Carolyn Cummings, was this your verdict?

16 JUROR: Yes.

17 MADAME CLERK: Is it still your verdict?

18 JUROR: Yes.

19 THE COURT: Counsel, the jury has been polled. The
20 verdict stands. Anything further from the defendant?

21 MR. WALKER: No, Your Honor.

22 THE COURT: Mr. Foreman, and ladies and gentlemen of
23 the jury, on behalf of Colleton County and this Court, I
24 want to thank you for your service in this trial. I realize
25 it took a little while this week and I very much appreciate

1 your time. We're going to be sending you a check for that
2 exorbitant amount of \$20 a day. It will be mailed from the
3 Finance Department of Colleton County. If anyone needs a
4 work excuse, when you go downstairs, you will go in the door
5 marked General Sessions. There will a person in there who
6 will be happy to give you a written excuse to you for your
7 employer to let them know you have been with me all week in
8 jury service.

9 Now, sometimes people want to talk to jurors after a
10 verdict. Sometimes people feel that they can learn how to
11 better handle trying cases from talking to jurors. If you
12 want to talk to anyone, you can, but you certainly do not
13 have to. If someone tries to push you into talking and you
14 don't want to talk about your jury service, you get their
15 name, you give it to me, and I'll handle that problem for
16 you.

17 Now, sentencing in this case is going to take place
18 right now, in just a moment. I'm going to invite you if
19 you'd like to, to stay for sentencing. That's the Court's
20 role, not yours. However, I'm happy for you to stay right
21 at the jury box or you can come down and sit in the back of
22 the courtroom, or you may leave the courtroom. This
23 concludes your jury service for the entire week. And if you
24 will recall, you are now exempt from jury service for three
25 years as a result of your service this week. On behalf of

1 Colleton County and this Court, I want to thank you for your
2 service very much.

3 Those of you who would like to leave, you may do so, or
4 you can stay for sentencing.

5 (Brief pause in courtroom.)

6 THE COURT: All right. Solicitor, do you have a
7 sentence sheet?

8 ASST. SOL. LEGETTE: Yes, Your Honor.

9 THE COURT: Mr. Walker, are there any post verdict
10 motions?

11 MR. WALKER: I renew my earlier motions, Your Honor.

12 THE COURT: And for the reasons I stated at the close
13 of the State's case and at the close of all the evidence on
14 the grounds that you enunciated on the record for directed
15 verdict, your motions are respectfully denied. Would you
16 and your client come around for sentencing?

17 (Mr. Walker and Mr. Brown comply.)

18 THE COURT: All right. Solicitor, I realize I have
19 members of family here. If they would like to be heard, I'm
20 certainly willing to listen to them. Now that some of the
21 jurors are here, first of all, I want you to -- so Mr.
22 Walker has a chance to respond to everything at one time, I
23 want you to give me his prior record. I also want to know
24 if any member of the victim's family wishes to address the
25 Court before I hear from counsel for the defendant in

1 mitigation.

2 ASST. SOL. LEGETTE: Your Honor, his prior record
3 includes a 2008 grand larceny, more than \$1,000, but less
4 than \$5,000. A 2006 obtaining goods by false pretenses. A
5 2006 breach of trust, greater than \$1,000, but less than
6 \$5,000. A 2006 forgery, less than \$5,000. And a 2006
7 forgery, less than \$5,000, and I believe he is currently on
8 Federal Probation for conspiracy to commit check fraud
9 involving \$400,000 from Wal-mart.

10 THE COURT: Dawn, it's my understanding that he's on
11 state probation; is that correct?

12 AGENT DAWN FARISH: Yes, sir, it is, Your Honor.

13 THE COURT: Tell us about that.

14 AGENT DAWN FARISH: Yes, sir. He was sentenced on
15 January 24th of 2012 in Charleston, South Carolina, for
16 fraudulent check on Indictment number 2012-GS-10-689. He
17 received a sentence of two years, suspended to two years
18 probation. Restitution, fine, and he has one prior
19 violation where he was revoked for seven months. He has a
20 remainder of 17 months left on his sentence.

21 THE COURT: That's 2012-GS-10-00689; is that correct?

22 AGENT DAWN FARISH: Yes, sir, it is.

23 THE COURT: And this conviction would be a violation of
24 his state probation; is that correct?

25 AGENT DAWN FARISH: Yes, sir, it is.

1 THE COURT: All right. Solicitor, is there anything
2 else you want to tell me?

3 ASST. SOL. LEGETTE: Your Honor, the family does not
4 wish to speak. I've asked all of them and they do not wish
5 to be heard at this time. Your Honor, I think the case
6 itself has spoken for them.

7 THE COURT: All right. Anything else from the State
8 before I hear the defense?

9 ASST. SOL. LEGETTE: Your Honor, we leave this matter
10 in the sound discretion of the Court. We did make a plea
11 offer in this matter for a cap of 20 and that was prior to
12 the trial beginning and Mr. Brown actually declined the
13 offer. So at this point, we leave the matter in the sound
14 discretion of the Court.

15 THE COURT: Very well. Mr. Walker, I'll be happy to
16 hear from you.

17 MR. WALKER: Thank you, Your Honor. Taquan Brown is 27
18 years of age. He has one son who is almost three years old.
19 He was previously employed as a satellite technician
20 installing satellite TV's and that sort of thing. And as
21 you already asked about his criminal history, and of course,
22 nothing of a violent nature, a lot of monetary things, such
23 as check fraud and that sort of thing. This incident was
24 out of character for him.

25 Before I go into that, I will say that his mother was

1 here for the first three days of trial and is here now. She
2 was not able to be here this morning, but has been here
3 since the beginning of the trial.

4 You heard the case, Your Honor. You heard the
5 arguments. I believe I said in the argument the same things
6 I'm saying to you now.

7 THE COURT: You've been a zealous advocate on behalf of
8 your client, Mr. Walker. I'm very aware. The jury is not
9 aware of how many times I've heard the evidence in this
10 case, but you are, as well as the Solicitor, because you
11 made a motion to dismiss this case under the Castle
12 Doctrine. The jury is not familiar with that because they
13 don't hear that testimony. I heard all the witnesses in
14 your motion before we started the trial on Tuesday until
15 approximately 7:30 on Monday night. And then we heard them
16 again in the presence of the jury. So you know I'm very
17 familiar with the facts and you've argued zealously for your
18 client on the issue of self defense.

19 MR. WALKER: Yes, sir. And I would, again, as to
20 sentencing, I would ask the Court's consideration to the
21 fact, again, that this unfortunate incident occurred and he
22 was not looking for any trouble that night. He was at his
23 own home.

24 THE COURT: Well, as I told you, Mr. Walker, of course,
25 that's why they grade my paper, too. But as I told you when

1 I denied your motion under the Castle Doctrine, I believe
2 that you did not convince me by a preponderance of the
3 evidence that I should hold him immune from suit because I
4 believe you could not prove he was without fault from
5 bringing on the difficulty when he emerged from the house
6 with a pistol, regardless of where it came from, whether it
7 was his, who handed it to him, and went out in the yard,
8 which I believe was a necessary element of self defense.
9 But that matter has been ruled on and that's a matter now
10 for the Appellate Court.

11 MR. WALKER: Yes, sir.

12 THE COURT: Anything you want to tell me now for
13 sentencing in mitigation?

14 MR. WALKER: And it wasn't an attempt to arguing, it
15 was an attempt in mitigation.

16 THE COURT: Exactly why I submitted self defense to the
17 jury for them to make a decision. There was clearly
18 evidence for them to find it was not and exactly why I
19 submitted the lesser included offense for you and your
20 client to the jury involuntary manslaughter.

21 MR. WALKER: When this happened, my client made some
22 poor decisions and unfortunately a life was lost, certainly,
23 but for his decision to go outside and into battle. We
24 would ask the Court to take into consideration that other
25 parties were involved that they made poor decisions as well.

1 THE COURT: There is never an easy way when life is
2 lost that we can restore it, but you also have to bear the
3 responsibility for it.

4 MR. WALKER: Yes, sir. And in light of the
5 circumstances that you've heard multiple times, we would ask
6 the Court for a lesser sentence in the range of 10 years.

7 THE COURT: Well, Mr. Brown, is there anything you
8 would like to tell the Court prior to sentencing? The jury
9 has spoken, and I'm not here to discuss guilt or innocence.
10 I'm here to listen to you about sentencing; do you
11 understand?

12 MR. BROWN: Yes, sir.

13 THE COURT: And there was clearly evidence, which I
14 believe the jury could base their verdict on. Yes, sir,
15 happy to hear from you.

16 MR. BROWN: I wish this had never happen. I'm sorry
17 for the family and their loss. Me being sorry can't bring
18 back their loved one. I just wish this incident had never
19 happened at all. I didn't want this incident to happen. It
20 was something that just happened. It was a mistake. If
21 possible, I would ask could you go along with the
22 recommendation of Mr. Walker?

23 THE COURT: Anything further from the defendant, Mr.
24 Walker?

25 MR. WALKER: We would admit that the verdict would

1 constitute a violation of his probation and ask for a
2 concurrent sentence on that, too.

3 THE COURT: First thing I'm doing, Dawn, I'm revoking
4 his South Carolina probation and I'm running the sentences I
5 give him concurrent with what's left on his probation; do
6 you understand?

7 AGENT DAWN FARISH: May we also request a civil
8 judgment on his restitution?

9 THE COURT: Yes, you may. Do you understand, Mr.
10 Walker? I'm giving you what you requested, that it be
11 concurrent.

12 MR. WALKER: Yes, Your Honor.

13 THE COURT: Anything further from the defendant?

14 MR. WALKER: No, sir.

15 THE COURT: Anything further from the State?

16 ASST. SOL. LEGETTE: No, Your Honor.

17 THE COURT: All right. First of all, I want to say a
18 few things before I announce the sentence. I take into
19 consideration a number of things. I take into consideration
20 that the jury chose to convict Mr. Brown of the lesser
21 included offense of voluntary manslaughter. I take into
22 consideration that his lawyer and he vigorously fought this
23 case on the basis of self defense. I completely understand
24 the jury's verdict, because as I believe you have already
25 heard me say, and Mr. Brown knows, but the people on the

1 jury didn't hear any of this. That I ruled as a matter of
2 law that the jury should decide the issue of whether or not
3 self defense was a defense in this case.

4 I also take into consideration the defendant's prior
5 criminal history. He's on probation both by the State and
6 the Federal Government for grand larceny, obtaining goods by
7 false pretenses, breach of trust, two forgeries and check
8 fraud. I agree with you, Mr. Walker, that as far as State
9 probation is concerned, I will run my sentence on these
10 charges concurrent to 2012-GS-10-689 with the Charleston
11 State probation case.

12 Mr. Brown, I realize that I think the jury made the
13 absolute correct decision in this case. I think it would
14 have been -- I think there was sudden heat of passion and I
15 think there was legal provocation.

16 Your lawyer has pointed out in his argument to the jury
17 that this happened quickly, and I believe it did. However,
18 a family has lost a life. And you have to bear the
19 responsibility for it.

20 I've tried to fashion a sentence that I think is fair
21 to the people of the State of South Carolina and to you.
22 The maximum sentence for voluntary manslaughter, ladies and
23 gentlemen of the jury, is 30 years, and it is violent, and
24 you have to serve 85 percent of whatever sentence I give
25 before being eligible for any release.

1 On Indictment Number 2013-GS-15-1041, the State v.
2 Taquan Brown , indictment for murder, the jury found him
3 guilty of the lesser included offense of voluntary
4 manslaughter. The sentence of the Court is the defendant is
5 committed to the State Department of Corrections for a term
6 of 25 years.

7 On Indictment Number 2013-GS-15-1042, indictment for
8 possession of a weapon during the commission of a violent
9 crime. The sentence of the Court is defendant is committed
10 to the State Department of Corrections for a term of five
11 years.

12 Finally, on Indictment Number 2013-GS-15-1040,
13 indictment for obstruction of justice, the sentence of the
14 Court is defendant is committed to the State Department of
15 Corrections for a term of ten years.

16 Now, the sentence for voluntary manslaughter, which is
17 violent, requiring service of 85 percent of the 25 years,
18 the sentence of possession of a weapon during the commission
19 of a violent crime, which is also violent, those sentences
20 will run consecutive to each other for a total of 30 years.
21 The sentence of ten years for obstruction of justice will
22 run concurrent to the other two.

23 As far as his probation in Charleston is concerned, the
24 balance of his time in probation since he's serving 30 years
25 from the offenses in Colleton, all sentences will run

1 concurrent to 2012-GS-10689 in Charleston. The defendant is
2 to be given credit for any time that he has served in jail
3 awaiting trial. This credit is pursuant to S. C. Code
4 Section 24-13-40 and it is to be calculated and applied by
5 the South Carolina Department of Corrections.

6 I think that concludes all matters in connection with
7 this matter. Major, the defendant is now in custody.
8 Please take him with you.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the trial of the captioned case, in the Court of General Sessions for Colleton County, South Carolina, on the 22nd - 25th days of June 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 15, 2015

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAQUAN L. BROWN,

APPELLANT

APPELLATE CASE NO. 2015-001447

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Appellant is entitled to immunity from prosecution for murder under the Protection of Persons and Property Act where the Act provides immunity to a person who uses deadly force while removing another from his dwelling and who uses deadly force when he reasonably believes it is necessary to prevent imminent death or great bodily injury.
- (A) Appellant is entitled to immunity from prosecution for murder under the Protection of Persons and Property Act because Appellant was without fault in bringing on the difficulty and he shot the deceased in the curtilage of his residence while attempting to remove him from the property.
- (B) Appellant is entitled to immunity from prosecution for murder under the Protection of Persons and Property Act because Appellant actually and reasonably believed he was in imminent danger of losing his life or sustaining serious bodily injury.
- II. The trial court erred in denying Appellant's motion for directed verdict where the undisputed evidence showed that Appellant shot the deceased in lawful self-defense and that Appellant was without fault in bringing on the difficulty, and that Appellant acted in reasonable fear of imminent death or great bodily injury.

STATEMENT OF THE CASE

On December 19, 2013, the Colleton County Grand Jury indicted Appellant Taquan Brown for murder, obstruction of justice, and possession of a weapon during the commission of a violent crime. R. 537 - 542.

On June 22-25, 2015, Appellant proceeded to trial before the Honorable Perry M. Buckner and a jury. Matthew Walker represented Appellant, and Assistant Solicitor Tameka Legette represented the State.

The jury found Appellant guilty of voluntary manslaughter, obstruction of justice and possession of a weapon during the commission of a violent crime. R. 566, l. 16 - 567, l. 9. The trial court sentenced Appellant to a total of thirty years imprisonment. R. 577, ll. 1-22.

STATEMENT OF FACTS

Introduction

The material facts of this case are not in dispute. On November 20, 2013, at roughly four thirty in the morning, Maurice “Big Mo” Kemp was fatally shot by Appellant Taquan Brown in Brown’s front yard. Minutes earlier Kemp had forced his way into Brown’s apartment and torn it apart in a search for his ex-girlfriend, Courtney “Coco” Boulware. He located Boulware at the apartment of Brown’s next door neighbor and friend, Nayronne Holmes. Kemp was irate.

Kemp was a convicted felon with reputation for violence. R. 20, ll. 4-23. On the night he was shot, Kemp was high on cocaine with a blood alcohol content of .137 and would test positive for marijuana. R. 153, ll. 13-24. Kemp, who had returned to his vehicle after forcing Boulware to leave with him, leapt out his car and charged towards Brown. He crossed into Brown’s front yard threatening to either kill Brown or challenging Brown to kill him, while reaching into his waistband.

Gunshot residue evidence presented by the State indicated that Kemp may have been as close as two feet from Brown when he was shot. Brown testified that he feared for his life. Nevertheless, the trial court ruled that Brown was not entitled to immunity from prosecution under the Defense of Persons and Property Act and that the State had beyond a reasonable doubt disproven Brown’s self-defense claim.

Relevant Facts

On November 13, 2013, a week before the shooting, Brown and Holmes were visiting Larry Council at the Southern Inn in Walterboro. R. 17, l. 8 -21, l. 10. During the visit, the group ran into Kemp, who also lived at the hotel. Holmes asked Kemp to tell Boulware, to stop calling him.

Id.

Kemp became enraged that Boulware had a relationship with Holmes. R. 20, l. 2-3. Kemp demanded that the group leave the hotel and threatened to kill them if they mentioned Boulware again. *Id.* Kemp then menacingly showed them a pistol that he had in waist band. *Id.*

Pre-trial Immunity Hearing Pursuant to the Protection of Persons and Property Act

Brown proceeded to trial on June 22 - 25, 2015. The defense moved for a hearing to determine if Brown was entitled to immunity under Protection of Persons and Property Act ("the Act").

Brown testified that, at four in the morning on November 20, 2013, Kemp forced his way into his apartment. R. 33, l. 19 - 34, l. 18. Brown recalled that when Kemp saw him, "he start telling me that if he find out that Coco is in the house, he is going kill me and I'm a pussy, mother -- you know." R. 34, ll. 1-3.

Brown stated that Holmes came over to his apartment while Kemp was looking for Boulware in the apartment Holmes shared with his mother, Barbara Mays. Fearing Kemp, Holmes had brought his gun. R. 35, l. 3 - 37, l. 7. Brown refused to allow Kemp back in his apartment, forcing Kemp to walk around the side of the apartment building. Brown also took Holmes' pistol from him to avoid antagonizing Kemp, given his hatred for Holmes.

Brown, Holmes and others were already in the front yard when Kemp finished rounding the building when they heard Barbara Mays calling for Holmes. R. 43, l. 14 - 44, l. 4. At the hearing Brown detailed what happened next:

[H]e didn't drive away. After Ms. Barbara was talking about him kicking on the back door, and he got out - - Big Mo got out of the car, and was standing by the driver's door and called my name. He said, "Taquan, you bitch mother fucker. You tried to play me." I told Big Mo, I waved my hand and told him to go ahead on from around here. And when I told him to go ahead on from around here, he told me, "You think I'm playing with you?" I told him again, "Go on off

from around here.” So he came from around the back, the driver’s door, to the front panel by the front tire, and then he started running towards me. And while he was running, he was reaching in his waistband. . . .

R. 37, ll. 7-20.

By the time he was shot, Kemp had crossed from the parking lot - which was separated from the apartment building’s front yard by a sidewalk - into Brown’s yard. R. 37, l. 21 - 38, l. 23. Brown estimated that Kemp was about twelve to thirteen feet away from him when he opened fire. R. 39, ll. 1-4.

Jermaine Brown, Brown’s friend (no relation), testified that he had been asleep when Kemp burst into Brown’s apartment “causing all type of chaos inside the house, running around” looking for Boulware. R. 46, l. 13-16. Kemp was yelling obscenities and threats while searching Brown’s apartment. Jermaine saw Kemp “yelling at Taquan and all types of stuff. He was threatening him that he wanted to do something to him.” R. 48, ll. 12-20. Jermaine Brown testified that Brown kept demanding Kemp leave. *Id.*

Jermaine stated that Kemp leapt from his car and “ran at Taquan like he was in the process of hurting him.” *Id.* at ll. 21-25. Jermaine further recollected that Kemp appeared to be reaching or clutching something in his waistband as he ran towards Brown. R. 51, l. 3 - 53, l. 10.

Wylie James, who was also asleep at Brown’ apartment, woke up to Kemp “tearing up” the apartment. R. 61, l. 10 - 62, l. 21. Kemp was “like, out of control. You couldn’t calm him down, this and that. He was searching, tearing up [Brown’s apartment] looking for Coco.” *Id.*

James recalled that he, Brown, and the others were standing in Brown’s front yard when Boulware and Kemp were getting into Kemp’s car. *Id.* Kemp started “arguing back” to Brown, who was telling Kemp to leave. *Id.* In response, Kemp “started running back at [Brown], and started reaching, and that’s when Taquan shot him.” *Id.*

At the hearing, the defense also entered into evidence Kemp's autopsy report prepared by Dr. Erin Presnell of MUSC. R. 78, l. 13 - 79, l. 3; Defense Exhibit No. 2. A toxicology report conducted by M & S Labs was also entered as an exhibit without objection. R. 79, ll. 12-24; Defense Exhibit No.: 3.

Finally, the defense entered, with the State's consent, the transcript of Lawrenzer Walker's guilty plea. R. 80, l. 3 - 83, l. 10. On January 20, 2015, Walker pled guilty to obstruction of justice before the Honorable Thomas W. Cooper, Jr. Assistant Solicitor Legette represented the State at the hearing. R. 579.

Walker recounted that Kemp pushed his way through, over Walker's protests. Kemp erupted when he saw Brown, "he automatically was just getting on [Brown] saying oh he is going to do this and do that, well basically saying he is going to kill [Brown] if he finds that Coco . . . is in the house." R. 589, ll. 12-25.

Walker was in Brown's front yard and saw Kemp get out of his car while "talking stuff to" Brown. R. 588, l. 8 - 11, l. 10. Brown ordered Kemp off of his property. *Id.* "Big Mo said that what he was going to do was kill [Brown] and the he just started charging [Brown]. And that's when [Brown] you know pulled the trigger and he shot him until he fell." *Id.*

State's Witnesses

Sgt. Robert Edwards of the Colleton County Sheriff's Department was the first police officer to reach the scene. He testified for the State at the hearing. He testified that Kemp was laying facedown in Brown's front yard with his left leg extended forward when he arrived. R. 85, l. 23 - 86, l. 8. The driver's side car door was open. The keys were in the ignition. *Id.*

On cross-examination, Edwards stated that he was a firearms instructor for the Colleton Sheriff's Department. When asked, he explained that police officers are taught the "thirty foot

rule,” which holds that: “[t]he closing gap on the average person approaching you at full speed is about 30 feet. That is your safest point at which you can draw your weapon and safely engaged an armed suspect approaching you with a weapon.” R. 98, l. 3 - 99, l. 7.

Edwards agreed that if a deputy had told him that he had used deadly force on a three hundred pound man that had threatened and then charged at the deputy inside a thirty foot radius while reaching into his waist band; the use of deadly force would have been in-line with law enforcement training and justified. *Id.* On re-direct, Edwards stated that the pistol Brown used was in bad condition and generally unsafe to fire.

Captain Jason Chapman had taken photographs of the scene and made a series of measurements. By his measurements, Kemp was shot in Brown’s yard, approximately thirty eight feet from the front door of Brown’s apartment. *Id.* Kemp was also just under twenty feet from the front driver’s side bumper of his car. *Id.* Chapman testified that police did not find a gun on Kemp at the scene of the shooting, but later located a .357 caliber revolver at his hotel room. R. 112, l. 14 - 113, l. 11.

SLED Trace Evidence Technician Whitney Berry conducted gunshot residue (“GSR”) tests on samples provided to her by law enforcement. Berry stated that GSR residue kits from Walker and Brown both testified positive for GSR. R. 121, l. 5 - 123, l. 24. Samples taken of Kemp’s hands also tested positive for GSR. *Id.* Berry testified that Kemp must have been very close to Brown, within two and half or three feet, for his hands to have GSR residue. *Id.*

Detective Nyle Eltzroth was the lead investigator of Kemp’s shooting. He testified that everyone he initially interviewed - Holmes, Mays, Walker, and Brown - denied having any knowledge of Kemp’s shooting. He alleged that a couple of days after the shooting a confidential informant told him that Boulware had knowledge of the shooting. R. 132, l. 16 - 133, l. 19.

Prior to Brown standing trial, Boulware died in a car accident in April, 2015. Eltzroth claimed that Boulware had told him Brown was walking down the sidewalk leading from the front door of his apartment to the parking lot with a pistol. R. 138, ll. 6-20. Eltzroth also stated that Boulware had said that Kemp saw the pistol and got out of his car.

Boulware explained to him that Kemp walked towards Brown yelling at Brown to shoot him. *Id.* Eltzroth conceded that Boulware's version of the shooting largely mirrored the version told by Brown and the other witnesses. Eltzroth rationalized his decision to charge Brown with murder as, "throughout my investigation with witnesses on scene, Taquan had come down the sidewalk towards the car, and at some point, come within a proximity of Mourice." R. 155, ll. 3-12.

Eltzroth seemed to conspiratorially believe that Brown may have somehow injected Kemp's dead body with cocaine, alcohol, and marijuana to further mislead the police. R. 153, ll. 13-24. Eltzroth conceded that Kemp was advancing on Brown when he was shot. However, Eltzroth adamantly denied ever stating during Brown's initial appearance that Brown acted reasonably and in fear of his life. R. 156, l. 1-6.

Court's Ruling

The trial court denied Brown immunity under the Act. The court ruled that Brown had failed to prove by a preponderance of the evidence that he acted in lawful self-defense. R. 158, l. 2- 159, l. 19. Oddly, the court noted that "there's a conflict in the testimony there as whether or not [Kemp] actually ever threatened [Brown] or threatened others in yours client's presence." R. 160, ll. 7-10.

After taking additional arguments, the court reiterated that it did not believe Brown was entitled to immunity. R. 175, l. 16 - 177, l. 17. The court specified that it did not believe Brown was without fault in bringing on the difficulty and that there was conflicting evidence about whether Brown actually believed he was in imminent fear of losing his life. *Id.*

Trial

Brown's trial proceeded in similar fashion to the immunity hearing. Dr. Presnell testified that Kemp tested positive for cocaine and marijuana. R. 253, ll. 1-20. Kemp also had a blood alcohol content of .137. *Id.* Dr. Presnell stated that is common for individuals who consume cocaine to be restless, to engage in risk-taking behaviors, and to become aggressive. Dr. Presnell testified that a combination of these drugs can cause impaired judgment. *Id.*

Trial Testimony of Barbara Mays

Mays did not testify at the castle doctrine hearing, but did testify before the jury. She recalled that, on November 20, 2013:

I woke up. Bam, bam, bam, bam, bam, bam. There was bamming at my door. [Kemp] asked for a particular name, but I didn't know her name was different, so he said Coco. I opened the door and let him come through my house. They went outside. He was getting in the car, him and Coco was getting in the car. The next thing I heard, I went to the door, I was standing there, I heard noise, so I went to the door and the *one thing I seen was the big guy running towards them* and he said pow, pow, pow. That was it.

R. 262, ll. 1-11 (*emphasis added*). Mays recalled that Boulware was obviously afraid of Kemp. R. 268, l. 5-10; R. 281, l. 5- 282, l. 25. She was crying profusely and had to be urged into leaving with Kemp by Mays. R. 281, l. 5- 282, l. 25.

Mays was adamant that Brown, Walker, and Holmes were already standing in the front yard when Kemp rounded the building. R. 274, l. 9 - 276, l. 6. Mays could hear that Kemp was arguing with Brown and the others, but she could not hear what they were saying. R. 277, ll. 8-20. Mays specifically recalled that "all of a sudden [Kemp] stopped and he started running toward the three guys who standing up there." R. 271, ll. 2-19; *see also* R. 282, l. 25 - 283, l. 3.

Trial Testimony of Nayronne Holmes

Holmes admitted he ran next door because he was afraid that Kemp was going to kill him for being with Boulware. R. 306, ll. 9- 14. Holmes also stated that he, Walker, and Brown were already in the front yard when Kemp rounded the building heading towards his car. R. 294, l. 6 - 295, l. 8.

Holmes recalled that Kemp was sitting in his car with the door open yelling at Brown. *Id.* Kemp then got out of the car and ran towards the group. "All he had to do was put it in reverse and back out." R. 298, ll. 3-7. On cross-examination, Holmes confirmed that Kemp had threatened Brown, Council, and Walker at the Southern Inn a week before the shooting and had presented a pistol. R. 301, l. 17 - 302, l. 23.

Holmes posited that Kemp had largely brought about his own demise, "I mean, at 4:30 in the morning, you're asking for a lot of trouble going to anybody's door, beating on it the way he beat on my mother's door." R. 307, ll. 10-15. Holmes did not remember Brown ever threatening Kemp, but conceded there was a lot of "trash talking". R. 308, l. 12 - 310, l. 15.

Trial Testimony of Detective Nyles Eltzroth

Eltzroth recounted his investigation and subsequent interview with Boulware. Eltzroth claimed that Brown had repeatedly denied having any "problems" Kemp, the incident at the Southern Inn notwithstanding. R. 393, l. 24 - 394, l. 23.

Despite not being at the scene of the shooting, Eltzroth was insistent that he somehow knew Brown had left his apartment and started walking towards Kemp and Boulware as Kemp was getting into his car. By contrast, all the eye witnesses agreed that Brown, Walker and Holmes were already standing in the front yard when Kemp rounded the side of the building. Eltzroth conceded

that Kemp got out of his vehicle and was either walking or running towards Brown before being shot. R. 424, ll. 4-6.

At trial, Eltzroth made clear that his intention was always to charge Brown with murder: “the simple fact [was] that there was no evidence of Mr. Kemp being in possession of a gun *or even threatening any deadly or serious bodily injury, and the fact that he was leaving, and there was no threat at that time.*” R. 408, ll. 21-25 (verbatim) (*emphasis added*).

This was quite a statement given the accounts of eye-witnesses to the shooting, the prior incident at the Southern Inn, the testimony on Kemp’s violent reputation, Kemp’s toxicology report, and the corroborating physical evidence; all of which tended to show that Kemp, who had repeatedly threatened to kill Brown after bursting into Brown’s apartment at four thirty in the morning, left his car and charged at Brown rather than simply driving away with Boulware.

Eltzroth continued to state that Kemp could not have reasonably been considered a threat even when presented with an internal Colleton County Sheriff’s Office memorandum advising officers to be careful around Kemp whom his fellow deputies had labeled: “caution - violent behavior.” R. 422, ll. 8-19.

Defense’s Motion for a Directed Verdict

The defense motioned for a directed verdict on the charge of murder and possession of a weapon during the commission of a violent crime arguing that the uncontroverted evidence presented during the State’s case established that Kemp was shot at night while charging at Brown who was standing in his own front yard. R. 458, l. 11 - 459, l. 3. There was no evidence that Brown had given Kemp legal provocation to attack him. *Id.*

Kemp weighed three hundred and seventy five pounds, had a reputation for violence, and Brown personally knew that Kemp had access to guns. *Id.* In response, the State relied on Detective

Eltzroth's version of events where Brown "exited his home with a gun in his hand" and walked towards Kemp as he and Boulware were getting into Kemp's car. The State argued that by "talking trash" with Kemp, Brown had forfeited his right to self-defense. R. 460, l. 10 - 461, l. 18.

Oddly, the State conceded that Kemp left the safety of his car and charged at Brown, but maintained that Brown was not entitled to self-defense because Kemp was shot from a distance of only two to three feet. *Id.* The State argued that once Kemp had left Brown's apartment, Brown was obligated to retreat and hide from Kemp, until Kemp left. *Id.*

The court denied the directed verdict motion but stated that it intended to instruct the jury on self-defense and voluntary manslaughter. R. 462, ll. 6-23.

Defense Witnesses

Jermaine Brown testified for the defense that he "woke up to a big man around the house causing all kinds of chaos." R. 467, l. 1 - 468, l. 23. He recalled that he watched from across the street as Kemp "started talking all crazy things. Saying all type of things to Taquan. Eventually, he charged Taquan like he was in the process of wanting to harm him. Taquan shot him." *Id.*

Jermaine drove away after the shooting. *Id.* The defense then read Walker's guilty plea before the jury. R. 483, l. 10 - 551, l. 20. Larry Council also testified for the defense regarding Kemp's threats of violence at the Southern Inn. R. 500, l. 5 - 503, l. 22.

ARGUMENT

- I. **Appellant is entitled to immunity from prosecution for murder under the Protection of Persons and Property Act where the Act provides immunity to a person who uses deadly force while removing another from his dwelling when he reasonably believes it is necessary to prevent imminent death or great bodily injury.**

Introduction

Prior to trial, Appellant moved for immunity from prosecution under the Protection of Persons and Property Act (the “Act”), S.C. CODE ANN. § 16-11-410 et al. The Act 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 or likely to cause death or great bodily injury to another person if the person: . . . (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.” § 16-11-440(A)(2).

In addition, the Act provides states, “[a] person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . *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.” § 16-11-440(C) (*emphasis added*).

In signing the Act into law, the General Assembly stressed 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 or attack.*” § 16-11-420(E) (*emphasis added*). Our Courts have determined that, in order to be granted immunity from prosecution under the Act, a defendant must prove all the elements of self-defense, except the duty to retreat, by a preponderance of the evidence. *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011).

Thus, to be entitled to immunity the defense must prove the following elements: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; and (3) 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, or if the defendant was actually 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. *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013).

The trial court denied Appellant immunity under the Act because the court believed that Appellant was not without fault in bringing on the difficulty and that there was conflicting evidence “as to whether the defendant actually believed he was in imminent danger of losing his life . . . “ R. 175, l. 16 - 176, l. 8. The trial court also noted that “there’s a conflict in the testimony there as to whether or not [Kemp] actually ever threatened [Appellant] or threatened others in [Appellant’s] presence.” R. 160, l. 7-10.

- (A) **Appellant is entitled to immunity from prosecution for murder under the Protection of Persons and Property Act because Appellant was without fault in bringing on the difficulty and he shot the deceased in the curtilage of his residence while attempting to remove him from the property.**

An individual who provokes or initiates an assault may not assert self-defense. *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). “Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide.” *Id.*

Here, Appellant was without fault in bringing on the difficulty. The evidence a trial established that, Kemp, weighing 375 pounds and high on cocaine, booze, and marijuana, stormed

into Appellant's residence uninvited at four in the morning. R. 35, l. 3 - 37, l. 20; R. 153, l. 10-25.. Once inside Kemp threatened to kill Appellant and destroyed Appellant's home in his search for Boulware. *Id.*

Even if Appellant left his residence armed and was walking towards Boulware and Kemp while the two were leaving in Boulware's car, as the State claimed, there was still no evidence that this act was reasonably calculated to create a situation in which *Kemp would leave his car and charge twenty feet across Appellant's yard.* See *State v. Burriss*, 334 S.C. 256, 513 S.E.2d 104 (1999) ("mere unlawful possession of a firearm, with nothing more, does not automatically bar a self-defense"); *Cf: State v. Slater*, 373 S.C. 66, 644 S.E.2d 50 (2007) (holding that defendant not without fault when he entered an on-going fight he was previously not involved in with a loaded weapon).

The eye-witnesses close enough to hear Appellant and Kemp, all agreed that Appellant was ordering Kemp to leave and that Kemp responded by threatening to kill Appellant or by taunting Appellant to shoot him. R. 48, ll. 11-23; See *State v. Rye*, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) ("the defense of habitation provides, defending one's home or premises means ending an unwarranted intrusion through the use of reasonably necessary means of ejection." (citing *State v. Bradley*, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923))).

Even in a light most favorable to the State, Appellant and Kemp were simply "talking trash" to one another, Kemp still chose to leave the safety of his car to charge at Appellant, who was standing in his own yard. See *State v. Douglas*, 411 S.C. 307, 768 S.E.2d 232, n. 8 (2014) ("[o]ne who merely does an action that affords an opportunity for conflict is not thereby precluded from claiming self-defense."). Fault implied misconduct, not lack of judgment"); see also: *State v.*

Wiggins, 330 S.C. 538, 548 n. 15, 500 S.E.2d 489, 494 n. 15 (1998)(holding the absence of a duty to retreat also extends to the curtilage of one's home, which includes the dwelling's yard).

Thus, Appellant had no duty to retreat in his own yard and did not "bring on the difficulty". § 16-11-440(A)(2). Kemp was the sole initiator of the difficulty and Appellant was allowed "to meet force with force". § 16-11-4 40(C). "All [Kemp] had to do was put it in reverse and back out," but instead he chose to attack Appellant. R. 298, ll. 5-7. Therefore, the court's determination that Appellant had brought the difficulty on himself was unsupported by the evidence and constituted an abuse of discretion. R. 175, 1.19 - 176, 1. 8.

(B) Appellant is entitled to immunity from prosecution for murder under the Protection of Persons and Property Act because Appellant actually and reasonably believed he was in imminent danger of losing his life or sustaining serious bodily injury.

In denying Appellant immunity, the trial court ruled that Appellant had failed to prove a by a preponderance of the evidence that he actually feared for his life when he shot Kemp. *Id.* This ruling also constitutes an abuse of discretion unsupported by the evidence presented at the hearing. Without question, Appellant believed he was in actual danger of losing his life or sustaining serious bodily injury. Moreover, a person of ordinary firmness would have entertained the same belief. *State v. Dickey*, 394 S.C. 491, 716 S.E.2d 97 (2011) (holding defendant entitled to directed verdict on self-defense where it was uncontroverted that decedent was highly intoxicated, acting aggressively, and advanced on defendant).

A person has the right to act on appearances, even if the person's belief is ultimately mistaken. *State v. Fuller*, 297 S.C. 440, 443-44, 377 S.E.2d 328, 331 (1989). "Once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act." *State v. Starnes*, 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000) (citing *State v. Hendrix*, 270 S.C. 653, 244 S.E.2d 503 (1978)). "[W]ords

accompanied by hostile acts may, depending on the circumstances, establish a plea of self-defense.” *Fuller*, 297 S.C. at 444, 377 S.E.2d at 331 (1989) (quoting *State v. Harvey*, 220 S.C. 506, 68 S.E.2d 409 (1951)).

In addition, under the Act, Appellant was entitled to a presumption that he had a reasonable fear of imminent peril of death or great bodily injury because he was removing Kemp from his residence. R. 37, ll. 7-20; § 16-11-410(A)(2); *Cf.* *State v. Curry*, 406 S.C. 364, 752 S.E.2d 364 (2013) (holding that a social guest not entitled to presumption because decedent had equal right to be in residence). The State did nothing to refute this presumption. In several instances, such as the testimony of SLED technician Berry regarding GSR residue, the testimony of Barbara Mays, and the expert testimony of Sgt. Edwards’ on the thirty foot rule, the State’s witnesses reinforced the reasonableness of Appellant’s fear.

Further, the court’s ruling that there was a “conflict in the testimony” about whether Kemp ever threatened Appellant was totally at odds with the evidence presented at trial. R. 175, l. 19 - 214, l. 8. Every eye witness to the incident at the Southern Inn on November 13, 2013, testified that Kemp threatened to kill anyone that asked him about Boulware. Even Detective Eltzroth did not dispute that the incident occurred. R. 394, l. 4 - 395, l. 14.

Rather Eltzroth absurdly argued that, while Kemp had concededly flashed a gun at Brown and the others, this did not constitute a threat to Brown because Kemp had not actually pointed the gun at him. *Id.* Whether Kemp pointed a gun at the group or showed them a gun while telling them he was going to kill them is a distinction without a difference. *Id.*; see *State v. Douglas*, 411 S.C. 307, 768 S.E.2d 232 (2014) (holding that a defendant entitled to immunity for fatal shooting of his lifelong friend during a fight because there was evidence that defendant reasonably believed shooting his friend was necessary to avoid imminent injury or death).

The other pillar of the State's argument was that Brown had purportedly told Eltzroth that he and Kemp did not have "any problems" prior to the night of the shooting. *Id.* The State contended that with this admission, Brown had necessarily conceded that he did not fear for his life Kemp when Kemp charged at him at 4:30 in the morning.

The State's argument was a ludicrous and willful misinterpretation of Appellant's meaning. Even the evidence most adverse to the defense showed that, Appellant was among those threatened by an armed Kemp at the Southern Inn, but that Kemp was particularly angry at Holmes for his relationship with Boulware. *See Douglas*, 411 S.C. 307, 768 S.E.2d 232.

Appellant feared for his life and reasonably so. As Appellant stood in his darkened front yard at four thirty in the morning, he had every reason to believe that he was in imminent danger of death or great bodily injury. *State v. Gandy*, 113 S.C. 147, 148, 101 S.E. 644 (1919) (holding that "a man, may act on appearance, even if mistaken."). A three hundred seventy-five pound convicted felon, high on cocaine who owned a pistol and had just a week earlier threatened to kill anyone found with his prostitute ex-girlfriend, was charging at him while reaching into his waist band after having earlier barged into Appellant's apartment uninvited and finding said prostitute ex-girlfriend in the company of Appellant's friend and neighbor.

Whatever level of credibility the court assigned to the witnesses, with their changing stories and criminal records, it was an abuse of discretion based on the uncontroverted physical evidence and undisputed testimony to conclude that Appellant did not actually and reasonably fear for his life when he shot Kemp. Accordingly, the trial court erred in denying Appellant's motion for immunity from prosecution under the Act.¹

¹ Appellant's conviction for obstruction of justice arises out of his statements to police during their investigation into Kemp's shooting. Therefore, if Appellant is entitled to immunity from prosecution under the Act, immunity should extend to the obstruction of justice charge.

II. The trial court erred in denying Appellant's motion for directed verdict where the undisputed evidence showed that Appellant shot the deceased in lawful self-defense, that Appellant was without fault in bringing on the difficulty, and that Appellant acted in reasonable fear of imminent death or great bodily injury.

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When a defendant asserts an affirmative defense, such as self-defense, the prosecution must disprove the elements of the defense beyond a reasonable doubt. *State v. Wiggins*, 330 S.C. 538, 544 -45, 500 S.E.2d 489, 492-493 (1998).

As argued at length above, Appellant was without fault in bringing on the difficulty and was in actual, reasonable fear of imminent death or bodily injury. Even when viewing the evidence in a light most favorable to the State, the prosecution failed to prove beyond a reasonable doubt that Appellant unlawfully shot and killed Kemp. *Dickey*, 394 S.C. at 499-501, 716 S.E.2d at 101-102; (directed verdict proper where defendant was lawfully ejecting decedent); *Hendrix*, 270 S.C. at 657-658, 244 S.E.2d at 505-506 (defendant confronted on his own land had no duty to retreat and was entitled to a directed verdict on self-defense).

The evidence presented at trial established that Appellant was without fault in bringing on the difficulty. The difficulty began when Kemp forced his way into Appellant's apartment at four in the morning. It continued, uninterrupted until Kemp got out of his car and was shot while charging at Appellant, who was standing in his own front yard. The proximate cause of Kemp's death was his decision to charge at Appellant. *See State v. Goodson*, 312 S.C. 278, 440 S.E.2d 370 (1994) (holding that the state must prove beyond a reasonable doubt that defendant's unlawful act was reasonably calculated to bring on the difficulty and the proximate cause of the homicide).

The State also failed to prove beyond a reasonable doubt that Appellant did not believe he was in imminent danger of losing his life or sustaining serious bodily injury where Kemp was likely

between two and twelve feet away from Appellant and reaching into his waist band when he was shot. R. 20, ll. 4-23. In South Carolina, a person has the right to act on appearances. *Starnes*, 340 S.C. at 911-912, 531 S.E.2d at 319-320.

In *Dickey*, this Court held that a defendant security guard was entitled to a directed verdict on self-defense when he fatally shot a man he was lawfully ejecting from an apartment building. The Court determined that the defendant's reasonably believed he was in actual danger of death or serious bodily injury because he was "faced with an attack by a belligerent, intoxicated, more agile, and younger male, who appeared to be reaching for a weapon." *Dickey*, 394 S.C. at 502, 716 S.E.2d at 102. The Court specifically noted that the aggressor was "undeterred at the sight of Petitioner's gun." *Id.*

Like the defendant in *Dickey*, Appellant also testified that he was afraid for his life and believed Kemp was reaching for a weapon. R. 37, ll. 7-20; *see also State v. Lockamy*, 369 S.C. 378, 384, 631 S.E.2d 555, 558 (Ct. App. 2006) (holding that had defendant struck the final blow while in imminent danger, then self-defense would apply, but where the threat had moved fifty feet away by the time defendant opened fire, defendant could no longer use self-defense). Kemp had threatened to kill Appellant just a week before the shooting and was high on alcohol and cocaine when he was shot.

With a three hundred seventy five pound convicted felon charging him while reaching into his waist band, Appellant acted as a reasonably prudent person would. When confronted with similar facts, the Court concluded in *Hendrix* that the only logical conclusion to be drawn from the circumstances was that they were such as to warrant a reasonable person to strike the fatal blow. *Hendrix*, 270 S.C. at 660, 244 S.E.2d at 507 (holding the trial court erred in failing to direct a

verdict in the defendant's favor concerning the charge of murder as the evidence established the defendant acted in self-defense).

In *Hendrix*, the deceased arrived at the defendant's lake house, he walked toward defendant who leveled a shotgun at the deceased and told him to "back off." *Id.* at 660, 244 S.E.2d at 506. The deceased then retrieved his shotgun and returned to confront the defendant. *Id.* Although some witnesses testified the deceased never pointed his gun at the defendant and others testified he did, the Court concluded that under any version of the evidence "it [was] clear that an actual, imminent danger confronted the [defendant] a danger which, unless met with an immediate response, held the promise of death for the [defendant]." *Id.*

If the Court concluded that Hendrix acted reasonably when the testimony differed as to whether the deceased actually pointed his gun in Hendrix's direction, then Appellant was justified in acting in self-defense given Kemp's hostile behavior on November 20, 2013 and the November 13, 2013 incident at the Southern Inn.

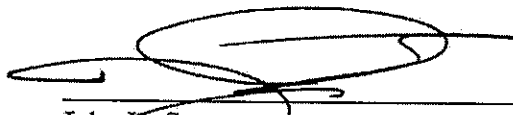
As Appellant was standing in the curtilage of his residence, he had no duty to retreat in the face of Kemp's charge. *Hendrix*, 270 S.C. at 659-660, 244 S.E.2d at 506 (holding that a defendant, who armed himself on his own property, was without fault in bringing on difficulty and had no duty to retreat). Moreover, given how close Kemp was to Appellant when Appellant shot him and the gross disparities in size between the two of them, it would have been highly unlikely that Appellant could have safely retreated.

Accordingly, the trial court erred in not finding as a matter of law that the circumstances would warrant a reasonable person to strike the fatal blow to save himself. In addition, the trial court erred in not finding as a matter of law that Appellant actually and reasonably believed Kemp posed a danger to him and was without fault in bringing on the difficulty.

CONCLUSION

Based on the foregoing reasons, Appellant is entitled to a grant of immunity from prosecution under the Protection of Persons and Property Act or, in the alternative, that this Court issue an Order of Acquittal on his convictions.

Respectfully submitted,



John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of December, 2016.

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."

December 22, 2016

A handwritten signature in black ink, appearing to read "John Harrison Strom", written over a horizontal line.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County
Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

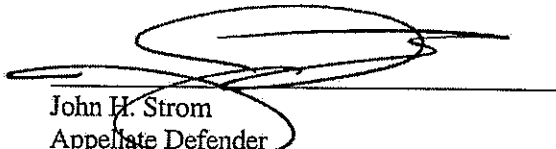
TAQUAN L. BROWN,

APPELLANT

APPELLATE CASE NO. 2015-001447

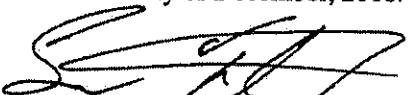
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 22nd day of December, 2016.


John H. Strom
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of December, 2016.

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

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County
The Honorable Perry M. Buckner, III, Circuit Court Judge
Appellate Case No. 2015-001447

THE STATE,

Respondent,

v.

TAQUAN L. BROWN,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The circuit court did not abuse its discretion in denying Appellant's motion for immunity from prosecution under the Protection of Persons and Property Act.

II. The circuit court properly denied Appellant's directed verdict motion because there was sufficient direct and circumstantial evidence reasonably tending to prove Appellant's guilt, which warranted submitting the case to the jury.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On December 19, 2013, the Colleton County Grand Jury indicted Appellant Taquan L. Brown on one count of murder, one count of possession of a weapon during a crime of violence, and one count of obstruction of justice, arising from the shooting death of Maurice Kemp and Appellant's statements after the shooting. The case was called for a jury trial on June 22, 2015, before the Honorable Perry M. Buckner, III, Circuit Court Judge.

Prior to trial, Appellant moved to dismiss the case pursuant to the Protection of Persons and Property Act, S.C. Code §16-11-410 – 450 (2015), commonly referred to as the "Stand Your Ground" or "Castle Doctrine" statute, contending he was entitled to immunity from prosecution. At the motion hearing, Appellant presented testimony from several witnesses who purportedly witnessed the shooting, and an investigator from the Public Defender's Office.

Larry Council testified he was riding with Appellant and another man at some point prior to the night of the shooting, and they went to the Southern Inn to find a woman who was living with Kemp at the time. Kemp got angry about them coming to find his girlfriend, went back inside his room and came back outside with a gun in his hand, and told Council they better leave the premises "before [Kemp] drops one of us out there." Appellant called 911, but hung up, and when the 911 operator called him back, Appellant stated he "was just going to let it ride; just let it go." (Trial Transcript [TT], pp. 15-20; Record on Appeal [R.], pp. 15-20).

On cross-examination, Council admitted he told police Kemp merely had the gun in his waistband, and he had changed his story on the witness stand. He also stated Kemp never pointed the gun at anyone that night. (TT, pp. 20-23; R., pp. 20-23).

Jessica Fulks testified Kemp came to her house the night of the shooting looking for his girlfriend, but she did not know where the girlfriend was. He stayed at her house for awhile

drinking and smoking marijuana, and left just before midnight to pay his phone bill so his phone would not get cut off. She stated she had heard he carried a gun, but she never saw him be violent, and he was a nice person who treated her nice. (TT, pp. 25-28; R., pp. 25-28).

Appellant testified about the incident at the Southern Inn, and stated he asked Kemp for a cigarette. Kemp got angry when one of the men with Appellant said Kemp's girlfriend had called him, and "just flipped," and told them to get out of there. Appellant stated he "was in a shock, like, where did this come from". Kemp then went into his room, got a gun and threatened to kill them if they did not leave. Appellant testified he told the 911 operator to "never mind," and stated he "didn't go back around [Kemp], because he wasn't a person who [Appellant] had to deal with on a daily basis. (TT, pp. 29-31; R., pp. 29-31).

Appellant further testified he was in his apartment sleeping on the night of November 20, 2013, when he woke up to the sound of someone beating on his door. One of Appellant's guests unlocked and opened the front door, and when Appellant got to the front room, Kemp pushed by Appellant's guest into the apartment. Kemp looked in every room in the apartment to see if his girlfriend was there until Appellant's guest told him she was next door in another apartment. Kemp then went out the back door of Appellant's apartment and over to the next apartment. According to Appellant's account of events, while Kemp was trying to get inside the next door apartment, one of the residents of that apartment entered Appellant's apartment through the front door and he was holding a gun, which Appellant took away from him. (TT, pp. 31-35; R., pp. 31-35).

Appellant stated Kemp came back to his back door after he was unable to get into the apartment next door, and asked if he could come back through Appellant's apartment to get to his car parked in front of the apartments. Kemp got angry when Appellant told him no, and

Appellant claimed Kemp said he was going to kill Appellant. Kemp did not push his way into Appellant's apartment, but walked around the apartment building to get to his car. (TT, pp. 35-36; R., pp. 35-36).

Rather than stay inside his apartment, Appellant walked out his front door. He saw Kemp come around the building, and Kemp's girlfriend came out of the next door apartment. Kemp and his girlfriend then went to Kemp's car, with the girlfriend getting in on the passenger side and Kemp "got in the driver's seat." Appellant testified some words were exchanged and Kemp got out of the car and called his name. Appellant waved his hand and told Kemp to leave but he came around the car "to the front panel by the front tire, and he started running towards [Appellant]." Appellant stated Kemp was reaching in his waistband as he ran, so Appellant shot him from approximately twelve to thirteen feet away. (TT, pp. 36-39; R., pp. 36-39).

On cross-examination, Appellant testified Kemp did not break into his apartment, and he did not force his way in when Appellant told him he could not come back through. Appellant stated he came out of his apartment because there were people in his yard, and his next door neighbor was coming over in her wheelchair. After Appellant stated he was afraid of Kemp, the solicitor asked him "[w]hy didn't you just stay inside your apartment," Appellant testified "I can't answer that question." (TT, pp. 39-44; R., pp. 39-44).

Jermaine Brown testified he was at Appellant's apartment the night of the shooting, and he was sleeping when he woke to "a big man standing over me, causing all type of chaos inside the house." After the man left through the backdoor, Brown left the apartment through the front door, and saw the man coming around from the back of the building toward his car. Brown testified the man was "yelling" at Appellant and threatening that he wanted to do something to Appellant, who was standing in his front yard approximately ten to twelve feet from the street,

but at the time of the shooting, Appellant was approximately six to seven feet from the man because the man ran at Appellant and looked like he was reaching for something to pull out. (TT, pp. 45-54; R., pp. 45-54).

Wylie James testified he was in Appellant's apartment the night of the shooting when Kemp "bust up in the house," and looked through the apartment for a woman. His testimony regarding the events that followed tracked with Appellant's and Brown's version of events, with one major difference. James testified Kemp went out the backdoor of Appellant's apartment and then came back through the apartment to the front yard. On cross-examination, James admitted he originally told the police he was not there that night, which was a lie. (TT, pp. 60-72; R., pp. 60-72).

After Appellant presented testimony from a Public Defender's Office investigation regarding measurements he took at the scene based on a photograph and information he received from Appellant's next door neighbor, the State presented testimony from the first officer to arrive at the scene after the shooting, who stated Kemp was lying on his stomach and his feet were approximately a step off the sidewalk beside the street, and was closer to the sidewalk than the apartment building. When the officer saw Kemp's face, he observed a gunshot wound to Kemp's forehead, which he testified would be a difficult shot for a novice to make if someone was running at him. He stated he was a firearms instructor and well versed in firearms, and for him to make such a shot, the target would have to be standing stationary right in front of him. (TT, pp. 73-101, State's Exhibit Two (Video); R., pp. 73-101).¹

Captain Jason Walker of the Colleton County Sheriff's Office testified he responded to a reported shooting on the night of November 20, 2013. He assisted other investigators with taking photographs of the scene. Based on measurements taken that night, investigators

¹Numerous photograph exhibits were transported to the Court for consideration.

determined there was approximately thirty-eight feet from the blood spot where Kemp's head was to the front door of Appellant's apartment. (TT, pp. 101-114; R., pp. 101-114).

A SLED analyst testified she found gunshot residue on Appellant's right and left hands, and multiple gunshot residue particles on Kemp's hands. She further testified residue from a smaller caliber gun, such as the .32 caliber handgun determined to be the murder weapon, would not travel more than two and a half to three feet, and for Kemp to have gun residue on his hands, he had to be close to the gun barrel when it was fired. (TT, pp. 115-125; R., pp. 115-125).

Nyle Eltzroth testified he was a criminal investigator with the Colleton County Sheriff's Office in November, 2013, and responded to the shooting scene. He interviewed Appellant at the scene, and Appellant stated he was asleep and did not see or hear anything. In a subsequent interview that day, Appellant again stated he was asleep and only learned about the shooting when one of his guests woke him up to tell him about it. (TT, pp. 168-172; R., pp. 130-134).

Eltzroth interviewed Appellant again a couple of days after the shooting. At that time, Appellant told him about Kemp coming to the apartment looking for his girlfriend, and when he tried to come back through the apartment, Appellant told him he was not allowed to come back into the apartment and closed the door. Appellant told Eltzroth Kemp walked around the building, got his girlfriend and was walking to his car when a third person walked down the sidewalk, talked trash to Kemp and shot Kemp when he got out of his car. (TT, pp. 173-175; R., pp. 135-137).

After receiving additional information, Eltzroth interviewed Kemp's girlfriend, Coco. She stated she and Kemp were inside the car when Appellant came down the sidewalk with a gun in his hand. Kemp saw the gun and got out of the car. He put his hands out and said: "If

you're going to pull it, use it." Appellant then shot Kemp several times. (TT, pp. 175-176; R., pp. 137-138).²

Eltzroth confirmed Coco's version with a third party witness, who admitted he disposed of the gun Appellant used to shoot Kemp, and subsequently took officers to that location. The officers recovered a handgun, and it was subsequently forensically confirmed to be the weapon used in the shooting. (TT, pp. 176-177, 500-510; R., pp. 138-139, 447-457).

While he was in jail, Appellant asked to speak with Eltzroth. At that time, he admitting shooting Kemp, but stated Kemp was coming toward him, and after the shooting, he found a revolver on Kemp, which he sold to a third party. Eltzroth interviewed the third party, who denied purchasing a weapon from Appellant. When he questioned the third party witness, who originally told him Appellant was the shooter, about Appellant's claim they found a weapon on Kemp, the witness stated "absolutely not," and said they did not even search Kemp that night. (TT, pp. 177-186; R., pp. 139-148).

After hearing the witnesses and argument of counsel, the circuit court ruled Appellant did not meet the burden of proving self defense by a preponderance of the evidence for purposes of the immunity hearing. In particular, the court found Appellant did not prove he was without fault in bringing on the controversy, and there was conflicting evidence regarding whether Appellant actually believed he was in imminent danger of death or serious bodily harm such that he was entitled to immunity under the statute. (TT, pp. 213-215; R., pp. 175-177).

The witnesses testified at trial much like they did during the immunity hearing. (TT, pp. 243-269, 364-399, 420-510; R., pp. 190-216, 311-346, 367-457). A pathologist testified Kemp

²Eltzroth testified Coco died prior to the trial. (TT, pp. 177-178; R., pp. 139-140).

had two bullet wounds, a significant and fatal wound to the middle of his forehead, and a wound in his abdomen. (TT, pp. 291-307, Defense Exhibit 2 (Autopsy Report); R., pp. 238-254).

The jury convicted Appellant of voluntary manslaughter on the murder charge, and of possession of a weapon during a crime of violence and obstruction of justice. (TT, pp. 656-657; R., pp. 566-567). The circuit court sentenced Appellant to five years incarceration on the possession of a weapon conviction, and twenty-five years on the voluntary manslaughter conviction, to be served consecutively. The court also sentenced Appellant to ten years incarceration on the obstruction of justice charge, to run concurrent with his other sentences. (TT, pp. 667-670; R., pp. 575-578). This appeal followed.

ARGUMENT

I. The circuit court did not abuse its discretion in determining Appellant was not entitled to immunity from prosecution under the Protection of Persons and Property Act.

Appellant contends he was entitled to immunity from prosecution under the Protection of Persons and Property Act ("the Act") because he was without fault in bringing on the difficulty, and he actually and reasonably believed he was in imminent danger of losing his life or sustaining serious bodily injury. Even though both contentions are meritless, the inquiry need go no further than whether Appellant established by a preponderance of the evidence he was without fault in bringing on the difficulty.

Under the mandates of the Act, any person who uses deadly force in a manner permitted by the provisions of the Act is immune from criminal prosecution for the use of deadly force.³ S.C. Code Ann. § 16-11-450(A) (2015). Part of the legislative intent in implementing the Act was to "codify the common law Castle Doctrine." S.C. Code Ann. § 16-11-420(A).

The question of whether a defendant is entitled to immunity under the Act must be decided prior to trial if either party moves for a determination regarding the Act's application to a defendant's case. State v. Duncan, 392 S.C. 404, 709 S.E.2d 662, 665 (2011). "[W]hen a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a preponderance of the evidence." *Id.*

³ Specifically, Section 16-11-450(A) reads: "A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer." S.C. Code Ann. § 16-11-450(A).

In an appeal from a circuit court judge's pre-trial determination regarding a claim of immunity under the Act, the appellate court reviews the circuit court judge's ruling for an abuse of discretion. State v. Douglas, 411 S.C. 307, 768 S.E.2d 232, 237 (Ct. App. 2015); *see also* State v. Curry, 406 S.C. 364, 752 S.E.2d 263, 266 (2013) ("[T]his court reviews [a claim of immunity under the Act] under an abuse of discretion standard of review."). The circuit court judge abuses his discretion when his conclusions lack evidentiary support, or are controlled by an error of law. State v. Elders, 386 S.C. 474, 688 S.E.2d 857, 861 (Ct. App. 2010); *see also* Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396, 400 (Ct. App. 1999) ("In appeals of pretrial rulings, this Court is 'bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.'") (citation omitted)). If any evidence supports the circuit court judge's immunity determination, an appellate court must affirm it. Curry, 752 S.E.2d at 267; *see also* Douglas, 768 S.E.2d at 237 ("[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.").

In order to qualify for immunity under the Act, the defendant must establish a valid case of self-defense, which requires proof of four elements: 1) the defendant must be 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 actual 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. Davis, 282 S.C. 45, 317 S.E.2d

452, 453 (1984). In determining whether the defendant is entitled to immunity, the trial court must necessarily consider the elements of self-defense, except the duty to retreat. State v. Curry, 406 S.C. 364, 752 S.E.2d 263, 266 (2013).

In this case, the circuit court found Appellant failed to establish by a preponderance of the evidence he was without fault in bringing on the difficulty, and there is ample evidence to support the circuit court's finding. Based on Appellant's own pre-trial testimony, the original altercation with Kemp associated with his abrupt entrance into Appellant's apartment, if an altercation occurred at all, ended when Kemp left the apartment and went next door to find his girlfriend. Then, after Appellant told Kemp he could not come back through the apartment, although Kemp verbally made it clear he was unhappy about Appellant's refusal, Kemp voluntarily went around the side of the building and was getting in his car when Appellant came outside with the gun in his hand, which led to the fatal shooting. When asked why he did not simply stay inside his apartment, Appellant admitted he did not have an answer. (TT, pp. 32-44; R., pp. 32-44).

It cannot be seriously disputed the subsequent fatal encounter occurred only because Appellant chose not to stay in his apartment and just let Kemp drive off. Instead, while claiming he was afraid of Kemp, Appellant chose to go outside with a gun, which was sure to cause difficulty, and engage in a verbal argument with Kemp until he shot him. See State v. Slater, 373 S.C. 66, 644 S.E.2d 50, 52 (2007) (an act in violation of the law and reasonably calculated to incite the occasion amounts to bringing on the difficulty and bars self-defense); State v. Wigington, 375 S.C. 25, 649 S.E.2d 185, 188 (Ct. App. 2007) (a person who provokes or initiates an assault cannot use self-defense to escape legal liability); State v. Santiago, 370 S.C. 153, 634 S.E.2d 23, 27 (Ct. App. 2006) (defendant not entitled to a jury charge on self-defense

because he brought about the difficulty by going to the victim's house with a loaded gun in his car, which the victim saw when putting items into the car, and words alone are insufficient to constitute legal provocation). Even though Kemp did get out of his car after he saw Appellant approach with a gun, there is no evidence he had a weapon,⁴ and Appellant's claim Kemp charged at him while reaching in his waistband is not supported by the forensic evidence.

According to Appellant, he was approximately twelve to thirteen feet away from Kemp when he shot Kemp. (TT, pp. 38-39; R., pp. 38-39). The forensic evidence established, however, there was approximately thirty-eight feet from the entrance to Appellant's apartment and where Kemp's head landed when he fell, Kemp was closer to the street than Appellant's apartment when he fell, and the amount of gunshot residue on Kemp indicated the fatal shot was fired from only three to four feet away. (TT, pp. 95-101, 108-109, 121-122, State's Exhibits 5, 8, 14, 17 [Photographs]; R, pp. 95-101, 108-109, 121-122).

Kemp was shot twice, and the location of the most serious bullet wound is also very telling. The pathologist testified the head wound was almost exactly in the center of Kemp's forehead between his eyebrows, and other evidence established such accuracy would be extraordinarily difficult for a novice if Appellant was as far away as he claimed, especially given the condition of the weapon he used. (TT, pp. 298-299, 265-266, State's Exhibit 24; R., pp. 245-246, 212-213).

There was ample evidence to support the circuit court's finding Appellant failed to prove he was without fault in bringing on the difficulty. On the contrary, it is clear from the evidence any altercation initiated by Kemp was over, and Appellant, who never saw a gun on Kemp, was

⁴ Kemp did have a weapon at his residence, and the fact he did not have it on him when he came over to Appellant's looking for his girlfriend, and never even implied he had the weapon that night, belies Appellant's claim he actually feared for his life or serious bodily harm.

directly at fault in bringing on the fatal encounter by coming out into the yard with a gun to engage in a verbal altercation with Kemp. But for Appellant's conduct, Kemp would not have been shot that night.

B. Reasonable Belief or Actual Danger

Under the circumstances of this case, Appellant's claim he believed he was in actual danger of death or great bodily injury falls under its own weight. As noted above, Kemp never brandished a weapon. At most, he engaged in trash talking just like Appellant did. Merely saying you are going to kill someone does not give rise to a right of self-defense unless the person making the statement affirmatively takes action designed to kill you. Further, the mere fact Appellant saw Kemp with a gun at Kemp's residence a week prior to the shooting is insufficient to cause a reasonable man to believe he is in actual imminent danger of death or great bodily injury. Again, even if Appellant felt threatened by Kemp's words, his own conduct caused the situation.

In essence, Appellant created a situation so he could shoot a man and then claim self-defense. For the same reasons set forth in subsection A, the circuit court acted well within his discretion in finding there were questions about whether Appellant feared death or great bodily harm at the time he shot Kemp. Accordingly, there was evidence to support the circuit court's denial of Appellant's claim of immunity under the Act, and the ruling should be affirmed.

II. The circuit court properly denied Appellant's directed verdict motion because there was sufficient direct and circumstantial evidence supporting the circuit court's conclusions, and warranted submitting the case to the jury.

Appellant also contends the circuit court erred in denying his directed verdict motion because he was not at fault in bringing on the difficulty, and was in actual, reasonable fear of imminent death or bodily injury. While Appellant presents the evidence on these issues as virtually undisputed, as discussed above in Issue I, the "witnesses" for Appellant, and Appellant himself, gave multiple versions of the events. At a minimum, this raised significant credibility issues, which was for the jury to determine. In addition, the actual evidence at the scene and the forensic evidence, did not support any of Appellant's and his witnesses' multiple versions of events.

"A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." State v. Walker, 349 S.C. 49, 562 S.E.2d 313, 315 (2002). In reviewing a defendant's directed verdict motion, the trial judge is only concerned with the existence of evidence, not with its weight, and the appellate courts must view the evidence and reasonable inferences in the light most favorable to the State. State v. Larmand, 415 S.C. 23, 780 S.E.2d 892, 895 (2015). If there is either any direct evidence or any substantial circumstantial evidence reasonably tending to prove the defendant's guilt, appellate courts must find the trial judge properly submitted the case to the jury. *Id.*

As discussed in depth above in Issue I, there was evidence indicating the original altercation (assuming for purposes of discussion there actually was an "altercation") was over, and Kemp was actually getting into his car to leave when Appellant came out of his apartment holding a gun, and initiated an argument with him. Thus, there were factual disputes regarding

Appellant's role in initiating the conflict, and whether he reasonably feared for his life. These factual disputes alone support the denial of Appellant's directed verdict motion.

Even looking at the evidence in a light favorable to Appellant, the directed verdict motion was still meritless. At best for Appellant, there were jury issues regarding his fault in bringing on the difficulty, and whether he was actually in danger of suffering death or seriously bodily injury. At a minimum, witness credibility was a big fact for the jury to determine, and the fact the witness gave investigators varying stories over a period of time, created serious credibility problems.

The circuit court did not abuse its discretion in denying Appellant's directed verdict motion, and the evidence amply supports Appellant's convictions. Therefore, the circuit court ruling should be affirmed.

CONCLUSION

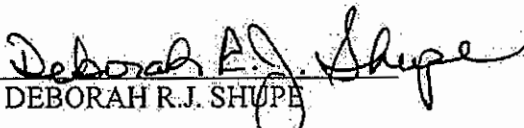
Based on the foregoing, Respondent submits the circuit court's denial of Appellant's immunity and directed verdict motion should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

December 16, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County
The Honorable Perry M. Bucker, III, Circuit Court Judge
Appellate Case No. 2015-001447

THE STATE,

Respondent,

v.

TAQUAN L. BROWN,

Appellant.

CERTIFICATE OF COUNSEL

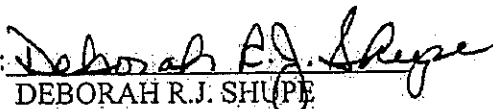
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled, Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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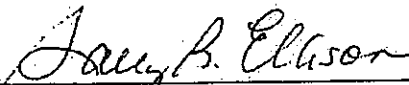
PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Final Brief of Respondent on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

John H. Strom
Assistant Appellate Defender
South Carolina Commission on Indigent Defense
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I further certify all parties required by Rule to be served have been served.

This 16th day of December, 2016.


SALLY B. ELLISON
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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.

Taquan L. Brown, Appellant.

Appellate Case No. 2015-001447

Appeal From Colleton County
Perry M. Buckner, III, Circuit Court Judge

Unpublished Opinion No. 2017-UP-315
Submitted June 1, 2017 – Filed July 26, 2017

AFFIRMED

Appellate Defender John Harrison Strom, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Deborah R.J. Shupe,
both of Columbia; and Solicitor Isaac McDuffie Stone,
III, of Bluffton, all for Respondent.

PER CURIAM: Taquan L. Brown appeals his convictions of voluntary
manslaughter, obstruction of justice, and possession of a weapon during the
commission of a violent crime and his consecutive sentence of thirty years'

imprisonment. On appeal, Brown argues the trial court erred in (1) finding he was not immune from prosecution under the Protection of Persons and Property Act¹ (the Act) and (2) denying his motion for a directed verdict. We affirm² pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Issue 1: *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 this court reviews under an abuse of discretion standard of review."); *Semken v. Semken*, 379 S.C. 71, 75, 664 S.E.2d 493, 496 (Ct. App. 2008) ("A preponderance of the evidence stated simply is that evidence which convinces as to its truth."); *Maybank v. BB&T Corp.*, 416 S.C. 541, 567, 787 S.E.2d 498, 511 (2016) ("An abuse of discretion occurs when the decision of the trial court is unsupported by the evidence or controlled by an error of law."); *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011) ("[T]he 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."); S.C. Code Ann. § 16-11-440(C) (2015) ("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"); *Curry*, 406 S.C. at 372, 752 S.E.2d at 267 (stating immunity under the Act "is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence"); *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984) (outlining the elements of self-defense as the following: (1) the defendant must be 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 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; 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. Wigington*, 375 S.C. 25, 32, 649 S.E.2d 185, 188 (Ct. App. 2007) ("Any act of the accused in violation of law and reasonably calculated to

¹ S.C. Code Ann. §§ 16-11-410 to 450 (2015).

² We decide this case without oral argument pursuant to Rule 215, SCACR.

produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a justification or excuse for a homicide." (quoting *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999)); *id.* at 31-32, 649 S.E.2d at 188 (finding the defendant's conduct could be reasonably calculated to bring about the difficulty because he injected himself into a verbal argument between other people, removed himself from the presence of the controversy, and returned with a loaded gun).

2. As to Issue 2: *State v. Dickey*, 394 S.C. 491, 498-99, 716 S.E.2d 97, 100 (2011) ("In criminal cases, the appellate court only reviews errors of law and is clearly bound by the trial court's factual findings unless the findings are clearly erroneous."); *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."); *id.* ("A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged."); *id.* ("When reviewing a denial of a directed verdict, this [c]ourt views the evidence and all reasonable inferences in the light most favorable to the [S]tate."); *id.* at 292-93, 625 S.E.2d at 648 ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [c]ourt must find the case was properly submitted to the jury."); *State v. Hendrix*, 270 S.C. 653, 657, 244 S.E.2d 503, 505 (1978) ("[U]nless it can be said as a matter of law that self-defense was established, it was not error to submit the case to the jury."); *Curry*, 406 S.C. at 372, 752 S.E.2d at 267 (finding that because the witnesses' testimonies varied substantially, the defendant's "claim of self-defense present[ed] a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution").

AFFIRMED.

SHORT, WILLIAMS, and KONDUROS, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

TAQUAN L. BROWN,

APPELLANT

APPELLATE CASE NO 2015-001447

Appeal from Colleton County

Honorable Perry M. Buckner, Circuit Court Judge

Opinion No. 2017-UP-315

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant Taquan Brown respectfully petitions this Court for a rehearing in the above-captioned matter after an unpublished opinion, dated July 26, 2017, affirmed his conviction for obstruction of justice, voluntary manslaughter, and possession of a weapon during the commission of a violent crime. In support of his petition, Appellant respectfully alleges that this Court overlooked or misapprehended the following arguments:

Issue I

As to Issue I, this Court erred in concluding that Appellant's conduct, in his residence and the curtilage of his residence, was reasonably calculated to bring on the difficulty such that

Appellant could not claim immunity from prosecution under the Protection of Persons and Property Act ("the Act").

In signing the Act into law, the General Assembly stressed 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 or attack.*" § 16-11-420(E) (*emphasis added*). Appellant was without fault in bringing on the difficulty.

The trial denied Appellant immunity under the Act because the court believed that Appellant was not without fault in bringing on the difficulty and that there was conflicting evidence "as to whether the defendant actually believed he was in imminent danger of losing his life" Tr. p. 213, l. 16 - 214, l. 8. The trial court also noted that "there's a conflict in the testimony there as to whether or not [Kemp] actually ever threatened [Appellant] or threatened others in [Appellant's] presence." Tr. p. 198, l. 7-10.

The trial court's determination that there was conflicting evidence on these issues was erroneous. The evidence a trial conclusively established that, Kemp, weighing 375 pounds and high on cocaine, booze, and marijuana, stormed into Appellant's residence uninvited at four in the morning. Tr. p. 35, l. 3 - 37, l. 20; Tr. p. 191, l. 10-25. Once inside Kemp threatened to kill Appellant and destroyed Appellant's home in his search for Boulware. *Id.*

Even if Appellant left his residence armed and was walking towards Boulware and Kemp while the two were leaving in Boulware's car, as the State claimed, there was still no evidence that this act was reasonably calculated to create a situation in which *Kemp would leave his car and charge twenty feet across Appellant's yard.* See *State v. Burriss*, 334 S.C. 256, 513 S.E.2d 104 (1999) ("mere unlawful possession of a firearm, with nothing more, does not automatically bar a

self-defense”); *Cf. State v. Slater*, 373 S.C. 66, 644 S.E.2d 50 (2007) (defendant not without fault where he entered an on-going fight he was previously not involved in with a loaded weapon).

The eye-witnesses close enough to hear Appellant and Kemp, all agreed that Appellant was ordering Kemp to leave and that Kemp responded by threatening to kill Appellant or by taunting Appellant to shoot him. Tr. p. 48, ll. 11-23; *See State v. Rye*, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) (“the defense of habitation provides, defending one's home or premises means ending an unwarranted intrusion through the use of reasonably necessary means of ejection.” (*citing State v. Bradley*, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923))).

Even in a light most favorable to the State, Appellant and Kemp were simply “talking trash” to one another, Kemp still chose to leave the safety of his car to charge at Appellant, who was standing in his own yard. *See State v. Douglas*, 411 S.C. 307, 768 S.E.2d 232, n. 8 (2014) ([o]ne who merely does an action that affords an opportunity for conflict is not thereby precluded from claiming self-defense. Fault implied misconduct, not lack of judgment) (internal citations omitted); *see also: State v. Wiggins*, 330 S.C. 538, 548 n. 15, 500 S.E.2d 489, 494 n. 15 (1998)(the absence of a duty to retreat also extends to the curtilage of one's home, which includes the dwelling's yard).

Thus, Appellant had no duty to retreat in his own yard and did not “bring on the difficulty”. § 16-11-440(A)(2). Kemp was the sole initiator of the difficulty and Appellant was allowed “to meet force with force”. § 16-11-4 40(C).

Issue II

As to Issue II, respectfully, this Court erred in affirming the trial court's denial of a directed verdict. When a defendant asserts an affirmative defense, such as self-defense, the prosecution must disprove the elements of the defense beyond a reasonable doubt. *State v. Wiggins*, 330 S.C. 538, 544 -45, 500 S.E.2d 489, 491.

Self-defense, when undertaken at the defendant's residence, has the following three elements: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; and (3) 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, or if the defendant was actually 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. *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013).

Even when viewing the evidence in a light most favorable to the State, the prosecution failed to present any direct or substantial circumstantial evidence that Appellant unlawfully shot and killed Kemp. *Dickey*, 394 S.C. at 499-501, 716 S.E.2d at 101-102; (directed verdict proper where defendant was lawfully ejecting decedent); *Hendrix*, 270 S.C. at 657-658, 244 S.E.2d at 505-506 (defendant confronted on his own land had no duty to retreat and was entitled to a directed verdict on self-defense).

The all of the evidence presented at trial established that Appellant was without fault in bringing on the difficulty. The difficulty began when Kemp forced his way into Appellant's apartment at four in the morning. It continued, uninterrupted until Kemp got out of his car and was shot while charging at Appellant, who was standing in his own front yard.

The proximate cause of Kemp's death was his decision to charge at Appellant. *See State v. Goodson*, 312 S.C. 278, 440 S.E.2d 370 (1994) (state must prove beyond a reasonable doubt that defendant's unlawful act was reasonably calculated to bring on the difficulty and the proximate cause of the homicide).

The State also failed to present any direct or circumstantial evidence that Appellant did not reasonably believe he was in imminent danger of losing his life or sustaining serious bodily injury where Kemp was likely between two and twelve feet away from Appellant and reaching into his waist band when he was shot. Tr. p. 20, ll. 4-23. In South Carolina, a person has the right to act on appearances. *Starnes*, 340 S.C. at 911-912, 531 S.E.2d at 319-320. 92-493 (1998).

Appellant testified that he was afraid for his life and believed Kemp was reaching for a weapon. Tr. p. 37, ll. 7-20; *see also State v. Lockamy*, 369 S.C. 378, 384, 631 S.E.2d 555, 558 (Ct. App. 2006) (had defendant struck the final blow while in imminent danger, then self-defense would apply, but where the threat had moved fifty feet away by the time defendant opened fire, defendant could no longer use self-defense). Kemp had threatened to kill Appellant just a week before the shooting and was high on alcohol and cocaine when he was shot.

With a three hundred seventy five pound convicted felon charging him while reaching into his waist band, Appellant acted as a reasonably prudent person would. *Hendrix*, 270 S.C. at 660, 244 S.E.2d at 507 (holding the trial court erred in failing to direct a verdict in the defendant's favor concerning the charge of murder as the evidence established the defendant acted in self-defense).

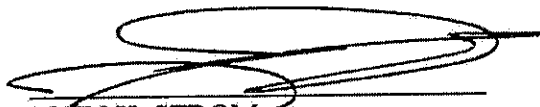
As Appellant was standing in the curtilage of his residence, he had no duty to retreat in the fact of Kemp's charge. *Hendrix*, 270 S.C. at 659-660, 244 S.E.2d at 506 (defendant, who armed himself on his own property, was without fault in bringing on difficulty and had no duty to retreat). Moreover, given how close Kemp was to Appellant when Appellant shot him and the gross disparities in size between the two of them, it would have been highly unlikely that Appellant could have safely retreated.

Accordingly, this Court erred in not finding as a matter of law that the circumstances would warrant a reasonable person to strike the fatal blow to save himself. In addition, this Court erred in not finding as a matter of law that Appellant actually and reasonably believed Kemp posed a danger to him and was without fault in bringing on the difficulty.

Conclusion

Appellant respectfully requests this Court rehear this matter for the significant points overlooked and/or misapprehended in rendering its unpublished opinion on July 26, 2017.

Respectfully Submitted,



JOHN H. STROM
Appellate Defender

This 10th day of August, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County

Honorable Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

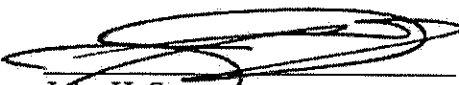
V.

TAQUAN L. BROWN,

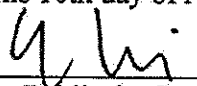
APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Taquan L. Brown, #341915, at Broad River Correctional Institution, Saluda B-110, 4460 Broad River Road, Columbia, SC 29210, this 10th day of August, 2017.


John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE
ME this 10th day of August, 2017.


_____(L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025

The South Carolina Court of Appeals

The State, Respondent,

v.

Taquan L. Brown, Appellant.

Appellate Case No. 2015-001447

ORDER

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

Paul E. Short, Jr.

J.

H. B. Wain

J.

U. Ke

J.

Columbia, South Carolina

FILED

cc:

Alan McCrory Wilson, Esquire
John Harrison Strom, Esquire
Deborah R.J. Shupe, Esquire
Isaac McDuffie Stone, III, Esquire
The Honorable Perry M. Buckner, III

October 19, 2017

FORM 5

STATE OF SOUTH CAROLINA)

County of Colleton)Teguan L. Brown #341915)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

14-CP-15-39

APPLICATION FOR

POST-CONVICTION RELIEF

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 Broad River Correctional Institution
4460 Broad River Rd Columbia S.C. 29210
2. Name and location of Court which imposed sentence General Sessions,
Colleton County Court house in Walterboro
3. Name(s) of co-defendant(s) (if any) Lawrence Walker
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-15-1040 for obstruction of Justice
 - (b) 2013-GS-15-1041 for Murder

 PATRICK G. GRIFFIN
 COLLETON COUNTY
 COMMON PLEAS

2018 JAN 16 PM 1:00

- (c) 2013-GS 1042 for poss. of weapon during Comm. of Vio. Crime
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 10 years June 25th 2015
- (b) Voluntary Manslaughter 25 years June 25th 2015
- (c) 5 years June 25th 2015
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. ~~August~~ July 26, 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. No Written Opinion
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: (see Reverse side) →
- (a) Ineffective Assistance of Counsel
- (b) Violation of due Process
- (c) Newly/After Discover Evidence
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Both Trial, and Appellate Counsel
- (b) All Right retain under the Due Process C.
- (c) Material Facts, not previously presented and heard.
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? _____
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. Petition for Rehearing Pursuant to Rule 22(a),
- ii. SCACR.
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of appeals
- ii. _____
- iii. _____
- iv. _____

10.) (D) will amend 3 application

(c) the disposition thereof:

i.

Deny

ii.

iii.

iv.

(d) the date of each such disposition:

i.

Don't recall

ii.

iii.

iv.

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

i.

ii.

iii.

iv.

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

No

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

(a) which grounds have been presented:

i.

ii.

iii.

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

i.

ii.

iii.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) All of which are PCR matters
 (b) _____
 (c) _____

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

(a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. Mathias Genard Chaplin
4511 W. Main St
Columbia, S.C. 29203
 ii. J.D. Bryan P.O. Box 1111 Wboro 29488
 iii. Matthew Lee Walker
115 Benson Street
 (b) the proceedings at which each such attorney represented you: (He did a good job)
 i. Mathias G. Chaplin - Arraignment
J.D. Bryan - Bond reduction
 ii. Matthew L. Walker - Trial
John H. Strom - Appeal
 iii. David Alexander - Appeal

(A.)
 18.) #4.) John Strom (b) - Appeal
 1330 Lady street
 Columbia S.C. 29201

→ Also
 s

David Alexander
 1330 Lady Street
 Columbia S.C. 29201
(Revised 3/2003)

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

New Trial or, in the alternative
a Reduction in Sentence.

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

No.

STATE OF SOUTH CAROLINA)

County of Colleton)

VERIFICATION

I, Teguan Lateek Brown, 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.

[Signature]

SWORN to and subscribed before me this 18th
 day of December, 2017.

[Signature] (L.S.)
 Notary Public

My Commission Expires: May 12, 2025

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Teguan Lateak Brown, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) ☒ I am the applicant in this action and I believe I am entitled to redress.
- (2) ☐ Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this
18th day of December, 2017.



Notary Public

My Commission Expires: May 12, 2025

Tequan L. Brown #341915
Broad River Corr. Inst.
4460 Broad River Rd
Columbia S.C. 29210

12/17/17

Patricia C. Grant
Colleton County Clerk of Court
Post office Box 620
Walterboro S.C. 29488

Dear Madam Clerk,

Please find enclosed an Application for
Post-Conviction Relief. I am requesting that
it be Clock Stamp, and Filed with the Court.
I also request Respectfully of Course to have
a Clock Stamped Copy sent, or Forwarded
back to me at the above address.

Thank you.

With Kind regards, I am

Sincerely

Tequan L. Brown

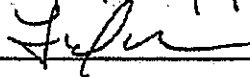
The information holds the likelihood of bringing the Drexel Case to a close. My Attorney in the pass told me that if I was to obtain new information that we would hold it until he was able to negotiate an agreement.

The information we hold, holds the wave abouts of parts of ms. Drexel remains.

I am sending a copy of this letter to Charleston County Sheriff's office, Myrtle Beach Police Department, and the FBI. It would be fruitful for the investigation, and the prosecution in the Drexel case if your office agree^{TB}~~ment~~ to file a Substantial Assistance motion Pursuant to S.C. Code of law §§ 17-25-65. Once the arrests are made. That's what we are asking in order to bring this matter to a end. We look forward to hearing something from you soon.

Thank you for your time.

Very Truly yours,



Tequan L. Brown

Tequan L. Brown #341915
McCormick Correctional Institution
386 Redemption Way
McCormick S.C. 29899

5/7/18

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General
Post office Box 11549
Columbia, S.C. 29211

RE: Appellate Case No. 2015-001447, PCR, and Substantial Assistance...

Dear Madam Counsel,

I am sending you this correspondence because the above captioned matter was on your docket. Now since the above captioned matter was affirmed by the Court of Appeals.

I have filed an application for Post-Conviction relief in December of 2017, in which I am awaiting the appointment of Counsel by the office of the Attorney General.

The reason for this letter is to request respectfully for a Cooperation agreement between your office, and myself.

Also a Cooperation agreement between your office and a inmate by the name of John D. Andrews #350034. SCDC No.

This request is base on new information obtain by Andrews and I in the investigation of Brittane Drexel.

Now an Attorney would be very helpful With the negotiation of an Substantial Assistance motion being filed on our behalf.

http://www.postandcourier.com/news/fbi-closer-to-arrests-in-brittanee-drexel-case-following-three/article_47331020-125f-11e7-87ce-db3d9f21f034.html

TOP STORY

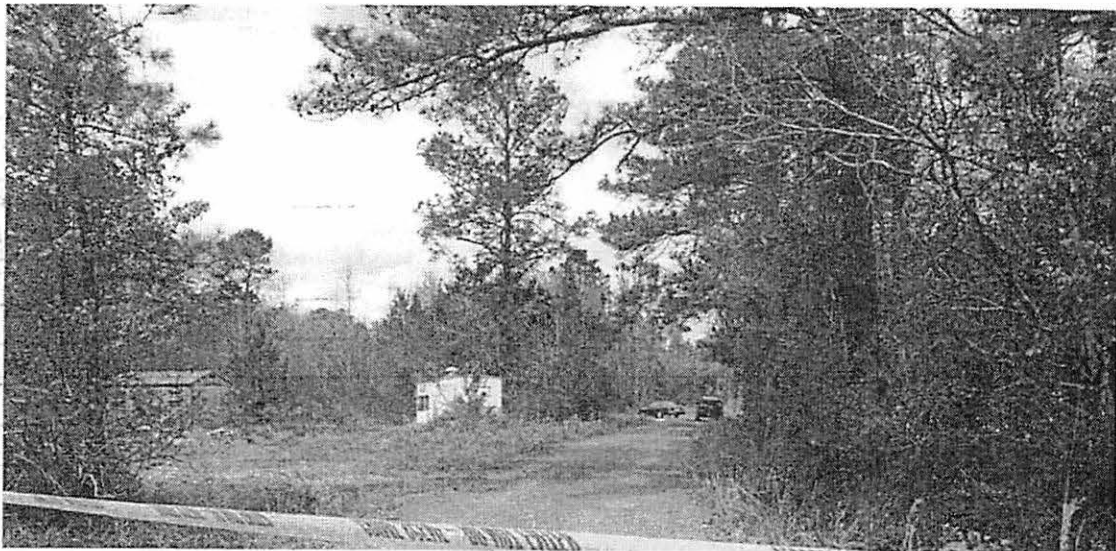
FBI closer to arrests in Brittane Drexel case following three-day search in Georgetown

By Derrek Asberry dasberry@postandcourier.com Mar 26, 2017 Updated Mar 27, 2017



The FBI has concluded a three-day search in Georgetown County for information in the Brittane Drexel case and says it is advancing the case. AP Photo/Myrtle Beach Police Department

A three-day search in Georgetown for leads in the Brittane Drexel case proved fruitful for the FBI, a spokesperson said Sunday as he was leaving the Foxfire Court area where the search took place.



S.C.

OFFICE

CREATION DATE ALLOCATION

DATE RECEIVED BY 5/11/2018RECEIVED BY SRE

ADDITIONAL INSTRUCTIONS

F. OF NEW CLOSE

ORDER: TRANSCRIPT

CLERK RECORDS

SOLICITOR'S FILE

☒ OTHER D. Shupe

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	14 TH JUDICIAL CIRCUIT
	)	
Tequal L. Brown	)	CASE# 2018-CP-15-0539
Plaintiff	)	
VS	)	AMENDMENT TO PCR APPLICATION
State of South Carolina	)	
Defendant	)	

The Plaintiff, by and through his attorney would submit the following:

Ineffective assistance of Counsel:

The trial attorney did not go over the discovery with the client and did not give him a copy.

Newly discovered evidence:

Claims that there was an affidavit by a witness that the victim in the case did possess a weapon – which was not known at the trial.

RESPECTFULLY SUBMITTED

Timothy L. Griffith, Attorney at Law

By /s Timothy L. Griffith

SC Bar# 77923
 2338 Mount Vernon Dr.
 Sumter, SC 29154
 803 499-2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	14 TH JUDICIAL CIRCUIT
	)	
Tequal L. Brown	)	CASE# 2018-CP-15-0539
Plaintiff	)	
VS	)	AMENDMENT TO PCR APPLICATION
State of South Carolina	)	
Defendant	)	

The Plaintiff, by and through his attorney would submit the following:

Plaintiffs asserts each and every part of his original application, as if included herein verbatim.

By way of more definitive statement, Plaintiff would assert the following

Ineffective assistance of Counsel:
TRIAL ATTORNEY Mr. Walker:

- The trial attorney did not go over the discovery with the client and did not give him a copy.
- Trial attorney failed to object to hearsay testimony of Investigator Esttroff as to deceased woman.
- Trial attorney failure to investigate
- Trial attorney failure to object to Judge adding instruction for manslaughter
- Trial attorney cross examination of pathologist

APPEAL ATTORNEY Mr. Strom

- Attorney failed to petition S. Court for case

APPEAL ATTORNEY Mr. Alexander

- Attorney failed to file motion for rehearing – rule 29.b

Newly discovered evidence:

Claims that there was an affidavit by a witness that the victim in the case did possess a weapon – which was not known at the trial.

RESPECTFULLY SUBMITTED

Timothy L. Griffith, Attorney at Law

By /s Timothy L. Griffith

SC Bar# 77923
2338 Mount Vernon Dr.
Sumter, SC 29154 803 499-2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
Tequan L. Brown, # 341915	)	
	)	2018-CP-15-0039
	)	
Applicant,	)	
	)	
v.	)	RETURN & MOTION FOR A
	)	MORE DEFINITE STATEMENT
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

In response to the action for post-conviction relief (PCR) commenced by Taquan Brown (Applicant) on January 16, 2018, the State makes this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. Applicant was indicted at the December 2013 term of the Colleton County Grand Jury for murder (2013-GS-15-1041); obstruction of justice (2013-GS-15-1040); and possession of a weapon during the commission of a violent crime (2013-GS-15-1042).

The case proceeded to a jury trial June 22–25, 2015, before the Honorable Perry M. Buckner. Applicant was represented by Assistant Public Defender Matthew Walker. Assistant Solicitor Tameka Legette prosecuted the case. The jury convicted Applicant of the lesser included offense of voluntary manslaughter, obstruction of justice, and the weapons charge. The trial court sentenced Applicant to an aggregate term of thirty-years' imprisonment. Applicant appealed.

On appeal, Applicant was represented by Appellate Defender John Strom. The court of appeals affirmed in an unpublished opinion. *State v. Brown*, Op. No. 2017-UP-315 (S.C. Ct. App.

filed July 26, 2017). Thereafter, Applicant petitioned for rehearing on August 8, 2017; however, the court of appeals denied Applicant's petition October 19, 2017. The case was remitted to the circuit court December 15, 2017. Applicant filed this PCR action January 16, 2018. The State did not receive the PCR application until February 7, 2019.

II. Facts

Applicant's charges stem from the death of Maurice Kemp and Applicant's statements after the shooting. The case was called for a jury trial on June 22, 2015. However, prior to trial, Applicant moved to dismiss the case pursuant to the Protection of Persons and Property Act¹ (Act) commonly referred to as the "Stand Your Ground" or "Castle Doctrine" statute. In his motion, Applicant asserted he was entitled to immunity from prosecution under the Act. At the motion hearing, Applicant presented testimony from several witnesses who purportedly witnessed the shooting, and an investigator from the Public Defender's Office.

Larry Council testified he was riding with Applicant and another man at some point prior to the night of the shooting, and they went to the Southern Inn to find a woman who was living with Kemp at the time. Kemp got angry about them coming to find his girlfriend, went back inside his room and came back outside with a gun in his hand. Kemp told Council they better leave the premises "before [Kemp] drops one of us out there." Applicant called 911, but hung up. When the 911 operator called back, Applicant stated he "was just going to let it ride; just let it go." (Trial Transcript [TT], pp. 15-20; Record on Appeal [R.], pp. 15-20).

On cross-examination, Council admitted he told police Kemp merely had the gun in his waistband, and he had changed his story on the witness stand. He also stated Kemp never pointed the gun at anyone that night. (TT, pp. 20-23; R., pp. 20-23).

¹S.C. Code §§ 16-11-410 to 450 (2015).

Jessica Fulks testified Kemp came to her house the night of the shooting looking for his girlfriend, but she did not know where his girlfriend was. She stated Kemp stayed at her house for awhile drinking and smoking marijuana, and left just before midnight to pay his phone bill so his phone would not get cut off. She stated she heard that he carried a gun, but she never saw him be violent, and he was a nice person who treated her nice. (TT, pp. 25-28; R., pp. 25-28).

Applicant testified about the incident at the Southern Inn, and stated he asked Kemp for a cigarette. Kemp got angry when one of the men with Applicant said Kemp's girlfriend had called him, and "just flipped," and told them to get out of there. Applicant stated he "was in a shock, like, where did this come from." Kemp then went into his room, got a gun and threatened to kill them if they did not leave. Applicant testified he told the 911 operator to "never mind," and stated he "didn't go back around [Kemp], because he wasn't a person who [Applicant] had to deal with on a daily basis." (TT, pp. 29-31; R., pp. 29-31).

Applicant further testified he was in his apartment sleeping on the night of November 20, 2013, when he woke up to the sound of someone beating on his door. One of Applicant's guests unlocked and opened the front door, and when Applicant got to the front room, Kemp pushed by Applicant's guest into the apartment. Kemp looked in every room of the apartment to see if his girlfriend was there until Applicant's guest told him she was next door in another apartment. Kemp then went out the back door of Applicant's apartment and over to the next apartment. According to Applicant's account of events, while Kemp was trying to get inside the neighboring apartment, one of the residents of that apartment entered Applicant's apartment through the front door. That individual was holding a gun, which Applicant took away from him. (TT, pp. 31-35; R., pp. 31-35).

Applicant stated Kemp returned to Applicant's back door after Kemp was unable to enter the neighboring apartment. Allegedly, Kemp asked if he could come back through Applicant's apartment to get to his car parked in front of the apartment building. However, Applicant refused and Kemp got angry. Applicant claimed Kemp said he was going to kill Applicant. Kemp did not push his way into Applicant's apartment, but walked around the apartment building to get to his car. (TT, pp. 35-36; R., pp. 35-36).

Rather than stay inside his apartment, Applicant walked out his front door. He saw Kemp come around the building, and Kemp's girlfriend exited the neighboring apartment. Kemp and his girlfriend then went to Kemp's car, with the girlfriend getting in on the passenger side and Kemp "got in the driver's seat." Applicant testified some words were exchanged and Kemp got out of the car and called his name. Applicant waved his hand and told Kemp to leave, but Kemp came around the car "to the front panel by the front tire, and he started running towards [Applicant]." Applicant stated Kemp reached into his waistband as he ran, so Applicant shot him from approximately twelve to thirteen feet away. (TT, pp. 36-39; R., pp. 36-39).

On cross-examination, Applicant testified Kemp did not break into his apartment, and he did not force his way in when Applicant told him he could not come back through. Applicant stated he came out of his apartment because there were people in his yard, and his next door neighbor was coming over in her wheelchair. After Applicant stated he was afraid of Kemp, the solicitor asked, "Why didn't you just stay inside your apartment[?]" Applicant responded, "I can't answer that question." (TT, pp. 39-44; R., pp. 39-44).

Jermaine Brown testified he was at Applicant's apartment the night of the shooting. Jermaine stated he was asleep when he awoke to "a big man standing over me, causing all type of chaos inside the house." After the man left through the backdoor, Jermaine left the apartment

through the front door, and saw the man coming around from the back of the building toward his car. Jermaine testified the man was “yelling” at Applicant and threatening that he wanted to do something to Applicant. He stated Applicant was standing in his front yard approximately ten to twelve feet from the street. Jermaine recalled the man running towards Applicant reaching for something; however, Applicant shot the man. (TT, pp. 45-54; R., pp. 45-54).

Wylie James testified he was also in Applicant’s apartment the night of the shooting. James recalled that Kemp “bust up in the house” looking through the apartment for a woman. His testimony regarding the events that followed corroborated Applicant’s and Jermaine’s version of events, with one major difference. James testified Kemp went out the backdoor of Applicant’s apartment and then came back through the apartment to the front yard. On cross-examination, James admitted he originally told the police he was not there that night, which was a lie. (TT, pp. 60-72; R., pp. 60-72).

Applicant presented testimony from a Public Defender’s Office investigator regarding measurements he took at the scene based on a photograph and information he received from Applicant’s next door neighbor. The State rebutted this testimony with testimony from the first responding officer. The officer stated Kemp was lying on his stomach and his feet were approximately “a step” off the sidewalk beside the street. Kemp’s body was closer to the sidewalk than the apartment building. When the officer saw Kemp’s face, he observed a gunshot wound to Kemp’s forehead. The officer testified it would be a difficult shot to make if someone was charging them. He stated he was a firearms instructor well versed in firearms. He stated for him to make such a shot, the target needed to be standing stationary directly in front of him. (TT, pp. 73-101; R., pp. 73-101).

Captain Jason Walker of the Colleton County Sheriff's Office testified he responded to a reported shooting on the night of November 20, 2013. He assisted other investigators with taking photographs of the scene. Based on measurements taken that night, investigators determined there was approximately thirty-eight feet from the blood spot where Kemp's head was to the front door of Applicant's apartment. (TT, pp. 101-114; R., pp. 101-114).

A SLED analyst testified she found gunshot residue on Applicant's right and left hands, and multiple gunshot residue particles on Kemp's hands. She further testified residue from a smaller caliber gun, such as the .32 caliber handgun determined to be the murder weapon, would not travel more than two and a half to three feet. The analyst opined that for Kemp to have gun residue on his hands, he had to be close to the gun barrel when it was fired. (TT, pp. 115-125; R., pp. 115-125).

Nyle Eltzroth testified he was a criminal investigator with the Colleton County Sheriff's Office in November, 2013, and responded to the shooting scene. He interviewed Applicant at the scene, and Applicant stated he was asleep and did not see or hear anything. In a subsequent interview that day, Applicant again stated he was asleep and only learned about the shooting when one of his guests woke him up to tell him about it. (TT, pp. 168-172; R., pp. 130-134).

Eltzroth interviewed Applicant again a couple of days after the shooting. At that time, Applicant told him about Kemp coming to the apartment looking for his girlfriend, and when he tried to come back through the apartment, Applicant told him he was not allowed to come back into the apartment and closed the door. Applicant told Eltzroth Kemp walked around the building, got his girlfriend and was walking to his car when a third person walked down the sidewalk, talked trash to Kemp and shot Kemp when he got out of his car. (TT, pp. 173-175; R., pp. 135-137).

After receiving additional information, Eltzroth interviewed Kemp's girlfriend, Coco. She stated she and Kemp were inside the car when Applicant came down the sidewalk with a gun in his hand. Kemp saw the gun and got out of the car. He put his hands out and said: "If you're going to pull it, use it." Applicant then shot Kemp several times. (TT, pp. 175-176; R., pp. 137-138).

Eltzroth confirmed Coco's version with a third party witness, who admitted he disposed of the gun Applicant used to shoot Kemp, and subsequently took officers to that location. The officers recovered a handgun, and it was subsequently forensically confirmed to be the weapon used in the shooting. (TT, pp. 176-177, 500-510; R., pp. 138-139, 447-457).

While he was in jail, Applicant asked to speak with Eltzroth. At that time, he admitting shooting Kemp, but stated Kemp was coming toward him, and after the shooting, he found a revolver on Kemp, which he sold to a third party. Eltzroth interviewed the third party, who denied purchasing a weapon from Applicant. When he questioned the third party witness, who originally told him Applicant was the shooter, about Applicant's claim they found a weapon on Kemp, the witness stated "absolutely not," and said they did not even search Kemp that night. (TT, pp. 177-186; R., pp. 139-148).

After hearing the witnesses and argument of counsel, the circuit court ruled Applicant did not meet his burden of proving self-defense by a preponderance of the evidence for purposes of the immunity hearing. In particular, the court found Applicant did not prove he was without fault in bringing on the controversy, and there was conflicting evidence regarding whether Applicant actually believed he was in imminent danger of death or serious bodily harm such that he was entitled to immunity under the Act. (TT, pp. 213-215; R., pp. 175-177).

The witnesses testified at trial much like they did during the immunity hearing. (TT, pp. 243-269, 364-399, 420-510; R., pp. 190-216, 311-346, 367-457). A pathologist testified Kemp had two bullet wounds, a significant and fatal wound to the middle of his forehead, and a wound in his abdomen. (TT, pp. 291-307; R., pp. 238-254).

The jury convicted Applicant of the lesser included offense of voluntary manslaughter, possession of a weapon during a crime of violence, and obstruction of justice. (TT, pp. 656-657; R., pp. 566-567). The trial court sentenced Applicant to an aggregate term of thirty-years' imprisonment—consecutive twenty-five-years for voluntary manslaughter, and five-years for the weapons charge; and a concurrent ten-years for obstruction of justice. (TT, pp. 667-670; R., pp. 575-578).

III. Current Application

Applicant alleges he is being held in custody unlawfully due to:

1. Ineffective assistance of trial and appellate counsel;
2. Due process violation; and
3. Newly-discovered evidence.

Applicant requests relief in the form of a new trial, or, alternatively, a sentence reduction.

Attached to this return and incorporated herein are the Colleton County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's direct appeal records, and the records of this PCR action.

IV. Motion for a More Definite Statement

The State hereby moves for a more definite statement. Applicant has failed to set forth facts to "support each ground" or to explain with specificity the facts upon which his claims of ineffective assistance of trial and appellate counsel, due process violation, and newly-discovered

evidence are based. The Uniform Post-Conviction Procedure Act² requires the applicant “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50. It is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so the State may adequately prepare for an evidentiary hearing. Therefore, the State requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

V. Response to Allegation of Ineffective Assistance of Counsel

Applicant’s allegations of ineffective assistance of trial and appellate counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove “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.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). However, counsel is presumed to have adequately assisted and exercised reasonable professional judgment in making decisions in the case. *Edwards*, 392

² S.C. Code Ann. §§ 17-27-10 to -160.

S.C. at 456, 710 S.E.2d at 64. “[W]here counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

A defendant is entitled to effective assistance of appellate counsel. *Southerland v. State*, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, “appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record.” *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (emphasis added). “For [courts] to second-guess reasonable professional judgments and impose on [appellate] counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy” *Jones v. Barnes*, 463 U.S. 745, 754 (1983).

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *Southerland*, 337 S.C. at 616, 524 S.E.2d at 836. Thus, the question becomes (1) whether appellate counsel's performance was deficient, and (2) whether the applicant was prejudiced by appellate counsel's deficient performance. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

Applicant cannot satisfy either requirement of *Strickland* or *Bennett*. However, the record likely does not directly dispute Applicant's allegations of ineffective assistance of trial or appellate counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues once, as requested above, Applicant provides a more definite statement. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR

application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court”).

VI. Response to Due Process Allegation

Applicant alleges a due process violation. However, Applicant fails to specify any facts supporting his due process violation allegation. As mentioned above, the applicant must “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50. Because Applicant has failed to make even a prima facie showing his due process rights were violated, the State submits this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the allegation is based. However, if Applicant properly amends his PCR application, the record likely does not directly dispute Applicant’s allegation; therefore, the State requests an evidentiary hearing to fully resolve the issue once, as requested above, Applicant provides a more definite statement. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court”).

VII. Response to Newly Discovered Evidence Allegation

Applicant alleges newly discovered or after discovered evidence exists. However, Applicant fails to specify any facts supporting his newly discovered evidence allegation. Therefore, the State, as stated above, requests Applicant amend, through counsel, his PCR application to specify the facts supporting his newly discovered evidence claim.

A defendant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;

- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and[]
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611–12, 299 S.E.2d 854, 855 (1983).

Applicant has not shown the alleged evidence meets any of the requirements for after discovered evidence. Importantly, Applicant has not provided any factual basis for his claim. Even so, Applicant's claim is without merit as the new evidence, if offered by Applicant, is not likely to meet the five requirements prescribed in *Hayden*. However, the record likely does not directly dispute Applicant's allegation of newly discovered evidence; therefore, the State requests an evidentiary hearing to fully resolve the issue once, as requested above, Applicant provides a more definite statement. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court").

VIII. Any Future Amendments

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 the Uniform Post-Conviction Procedure Act and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRPC. 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, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRPC.

IX. Response to Any and All Other Allegations

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

X. Request for an Evidentiary Hearing

WHEREFORE, the State requests an evidentiary hearing be held once Applicant provides a more definite statement.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
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Assistant Attorney General

March 22, 2019

By:  Samuel BHL

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STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS
)
) FOURTEENTH JUDICIAL CIRCUIT

TEQUAN L. BROWN

) NO. 2018-CP-15-00039
)

VS.

) TRANSCRIPT OF RECORD
)

STATE OF SOUTH CAROLINA

) Post Conviction Relief Hearing

B E F O R E:

The Honorable Eugene C. Griffith, Jr., Judge
Beaufort, South Carolina

DATE: Monday, August 9, 2021
11:16 a.m

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

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Reported by: Cathy J. Provost, RMR, Official Court Reporter

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(No exhibits marked.)

1 -- P R O C E E D I N G S --

2 ATTORNEY SMITH: This is the case of Tequan Brown v. State,
3 2018-CP-15-0039. Mr. Brown is serving out an aggregate 30-year
4 sentence for voluntary manslaughter and possession of a weapon
5 during commission of a violent crime and obstruction of justice.

6 Back in June of 2015 he was tried before a jury, with Judge
7 Buckner presiding. At the beginning of trial Judge Buckner
8 denied the defense's motion for immunity under the Protection of
9 Persons and Property Act. Mr. Matthew Walker represented
10 Mr. Brown at trial, and Assistant Solicitor Tameaka Legette
11 prosecuted. At the conclusion of trial, the jury convicted of
12 all three offenses.

13 On appeal, appellant Defender John Strom represented
14 Mr. Brown initially, although ultimately Appellant Defender David
15 Alexander began representing Mr. Brown. Mr. Strom argued that
16 Judge Buckner erred in denying the defense's motion for immunity
17 because Mr. Brown was not at fault on bringing on the difficulty,
18 was acting in self-defense, and reasonably believed he was in
19 imminent danger, and also argued that Judge Buckner erred in
20 denying a motion for a directed verdict.

21 The Court of Appeals affirmed in an unpublished opinion, and
22 Mr. Strong petitioned for rehearing, which was denied in an order
23 issued on October 19th, 2017. Mr. David Alexander then took over
24 and asked for an extension of time to file the petition for a
25 cert in the Supreme Court, and then before the petition was due

1 sent a letter to the Supreme Court saying he would not petition
2 for a cert, and then the Supreme Court dismissed the appeal and
3 remitter was issued.

4 This application followed. I talked with Mr. Griffith back
5 and forth a full times, and I think that, from my understanding,
6 they're going to argue a few issues today. I'll summarize them
7 as best I can, and then we'll see if Mr. Griffith can agree that
8 I have accurately stated them.

9 He wants to incorporate everything raised in the original
10 amended application that Mr. Brown filed. I think it pretty much
11 tracks closely with the other things I'm about to say but, in
12 issue, that Mr. Walker was ineffective for: A, not going over
13 discovery with Mr. Brown and giving him a copy of the discovery;
14 B, failing to object to hearsay from a law enforcement officer;
15 and C, failing to adequately investigate; and D, not
16 cross-examining the forensic pathologist who testified at trial.

17 They're also going to argue that Mr. Strom was ineffective
18 for not filing for petition of cert in the Supreme Court; that
19 David Alexander was ineffective for not moving for rehearing
20 according to Rule 29(b), the South Carolina Rules of Criminal
21 Procedure; and lastly, that Mr. Brown has -- well, was that
22 Mr. Brown has newly discovered evidence that the victim possessed
23 a weapon at the time of the shooting. After talking with Mr.
24 Griffith today, that may not be an issue they're arguing today,
25 but I'll leave that to Mr. Griffith.

1 That's the State's intro, Your Honor.

2 THE COURT: All right. Mr. Griffith.

3 ATTORNEY GRIFFITH: If it please the Court, Your Honor.

4 Mr. Brown has made his petition. He does have several items, of
5 course, that he would like to present to the Court. And at this
6 time I would like to call Mr. Brown.

7 THE COURT: Okay. Let me make sure we get a clear record,
8 Mr. Griffith, you've appeared in front of me, I think, once or
9 twice already --

10 ATTORNEY GRIFFITH: Many times.

11 THE COURT: -- in ten years or longer. You and I, to our
12 knowledge, are not kin at all.

13 ATTORNEY GRIFFITH: No, we are not kin at all, although I
14 did tease him at the beginning, Your Honor. I told him, Oh, he's
15 my brother.

16 THE COURT: True story: My grandfather was a circuit judge,
17 and at that time kin could appear, and my granddad always ruled
18 against my uncle and my father. And a local rule in Newberry
19 was, if you had a hearing coming up, he crawled up in his lap
20 because he knew he wasn't going to win because my granddad would
21 rule against him. But that is not allowed. You and I are not
22 kin, to our knowledge.

23 ATTORNEY GRIFFITH: No, Your Honor. No, sir.

24 THE COURT: All right.

25

1 TEQUAN L. BROWN,
2 having first been duly sworn, was examined and testified as
3 follows:

4 CLERK OF COURT: If you'll just spell your name, and then
5 spell out your last name for the court reporter.

6 MR. BROWN: Tequan Brown, B-r-o-w-n.

7 THE COURT: You can take your mask off while you're sitting
8 there.

9 ATTORNEY GRIFFITH: If it please the Court, Your Honor.
10 I'll come up here, if it please the Court.

11 THE COURT: That's fine. That's fine. You can do that.

12 DIRECT EXAMINATION

13 BY ATTORNEY GRIFFITH:

14 Q Mr. Brown, you and I have talked about the case, and we have
15 gone over several of the items that you want to bring before the
16 Court. And we'll go over them one at a time so that you can
17 elaborate on them. Okay?

18 A All right.

19 Q And the first one is talking about your attorney,
20 Mr. Walker. Did you ever see the discovery for your case?

21 A I did. During the trial, at the defense table I seen the
22 full discovery of the case.

23 Q So prior to that did you see the discovery?

24 A No, sir. Mr. Walker had gave me a police report and a few
25 items, but I never seen full discovery in the case.

1 Q So did you ever possess, before the trial, a copy of the
2 discovery?

3 A No, sir.

4 Q And so your next item, you're talking about there was
5 testimony by an Investigator Eltzroth, he was talking about a
6 lady who was deceased. Why don't you tell us what --

7 A Prior to trial, on March 27th of 2013, we went before Judge
8 Mullens (sic), Carmen Mullen, and the state solicitor, Tameaka
9 Legette, told Judge Mullen, told the Court, that the State of
10 South Carolina no longer had probable cause because the witness,
11 Cortney Boulware, had passed away. And Mr. Walker had a
12 discussion with the judge and Tameaka Legette about -- the
13 solicitor wanted to use the deceased's statement, and Mr. Walker
14 had informed me that Judge Mullen had told Solicitor Legette that
15 the statement was inadmissible, it wasn't coming in, because I
16 would not have the right to cross-examine the deceased.

17 And, in fact, during the Castle Doctrine hearing, and
18 certain parts of the trial, Detective Eltzroth was able to use
19 certain portions of her statement.

20 Q So the detective used portions of the statement. And your
21 complaint says that one of the things that Mr. Walker was
22 ineffective as is that -- Did he object to that evidence?

23 A During the Castle Doctrine hearing, when he got up to
24 cross-examine Mr. Eltzroth, he attempted.

25 Q He did what? I'm sorry.

1 A He attempted to object to it. He did. He tried. The judge
2 didn't let him.

3 Q Okay. So, all right.

4 A But during the course of trial Detective Eltzroth did it
5 again, and he didn't object to it.

6 Q So as far as you know, did your attorney investigate the
7 case prior to your trial?

8 A No.

9 Q As far as you know, did he hire an investigator for the
10 trial?

11 A No. I believe that the public defender office in Walterboro
12 has a investigator on staff.

13 Q And as far as you know, no investigation was performed at
14 all? Is that what you're telling me?

15 A Yes.

16 Q And so also one of your complaints is the trial attorney's
17 cross-examination of the pathologist. Why don't you tell us,
18 elaborate on what happened.

19 A Well, during the course of trial -- you know, I don't have
20 no knowledge of the law so a lot of stuff that was going on was
21 over my head, but during the trial, there was a trace evidence
22 analyst from SLED, Ms. Whitney Berry, and they was talking about
23 GSR and how the victim has GSR on his hands, and it was
24 speculated that it was a close-round shooting.

25 And the pathologist got on the stand, and no one asked the

1 pathologist about that right there, about those particular
2 issues.

3 After I was convicted and went to prison and talked to
4 Mr. Strom and talked to a private investigator who reached out to
5 the pathologist, we found out -- I learned a little bit about
6 that, and she did, a Dr. Susan Presnell, I think her name is,
7 from MUSC, she was able -- the question was asked and she said,
8 No, it wasn't a close-round shooting, and if it was --

9 ATTORNEY SMITH: Objection. Hearsay.

10 BY ATTORNEY GRIFFITH:

11 Q Yeah, you can't say what she said.

12 A Well, I learned that if it was, there would be certain
13 things that would prove that it is besides someone speculating on
14 the presence of GSR.

15 ATTORNEY SMITH: Objection. Lack of personal knowledge.

16 THE COURT: I'm going to overrule. I'm going to allow it.
17 Go ahead.

18 BY ATTORNEY GRIFFITH:

19 Q And so as far as the pathologist is concerned, you're
20 presuming that as being some new evidence that was not known at
21 trial; is that correct?

22 A It wasn't known. Yes. Yes.

23 Q Then also you and I talked about Mr. Strom, who was your
24 first appeals attorney. And, really, you're saying you didn't
25 have a lot going against him.

1 A No.

2 Q Is that correct?

3 A Correct. I believe Mr. Strom done a marvelous job on my
4 behalf. He did some things that he didn't have to do.

5 Q And then your next appeal attorney was Mr. Alexander; is
6 that correct?

7 A Yes.

8 Q And what specifically are you alleging that he failed or was
9 ineffective as an appeal attorney on your behalf?

10 A Well, when Mr. Strom was representing me, we had several
11 meetings face-to-face at the institution and with the U.S.
12 attorney and FBI, and Mr. Strom was very adamant that he could
13 get me some relief.

14 And when the Court of Appeals affirmed the conviction,
15 Mr. Strom petitioned for rehearing in order to get to the Supreme
16 Court. And he was very adamant. He felt like he could do
17 something with that, but he took a job working for Congress, and
18 Mr. Alexander told me that he didn't know what Strom was talking
19 about, and he wasn't going to pursue that.

20 Q So your basic complaint of ineffectiveness is that he failed
21 to follow through on the Rule 29(b); is that correct?

22 A Correct.

23 Q Now, is there anything else, Mr. Brown, that you want to
24 bring to the attention of the Court?

25 A We had a conversation a week ago about the -- about the ...

1 about -- I think it's a due process issue about the standard of
2 -- I don't know what it's called, a standard -- about the State
3 not meeting its burden, and you said that that wouldn't be a
4 proper issue for this case.

5 Q Well, if you want to elaborate as to why you don't think
6 they met their burden. You and I talked about it, and we were
7 not able to articulate anything, you and I, but do you have
8 something that you want to talk about now?

9 A Yeah. I believe -- my understanding of an affirmative
10 defense, like insanity or self-defense, the burden of disproving
11 would be on the State.

12 And to my knowledge -- I know very little, but -- during the
13 closing arguments of my case, the solicitor admitted, on page
14 609, that she didn't know who started the difficulty. She said
15 it twice, at line 6 and line 16.

16 And the State, on appeal, they used that, and the scientific
17 evidence from SLED, they kind of used that. Their case was
18 hinged on that, but I don't believe -- to my belief, I don't
19 believe they met the burden of disproving it, especially when it
20 goes to the first element of self-defense.

21 ATTORNEY GRIFFITH: Okay. Please answer any questions that
22 the Attorney's General's Office may have.

23 ATTORNEY SMITH: Your Honor, may I have just a moment?

24 THE COURT: Sure.

25 ATTORNEY SMITH: Your Honor, I have no questions. Thank

1 you.

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

3 ATTORNEY GRIFFITH: Your Honor, I have no further questions.
4 No further witnesses.

5 THE COURT: All right. Mr. Smith.

6 ATTORNEY SMITH: All right. Your Honor, at this time I
7 would call Mr. Matthew Walker.

8 MATTHEW L. WALKER,

9 having first been duly sworn, was examined and testified as
10 follows:

11 CLERK OF COURT: And once you're seated, if you'll just
12 state your name, first and last, and spell your last name for the
13 court reporter, please.

14 THE WITNESS: Matthew Walker, W-a-l-k-e-r.

15 DIRECT EXAMINATION

16 BY ATTORNEY SMITH:

17 Q Mr. Walker, do you happen to have access to your criminal
18 defense files for Mr. Brown today?

19 A I do.

20 Q Okay. When did you begin practicing law?

21 A I was admitted in 2004.

22 Q Can you tell me about the different positions you've held
23 since being admitted to practice.

24 A Graduate from University of South Carolina School of Law. I
25 clerked for the Honorable Judge Lockemy when he was still on the

1 Circuit Bench, and then I have been in this job since then.

2 Q And what is your job know?

3 A I'm an assistant public defender. Well, I was assistant
4 public defender in the Beaufort County's Public Defender's Office
5 before it became the circuit system. And then when it became the
6 circuit system, I've been in the circuit since then. And I am
7 now -- I was in Beaufort for nine years, and I've been in
8 Walterboro ever since.

9 ATTORNEY GRIFFITH: I wonder if you could use the
10 microphone.

11 THE WITNESS: Sorry. I'll sit closer. Is that better?

12 ATTORNEY GRIFFITH: Yes, sir. Thank you.

13 BY ATTORNEY SMITH:

14 Q How did you come to be involved in Mr. Brown's underlying
15 criminal case?

16 A He was charged, and I was assigned the case.

17 Q On how many occasions did you meet with Mr. Brown before his
18 case went to trial?

19 A I don't have an exact number. Certainly enough to
20 understand the case; to have gone over with him everything, what
21 he felt we should be doing; and just to make sure that he
22 understood what the State was doing, and try the case.

23 ATTORNEY GRIFFITH: I'm sorry, Your Honor. I really can't
24 hear what he's saying unless he would use the microphone.

25 THE WITNESS: I'm sorry. I'll try and speak up. Is that

1 better? All right, sorry.

2 ATTORNEY GRIFFITH: That is better.

3 THE WITNESS: I don't have an exact number. I met with him
4 enough that I felt like I understood the issues that he wanted to
5 raise in his trial; that I understood -- that I had communicated
6 to him on both the trial process and what the State was alleging;
7 and I felt that we were prepared for trial, try the case.

8 BY ATTORNEY SMITH:

9 Q So it would have been multiple meetings?

10 A Yes, increasing in frequency as the trial came. And even
11 during the trial we'd try the case, and at night I'd go back to
12 the jail and talk about what we were going to do the next day and
13 that kind of thing.

14 Q Okay. Did you communicate with Mr. Brown outside of those
15 meetings through phone calls or letters?

16 A No. I mean -- well, generally he'd either call from the
17 jail, but, really, it would be he'd send a letter, I need a bond
18 or something, so we did see him in court or I'd go to jail and
19 discuss whatever issues that needed to be discussed.

20 Q So primarily face-to-face communication?

21 A Yes.

22 Q Did you receive the discovery disclosure from the State?

23 A Yes.

24 Q Okay. What do you remember generally about the things that
25 were included in that?

1 A It was a pretty standard case. It was a basic initial
2 packet with the incident report and whatnot. He had given some
3 interviews, so we had some video interviews with -- well, him,
4 and there were codefendants charged with conspiracy and that sort
5 of thing. So there were video interviews, and then the police
6 report.

7 And then as we got closer to trial, I think there was a GSR
8 report and an autopsy report, that sort of thing. It wasn't a
9 particularly complicated case, so there wasn't any type of weird
10 types of discovery.

11 Q Did you review those things with Mr. Brown?

12 A I did.

13 Q And by that do you mean that you described to him what was
14 in the disclosure, or did you show the items to him?

15 A I'll say my normal practice certainly, in something like
16 this, is to discourage clients from having physical copies of
17 their discovery in the jail. Mr. Brown wanted physical copies.
18 And as you heard him say, I gave him an incident report and those
19 sorts of paper copies.

20 They don't have any way to view videos and things at the
21 jail, and at that time I was still getting CDs, and they can't
22 have CDs at the jail.

23 And then you get all kinds of stuff in discovery that's kind
24 of just voluminous paper or photos, or things like that. So I
25 believe what I would have done with Mr. Brown is give him the

1 incident report, a copy of the GSR report, autopsy report, that
2 sort of thing, and videos and, you know, and just like
3 photographs, put those on the computer; take that computer to the
4 jail with me; go through those digital type items at the jail, or
5 have my investigator go over and show those things to him. You
6 know, This is what we have; Do you want to look at this?; Do you
7 want to watch any more of this?, you know, that sort of thing.

8 Q Do you recall having anything that you did not either show
9 to him in hard-copy form or digital format or described to him?

10 A What I will do -- I don't know if he looked at every piece.
11 I would be there with or digital things and say, What do you want
12 to look at? These are autopsy photos; These are crime scene
13 photos; These are cellphone call logs, for example; Do you want
14 to look at these? Either no or yes. And, you know, Anything
15 else you want to look at before I go home for the day?, and that
16 kind of thing.

17 So everything was made available. He was given paper copies
18 of what I would call the major reports, and given the opportunity
19 to view anything else that was on the video or something.

20 Q Did he ask for anything that you refused to give him or show
21 him?

22 A Not to my recollection.

23 Q Did Mr. Brown give you any reason to believe that he did not
24 understand your explanation to him about what was in discovery or
25 the significance of the things in discovery?

1 A No.

2 Q Will you describe for me the facts of the case as best as
3 you remember them.

4 A The gentleman, whose name escapes me, showed up at
5 Mr. Brown's house about 4:00 in the morning, coked up and I
6 think, also, drunk. He had a reputation for violence in the
7 community; had previously threaten Mr. Brown on another occasion,
8 and some other people on another occasion; was looking for a
9 woman who I believe was a prostitute who he thought was in the
10 house with Mr. Brown, and some of Mr. Brown's friends were also
11 in the house, but the woman ended up being next door. He
12 basically barged into Mr. Brown's house. He went through the
13 house yelling, threatening everyone. Couldn't find her in there.
14 They're like, Hey, she's next door. He went next door, kind of
15 grabbed her and took her back to the car.

16 Mr. Brown's house was one in, I believe, four single unit
17 apartments. They're all next to each other, and they share a
18 common yard with a sidewalk in front of that, and people park in
19 front of that sidewalk, which is by the road.

20 He basically dragged her back over to his car; put her in;
21 went around and started to get into his car; then got out and
22 advanced on Mr. Brown, at which point Mr. Brown shot him.

23 Q Other than reviewing the discovery, did you do any
24 investigation?

25 A Yes. I went out to the scene with my -- my investigator

1 went out to the scene multiple times. I went out with him. I
2 had to go out there and measure distances from Mr. Brown's front
3 porch to the sidewalk, to the place where the body laid, to where
4 the car was, to get an accurate picture of just what went on,
5 because basically after the shooting kind've everybody went in
6 and went back to sleep and left the deceased on the front lawn,
7 and so it was kind of where was he found and that kind of stuff.

8 And so we were just trying to get an accurate idea of where
9 he would have been coming from when he was coming back to attack
10 Mr. Brown.

11 Q Okay. Would it be fair to say that the eyewitnesses had
12 varying accounts of the incident?

13 A There were minor differences but, I think, on the whole I
14 think it tracked pretty well with what I just told you, I mean,
15 as far as, you know, who did what, when. There were minor
16 differences, but I think that broad outline of what I told you
17 was pretty consistent amongst all the witnesses.

18 Q But certainly the witnesses gave statements that changed
19 over time --

20 A Yes.

21 Q -- compared to their earlier statements?

22 A Yes.

23 Q Did you take advantage of the assistance of an investigator
24 while you were representing Mr. Brown?

25 A Yes. We had an investigator on staff and who, as I said, I

1 sent him out to the scene to do measurements. He testified about
2 some of those things. You know. I'm trying to think if he -- I
3 think he went out and actually talked to the -- there was a lady
4 that was kind of in the apartment next door but didn't see
5 anything. I think he went out and talked to her. But, I mean,
6 it was pretty straightforward, what had happened.

7 Q That investigator, he testified at trial; didn't he?

8 A He did.

9 Q Was there any specific thing that Mr. Brown asked you to do
10 during the investigation that you did not do?

11 A It wasn't part of the investigation. There were two things
12 I recall Mr. Brown wanting me to do that I didn't do regarding
13 the trial strategy. And I can address that now or not.

14 Q Well, I guess I'm specifically asking about investigation,
15 but if it's related to that.

16 A Well, the two things that he brought up at the time -- and
17 one, I guess, relates to the deceased having a gun, Mr. Brown
18 always maintained that the gentleman also had a gun and was
19 reaching for it, and that would not have been out of character,
20 but that gun had disappeared at some point and there was no
21 independent evidence of him having a gun.

22 And it did not, in my opinion, matter if he had a gun or not
23 for purposes of the self-defense based on prior threats and based
24 on his reputation in the community and Mr. Brown being in
25 reasonable fear of this man. If he's coming at him and reaching

1 for his waistband, Mr. Brown certainly -- it was certainly
2 reasonable for him to feel in danger from him.

3 Q So in other words, if Mr. Brown's explanation for the
4 shooting was true, you're saying you didn't believe it would have
5 mattered whether the victim was actually armed or not if he had
6 the appearance of being armed?

7 A That is correct. And I didn't have -- as you said, all the
8 people's statements had changed. I didn't really have any
9 credible witnesses saying that he had a gun, and I didn't think
10 it mattered whether he did or not.

11 Q Well, I'll move on from that, but just my final question on
12 that would be, That several of the witnesses testified that at
13 trial they did not see a gun. That's correct?

14 A Correct.

15 Q And I think you said there was a second thing he asked you
16 to do that you did not do?

17 A Yes. There was a witness, a police officer, who, I guess,
18 Mr. Brown had had some friction with in the past, and he had said
19 he wanted me to kind of point out this guy was out to get him
20 kind of thing, and the reason being, he thought he had committed
21 some earlier crime, which Mr. Brown says he hadn't done, which I
22 pointed out to him we don't really need the jury hearing you may
23 have committed some other crime. And the guy did get shot and
24 you did shoot him. It's not like they were framing you for it or
25 anything, so I just didn't feel like that was a fruitful avenue

1 of questioning.

2 Q So you mentioned Cortney Boulware. She went by "Cocoa."

3 Does that sound familiar to you?

4 A I believe that was the lady that was the prostitute that the
5 guy was there trying to find.

6 Q And she died in a car crash before trial?

7 A I believe so. I think so. I don't remember for sure.

8 Q Do you have a copy of the transcript of record on appeal
9 that you can refer to?

10 A If you'd give me one moment.

11 Q Sure.

12 A What page?

13 Q I am referring to page 176. That would be the original
14 trial transcript pagination; in other words, not the bold
15 numbers.

16 A Okay. I'm on page 176.

17 Q Okay. So if you look there, will you agree with me that
18 this is Investigator Eltzroth testifying during the immunity
19 hearing before trial?

20 A Yes.

21 Q And Mr -- investigator Eltzroth is being questioned on
22 direct by the assistant solicitor?

23 A I see that.

24 Q Okay. And will you read here, beginning on about, line 6
25 through 20.

1 A You want me to read it out loud, or just to myself?

2 Q Out loud, please.

3 A All right. Talking about, Ms. Boulware was mirandized on
4 the same type of form that she waived. She immediately gave up
5 everything, along with Tequan's second statement which was
6 similar in nature. However, she stated that Tequan, the
7 defendant, was the one who came down the sidewalk with a gun in
8 his hand. That's when Maurice saw the gun in his hand; got out;
9 exited the vehicle; and basically went -- as Tequan was coming
10 down, Cocoa specifically stated that Maurice kept putting his
11 hands out and said, If you're going to pull it, use it, several
12 times. She then stated that she witnessed from the vehicle that
13 Tequan had started firing.

14 At one point she could even tell that the gun jammed or
15 something was wrong because no shot was fired and she saw his
16 hand jump forward and he continued to fire. At that point she
17 tried to flee the scene.

18 Q Okay. And, so in the statement, this is the investigator
19 repeating what Ms. Boulware had told him?

20 A Yes.

21 Q And in the statement he testifies that she told him that
22 Mr. Brown was the person who had a gun in his hand?

23 A Yes.

24 Q And that he approached the victim as the victim was leaving?

25 A Yes.

1 Q Or getting in the vehicle. Okay. And that the victim had
2 his hands out, and that then Mr. Brown fired on him?

3 A Yes.

4 Q And said, If you're going to pull it, use it?

5 A Yes.

6 Q Did you think, at this point, when you heard this testimony
7 during the immunity hearing, that you should object on the basis
8 of hearsay?

9 A I really don't have an independent recollection of what I
10 was thinking when that was being said.

11 Q Okay.

12 A I do recall, one, at some point at that hearing where some
13 hearsay was kind of being danced around, I recall an appellate
14 court opinion saying that trial judges are learned and steeped in
15 the law and know the difference and when to disregard hearsay and
16 all that stuff, and that hearings are slightly less formal than
17 that of an actual trial of that nature.

18 And then I also -- even if that comes in, under Castle
19 Doctrine, he is -- Maurice is not on his property, and Mr. Brown
20 is. This is Mr. Brown's front yard, and we took the position he
21 could be anywhere in his yard he wants to be with a gun and not
22 be at fault for anything. And apparently Judge Buckner and the
23 Court of Appeals disagreed with me on that. So again, I didn't
24 see where these were necessarily defeating the theory of the
25 defense.

1 Q And from what I heard you say, it sounds like you make a
2 distinction between a hearsay statement made during your pretrial
3 hearing and case in chief?

4 A I think the Court of Appeals had made that distinction.

5 Q Okay. Sir, I'll refer you now to page 192.

6 A I'm there.

7 Q Would you agree with me that at this point we're still in
8 the immunity hearing and that you are cross-examining
9 Investigator Eltzroth?

10 A Yes.

11 Q We'll look at 192. Do you agree that you did instruct
12 Investigator Eltzroth not to get into the hearsay; that Judge
13 Buckner told you that it was not your job to instruct the witness
14 what was admissible?

15 A Yes, I see that.

16 Q But at that point, if we look to the next question and
17 answer, Does Investigator Eltzroth return to Ms. Boulware's
18 statement?

19 A I'm sorry. Where are you looking at?

20 Q So if we look at the bottom of 192, that's where Judge
21 Buckner instructs you not to -- tell the witness not to give
22 hearsay.

23 A Right.

24 Q And then at the top of 193, when you ask your next question,
25 it does not come back up?

1 A Yes. That appears to be the case.

2 Q Okay. So although technically Judge Buckner did not agree
3 with your line there, it is true that Investigator Eltzroth did
4 not then say, Here's what she said?

5 A Correct.

6 Q Okay. If we look at page 438 --

7 A Yes.

8 Q -- will you agree with me that at this point the State is
9 questioning Investigator Eltzroth during the state's case in
10 chief?

11 A Yes.

12 Q So this is before the jury at this point?

13 A Yes.

14 Q And if we look at page 438, do you agree that -- and running
15 onto 439 -- that Investigator Eltzroth does not repeat the
16 earlier statement from Ms. Boulware?

17 A He did not appear to. That's correct.

18 Q So let's turn now to the forensic pathologist who testified
19 at trial. Did you consider asking Dr. Presnell about whether
20 there was any stippling or soot on the victim's body?

21 A I don't believe I did.

22 Q I'm sorry?

23 A I don't believe I considered it.

24 Q Okay. And by that, do you mean you thought about it and
25 rejected it, or it never entered your mind at all?

1 A To be honest, I don't remember. I feel like the pathologist
2 was before the GSR expert, so I hadn't thought to ask about GSR
3 stuff related to the pathologist.

4 You know, really, again, for the theory of the defense, you
5 know, it really doesn't matter. You know. I guess the closer,
6 the better. The theory for the defense, but at the point that he
7 is advancing -- the deceased was found inside the sidewalk area
8 of the apartment complex, so basically on Mr. Brown's front lawn.
9 So he had gone from his car, which is on the far side of the
10 sidewalk, you know, towards Mr. Brown, across the sidewalk, and
11 into the yard some distance, and that was where he was killed.

12 Again, literally in the police report it says, to the
13 officers, Danger; use caution; violent; violent criminal, you
14 know, in their self police reports. And again, the threats. So
15 in our theory, once he crosses into Mr. Brown's yard, it doesn't
16 matter how close or how far, Mr. Brown had reasonable belief to
17 fire and kill him.

18 Q Do you remember questioning a witness at trial about the
19 30-foot rule?

20 A I do.

21 Q Okay. So for your version of -- the defense's version of
22 the facts at trial and the self-defense argument, would it have
23 really mattered that much whether Mr. Brown was 8 feet away
24 versus 4 if your argument was he was still in the 30-foot rule?

25 A That's correct.

1 Q Okay.

2 ATTORNEY SMITH: Beg the Court's indulgence. Okay. Your
3 Honor, I think those are all my questions for this witness.

4 THE COURT: Cross, Mr. Griffith.

5 ATTORNEY GRIFFITH: Thank you, Your Honor. If it please the
6 Court.

7 CROSS-EXAMINATION

8 BY ATTORNEY GRIFFITH:

9 Q Mr. Walker, do you have any kind of documentation about how
10 many times you visited at the jail, or would you be able to tell
11 us?

12 A I would not be able to.

13 Q Do they keep a record at the jail?

14 A They do.

15 Q And so you were talking about taking things to the jail to
16 show to Mr. Brown and but you did not give him a copy of any of
17 those items. Is that correct?

18 A I gave him copies of some items. I did not give him copies
19 of others.

20 Q But you did not give him a copy of all the discovery; is
21 that correct?

22 A That is correct.

23 Q Did you, yourself, talk to the pathologist prior to the
24 trial?

25 A No.

1 Q Did your investigator talk to the pathologist prior to the
2 trial that you know of?

3 A No. No, I don't believe he did.

4 ATTORNEY GRIFFITH: I have no further questions. Thank you.

5 ATTORNEY SMITH: No more questions, Your Honor. Thank you.

6 THE COURT: You can step down.

7 ATTORNEY SMITH: Your Honor, our next witness was going to
8 be David Alexander who, we agreed earlier, could testify by
9 Webex. I'd like to ask for a moment just so we can get that set
10 up.

11 (WHEREUPON, Webex is set up and David Alexander appears
12 online.)

13 THE COURT: So we've got the court reporter on. She's not
14 showing as a participant, but she's on and she can hear. So I'm
15 on the bench. My law clerk's here. Taylor's out there, is as
16 Mr. Griffith, and Mr. Griffith is no kin but Mr. Griffith is an
17 attorney representing the applicant. I'm going to have the Clerk
18 of Court place you under oath. I understand Mr. Alexander is
19 called as a witness.

20 DAVID ALEXANDER,

21 (via Webex)

22 having first been duly sworn, was examined and testified as
23 follows:

24 CLERK OF COURT: And will you please state your name, and
25 spell your last name for the court reporter.

1 THE COURT: Spell your last name, Mr. Alexander, for the
2 Court reporter's benefit.

3 THE WITNESS: I've lost audio feed. I can't hear.

4 THE COURT: How about that? Can you hear me now? There.
5 Can you please spell your last name for the court reporter.

6 THE WITNESS: A-l-e-x-a-n-d-e-r.

7 THE COURT: All right. Your witness, Mr. Smith.

8 ATTORNEY SMITH: I don't think that I'm clicked on as a
9 person yet, so I don't think he can hear me.

10 THE COURT: Well, let's see.

11 ATTORNEY GRIFFITH: Mr. Alexander, can you hear us from
12 here?

13 THE WITNESS: I can.

14 ATTORNEY GRIFFITH: Okay. We'll speak up.

15 DIRECT EXAMINATION

16 BY ATTORNEY SMITH:

17 Q Mr. Alexander, when did you begin practicing law?

18 A 2000.

19 Q Okay. What portion of your legal work has been devoted to
20 the field of criminal appeals?

21 A Since 2012, 100 percent.

22 Q All right. Can you tell me how you came to be involved in
23 Mr. Brown's case?

24 A Yes. A former appellant defender by the name of John Strom
25 had Mr. Brown's case, and he left for another job, and his case

1 was reassigned to me.

2 Q Do you know on what date your representation of Mr. Brown
3 began?

4 A I do. If you'll give me one second.

5 Q Okay.

6 A It looks like October 16th of 2017 I sent Mr. Brown a letter
7 telling him his case had been reassigned to me.

8 Q Do you know on what date John Strom left employment at the
9 Office of Appellant Defense?

10 A I don't know the answer to that, but I think it would have
11 been shortly before that because he filed the petition for
12 rehearing in this case. It looks like he filed that on
13 August 10th, 2017.

14 Q Okay. Do you know on what date the Court of Appeals issued
15 its order denying the petition for rehearing?

16 A Yes. It was October 19th, 2017.

17 Q Okay. So at the time that the Court of Appeals issued its
18 order denying the petition for rehearing, you had already begun
19 to represent Mr. Brown?

20 A That's correct.

21 Q Okay. Do you know if Mr. Strom was still employed at the
22 Office of Appellant Defense on that date?

23 A He would not have been.

24 Q Okay. Did you notify Mr. Brown of your decision not to take
25 the direct appeal any further?

1 A I did.

2 Q Okay. Did you do that by phone? Letter?

3 A Both. From my notes, it looks like I had several telephone
4 conferences with Mr. Brown. After I inherited the case, I ending
5 up actually taking an extension at the Supreme Court to file a
6 certification so that I could review this case for myself. I did
7 so, and I talked to Mr. Brown and told him I was doing that.

8 And then it looks like on December 11th, 2017, I had a phone
9 conference with Mr. Brown. I told him I would not be petitioning
10 for certiorari, and I sent him a letter to that effect -- bear
11 with me -- on December 8th, 2017. It usually takes a while for
12 our mail to get to our clients at the Department of Corrections,
13 so he probably did not receive my letter by the time we had that
14 phone call.

15 Q So it was your decision alone not to take the case any
16 further?

17 A That's correct.

18 Q Did Mr. Brown ever ask you to file a motion for a new trial
19 on the basis of after-discovered evidence?

20 A We definitely discussed that. I told him that I was not
21 going to be doing that because I was not going to continue with
22 the appeal, and he could bring that claim in a PCR action.

23 Q Why did you decide not to file that motion?

24 A Well, we're appellate lawyers. The first thing we have to
25 do is assess whether I was going to file a cert petition at the

1 Supreme Court. Once I decided I was not going to do that, it
2 didn't make any sense at all for me to file a motion to basically
3 suspend an appeal that is not going anywhere.

4 To file a Rule 29, motions for new trial on after-discovered
5 evidence, that's a specific ground that's recognizable in a PCR,
6 so that was the best avenue of relief for him.

7 Q Did you make your decision based on the merits of his
8 argument at all, or was it entirely on the logistics and his
9 ability to make that same argument in a PCR application?

10 A I would say probably had yet the best Rule 29 in the world,
11 I was not going to continue with the appeal at that point, then I
12 still probably would have sent him to a PCR.

13 Q Why did you decide not to petition for cert?

14 A I didn't think the case had any merit to go up further. The
15 two issues raised were the denial of immunity and directed
16 verdict based on self-defense. My view was that it was basically
17 a case governed by the standard of review. The Court of Appeals
18 ruled that way unanimously, an unpublished decision without oral
19 argument.

20 Q And then denied the petition for rehearing, too; right?

21 A Correct.

22 Q Did you notify Mr. Brown of your decision not to move for a
23 new trial?

24 A Yes. In that same letter; in that same conversation.

25 Q In December?

1 A Yes.

2 Q Did you see anything -- well, I'll ask this way: When you
3 began representing Mr. Brown, did you take over the file that
4 Mr. Strom had already opened, or did you open your own file?

5 A Took over the file he already opened.

6 Q Did you see anything in the file indicating that Mr. Brown
7 or Mr. Strom had similar conversations about a motion for a new
8 trial?

9 A I didn't get the last part of your question, Mr. Smith.

10 (Inadequate online connection.)

11 ATTORNEY SMITH: It's frozen on my end. It went out on me
12 immediately after I asked my question, I think.

13 THE COURT: All right. Mr. Alexander, can you hear me?

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: Apparently Mr. Smith's computer's on -- it came
16 back on. Turn you back over to him.

17 THE WITNESS: Thank you, Your Honor.

18 BY ATTORNEY SMITH:

19 Q Mr. Alexander, will you repeat your answer to my last
20 question? We weren't able to hear.

21 A You cut out before I could hear your whole question.

22 Q Okay. Did you see anything in your file indicating that
23 Mr. Strom and Mr. Brown had had similar conversations about a
24 motion for a new trial?

25 A Yes, I did.

1 Q Did you discuss that issue with Mr. Strom?

2 A I did.

3 Q And am I correct that he also did not file a motion for a
4 new trial?

5 A He did not.

6 ATTORNEY SMITH: Those are all the questions I have. Thank
7 you.

8 THE COURT: All right. Mr. Griffith.

9 CROSS-EXAMINATION

10 BY ATTORNEY GRIFFITH:

11 Q Mr. Alexander, this is Attorney Timothy Griffith for
12 Mr. Brown. I don't know if you can see me, but, Mr. Alexander,
13 so was a motion for rehearing filed for Mr. Brown at all?

14 A At the Court of Appeals?

15 Q Yes.

16 A Yes, it was.

17 Q I believe you testified it was denied. Is that correct?

18 A That's correct.

19 Q And that motion was filed by Mr. Strom or yourself?

20 A Mr. Strom.

21 Q And you did not refile a motion for rehearing; is that
22 correct?

23 A No, I did not. The Court denied rehearing on October -- let
24 me give you the exact date -- on October 19th, 2017. I then took
25 one extension with the Supreme Court for a certiorari petition so

1 that I would have time to review this case and make a decision,
2 but ultimately I decided not to seek certiorari at the Supreme
3 Court.

4 ATTORNEY GRIFFITH: Okay. Thank you. I have no further
5 questions. Thank you, Mr. Alexander.

6 THE WITNESS: Thank you.

7 ATTORNEY SMITH: Mr. Alexander, unless Judge Griffith has
8 any questions, that's all from the State for you.

9 THE COURT: Mr. Alexander, thank you for your patience in
10 getting in this virtual courtroom.

11 THE WITNESS: I can't hear the Court. I'm sorry.

12 THE COURT: I think I muted myself. I'm sorry. I
13 appreciate your patience in getting in this virtual courtroom.

14 THE WITNESS: Your Honor, thank you. It's a great benefit
15 of us to allow us to.

16 THE COURT: You're quite welcome. I'm going to end the
17 event.

18 (WHEREUPON, Webex connection was terminated.)

19 ATTORNEY SMITH: Judge, that's the State's case.

20 THE COURT: He testified that the denial -- or, the petition
21 for rehearing was three days after he got the case, and that's
22 why he had the extension to file the petition for writ, and
23 didn't do it after he thought about it? Okay.

24 ATTORNEY GRIFFITH: That's the way I understood, Your Honor.

25 THE COURT: All right. Mr. Griffith.

1 ATTORNEY GRIFFITH: Your Honor, if it please the Court. We
2 would ask that the Court consider Mr. Brown's application and
3 grant his application in that Mr. Walker and the Attorney General
4 offered no proof that Mr. Walker visited Mr. Brown. As Mr. Brown
5 stated, he was not visited.

6 Mr. Walker admitted that he did not provide a complete
7 discovery to Mr. Brown. He said he gave him a few things but did
8 not give him his discovery, so he was not afforded the
9 opportunity to have all of his discovery.

10 And Mr. Walker also stated that he did not do an
11 investigation that included questioning the pathologist, and that
12 his investigator, as far as he knew, did not investigate,
13 including the pathologist, who Mr. Brown would claim would be
14 able to offer enough evidence to perhaps change the verdict in
15 his case.

16 And so we would ask that the Court grant his appeal for PCR.

17 THE COURT: All right. You want to be heard, Mr. Smith,
18 briefly?

19 ATTORNEY SMITH: Yes, Your Honor. I'll address only the
20 things that Mr. Griffith addressed.

21 THE COURT: Okay.

22 ATTORNEY SMITH: The issue of discovery, the standard in PCR
23 is both that the lawyer has to be deficient in that his conduct
24 does not fall within the reasonable bounds of professional norms
25 and that, as a result, there's a reasonable probability that the

1 outcome of trial would have been different had he not been
2 deficient in a certain state.

3 In this case, he testified about reviewing discovery; that
4 he had felt he had done it adequately; that Mr. Brown didn't give
5 him any reason to think he didn't understand it. I can't
6 remember exactly if he said he showed him every bit of discovery,
7 but he certainly said he made it all available to him and showed
8 Mr. Brown anything he wanted to see. Mr. Brown didn't say there
9 was anything in there that he could have seen that could have
10 changed the outcome of trial.

11 And the other was about investigation. He said he did not
12 meet with the forensic pathologist, but he reviewed all
13 discovery, which would have included the pathology, the autopsy
14 report, and he cross-examined that witness at trial.

15 I'm not sure what difference the stippling would have made
16 because there was some questions at trial about how close
17 Mr. Brown was to the victim when the victim was shot. Certainly
18 when their theory of the case is, He was charging at me in
19 self-defense, the exact number of feet you are away, whether it's
20 two or six, I'm not sure it makes that much difference,
21 especially when your story is he was reaching for a pistol.

22 So I think that if you do have a credible, valid
23 self-defense claim, the fact that you're grabbing a pistol and
24 went running at someone certainly overrides a few feet distance
25 away.

1 So I'll only address those two since those are the ones he
2 raised. As far as anything else, I'd be happy to just run off on
3 the evidence or submit some kind of proposed summary. Thank you.

4 THE COURT: All right. And I have -- thank you very much --
5 the transcript, plus the applications, and I've taken copious
6 notes. Let me study it. I'll let y'all know my decision. Kind
7 of interesting.

8 ATTORNEY GRIFFITH: Thank you, Your Honor.

9 (End of Transcript of Record)

10

11 CERTIFICATE OF REPORTER

12 I, Cathy J. Provost, Official Court Reporter for the
13 Fourteenth Judicial Circuit of the State of South Carolina, do
14 hereby certify that the foregoing is a true, accurate and
15 complete Transcript of Record of the proceedings had and evidence
16 introduced in the trial/proceedings of the captioned case in the
17 Court of Common Pleas for Colleton County, South Carolina, on the
18 9th day of August, 2021.

19 I do further certify that I am neither of kin, counsel, nor
20 interest to any party hereto.

21 Date: October 7, 2022

22

23 /s/ Cathy J. Provost
24 Cathy J. Provost, RMR
 Official Circuit Reporter

25

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

Tequan L. Brown,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT

) Case No. 2018-CP-15-39

) **ORDER OF DISMISSAL**

2022 SEP 22 AM 8:34

COLLETON COUNTY
COMMON PLEAS COURT

This matter comes before this Court by way of an application for post-conviction relief filed by Tequan L. Brown ("Applicant") on January 16, 2018. The State's ("Respondent") return to the application included a motion for a more definite statement. An evidentiary hearing in this matter was held before the undersigned at the Beaufort County Courthouse on August 8, 2021. Applicant was present and was represented by Timothy L. Griffith, Esquire. Assistant Attorney General Taylor Z. Smith of the South Carolina Attorney General's Office represented Respondent. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to prove that he is entitled to post-conviction relief, and denies the application with prejudice.

PROCEDURAL HISTORY

Applicant is currently imprisoned in the South Carolina Department of Corrections. During its December of 2013 term, the Colleton County Grand Jury indicted Applicant for murder (2013-GS-15-1041), obstruction of justice (2013-GS-15-1040), and possession of a weapon during the commission of a violent crime (2013-GS-15-1042). On June 22-25, 2015, Applicant proceeded to a jury trial with the Honorable Perry Buckner ("the trial court") presiding. Matthew Lee Walker ("trial counsel"), Esquire, represented Applicant at trial. Assistant Solicitor Tamecka A. Legette

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of the Fourteenth Circuit Solicitor's Office prosecuted Applicant. At the beginning of trial, the trial court denied Applicant's motion for immunity from prosecution under the Protection of Persons and Property Act of the South Carolina Code of Laws. At the conclusion of trial, the jury found Applicant guilty of voluntary manslaughter, which is the lesser-included offense of murder, and of obstruction of justice and possession of a weapon during the commission of a violent crime. The trial court sentenced Applicant to an aggregate term of thirty years' imprisonment.

Trial counsel filed a timely notice of appeal. Appellate Defender John Harrison Strom of the South Carolina Commission on Indigent Defense represented Applicant on appeal initially. Strom raised the following arguments on Applicant's behalf: (1) that the trial court erred in denying Applicant's motion for immunity because Applicant was without fault in bringing on the difficulty, Applicant shot the victim while trying to remove the victim from Applicant's property, and Applicant reasonably believed that he was in imminent danger; and (2) that the trial court erred in denying Applicant's motion for a directed verdict. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Brown, Op. No. 2017-UP-315 (Ct. App. filed July 26, 2017) (per curiam). Strom petitioned for rehearing; however, the Court of Appeals denied the petition in an order issued on October 19, 2017.

Appellate Defender David Alexander, also of the Commission on Indigent Defense, began representing Applicant. Alexander asked for an extension of time from the South Carolina Supreme Court to file a petition for a writ of certiorari. Afterwards, Alexander then informed the Supreme Court that he would not file a petition. As a result, the Supreme Court issued an order dismissing the appeal. The remittitur was issued on December 15, 2017.

Applicant's application for post-conviction relief followed.

CURRENT PROCEEDING

In his application, filed on January 16, 2018, Applicant raised multiple claims, which this Court interprets as follows: (1) trial counsel was constitutionally ineffective; (2) one or both of Applicant's appellate lawyers were constitutionally ineffective; (3) Applicant's due process rights were violated; and (4) Applicant has newly discovered evidence. At the start of the evidentiary hearing before this Court, Respondent noted that it had received from Applicant's counsel by email on August 2, 2021, an amended set of claims, which were: (1) trial counsel was constitutionally ineffective for not going over discovery with and giving a copy thereof to Applicant; (2) trial counsel was constitutionally ineffective for failing to object to hearsay of a deceased woman from a law enforcement officer; (3) trial counsel was constitutionally ineffective for failing to investigate adequately; (4) trial counsel was constitutionally ineffective for not cross-examining the pathologist who testified during the State's case-in-chief; (5) Strom was constitutionally ineffective for not filing a petition for a writ of certiorari in the South Carolina Supreme Court;¹ (6) Alexander was constitutionally ineffective for not filing a motion for rehearing according to Rule 29(b), SCRCrimP; and (7) Applicant has newly discovered evidence that a witness who alleges that the victim possessed a weapon has sworn out an affidavit². This Court finds that Applicant abandoned or waived all claims other than those addressed substantively in this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Before this Court are: the records of the Colleton County Clerk of Court for Applicant's convictions and sentences;

¹ During Applicant's case-in-chief before this Court, he abandoned this claim against Strom, testifying that he was satisfied with Strom's representation of him. This Court finds that this claim is abandoned and will not address it in this order.

² Applicant presented no evidence or argument as to the seventh claim listed here, so this Court finds that Applicant has abandoned the claim, and this Court will not address it in this order.



Applicant's records from the South Carolina Department of Corrections; and Applicant's direct appeal records, including the notice of appeal, the order transferring the appeal to the Court of Appeals, the record on appeal, the parties' final briefs, the Court of Appeals' opinion, Alexander's request for an extension to file the petition for a writ of certiorari, the Supreme Court's order granting the extension, Alexander's letter indicating that he would not file a petition, the Supreme Court's order of dismissal, and the remittitur. Set forth below are the relevant findings of facts and conclusions of law with regards to the claims that Applicant advanced at the evidentiary hearing, as required by S.C. Code Ann. §17-27-80 (1985).

Applicant's claim that trial counsel was constitutionally ineffective for not going over discovery with and giving a copy to Applicant.

Applicant raises a claim that trial counsel was constitutionally ineffective for not going over discovery with Applicant and for not giving a copy of the things in discovery to Applicant. Applicant testified that he did not see full discovery before trial. He testified that he only saw police reports and a couple of other things. He testified that he never possessed a full copy of discovery.

Trial counsel testified about his background, and said that he was appointed to represent Applicant. He testified that he did not remember the exact number of times that he met with Applicant before trial, but he felt that they met on enough occasions for him to understand the issues that Applicant wanted to raise and for him to communicate to Applicant the State's allegations. He testified that the frequency of his meetings with Applicant increased as the trial date drew near. He testified that he communicated with Applicant by mail, too, and that he sometimes met with Applicant at the jail after receiving letters from Applicant. He testified that he received a discovery disclosure from the State, which included, according to his memory, video recordings of law enforcement interviews, police reports, a gunshot residue report, and an autopsy

report. Trial counsel did not feel that the case was complicated. He testified that he described the things in discovery to Applicant and asked Applicant what Applicant wanted to review; he gave hard copies of all the reports that he described as "major" to Applicant. He testified that Applicant gave him no reason to believe that Applicant did not understand what was in the discovery disclosure or the significance thereof.

Applicant, like all defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in the post-conviction relief action, and when alleging that his lawyers were constitutionally ineffective, he must prove that the conduct of his lawyers "so undermined the proper functioning of the adversarial process that [that conduct] cannot be relied upon as having produced a just result." Strickland, at 686. In evaluating allegations of ineffective assistance of counsel, the post-conviction relief court applies the two-pronged test outlined in Strickland. First, Applicant must prove that the performance of his lawyers was deficient. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (quoting Strickland, 466 U.S. 668). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, at 117, 386 S.E.2d at 625 (quoting Strickland, at 690). In order for a post-conviction relief applicant to successfully prove that his defense attorney's performance was deficient, the applicant must prove "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quotation omitted). "The proper measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." Id. (citations omitted). The "preeminent authority for all"

courts when they are considering an applicant's claim of constitutional ineffectiveness requires that the courts be highly deferential to a defense lawyer's performance because:

[I]t 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 A fair assessment of attorney performance requires that every effort be made 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. Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.

Id. at 444-45, 334 S.E.2d at 815-16 (quoting Strickland). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, the deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for [the lawyer'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.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether a lawyer's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, at 670. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690.

This Court finds that Applicant has failed to prove that trial counsel's performance was deficient in any way with respect his handling of Applicant's discovery. Applicant's testimony that trial counsel did not discuss the discovery with him and show it to him is not credible. Trial counsel's testimony that he discussed the discovery with Applicant, explained to Applicant the significance of the things in discovery, gave Applicant the chance to request further explanation or review of anything in discovery, and gave hard copies of at least some of the things in discovery to Applicant is credible.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that the outcome of trial would have been different had trial counsel spent more time reviewing discovery with him. Applicant has not proven that more discovery review would have enhanced his defense at trial or that any new evidence or defenses would have been uncovered with more review.

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for not going over discovery with Applicant and for not giving a copy of the things in discovery to Applicant because Applicant has failed to prove that trial counsel's performance with respect to discovery was deficient and has failed to prove any resulting prejudice. The more credible evidence shows that trial counsel did do these things. This claim is denied and dismissed with prejudice.

Applicant's claim that trial counsel was constitutionally ineffective for not objecting to hearsay.

Applicant raises a claim that trial counsel was constitutionally ineffective for not objecting to hearsay when a law enforcement officer testified as to what Courtney Boulware told him. There was some evidence at trial that Boulware may have been in some sort of romantic relationship with the victim, and that the victim went to Applicant's home on the night of the victim's death

because he was looking for Boulware, who was either at Applicant's or in the apartment next to Applicant's. Tran. 18, 26, 34-37, 46, 52, 60-61, 70. Boulware died in a car crash before Applicant's trial began. Tran. 177, 438. Nyle Eltzroth, an investigator at the Colleton County Sheriff's Department, testified during the pre-trial immunity hearing that he had talked with Boulware during the course of his investigation after Boulware had been arrested for probation violations in another county. Tran. 176. Investigator Eltzroth testified that Boulware told him the following:

[S]he stated that [Applicant] was the one who came down the sidewalk with the gun in his hand. That's when [the victim] saw the gun in [Applicant's] hand. Got out, exited the vehicle, and basically, went, as [Applicant] was coming down, [Boulware] specifically stated that [the victim] put his hands out and said, "If you're going to pull it, use it." Several times. She then stated that she witnessed from the vehicle, that [Applicant] then started firing. At one point, she could even tell that the gun jammed or something was wrong, because no shot was fired and she saw his hand jump forward and he continued to fire. At that point, she tried to flee the scene.

Tran. 176. Trial counsel did not raise a hearsay objection to that testimony, although he did instruct Investigator Eltzroth later in the hearing not to repeat what Boulware said because trial counsel did not think it was admissible, at which point the trial court instructed trial counsel not to tell a witness what is or is not admissible. Tran. 192. Investigator Eltzroth testified again during the State's case-in-chief, testifying that he had spoken with Boulware, and others, when he arrived at Applicant's home on the night of the shooting, and that he had spoken with Boulware twice before she died; however, Investigator Eltzroth did not testify as to what Boulware told him about the details of the shooting. Tran. 420, 425, 438.

Trial counsel testified before this Court about Investigator Eltzroth's testimony concerning Boulware. He testified that he had no independent recollection of Investigator Eltzroth's testimony and trial counsel's in-trial thoughts on it and his decision not to object, but he testified that it was his position that, in a pre-trial hearing, the trial court knows when to disregard hearsay testimony

without needing a defense lawyer to object. He testified that he does not typically object to hearsay in pre-trial hearings because he believes that our appellate courts have drawn distinctions between the admissibility of such evidence in motions hearings and in a party's case-in-chief.

This Court finds that Applicant has failed to prove that trial counsel's performance with regard to this testimony was deficient. "'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, SCRE. "Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE. In this case, Investigator Eltzroth's testimony during the pre-trial hearing as to what Boulware told him was hearsay. However, trial counsel's practice of not making hearsay objections during pre-trial hearings is a reasonable one. The trial court was able to discount the hearsay when making its ruling on Applicant's motion for immunity. The hearsay was not repeated during the State's case-in-chief, so Applicant has failed to prove that there was any reason for trial counsel to make a hearsay objection when Investigator Eltzroth testified during that portion of trial.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that the outcome of his trial would have been different had trial counsel made a hearsay objection during the pre-trial hearing. As noted already, the jury never heard what Boulware told the investigator. Even with regards only to the immunity hearing, Applicant has not proven that the lack of objection to the relevant testimony likely affected the trial court's ruling on immunity. The fact that the jury, without hearing of Boulware's statement, still gave no credit to Applicant's assertion of self-defense is another indication that a hearsay objection to Boulware's statement in the pre-trial hearing would have had no effect on the trial court's ruling.

Furthermore, Lawrenzer Walker told Investigator Eltzroth the same thing that Boulware had. Applicant testified that Walker was in the duplex apartment with him when the victim arrived. Tran. 32-34, 62. Applicant testified that Walker was in the yard with him outside the apartment when the final confrontation with the victim occurred. Tran. 36, 68. A gunshot residue test sample was collected from Walker on the night of the shooting, and gunshot residue was detected on both of Walker's hands. Tran. 115-16, 121. Investigator Eltzroth questioned Walker as part of his investigation; in fact, Investigator Eltzroth secured an arrest warrant for Walker because, in part, he learned after speaking with Walker that Walker and Applicant had concealed from Investigator Eltzroth the fact that Boulware had been present at the apartment at the time of the shooting. Tran. 169, 170-71, 439-40. Investigator Eltzroth testified that Walker told him that Applicant walked out of the duplex with a pistol in his hand, that the victim exited the victim's vehicle, and that Applicant then shot the victim multiple times. Tran. 176-77. Walker also took Investigator Eltzroth to the murder weapon, which he said that he had hid after Applicant shot the victim. Tran. 440. Trial counsel had the transcript of Walker's guilty plea hearing, and the parties stipulated to the admission of the entire transcript during the defense's case-in-chief. Tran. 80, 522.³ During the guilty plea hearing, Walker alleged that the victim told those present in Applicant's yard on the night of the shooting that the victim was going to kill Applicant, and that the victim then charged at Applicant, although Walker stated that he had not seen a weapon on the victim's person. Tran.

³ Both Investigator Eltzroth and trial counsel's investigator testified that Walker was serving a prison sentence in Maryland at the time of Applicant's trial. Tran. 73, 572. The trial court memorialized for the record some things that had happened off the record: trial counsel wanted to introduce Walker's guilty plea transcript into evidence, the trial court had not wanted to admit the transcript because the State would be deprived thereby of the opportunity to cross-examine Walker, but the parties agreed that trial counsel would be able to introduce the transcript as long as Investigator Eltzroth was allowed to testify in reply about the discrepancies between Walker's testimony at the guilty plea hearing and his statements to law enforcement officers. Tran. 576.

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546, 549. In the State's case-in-reply, Investigator Eltzroth testified that Walker's statement at the guilty plea hearing differed from Walker's previous statements. Tran. 566. Trial counsel wanted Walker's statements in evidence at trial because some of them supported Applicant's assertion that he was acting in self-defense when he shot the victim. Boulware's statement to Investigator Eltzroth was not too different in substance from Walker's ultimate statement to Investigator Eltzroth.

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for not raising a hearsay objection to Investigator Eltzroth's testimony about what Boulware told him because Applicant has not proven that trial counsel was performing deficiently when he did not object during the pre-trial immunity hearing and because Applicant has not shown that there is a reasonable likelihood that the outcome of trial would have been different had trial counsel done so. This claim is denied and dismissed with prejudice.

Applicant's claim that trial counsel was constitutionally ineffective for not conducting an adequate pre-trial investigation.

Applicant raises a claim that trial counsel's pre-trial investigation was inadequate. Applicant testified before this Court that, as far as he was aware, trial counsel did not do any investigation before trial. He testified that he was aware that the Public Defender's Office has an investigator on staff.

Trial counsel testified before this Court about this claim. He testified that he was not sure of the exact number of his meetings with Applicant during the course of the representation, but he felt that they met enough times for him to understand the issues that Applicant wanted him to raise at trial and for him to inform Applicant of the State's allegations. He testified that the frequency of his meetings with Applicant increased as the date of trial got closer. He testified that Applicant contacted him by mail, too. He testified about the things that he received from the State in its

discovery disclosures. He did not feel that Applicant's case was a complicated one. He testified that he and his investigator went to the crime scene on multiple occasions and took measurements there, and tried to get an idea of where the victim had been located at the time of the shooting and where the victim was located when he was approaching Applicant. He testified that the investigator was on staff at the Public Defender's Office, and he called the investigator as a witness at trial in order to elicit testimony about some aspects of their pre-trial investigation. He testified that the investigator also went out and talked to people and potential witnesses.

A defense attorney has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland, at 691. Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). A defense attorney's "[f]ailure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 227 S.E.2d 199 (1976)). An applicant alleging that his attorney failed to prepare for the case must show how additional preparation would have resulted in a different outcome. Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690; Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).

This Court finds that Applicant has failed to prove that there was any deficiency in trial counsel's performance with respect to his pre-trial investigation. Trial counsel believed, with good reason, that Applicant's case was not complex; rather, it involved a factual dispute over the victim's and Applicant's actions immediately before Applicant killed the victim. This Court is convinced after reviewing trial counsel's advocacy on Applicant's behalf at trial and considering trial counsel's testimony before this Court that trial counsel's pre-trial investigation was more than adequate. Trial counsel and his investigator went so far as to visit the crime scene more than once and take measurements in an effort to support Applicant's ultimate allegation that he killed the victim in an act of self-defense. Applicant did not identify anything that trial counsel should have done during his pre-trial investigation that he did not do.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that the outcome of trial would have been different had trial counsel done some further investigation. Applicant presented this Court with no evidence that trial counsel would have uncovered had he done some further investigation. Mere speculation on Applicant's part as to how the trial would have come out differently had trial counsel done further investigation would not have served to satisfy Applicant's burden with regard to this claim, but Applicant did not even offer such speculation.

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for allegedly conducting an inadequate pre-trial investigation because Applicant has failed to prove that there was any deficiency in trial counsel's investigation and has failed to prove that he suffered any resulting prejudice. This claim is denied and dismissed with prejudice.

Applicant's claim that trial counsel was constitutionally ineffective for not cross-examining the pathologist who testified during the State's case-in-chief.

Applicant raises a claim that trial counsel was constitutionally ineffective for not cross-examining the State's pathologist about gunshot residue. He contends that trial counsel should have questioned the pathologist about the gunshot residue evidence because, without any supporting evidence, Applicant alleges that the pathologist stated after trial that the shooting in which the victim was killed was not a close-distance shooting. Applicant referred to this as newly discovered evidence. Trial counsel testified about the claim before this Court. Trial counsel did not remember specifically why he did not question the State's forensic pathologist about whether there was any stippling or soot on the victim's body, but he noted that the State's forensic pathologist testified before the State's gunshot residue expert testified. He testified that it would have had no effect on his defense theory whether or not the victim had stippling or soot on his body. He testified that the defense theory was that the victim was on Applicant's property and was threatening Applicant. He testified that, under that theory, it did not matter exactly how close the victim was from Applicant because the victim's being in Applicant's yard while making threats against him was enough to justify Applicant's acting in self-defense.

Doctor Susan Erin Presnell, a forensic pathologist, testified at trial as an expert without objection from the defense about her autopsy of the victim. Tran. 291-95. Dr. Presnell testified that one bullet went through the center of the victim's forehead and into his brain; this was the bullet that killed the victim. Tran. 297-99. Dr. Presnell testified that another bullet entered the right side of the victim's abdomen. Tran. 298. Dr. Presnell concluded that the cause of the victim's death was a gunshot wound. Tran. 307. Later on during the State's case-in-chief, crime scene investigator James Davis of the Colleton County Sheriff's Department testified that he took a gunshot residue sample from the victim's body. Tran. 407-08. Whitney Berry, a gunshot residue analyst from the

South Carolina Law Enforcement Division ("SLED") testified as an expert in gunshot residue testing and analysis without objection from the defense. Tran. 479-81. Berry testified about the ways that gunshot residue can get on someone's hands and the length of time that the residue would remain on that person's hands. Tran. 482-83, 492. Berry's testing and analysis led her to conclude that gunshot residue was present on both of the victim's hands. Tran. 488-89, 493. Berry testified that she would not have expected the gunshot residue in this case to travel for more than two to three feet because the fatal shot was fired by a .32-caliber handgun. Tran. 489. Berry testified that shooting victims usually have gunshot residue on them. Tran. 489. Berry did not know exactly how gunshot residue scatters at a distance. Tran. 495. Berry testified that, due to the shape of the gunshot residue particles that she found on the victim's hands, she believed that it was more probable that the residue came to be on the victim's hands from gunfire rather than from the victim's handling of a firearm. Tran. 494-98.

This Court finds that Applicant has failed to prove that there was any deficiency in trial counsel's performance with respect to his cross-examination of Dr. Presnell. Applicant has offered this Court no reliable evidence of what the defense would have gained had trial counsel asked Dr. Presnell about any gunshot residue on the victim's body. Applicant has offered this Court no reliable or credible evidence that Dr. Presnell believed that the shooting was not one that took place with only a short distance between Applicant and the victim. Furthermore, trial counsel, though he could not specifically remember the reason that he did not question Dr. Presnell about gunshot residue, gave an explanation for his not doing so in light of his theory of the case, which was reasonable under the circumstances. Trial counsel argued during the defense's closing argument: that Applicant was acting in self-defense; that it was not possible for the jury to know every detail of the night's events; that Applicant had no obligation to run from the victim; that

Applicant had no duty to retreat from the victim's advances; that it should not have been surprising that both Applicant and the victim had gunshot residue on them considering the circumstances of the shooting; that Applicant was lucky to have killed the victim before the victim closed the distance between them considering that the victim was within a few feet of Applicant, was such a large-bodied person, and was "drunk, high on cocaine, and manic"; that the victim was a threat to Applicant at the time of the shooting; that one of the witnesses had said that the witness saw the victim brandish a firearm; and that Applicant knew of the victim's reputation for dangerousness. Tran. 581, 588, 590, 592, 599-601. Indeed, trial counsel turned around the evidence about the short distance between the victim and Applicant so as to use it in argument to try to add weight to Applicant's assertion of self-defense.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that the outcome of his trial would have been different had trial counsel questioned Dr. Presnell about gunshot residue on the victim's body. An "applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998)); see also Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding that the PCR court's finding that Dempsey was prejudiced by trial counsel's failure to call an expert at trial to rebut the State's expert was merely speculative when Dempsey failed to have an expert testify at his PCR hearing), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Applicant could have called Dr. Presnell as a witness at his hearing in order to give testimony in support of his claim, but he did not do so. Applicant has produced no evidence of prejudice.

This Court finds that Applicant has failed to prove that trial counsel was constitutionally ineffective for not questioning the forensic pathologist who conducted the autopsy of the victim about gunshot residue because Applicant has not proven that trial counsel should have questioned the witness about the matter and because Applicant has not proven that he suffered any resulting prejudice. This claim is denied and dismissed with prejudice.

Applicant briefly referred to his claim as one of newly discovered evidence. Applicant did not refer to it that way after his brief reference and did not provide any argument on the point. Nevertheless, this Court finds that Applicant has failed to prove that he has newly discovered evidence. "Any person who has been convicted of, or sentenced for, a crime and who claims . . . [t]hat there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice" may raise the claim in an application for post-conviction relief. S.C. Code Ann. § 17-27-20(A)(4). The "traditional five-factor test" in South Carolina for one seeking a new trial on the basis of newly discovered is that "the party [seeking a new trial] must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 128 (2014) (quotation omitted). As noted above, Applicant has failed to identify for this Court what evidence is the subject of the claim or what evidence would have been produced had trial counsel questioned Dr. Presnell about gunshot residue. Applicant has failed to prove that any testimony from Dr. Presnell that would have resulted from questioning about gunshot residue would probably have changed the outcome of trial. Applicant has not proven that any such evidence could not have been discovered before trial. Applicant has failed to prove that any such evidence would have been material to the issue

of his guilt or innocence; as trial counsel noted, the defense's theory was that the victim's relative closeness to Applicant at the time of the shooting is evidence that Applicant was justifiably in fear for his life. This claim is denied and dismissed with prejudice.

Applicant's claim that Alexander was constitutionally ineffective for not filing a motion for rehearing according to Rule 29(b), SCRCrimP.

Applicant raises a claim that Alexander was constitutionally ineffective for not moving for rehearing pursuant to Rule 29(b), SCRCrimP. Applicant testified before this Court that Alexander, once he took over the representation of Applicant from Strom, was not willing to pursue Applicant's claims on appeal. He testified that Alexander did not follow through on filing a motion under Rule of Criminal Procedure 29(b).

Alexander testified before this Court. He began practicing law in 2000 and has devoted his work exclusively to criminal appellate work since 2012. He began representing Applicant when Strom took an outside position. He testified that Strom, who had represented Applicant before the South Carolina Court of Appeals up until that point, had filed a petition for rehearing in the Court of Appeals on August 10, 2017. He testified that he sent a letter to Applicant on October 16, 2017, notifying Applicant that the appeal had been re-assigned to him from Strom. He testified that the Court of Appeals issued an order denying the petition for rehearing on October 19, 2017. He requested an extension from the South Carolina Supreme Court for the filing and service deadline for a petition for a writ of certiorari so that he could have time to review the case. He testified that he then notified the Supreme Court that he had decided not to file a petition for a writ of certiorari. He testified that he decided to take the appeal no further because he believed that it had no merit. He notified Applicant of his decision by letter and by phone.

Alexander testified that Applicant had asked him to file a motion under Rule of Criminal Procedure 29(b) on the basis that Applicant believed that he had newly discovered evidence. He

testified that he thought that, under the circumstances, it would have made no sense for Applicant to move for relief under the rule, and that Applicant would be better served by raising a newly discovered evidence claim in an application for post-conviction relief. He testified that a lawyer who regularly practices in the field of post-conviction relief would have been the proper person to raise the issue for Applicant. He testified that he also notified Applicant of his decision not to file a motion for a new trial. He testified that there were notes in the file indicating that Strom had had conversations with Applicant about Applicant's request that a motion be filed. He testified that he had discussed the matter with Strom when considering the issue. He testified that he did not file the motion.

This Court finds that Applicant has failed to prove that Alexander's performance was deficient with regard to his decision not to file a motion pursuant to Rule 29(b), SCRCrimP. Applicant has not proven that it is customary or usual for an appellate lawyer representing an appellant in a criminal appeal to file such a motion in the circuit court, nor has he proven that such is required as a constitutional matter. Applicant's failure to prove that Alexander was required "under prevailing professional norms" to file the motion means that Applicant has failed to meet the first prong of Strickland. See Cherry, at 117, 386 S.E.2d at 625 (instructing that a post-conviction relief court evaluates the first prong of Strickland by weighing a lawyer's performance against prevailing professional norms). Alexander was under no obligation to file the motion, particularly because he could have done so only after being granted leave of the appellate courts. See Rule 29(b), SCRCrimP (prohibiting the filing of the motion while a case is on appeal, except in situations in which the appellate court grants the filing party's motion for leave to file the motion, and suspends the appeal). Alexander rejected Applicant's request that he file the motion, in part, because Alexander felt that Applicant's motion would be better served if advanced by a

lawyer appointing during the post-conviction relief process. Alexander's judgment in this regard seems to have been made in the best interests of Applicant. Additionally, Strom must have shared Alexander's opinion about the advisability of suspending the appeal in order to file the motion because, although Strom was aware of Applicant's desire that the motion be made, he, too, did not comply.

This Court finds that Applicant has failed to prove that there is a reasonable likelihood that the outcome of the proceeding would have been different had Alexander filed the motion at Applicant's request. The "traditional five-factor test" in South Carolina for one seeking a new trial on the basis of newly discovered is that "the party [seeking a new trial] must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching." Jamison, at 467, 765 S.E.2d at 128. As noted above, Applicant has failed to prove that he is entitled to relief due to newly discovered evidence. As such, it would have been a fruitless endeavor for Alexander to have filed the motion. Applicant has been able to raise his claim of newly discovered evidence before this Court, which proves true Alexander's belief that his decision not to move under Rule 29(b) would not deprive Applicant of the chance to raise his claim.

This Court finds that Applicant has failed to prove that Alexander was constitutionally ineffective for not moving for a new trial under Rule of Criminal Procedure 29(b) because he has failed to prove that there was any deficiency in Alexander's decision not to do so and because Applicant has failed to prove any resulting prejudice. This claim is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds that Applicant has not proven any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application is denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt of this order to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to the assistance of appellate counsel in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that, if the applicant wishes to seek appellate review, he must serve and file a notice of appeal. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 19th day of August, 2022.


 Eugene C. Griffith, Jr.
 Presiding Judge

 _____, South Carolina

DOCKET NO. 2013-GS-15-01040

The State of South Carolina

County of Colleton

Duplicate

COURT OF GENERAL SESSIONS

February Term 2014

THE STATE

vs.

Taquan Brown

Indictment for

Obstructing / Obstructing justice

SC Code: 00-00-0000; 17-25-0030
CDR Code: 0118

WITNESSES

J. Taylor, CCSO

M. Atwood, CCSO

ARREST WARRANT NUMBER

2013A1510100854

Date of Arrest: November 22, 2013

ACTION OF GRAND JURY

TRUE BILL

Pamora Miles

Foreperson of Grand Jury
Date: 2-20-14

VERDICT

Guilty

Foreperson of Petit Jury

Date: 6/25/15

INDICT

2014 FEB 28 PM 2:24

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Colleton)

INDICTMENT

2013-GS-15-01040

At a Court of General Sessions, convened on February 20, 2014, the Grand Jurors of Colleton County present upon their oath:

Obstructing / Obstructing justice

That in Colleton County, South Carolina, on or about November 20, 2013, the Defendant, Taquan Brown, did intentionally prevent, obstruct, impede or hinder the administration of the justice, to wit: the defendant did willfully withhold information in a murder investigation; all in violation of the Common Law of South Carolina.

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


 Isaac M. Stone, III
 Solicitor, 14th Judicial Circuit

FILED
 2014
 FEB 20

DOCKET NO. 2013-GS-15-01041

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

December Term 2013

THE STATE

vs.

Taquan Brown

Indictment for

Murder / Murder

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

CDR Code:0116

WITNESSES

J. Taylor, CCSO

ARREST WARRANT NUMBER

2013A1510100857

Date of Arrest: November 22, 2013

ACTION OF GRAND JURY

TRUE BILL

Christopher West

Foreperson of Grand Jury

Date: 12-19-13

VERDICT

Guilty of voluntary

manslaughter

Foreperson of Petit Jury

Date: 6/25/15

INDICT

2013 DEC 19 PM 12:11

CLERK
COURT OF GENERAL SESSIONS
2013 DEC 19 P.

STATE OF SOUTH CAROLINA)
COUNTY OF Colleton)

INDICTMENT

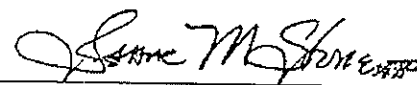
2013-GS-15-01041

At a Court of General Sessions, convened on December 19, 2013, the Grand Jurors of Colleton County present upon their oath:

Murder / Murder

That in Colleton County on or about November 20, 2013, with malice aforethought, Taquan Brown did kill and murder Maurice Kemp by means of shooting him with a gun, and that Maurice Kemp did die in Colleton County as a proximate result thereof on November 20, 2013; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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



Isaac M. Stone, III
Solicitor, 14th Judicial Circuit

FILED
CLERK OF COURT
COLLETON COUNTY
SOUTH CAROLINA
DEC 20 2013

DOCKET NO. 2013-GS-15-01042

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

February Term 2014

THE STATE

vs.

Taquan Brown

Indictment for

Weapons / Poss. weapon during violent crime,
if not also senSC Code: 16-23-0490
CDR Code: 0549

WITNESSES

J. Taylor, CCSO

M. Atwood, CCSO

ARREST WARRANT NUMBER

2013A1510100858

Date of Arrest: November 22, 2013

ACTION OF GRAND JURY

TRUE BILL

Barbara Miller

For person of Grand Jury

Date: 2-20-14

VERDICT

Guilty

For person of Petit Jury

Date: 6/25/15

INDICT

2014 FEB 20 PM 2:24

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Colleton)

INDICTMENT

2013-GS-15-01042

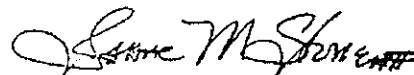
At a Court of General Sessions, convened on February 20, 2014, the Grand Jurors of Colleton County present upon their oath:

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

That in Colleton County, South Carolina, on or about November 20, 2013, the Defendant, Taquan Brown, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Murder, a violent crime for which he is convicted of committing or attempting to commit; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

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

FILED
 2014
 FEB 20
 CLT



Isaac M. Stone, III
 Solicitor, 14th Judicial Circuit