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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI- COA
APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge
Deadra L. Jefferson, Trial Judge

Appellate Case No. 2023-001847

Jerome Campbell, # 349454, ... Petitioner,

vs.

State of South Carolina, ... Respondent.

APPENDIX
VOLUME III

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
S.C. Bar No. 6188
(864) 229-5010
rauchwise@gmail.com

Attorney for Petitioner

ZACHARY WILLIAM JONES
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
S.C. Bar No. 104174
(803) 734-1680
zacharyjones@scag.gov

Attorney for Respondent

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(Whereupon, there is no further response from any of the jury members.).

R. p. 34, ll. 14-21.

Judge Jefferson then re-iterated her earlier instructions about the importance of avoiding innocent conversations which may be misinterpreted, particularly noting that the gallery was full of members from the victim's and defendant's families. She continued:

I need for you all to be aware that reports have been made to the Court that conversations took place in the snack bar otherwise with members of - - with differing parts of members of the family and that there was a perception that the jury might be inclined or already predisposed regarding this case.
Again, I don't have any independent information that that is accurate. However, I will reinforce that even an innocent conversation can be easily misinterpreted.

Emotions run very high during a trial. As you are well aware, the allegations in this case are significant and perception becomes reality. so I would ask that you very stringently follow my instructions and have no conversation with anyone in or about the courthouse who does not have a blue juror sticker on....

R. p. 35, ll. 4-17. (Emphasis added). See also, R. p. 35, l. 18 - p. 36, l. 15. No exceptions to the instructions were raised by the State on defense. R. p. 36, ll. 16-18.

Judge Jefferson then continued her instructions on the case. R.p. 36-39; Tr. 50-59. Included within the instructions was another admonishment to not discuss the case with anyone or consider matters outside of the courtroom. R. p. 39, ll. 2-22.

E. The Trial.

During the trial, juror 205 wrote a note claiming that he "knows the brothers." Tr. p. 106, l. 23 - p. 107, l. 2. After further extended inquiry with the juror, it was unclear whether the Campbell brothers he knew in James Island years before were related to the Appellant. Tr. 107-

114. The trial judge concluded that the particular juror could be fair and impartial and he remained on the jury. Tr. 115-16.

F. The Written Motion to Exclude Jurors and Hearing.

On January 24, 2012, the prosecution made a written motion to exclude two jurors.

[*State's Motion to Exclude Jurors*]. R.p. 1. The focus of the State's motion again concerned jurors 63 (Gadsden) and juror 70 (Givens). In particular, the motion declared:

3. The State is in possession of video from the Snack Bar taken during the Court's lunch break. The video (attached hereto as Attachment #1)⁹ clearly shows members of the defendant's family enter the Snack Bar. One family member, identified as defendant's sister, engages Jurors numbers 63 and 70 in conversation and goes as far as giving Juror number 70 a hug. Later, another of the defendant's family appears to have given the jurors a short greeting.
4. The actions captured by the Snack Bar video belie the answers given by these jurors to the Court's clear questions regarding potential improper contact during the lunch break. More troubling than the contact is the jurors' lack of candor towards the court. The jurors' mendacity undermines any faith that these jurors can fulfill their oath fairly.
5. Had the State known of any familiarity, however, slight, between these jurors and a member of the defendant's family, the State would have exercised its peremptory challenges on these jurors.

State's Motion, p. 1-2. ROA 1-2. (Emphasis added). The State supplemented the motion with Court Exhibit 3 (Statement of Trenell German)¹⁰ and Court Exhibit 4 (Statement of Tiffany

⁹Court Exhibit #2 described *infra*, at fn. 2.

¹⁰In Trenell German's January 23, 2012 statement he declared:

Peacock).¹¹ R.pp. 46, 88-91; Tr. 154. At the motion hearing, the prosecutor asserted that during the inquiry the day before neither juror raised their hands upon the trial judge's inquiry.

Assistant Solicitor Voigt stated that he saw juror Gadsden look into the audience on the inquiry.

R.p. 48, ll. 2-17. Judge Jefferson commented that in her view she was avoiding her eyes and looked toward the bailiffs. R.p. 48, ll. 18-23.

Counsel for the State asserted that in the earlier voir dire, the court gave the jurors the

I witness Candance Ladson speaking with the juror with the yellow shirt on, heavy set female looks like to be about 24, African America, they talked for about two minutes.

Q. How do you know they were jurors?

A. As Jurors were coming out in the courtroom first time she had on blue/white juror sticker.

Q. How do you know Ms. Ladson?

A. She the mother of my sister in law and sister of Jerome Campbell

Q. Where did the conversation take place?

A. Courtroom snack bar.

Q. Describe the juror in question the best you can.

A. She's an African American female on the heavy side she has on a yellow shirt (bright). She had diamond heart earring in her ears. She has pink nail polish (on nails). She looks to be 24.

Court Exhibit 3. ROA 88-89.

¹¹In Tiffany Peacock's January 23, 2012 statement she declared:

I did on 1-23-2012 observe two of the jury members. The conversation appeared to last approx. 2 -4 min. , and it appeared that the jurors and the family of the defendant knew each other. During the conclusion of the conversation I observed a black female with a brown jacket and pants casual sweat suit making the statement "I have them on our side." I proceeded to ask Trenelle "I thought we could not have contact with the jury." She stated that she thought the same and that she would speak with Mrs. Porcel. The two jury members that I observed were both black females, one heavier set with a yellow screen print type shirt. The other had long wavy hair and a heavy jacket that was dark in color. This conversation took place in the court house snack bar approx. 1:20 PM on 1-23-2012.

Court Exhibit 4. ROA 90-91.

opportunity for an innocent explanation and now the conversation is shown on the video from the snack bar. R. p. 49, ll. 9-18. The State contended that there was deliberate misleading of the court and asked that the jurors be removed. R. 49-50.

The defense asserted that he also viewed the juror during the questioning and the person in the video (a cousin, not his sister) was not in the courtroom after lunch as earlier asserted by the State. R. 50-51. The defense stated that there was no audio in the video so the conversation is not revealed and suggested it could have been innocent or that they did not know the person was on the jury. R. 52. The defense expressed a concern about a mistrial if both jurors are removed due to the earlier concern by juror Porter about the "Campbell brothers", potentially leaving eleven (11) jurors. R. 52-53.

The defense stated that juror 70 (Givens) on the video was the only person talking with a relative and the video did not show the juror badge on her, although it shows it on juror Gadsden. R. 53. The defense stated: "If Your Honor is going to excuse on that you excuse Ms. Givens based on that you can see somebody talking to her, but we don't know what the conversation entails." R. p. 53, ll. 14-17.

Judge Jefferson stated she had viewed the video several times. She stated that some alleged members of the defendant's family walk into the snack bar and made contact with a juror seated at a round table. R. p. 53, ll. 18-25. The person is seated with her back to the camera and identified as interacting, but she did not see a hugging.¹² Judge Jefferson described the other juror in the yellow shirt as quiet and exits. **From the video, Judge Jefferson stated it was difficult,**

¹² The video, in fact, reveals the juror reaching out while remaining seated, grabbing a female's outstretched hand and pulling her towards her. Court Exhibit #2, 1:20:00.

but notes that there was clearly interaction between a juror and a member of the defendant's family that was prohibited in her instructions. R. p. 55, ll. 3-9. Judge Jefferson noted that the names German, Coaxum, and Campbell were used in the voir dire, but it was possible that they would not have been recognized. However, she noted it was troubling that this contact was not disclosed in the intervening voir dire. R. 56.

a. The Givens Voir Dire

Judge Jefferson first voir dired juror Givens. R. 60-65. Juror Givens declared she had lunch at the snack bar with juror 63 (Juror Gadsden). R. 60-61. She confirmed that while having lunch a girl from James Island came up to her. She stated she knew her through a friend and that they had "hung out together a few times," like going to birthday parties. R. p. 61, ll. 7-20. Juror Givens stated she had seen the girl last year in June or July, but not since until yesterday. R. p. 61, l. 21 - p. 62, l. 1. She did not consider the girl a close friend and did not talk to her on the telephone, but recalled she was named after a champagne or wine. She said that they hailed each other in the snack bar and was surprised to see her. R. 62. She did not think she was involved in the case and asserted that she did not have a discussion about the case. R. 62-63. She said that they just talked about the friend they had in common and about the girl's grandmother she had moved in with. R. 63.

Juror Givens again stated she did not have a discussion about the case and that the girl was not to her knowledge related to the defendant. R. 63. Juror Givens stated that she recalled the instructions not to speak with anyone, but admitted that she forgot it when she saw someone from the neighborhood. R. p. 64, ll. 4-16. She opined that she could still be fair and impartial and decide the case on the evidence. R. 63-64.

The State urged the court, in reliance on its written motion, to remove contending that Juror Givens had misled the court yesterday in her failure to answer the court's questions about the contact. He stated that due to the omission, she was not entitled to any presumption of impartiality. R. p. 66, ll. 12-18.

The defense asserted it was not an intentional omission on her part. He asserted it was cleared up when asked if she was in the snack bar and spoke with someone. R. 67. He noted her statements about impartiality and that it was a passing acquaintance. R. 66-67.

b. The Gadsden Voir Dire

Judge Jefferson next voir dired juror Gadsden (63). Although she initially denied having lunch with Ms. Givens at the snack bar, she then confirmed she had lunch with her, but did not know her name. R. 68. She confirmed that someone came up to juror Givens and juror Gadsden asked her if she knew the person from someplace and the girl responded no. R. 68-69. Gadsden claimed she did not have further contact with anyone other than Givens. Gadsden had no reason why she did not respond yesterday about having interaction with anyone in the courthouse other than a juror. R. 69. She denied knowing anyone who was a family member of Michael German or Campbell. R. 69-70. She opined that she could be fair and render a verdict based on the evidence. R. 70.

After the inquiry with Gadsden, the State withdrew its motion to remove her. R. p. 71, ll. 8-12.

c. The Court's Decision to Remove Juror Givens

Judge Jefferson announced her intent to view the video again. She noted the juror's flat affect. R. p. 71, ll. 15-21. Judge Jefferson then stated:

Now I really don't have any concerns about Miss Givens' impartiality. She's indicated she can be fair and impartial and she can render a fair and impartial decision. But I am troubled I guess and I use that word very lightly because I'm not really not troubled by the fact that she didn't disclose when I asked the question because she's a typical juror. They just don't -- The things we think are important they don't think are important and I really don't think she had any intention to mislead the Court and there would have been no reason for her to have disclosed the individuals in voir dire because they weren't in the courtroom and their names specifically were not mentioned and in addition to that, she indicated I really don't even know this person's name. I just know she has the name of a wine or champagne or something.

I do think that the interaction was innocent. I really don't think it amounts to anything, but out of an abundance of caution I'm going to excuse her just because I don't want there to be any perception that whatever verdict is rendered that it was not fair and impartial. But I really think that anything she did was innocent. I don't even think she really knows the woman. I think it's one of those things because you can tell on the video the lady is very shocked that she sees her. She's like -- It's almost like, oh, that's you, I haven't seen you in a long time. There is no indication that they discussed anything about this case.

I have no reason to question that she would mislead the Court about it, but perception as I've indicated is often reality for people and I'm going to dismiss her just out of

R. p. 72, l. 3 - p. 73, l. 5 (emphasis added).

Judge Jefferson brought in Juror Givens to address her removal from the jury with her.

R. p. 73, l. 20 - p. 74, l. 19. She stated to her:

The Court: Miss Givens, out of an abundance of caution, I do not believe you have misled the Court in any way. I believe you have been candid and I believe the person you interacted with in the snack bar was an innocent interaction with somebody you hadn't seen in a while. But out of an abundance of caution, I'm going to excuse you as a juror in this case so that there can never be any question regarding

the impartiality of the verdict. We appreciate your candor and your time.

R. p. 73, l. 20 - p. 74, l. 3 (emphasis added).¹³ The defense noted its objection. R. p. 75, ll. 9-12.

The trial judge replaced juror Givens with an alternate, juror Latimer. R. 77-78.¹⁴

ANALYSIS

The Appellant primarily relies upon three cases State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001), State v. Guillebreaux, 362 S.C. 270, 607 S.E.2d 99 (S.C. Ct. App. 2004) and State v. Stone, 359 S.C. 442, 567 S.E.2d 244 (2002) to support his argument for a new trial.¹⁵

¹³It is interesting to note that juror Givens was perceived as being happy to be removed as a juror and being ready to go. See R.p. 74, ll. 5-19.

¹⁴ The defense renewed its prior motions and objections in a summary fashion after the State had rested. R.p. 79, ll. 7-8. It was denied. A similar general motion was after rebuttal. Tr.p. 652. The Court denied the motions. R. p. 80, ll. 21-22. After the guilty verdict, the trial court heard post-trial motions. R.p. 83-84. Counsel only made a general motion, asserting that he would reiterate and renew all objections during the trial and all motions made during the trial. The trial judge stated that it would note all motions and deny based on its previous ruling. R.p. 84, ll. 8-17. No specific mention was made by counsel or the court concerning the replacement of an alternate. Id.

¹⁵ Jurors should be admonished not to discuss the case with anyone, including each other, prior to submission of the case. State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994); Gallman v. State, 307 S.C. 273, 276, 414 S.E.2d 780, 782 (1992). "The rule is well settled that jurors should not, prior to the submission of the case to them, converse with outsiders or among themselves on any subject connected with the trial, or form or express any opinion thereabout; and that the jurors should be so admonished when they are permitted to separate during the trial." State v. Parker, 255 S.C. 359, 361, 179 S.E.2d 31, 32 (1971).

Any unauthorized communication, contact, or tampering directly or indirectly, made by a nonjuror with a juror during a trial about the matter pending before the jury is generally deemed presumptively prejudicial, if not made in accordance with rules of court and the instructions and directions of the court made during the trial, with full knowledge of all the parties. The presumption is not conclusive, but the burden rests heavily upon the nonmovant to establish, after notice to and hearing, that such contact with the juror was harmless. Prejudice may be shown by evidence that an extrinsic factual matter may taint the jury's deliberations. Essentially, an impermissible "outside influence" is an unauthorized communication or overt act by a third party which creates an extraneous influence on the jury.

However, a closer reading of these cases does not support the relief that he seeks in contrast with the unique facts in this proceeding.

In State v. Stone, the Court determined that the trial judge had abused its discretion in removing a juror.¹⁶ In particular, at sentencing, the state called the defendant's aunt as a witness. When she was placed on the witness stand, Juror Thompson indicated to the court that she knew the aunt. Although the aunt had been announced as a witness at the start of voir dire, Thompson later claimed did not know her name. Thompson had lived down the street from the aunt five or six years earlier, and they were casual acquaintances only. Thompson indicated her acquaintance would not affect her ability to be fair and impartial. The Supreme Court concluded that it is patent here that Juror Thompson's failure to disclose her acquaintance with Perry [during the opening voir dire] was innocent. Moreover, the Court concluded that "her scant acquaintance would neither have supported a challenge for cause nor would it have been a material factor in the state's exercise of its peremptory challenges. Thompson clearly indicated her former acquaintance with a witness whose name she did not even know, would not have affected her in

¹⁶ In Stone, the Court relied upon State v. Woods, 345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001), wherein the Court had stated:

When a juror conceals information inquired into during voir dire, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986). Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn. State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct.App.1991).

any way.” Stone, supra.¹⁷ The Court held the trial court abused its discretion in removing her. However, a closer reading of the case reveals that the new sentencing proceeding was not granted based upon this alleged error. The Court, unlike its response to the issues related to the failed to instruct on certain mitigating circumstances and the failure to give a parole ineligibility charge did not include any similar language that “required reversal.”¹⁸ The harmless error issue was not addressed or whether it warranted a new trial standing alone.

The Appellant also relies on State v. Woods, supra. Importantly, in Woods, the Court defined that “intentional concealment occurs when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror’s failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror’s failure to respond is reasonable under the circumstances. Necessarily, whether a juror’s failure to respond is intentional is a fact intensive determination which must be made on a case by case basis.” In Woods, the court found that the juror’s failure to reveal the prior relationship with the solicitor’s office during the opening voir dire was intentional concealment and would have impacted on the use of the peremptory challenges. Here, there is no concealment, intentional or

¹⁷Here, the issue was not about the failure to reveal a scant acquaintance” with the family member during the initial voir dire, but the failure to acknowledge the existence of the contact in the snack bar and the direct violation in the contact with the person and impression it made on the observers and participants in the contact.

¹⁸ The failure to specify that the juror issue “required reversal” is a difference with a distinction. The Court was not required to address the issue concerning prejudice and harmless error concerning the removal. The absence of this language is telling of the limitation in the holding.

otherwise, of information by a juror on the initial voir dire as determined by Judge Jefferson. Thus, the language from Stone regarding whether the information would have been a material factor in the use of a peremptory challenge is inapplicable to this case.

Here, it was not about the failure to reveal on voir dire that supported juror Givens removal, but her failure to follow the instructions, have the contact with a third party and then failure to reveal it in a response in the court.

In State v. Guilibreaux, the Appellant also seeks support. Therein, the Court of Appeals, through Judge, now Justice, Beatty, concluded a juror's failure during voir dire to disclose an alleged social relationship with State witness, who was the confidential informant who purchased crack from defendant, was not intentional. The Court of Appeals found that the juror's knowledge of who the confidential informant was and a rare exchange of greetings with him in her community did not constitute social relationship. The court found that the juror answered questions posed to her honestly, her failure to reveal her knowledge of confidential informant was reasonable response to question posed. In seeking a new trial based upon the juror's retention and alleged failure to disclosed the unfounded social relationship with the witness, the court concluded that a new trial was not warranted. As the Court stated: "[A]s we find no intentional concealment on Juror's part, we need not further determine whether the information would have been a material factor in the exercise of Guillebeaux's peremptory strikes. [State v.] Sparkman, 358 S.C. at 497, 596 S.E.2d at 377-78. Based on this evidence, we find the trial judge did not abuse his discretion in denying the motion for a new trial."

In Smith v. State, 375 S.C. 507, 654 S.E.2d 523 (2007), the Court cited Guilibreaux addressed whether a juror had intentionally concealed a prior relationship with the defendant.

The Court found that the juror did not intentionally conceal the existence of his prior relationship with defendant during voir dire. The defendant claimed after the trial that he learned that they had been incarcerated together prior to defendant's murder trial at the detention center and did not recognize the juror due to a change in his appearance by his head being shaved and that he knew him only by a nickname "Rum Gully." He claimed without documentation that he had altercations with him in prison. The Court found that the defendant failed to establish that he suffered a per se violation of his due process right to a fair and impartial jury. It concluded that it was reasonable for juror to remain silent when asked during voir dire whether any member of the jury pool was "related by blood or marriage or a close personal friend of [defendant]." The juror testified that he and defendant were not close friends, juror also testified that he did not have any bias or prejudice against defendant, and he and the other members of the jury held the State to its burden of proof before finding defendant guilty of the two murder charges.

Unlike these cases, there was intentional concealment, although not during the initial voir dire. The Appellant asserts that this failure to show intentional concealment during the initial voir dire provides sanctuary and a requirement to have retained juror Givens despite her failure to acknowledge during the later voir dieres the existence of the snack bar contact, the failure to follow the no contact instructions. Simply put the setting in this case is different than the settings in Guillibreaux and Stone. He ignores that juror Givens did intentionally conceal her out of court contact with the person in the snack bar when expressly asked the following questions by Judge Jefferson:

Before we begin that process of opening instruction and opening argument, I gave the jury strict instructions that they were not to have any contact with anyone in or about

the courthouse who did not have a juror sticker on because, again, very innocent conversations could be very easily misinterpreted and misconstrued. I need to ask you all did any of you during the lunch and recess have any contact with anyone in or about the courthouse who did not have a juror sticker on? If so, if you did, I need you to raise your right hand for me.

R. p. 33, ll. 15-17. Juror Givens did not respond to this clear inquiry.

Judge Jefferson then made further inquiry of the jury:

The Court: Okay. Is there anyone else who had any contact with anyone in or about the courthouse, either in the snack bar or any other parts of the building that did not have a juror sticker on and you had any interaction with them?

(Whereupon, there is no further response from any of the jury members.).

R. p. 34, ll. 14-21. Juror Givens did not respond to this clearer response!

Judge Jefferson continued:

I need for you all to be aware that reports have been made to the Court that conversations took place in the snack bar otherwise with members of -- with differing parts of members of the family and that there was a perception that the jury might be inclined or already predisposed regarding this case.

Again, I don't have any independent information that that is accurate. However, I will reinforce that even an innocent conversation can be easily misinterpreted.

Emotions run very high during a trial. As you are well aware, the allegations in this case are significant and perception becomes reality. so I would ask that you very stringently follow my instructions and have no conversation with anyone in or about the courthouse who does not have a blue juror sticker on....

R. p. 35, ll. 4-17. (Emphasis added). See also, R. p. 35, l. 18 - p. 36, l. 15. Again, no response about the proven contact by Juror Givens. This can only be concluded as "intentional

concealment.” This is more than merely whether the removed juror had a relationship with the defendant’s family.

“Determining whether a juror’s failure to respond to a voir dire question amounts to intentional concealment is a ‘fact intensive determination that must be made on a case-by-case basis.’ ” State v. Guillebeaux, 362 S.C. 270, 274, 607 S.E.2d 99, 101-02 (Ct.App.2004)(quoting State v. Sparkman, 358 S.C. 491, 496, 596 S.E.2d 375, 377 (2004)). Here, the questions put to juror Givens and the other jurors by the trial judge were reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror’s failure to respond is unreasonable.’ ” Id. These inquiries were not “ambiguous or incomprehensible to the average juror” shortly after the lunch recess and therefore it was not reasonable for Juror Givens to fail to respond.

The snack bar video of January 23 shows the basis of the intentional concealment by Juror Givens. Court Exhibit #2. The video shows juror Erica Gadsden (Juror 63) in a bright yellow shirt and juror Robin Givens in a red coat entering the snack bar area at 12:26:30. They are viewed sitting down and conversing with each other while eating. Shortly thereafter, four females enter the snack bar area at around 1:19. Juror Givens initially waves at group at 1:19:52. One female walks over toward the table where Givens and Gadsden are sitting and juror Givens reaches out, grabs her hand and then pulls the female towards her at 1:20:00. This female remains in apparent close contact conversation at the table where Givens and Gadsden are seated while three others briefly move away. This person remains in conversation at the table until 1:20:36 when she moves away toward her three remaining group members standing at the end of the snack bar counter. The female Givens spoke with in the group goes back toward the door and

juror Givens gets up preparing to leave and has another brief conversation with the same female at 1:21:10. The person then leaves while the remaining three members remain [with others who later share pleasantries and replace the departed jurors at the table]. Juror Gadsden leaves, followed by juror Givens at 1:21:25. Court Exhibit #2. This information cannot be disputed.

Was there an instruction to not have contact or discussions with anyone? Yes. Did the juror have improper discussions with such a person shortly after the instructions? Yes. Did she reveal the contact after the first inquiries were made after lunch? No. Was this improper contact with a family member of the defendant? Yes.

Appellant applies the wrong standard when he asserts that removal of a juror is only supported when the removed juror intentionally concealed information which would have supported a challenge for cause or a would have been a material factor in the party's use of peremptory challenges, because it does not address all setting that could lead to the need to remove a juror. See Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986) (affirming denial of motion for new trial based on after-discovered evidence where jurors' relationship with doctor's attorney was not a basis for disqualification). See also State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001) (post-verdict motion for new trial should have been granted where juror intentionally concealed prior association with solicitor's office, which denied defendant effective use of peremptory challenges); State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998) (affirming denial of new trial motion based on after discovered evidence based on information that juror attended pro-death penalty rally, where information was not intentionally concealed); State v. Gullede, 277 S.C. 368, 287 S.E.2d 488 (1982) (pre-verdict mistrial should have been granted for juror's failure to disclose relationship with police officer, where

information would have supported a challenge for cause or would have been a material factor in the exercise of a peremptory strike); State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct. App. 1991) (post-verdict mistrial motion properly denied because no evidence party would have struck juror, and juror's failure to disclose distant relationship with witness was not intentional).

The state agrees Juror Givens concealment during the pre-selection voir dire did not appear to be intentional. However, her failure to respond about the contact after the snack bar incident during the subsequent voir dire is much more troubling. Absent the revelations on the surveillance video, juror Gadsden was the only juror specifically identified, not juror Givens. The video also revealed that it was juror Givens who initially waved and then pulled the defendant's family member towards herself and then engaged in the "close contact" conversation. While the video is silent, it remains uncontradicted that family member orally expressed a comment that "I have them on my side." Court Exhibit #4. R.p. 90. The focus of the Appellant is on the initial voir dire before jury selection. However, the critical mistake is juror Givens failure to reveal the unauthorized contact in the snack bar after being instructed to not have the contact and the effect the contact had on others - to both the defendant's family - "I have them on my side." and the victim's family upon seeing and hearing it and then reporting it.

Contrary to the assertions of the Appellant, it is more than the mere fact that juror Givens did not reveal a "scant acquaintance" with a member of the defendant's family during the pretrial voir dire. Instead, this was a wholly different scenario where the juror was perceived after the unauthorized contact as being turned to the defendant's side and then intentionally failed to reveal that there was any contact when the jury was specifically asked. In addition, when the juror physically pulled the family over for close contact conversation, an appearance of

impropriety cannot be disabused, particularly when she failed to reveal it during the post-lunch voir dres. Contrary to Appellant's claims, juror Givens had to be removed to maintain integrity to any verdict after the video surveillance was revealed. In fact, counsel for the Appellant, prior to the voir dire of Givens noted that she was the only person talking with the family member (whom he identified as a cousin - not a sister) and if you excuse on that, you only excuse Givens, not Gadsden. R.p. 53, ll. 14-17.

Despite Appellant's contentions, Thompson and the other cases cited above instead provide the standard for the granting of the extreme measures of a mistrial or a new trial, when juror concealment of relevant information is discovered. State v. Kelly, 331 S.C. 132, 146, 502 S.E.2d 99, 106 (1998) (quoting Thompson as the standard for a new trial due to retaining as juror, not as the standard for removal of a juror). Thompson and the other cases mandate when a trial court has to address the problem of newly discovered juror information with new trial or mistrial.

However, trial courts may still as a matter of discretion remove jurors for alternates in lesser circumstances than those which require mistrial as defined by Thompson and its progeny. This standard is discussed below.

"The general rule in this State is that the conduct of a criminal trial is left largely to the sound discretion of the presiding judge and [an appellate court] will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way". State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982). Along these lines, the typical appellate standard of review for the discretionary pre-deliberation removal of a juror and replacement with an alternate, is whether or not the trial court's decision was so unreasonable as to be an abuse of

discretion resulting in actual prejudice. State v. Rogers, 263 S.C. 373, 210 S.E.2d 604 (1974); State v. Williams, 321 S.C. 455, 469 S.E.2d 52 (1996). In this case, Appellant can show no prejudice from the seating of Alternate, nor can he show that the trial court's decision to excuse Givens was so unreasonable as to amount to an abuse of discretion.

This case is similar to State v. Williams, 321 S.C. 455, 469 S.E.2d 52 (1996). During trial in Williams, a juror spoke to a minister seated at counsel table. The juror testified he had worked with the minister and had heard him preach. The minister was seated at counsel table because he had assisted the defense in contacting witnesses. The trial court excused the juror and replaced him with an alternate to prevent any problems. The Court rejected the defendant's claim that the excusal violated Batson v. Kentucky, 476 U.S. 79 (1986), and Georgia v. McCollum, 505 U.S. 42 (1992), by first noting that the issues were not preserved. However, the Court went on to hold that there was no reversible error, because (1) there is no right to be tried by a jury composed of particular individuals, (2) the alternate juror had been approved by both sides at the inception of trial, and (3) there was no showing of any prejudice from the seating of the alternate juror. Williams, 321 S.C. at 459-60, 469 S.E.2d at 52.

The same result is warranted here as is warranted in Williams. Appellant has no right to be tried by a particular juror, and the alternate juror in this case was approved by both sides. Appellant has identified no sustainable reason why he was prejudiced by the seating of the Alternate. Here, the party aggrieved by the Juror Givens' belated revelations about her contact at the snack bar and disobedience with the trial court's no contact admonishment was the court and the state, not the defense.

The Removal of the Juror Based Upon the Lunch Room Contact Did Not Equate With An Additional Peremptory Challenge.

In his second argument, Initial Brief of Appellant, pages 10-15, Appellant attempts to show prejudice by contending that the effect of the judge's decision was to give the state an extra peremptory strike. This is incorrect. He asserts that the trial court found that because there was no cause to remove juror Givens. However, the trial court's decision, that a juror's improper contact, failure to follow her instructions and acquaintance with a relative of Appellant warrants excusal, is not so unreasonable as to be an abuse of discretion. The trial court acknowledged that it was removing the juror "out of an abundance of caution" to preserve the integrity of the verdict, not to award the state an additional peremptory challenge. Contrary to the characterization by the Appellant, the State was not provided an additional peremptory challenge as a matter of state law or by the action of the trial judge. This action occurred solely because of the post-selection contact between juror Givens and a member of the Appellant's family.

This Peremptory Challenge Issue Is Not Preserved For Appeal .

Nevertheless, this peremptory challenge claim is not preserved for review. At no time did the Petitioner claim that the state was given a de facto additional peremptory challenge. See R.p. 30-32, 50-53, 66-67, 79, 80, 83-84. As such, this specific claim is not preserved. State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000) (party may not argue one ground for objection at trial and a different ground on appeal); See State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996) (Eighth Amendment challenge to parole eligibility not preserved because no constitutional basis was raised at trial); State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996) (Batson issue regarding dismissal of juror during trial not preserved where it was not raised at trial).

Parties are entitled to truthful and accurate information during voir dire so that they may intelligently make peremptory challenges; there is no question that the state did not have this information at selection about the contact in the lunch room and the overheard comments that "I have them on our side" by a family member after the contact because it did not exist until after the selection. See, e.g. State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998). Further, the failure of the juror to accurately respond after the initial inquiries about the contact brings her partiality into reasonable question where the defendant's family is overheard making the "on our side" comments and then followed by the non-disclosure. Although it certainly appears that the relationship was likely minimal based upon juror Givens eventual testimony, the state pointed out its concern about a juror who violated the court's instructions not to speak with people not wearing juror badges. State's Motion, p. 1-2. ROA 1-2. R.p. 27-29, 49-50. Like the judge in Williams, where the relationship between the juror and the minister was admittedly more defined than the present case, yet still very casual, the trial court in this case was not unreasonable in deciding to avoid any possible appearance or existence of unfairness by seating the alternate.

The reliance by Appellant on the decision in U.S. v. Harbin, 250 F.3d 532 (7th Cir. 2001) is misplaced on the peremptory challenge issue. In Harbin, the Seventh Circuit reversed a decision by the district court allowing the government to use, in the middle of trial, a statutory peremptory challenge it had foregone during voir dire, when new information about a juror came to light. Id. at 538-39. The defendants had exhausted their strikes during voir dire but were unaware that they might be able to save them and use them during the trial. Id. at 538, 541. The Seventh Circuit held that the district court's decision was erroneous because "[t]he prosecution was unilaterally granted control over the composition of the jury during the trial stage ... [and

the] jury selection process ... failed to minimally inform [defendants] of the procedures that ultimately were followed.” Id. at 541 - 42.

The current case is nothing like the situation in Harbin. Here, each side received the statutory number of peremptory challenges. Both sides also knew full well that they were prohibited from using any of their challenges in a racially discriminatory manner nor had the ability to save strikes to use during the trial. All parties to the case were subject to the same requirements, and the jury selection process was not weighted in either the State or Campbell’s favor beyond the statutory limits for peremptory challenges. At no point did the State claim any entitlement to an additional strike. To the contrary, they were arguing prior to the voir dire the standard set out by the Court in Woods and Stone due to the improper contact, lack of candor with the court. State Motion, p. 2. He argued that the mendacity undermined that they could fulfill their duty. The Appellant seeks to parse the information and ignore that the motion was additionally based upon the overheard comment that “I have them on my side.” Under Stone, Woods, etc., had any prosecutor (or defense counsel) been aware that after contact with a family member by a juror that the juror was reported to be “on my side” that a peremptory challenge would have been used, thus satisfying the materiality component Stone and Woods to have required their removal and a new trial.

SUMMARY

Under these circumstances, the proper way to maintain integrity with the jury selections was to replace the juror with a qualified alternate.¹⁹ This was reasonable discretion on the judge’s

¹⁹ The Appellant tries to make the peremptory challenge issue to be supported because it withdrew its motion to remove juror Gadsden after the voir dire of juror Givens and Gadsden. However, the difference in their settings was clear after the testimony revealed the

part .

A New Trial Is Not Warranted by Harmless Error.

As stated above, Stone itself does not mandate reversal and the grant of a new trial should this Court find that the trial judge abused its discretion. Assuming Appellant is correct in his assertion that the record does not reflect by clear and convincing evidence that Juror Givens violated the rule of sequestration by the conversation with the defendant's family and the failure to acknowledge it upon voir dire after the lunch break, Appellant's argument that this error requires reversal is less convincing. Although Juror Givens may have been improperly removed, she was replaced by an alternate juror who had been passed upon by both the State and defense. Appellant has shown no prejudice from having his case decided by alternate Juror Latimer rather than Juror Givens and this Court should decline to find any. Reversal and a new trial is not warranted.

Although juror Givens claimed only a casual relationship with a family member who she "hung out together a few times, " but claimed not to see in around a year and spoke only about a common friend, she claimed she could remain fair and impartial. There is no right to have a juror with a casual connection with the defendant's family to sit as a juror. However, when the removal occurred "out of an abundance of caution, " jury deliberations had not begun. In fact, only a few witnesses [4] had even testified during the first day. The alternate was qualified in the same manner as juror Givens and was subject to peremptory challenges by both the state and defense with one strike remaining by each. R.p. 20-21. The alternate was present throughout the

communication was virtually only with Givens, not Gadsden. Although Gadsden did not reveal the brief encounter she had, by the testimony she was an uninvolved bystander to the actions of juror Givens.

first day of the evidence.

Any error was harmless where the alternate was present throughout the proceeding and the Appellant had not shown he was prejudiced by the substitution prior to any deliberations. State v. Williams, 469 S.E.2d 49 (1996) (defendant was not prejudiced from seating an alternate juror after juror was dismissed).²⁰ Accord Ballentine v. State, supra.; Barker v. State, 487 S.E.2d 494 (Ga. App. 1997) (no harmful error in court replacing juror with alternate where court found that juror's conduct amounted to immaterial irregularity," if any , and court would thus have been entitled to retain juror, while it was claimed that investigator stated to juror "we got one ," and that juror repeated the statement and shook hands with investigator, trial court conducted inquiry , and determined that only greetings were exchanged, but excused juror out of an abundance of caution and seated alternate); Lee v. State, 11 S.W. 3d 553 (Ark. 2000)(a defendant must show prejudice when the trial court removes a juror and seats an alternate in the juror's place); Thornberg v. State, 985 P. 2d 1234 (Okla. Crim App. 1999)(removal of juror on less than clear and convincing evidence of misconduct did not prejudice murder defendant and did not require reversal, where removed juror was replaced by alternate who had been passed upon by both the state and the defense); State v. Pettigrew, 860 P. 2d 777 (N.M. App. 1993)(defendant's were not

²⁰ As the Court stated in Williams,

In any event, in State v. McDaniel, 275 S.C. 222, 268 S.E.2d 585 (1980), this Court held there is no right to be tried by a jury composed of particular individuals. In McDaniel, an alternate was seated after a juror was dismissed for making improper gestures. The McDaniel court noted the alternate juror had been approved by both sides at the inception of the trial, and there was no showing in what manner the seating of the alternate prejudiced him. As in McDaniel, we discern no prejudice to Williams from the seating of the alternate juror here.

prejudiced by court's excusal of juror following unauthorized contact with public defender intern and replaced with alternate chosen in same manner as excused jurors and defendant had no right to a particular juror on the panel).

CONCLUSION

For all the foregoing reasons, the appeal should be dismissed and judgment of conviction affirmed.

Respectfully submitted,

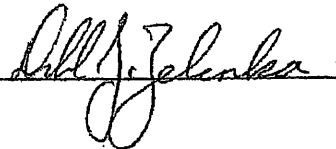
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
S. C. Bar #5758

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

ATTORNEYS FOR RESPONDENT

By:  _____

Columbia, South Carolina
March 6, 2013

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

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2012-208426

THE STATE OF SOUTH CAROLINA,

Respondent,

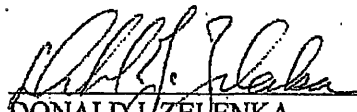
v.

JEROME RENALDO CAMPBELL,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."


DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

March 6, 2013

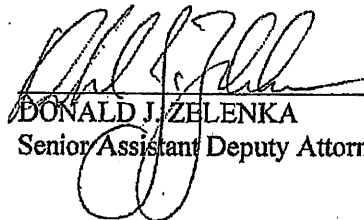
CERTIFICATE OF SERVICE

I, Donald J. Zelenka, hereby certify that I have served the *Final Brief of Respondent* in the foregoing action by depositing copies in the United States Mail to:

Stephan V. Futeral, Esquire
Futeral & Nelson, LLC
P. O. Box 1543
Mt. Pleasant, SC 29465-1543

Thomas C. Nelson, Esquire
Futeral & Nelson, LLC
P. O. Box 1543
Mt. Pleasant, SC 29465-1543

This 6th day of March, 2013.


DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Deadra L. Jefferson, Circuit Court Judge

Case No. 09-GS-10-6730
Case Tracking Number: 2012208426

State of South Carolina, ...Respondent,

v.

Jerome Campbell
a/k/a Jerome Coaxum, ...Appellant,

RECORD ON APPEAL

Stephan V. Futeral
Thomas C. Nelson
Futeral & Nelson, LLC
Post Office Box 1543
Mt. Pleasant, South Carolina 29464
Telephone (843) 284-5500
Attorneys for Appellant

Donald J. Zelenka
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone (803) 734-6305
Attorney for Respondent

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FILED
STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON 2012 JAN 24 AM 9:54

JULIE J. ARMSTRONG
CLERK OF COURT

Assignment Numbers: 2009-GS-10-06730-33

STATE OF SOUTH CAROLINA)

v.

STATE'S MOTION TO EXCLUDE JURORS

JEROME CAMPBELL,
aka
Jerome Campbell Defendant.

NOW INTO COURT comes the State of South Carolina who hereby moves to exclude two jurors in the trial of the above captioned matter for the following reasons, to wit:

1. On January 23, 2012, the first day of trial in this matter, the State informed the Court that at the lunch break members of the victim's family witnessed a conversation in the Courthouse Snack Bar between members of the defendant's family and two jurors, identified as Juror number 63, Erica Gadsden, and believed to be Juror number 70, Robin Givens.¹
2. The Court brought the entire jury panel into the courtroom and asked if any jurors had violated the court's previous instruction to not speak to any persons who were not wearing juror badges. One juror raised her hand to say that she had spoken to a man at a sandwich shop, but the conversation did not involve her jury service. No other juror raised his or her hand, although Juror number 63 was observed to look in the direction of the defendant's family in the courtroom by the undersigned.

3. The State is in possession of video from the Snack Bar taken during the Court's lunch break. The video (attached hereto as Attachment #1) clearly shows members of the defendant's

¹ This person is clearly a juror, the State is unsure of her name and number.

family enter the Snack Bar. One family member, identified as defendant's sister, engages Jurors numbers 63 and 70 in conversation and goes as far as giving Juror number 70 a hug. Later, another of the defendant's family appears to have given the jurors a short greeting.

4. The actions captured by the Snack Bar video belie the answers given by these jurors to the Court's clear questions regarding potential improper contact during the lunch break. More troubling than the contact is the jurors' lack of candor towards the court. The jurors' mendacity undermines any faith that these jurors can fulfill their oath fairly.

5. Had the State known of any familiarity, however slight, between these jurors and a member of the defendant's family, the State would have exercised its peremptory challenges on these jurors

WHEREFORE, the State moves that, after due proceedings had, that Jurors numbers 63 and 70 be excluded and release from jury service in this trial and that the alternates be placed in their stead.

FILED

2012 JAN 24 AM 9:54

JULIE J. ARMSTRONG
CLERK OF COURT

BY: _____

Respectfully submitted,

Scarlett A. Wilson
Solicitor, Ninth Judicial Circuit

By: _____

Gregory K. Voigt
Assistant Solicitor

1 THE COURT: Okay.

2 MR. VOIGT: Thank you, Your Honor, and one of those
3 indictments is A/K/A Coaxum. I think I'm going to refer to
4 him consistently as Mr. Campbell. He has previously gone by
5 Coaxum.

6 THE COURT: Jerome Renaldo Coaxum. I don't think I to
7 need to say that.

8 MR. VOIGT: No. I just wanted to let you know I'm going
9 refer to him ---

10 THE COURT: But he goes by Jerome Renaldo Campbell for
11 our purposes?

12 MR. VOIGT: Yes, Your Honor, Jerome Renaldo Campbell.
13 (Whereupon, the bench conference ends and there is a
14 brief pause in the proceedings while the jury panel
15 enters the courtroom and counsel returned to their
16 tables.)

17 THE COURT: Could counsel approach for me, please?
18 (Whereupon, a bench conference is held off the record in
19 the presence of the jury panel, but out of the hearing of
20 the jury panel.)

21 THE COURT: Ladies and gentlemen, we are going to select
22 a jury for the case of the State of South Carolina versus
23 Jerome Renaldo Campbell. Before we begin that process --
24 Well, as part of that process we're going to go through
25 something that is called voir dire, which is simply a legal

1 term meaning that I am going to ask you some questions so that
2 the attorneys can more effectively exercise their preemptory
3 challenges in jury selection. If a question applies to you,
4 please stand and in a loud and clear voice give us your name
5 and your juror number and an answer to the question if
6 applicable and remain standing until the Court has completed
7 questioning you.

8 And we are going to select a jury for the following
9 indictments. 2009-GS-10-6730, which is an indictment for
10 assault with intent to kill and that indictment alleges as
11 follows: That in Charleston County, South Carolina, on or
12 about January 19th, [sic.] 2009, the defendant, Jerome Renaldo
13 Campbell, with malice aforethought accompanied by a present
14 ability to complete the act did attempt to commit an unlawful
15 act of violent injury to Frank Haigler, to wit: the defendant
16 did shoot at the victim several times alleging a violation of
17 the common law of South Carolina.

18 And indictment 2009-GS-10-6731, an indictment for murder
19 and that indictment alleges that in Charleston County on or
20 about January 9th, 2009, with malice aforethought Jerome
21 Renaldo Campbell did kill and murder Michael German by means
22 of shooting the victim and that Michael German did die in
23 Charleston County as a proximate result thereof on January 9th,
24 2009, alleging a violation of Code Section 16-3-10 of the
25 South Carolina Code of Laws as amended.

1 And indictment 2009-GS-10-6732, an indictment for assault
2 with intent to kill and that indictment alleges that in
3 Charleston County, South Carolina, on or about January 9th,
4 2009, the defendant, Jerome Renaldo Campbell, with malice
5 aforethought accompanied by a present ability to complete the
6 act did attempt to commit an unlawful act of violent injury to
7 Anthony German, to wit: the defendant did shoot at the victim
8 alleging a violation of the common law of South Carolina.

9 And indictment 2009-GS-10-6733, an indictment for assault
10 with intent to kill and that indictment alleges that in
11 Charleston County, South Carolina, on or about January 9th,
12 2009, the defendant, Jerome Renaldo Campbell, with malice
13 aforethought accompanied by a present ability to complete the
14 act did -- did attempt to commit an unlawful act of violent
15 injury to Michael Allen, to wit: the defendant did shoot at
16 the victim alleging a violation of the common law of South
17 Carolina and alleging all of these actions to be against the
18 peace and dignity of this state.

19 Before we begin the process of voir dire, I'm going to
20 ask counsel for the State to introduce himself, anyone who
21 will be assisting him in the trial of this case and also the
22 names of the members of his office -- of the lawyers in his
23 office and I'm going to ask counsel for the defense to provide
24 us with the same information and also have his client stand
25 and face the panel. You may proceed.

1 MR. VOIGT: Thank you very much, Your Honor.

2 THE COURT: You're welcome.

3 MR. VOIGT: My name is Greg Voigt. I'm the Assistant
4 Solicitor here in Charleston County. Assisting me today will
5 be Elizabeth Riddle. You may also see Joanne Gould, who is a
6 paralegal in our office. In and out of the courtroom you may
7 see my investigator, Ryan Kelly.

8 Some of the attorneys in our office include: the
9 Solicitor, Scarlett Wilson; the chief deputy, Bruce DuRant;
10 Spencer Compton; Stephanie Linder; Rutledge DuRant; Michael
11 Nelson; Culver Kidd; Chad Simpson; Amy Harrell; Julie
12 Cardillo; Jennifer Shealy; Shannon Elliott; Natasha Chisholm;
13 Timmy Finch; Marian Askins; Meg Haley; Jim Stack; Lindsey
14 McClain; Tyler Whitaker; Adam Young; Jessica Baldwin; Jennifer
15 McCoy; Debbie Herring-Lash; Elizabeth Gordon; Burns Wetmore;
16 and Jennifer Kinzeler. I think I got them all.

17 THE COURT: Mr. Harris?

18 MR. HARRIS: I am Stephen Harris and I'm with the law
19 firm Harris & Huger consisting of myself and my partner, Ted
20 Huger. Jason Mikell will be as co-counsel on this case. He'll
21 introduce himself in a moment and Jerome Campbell is my
22 client. Other people that would be working on this case would
23 be Avery Kepple (sp.), Jessie Cabot (sp.) and Crystal
24 Robinson.

25 MR. MIKELL: My name is Jason Mikell. I'm a solo

1 practitioner from Mount Pleasant, South Carolina. My
2 paralegal is named Sonya Blessing (sp.).

3 THE COURT: Thank you. Again, ladies and gentlemen, if a
4 question applies to you, please stand and in a loud and clear
5 voice tell us your name, your juror number, and an answer to
6 the question if applicable and remain standing until the Court
7 has completed questioning you.

8 Is there any member of the panel related by blood or
9 marriage to Jerome Renaldo Campbell, Michael Allen, Anthony
10 German, Frank Haigler, or anyone who is related to or a member
11 of -- or have any connection with Michael German? If so,
12 please stand at this time?

13 (Whereupon, no one stands.)

14 THE COURT: Does any member of the panel have a close --
15 close personal or social relationship with Jerome Renaldo
16 Campbell, Michael Allen, Anthony German, Frank Haigler or
17 anyone who is related to Michael German? If so, please stand
18 at this time.

19 (Whereupon, no one stands.)

20 THE COURT: The following are a list of potential
21 witnesses in this case. I would ask that you listen very
22 carefully. Jerome Renaldo Campbell, Charise Coaxum,
23 Christopher Robinson, Aaron Burnham, Sandra Campbell, Jordan
24 Richardson, John Tisdale, Mary Phillips, Anita Moore, Mike
25 Sherman, Richard Wiersman -- Wiersma, W-I-E-R-S-M-A, Richard

1 Burckhardt, Sergeant Scott Ray, Rene Charles, all of the
2 Charleston Police Department, Ryan Kelly, Anthony German,
3 Michael Allen, Timothy McCarthy, James Tawney, Frank Haigler,
4 Kenneth Whitler, John Roberts, all of the South Carolina Law
5 Enforcement Division, Erin Presnell, Medical University of
6 South Carolina, Joshua Briar-Ridgeway, and Joy Glover.

7 Is there any member of the panel related by blood or
8 marriage to any of the people that I have just listed or does
9 anyone have a close personal or social relationship with any
10 of these individuals? If so, please stand at this time.

11 (Whereupon, no one stands.)

12 THE COURT: Has any member of the panel ever been
13 represented by any of the attorneys involved in this case or
14 anyone with whom they practice law? If so, please stand at
15 this time.

16 (Whereupon, no one stands.)

17 THE COURT: Is there any member of the panel related by
18 blood or marriage to or have a close personal or social
19 relationship with any of the attorneys involved in this case
20 or anyone with whom they practice law? If so, please stand at
21 this time.

22 (Whereupon, no one stands.)

23 THE COURT: Is there any member of the panel related by
24 blood or marriage to or have a close personal or social
25 relationship with anyone who is employed in the Solicitor's

1 Office or anyone who is employed in the offices of Mr. Harris
2 or Mr. Mikell? If so, please stand at this time.
3 (Whereupon, one panel member stands.)
4 THE COURT: Yes, sir. Tell me your name and your juror
5 number.
6 JUROR RICHARDSON: Joseph Richardson, 215.
7 THE COURT: And who are you related to, sir?
8 JUROR RICHARDSON: Tasha Lafayette.
9 THE COURT: And where is she employed?
10 JUROR RICHARDSON: The Solicitor's Office.
11 THE COURT: And in what capacity? Do you know?
12 JUROR RICHARDSON: I do not.
13 THE COURT: Okay. Sir, as a result of this experience,
14 do you feel that you can remain fair and impartial and render
15 a fair and impartial decision in this case based solely on the
16 evidence as it will be presented and on the law as the Court
17 will instruct?
18 JUROR RICHARDSON: I do not.
19 THE COURT: Okay. Sir, you will be excused from the
20 trial of this case only. You may take your seat.
21 Has any member of the panel formed or expressed an
22 opinion about any issue or matter involved in this case? If
23 so, please stand at this time.
24 (Whereupon, no one stands.)
25 THE COURT: Is there any member of the panel aware of any

1 bias or prejudice toward either the State or the defense in
2 this case? If so, please stand at this time.

3 (Whereupon, no one stands.)

4 THE COURT: Is there any member of the panel who was a
5 member of the grand jury which issued the indictments in this
6 case? If so, please stand at this time.

7 (Whereupon, no one stands.)

8 THE COURT: Is there any member of the panel who is a
9 member of or contributor to any group which has as its primary
10 concern the promotion of law enforcement or victim's rights?
11 These groups would include but are not limited to Mothers
12 Against Drunk Driving, Students Against Drunk Driving,
13 Citizens Against Violent Crime, People Against Rape, Citizens
14 Advocating a Return to Decency in Ethics, Parents in Power to
15 Save Teens, or any other type community watch organization or
16 the Fully Informed Juror Organization. If so, please stand at
17 this time.

18 (Whereupon, no one stands.)

19 THE COURT: Is there any member of the panel who has a
20 family member who is employed with -- in any capacity with law
21 enforcement? If so, please stand at this time.

22 (Whereupon, several panel members stand.)

23 THE COURT: Yes, sir? Tell me your name and your juror
24 number.

25 JUROR JORDAN: Silvester Jordan, 122.

1 THE COURT: And which family member is it?
2 JUROR JORDAN: I have two cousins working for Charleston
3 City Police Department.
4 THE COURT: If you would, remain standing. Yes, ma'am?
5 JUROR PATTERSON: I have a cousin. I'm Juror 188. She's
6 a lawyer. Tiffany Spain (sp.) and she's a judge.
7 THE COURT: Okay, what is your name, ma'am?
8 JUROR PATTERSON: Roberta Patterson.
9 THE COURT: Okay and behind you, yes, ma'am?
10 JUROR GIVENS: I have a first cousin that's a state
11 trooper in North Charleston Police Department. Her name is
12 Charlene Gadsden..
13 THE COURT: And your name, ma'am?
14 JUROR GIVENS: Robin Givens.
15 THE COURT: And your juror number?
16 JUROR GIVENS: 70.
17 THE COURT: And yes, ma'am?
18 JUROR GADSDEN: My name is Erica Gadsden and I have a
19 cousin in the police department, Charleston Police Department,
20 Charleston police.
21 THE COURT: Charleston Police Department?
22 JUROR GADSDEN: Uh-huh.
23 THE COURT: And your name and your juror number?
24 JUROR GADSDEN: 63, Erica.
25 THE COURT: Erica?

1 JUROR GADSDEN: Gadsden.
2 THE COURT: Okay, thank you. Yes, sir?
3 JUROR SULLIVAN: I have a brother who in the Secret
4 Service.
5 THE COURT: And your name and juror number?
6 JUROR SULLIVAN: Matt Sullivan, number 259.
7 THE COURT: And I need everyone to remain standing who --
8 Thank you. As a result -- Yes, sir?
9 JUROR PORTER: Paul Porter, 205. I got a niece and
10 nephew working Charleston Police.
11 THE COURT: City or county?
12 JUROR PORTER: City.
13 THE COURT: As a result of these experiences, do you all
14 feel that you can remain fair and impartial and render a fair
15 and impartial decision in this case based solely on the
16 evidence as it will be presented and on the law as the Court
17 will instruct? If your answer is yes, please take your seat.
18 (Whereupon, all those standing are seated and then one
19 person stands again.)
20 THE COURT: Let the record reflect -- If you're -- Are
21 you standing up because you're telling me you can't be
22 impartial or did you -- Are you ---
23 JUROR: I could.
24 THE COURT: Okay. Let me repeat. Let me say if you
25 could be fair and impartial, you can take your seat. If you

1 do not feel you can be fair and impartial, you would remain
2 standing.

3 (Whereupon, the juror is seated.)

4 THE COURT: Let the record reflect that all indicated
5 they could be fair and impartial. Is there any member of the
6 panel who has any religious, philosophical or moral beliefs
7 that would prevent them from sitting in judgment of a fellow
8 human being? If so, please stand at this time.

9 (Whereupon, no one stands.)

10 THE COURT: Is there any member of the panel who has ever
11 had what they would characterize as an unpleasant experience
12 with law enforcement that would affect your ability to be fair
13 and impartial? If so, please stand at this time.

14 (Whereupon, no one stands.)

15 THE COURT: Does any member of the panel know of any
16 reason whatsoever why he or she should not serve as a juror in
17 this case with particular emphasis being placed on your
18 ability to be fair and impartial to both the State and the
19 defense? If so, please stand at this time.

20 (Whereupon, no one stands.)

21 THE COURT: Are there any additional questions from the
22 State?

23 MR. VOIGT: None from the State, Your Honor.

24 THE COURT: From the defense?

25 MR. HARRIS: None, Your Honor.

1 THE COURT: Strikes will be ten and five. Who is going
2 to demonstrate for me? Mr. Robinson or Mr. Major? Ladies and
3 gentlemen, if your name is called, please come forward as Mr.
4 Major is doing and stand where he is standing, turn back
5 facing your -- your fellow panel members until either we seat
6 or excuse you as a juror. If you would, give the clerk your
7 undivided attention. Give us a few moments.

8 (Whereupon, there is a brief pause in the proceedings
9 while the jury list is generated, printed and
10 distributed.)

11 THE CLERK: Juror number 82, Kelly Grobmeyer, juror
12 number 82.

13 (Whereupon, a white female comes forward.)

14 THE CLERK: What say you for the State?

15 MR. VOIGT: The State would thank but excuse this juror.

16 THE CLERK: Ms. Grobmeyer, please have a seat back in the
17 audience. You've been excused from the trial of this case.

18 Juror number 42, Keith Culbreath, 42.

19 (Whereupon, a white male comes forward.)

20 THE CLERK: What say you for the State?

21 MR. VOIGT: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MR. HARRIS: Beg the Court's indulgence, Your Honor.

24 THE COURT: Mm-hmm.

25 MR. HARRIS: Please seat the juror.

1 THE CLERK: Mr. Culbreath, please have a seat in the jury
2 box. You've been selected as a juror in this case. Juror
3 number 14, Danielle Bowles, number 14.
4 (Whereupon, a black female comes forward.)
5 THE CLERK: What say you for the State?
6 MR. VOIGT: The State would thank but excuse this juror.
7 THE CLERK: Ms. Bowles, please have a seat back in the
8 audience. You've been excused from the trial of this case.
9 Juror number 107, Lorilee Hoyle, 107.
10 (Whereupon, a white female comes forward.)
11 THE CLERK: What say you for the State?
12 MR. VOIGT: Please present this juror.
13 THE CLERK: What say you for the defendant?
14 MR. HARRIS: Please seat the juror.
15 THE CLERK: Ms. Hoyle, please have a seat in the jury
16 box. You've been selected as a juror in this case. Juror
17 number 16, Alicia Brown, number 16.
18 (Whereupon, a black female comes forward.)
19 THE CLERK: What say you for the State?
20 MR. VOIGT: Please present this juror.
21 THE CLERK: What say you for the defendant?
22 MR. HARRIS: Please seat the juror.
23 THE CLERK: Ms. Brown, please have a seat in the jury
24 box. You've been selected as a juror in this case. Juror
25 number 275, Jessica Walters, 275.

1 (Whereupon, a white female comes forward.)
2 THE CLERK: What say you for the State?
3 MR. VOIGT: Please present this juror.
4 THE CLERK: What say you for the defendant?
5 MR. HARRIS: Please excuse this juror.
6 THE CLERK: Ms. Walters, please have a seat back in the
7 audience. You've been excused from the trial of this case.
8 Juror number 286, Cynthia Wilcher, 286.
9 (Whereupon, a black female comes forward.)
10 THE CLERK: What say you for the State?
11 MR. VOIGT: The State would thank but excuse this juror.
12 THE CLERK: Ms. Wilcher, please have a seat back in the
13 audience. You've been excused from the trial of this case.
14 Three strikes for the State. Juror number 63, Erica Gadsden,
15 63.
16 (Whereupon, a black female comes forward.)
17 THE CLERK: What say you for the State?
18 MR. VOIGT: Please present this juror.
19 THE CLERK: What say you for the defendant?
20 MR. HARRIS: Please seat this juror.
21 THE CLERK: Ms. Gadsden, please have a seat in the jury
22 box. You've been selected as a juror in this case. Juror
23 number 193, Alex Pearson, 193.
24 (Whereupon, a black male comes forward.)
25 THE CLERK: What say you for the State?

1 MR. VOIGT: Please present this juror.
2 THE CLERK: What say you for the defendant?
3 MR. HARRIS: Please seat the juror.
4 THE CLERK: Mr. Pearson, please have a seat in the jury
5 box. You've been selected as a juror in this case. Juror
6 number 33, Henry Cheves, 33.
7 (Whereupon, a white male comes forward.)
8 THE CLERK: What say you for the State?
9 MR. VOIGT: Please present this juror.
10 THE CLERK: What say you for the defendant?
11 MR. HARRIS: Please seat the juror.
12 THE CLERK: Mr. Cheves, please have a seat in the jury
13 box. You've been selected as a juror in this case. Juror
14 number 205, Paul Porter, 205.
15 (Whereupon, a black male comes forward.)
16 THE CLERK: What say you for the State?
17 MR. VOIGT: Please present this juror.
18 THE CLERK: What say you for the defendant?
19 MR. HARRIS: Please seat the juror.
20 THE CLERK: Mr. Porter, please have a seat in the jury
21 box. You've been selected as a juror in this case. Juror
22 number 251, Helen Spann, 251.
23 (Whereupon, a black female comes forward.)
24 THE CLERK: What say you for the State?
25 MR. VOIGT: Please present this juror.

1 THE CLERK: What say you for the defendant?
2 MR. HARRIS: Please present the juror.
3 THE CLERK: Ms. Spann, please have a seat in the jury
4 box. You've been selected as a juror in this case. Juror
5 number 52, Glenda Elayda, juror number 52.
6 (Whereupon, an Asian female comes forward.)
7 THE CLERK: What say you for the State?
8 MR. VOIGT: Please present this juror.
9 THE CLERK: What say you for the defendant?
10 MR. HARRIS: Please excuse this juror.
11 THE CLERK: Ms. Elayda, please have a seat back in the
12 audience. You have been excused from the trial of this case.
13 Juror number 115, Christina Janke, 115.
14 (Whereupon, an Asian female comes forward.)
15 THE CLERK: What say you for the State?
16 MR. VOIGT: The State would thank but excuse this juror.
17 THE CLERK: Ms. Janke, please have a seat back in the
18 audience. You have been excused from the trial of this case.
19 Four strikes for the State. Juror number 255, Stacy Stewart,
20 255.
21 (Whereupon, a white female comes forward.)
22 THE CLERK: What say you for the State?
23 MR. VOIGT: Please present this juror.
24 THE CLERK: What say you for the defendant?
25 MR. HARRIS: I beg the Court's indulgence, Your Honor.

1 THE COURT: Mm-hmm.
2 MR. HARRIS: Please seat the juror.
3 THE CLERK: Ms. Stewart, please have a seat in the jury
4 box. You've been selected as a juror in this case. Juror
5 number 259, Matthew Sullivan, 259.
6 (Whereupon, a white male comes forward.)
7 THE CLERK: What say you for the State?
8 MR. VOIGT: Please present this juror.
9 THE CLERK: What say you for the defendant?
10 MR. HARRIS: I beg the Court's indulgence for a moment.
11 THE COURT: Mm-hmm.
12 MR. HARRIS: Please seat the juror.
13 THE CLERK: Mr. Sullivan, please have a seat in the jury
14 box. You've been selected as a juror in this case. Juror
15 number 131, William Kufner, 131.
16 (Whereupon, a white male comes forward.)
17 THE CLERK: What say you for the State?
18 MR. VOIGT: The State would thank but excuse this juror.
19 THE CLERK: Mr. Kufner, please have a seat back in the
20 audience. You have been excused from the trial of this case.
21 THE COURT: The State has exhausted its strikes.
22 THE CLERK: Juror number 262, Cathy Thomas, 262.
23 (Whereupon, a white female comes forward.)
24 THE CLERK: Any challenge from the State?
25 MR. VOIGT: No challenge.

1 THE CLERK: What say you for the defendant?
2 MR. HARRIS: Please excuse this juror.
3 THE CLERK: Ms. Thomas, please have a seat back in the
4 audience. You have been excused from the trial of this case.
5 Juror number 70, Robin Givens, 70.
6 (Whereupon, a black female comes forward.)
7 THE CLERK: Any challenge from the State?
8 MR. VOIGT: No challenge.
9 THE CLERK: What say you for the defendant?
10 MR. HARRIS: Please seat the juror.
11 THE CLERK: Ms. Givens, please have a seat in the jury
12 box. You've been selected as a juror in this case. Juror
13 number 143, Julie Lowman, 143.
14 (Whereupon, a white female comes forward.)
15 THE CLERK: Any challenge from the State?
16 MR. VOIGT: No challenge.
17 THE CLERK: What say you for the defendant?
18 MR. HARRIS: Please seat the juror.
19 THE CLERK: Ms. Lowman, please have a seat in the jury
20 box. You've been selected as a juror in this case. Your
21 Honor, how many alternates?
22 THE COURT: Two, strikes are one and two.
23 THE CLERK: Picking for the first alternate. Juror
24 number 187, Laura Patrick, 187.
25 (Whereupon, a white female comes forward.)

1 THE CLERK: What say you for the State?
2 MR. VOIGT: Please present this juror.
3 THE CLERK: What say you for the defendant?
4 MR. HARRIS: Please present the juror.
5 THE CLERK: Ms. Patrick, please have a seat in the jury
6 box. You've been selected as a juror in this case. Now
7 picking for the second alternate. Strikes are one and two.
8 Juror number 184, Laura Owings, 184.
9 (Whereupon, a white female comes forward.)
10 THE CLERK: What say you for the State?
11 MR. VOIGT: Please present this juror.
12 THE CLERK: What say you for the defendant?
13 MR. HARRIS: Please excuse this juror.
14 THE CLERK: Ms. Owings, please have a seat back in the
15 audience. You have been excused from the trial of this case.
16 Juror number 132, Walter Latimer, 132.
17 (Whereupon, a white male comes forward.)
18 THE CLERK: What say you for the State?
19 MR. VOIGT: Please present this juror.
20 THE CLERK: What say you for the defendant?
21 MR. HARRIS: Please seat the juror.
22 THE CLERK: Mr. Latimer, please have a seat in the jury
23 box. You have been selected as a juror in this case. Your
24 Honor, the jury has been selected and are seated.
25 THE COURT: Any objections? Any motions regarding

1 selection of the jury from the State?

2 MR. VOIGT: None from the State, Your Honor.

3 THE COURT: From the defense?

4 MR. HARRIS: None from the defense, Your Honor.

5 THE COURT: Okay. Ladies and gentlemen, we appreciate
6 your patience. Again, I know that this is a long day for you,
7 but hopefully we'll get as much done today as possible so that
8 you will know what to expect of your week. Please know that
9 we do not take your time for granted. The bailiffs can take
10 the remaining panel up to Judge Harrington, courtroom 4C. Is
11 that correct, Mike?

12 THE CLERK: Yes, ma'am.

13 THE COURT: Thank you all. Have a great day.

14 (Whereupon, the remaining jury panel members leave the
15 courtroom at 12:05 p.m.)

16 THE COURT: Ladies and gentlemen, you have been selected
17 for the State of South Carolina versus Jerome Renaldo
18 Campbell. I need to talk with the lawyers about some
19 scheduling. If you would bear with me for a few moments, I
20 suspect we may break for lunch and then get an early start on
21 the afternoon. It's been a long morning for you all.

22 During this break, please do not discuss the case among
23 yourselves. Please don't speculate about what you think it
24 may or could be about. We appreciate your patience. If you
25 would, go with the bailiffs.

1 (Whereupon, the jury exits the courtroom at 12:07 p.m.)
2 THE COURT: You may be seated. Are there any pretrial
3 motions?
4 MR. VOIGT: None from the State, Your Honor.
5 MR. HARRIS: Your Honor, just that the witnesses in the
6 case that are non-law enforcement -- I mean Burckhardt would
7 be and ---
8 THE COURT: The case agent and the victims.
9 MR. HARRIS: The case agent and the victims.
10 THE COURT: Are you asking that the witnesses be
11 sequestered?
12 MR. HARRIS: Yes, Your Honor.
13 THE COURT: Any exception from the State?
14 MR. VOIGT: Your Honor, I'm going to call my investigator
15 first and I would ask that after he be called that he be
16 released from sequestration just to be ---
17 THE COURT: That's the case agent. We've already
18 exempted him.
19 MR. VOIGT: No, no, no, no. Ryan Kelly, my investigator
20 took some pictures, so I'm going to call him.
21 THE COURT: Oh, your investigator.
22 MR. VOIGT: So I'm going to put him up first and ---
23 THE COURT: That's Mr. ---
24 MR. VOIGT: It's just ---
25 THE COURT: That's Mr. Kelly?

1 MR. VOIGT: That's Mr. Kelly.
2 THE COURT: Okay. Any exceptions?
3 MR. HARRIS: No exceptions, Judge, except one question I
4 do have is the three victims are also three witnesses, if they
5 ---
6 THE COURT: We can't exclude them by the statute. The
7 statute gives them the absolute right to be present at all
8 proceedings.
9 MR. HARRIS: Okay.
10 THE COURT: All right, any other pretrial motions? Any
11 Jackson v. Denno? Any Biggers? Anything that I need to be
12 aware of?
13 MR. HARRIS: None, Your Honor.
14 THE COURT: Okay. That's unusual. All righty. Do y'all
15 want to break for lunch and start back like say at -- Well,
16 I'll be doing some other stuff. Two o'clock? Is that
17 acceptable? Because I've got to do some more guilty pleas. I
18 just thought about that. I was going to say 1:30, but I think
19 I'd be pushing it tight for myself.
20 MR. VOIGT: That's fine.
21 THE COURT: Is that good for y'all?
22 MR. HARRIS: That's fine.
23 THE COURT: Okay. (To bailiff) Please bring in the jury
24 for me. You ready to swear them, Mike?
25 THE CLERK: Yes.

1. (Whereupon, the jury comes into open court at 12:11 p.m.
2. after a brief discussion between the Court and other
3. counsel regarding guilty pleas to be done.)
4. THE COURT: Ladies, if you would, remain standing.
5. Ladies and gentlemen, remain standing. Raise your right hand
6. so that the Clerk can administer the oath.
7. THE CLERK: Ladies and gentlemen of the jury, once I have
8. given you this oath if you accept it, please respond by saying
9. "I do." Do you swear or affirm that you shall well and truly
10. try and a true deliverance make between the State of South
11. Carolina and the defendant at the bar whom shall have a charge
12. and a true verdict render according to the evidence and the
13. law, so help you God?
14. (Whereupon, all jury members respond with "I do.")
15. THE CLERK: If you have accepted this oath, please have a
16. seat.
17. (Whereupon, all jury members are seated.)
18. THE COURT: You may be seated. Ladies and gentlemen, as
19. I've indicated, you have been selected for the cases of the
20. State of South Carolina versus Jerome Renaldo Campbell. I'm
21. going to go ahead and give you your lunch break. We're going
22. to resume at 2:00. I know that seems like a long time, but
23. actually we're still going to be working for another thirty to
24. forty minutes before we can go to lunch and so I need to be
25. able to give adequate time to the remainder of the staff to go

1 to lunch as well and it doesn't make any sense to have you all
2 waiting during that time frame.

3 During the break, please do not discuss the case among
4 yourselves or with anyone else. Please don't speculate about
5 what you think it may or could be about. Please don't do any
6 independent research. That includes anything that could be
7 found on the internet or any other alternate source. As the
8 fact finders in this case, you are bound to decide this case
9 according to the evidence that you hear from the lips of the
10 sworn witnesses and the other evidence that will be
11 introduced.

12 Also, please do not have any contact with anyone in or
13 about the courthouse. There are a lot of witnesses in this
14 case and again, we would not want an innocent conversation to
15 be observed and misinterpreted. I hope that you all have a
16 great lunch. You will return directly to your jury room at
17 2:00. The bailiffs will show you how to do that and we will
18 see you at 2:00 at which time we will resume with opening
19 argument and instruction. Have a great lunch.

20 (Whereupon, the jury leaves the courtroom at 12:13 p.m.)

21 THE COURT: You may be seated. All right, I'll see you
22 all at 2:00.

23 MR. HARRIS: Thank you, Your Honor.

24 THE COURT: Thank you and Mr. Campbell will be taken into
25 custody as the case has been sworn and his bond has been

1 called.

2 MR. VOIGT: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 (Whereupon, there is a break in the proceedings from

5 12:13 p.m. until 2:19 p.m. When the proceedings resume

6 at 2:19 p.m., the defendant and all counsel are present,

7 but the jury is not yet present in the courtroom.)

8 THE COURT: Is the State ready to proceed?

9 MR. VOIGT: Yes, Your Honor.

10 THE COURT: Is the defense ready to proceed?

11 MR. HARRIS: Yes, Your Honor.

12 THE COURT: We apologize for the delay. We did not get

13 done with court until 1:35 and so I had to give staff adequate

14 time to collect themselves before we resumed session. I

15 understand that there is something about a juror that the

16 State wanted to bring to the Court's attention.

17 MR. VOIGT: May it please the Court, Your Honor.

18 THE COURT: Mm-hmm.

19 MR. VOIGT: My -- Member's of my client -- of my victim's

20 family were in the snack bar downstairs and saw members of the

21 jury conversing with family members and friends of the

22 defendant's. Perhaps I should wait for Mr. Campbell.

23 THE COURT: Oh, I apologize. I didn't realize he wasn't

24 up yet.

25 MR. VOIGT: Your Honor, they witnessed two members of the

1 jury conversing with a family member or friend of the Campbell
2 group that was also down there in the snack bar as well. One
3 person in that group was overheard to say, "They're on our
4 side," after she had conversed with these jurors and I -- and
5 that's all I know about it, but I'd like to bring it to the
6 Court's attention.

7 THE COURT: How are they certain they were jurors? It's
8 my understanding all the jurors left the building. They were
9 coming back in when I was leaving, just getting done with the
10 hearing.

11 MR. VOIGT: One of the jurors had a jury sticker on, Your
12 Honor.

13 THE COURT: And we're certain it was this jury and not
14 the other jury ---

15 MR. VOIGT: That was what I was ---

16 THE COURT: --- for Judge Harrington or Judge McDonald?

17 MR. VOIGT: That's what I was led to believe. It was
18 someone who was serving on this jury.

19 THE COURT: Well, I need something more specific than
20 that. That's nebulous. That doesn't tell me who it is.

21 MR. VOIGT: I believe that juror 63, Erica Gadsden, is
22 wearing a yellow shirt. The description I have is someone
23 wearing a yellow shirt and an older woman wearing a dark
24 jacket. That fits the description of Ms. Givens as best as I
25 can recollect. I believe she's juror 70. And, Your Honor,

1 the family member that overheard this -- overheard the person
2 who is present in the courtroom right now that made that
3 statement. So I can identify the person having made the
4 statement.

5 THE COURT: I understand that, but I'm not going get into
6 tit for tat between these families.

7 MR. VOIGT: I understand.

8 THE COURT: Because, you know, what is actually said and
9 what is perceived as being said can be a totally different
10 thing. I'm going to handle it the way the law prescribes it
11 should be handled.

12 MR. VOIGT: Thank you, Your Honor. I was just trying to
13 ---

14 THE COURT: But I'm not going to get into all that.

15 MR. VOIGT: Trying to give you as much information as I
16 have been provided.

17 THE COURT: Yeah. I'm certain that that is the
18 perception, but I'm a little hesitant about that. But I'm
19 going to deal with it ---

20 MR. VOIGT: Thank you.

21 THE COURT: --- pursuant to case law very shortly. Is
22 there anything from the defense?

23 MR. HARRIS: On that issue, Your Honor?

24 THE COURT: Yes.

25 MR. HARRIS: Fair enough. I mean we don't know which

1 jurors these are or anything. Like you said, we don't know if
2 it's jurors from another jury. No one in the family came in
3 here during jury selection. So to say it was randomly
4 somebody picking and they never saw our jury, A, and there's
5 three juries. There's three hundred jurors in the building,
6 three juries were selected, but to say it may be two -- these
7 two people and select two people based on what they were
8 wearing.

9 I don't think -- I don't -- I don't believe that -- Maybe
10 these two jurors were talked to by somebody and maybe they
11 were on this jury. I mean it's a very broad accusation and I
12 mean it just happens to be two African American jurors on my
13 jury. I mean that is -- You know, it just -- I would ask that
14 if we're going to get -- If you're going to remedy this by
15 excusing jurors that we would ---

16 THE COURT: No, I'm going to do a voir dire.

17 MR. HARRIS: Okay.

18 THE COURT: Of the entire panel.

19 MR. HARRIS: Okay.

20 THE COURT: And if they answer me that they have not done
21 it, that's the end of it.

22 MR. HARRIS: Okay.

23 THE COURT: Unless there's something more specific
24 regarding the identity of these individuals. They're under
25 oath and they're under a criminal -- the -- They can be

1 criminally sanctioned for failing to follow the Court's
2 instructions and I'm going to be very adamant and I'm going to
3 make them aware that somebody -- precisely what I told you not
4 to do happened.

5 They might have been talking about the weather. I don't
6 know. Southerners tend to be very animated and have very --
7 conversations that look more intimate than they -- than they
8 actually are and for example -- I'll use myself for an
9 example. I'm very careful when I leave the secure area of the
10 building because I'm naturally a very congenial person. If I
11 see parties in the lobby and I'm on my way to the post office,
12 I'm not going to be rude. I'm going to smile.

13 MR. HARRIS: Right.

14 THE COURT: Now would that person perceive that I'm on
15 their side? Yeah, probably. They're in probably one of the
16 most stressful situations of their life, especially if it's a
17 criminal defendant and I'll like nod and hello and smile and
18 keep moving. They're going to think, ooh, the judge is on my
19 side. Not so.

20 MR. HARRIS: Okay.

21 THE COURT: Or the -- Or the victims may be congregated.
22 I'm not going to just walk by people and not say hello and be
23 congenial, but it's funny what people do versus how it is
24 perceived.

25 MR. HARRIS: Right.

1 THE COURT: And so I think it may well be that it is
2 perceived that that is what happened, but I'm not certain that
3 that is what actually happened and I'm not going to go into
4 any extensive voir dire of a jury without more than that. Now
5 I'm going to do a voir dire, however, of the panel because
6 they're required to follow my instructions and if they
7 haven't, then I'm going to -- I'll deal with that.

8 MR. HARRIS: Your Honor ---

9 THE COURT: We'll take it as it comes, but I am -- I
10 think it is appropriate that I voir dire them and make sure
11 that they followed my instructions and that nobody had any
12 inappropriate conduct -- contact with anyone in or about the
13 courthouse. Any exception from the State?

14 MR. VOIGT: None, Your Honor.

15 THE COURT: From the defense?

16 MR. HARRIS: None, Your Honor.

17 THE COURT: Please bring in the jury.

18 BAILIFF: Yes, ma'am.

19 (Whereupon, the jury enters open court at 2:26 p.m.)

20 BAILIFF: They jury is present, Your Honor.

21 THE COURT: You may be seated. Ladies and gentlemen, we
22 appreciate your patience. As I indicated to you, we were
23 going to take a brief break and actually -- Yeah, the
24 alternates -- And actually while we're doing that, why don't
25 we also do this. Number 107 is the foreperson. So why don't

1 we -- And I apologize. I meant to tell you that as you were
2 bringing them down the hallway. If we could, have her take
3 the foreperson seat. I need the two of you to switch for me,
4 switch seats.

5 Ladies and gentlemen, as I indicated prior to the lunch
6 recess, we had some other matters that we needed to take up in
7 cases unrelated to this case and as circumstances would have
8 it, we did not finish that until 1:30, 1:35, and so I had to
9 give my staff adequate time to refresh themselves and get
10 something to eat and just get a second wind. So we appreciate
11 you all being so very patient with us as we are delayed in
12 restarting the trial, but please know that we were actively
13 involved in the Court's business and we do not take your time
14 for granted.

15 Before we begin that process of opening instruction and
16 opening argument, I gave the jury strict instructions that
17 they were not to have any contact with anyone in or about the
18 courthouse who did not have a juror sticker on because, again,
19 very innocent conversations could be very easily
20 misinterpreted and misconstrued. I need to ask you all did
21 any of you during the lunch and recess have any contact with
22 anyone in or about the courthouse who did not have a juror
23 sticker on? If so, if you did, I need you to raise your right
24 hand for me.

25 (Whereupon, one juror raises her right hand.)

1 THE COURT: Okay. Yes, ma'am? Tell me your name and
2 your ---

3 JUROR STEWART: When I was at lunch. Stacy Stewart. I
4 was at lunch.

5 THE COURT: And who did you speak with?

6 JUROR STEWART: I don't -- Some gentlemen was having
7 lunch. I mean I didn't speak about this.

8 THE COURT: You were at lunch in the courthouse or
9 outside the courthouse?

10 JUROR STEWART: Outside.

11 THE COURT: Okay, but you do not know it to be someone
12 involved in this case?

13 JUROR STEWART: No.

14 THE COURT: Okay. Is there anyone else who had any
15 contact with anyone in or about the courthouse, either in the
16 snack bar or any other parts of the building that did not have
17 a juror sticker on and you had any interaction with them?

18 (Whereupon, there is no further response from any of the
19 jury members.)

20 THE COURT: Okay. Let the record reflect that the
21 response was negative. I need to reinforce the Court's
22 instruction. Again, very innocent conversations can be
23 misinterpreted and misconstrued. There are many parties. As
24 you can see, the gallery is full with members of the victim's
25 family, as well as victim's -- I mean as members of the

1 defendant's family who are here to watch these proceedings, as
2 well as other individuals who are just interested in the court
3 process.

4 I need for you all to be aware that reports have been
5 made to the Court that conversations took place in the snack
6 bar otherwise with members of -- with differing parts of
7 members of the family and that there was a perception that the
8 jury might be inclined or already predisposed regarding this
9 case. Again, I don't have any independent information that
10 that is accurate. However, I will reinforce that even an
11 innocent conversation can be easily misinterpreted.

12 Emotions run very high during a trial. As you are well
13 aware, the allegations in this case are significant and
14 perception becomes reality. So I would ask that you very
15 stringently follow my instructions and have no conversation
16 with anyone in or about the courthouse who does not have a
17 blue juror sticker on. Again, I would not want an innocent
18 conversation to be observed by a third party and misinterpret
19 it. And again, just having a friendly conversation about
20 nothing related to the case could be very easily
21 misinterpreted. A smile, a handshake, a laughter or otherwise
22 can be very easily misinterpreted.

23 So I would ask that you strictly abide by those
24 instructions. Otherwise if you don't, I would have to do what
25 is called an individual voir dire of each juror. That's very

1 time consuming and can also result in a mistrial, which as you
2 could all imagine would be a gross waste of your time as well
3 as the Court's resources.

4 So if necessary, every morning I will voir dire the panel
5 regarding whether you followed the Court's instructions, that
6 being not only about contact but also about information
7 outside of the proceedings whether it be on the internet,
8 newspaper or any other media outlet because it is very
9 important. It is essential that your impartiality as twelve
10 individual citizens sitting as the fact finders in this case
11 never be questioned because the integrity of the process is
12 paramount and it must be maintained. Okay? So I hope that
13 each of you and I have no doubt that each of you will follow
14 the Court's instructions accordingly. Any exceptions from the
15 State?

16 MR. VOIGT: None from the State, Your Honor.

17 THE COURT: From the defense?

18 MR. HARRIS: None, Your Honor.

19 THE COURT: Ladies and gentlemen, we're about to try the
20 case of the State of South Carolina versus Jerome Renaldo
21 Campbell. What I will now say is intended to serve as an
22 introduction to the trial of this case. These remarks are not
23 a charge on the law of this case and just so that you know,
24 charge and instructions are interchangeable terms. Charge is
25 a legal term of ours which means instructions. So when you

1 hear me use the term charge, that simply means instructions.

2 These remarks are not a charge on the law. I will
3 instruct you on the law applicable to this case at the end of
4 the trial before you retire to consider your verdict. This is
5 merely an explanation of the procedure that we will follow in
6 the trial of this case so that you may better understand what
7 may be happening.

8 During the course of this trial, you will be given the
9 opportunity to take notes and the bailiffs are going to pass
10 out the notebooks to you and the pens. There is a white
11 sticker on the front of each notepad. Please write your juror
12 number on that sticker so that you will be able to identify
13 very easily which notepad belongs to you. I will give you
14 some additional instructions regarding note taking near the
15 end of this instruction.

16 The defendant is charged by four separate indictments
17 filed in this court with the crimes of assault with intent to
18 kill, three counts, and murder, one count, the elements of
19 which I will explain to you later. The indictments, ladies
20 and gentlemen, are simply the formal charge or charges by
21 which the case is brought into court and it is not in any
22 sense evidence of any of the allegations they may contain.

23 The defendant has pled not guilty to the indictments.
24 The State therefore has the burden of proving each of the
25 elements of the indictments beyond a reasonable doubt and it

1 will be your duty, ladies and gentlemen, to decide whether the
2 State has met that burden or not.

3 Your purpose as jurors is to find and determine the
4 facts. You are the sole judges of the facts. If at any time
5 I make any comment regarding the facts, you must disregard it.
6 You are to determine the facts from the testimony you hear and
7 the other evidence introduced in court. It is up to you to
8 determine the inferences which you feel may be properly drawn
9 from the evidence. It is especially important that you
10 perform your duty of determining the facts diligently and
11 conscientiously because ordinarily there is no way to correct
12 an erroneous determination of facts made by a trial jury.

13 On the other hand and with equal emphasis, the same law
14 that makes you the judges of the facts makes me the judge of
15 the law. The law as given by the Court is the only law you
16 may consider. You must accept and follow it even though you
17 may disagree with it. I cannot tell you what the facts are
18 and you cannot disagree with the Court about what the law is
19 or what the law should be.

20 Your responsibility, ladies and gentlemen, is to take the
21 law as I instruct it and apply it to the facts as you find
22 them from the testimony of the witnesses and the other
23 evidence that will be introduced during the course of this
24 trial. After doing that, you will render your verdict, a true
25 and just verdict, under the solemn oath that you have taken as

1 jurors in this case.

2 Until I advise you to begin your deliberations, you must
3 not discuss this case with anyone. That includes your fellow
4 jurors, your friends, your family members or anyone involved
5 in the case. After the case is submitted to you, you must
6 discuss it only in the jury room with your fellow jurors.

7 The attorneys and the parties in this case have been
8 advised that they should not speak with you at all. So if you
9 see anyone involved in the case around the courthouse, in a
10 local restaurant or even in the garage or on the street and
11 they don't speak with you, please don't think they're being
12 unfriendly. They are simply following the Court's
13 instructions. Again, we would not want an innocent
14 conversation to be misinterpreted or misconstrued.

15 During the trial, you're not to read, listen to or watch
16 any news reports about this case. That includes anything that
17 could be in the newspaper, on radio, television or internet
18 and you're not to do any independent research regarding any
19 fact or issue in this case on the internet.

20 You must not consider anything that you may have read or
21 heard about this case outside the courtroom, whether before or
22 during the trial. It is important and essential that you
23 maintain an open mind and not decide any issue in this case
24 until all of the evidence has been presented, the parties have
25 made their closing arguments and I have instructed you on the

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2 (Whereupon, the proceedings continue beginning at 10:40
3 a.m. The defendant and all counsel are present, but the
4 jury is not yet present in the courtroom.)

5 THE COURT: What are the names of the -- of the
6 defendant's family members, their surnames?

7 MR. HARRIS: Their surnames, Your Honor?

8 THE COURT: Mm-hmm.

9 MR. HARRIS: There's Coaxum.

10 MR. CAMPBELL: Coaxum.

11 MR. HARRIS: Campbell and Ladson.

12 THE COURT: And what are the surnames of the victim's
13 family?

14 MR. VOIGT: German, Your Honor. We also as a part of my
15 motion would like to submit the --

16 THE COURT: I didn't ask that question. I asked a very
17 direct question and I'm seeking a direct answer.

18 MR. VOIGT: Yes, Your Honor.

19 THE COURT: What are the last names of the victim's
20 family?

21 MR. VOIGT: German, Your Honor.

22 THE COURT: And that is the only surname?

23 MR. VOIGT: March and Bobo, Your Honor.

24 THE COURT: M-A-R-C-H?

25 MR. VOIGT: Yes.

1 THE COURT: And Bobo, B-O-B-O?

2 MR. VOIGT: Yes.

3 THE COURT: So their surnames then are German, March and
4 Bobo?

5 MR. VOIGT: Yes, Your Honor.

6 THE COURT: Who are the other individual surnames that
7 you mentioned in your opening argument, Mr. Voigt?

8 MR. VOIGT: Frank Haigler, Your Honor, and Michael Allen.

9 THE COURT: Those are the only additional names that you
10 mentioned?

11 MR. VOIGT: Of the lay witnesses, yes, ma'am.

12 THE COURT: You didn't mention German?

13 MR. VOIGT: I did mention German, Your Honor. I would
14 have thought that that would have -- would have occurred.

15 THE COURT: So the only names you mentioned in your
16 opening argument were Haigler, Allen and German?

17 MR. VOIGT: Yes. I also -- I highlighted Coaxum and
18 Ladson as well as part of my presentation to demonstrate the
19 defendant's relationship to several witnesses.

20 THE COURT: And those are all the last names that you
21 used in your opening argument?

22 MR. VOIGT: Including ---

23 THE COURT: Haigler, Allen, German, Coaxum and Ladson?

24 MR. VOIGT: As well as Campbell.

25 THE COURT: Campbell. I knew there was one that I

1 couldn't remember. And what is the last name of the
2 defendant's sister?

3 MR. HARRIS: One is Coaxum and one is Ladson.

4 THE COURT: Okay. The State may proceed with its motion.

5 MR. VOIGT: May it please the Court, Your Honor.

6 THE COURT: Let me ask another preliminary question. I
7 apologize. Mr. Harris, have you had an opportunity to watch
8 the video that was procured from the snack bar?

9 MR. HARRIS: I have not, Your Honor.

10 THE COURT: Is there a reason Mr. Harris has not been
11 provided with a copy of the video?

12 MR. VOIGT: I called Mr. Harris as I detailed your clerk,
13 Your Honor, at approximately 8:45 to 9 o'clock this morning
14 and offered him the opportunity to view the video before we
15 went to court. Mr. Harris informed me that he would rather
16 take it up once we got to court.

17 THE COURT: When did you procure a copy of the tape?

18 MR. VOIGT: I believe that a copy was procured by someone
19 in my office yesterday afternoon.

20 THE COURT: Was there a reason you didn't turn it over
21 then?

22 MR. VOIGT: I hadn't viewed it. I was unaware of the
23 contents then. When I left the office at 5:30, it was not
24 available to me.

25 THE COURT: Say that one more time?

1 MR. VOIGT: When I left the office at 5:30 yesterday, it
2 was not available to me. I did not see it ---
3 THE COURT: So you did not. When did you watch it?
4 MR. VOIGT: I watched it when I came to the office this
5 morning at approximately 8:30.
6 THE COURT: Okay. Is there a reason you have not watched
7 the video yet, Mr. Harris?
8 MR. HARRIS: Your Honor, I was going to come here and
9 watch it today. I assumed we would watch it. I didn't find
10 out about it until this morning. I didn't get the motion
11 until I walked in here at court. I got here at 9:30 in order
12 to get a shirt and tie to my client because they told my
13 client's wife at 8:30 that the attorney has to give it to
14 them.
15 THE COURT: That's correct.
16 MR. HARRIS: So I came down -- I left my home. I had to
17 take my mother to the airport and I apologize that delayed me
18 this morning. I got here at 9:30 as soon as I could. You
19 know, we were told we were starting at 10. I was hoping to --
20 I thought we could either go to chambers to watch the video
21 because I'm assuming it's only 25 seconds long.
22 THE COURT: No, it's a lot longer than that. The
23 operative portion is fairly short, but the entire video is
24 much longer than that.
25 MR. HARRIS: Okay, but I didn't have -- I mean I got a

1 motion while I was -- I was asked while in court if I got a
2 motion. Because I was here, I didn't have the accessibility
3 to print it or to respond to it. So that's what I'm -- You
4 know, it was -- it happened between 8:45 and 9:30 this
5 morning. You know, that's a 45 minute window.

6 I didn't have time to go from North Charleston to here
7 and watch the video in time and again, I thought we were
8 starting at 10 o'clock, which would have been 30 -- it would
9 only have given me 30 minutes when I got here. I didn't have
10 time to write a motion or a response or anything like that
11 because like I said, Your Honor, this is something that came
12 up this morning.

13 THE COURT: And what time did you file your motion, Mr.
14 Voigt?

15 MR. VOIGT: It was officially filed, Your Honor. I sent
16 my legal assistant down to the Clerk of Court's office and the
17 date -- the time stamp is 9:54. I believe that I sent a copy
18 to your clerk approximately 20 to 25 minutes earlier than that
19 and that would have been the same copy that Mr. Harris would
20 have received. I also sent an amended copy a couple minutes
21 later because I realized I had the wrong indictment numbers on
22 my motion.

23 (Whereupon, the Court has a brief conference with the law
24 clerk regarding the time of the transmission of the
25 motion.)

1 MR. VOIGT: And I sent the amended copy to Mr. Harris,
2 too, and when I walked into the courtroom this morning, I
3 placed a written copy on counsel's table and informed Mr.
4 Harris that I had filed a motion.

5 THE COURT: Do you have the ability to let Mr. Harris
6 watch? Do you want to watch the video now?

7 MR. HARRIS: I'd like to. I would like to before we -- I
8 mean you just ---

9 THE COURT: Could you all give Mr. Harris the opportunity
10 to watch the video?

11 MR. VOIGT: I believe that you have the video. May I
12 approach?

13 (Whereupon, there is a break in the proceedings while
14 defense reviews the snack bar surveillance video.)

15 MR. VOIGT: Your Honor, Mr. Harris has reviewed ---

16 (Whereupon, the Court makes a gesture to stop Mr. Voigt
17 from speaking further at that time.)

18 MR. VOIGT: Thank you very much.

19 THE COURT: I'll inquire of him when I'm ready.

20 (Whereupon, there is a brief break in the proceedings.)

21 THE COURT: Mr. Harris, have you had an opportunity to
22 review the video?

23 MR. HARRIS: I have, Your Honor.

24 THE COURT: And Mr. Voigt, you were going to say

1 MR. VOIGT: Yes, Your Honor, and I apologize.
2 THE COURT: Certainly.
3 MR. VOIGT: In furtherance of the State's motion, Your
4 Honor, the State would offer two statements that were
5 collected by my office from Tiffany Peacock and Trenell
6 German, the contents of which were what I relayed to the Court
7 yesterday which got this started about the observations of the
8 family members in the snack bar and I've -- Mr. Harris has
9 reviewed those and I would offer those as -- in addition with
10 the video as Court's 1, 2 and 3.
11 THE COURT: Any exception?
12 MR. HARRIS: No exception, Your Honor.
13 THE COURT: You may proceed.
14 COURT REPORTER: It would be 2, 3 and 4. We already have
15 a 1.
16 MR. VOIGT: As a Court's exhibit?
17 COURT REPORTER: Yes.
18 MR. VOIGT: Okay.
19 (Whereupon, the DVD video is marked as Court's Exhibit
20 Number 2 and the two affidavits are marked as Court's
21 Exhibits Number 3 and 4.)
22 MR. VOIGT: For the record, Your Honor, there will be 2
23 as the video, 3 as the statement of Trenell German and 4 as
24 the statement of Tiffany Peacock.
25 Your Honor, as I set out in my motion, I believe that the

1 procedure employed by the Court yesterday to determine the
2 truthfulness of whether or not such contact had occurred
3 involved voir dire to the general jury panel. One of our
4 jurors volunteered that she had had a conversation at a
5 sandwich shop, although the contents of that conversation were
6 innocent and I believe we all -- we all believed that. The
7 two ladies though that I had brought to the Court's attention
8 ---

9 THE COURT: Actually you were very vague about who it was
10 and your motion is a bit misleading because you identify two
11 jurors, but you did not -- by their number, but you did not do
12 that on yesterday.

13 MR. VOIGT: Yesterday, Your Honor ---

14 THE COURT: You indicated someone in a yellow shirt,
15 which I -- I knew who that juror was, but you indicated
16 another juror who you really could not identify and you had a
17 very vague description of her.

18 MR. VOIGT: And ---

19 THE COURT: So to the extent that it is stated in the
20 motion that you actually brought with specificity those jurors
21 to the Court's attention is a bit misleading. So that needs
22 to be corrected for the record.

23 MR. VOIGT: And I would be happy, Your Honor, to go back
24 in the transcript of all of my remarks yesterday.

25 THE COURT: You don't need to because I've already

1 reviewed it. You may proceed.

2 MR. VOIGT: Thank you, Your Honor. I believe I named
3 Miss Gadsden by name and I believe, as I have done in my
4 motion, to the best extent possible I believe that the other
5 juror's name is Robin Givens, a name that I supplied in open
6 court to you, Your Honor. I did that because I know she's a
7 juror. I can recognize her as a juror, but in my notes
8 sometimes I -- I don't know which one of these people is
9 which. Miss Gadsden I could clearly identify because of the
10 bright yellow shirt and I -- I did give you that name
11 yesterday to the best extent I could.

12 Neither one of those ladies raised their hands to
13 indicate a conversation. I watched the ladies from where my
14 vantage point was. I observed nothing unusual about the juror
15 that I would call Ms. Givens for lack of a better term or
16 juror number 70, but Miss Gadsden clearly looked out into the
17 audience into the ---

18 THE COURT: I watched her the entire time and frankly,
19 she was avoiding my eyes and she looked toward the bailiffs.
20 So I would have to tell you that I don't find particular
21 veracity in that statement because I deliberately watched
22 both. I watched her specifically because you identified her
23 as having a yellow shirt on.

24 MR. VOIGT: Thank you, Your Honor. Nevertheless, I sat
25 on this chair and I believe that for a brief period of time,

1 not during the entire time that the Court was addressing those
2 jurors, I observed Miss Gadsden look out in that general
3 vicinity and that's -- that's -- and I'm not going to go any
4 further than that, but ---

5 {Whereupon, counsel for the State indicates the gallery
6 behind the defense table when pointing and stating
7 "general vicinity."}

8 THE COURT: I would caution you not to.

9 MR. VOIGT: Thank you, Your Honor, but that was an
10 observation which I will stand by. Nevertheless, neither one
11 of the ladies raised their hands. I believe that the Court
12 gave them the opportunity to give an innocent explanation were
13 there one for any of that, for any of the conversation. The
14 conversation is clearly captured on the video. It is not a --
15 the kind of innocent thing that the Court went to at length
16 and described to the jury about, you know, a congenial
17 greeting of sorts. I think that the conversation was more
18 than that.

19 It belies the fact -- you know, it belies their
20 indication to the Court that no conversation took place.
21 Ordinarily, had there been an innocent explanation and an
22 admission to such, there would be no way of asserting that
23 they were anything other than impartial and I believe the case
24 law indicates that where there has been -- where a juror has
25 deliberately misled the Court, and I believe the actions of

1 those two jurors indicate that they have, that they are not to
2 be given the same presumption of impartiality.

3 I think that the conduct of jurors should be free from
4 all extraneous and improper influences. I believe that they
5 should be impartial. I believe that the case law is clear on
6 that and I believe that they have demonstrated to the Court
7 that they cannot be that way and I would ask that you remove
8 them from the case in this matter.

9 THE COURT: Mr. Harris, would you like to respond?

10 MR. HARRIS: Thank you, Your Honor. May it please the
11 Court.

12 THE COURT: Yes, sir, you may proceed.

13 MR. HARRIS: Your Honor, I -- This was brought to our
14 attention, as it was, Your Honor, right after lunch. I -- And
15 I'm not -- I did the same thing you're talking about because I
16 knew exactly which one they were talking about. I knew one
17 they said was in a yellow shirt, one person, and the person
18 that was in that video was not in the courtroom after lunch
19 because when I brought that -- when it was brought to my
20 attention, I asked what ---

21 THE COURT: What person are you referring to?

22 MR. HARRIS: They say it's his sister, but it's not.
23 It's a cousin and I don't think she's in the courtroom today.

24 THE COURT: I need you to be more specific for the
25 record. When you say you're referring to "that person was not

1 in the courtroom", what do you mean?

2 MR. HARRIS: The person on the video. Let me get her.

3 THE COURT: You're saying the person depicted on the
4 video ---

5 MR. HARRIS: On the video.

6 THE COURT: --- was not in the courtroom after lunch?

7 MR. HARRIS: Right.

8 THE COURT: Okay. Now I'm clear what you're saying.

9 MR. HARRIS: Okay.

10 THE COURT: You may continue.

11 MR. HARRIS: And, Your Honor, two things. One, if this
12 was more than -- you know, there is no audio on this video. I
13 argue this was no more than a passing I know you, hey, what's
14 going on, because no one had seen this jury pool and I'm not
15 saying that excuses any of the jurors of saying I didn't have
16 a conversation. No one had seen this jury pool. We picked
17 the jury and then they went to lunch.

18 If someone in the family had said -- had walked up and
19 said there's some jurors that's on this jury, let me walk up
20 and talk to them, what my explanation from their family was
21 when the person they said they walked up, they recognized
22 them, they waved their hand, they said I'm not supposed to
23 talk to jurors. They didn't -- they said they didn't have a
24 word to speak with the person in the yellow shirt.

25 So therefore, I can understand how you -- On the video,

1 you don't see -- you see the person leaning in and talking to
2 the person on the right. There's nothing that's been shown to
3 us that shows that these two jurors know each other in such an
4 intimate way that they're going to know the same group of
5 friends or anything to that aspect.

6 You know, like I said, it would be something that we need
7 to talk to the jurors individually I believe because I think
8 the one in the yellow shirt, Ms. Gadsden, would say I'm
9 sitting at a table having lunch with a fellow juror because I
10 can't talk to anybody else and this person walks up and talks
11 to the person sitting here.

12 Like I said, there's no audio on this video, so you can't
13 tell if she's talking to the person in the yellow shirt. Just
14 from the -- me watching it a few minutes ago, it doesn't look
15 like she's talking to the person in the yellow shirt, but I
16 also say that I -- we don't know that this is anything more
17 than a innocent hey, I know you from somewhere. They didn't
18 know this person was on this jury. I mean that's what I'm
19 saying. No one had seen this jury before the afternoon
20 session because we sent them directly to lunch and nobody came
21 in the courtroom.

22 So I'd ask Your Honor -- and also to try to -- you know,
23 we have a juror that's already trying to get off the jury
24 once. We don't know if he's going to get off tomorrow if he
25 happens to know somebody that we talk about or that we bring

1 in here. If we excuse two jurors today and one tomorrow,
2 we've got a mistrial built in already at eleven jurors. So we
3 don't know because the gentleman said he could not be
4 impartial if he knew the family. So if we come in tomorrow
5 and he says, oh, yeah, I played basketball with this witness
6 and I can't be impartial, then we've got eleven jurors.

7 So if -- if Your Honor is going to grant a motion to
8 excuse jurors, the only person that shows on that video
9 clearly that is talking to a person, a relative of my family,
10 would be Ms. Givens, juror 70, and again, she comes in with a
11 jacket on and we don't know if it's clear that she had a juror
12 badge on or not. So the only person we see a juror badge on
13 is Miss Gadsden, who has on a yellow shirt.

14 So I'd ask that if Your Honor is going to excuse one that
15 you excuse Ms. Givens based on that you can see somebody
16 talking to her, but we don't know what that conversation
17 entails. Thank you.

18 THE COURT: You're welcome. I've had the opportunity to
19 watch the video. I've watched it several times and the
20 operative portions several times, which spans a fairly short
21 period. It appears from the video that some members and I
22 don't know whether they are members of the defendant's family,
23 I take that for granted based on what has been represented to
24 the Court, walk into the snack bar and make contact with a
25 juror who is -- they're sitting at a round table.

1 Her back is facing the camera. You really cannot see
2 her. The only way you would be able to identify her is the
3 fact that she walked in -- into the snack bar and you see
4 where she is seated with the young lady with the yellow shirt
5 who is facing toward the camera.

6 A person walks in and a comment it looks like is made and
7 she stands back and does a gesture with her hands almost like
8 -- almost like surprised to see the person. They interact,
9 which you cannot really see that interaction except for one
10 perspective on camera. There's been a representation that
11 hugging took place. There is absolutely no indication of any
12 hugging on the video and based on my perspective, there is no
13 interaction with the young woman in the yellow shirt with
14 anyone. If anything, she -- she is quiet. She goes -- You
15 see her get up as everyone is leaving, put her stuff in the
16 garbage can and then exit with a group of people.

17 And I looked very carefully to see if anyone could
18 observe anyone making statements. It's just really -- It sort
19 of -- It befuddles me a little because I'm a -- I'm trying to
20 figure out and I looked at it objectively to see when a
21 statement could have been made. There is a large group of
22 people, clearly all known to one another, who are leaving the
23 snack bar at the same time -- point in time. Other than that,
24 there's no interaction with them and they're so far away you
25 would not be able to hear what they're saying even though

1 there's no audio on the -- on the video itself.

2 But what's troubling to me, however, is that once the
3 Court gave the instruction that you're not to have any
4 interaction with anybody that doesn't have a juror sticker on,
5 there's clearly interaction with -- I don't know the juror's
6 number and I'm going to have to conduct some additional
7 inquiry of them, is that clearly there is some interaction
8 with a member of the defendant's family and a juror and that
9 was clearly prohibited and should not have taken place.

10 Now I asked the question about the -- the surnames
11 because I wanted to see if we had mentioned them during voir
12 dire and if there had been some deliberate concealment on the
13 part of any of the jurors during that process and when I
14 looked back through the witness lists that were propounded to
15 the Court, let me see, there was a Charise Coaxum that was
16 listed as a witness, a Sandra Campbell. Sandra Campbell.
17 Aaron Burnham.

18 Of the last names that were surnames, there was a Coaxum
19 and there was a Ladson. No, I'm sorry. There was Coaxum,
20 Campbell. There was no mention of a Ladson and then on the
21 State's list -- There was on the defendant's list a -- a
22 Robinson, but that's the GSR person, I assume some expert that
23 they have retained. There was a Burnham and there was a
24 Richardson. However, there was no mention of those names to
25 me by counsel when I asked.

1 On the State's list, again the surnames German, Allen,
2 McCarthy, Tawney, Haigler, Glover, but not -- but certainly
3 German and Ladson were mentioned and Campbell were listed as
4 potential surnames and while those -- while the particular
5 individuals may not have been listed and I believe that I
6 asked what the defendant's sisters' last names were, they said
7 Coaxum and Ladson. While their first names may not have been
8 mentioned, I don't know that there would have been any
9 indication without a mention of first names of a juror
10 listening to that information.

11 It is possible that they did not recognize -- because the
12 whole family was not in here during jury selection, it is
13 possible that they may have recognized one another later, but
14 certainly it should have been disclosed in voir dire when the
15 Court asked did you have any interaction with anyone during
16 the lunch and recess. Certainly you should have disclosed
17 that we saw -- Just out of an abundance of caution, you should
18 have disclosed we saw some people in the -- in the break room
19 and it is possible that I know them and I need to disclose
20 that. And I find it troubling that that was not disclosed
21 because it is not only the actual propriety that we must all
22 exercise, it is the appearance because perception is reality
23 and -- and I said that on yesterday that I was not going to
24 get into sort of a tit for tat because --

25 I'll give you a short story from Seinfeld. As George

1 Costanza would say, if I believe it, it's not a lie. So in
2 other words, if I perceive it, it's real to me. So I don't --
3 I believe that the people who say they overheard that
4 perceived that they heard that, although the video does not
5 support it because there's no way you can tell what is being
6 said or not being said and maybe I'm just naïve, but I can't
7 imagine I would say something that inculpatory when people I
8 know are walking through me where they can hear it.

9 But then, you know, stranger things have happened. But I
10 have no way of independently judging that because there is no
11 audio on the video and I don't know what was said. I just
12 know the logistics. I've been in that snack bar. The --
13 Although I go down there, I've been in there very rare times,
14 it's a large, vacuous area. I don't -- You know, there are --
15 I was surprised at how many people were down there having
16 lunch, how much court staff has lunch down there. I was
17 really shocked.

18 But I don't know that from where they were sitting, which
19 is way on the end by these windows, if you could hear what
20 somebody is saying way at the end of the door. Now there was
21 some people sitting at what I guess you could consider a lunch
22 counter of sorts, but where the talking would have been taking
23 place is when you see members of the victim's family walking
24 through members of the defendant's family and there does not
25 appear to be any discussion going on at that time.

1 Do I believe that's the perception? Yeah, absolutely, I
2 believe that's the perception and that is why I strictly gave
3 the instruction not to have any interaction with anyone and I
4 may have to instruct the jury not to have lunch in the snack
5 bar at all because there's too many people milling around the
6 courthouse and people do look very different in the courthouse
7 than they look in a courtroom.

8 But I'm going to voir dire the individual jurors and then
9 we'll see where we go from there because I need some answers
10 and I don't need somebody else's perception. I need their
11 answers about what actually took place and who they interacted
12 with and it is correct that -- and I don't know. I'll have to
13 take Mr. Harris' word for it that these individuals that may
14 have had interaction were not in the courtroom after lunch,
15 which may well have signaled this particular juror's memory or
16 not signaled it. In her mind, I don't know, she may have
17 interacted with somebody that she didn't know was involved in
18 the case, somebody she may have seen after a number of years,
19 an acquaintance or otherwise.

20 But since I knew of the specific juror that was
21 identified, the young lady in the yellow, I specifically
22 looked at her while I was talking and at no time did I see her
23 avert her eyes. If anything, she was trying not to look at
24 me. She was looking down at the floor. She looked over at
25 the bailiffs, but I was observing her specifically because I

1 wanted to know and make an independent judgment about whether
2 she was being misleading or not or whether in fact she had
3 some contact.

4 But the video very clearly shows her not really -- She's
5 more of a -- She's just in -- She's there because she's eating
6 lunch with this other lady, but I don't really see her having
7 anything other than ordinary social hospi -- I mean if the
8 person that I guess you could say liberally waved at her, it
9 would have been really rude for her not to have waved back or
10 to have acknowledged it in some way.

11 Which is the same observation I made on yesterday which
12 is why I avoid the public areas of this courthouse because I'm
13 a social -- I'm not going to be rude to somebody if they say
14 hi to me. I'm not going to not speak to them, but I also am
15 cognizant enough to know that if I see a criminal defendant or
16 if I see a victim's family and I exercise ordinary social
17 hospitality, they're going to misinterpret that. They're
18 going to be like, the judge smiled at me, the judge waved at
19 me and -- and frankly, I'm not going to remember who I waved
20 at or smiled at because my mind is 20 miles away doing
21 something else. It's on to the next thing, but I'm not going
22 to be rude to somebody as I'm walking through the courthouse
23 and I don't think anybody else would be either, but could that
24 be very easily misinterpreted? Absolutely.

25 Mr. Robinson, I need you to get -- I need you to get

1 juror number 63 for me, Miss Gadsden, and juror number 70,
2 Miss Givens, and have them stand outside in that hallway for
3 me, please.

4 (Whereupon, there is a brief pause in the proceedings
5 during which the Court views a portion of the video
6 again.)

7 THE COURT: Okay, could you bring in Miss Givens first?

8 BAILIFF: Miss Givens?

9 THE COURT: Pardon me?

10 BAILIFF: Miss Givens?

11 THE COURT: Yeah, number 70, Miss Givens.

12 (Whereupon, juror number 70, Miss Givens, is brought into
13 the courtroom.)

14 BAILIFF: Number 70, Miss Givens.

15 THE COURT: Hi, Miss Givens, how are you?

16 JUROR: Fine.

17 THE COURT: If you would, state your name for the record,
18 please.

19 JUROR: Robin Givens.

20 THE COURT: Miss Givens, I want to ask a question. Were
21 you in the snack bar on yesterday having lunch downstairs in
22 the courthouse?

23 JUROR: Mm-hmm.

24 THE COURT: And who did you have lunch with?

25 JUROR: Number 63, I can't remember her name.

1 THE COURT: Okay and while y'all were having lunch, did
2 some people come into the snack bar that you recognized?
3 JUROR: Yeah, a girl.
4 THE COURT: And who was that?
5 JUROR: I can't remember her name.
6 THE COURT: Where do you know her from?
7 JUROR: James Island.
8 THE COURT: Okay and when you say you know her from James
9 Island, what do you know of her from James Island?
10 JUROR: We -- I know her through another friend of mine
11 that lives on James Island.
12 THE COURT: Okay. When you say you know her through
13 another friend of yours, what -- how would you characterize
14 that?
15 JUROR: We've hung out together a few times.
16 THE COURT: You mean with the person you said hello to?
17 JUROR: Mm-hmm.
18 THE COURT: Okay. When you say you hung out, what do you
19 mean?
20 JUROR: We went to birthday parties together, like that.
21 THE COURT: Okay. Have you seen -- How long ago was
22 that?
23 JUROR: Last year in like June or July or something like
24 that.
25 THE COURT: Have you seen her since then?

1 JUROR: No, not since then before yesterday, no.

2 THE COURT: Okay and would you consider her a close

3 friend of yours?

4 JUROR: No.

5 THE COURT: Do y'all talk on the phone or have any

6 interaction other than the birthday party and when you saw her

7 yesterday?

8 JUROR: No.

9 THE COURT: And do you know her name?

10 JUROR: I can't recall her name. She named after a

11 champagne or a wine or something. Oh, I can't recall her

12 name.

13 THE COURT: Okay. What -- Tell me in your own words what

14 happened when she -- when you were sitting in the snack bar on

15 yesterday?

16 JUROR: We hailed each other.

17 THE COURT: When you say you hailed each other, tell me

18 what that means?

19 JUROR: Hi, how you doing, I ain't seen you in a long

20 time.

21 THE COURT: Mm-hmm.

22 JUROR: Stuff like that.

23 THE COURT: Were you surprised to see her?

24 JUROR: Yeah, mm-hmm.

25 THE COURT: To your knowledge, is she involved in this

1 case at all?

2 JUROR: Not to my knowledge.

3 THE COURT: Okay. Did you all have any discussion about
4 this case?

5 JUROR: No.

6 THE COURT: Did you all -- What did you all -- Other than
7 what you said, what else did you say?

8 JUROR: Then we just started talking about the friend I
9 told you about.

10 THE COURT: The friend in common that you have?

11 JUROR: Yeah, mm-hmm.

12 THE COURT: And then what else did you talk about?

13 JUROR: And she spoke about her -- that she moved in with
14 her grandmother.

15 THE COURT: Okay.

16 JUROR: That was it.

17 THE COURT: And again I ask did you in any way have any
18 interaction or discussion about this case?

19 JUROR: No.

20 THE COURT: Did you talk about the facts and
21 circumstances of this case?

22 JUROR: Oh, no, uh-uh.

23 THE COURT: To your knowledge, was she -- is she related
24 in any way to the defendant?

25 JUROR: Not to my knowledge.

1 THE COURT: Is she in any way related to the victims in
2 this case?

3 JUROR: Not to my knowledge.

4 THE COURT: Okay and did you hear the Court's
5 instructions not to speak to anyone that did not have a juror
6 sticker on?

7 JUROR: Yes, I did.

8 THE COURT: Okay and you just -- you forgot, is that what
9 you're saying?

10 JUROR: Yes.

11 THE COURT: Okay, because you saw what you considered to
12 be an old acquaintance? Is that an accurate statement?

13 JUROR: Just somebody to see from my neighborhood was
14 just ---

15 THE COURT: It was just that?

16 JUROR: Yeah, that was just that.

17 THE COURT: Okay and if you would, stand back in the
18 hallway -- Well, actually I need to ask this question. As a
19 result of that interaction, do you feel that you can remain
20 fair and impartial in this case?

21 JUROR: Yes.

22 THE COURT: Do you feel that you can render a fair and
23 impartial verdict in this case?

24 JUROR: Yes.

25 THE COURT: Do you feel that you can render a fair and

1 impartial verdict based solely on the evidence as it will be
2 presented and on the law as the Court will instruct?
3 JUROR: Yes.
4 THE COURT: Okay. Ma'am, if you would stand out in the
5 hallway please and do not discuss what we have discussed in
6 any manner whatsoever.
7 JUROR: Okay, thank you.
8 THE COURT: You're welcome.
9 (Whereupon, the juror leaves the courtroom with the
10 bailiff.)
11 THE COURT: Are there any additional questions in voir
12 dire for the juror from the State?
13 MR. VOIGT: No, Your Honor.
14 THE COURT: From the defense?
15 MR. HARRIS: None, Your Honor.
16 THE COURT: Is there any statements regarding whether
17 this juror should be excused or whether the juror should be
18 retained from the State?
19 MR. VOIGT: I would just reaffirm my motion.
20 THE COURT: Well, you need to be more specific than that.
21 You've heard voir dire now. I need to know if there is any
22 indication because you have the burden of proof to prove to me
23 that she can't be fair and impartial and that somehow she's
24 violated the Court's instructions.
25 MR. VOIGT: I believe Your Honor was very clear in voir

1 dire yesterday and in fact in today's voir dire she clarified
2 that, but it does not change in any way the fact that she
3 misled the Court yesterday.

4 THE COURT: Well, how did she mislead me yesterday?

5 MR. VOIGT: You asked that same sort of question about
6 contact with somebody other than someone with a juror badge
7 yesterday ---

8 THE COURT: Mm-hmm.

9 MR. VOIGT: --- and you had a different answer from her
10 yesterday ---

11 THE COURT: Mm-hmm.

12 MR. VOIGT: --- or a non-answer, which is I believe the
13 way the Court structured the voir dire would have been an
14 answer in the affirmative that she had not had such a
15 discussion. I don't believe that today's answer in any way
16 changes the fact that she was not entirely forthright with the
17 Court yesterday and because of yesterday's answer, she's not
18 entitled to any presumption of impartiality.

19 THE COURT: Mr. Harris?

20 MR. HARRIS: Your Honor, I don't believe that it was an
21 intentional omission on her part. I think it's like -- just
22 like she said. If a person says no name, it's an acquaintance
23 from a while back, like you said, it looked like somebody
24 waves their hands up like, oh my God, I haven't seen you in a
25 long time. It's been years.

1 I think she cleared it up today. We didn't say -- It's
2 not like we came to her and said we've got you on video, why
3 are you lying? You asked her clearly today were you in the
4 snack bar yesterday? Yes. Did you talk to someone yesterday?
5 Oh, yeah, I did.

6 It's kind of like it wasn't -- I don't think it was an
7 intentional omission on her part. I don't think she was
8 trying to mislead or deceive the Court. I think she didn't
9 think I saw a good friend of mine and I didn't realize that --
10 you know, she hadn't seen anybody in this courtroom at that
11 time.

12 So I'd ask that she remain on the panel. She told you
13 clearly she can be fair and impartial. She doesn't even know
14 the person's name. She said it might be after a wine or a
15 champagne. It's a passing acquaintance that she hasn't seen
16 in a year.

17 THE COURT: Bring in Miss -- Miss Gadsden for me, please.

18 BAILIFF: Miss Gadsden?

19 (Whereupon, juror number 63 is brought into the courtroom
20 by the bailiff.)

21 THE COURT: Tell me your name, ma'am, for the record?

22 JUROR: Erica Gadsden.

23 THE COURT: How are you doing this morning?

24 JUROR: Fine.

25 THE COURT: Miss Gadsden, did you have lunch with Miss

1 Givens yesterday in the lunch bar?
2 JUROR: No.
3 THE COURT: In the snack bar? Do you know who Miss
4 Givens is?
5 JUROR: No.
6 THE COURT: Okay. She's the lady that you came down the
7 hallway with. Did you have lunch with her yesterday?
8 JUROR: With her?
9 THE COURT: Yes, ma'am.
10 JUROR: Yeah.
11 THE COURT: So you don't know her name?
12 JUROR: No.
13 THE COURT: Okay. Y'all just sat in the snack bar
14 yesterday and had lunch?
15 JUROR: Yes, ma'am.
16 THE COURT: Okay and during lunch did anybody come up to
17 your table or did you interact with anybody during lunch while
18 you all were having lunch?
19 JUROR: Uh-uh.
20 THE COURT: Okay. Did anybody come up and speak to Miss
21 Gavins -- I mean Miss Givens?
22 (Whereupon, the juror nodded her head.)
23 THE COURT: I need you to tell me yes or no.
24 JUROR: Yes.
25 THE COURT: Okay and did you have any part in that

1 conversation?

2 JUROR: I might have just asked her if I know her from
3 someplace and stuff.

4 THE COURT: I'm sorry? Say that one more time.

5 JUROR: I asked her if I know her from someplace. That's
6 it.

7 THE COURT: And what was her response?

8 JUROR: No.

9 THE COURT: Okay and did you have any further contact
10 with anybody else in the snack bar during lunch?

11 JUROR: No, ma'am.

12 THE COURT: Other than Miss Givens?

13 JUROR: No, ma'am.

14 THE COURT: Okay. Is there a reason you didn't indicate
15 yesterday after lunch when I asked if you'd had any
16 interaction with anyone in or about the courthouse who didn't
17 have a juror sticker on?

18 JUROR: No.

19 THE COURT: I can't hear you.

20 JUROR: No.

21 THE COURT: Okay. Do you know any members of the
22 victim's family in that -- in this case, that being anyone who
23 is a member of Michael German's family?

24 JUROR: No, ma'am.

25 THE COURT: Do you know anyone that is a member of Mr.

1 Campbell's family?

2 JUROR: No, ma'am.

3 THE COURT: Okay. Ma'am, is there — after the
4 interaction that you had in the snack bar, that being someone
5 asking if you knew them or not, do you feel that you can
6 remain fair and impartial?

7 JUROR: Fair.

8 THE COURT: I can't hear you.

9 JUROR: Fair.

10 THE COURT: Okay. Do you think you can render a fair and
11 impartial decision in this case?

12 JUROR: Yes.

13 THE COURT: I can't hear you.

14 JUROR: Yes.

15 THE COURT: Do you feel you can render a decision based
16 solely on the evidence as it will be presented and on the law
17 as the Court will instruct?

18 JUROR: Yes.

19 THE COURT: You tell me ---

20 JUROR: Yes.

21 THE COURT: Okay. If you would, step out into the
22 hallway for me and please do not discuss anything that we've
23 discussed with anyone.

24 JUROR: Okay.

25 THE COURT: Thank you.

1 (Whereupon, the juror leaves the courtroom.)
2 THE COURT: Any additional questions from the State?
3 MR. VOIGT: No, Your Honor.
4 THE COURT: From the defense?
5 MR. HARRIS: None, Your Honor.
6 THE COURT: Any argument from the State regarding the
7 witness?
8 MR. VOIGT: Your Honor, based on the witness' comments to
9 the Court today, as well as the difference in the video
10 evidence between this juror and the juror we previously
11 discussed, the State would withdraw its motion as to this
12 juror.
13 THE COURT: Any exception from the defense?
14 MR. HARRIS: No exception, Your Honor.
15 THE COURT: Okay. I am going to -- and I -- I watched
16 the video. As a matter of fact, I was going to watch it again
17 in light of what's been disclosed because I wanted to make
18 sure I was accurate, but the video does really -- it really
19 shows the same affect that the juror exercised today as
20 yesterday. She has a pretty flat affect, like I don't know.
21 She's young, I guess. I don't want to cast any aspersions on
22 her character, but she's a typical young person. She's just
23 sort of like I'm sort of here and that's pretty much how she
24 was acting on the video, almost like I'm just sort of a
25 peripheral part of this situation, just trying to get through

1 it basically and she doesn't really have any interaction with
2 anyone.

3 Now I really don't have any concerns about Miss Givens'
4 impartiality. She's indicated she can be fair and impartial
5 and she can render a fair and impartial decision. But I am
6 troubled I guess and I use that word very lightly because I'm
7 really not troubled by the fact that she didn't disclose when
8 I asked the question because she's a typical juror. They just
9 don't -- The things we think are important they don't think
10 are important and I really don't think she had any intention
11 to mislead the Court and there would have been no reason for
12 her to have disclosed the individuals in voir dire because
13 they weren't in the courtroom and their names specifically
14 were not mentioned and in addition to that, she indicated I
15 really don't even know this person's name. I just know she
16 has the name of a wine or champagne or something.

17 I do think that the interaction was innocent. I really
18 don't think it amounts to anything, but out of an abundance of
19 caution I'm going to excuse her just because I don't want
20 there to be any perception that whatever verdict is rendered
21 that it was not fair and impartial. But I really think that
22 anything she did was innocent. I don't even think she really
23 knows the woman. I think it's one of those things because you
24 can tell on the video the lady is very shocked that she sees
25 her. She's like -- It's almost like, oh, that's you, I

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

**CERTIORARI TO CHARLESTON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge**

**Appellate Case № 2018-000464
Lower Case No. 2014-CP-10-3019**

Jerome Campbell, # 349454, ... Petitioner,

vs.

State of South Carolina, ... Respondent.

APPENDIX VOLUME III

**ZACHARY WILLIAM JONES
S.C. Attorney General Office
PO Box 11549
Columbia, SC 29211
zacharyjones@scag.gov
S.C. Bar No. 104174
(803) 734-1680**

**C. RAUCH WISE
Attorney at Law
305 Main St.
Greenwood, SC 29646
(864) 229-5010
Rauchwise@gmail.com
S. C. Bar № 06188
Attorney for Petitioner**

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1 haven't seen you in a long time. There is no indication that
2 they discussed anything about this case.

3 I have no reason to question that she would mislead the
4 Court about it, but perception as I've indicated is often
5 reality for people and I'm going to dismiss her just out of --
6 And we still have two alternates, so I don't think we're in
7 any jeopardy of losing -- Well, you never know. Stranger
8 things have happened. People get sick and other things. I
9 hope I didn't just speak something horrible over my case --
10 over the case. Stranger things have happened, but we'll -- we
11 should be able to get through the rest of this trial hopefully
12 still having twelve jurors remaining and being able to
13 continue to try the case.

14 If you could bring out Miss -- let's see here, I can't
15 remember this lady's number, number 70, Miss Givens for me,
16 please.

17 BAILIFF: Miss Givens?

18 (Whereupon, juror number 70, Robin Givens, is brought
19 into the courtroom.)

20 THE COURT: Miss Givens, out of an abundance of caution,
21 I do not believe you have misled the Court in any way. I
22 believe you have been candid and I believe the person you
23 interacted with in the snack bar was an innocent interaction
24 with somebody you hadn't seen in a while. But out of an
25 abundance of caution, I'm going to excuse you as a juror in

1 this case so that there can never be any question regarding
2 the impartiality of the verdict. We appreciate your candor
3 and your time.

4 JUROR: Yes, ma'am.

5 THE COURT: And I know you're probably happy to go. You
6 can go on back to work.

7 JUROR: I am.

8 THE COURT: You have a good day. I would ask that you
9 not discuss this, however, with anyone.

10 JUROR: Okay.

11 THE COURT: And you're free, of course, to discuss your
12 experience as a juror at the conclusion of the week when
13 everyone is excused, but I would just ask that you call the
14 jury information line after 6 o'clock this evening for further
15 instructions and you have a wonderful day.

16 JUROR: You, too. Thank you.

17 THE COURT: You're welcome, ma'am.

18 JUROR: Woooo.

19 THE COURT: She's ready to go.

20 (Whereupon, juror number 70 is excused from the jury and
21 leaves the courtroom.)

22 BAILIFF: Judge, do you want the second juror?

23 THE COURT: Actually, you can leave her in the hall and
24 you can bring the rest of the panel down the hall for me. Ms.
25 Shealy, did they figure out -- Ms. Shealy left? She probably

1 got tired.

2 MR. HARRIS: Your Honor?

3 THE COURT: Mm-hmm.

4 MR. HARRIS: For the record, can I just -- I mean object
5 to the ---

6 THE COURT: You've noted your exception.

7 MR. HARRIS: Okay.

8 THE COURT: Yeah.

9 MR. HARRIS: I just wanted to note my exception for the
10 record.

11 THE COURT: You've already noted your exception for the
12 record when you made your argument.

13 MR. HARRIS: Thank you.

14 THE COURT: You're welcome.

15 (Whereupon, Ms. Shealy enters the courtroom and has a
16 brief discussion with the Court regarding another
17 matter.)

18 THE COURT: You can give that to the court reporter.

19 THE LAW CLERK: What about the statements?

20 THE COURT: Oh, no, she can have those as well.

21 (Whereupon, Court's Exhibits 2, 3 and 4 are passed to the
22 court reporter.)

23 THE COURT: Who is the State's next witness?

24 MR. VOIGT: Dr. Presnell, Your Honor.

25 THE COURT: Is she here?

1 MR. VOIGT: Yes, she is.
2 THE COURT: Could you get her so that we don't have to
3 hunt for her?
4 MR. VOIGT: My investigator has gone to get her.
5 THE COURT: Thank you, sir, appreciate it.
6 (Whereupon, the bailiff returns to the courtroom to
7 indicate the jury is present in the hall.)
8 THE COURT: Ready? Wait a minute, wait, wait, wait.
9 Where is Dr. Presnell?
10 (Whereupon, the witness enters the courtroom.)
11 THE COURT: Dr. Presnell, if you could, come on up front
12 for me, please, so that you'll be ready to be sworn when the
13 jury comes in. I appreciate you being so patient with us.
14 You can bring in the jury, Mr. Robinson.
15 (Whereupon, the jury enters open court at 11:41 a.m.)
16 THE COURT: Oh, we're supposed to do it by lot. I just
17 realized that. Approach for me, please. I completely forgot
18 about that.
19 BAILIFF: The jury is present, Your Honor.
20 THE COURT: You may be seated.
21 (Whereupon, a bench conference is held in the presence of
22 the jury but out of the hearing of the jury.)
23 THE COURT: I completely forgot about that.
24 MR. VOIGT: About what?
25 THE COURT: According to statute, you're supposed to seat

1 the alternates by lot. So I'm going to get them to put the
2 two names in a box. We need to juggle them up and have
3 somebody pick one. Where did Mike go?

4 MR. VOIGT: I can get somebody to do it.

5 THE COURT: I forgot to do something. I'm sorry. You
6 know we're supposed to pick the alternate by lot. Do you have
7 like two slips of paper we can just ---

8 THE CLERK: I can make one.

9 THE COURT: Would you do that for me real quick? And
10 then y'all can stand back. Do you want the numbers?

11 THE CLERK: No, no.

12 THE COURT: Okay.

13 (Whereupon, the bench conference ends and a tissue box
14 with two slips of paper is prepared for drawing the
15 alternate juror and the drawing is made by the clerk.)

16 THE COURT: Number 132 will be seated. If you could --
17 if y'all could slide -- from this way slide down for me one
18 and then have -- Mr. Latimer, if you would come be seated
19 right in this first chair for me? Thank you so much.

20 Ladies and gentlemen, I hope that you all had a pleasant
21 and restful evening. We appreciate your patience. We have
22 had to deal with some matters of law this morning that took us
23 a little bit longer than we anticipated. As you all are now
24 aware, Mr. Latimer has now been seated as a member of the
25 panel and he is no longer an alternate but a member of your

DIRECT EXAMINATION OF DR. SUSAN ERIN PRESNELL BY MR. VOIGT

1 twelve. We have for legal reasons sufficient to the Court had
2 to remove number 70, one of your fellow jurors, and I will get
3 into some further instructions regarding that before we retire
4 for the luncheon recess.

5 I will -- We will now resume the testimony and I would
6 ask that you give the attorneys your undivided attention. You
7 may proceed.

8 THE CLERK: Do you swear or affirm that your testimony
9 will be the truth, the whole truth and nothing but the truth,
10 so help you God?

11 DR. PRESNELL: Yes, sir.

12 THE CLERK: Be seated. If you would, please state your
13 full name and spell your last name for the record.

14 DR. PRESNELL: My name is Susan Erin Presnell, P-R-E-S-N-
15 E-L-L and I do apologize I have a cold, so I'll try to not
16 cough too much.

17 THE COURT: You may proceed.

18 MS. RIDDLE: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 DR. ERIN PRESNELL, being first duly sworn,
21 testifies as follows:

22 DIRECT EXAMINATION

23 BY MS. RIDDLE:

24 Q: Dr. Presnell, please tell us about your current job
25 title?

1 MR. VOIGT: Yes, Your Honor.

2 THE COURT: Okay. Now that the defense has rested their
3 case, are there any motions?

4 MR. HARRIS: From the State, Your Honor?

5 MR. VOIGT: Not from the State, Your Honor.

6 THE COURT: From the defense, are there any motions?

7 MR. HARRIS: Your Honor, I would renew all previous
8 motions and objections.

9 THE COURT: Again, the Court would deny the motions based
10 on its previous ruling. Without belaboring time, the Court is
11 concerned with the existence or non-existence of evidence and
12 not its weight and there is direct and substantial
13 circumstantial evidence reasonably tending to prove the
14 defendant's guilt and therefore, the motion is denied.

15 Enjoy your break. I'll see y'all in about ten minutes.
16 It is 11:19, so I guess -- Well, you might as well just round
17 it out to 11:30.

18 MR. VOIGT: Thank you, Your Honor.

19 MR. HARRIS: Thank you, Your Honor.

20 (Whereupon, there is a break in the proceedings from
21 11:20 a.m. until 11:43 a.m.)

22 THE COURT: Is the State ready to proceed?

23 MR. VOIGT: Yes, Your Honor.

24 THE COURT: Is the defense ready to proceed?

25 MR. HARRIS: Yes, Your Honor.

1 lunch, it should arrive by 12:30. So what I'm going to do, I
2 need to debate a little bit about what I'm going -- how --
3 what we're going to do. I might let you all just go walk
4 around for 30 minutes and then when your lunch comes, you'll
5 -- you know, you can eat and then we can resume with the
6 proceedings, but if you all could indulge me for a moment
7 while I figure that out, I appreciate it. During this break,
8 please do not discuss the case and please leave your notepads
9 in your seats.

10 (Whereupon, the jury leaves the courtroom at 11:59 a.m.
11 While the jury is exiting, the sound of a cell phone
12 ringer is heard.)

13 THE COURT: Was that a phone? Was that your phone?

14 MR. HARRIS: I don't have a phone on me.

15 THE COURT: That's okay. You may be seated. Now that
16 the State has rested, are there any motions?

17 MR. VOIGT: None from the State, Your Honor.

18 THE COURT: Any from the defense?

19 MR. HARRIS: Your Honor, I'll just again renew my motions
20 from before and objections.

21 THE COURT: And the Court will mark those renewed and
22 denied based on its previous ruling.

23 (Whereupon, there is a break in the proceedings as the
24 Court confers with the clerk regarding the lunch
25 delivery.)

1 THE COURT: You may be seated. Madam Forelady, is it
2 correct the jury has reached a verdict?

3 MADAM FORELADY: Yes, ma'am.

4 THE COURT: You can give the verdict forms to the bailiff
5 for me, please.

6 MADAM FORELADY: Okay.

7 THE COURT: Thank you, ma'am. Sir, if you would, stand
8 for the publication of the verdict.

9 THE CLERK: The verdict forms in the matter of The State
10 of South Carolina versus Jerome Renaldo Campbell, defendant.
11 As to Indictment Number 2009-GS-10-6730, we the jury by
12 unanimous consent find the defendant guilty of assault with
13 intent to kill involving Frank Haigler, signed by the
14 foreperson of the jury on January 27, 2012. Ladies and
15 gentlemen of the jury, if this was your verdict, please raise
16 your right hand.

17 (Whereupon, all jurors raise their right hand.)

18 THE CLERK: Thank you. Please let the record reflect
19 that all twelve jurors raised their right hand. As to
20 Indictment Number 2009-GS-10-6731, we the jury by unanimous
21 consent find the defendant guilty of murder, signed -- signed
22 by the foreperson of the jury on January 27, 2012. Ladies and
23 gentlemen of the jury, if this was your verdict, please raise
24 your right hand.

25 (Whereupon, all jurors raise their right hand.)

1 THE CLERK: Thank you. Please let the record reflect
2 that all twelve jurors raised their right hand. As to
3 Indictment Number 2009-GS-10-6732, we the jury by unanimous
4 consent find the defendant guilty of assault with intent to
5 kill involving Anthony German, signed by the foreperson of the
6 jury on January 27, 2012. Ladies and gentlemen of the jury,
7 if this was your verdict, please raise your right hand.

8 (Whereupon, all jurors raise their right hand.)

9 THE CLERK: Thank you. Please let the record reflect
10 that all twelve jurors raised their right hand. As to
11 Indictment Number 2009-GS-10-6733, we the jury by unanimous
12 consent find the defendant guilty of assault with intent to
13 kill involving Michael Allen, signed by the foreperson of the
14 jury on January 27, 2012. Ladies and gentlemen of the jury,
15 if this was your verdict, please raise your right hand.

16 (Whereupon, all jurors raise their right hand.)

17 THE CLERK: Thank you. Please let the record reflect
18 that all twelve jurors raised their right hand.

19 THE COURT: Is there any request to poll the jury from
20 the State?

21 MR. VOIGT: None from the State, Your Honor.

22 THE COURT: From the defense?

23 MR. HARRIS: None, Your Honor.

24 THE COURT: You may take your seats. Madam Forelady,
25 ladies and gentlemen, we thank you for your time and your

1 attention to this matter. I hope that jury service has been
2 educational for you. I say it during jury qualification and
3 people often chuckle that real court is nothing like Judge
4 Judy, Judge Joe Brown or the Peoples Court and it is not and I
5 hope that you all from this experience learned how very
6 valuable you are to the system and that it could not operate
7 without individuals being willing to donate their time to us
8 because really that's what you do. Our system is the only
9 system where twelve individuals sit as fact finders and apply
10 a very complicated set of laws to those facts and render
11 verdicts.

12 You are welcome to discuss this case if you would like.
13 By the same token, if someone should persist in trying to
14 speak with you and it makes you feel uncomfortable, please
15 make us aware of it so that we can take the appropriate action
16 to protect your privacy.

17 If you need a work excuse before you leave today, you can
18 get those on the first floor of the Clerk of Court's office on
19 the Circuit Court side. Any of the deputy clerks at any of
20 those windows can give you a work excuse. Otherwise, they
21 will be mailed to you along with your checks.

22 We will hear post-trial motions and sentencing
23 immediately following this proceeding. If there is anyone
24 that wants to stay for sentencing, please make the bailiffs
25 aware of it and we'll bring you back into the courtroom and

1 seat you in the jury box for that purpose.

2 You are excused with the Court's profound thanks. If you
3 would, go with the bailiffs.

4 (Whereupon, the jury leaves the courtroom at 2:02 p.m.
5 The Court briefly leaves the bench to personally thank
6 the jurors in the hall. Several jurors return to the
7 courtroom and are seated in the jury box.)

8 THE COURT: You may be seated. Are there any post-trial
9 motions for the State?

10 MR. VOIGT: None from the State, Your Honor.

11 THE COURT: From the defense?

12 MR. HARRIS: Your Honor, I would reiterate and renew all
13 objections during the trial and all motions made during the
14 trial.

15 THE COURT: The Court would note those motions and deny
16 them based on its previous rulings. Are we ready? Do we have
17 sentencing sheets?

18 MR. VOIGT: I'm signing those as we speak, Your Honor.

19 THE COURT: Did you want to say something, Mr. Harris?

20 MR. HARRIS: No.

21 THE COURT: Okay.

22 (Whereupon, there is a brief pause in the proceedings.)

23 MR. VOIGT: Your Honor, I have a question.

24 THE COURT: Sure.

25 MR. VOIGT: And as to the AWIKs ---

1 sentencing?

2 MR. VOIGT: None, Your Honor.

3 (Whereupon, there is a brief pause in the proceedings.)

4 SENTENCE

5 THE COURT: Six, if you would, stand for sentencing. I
6 think that we've all heard the facts and circumstances of this
7 case and there's no need for the Court belaboring it by making
8 any protracted comments, but I think that both Mr. Voigt and
9 Mr. Harris had summed it up by saying that this is just an
10 utter tragedy, young lives just gone and without any ability
11 really to recoup them because irregardless of what the Court
12 does today, the fact of any sentence --

13 South Carolina -- And it's been interesting to me of late
14 the way our system is perceived because most people are not
15 educated about it and they don't realize that South Carolina
16 is unlike most states in terms of our sentencing structure.
17 So whatever sentence Mr. Campbell receives today will have the
18 net effect of a life sentence irregardless because he will
19 serve it at 85% and at his age, he will be inordinately -- He
20 would have reached a fairly -- because his life expectancy, as
21 much as we don't like like to think about it, is only another
22 41 years. So as a practical matter, the net effect of
23 whatever the Court does today really at some point becomes a
24 nullity because it all has the same net effect when you look
25 at the way our system is structured.

1 However, having made that observation, sir, I find it
2 appropriate under the circumstances that on each of the
3 offenses, that being assault with intent to kill, which is
4 Indictment 2009-GS-10-6732, 2009-GS-10-6730 and 2009-GS-10-
5 6733, that you be sentenced to the State Department of
6 Corrections for a period of ten years.

7 On the offense of murder, which is Indictment 2009-GS-10-
8 6731, you are sentenced to the State Department of Corrections
9 for a period of thirty years.

10 These sentences will run concurrent with one another.
11 You'll get credit for any time that you have served. That
12 will be calculated and applied by the Department of
13 Corrections.

14 I have not heard anything regarding any addictions or
15 other things such that it would be necessary for the Court to
16 order the treatment unit. However, I would encourage you,
17 sir, and again, the Court takes no posture about this or
18 regarding this, that if you know the identity of these other
19 individuals, that you would be forthcoming and provide that
20 information to the State, at least for the benefit of the
21 closure of this family.

22 Thank you very much. Thank you, gentlemen, for a well-
23 tried case. Have a good weekend and if y'all would make sure
24 the court reporter has all of the evidence so that it can be
25 secured in the evidence locker in the event of an appeal.

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(The trial ended at 2:25 p.m.)

--- END REQUESTED TRANSCRIPT ---

843 818 9838

SOLICITOR'S OFFICE
NINTH JUDICIAL CIRCUIT

WITNESS STATEMENT

Statement of Truville German
Date of Birth: 07/21/1986 SSN: [REDACTED] 6243
Home Address: [REDACTED]
Home Telephone#: 843 818 9838 Work Telephone#: [REDACTED]
Employer/Occupation: Verizon Wireless / CSR
Date of Statement: 1/23/2012 Time of Statement: 9:20
Location: Court house
RE: _____

At this time, I, Truville German, desire to make the following voluntary statement:

I witness Candace Hudson speaking with the juror with a fellow chi-ton, hand ~~identified~~ Set female looks to be about 24, African-American, they talked for about 2 mins.

Q - How do you know they were Jurors?

A - AS Jurors were coming out go in court room first time she had on blue/white juror sticker

Q - How do you know ms ~~Gilson~~ ^{Gilson}?

A - She the mother of my sister in law and ~~prob~~ sister of Jerome Campbell

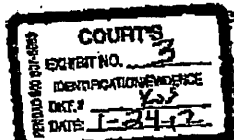
Q - Where DID THIS CONVERSATION TAKE PLACE?

A - Court room snack bar.

I have made the following statement freely and voluntarily without fear, threat, promise, reward or hope of reward of any kind.

Witness: [Signature] Signed: [Signature]

This is to confirm that the signature above is my own and that before I made my signature I read or had read to me the foregoing statement consisting of 2 page(s). My signature appears on each page. A true copy has been given to me this _____ day of _____, 200__.



Page ____ of ____

Statement of _____

Q - DESCRIBE THE SUSPECT(S) AS BEST YOU CAN.

A - She's an African American female
on the heavier side she has on a yellow
shirt (bright) she has diamond heart earring
in her ears. She has pink nail polish, (on both)
She looks to be 24.

I have made the following statement freely and voluntarily without fear, threat, promise,
reward or hope of reward of any kind.

Witness: _____

Signed: _____

This is to confirm that the signature above is my own and that before I made my signature I read
or had read to me the foregoing statement consisting of 2 page(s). My signature appears on
each page. A true copy has been given to me this ____ day of _____, 200__.

SOLICITOR'S OFFICE
NINTH JUDICIAL CIRCUIT

WITNESS STATEMENT

Statement of Tiffany Penick
Date of Birth: 7-26-81 SSN: [REDACTED] 4759
Home Address: [REDACTED] Sumner St 29415
Home Telephone#: 843-631-3288 Work Telephone#: _____
Employer/Occupation: State of SC
Date of Statement: 1-23-2012 Time of Statement: _____
Location: Courthouse.
RE: Cashell trial

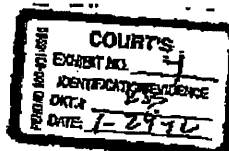
At this time, I, Tiffany Penick, desire to make the following voluntary statement:

I did on 1-23-2012 observe two of the jury members. The conversation appeared to last approx 2-4 min, and it appeared that the jurors and the Penick family of the defendant knew each other. During the conclusion of the conversation I observed a black female with a brown jacket + pants casual sweat suit making the statement "I have them on our side". I proceeded to ask Tranelle "I thought we could not have contact with the jury." She stated that she thought the same and that she would speak with Mrs. Penick. The two jury members that I observed were both black females, one heavier set with a yellow screen print t-shirt

I have made the following statement freely and voluntarily without fear, threat, promise, reward or hope of reward of any kind.

Witness: [Signature] Signed: [Signature]

This is to confirm that the signature above is my own and that before I made my signature I read or had read to me the foregoing statement consisting of 2 page(s). My signature appears on each page. A true copy has been given to me this _____ day of _____, 200__.



Page ____ of ____

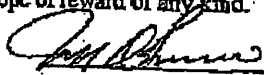
Statement of shirt. The other had long wavy

hair and a heavy jacket that was dark in color.

This conversation took place in the meth house snuff bar
approx. 1:20 PM on 1-23-2012.

I have made the following statement freely and voluntarily without fear, threat, promise, reward or hope of reward of any kind.

Witness:



Signed:



This is to confirm that the signature above is my own and that before I made my signature I read or had read to me the foregoing statement consisting of 2 page(s). My signature appears on each page. A true copy has been given to me this ____ day of _____, 200__.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Deadra Jefferson, General Sessions Court Judge
09-GS-10-6730

Case Tracking Number: 2012208426

The State of South Carolina, ... Respondents,

v.

Jerome Campbell
a/k/a Jerome Coaxum Petitioner.

PETITION FOR REHEARING OR REHEARING *EN BANC*

Appellant, by and through undersigned counsel and pursuant to Rules 219 and 221, SCACR, respectfully submits this Petition for Rehearing or Rehearing *En Banc* and requests this Honorable Court rehear this matter and reconsider its opinion based upon the following arguments:

STATEMENT OF THE CASE

This is an appeal from a murder conviction where Appellant was sentenced to 30 years imprisonment with no possibility of parole. At trial, on January 23, 2012, Appellant and Respondent selected a jury consisting of twelve primary and two alternate jurors. [R. p. 14, line 11 – p. 22, line 4] During the initial *voir dire*, the court asked the venire, “Does any member of

the panel have a close personal or social relationship with [the accused, the victims, or anyone related to the deceased]?” [R. p. 7, lines 14 – 18] No one responded. During the initial *voir dire*, the court neither identified Appellant’s family members nor asked the venire whether any of the jurors were acquainted with Appellant’s family members.

Prior to the selection of Juror # 70 Robin Givens (hereinafter “Juror Givens”), the State exhausted all five of its peremptory challenges. [R. p. 19, line 21; p. 14, lines 11 – 18; p. 15, lines 2 – 8; p. 16, lines 8 – 14; p. 18, lines 13 – 19; p. 19, lines 14 – 20; p. 20, lines 5 – 12] After the jury was sworn in, the court recessed for lunch. [R. p. 25, line 4 – p. 26, line 20] Before recessing, the court instructed the jury panel as follows:

During the break, please do not discuss the case among yourselves or with anyone else. . . . Also, please do not have any contact with anyone in or about the courthouse. There are a lot of witnesses in this case and again, we would not want an innocent conversation to be observed and misinterpreted.

[R. p. 26, lines 3 – 15]

When the trial reconvened, the State asserted that during lunch two jurors conversed with a “family member or friend of the Campbell group” in the courthouse snack bar. [R. p. 27, line 4 – p. 28, line 6] The trial judge performed a *voir dire* of the jury panel and inquired whether any of the jurors had any conversations during lunch with anyone who was not a juror. [R. p. 30, lines 16 – 18; p. 33, lines 15 – 24] Juror Givens and Juror # 63 Erica Gadsden (hereinafter “Juror Gadsden”) did not respond to the court’s questions. The court proceeded with trial.

The next day, on January 24, 2012, the State moved to exclude Juror Givens and Juror Gadsden. [R. p. 1 – 2; p. 48, line 2 – p. 60, line 3] In support of its motion, the State submitted a surveillance video. [Surveillance Video, attached to inside back cover of Record on Appeal] As shown on the video, Juror Givens and Juror Gadsden sat together in the snack bar when a person

who may have been related to Appellant approached these jurors and appeared to speak with them for approximately forty-four (44) seconds. [R. p. 50 lines 22 – 23; Surveillance Video, Time 1:19:54 – 1:20:38]

The trial judge performed *voir dire* regarding the jurors in issue. Juror Givens testified that: (1) a woman approached her in the snack bar, but Juror Givens could not recall her name; (2) she knew this person through a mutual friend and had “hung out” with her a few times at birthday parties; (3) she had not seen this person since June or July of the previous year; (4) she did not know whether this person was involved with the case; (5) the person was not a close friend; (6) she did not discuss the case with this person; (7) she forgot about the court’s instructions not to speak with a non-juror; and (8) she could be fair and impartial. [R. p. 60, line 7 – p. 65, line 7]

Juror Gadsden testified that: (1) a woman approached Juror Givens and her during the break; (2) Juror Gadsden asked the person if they knew each other, but the person responded “no;” (3) there was no reason why she did not respond the previous day when the trial court asked if any jurors had interaction with anyone at lunch; (4) she did not know any members of the victim’s family or Appellant’s family; and (5) she could be fair and impartial. [R. p. 67, line 17 – p. 70, line 24] The State withdrew its motion regarding Juror Gadsden. [R. p. 71, lines 8 – 12] Regarding Juror Givens, the State argued that Juror Givens was not “entitled to any presumption of impartiality” because she did not disclose her conversation to the court during *voir dire* the day before. [R. p. 66, lines 12 – 18]

The trial judge found that Juror Givens had no intention to mislead anyone or to conceal information:

I'm really not troubled by the fact that [Juror Givens] didn't disclose when asked the question because she's a typical juror. They just don't -- The things we think are important they don't think are important and I really don't think she had any intention to mislead the Court and there would have been no reason for her to have disclosed the individuals in *voir dire* because they weren't in the courtroom and their names specifically were not mentioned and in addition to that, she indicated really don't even know this person's name. . . . I do think that the interaction was innocent. I really don't think it amounts to anything I don't even think she really knows the woman. I think it's one of those things because you can tell on the video the lady is very shocked that she sees her. She's like -- It's almost like, "oh, that's you, I haven't seen you in a long time." There is no indication that they discussed anything about this case.

[R. p. 72, line 6 – p. 73, line 2] Nevertheless, the trial judge removed Juror Givens over Appellant's objection. [R. p. 71, line 15 – p. 74, line 3; p. 20, line 6] The trial judge addressed Juror Givens as follows:

Miss Givens, out of an abundance of caution, I do not believe you have misled the Court in any way. I believe you have been candid and I believe the person you interacted with in the snack bar was an innocent interaction with somebody you hadn't seen in a while. But out of an abundance of caution, I'm going to excuse you as a juror in this case so that there can never be any question regarding the impartiality of the verdict. We appreciate your candor and your time.

[R. p. 73, line 20 – p. 74, line 3] The trial judge stated her reason for dismissing Juror Givens as follows: "[O]ut of an abundance of caution I'm going to excuse her just because I don't want there to be any perception that whatever verdict is rendered that it was not fair and impartial. But I really think that anything she did was innocent." [R. p. 72, lines 18 – 22] At the State's request, the court replaced Juror Givens with an alternate juror. [R. p. 74, line 22 – p. 78, line 4; p. 21, line 17]

On January 27, 2012, the jury convicted Appellant of murder and three counts of assault and battery with intent to kill. [R. p. 81, line 9 – p. 82, line 23] The court sentenced Appellant, consecutively, to thirty (30) years for murder and ten (10) years each on the three counts of assault and battery with intent to kill. [R. p. 86, lines 1 – 13] This appeal followed.

ARGUMENTS

- I. This Court should rehear this matter because this Court overlooked the Supreme Court's decision in State v. Stone wherein the Supreme Court remanded the case for a new trial finding that the trial court abused its discretion in removing a juror whose nondisclosure was innocent and overlooked several other authorities to support the same.

In State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002), the state called the defendant's aunt, Ms. Perry, as a witness during sentencing. At that time, a juror indicated that she knew Ms. Perry, that Ms. Perry had lived down the street from the juror five or six years earlier, that they were casual acquaintances, and that the juror's acquaintance with Ms. Perry would not affect the juror's ability to be fair and impartial. Although Ms. Perry had been identified as a witness at the start of *voir dire*, the juror did not recognize Ms. Perry's name. The solicitor objected to the juror's participation and claimed the juror was biased. The lower court removed the juror and replaced her with an alternate juror. Our Supreme Court reversed and remanded the case for a new trial because, in part, the trial court abused its discretion in removing a juror whose nondisclosure was innocent.

Here, the lower court made an extensive factual determination that Juror Givens did not intentionally conceal information. The trial judge personally examined Juror Givens under oath and reviewed Juror Givens' demeanor, conduct in the courtroom, and conduct on the surveillance video. The trial judge noted that Juror Givens seemed surprised on the video when the person approached her in the snack bar. [R. p. 162, lines 6 – 8; p. 71, line 15 – p. 72, line 2; Surveillance Video] The trial judge made an unequivocal finding that Juror Givens' nondisclosure was innocent. The trial judge expressly stated that: (1) the court had no concerns about Juror Givens' impartiality; (2) Juror Givens' interactions were innocent; and (3) Juror Givens did not attempt to mislead the court in any way. [R. p. 71, line 15 – p. 73, line 13; p. 73,

line 20 – p. 74, line 3] Moreover, the trial court recognized that Juror Givens did not act intentionally because the subject matter of the court’s inquiry, a forty-four (44) second encounter, was insignificant. As the trial court observed, Juror Givens was “young,” “a typical juror,” and “[t]he things we think are important they don’t think are important and I really don’t think she had any intention to mislead the Court” [R. p. 71, lines 21 – 22; p. 72, lines 8 – 11] Still, the trial judge removed Juror Givens. Accordingly, pursuant to Stone, the lower court abused its discretion in removing the juror.

Other authority also lends to the conclusion that the trial court abused its discretion removing a juror who innocently and unintentionally did not disclose her insignificant forty-four (44) second encounter at the snack bar with a non-juror. Pursuant to S.C. Code Ann. § 14-7-1020, “[i]f it appears to the court that the juror is not indifferent in the cause, he must be placed aside as to the trial of that cause and another must be called.” “[T]he first inquiry in the juror disqualification analysis is whether the juror intentionally concealed the information in *voir dire*.” State v. Woods, 345 S.C. 583, 588, 550 S.E.2d 282, 284 (2001) (citation omitted). If the juror’s failure to disclose is innocent, no such inference of partiality may be drawn against that juror. Id.

In Woods, during *voir dire*, the trial court asked the potential jurors whether they were “friends or casual acquaintances with any of them [i.e., the attorneys involved in the trial] or business associates or social acquaintances with any of them, that would also include having been represented by any of them in the past.” Id. at 586, 550 S.E.2d at 283. The court also asked whether any of the jurors were “contributors to or supporters of any organization which has as its primary function the promotion of law enforcement or protection of victims’ rights such as MADD, SADD, CAVE, or the like.” Id. The juror in issue did not respond to either

question. When this juror was selected, the defendant had one peremptory challenge remaining. After the jury rendered its verdict, but before sentencing, the defendant moved for a new trial based upon the discovery of the juror's volunteer work as a victims' advocate in the prosecutor's office.

The court held that the defendant was entitled to a new trial because the juror intentionally failed to disclose that she had worked as a volunteer victims' advocate in the prosecutor's office.

We hold that intentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances.

Id. at 588, 550 S.E.2d at 284. Further, our Supreme Court held that "whether a juror's failure to respond is intentional is a fact intensive determination which must be made on a case by case basis." Id. "The trial judge is in the best position to determine the credibility of the jurors; therefore, this Court should grant [the trial judge] broad deference on this issue." State v. Kelly, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998) ; *see also* State v. Harris, 340 S.C. 59, 530 S.E.2d 626 (2000) (holding the trial judge is in the best position to determine the credibility of the jurors); State v. Loftis, 232 S.C. 35, 100 S.E.2d 671 (1957) (refusing to interfere with the trial judge's discretion in matters involving the jury because the trial judge has the opportunity to consider the juror's credibility).

In State v. Guillebeaux, 362 S.C. 270, 607 S.E.2d 99 (Ct. App. 2004), the jurors were asked during *voir dire* whether they had "any personal, business or social relationship either with the defendant, Mr. Guillebeaux or any of the potential witnesses." After both sides exhausted all

of their peremptory strikes, the juror in issue was seated without challenge. During trial, the court learned that: (1) the juror in issue knew the State's lead witness; (2) the juror had no conversations with the witness beyond saying "hi" in passing; (3) the juror went to high school with the witness's brother; and (4) the juror knew what type of car the witness drove because the witness worked across the street from the juror's hairdresser. The lower court denied the defendant's motion for a new trial because it found that the juror had not misled the court. In affirming the lower court, this Court stated, "When allegations arise concerning a juror's failure to reveal information in response to *voir dire* questions, courts look to whether the concealment was intentional and consider the nature of the information concealed." *Id.* at 270, 101 (citation omitted).

When the lower court determined that Juror Givens did not intentionally conceal any information, the court's inquiry should have ended at that point. Guillebeaux, 362 S.C. at 270, 607 S.E.2d at 101 (citation omitted). However, the trial judge granted the State's motion to remove Juror Givens "in an abundance of caution" to avoid "any perception that whatever verdict is rendered that it was not fair and impartial." [R. p. 72, lines 17 – 22] By allowing the State to remove Juror Givens without cause on the second day of trial, the lower court acted partially toward the State by granting the State a *de facto* sixth peremptory challenge and thereby prejudiced Appellant as discussed *infra*.

Assuming for argument's sake that Juror Givens intentionally concealed information, the trial court still abused its discretion in allowing the State to challenge Juror Givens. Specifically, if a court finds that a juror intentionally concealed information during *voir dire*, then the court must "determine if the information concealed would have supported a challenge for cause or would have been a material factor in the use of [a party]'s peremptory challenges." Stone, 345

S.C. at 590, 550 S.E.2d at 285 (citation omitted). "The inquiry must focus on the character of the concealed information, not on the mere fact that a concealment occurred." Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986).

In Stone, the juror was a casual acquaintance with a witness who had lived down the street from the juror. The Supreme Court held that the character of the concealed information did not warrant the removal of the juror:

[The juror's] scant acquaintance would neither have supported a challenge for cause nor would it have been a material factor in the state's exercise of its peremptory challenges. [The juror] clearly indicated her former acquaintance with a witness whose name she did not even know, would not have affected her in any way. Accordingly, we hold the trial court abused its discretion in removing her.

Stone, 350 S.C. at 448, 567 S.E.2d at 247 - 248.

Like the juror in Stone, Juror Givens' "scant acquaintance" with the person in the snack bar would not have supported a challenge for cause. Juror Givens did not know the person's name, she only knew the person "through another friend of [hers] that lives on James Island," she had "hung out" with that person at a birthday party approximately a year before, she was not the person's friend, she was unaware that the person was involved in the case in any way, and she could be fair and impartial. [R. p. 60, line 7 - p. 65, line 7]

Additionally, Juror Givens' "scant acquaintance" with the person in the snack bar could not have been a material factor in the State's exercise of its peremptory challenges because the State had exhausted all of its peremptory challenges by the time Juror Givens was selected for trial. In Woods, when the juror's name was selected from the venire, the respondent had one peremptory challenge remaining. The respondent claimed that had he known of the juror's relationship with the prosecutor's office, he would have used a peremptory challenge to remove

the juror. Accordingly, the court held that the juror's failure to disclose her relationship with the prosecutor's office "prevented the respondent's intelligent exercise of his peremptory challenges." Woods, 345 S.C. at 590, 550 S.E.2d at 286. Here, unlike the party in Woods, the State had exhausted all of its peremptory challenges before Juror Givens' name was selected from the venire. Therefore, the State was not prevented from intelligently exercising its peremptory strikes because it had no remaining strikes to use against Juror Givens.

II. This Court should rehear this matter because it misapprehended the reasoning of the Supreme Court in State v. Simmons where Simmons involved a juror who discussed with his wife during trial the personal effect on the juror that a verdict would have had.

In State v. Simmons, 360 S.C. 33, 599 S.E.2d 448, the jury was sequestered. Juror C had a conversation with his wife regarding the fact that the defendant's sister lived across the street from a piece of property owned by Juror C and his wife where Juror C and his wife intended on building a home. Juror C advised the trial judge of his relation to the defendant's sister and that he was concerned an adverse verdict would perhaps cause "consternation, fear, concern, or whatever." Juror C did not advise the judge of his conversation with his wife until he was asked about it. When the SLED agent who was monitoring the sequestration of the jurors spoke to Juror C's wife, she revealed that she was "upset, fearful, and 'really concerned.'" Juror C was then examined in chambers where he confirmed that he and his wife discussed the personal effect of a verdict in the case. The Supreme Court held that the judge acted within his discretion in removing Juror C.

Here, unlike Simmons, the trial judge expressly stated that: (1) the court had no concerns about Juror Givens' impartiality; (2) Juror Givens' interactions were innocent; and (3) Juror Givens did not attempt to mislead the court in any way. As the trial court observed, Juror Givens

was “young,” “a typical juror,” and “[t]he things we think are important they don’t think are important and I really don’t think she had any intention to mislead the Court” The “scant acquaintance” between Juror Givens and the purported member of Appellant’s family is akin to the acquaintance in Stone. Further, nothing suggests that Juror Givens would experience “consternation, fear, concern, or whatever” from an adverse verdict, nor does anything suggest that she was “upset, fearful, and really concerned.” In fact, Juror Givens did not even realize that the person with whom she spoke in the snack bar may have had any relation to Appellant or to the case.

III. This Court should rehear this matter because it overlooked the arguments of counsel at trial that preserved the issues on appeal.

“Error preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review.” State v. Brannon, 388 S.C. 498, 502, 697 S.E.2d 593, 595 (2010). In Brannon, the state argued that the court of appeals violated error preservation rules by using a seizure analysis to determine whether an arrest was being made where the Appellant never used the terms “seizure” or “Fourth Amendment” in his directed verdict motion. The Supreme Court disagreed and held that “a litigant is only required to fairly raise the issue to the trial court, thereby giving it an opportunity to rule on the issue.” Id. at 502, 596 (citation omitted).

Here, Appellant argued that no cause existed to excuse Juror Givens. Appellant argued that the jurors and the defendant’s family had not seen each other prior to the break, that the video did not reflect that Juror Givens and the person in the snack bar knew each other very well, and that the interaction was innocent. [R. p. 50, line 10 – p. 53, line 17] Appellant further argued that any omission to disclose was innocent, that the juror disclosed her conversation in

the snack bar when asked the second time, that Juror Givens did not try to mislead or deceive the court, that she did not even know the name of the person in the snack bar, and that Juror Givens could be fair and impartial. [R. p. 66, line 20 – p. 67, line 16] Finally, Appellant attempted to reiterate his objection on this issue, but the court noted the objection without allowing additional argument:

MR. HARRIS: Your Honor?

THE COURT: Mm-hmm.

MR. HARRIS: For the record, can I just – I mean object to the –

THE COURT: You've noted your exception.

MR. HARRIS: Okay.

THE COURT: Yeah.

MR. HARRIS: I just wanted to note my exception for the record.

THE COURT: You've already noted your exception for the record when you made your argument.

MR. HARRIS: Thank you.

THE COURT: You're welcome.

[R. p. 75, lines 2 – 14] Trial counsel effectively preserved the issue with the arguments he made. Further, the trial court did not allow him to continue arguing the issue after the above-described attempt.

In On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000), the Supreme Court explained the rationale behind the longstanding rule of issue preservation:

Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. The requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve--

intentionally or by chance--in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.

Here, trial counsel kept no ace card up his sleeve. Counsel argued extensively at trial that there was no cause for removing Juror Givens. The trial judge was given ample opportunity to consider these arguments. Appellant describes in his briefs that the effect of removing a juror without cause is to give the state a sixth peremptory strike. Such is not a new issue from what Appellant's counsel argued at trial. Instead, it is part of the analysis as to whether the trial court's error is reversible.

In addition, even if further argument by trial counsel would have been required to preserve the issue under the general rule, our courts have developed the doctrine of futility, which recognizes that in circumstances where it would be futile to raise an objection to the trial judge, failure to raise the objection will be excused. See State v. Pace, 316 S.C. 71, 74, 447 S.E.2d 186, 187 (1994) (finding "[a]s to counsel's failure to raise an objection, the tone and tenor of the trial judge's remarks concerning her gender and conduct were such that any objection would have been futile."); State v. Higgenbottom, 344 S.C. 11, 542 S.E.2d 718 (2001) (employing the futility doctrine). Here, the trial judge made it clear that she had ruled and did not wish to hear further argument on the matter, and it would have been futile for Appellant to continue arguing the point.

IV. This Court should rehear this matter because Appellant preserved the issues raised on appeal including whether the lower court gave the State a sixth peremptory challenge when the court removed a juror without cause.

The beginning of wisdom is to call a thing by its proper name. On appeal, Appellant has articulated the obvious effect of the trial court's decision to remove a juror without cause at the State's request. In other words, Appellant is not arguing a new ground on appeal. Rather,

Appellant is merely elucidating the end result of the trial court's removal of a juror without cause – such removal gave the State the use of a sixth peremptory challenge on the second day of trial that, in turn, skewed the jury selection process and gave the State unilateral and discretionary control over the composition of the jury during the trial. This fundamental error mandates automatic reversal and a new trial.

Appellant urges this court to rehear the matter in order to reconsider whether the issue was preserved. Clearly the issue of whether the removal of the juror was error was preserved, and this Court acknowledged the same by deciding the issue on the merits. Appellant went further in his brief to characterize the trial court's removal of the juror as a sixth peremptory strike only to explain why such error is reversible. Our courts have never required, in order to preserve an issue, the level of elucidation as set forth in the appellate brief. Here, the underlying issue for the trial judge was not whether the error was reversible. The issue was whether there was cause to remove Juror Givens. See Mizell v. Glover, 570 S.E.2d 176, 351 S.C. 392 (2002) (finding an evidentiary issue was preserved where a party raised an issue despite the absence of discussion as to why the error is reversible); State v. Kromah, 737 S.E.2d 490, 401 S.C. 340 (2013) (same); State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) (finding issue was preserved even though defendant did not use exact words "corpus delicti" in his request for a directed verdict); S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007) (finding an issue preserved where, although a party did not phrase objection in the exact terms used in the issues on appeal, the party made an objection sufficient enough to allow the trial court to rule on the issue).

"A peremptory challenge is an arbitrary rejection of a juror without cause. The exercise of the right of peremptory challenge affords an accused an opportunity to dismiss jurors who, he

believes, for whatever reason, may be unfavorable to him.” State v. Bailey, 273 S.C. 467, 469, 257 S.E.2d 231, 232 (1979). Peremptory challenges are one of the most important of the rights secured to the accused, and the system of peremptory challenge has traditionally provided the assurance of impartiality in a jury trial. Holland v. Illinois, 493 U.S. 474, 110 S.Ct. 803, 107 L.Ed.2d 905 (1990). Peremptory challenges assure the selection of a qualified and unbiased jury by enabling each side to exclude those potential jurors believed to be most partial towards the other side thereby rejecting extremes of partiality on both sides. Id. at 484, 110 S.Ct. at 806 (citing Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986)). Peremptory challenge is a device that “occupies ‘an important position in our trial procedures,’ . . . and has indeed been considered ‘a necessary part of trial by jury.’” Holland, 493 U.S. at 475, 110 S.Ct. at 804 (quoting Batson, 476 U.S. at 98, 106 S.Ct. at 1724 and Swain v. Alabama, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965), *overruled on other grounds by Batson*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986)). The goal of an impartial jury is obstructed by procedures that cripple the device of peremptory challenge. Holland, 493 U.S. at 483 – 484, 110 S.Ct. at 809.

The right to peremptory challenges is denied or impaired if the accused does not receive that which state law provides. Ross v. Oklahoma, 487 U.S. 81, 108 S.Ct. 2273, 101 L.Ed.2d 80 (1988). South Carolina law provides the accused with twice as many peremptory challenges as the State. “Any person who is arraigned for the crime of murder . . . is entitled to peremptory challenges not exceeding ten, and the State . . . is entitled to peremptory challenges not exceeding five.” S.C. Code Ann. § 14-7-1110 (emphasis added). South Carolina’s courts have always considered the jury selection process in criminal cases, including the use of peremptory challenges, as sacrosanct.

In State v. Briggs, 27 S.C. 80, 2 S.E. 854 (1887), the state and four defendants collectively challenged thirty-two jurors thereby exhausting the entire jury venire without selecting a single juror for the trial. Under an applicable statute regarding jury selection, the trial court was required to draw additional jurors as “the court may deem necessary to fill such deficiency.” Id., 2 S.E. at 857. However, the lower court failed to order a new venire and continued the case until the following week at which time “a separate and distinct jury had been drawn and summoned.” Id. Further, the lower court held that because the four defendants challenged eight jurors the week before, the defendants were only entitled to challenge twelve more to make the twenty allowed under the law at that time. Our Supreme Court remanded the case for a new trial based on the lower court’s failure to follow statutory procedure even though the defendants may not have been prejudiced by the lower court’s actions:

[The applicable statute set forth] a plain, positive direction as to how to proceed in a criminal case “whenever it shall be necessary to supply any deficiency” as to jurors. After the trial was entered upon in the first week of the term, and the jury was exhausted, we think it was irregular to adjourn it over to the second, and then to present the jurors regularly drawn for that week, instead of those who would have been presented if the above provision of the law had been followed. This may seem technical. It may not be obvious that by this course any injustice was done to the defendants. Theoretically the jurors summoned under one *venire* may be as good as those called under another; but in criminal proceedings, and especially those involving life, it is proper that there should be great care and particularity.

Id. Our Supreme Court also held that the lower court erred in limiting the number of the defendants’ peremptory challenges and that “[t]he right of challenge as allowed [by statute] is regarded sacred.” Id.

There is only one reported decision that is analogous to the present circumstance wherein a court allowed the prosecution to use a peremptory challenge after a jury was selected and impaneled. In U.S. v. Harbin, 250 F.3d 532 (7th Cir. 2001), during the trial of a drug trafficking

case, one of the jurors indicated that he knew a witness's mother. The juror also indicated that he had participated in Narcotics Anonymous. Like South Carolina's courts, the trial court in Harbin could only remove a juror during trial for cause. The court conducted a *voir dire* examination of the juror, and the juror stated that he could be impartial. Although the court declined to dismiss the juror for cause, the court allowed the prosecution to exercise one of its peremptory challenges "left over" from jury selection based on the newly discovered information and replaced the juror with an alternate juror. The Seventh Circuit Court of Appeals held that the lower court violated the accused's right to a fair trial and to the fair and the intelligent use of peremptory challenges. The court held that "the ability to remove jurors with peremptory challenges mid-trial is a significant weapon. At that time, the parties have had the opportunity to observe the demeanor of the jurors and to employ that knowledge in their decision." Id. at 539. The court also observed that the "prosecution was unilaterally granted control over the composition of the jury during the trial stage . . . [which] skewed the jury selection process in favor of the prosecution, and adversely impacted the ability of the peremptory challenge process to fulfill its function as a means of ensuring an impartial jury and a fair trial." Id. at 541. The court further held that this error was "the type of fundamental error requiring automatic reversal." Id. at 547.

As previously indicated, the State had exhausted all five of its peremptory challenges before Juror Givens was selected from the venire. Further, the trial judge did not ask any questions during the initial *voir dire* that would have identified any connection between Juror Givens and the person in the snack bar. [R. p. 7, line 14 – p. 13, line 17] Moreover, although the trial judge gave the State the opportunity to ask additional questions of the jurors during *voir dire*, the State declined to do so. [R. p. 13, lines 21 – 23] However, the State was able to use information it

gleaned after the jury was impaneled to remove a juror without cause during the second day of trial. By removing an impartial juror at the State's request, the lower court unilaterally permitted the State to use a pre-trial jury selection tool to alter the composition of the jury during trial.

Here, the State was not concerned with any concealment by Juror Gadsden or Juror Givens. Rather, the State was solely interested in challenging Juror Givens based upon "any familiarity, however slight, between [her] and a member of the defendant's family" [R. p. 1 – 2] Notably, the State decided not to remove Juror Gadsden although: (1) Juror Gadsden spoke with the non-juror during the lunch break; (2) Juror Gadsden did not reveal this encounter during the court's *voir dire* of the matter during the first day of trial; (3) the State accused Juror Gadsden of "look[ing] in the direction of the defendant's family in the courtroom" during *voir dire*; and (4) Juror Gadsden had absolutely no explanation as to why she concealed her encounter in the snack bar. [R. p. 1 – 2; p. 69, lines 14 – 18] Yet, despite all of the State's professed concern that Juror Gadsden's "mendacity undermine[d] any faith that [she] could fulfill [her] oath fairly," the State withdrew its motion to excuse Juror Gadsden after she indicated that she and the non-juror did not know one another. [R. p. 69, lines 5 – 8; p. 71, lines 8 – 12] As for Juror Givens, the State challenged her after she testified that she had a "familiarity, however slight, between [herself] and a member of the defendant's family." [R. p. 1 – 2]

The State's challenge and removal of Juror Givens during trial was precisely the concern the court in Harbin addressed by granting a new trial. Specifically, here there was a shift in the balance of advantages in the State's favor that deprived Appellant of a fair trial. Like the prosecution in Harbin, the State in this case "was allowed exclusive, discretionary control over the composition of the jury mid-trial, and whether the mechanism for achieving that control was a peremptory challenge or another device is unimportant. . . . [T]he framework in which the trial proceeded

was fundamentally altered, with the jury selection mechanism transported to the trial stage for one party.” Harbin, 250 F.3d at 547 – 548. This Court should not “tolerate a system in which control over the jury rests in the exclusive domain of one party during a particular stage of the proceedings.” Id. at 549. Accordingly, like our Supreme Court in Stone and the court in Harbin, this Court should reverse and remand this case for a new trial.

CONCLUSION

Appellant requests this Court rehear the matter or rehear the matter *en banc* where (1) State v. Stone, along with the other authorities cited, show that the trial judge abused her discretion, (2) State v. Simmons is distinguishable from the case at hand and less akin to the case at hand than Stone, and (3) the issues are preserved in that trial counsel was only required to raise the issue of whether there was cause to remove the juror, regardless of whether trial counsel explained why any such error was reversible.

Respectfully submitted,

FUTERAL & NELSON, LLC



Stephan V. Futeral

S.C. Bar ID 66427

Thomas C. Nelson

S.C. Bar ID 71178

Post Office Box 1543

Mt. Pleasant, South Carolina 29465-1543

Telephone (843) 284-5500

Facsimile (843) 284-5501

email to: sfuteral@charlestonlaw.net

Dated: 8/20/13

Attorneys for Appellant

The South Carolina Court of Appeals

The State, Respondent,

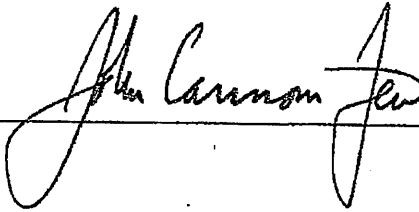
v.

Jerome Renaldo Campbell, Appellant.

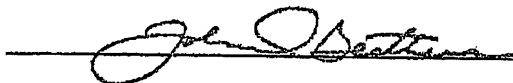
Appellate Case No. 2012-208426

ORDER

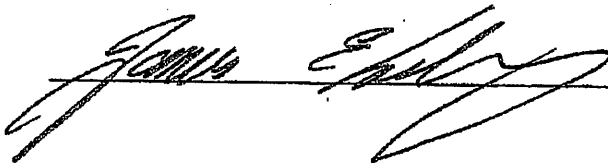
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



J.

Columbia, South Carolina

cc: Stephan Victor Futeral
Salley W. Elliott
Deadra L. Jefferson

FILED

23 Oct 2013



RECEIVED

DEC - 4 2013

ATTORNEY GENERALS
OFFICE

The South Carolina Court of Appeals

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POST OFFICE BOX 11620
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1690
FAX: (803) 734-1839
www.sccouris.org

December 02, 2013

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

REMITTITUR

Re: The State v. Jerome R. Campbell
Lower Court Case No. 2009GS1006731, 2009GS1006732,
2009GS1006733, 2009GS0900512
Appellate Case No. 2012-208426

Dear Clerk of Court:

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

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Stephan Victor Futeral, Esquire
Salley W. Elliott, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Jerome Renaldo Campbell)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

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 McCormick Correctional Institution
2. Name and location of Court which imposed sentence Court of General Sessions for Charleston County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-10-6730
 - (b) 2009-GS-10-6731
 - (c) 2009-GS-10-6732
 - (d) 2009-GS-10-6733
5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2003

- (a) January 27, 2012, ten years
 - (b) January 27, 2012, thirty years
 - (c) January 27, 2012, ten years
 - (d) January 27, 2012, ten years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty X
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals for all charges
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Appeal denied as to all charges
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. August 7, 2013
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. No. 2013-UP-338
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____

Revised 3/2003

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Trial counsel was ineffective in that he failed to object to the trial judge charging the law of aiding and abetting when the indictment only alleged the applicant acted as a principal.

(b) Trial counsel was ineffective for his failure to object to the trial judge charging the law of one, hand of all charge because the facts did not establish or prove that the occupants of the automobile were acting in concert.

(c) Trial Counsel failed to object to the mutual combat charge as there was no evidence of mutual combat.

(d) Trial counsel was ineffective for not objecting to the failure to charge the law concerning the defense of others.

(e)

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

(a) The indictment in this case only charges that the applicant acted as a principal. At the end of the trial, without objection from trial counsel, the trial judge charged the jury as to the law of aiding and abetting. The indictment did not give the applicant notice that he could be tried for aiding and abetting and therefore is in violation of Article I, §§ 3 and 14 of the Constitution of the State of South Carolina and the due process clause of the Fourteenth Amendment to the Constitution of the United States of America.

(b) The testimony at the trial only established that shots were fired from a moving automobile. No testimony at trial established that the occupants of the automobile were acting in concert or had agreed to use force against the victim in this case.

(c) The trial court on her own motion elected to charge the law of mutual combat. No testimony at this trial established any basis for a charge on mutual combat.

(d) Trial counsel erred in failing to object to the trial judge not charging the defense of others. Such a charge was proper as the person shooting from the automobile would have been shooting to defend the occupants of the automobile and not just himself.

(e)

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

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

Revised 3/2003

- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____

- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/A
- (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? Yes
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. William S. Harris, 180 Spring St., Charleston, SC 29403 and Jason T. Mikel, 321 Wingo Way, Ste. 201, Mt. Pleasant, SC 29464

ii. Stephen V. Futeral and Thomas C. Nelson, P. O. B0x 1543, Mt. Pleasant, SC
29465-1543

iii. C. Rauch Wise, 305 Main St., Greenwood, SC 29646

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

i. Trail of case

ii. Appeal of case

iii. Preparation of this Post Convictino Relief Petition

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

A new trial on all charges

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of McCormick)

VERIFICATION

I, Jerome Campbell, 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.

SWORN to and subscribed before me this _____
day of _____, 2_____.

_____(L.S.)
Notary Public

My Commission Expires: _____

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, 2____.

Notary Public

My Commission Expires: _____

Revised 3/2003

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2014-CP-10-3019
	)	
Jerome Renaldo Campbell, #349454,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed May 12, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the September 2009 term of the Charleston County Grand Jury for murder (2009-GS-10-6731) and four (4) counts of assault with intent to kill (AWIK) (2009-GS-6730, -6732, -6733). The Applicant was represented by William S. Harris, Esquire, and Jason Todd Mikell, Esquire.

On January 23-27, 2012, the Applicant proceeded to trial and was found guilty. The Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of thirty (30) years for murder and ten (10) years for each AWIK. The Applicant's sentences are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Stephan Futeral, Esquire, and Thomas Nelson, Esquire. The Applicant's convictions and sentences were

affirmed by the Court of Appeals. State v. Campbell, No. 2014-UP-338 (S.C. Ct. App. August 7, 2013). The Applicant filed a Petition for Rehearing which was denied on October 23, 2013. The Remittitur was issued on December 2, 2013.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Trial counsel was ineffective in that he failed to object to the trial judge charging the law of aiding and abetting when the indictment only alleged the applicant acted as a principal.
 - i. The indictment in this case only charges that the applicant acted as a principal. At the end of trial, without objection from trial counsel, the trial judge charged the jury as to the law of aiding and abetting. The indictment did not give the applicant notice that he could be tried for aiding and abetting and therefore is in violation of Article I, §§3 and 14 of the Constitution of the State of South Carolina and the due process clause of the Fourteenth Amendment to the Constitution of the United States of America.
 - b. Trial counsel was ineffective in that he failed to investigate and establish that the cell phone found in the automobile was not an operational cell phone. The prosecuting attorney made reference to the cell phone in his closing argument to establish that the applicant could have been sitting in the back seat of the automobile from which the bullets were allegedly fired.
 - i. During closing arguments the prosecuting attorney made reference to a cellphone found in the back seat of the automobile. This cellphone was not useable. Had trial counsel properly investigated the case, testimony could have been presented that showed that the cell phone was not operable and had not been operable for some time. The claim by the state that the cellphone belonged to the applicant and therefore the

applicant had been in the back seat of the automobile was prejudicial to the applicant and not factually correct.

- c. Trial counsel failed to adequately develop an alibi defense for the applicant when the facts established that such defense had been established under the facts of the case as proven by the state.
 - i. The testimony presented by the state established that the applicant turned himself in to the police on James Island and his automobile was found some distance away in the West Ashley area of Charleston, SC. Trial counsel did not investigate how applicant traveled to James Island and therefore was not effective in investigating the case.
- d. Trial counsel failed to develop a coherent theory of defense for use at trial.
 - i. At no time did trial counsel develop a coherent theory of defense in this case. Trial counsel apparently sought to defend the case on some alibi and some self-defense. Had trial counsel properly interviewed all witnesses he would have been able to establish an alibi defense for the applicant.
- e. Trial counsel failed to properly investigate the case as to witnesses who testify about threats against the applicant.
 - i. Trial counsel ailed to investigate threats that had been made against the applicant by one or more individuals who were involved with the victim. Had these witnesses been investigated, the evidence would have established a motive for the witness to lie about the applicant.

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

Respectfully submitted,

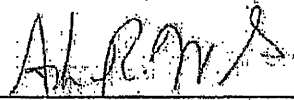
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT

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

March 4, 2015

1	STATE OF SOUTH CAROLINA	)	
2	COUNTY OF CHARLESTON	)	Court of Common Pleas
3		)	Case No. 2014-CP-10-3019
4	JEROME RENALDO CAMPBELL,	)	
5	Applicant,	)	
6	vs.	)	Transcript of Record
7	STATE OF SOUTH CAROLINA,	)	
8	Respondent.	)	DATE: January 12, 2017

10 B E F O R E:

11 THE HONORABLE WILLIAM SEALS

13 A P P E A R A N C E:

14 C. RAUCH WISE
Attorney for the Applicant

16 ALICIA OLIVE
Attorney for the Respondent

18 Karen V. Andersen, RMR, CRR
19 Circuit Court Reporter

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1 THE COURT: Which one do we want to do first?

2 MS. OLIVE: We are going to do Jerome Campbell.

3 MR. WISE: Your Honor, I would like to hand up to
4 the Court an amended PCR. We've changed allegations. I've
5 sent a copy, I think, earlier this week, if not last week.

6 MS. OLIVE: I received it earlier this week. No
7 objection.

8 MR. WISE: That eliminated some and added some.
9 They are basically more legal issues.

10 THE COURT: Go ahead and call the case. Introduce
11 it.

12 MS. OLIVE: Thank you, Your Honor. May it please
13 the Court. This is Jerome Campbell, 2014-CP-10-3019.
14 Mr. Campbell was indicted in September of 2009 for murder and
15 four counts of assault with intent to kill. He was
16 represented on those charges by William Harris and Jason
17 Mikell. He proceeded to trial on January 23rd through 27th,
18 2012, after which he was found guilty.

19 He was sentenced by Judge Jefferson to imprisonment
20 for 30 years for murder and 10 years for each count of the
21 assault with intent to kill. Those were to be served
22 concurrently.

23 He filed a timely notice of appeal. His appeal was
24 perfected and his conviction of sentence was affirmed by an
25 unpublished opinion dated August 7th, 2013. He filed a

1 petition for rehearing, which was denied on October 23rd,
2 2013. The remittitur was issued on December 2nd, 2013.

3 He filed this application on May 12th, 2014,
4 alleging ineffective assistance of counsel. And as Mr. Wise
5 just stated, he has amended that application. And Your Honor
6 has that before him.

7 Mr. Campbell is present in the courtroom today and
8 represented by Rauch Wise. I will turn it over to Mr. Wise.

9 MR. WISE: Mr. Harris is going to be our first
10 witness. And he is in the restroom. We basically allege
11 that the -- in the amended petition, that there was some
12 charges to the jury that we think were improper. They deal
13 with the charge of aiding and abetting. They deal with the
14 charge of mutual combat. And they deal with the charge of
15 failure to charge defense of others. Gave a self-defense
16 charge, but did not charge the "defense of others", which we
17 think prejudices the defendant in this case.

18 Mr. Harris should be back shortly.

19 THE COURT: Okay.

20 MR. WISE: In lieu of Mr. Harris, actually, we can
21 start with the applicant.

22 THE COURT: Come around.

23 JEROME CAMPBELL,
24 having been duly sworn, testifies as follows:

25 THE CLERK: Sir, for the record, if you will please

1 state your name, spelling your last name.

2 THE WITNESS: Jerome Campbell, C-a-m-p-b-e-l-l.

3 DIRECT EXAMINATION

4 BY MR. WISE:

5 Q. Mr. Campbell, where are you from?

6 A. Charleston, South Carolina.

7 Q. And where were you born?

8 A. Right here in Charleston.

9 Q. In Charleston?

10 A. Yes, sir.

11 Q. And how long did you live in Charleston?

12 A. All my life, 17 years before I went to school.

13 Q. Before you went to school? And where did you go to
14 school?

15 A. I went to college -- I started off at Anderson
16 College.

17 Q. How did you go to Anderson College?

18 A. Well, I was recruited for basketball. I actually
19 wasn't on a scholarship. I ended up walking on and,
20 eventually, I earned a scholarship.

21 Q. And then after that, where did you go?

22 A. I transferred to Spartanburg Methodist College..

23 Q. That was a junior college also?

24 A. Yes, sir. That's where I earned my associate's
25 degree.

1 Q. After --

2 A. After --

3 Q. -- where did you go?

4 A. Actually, I got recruited for a basketball
5 scholarship by several schools. And I chose the University
6 of South Alabama. I went there '96-'97, '97-'98. I played
7 basketball two years there. And actually graduated with a
8 bachelor's degree in business administration in '99.

9 Q. You've had the rare distinction of playing in a
10 couple of tournament games?

11 A. Yes, sir. I had a chance to play in the NCAA
12 tournament two years. First year we actually got to play
13 against the national champs, Arizona, first round of term.
14 Yes, sir.

15 Q. Did you graduate from South Alabama?

16 A. Yes, sir.

17 Q. After you graduated, don't go into great detail, but
18 generally, what did you do?

19 A. I moved back to Charleston, worked a few jobs, kind
20 of searching for a career. It didn't pan out. Made a couple
21 of calls back to South Alabama. My coach helped me get a job
22 at an engineering firm back in South Alabama. I moved back
23 there, worked that for a while. It didn't work out. Ended
24 up moving back to Charleston and stayed there for a couple of
25 years, worked a couple of jobs, you know.

1 Actually, after I graduated, when I moved back to
2 Charleston, I actually got back with my then-girlfriend, now
3 wife.

4 Q. She's here in the courtroom?

5 A. Yes, she's here, yes.

6 Q. On the far end on the right?

7 A. Yes, sir. So I worked a couple of jobs. We got
8 back together. And, eventually, I worked at the Boys and
9 Girls Club as a unit manager in Mount Pleasant for a while.
10 And eventually moved to Charlotte. My dad got sick in around
11 2004, 2005. And my wife, she moved to Charlotte and I stayed
12 around. My dad eventually passed, and I moved to Charlotte
13 with her.

14 Q. Where did you work in Charlotte?

15 A. Actually, I started off working as a one-on-one
16 counselor working with kids, you know, still searching for
17 that career job. And then I got into mortgages. I worked
18 for Ameriquist Mortgage for a while. And, eventually, I
19 ended up at Wachovia Bank.

20 Q. And how long had you been at Wachovia Bank when this
21 incident occurred?

22 A. About three years.

23 Q. Okay.

24 A. I was working there when I got -- when this
25 happened.

1 Q. Let's go back and focus a little bit more on this
2 incident. You didn't testify at the trial?

3 A. No, sir.

4 Q. Okay. Do you know the background behind this
5 incident? I assume you do.

6 A. Well --

7 Q. Part of it anyway.

8 A. Yeah. I could remember coming to Charleston and,
9 you know, just hanging out with my friends, hanging out in
10 the yard, like I normally do.

11 Q. Let me back up. Why were you in Charleston? This
12 was in January?

13 A. January, 2009. I believe I ran out of paid time off
14 at the bank. And I believe either was the first time I could
15 get off or I had a new paid time off. It was the first
16 weekend. I didn't get to go home for the holidays in 2008.
17 So I wanted to go down to see my family. So I did go down.
18 I had that planned for actually about a week.

19 Q. So when this occurred, you were living where?

20 A. In Charlotte.

21 Q. In Charlotte?

22 A. Yes.

23 Q. And had been there about how long?

24 A. About six years, six years or so.

25 Q. Go ahead.

1 A. Okay. And I really didn't remember how everything
2 started, but I thought back to while I was in Charlotte to a
3 conversation that I had with my mom on the phone. And she
4 was talking to somebody in the background. It was Michael
5 Allen. And they were having words, her and my sister. Him
6 and my sister actually had, you know, something going on, a
7 feud between them. And I never actually talked to Mike on
8 the phone, but I knew -- I kind of asked my mom what was
9 going on. And I did tell her I would be down there, because
10 I had already planned on coming down here.

11 So I go down there. I go down to Charleston, doing
12 my normal routine. I stay across the street from a store.
13 And where I'm located at --

14 Q. When you say you stay across the street from a
15 store, who actually lives there?

16 A. My mom.

17 Q. Your mother's house?

18 A. Uh-huh, my mamma's house.

19 Q. When you come back to Charleston, you stay with your
20 mother?

21 A. Yes, sometimes my mom; sometimes my sister. So I'm
22 actually across the street from the store. And we would come
23 back in the yard, me and a couple of friends, because we
24 would all get together. Sometimes there would be maybe 10,
25 15 of us in my mom's yard having a good time. You know what

1 I'm saying? Friends hadn't seen me in a while and they would
2 stop by.

3 So that particular day, it was me and Aaron Burn
4 (ph), a friend of mine, we were hanging together.

5 Q. Is he kin to you?

6 A. Yes, uh-huh. And that is when I -- I actually
7 received a text message from my sister saying -- from Michael
8 Allen that she forwarded to me.

9 Q. There was testimony about that at the trial too?

10 A. Yes, uh-huh. Uh-huh. Saying that -- so I got the
11 text message. And I really didn't think anything of it right
12 then, because I really didn't know where it was coming from,
13 because I never actually talked to him up until -- we never
14 had a heated argument or anything. So I received the text
15 message, and I kind of shrugged it off.

16 Going back, when I first got home, normally what I
17 do is, I get with all my nieces and nephews and I get them
18 all together. And sometimes I will take them to Walmart or I
19 will take them to Burger King or whatever the case might be.
20 Having a new niece, my niece, she just had a baby and I
21 wanted to see her, but I already heard that they were
22 feuding.

23 Q. When you say "they", I'm sure the judge is not
24 up-to-date on who "they" are.

25 A. Okay. I guess my sister, something to do with the

1 baby and them wanting to see the baby --

2 Q. Who was your sister married to?

3 A. My niece was married to Anthony German.

4 Q. That was the brother of the man that was killed?

5 A. Yes, sir, uh-huh. I don't know the extent of what
6 was going on, but I knew I wanted to see my niece, my new
7 grandniece or whatever. So I called him. And he was saying,
8 basically, no, that ain't going to happen. And I'm asking
9 him why. And he said he didn't have to explain. And we had
10 a couple of words. I hung the phone up. He called me back
11 saying something. And I hung the phone up on him again.
12 That was pretty much the only conversation I ever had with
13 him.

14 Q. Okay.

15 A. And that's it. So we were carrying on with our day,
16 about to have a good time out in the yard. Then I get a call
17 from my sister saying that --

18 Q. Who is your sister?

19 A. My sister is Cheryse Coaxum. She's married to
20 Michael Allen.

21 Q. She's married to Michael Allen, who is one of the
22 witnesses in this case?

23 A. Yes, sir. Saying that Michael Allen and the Germans
24 and Frank all were over there looking for me and making
25 threats --

1 Q. When you say "over there", over where?

2 A. I'm sorry. My sister's house.

3 Q. And that's where?

4 A. That's West Ashley. I'm on James Island at my mom's
5 house. They over there at West Ashley.

6 Q. And your sister's house was what apartment complex?

7 A. That was, I think, the Plantation apartment complex,
8 yes, sir, uh-huh.

9 Q. You get a call saying they are over at the
10 Plantation?

11 A. Yes, looking for me.

12 Q. What did you do?

13 A. I kind of ignored it at first. Then I got another
14 call from my other sister saying that they were over there
15 looking for me. And I kind of didn't, you know, pay it any
16 attention. But, so, basically, what we did was, we rode
17 over, me and Aaron Burn, we rode over there. We rode over
18 there. We rode through --

19 Q. Anybody in the car with you?

20 A. Not at this point.

21 MS. OLIVE: Your Honor, I'm going to object to the
22 testimony, because it's not germane to the issues presented.
23 Mr. Campbell didn't testify at trial. We have to go by
24 what's in the record.

25 THE COURT: Sustained. Let's go ahead and get to

1 the facts and allegations.

2 BY MR. WISE:

3 Q. You ultimately were charged?

4 A. Yes, sir.

5 Q. And who did you hire as your lawyer?

6 A. Steven Harris.

7 Q. Steven who?

8 A. Steven Harris.

9 Q. And did you meet with him?

10 A. Yes, sir.

11 Q. And you are not here complaining that he didn't meet
12 with you enough, are you?

13 A. No, I met him.

14 Q. You had a pretty good relationship with him?

15 A. Yes, sir. Yes, sir.

16 Q. Now, during the trial, there was some -- there was a
17 comment about some of the jury charges?

18 A. Yes, sir.

19 Q. And did he raise any objection to some of the jury
20 charges that you perhaps think should have been raised?

21 A. No, sir.

22 Q. And I believe you and I discussed the charge about
23 mutual combat.

24 A. Yes, sir.

25 Q. And was there objection raised to that?

1 A. No, sir.

2 Q. And what do you understand there about mutual combat
3 and why it's not right?

4 A. From what I understand, it's when two people have an
5 agreement to meet up somewhere and, say, have a gun fight or
6 knife fight, or they agree that we both taking part in this,
7 we are going to meet up and duke it out. That's what I
8 understand.

9 Q. Is that consistent or inconsistent with
10 self-defense?

11 A. Inconsistent.

12 Q. And also during the course of the trial, there
13 was -- you were originally indicted in an indictment -- let
14 me back up.

15 Did your indictment allege that you aided and
16 abetted anybody?

17 A. No, sir.

18 Q. The indictment alleged what?

19 A. That I killed somebody with malice aforethought.

20 Q. Did you ever shoot a gun that day?

21 A. No, sir.

22 Q. Now, there was also a charge about the "hand of one
23 is the hand of all"?

24 A. Yes, sir.

25 Q. Did you ever that day ever agree with anybody to do

1 any shooting?

2 A. No, sir.

3 Q. Encourage anybody to do any shooting?

4 A. No, sir.

5 Q. Was there any real evidence that you encouraged
6 anybody to do any shooting?

7 A. No, sir.

8 Q. There was no objection to that?

9 A. No, sir.

10 Q. Also, there was a charge to the jury about if
11 someone, not you, but if someone else fired a shot, and that
12 she did not charge what we call the "defense of others". Do
13 you remember that?

14 A. Yes, sir.

15 Q. She did charge self-defense?

16 A. Yes, sir.

17 Q. Was there some testimony in the trial that would
18 lead a reasonable jury to conclude that someone may have shot
19 from the group that was by the store?

20 A. Yes, sir.

21 Q. And that was placed --

22 A. From video.

23 Q. Video, sound on the video?

24 A. Sound, yes, sir.

25 Q. And also, was there gunshot residue testimony --

1 A. Yes.

2 Q. -- on the hands of any of the people at the store?

3 A. I believe on two people at the store.

4 Q. And no gun was found -- well, a gun was found at the
5 store, but they say it was not operable?

6 A. Correct.

7 Q. And there was no objection to -- there was no
8 objection to charging -- excuse me.

9 There was no objection to the trial judge not
10 charging that "defense of others" could be part of
11 self-defense?

12 A. Correct.

13 Q. And do you think that was important?

14 A. Yes, sir.

15 Q. And if those charges had been made, do you think it
16 could have been affected the outcome of the trial?

17 A. Yes, sir.

18 Q. Now, on June -- January of 2009, when this occurred,
19 you never shot anybody?

20 A. No, sir.

21 Q. Ever plan on shooting anybody?

22 A. No, sir.

23 Q. Ever involved in shooting anybody?

24 A. No, sir.

25 Q. Who was in the car with you when you all left the

1 scene?

2 A. It was Aaron Burn and John Watson.

3 Q. John Watson?

4 A. Yes, sir.

5 Q. And was there testimony at the trial about other
6 individuals being with you that day?

7 A. Yes, sir.

8 Q. I believe at the Plantation --

9 A. Yes, sir.

10 Q. -- Apartments; is that correct?

11 A. Yes, sir.

12 MR. WISE: Thank you. Answer any questions the
13 State may have.

14 MS. OLIVE: Thank you, Your Honor. May it please
15 the Court.

16 CROSS-EXAMINATION

17 BY MS. OLIVE:

18 Q. Do you recall your attorney did actually make -- he
19 did actually ask the judge to charge the "defense of others";
20 do you remember that?

21 A. I don't recall.

22 Q. Would you agree if it appears in the record that it
23 happened?

24 A. Yes, if it appears in the record.

25 MS. OLIVE: And for Your Honor's reference, I'm

1 referring to pages 660 through 669 of the trial transcript.

2 BY MS. OLIVE:

3 Q. Do you remember the judge decided that she was not
4 going to charge "defense of others"?

5 A. She did?

6 Q. She decided she was not going to charge "defense of
7 others"; do you remember that?

8 A. I don't recall. I don't have that in front of me.

9 Q. Going to trial, you knew that you were charged --
10 you knew what charges you were facing going to trial?

11 A. Yes, sir, as far as what the indictment says, yes,
12 sir -- yes, ma'am. I'm sorry.

13 Q. And there was testimony at trial that there were
14 others with you? There were several people that were -- at
15 least two people that had guns, right?

16 A. Yes, there was testimony at trial.

17 Q. Frank Heyward had testified that there were two
18 people with shotguns; do you remember that?

19 A. Yes, ma'am.

20 Q. And you had the opportunity to testify at trial and
21 tell the jury that you never shot anyone that day?

22 A. Yes, ma'am.

23 Q. You didn't?

24 A. No, ma'am.

25 MS. OLIVE: Thank you. That's all the questions I

1 have.

2 THE COURT: Any redirect?

3 MR. WISE: I don't have any redirect, Your Honor.

4 WILLIAM HARRIS,

5 having been duly sworn, testifies as follows:

6 THE CLERK: Sir, for the record, if you will please
7 state your name, spelling your last name.

8 THE WITNESS: William Steven Harris, last
9 H-a-r-r-i-s.

10 DIRECT EXAMINATION

11 BY MR. WISE:

12 Q. DID you represent Jerome Campbell?

13 A. I did, yes.

14 Q. I believe we talked about this case earlier.

15 A. Yes, sir.

16 Q. About a year's or so ago?

17 A. About a year, yes.

18 Q. Unfortunately, the file was not available?

19 A. Right. I moved offices from a historic building in
20 downtown to another historic building downtown, and we lost
21 some files in that move based on -- I can't remember if it
22 was water or just damage, but I believe this was one of
23 them.

24 Q. Notwithstanding that, how is your recall of this
25 case?

1 A. A case like this, very well. It really is. It is
2 one of the cases that the outcome upset me personally, so I
3 remember it well.

4 Q. Now, I'm going to ask you a little background
5 questions about this. In this case, what was the testimony
6 about a shooting by the people by the store? For the judge's
7 identification, this was a shooting that occurred from a car
8 speeding out of an apartment complex?

9 A. Yes, sir.

10 Q. And the victim was over by a store?

11 A. He was standing by the wall at a gas station in West
12 Ashley, yes, sir.

13 Q. He was wounded with a ricochet bullet?

14 A. That's what the State was claiming, yes.

15 Q. And there's some evidence of that, that the bullet
16 was badly mangled?

17 A. Badly mangled and there's a big hole in a brick wall
18 right next to it. But, again, that was their expert's
19 testimony, yes.

20 Q. Was there evidence that the shooting could have
21 occurred -- could have been made by the people standing by
22 the store?

23 A. Evidence that could have been made by them? They
24 all had gunshot residue on their person in some way.

25 Q. Did anybody have any gunshot residue on their hand?

1 A. Yes.

2 Q. Did the State try to explain that away?

3 A. They did.

4 Q. And what was their explanation?

5 A. That the bullet from the gun in a car 80 to 100 feet
6 away, if I remember correctly -- I haven't refreshed on the
7 case. I've been extremely busy. I apologize. -- 80 to 100
8 feet away, I believe, that the residue stayed on the bullet;
9 the bullet hit the wall and the gunshot residue sprinkled
10 down from the wall onto his shooting hand.

11 Q. You weren't on the jury, but is that credible?

12 A. Not at all, from what I know, no.

13 Q. Now, Mr. Campbell did not testify?

14 A. He did not.

15 Q. I think you urged him to?

16 A. I did. And can I clarify that answer?

17 Q. Sure.

18 A. I urged Jerome to testify, Mr. Campbell to testify.
19 The way this trial was going and had gone with certain
20 things, there were certain parts of this -- and stop me if
21 I'm expanding too much.

22 Q. She will do it. Don't worry.

23 A. Sorry?

24 Q. She will stop you. Don't worry.

25 A. Okay. There was a point I felt that he had a story

1 to tell. And on a defense-strategy type of way, I also
2 didn't want him to open himself up to certain things.
3 Because when a client testifies, they are opening themselves
4 up. They can tell their story, but they are opening
5 themselves up to the prosecutor asking them about things that
6 may not be related to that. And there's parts of it that I
7 don't believe at the time he wanted to disclose. And under
8 oath, he would have to do that on the stand. So that was a
9 decision that was made.

10 Q. That part was relatives --

11 A. That part was who really shot the person.

12 Q. Relatives of his?

13 A. Yes.

14 Q. Now, during the course of the trial -- let me back
15 up a second. If there was testimony that would lead a
16 reasonable jury to believe that shots were fired by the
17 people at the store, was that the basis on which you got the
18 self-defense charge?

19 A. Yes.

20 Q. And during the charge conference, the judge urged --
21 and you've got the transcript?

22 A. I do.

23 Q. The judge said they were not going to charge
24 "defense of others"?

25 A. Right.

1 Q. And that's on page 669, line 15 through 18 of the
2 transcript.

3 A. You want me to read that?

4 Q. You don't have to read it, but is that correct?

5 A. Yes.

6 Q. After she said that, do you recall on the following
7 pages making a real objection to that charge, statement on
8 that fact?

9 A. From me? I don't see an objection from me.

10 Q. At the end of the testimony -- excuse me, end of the
11 charge to the jury, does the record also reflect there was
12 not another objection made?

13 A. Right.

14 Q. Now, Mr. Campbell was indicted. In his indictment,
15 they allege that he did the shooting?

16 A. I'm sorry?

17 Q. In the indictment, they allege that he did the
18 shooting?

19 A. Yes, yes.

20 Q. The indictment did not allege that he was part of a
21 conspiracy or "hand of one is the hand of all" or anything
22 like that?

23 A. No.

24 Q. When the State went on the theory of "hand of one is
25 the hand of all", did you make an objection that that wasn't

1 what the indictment said?

2 A. Does the record reflect that?

3 Q. No?

4 A. No.

5 Q. In your defense, that's probably the law in South
6 Carolina, just whether or not it should be the law in South
7 Carolina?

8 A. Right. And I think -- again, I think I flashed back
9 to that point to my public defender days and remembered that
10 that's a fruitless argument.

11 Q. The judge did charge "hand of one is the hand of
12 all", correct?

13 A. Yes.

14 Q. Was there any real testimony of a conspiracy or an
15 agreement between Mr. Campbell and the other two people in
16 the car to do a shooting together?

17 A. No.

18 Q. No, there wasn't?

19 A. No. If I recall correctly, there was testimony
20 about some confrontations that happened earlier in the day,
21 earlier in the hour. And there was some -- Jerome was
22 selling shoes out of a car. And there was a problem with his
23 niece being -- who was underage -- being with an adult, is
24 what I remember it being about.

25 Q. And, obviously, the two people in the car,

1 Mr. Campbell didn't testify?

2 A. Right.

3 Q. But you didn't raise an objection to the charge of
4 "hand of one is the hand of all"?

5 A. I did not.

6 Q. Now, also, there was a charge on mutual combat?

7 A. Yes.

8 Q. Do you know -- and I believe the mutual combat
9 charge is found on page 759, if you turn to it. Do you
10 remember that, lines 11 through 13?

11 A. Yes.

12 Q. All right. Did you raise an objection to mutual
13 combat?

14 A. No, I did not. And this is -- let me see. I don't
15 know if I took -- was there -- this is again -- yeah, I
16 didn't object there. But was there anywhere in the record
17 that reflects a, "Your Honor, may I approach?"

18 Q. Not that I recall, but don't hold me to it either.
19 Did you request a charge of mutual combat?

20 A. No. I requested the self-defense charge, if I
21 remember correctly. And after she gave the self-defense
22 charge, I regretted asking for the self-defense charge
23 because of the way she worded it.

24 Q. Because of the "mutual combat" in there?

25 A. Yes. Because it made it sound like, if it wasn't

1 self-defense, then they had to find him guilty. The way she
2 phrased it was -- and if it's -- because that's the one
3 problem I walked away from, just trying to figure out why it
4 was phrased that way, why you put those two things together.

5 Q. Are you familiar with the case of *State v. Taylor*
6 decided in 2002?

7 A. Can you refresh me on it? I'm sure I am.

8 Q. I will give it to you to review it. And the cite on
9 that, for the record, is 356 S.C. 227, 589 S.E. 2nd 1.

10 A. Is this the case where the weapon's presumed --

11 Q. No. That's the one where the court said you don't
12 charge mutual combat and self-defense at the same time.

13 A. Okay. No, I am not. Obviously, if I was familiar
14 with this case, I could have made a better argument on that.
15 But, no, I wasn't familiar with this case.

16 Q. Now, do you believe that the mutual combat charge in
17 with self-defense confused the jury?

18 A. Yes. That was -- like I said, that was the -- one
19 of the bigger problems I had with the charge the way it was.
20 I believe I spoke to the appeals lawyer on that. That's why
21 I was asking if I could ask to approach, because I know that
22 you can't have a speaking objection in front of the judge
23 that we have on the bench there. I tried many cases in front
24 of Judge Jefferson, and you can't have a speaking objection.
25 You have to approach. So I don't know -- again, I remember

1 saying something to her. I don't remember what it was, but
2 it was probably at the bench, because the jury was seated and
3 those don't go on the record. So I don't know what was said.
4 I can't recall what was said.

5 Q. But with no real evidence of Mr. Campbell acting in
6 concert with others in the car, do you think the judge -- you
7 should have objected to the charge of "hand of one is the
8 hand of all"?

9 A. In hindsight, yes.

10 Q. And you did not object. While you suggested that
11 she charge "hand of one is the hand of all", when she refused
12 to do it, you didn't make an objection to that, according to
13 the record?

14 A. When I suggested she charge "hand of one is the hand
15 of all"?

16 Q. You made a suggestion about it on page -- let me see
17 if I can find it.

18 A. I thought I suggested that she make this a "defense
19 of others".

20 Q. Right, on page 661, line 16 through 22.

21 A. Right. Well, if you look at 660, again, this is --
22 she had just -- I don't want to say embarrassed me, but
23 intentionally brought up that she has a tendency of lawyers
24 not to answer questions. And if you said -- kind of asked
25 me, like, what I was basically asking. And I said, yes, I'm

1 asking you to charge that this is "defense of others". This
2 is not just the alter ego part of it, this is "defense of
3 others".

4 And, again, she said, you are not answering my
5 question. And that's when I tried to go through without
6 giving up my defense -- my closing arguments, I tried to go
7 through and tell what we were going to be arguing.

8 Q. But after she ruled that she wasn't going the charge
9 that, you didn't raise -- you didn't raise an objection?

10 A. No, I did not.

11 Q. And, certainly, did not raise it in the end of the
12 jury argument either?

13 A. No, I did not.

14 Q. And was that prejudicial to Mr. Campbell with her
15 not charging that?

16 MS. OLIVE: Your Honor, I object. That's a legal
17 conclusion.

18 THE COURT: Sustained.

19 MR. WISE: Excuse me?

20 THE COURT: Sustained.

21 MR. WISE: I don't think it's a legal conclusion,
22 but it is a factual conclusion under his view of the facts.

23 THE COURT: Rephrase your question. Let me hear
24 it.

25 BY MR. WISE:

1 Q. You were at the trial, obviously?

2 A. Uh-huh.

3 Q. Do you have an opinion as to whether or not her not
4 charging "defense of others" was prejudicial to your case?

5 THE COURT: I think that's my decision, not his.

6 MR. WISE: Well, let me rephrase it.

7 BY MR. WISE:

8 Q. When she failed to charge "defense of others", did
9 that hurt your closing argument?

10 A. Yes.

11 Q. And why is that?

12 A. Because I couldn't make that argument, that I had to
13 make the argument under the alter ego rule, which the alter
14 ego rule, you basically have to admit that person. Again,
15 it's one where we never said who that person was. We were
16 arguing that it's based on it being a stranger, because we
17 didn't have testimony on who the shooter was. So to say, I'm
18 stepping in as the alter ego under self-defense for this
19 person, you need -- you have to know what's in that person's
20 mind. But under "defense of others", you -- the rule -- I
21 mean, the test, the four-part test is not stripped on
22 "defense of others" as it is alter ego under the self-defense
23 rule.

24 And that's why, yes, I think it was different,
25 because that's why I made the argument to her. And she

1 rejected it.

2 Q. You listened to the audiotape in this case?

3 A. Yes.

4 Q. And, unfortunately, lost your copy that you had?

5 A. Yes.

6 Q. From listening to the audiotape, where does it sound
7 like the shots were first fired from --

8 A. From the --

9 Q. -- and why do you say that?

10 A. It's in my closing and was in the evidence I
11 presented and my expert presented. The shots, the noise of
12 the shots, is two specific loud booms. There's a camera
13 right by the gas station. So they can pick up what's going
14 on right by the cash register, two loud booms. Then you hear
15 a faint "pop, pop", which is what we argued, what I believe
16 the evidence showed, was a person shooting from right under
17 the camera, "bam, bam," and then two shots firing back.

18 And that was 95 percent of the reason we argued
19 self-defense in this case and "defense of others", was they
20 were being shot at first.

21 Q. So your argument about the "defense of others" would
22 have been what exactly?

23 A. That even if you don't know the person sitting there
24 that's being shot at, even if you didn't shoot back, that
25 whoever was shooting back to defend the people in that car

1 was immune from prosecution.

2 Q. And that would have been your argument?

3 A. Yes.

4 Q. You were not able to make that argument?

5 A. I was not.

6 MR. WISE: Thank you. Answer any questions the
7 State may have been.

8 THE COURT: Cross.

9 CROSS-EXAMINATION

10 BY MS. OLIVE:

11 Q. But you did request the "defense of others" charge,
12 right?

13 A. I did.

14 Q. And the judge simply refused to charge it?

15 A. Yes.

16 Q. Do you recall whether you objected to the mutual
17 combat charge?

18 A. Is it in the record? I'm just asking because that
19 one I don't recall. And if I can explain, you know, I don't
20 know how -- I haven't done one of these in five years.

21 Different judges do different things. I've tried a
22 lot of cases in front of the ones here in Charleston, Judge
23 Jefferson, Judge Dennis, Judge Young. Judge Jefferson has a
24 lot of different rules than other judges.

25 On a defense, strategy-wise, I don't like to make

1 her angry by continuously objecting or continuously bringing
2 things up. She won't let you renew objections, for instance,
3 after the case in chief. She says, don't worry, it's covered
4 if you do it. So I don't recall if I did. And I don't
5 recall why I wouldn't have. It may have had something to do
6 with that, because when I'm trying to get things -- I was in
7 sales for a long time. When I'm trying to get something in,
8 I try not to make the person mad that I'm trying to sell
9 something to.

10 Q. So you have no specific recollection of why you
11 would not have objected to the mutual combat charge?

12 A. No. And looking at the transcripts, it's probably
13 because, like I said, she had just kind of read me the riot
14 act on why I didn't answer specifically "yes" to a question
15 she asked, as opposed to giving my version of the answer,
16 according to her. So I don't know if it was because I was
17 flustered or what. I have no idea. Like I said, it looks
18 like I was a little flustered, to be honest at that point.
19 Because she's basically comparing me to every other lawyer in
20 town and why I'm not answering the question.

21 Q. Did you see any reason to object to the "hand of one
22 is the hand of all" charge?

23 A. Based on facts, yes. I didn't, but based on the
24 facts, yeah. Again, hindsight, I should have objected to the
25 "hand of one is the hand of all" charge.

1 Q. What would --

2 A. What would my reason be?

3 Q. But you didn't object at the time?

4 A. No.

5 Q. Do you know why?

6 A. It would be a guess, a little bit of recollection on
7 why. A lot of it had to do with the fact that we didn't have
8 testimony on who the actual shooter was. So if you are
9 arguing in a case where you don't have the person that's the
10 shooter -- everybody in the room, including the prosecutor,
11 knew he was not the shooter. The prosecutor even told me
12 that. So when you don't have the shooter and you are saying,
13 if this person did this for this reason, it's hard to make
14 objections because you don't have backup -- you are using a
15 hypothetical individual. And you are trying to get into
16 their mind. But you don't know what's in their mind because
17 you don't know who they are.

18 So that's probably the reason I didn't object to
19 "hand of one", because I would get questions like, well, how
20 do you know he didn't collude with this person, we don't even
21 know who that person is. So it might have been summarily
22 objected, like my "defense of others".

23 Q. But there was some testimony presented at trial.
24 Testimony was that this car drove by and there were three
25 individuals in the car?

1 A. Uh-huh.

2 Q. And at least one person in the car shot?

3 A. Right.

4 Q. And there was also testimony that Mr. Campbell
5 earlier in the day had driven by, I believe it was Frank
6 Heyward's house or somewhere where Frank Heyward was, in that
7 same car. And Frank testified that he saw what he thought to
8 be a gun pointed out of the car. And Mr. Campbell said
9 something from the car and he ducked down. Do you remember
10 that?

11 A. I do recall that. And can I explain why I didn't
12 think that mattered? Because I thought we had presented
13 Frank Heyward as a compulsive liar.

14 Q. But in terms of what to charge to the jury --

15 A. Right. I understand that.

16 Q. -- you have to go by what evidence is presented at
17 trial, right?

18 A. I understand, yeah. And I want to say in closing,
19 we talked about Mr. Heyward pretty regularly. I can't
20 remember if we did or not, but I do remember talking about --
21 you know, like I said, this was -- I don't know how many
22 years ago now.

23 Q. So based on that fact that the evidence was
24 presented at trial, do you believe that an objection to "hand
25 of one is the hand of all" charge would have been successful?

1 A. Would have been successful?

2 Q. I mean, right, do you think that Judge Jefferson
3 would have --

4 A. On my legal basis, a person saying somebody came by
5 with a gun earlier in the day, does that mean that they
6 planned to go out and kill somebody that night? I think
7 that's a jury question.

8 Q. Right. Exactly. But it is evidence that can go
9 towards proving the elements of what he's charged with,
10 right?

11 A. I mean, again, that's concluding what the judge
12 would do. I know the judge would have denied it if I would
13 have asked for it, but just because -- again, I know the
14 judge I'm in front of. I know I'm going to get denied.
15 Hindsight, I should have. I don't know if I would have been
16 successful or not.

17 Q. Okay. And in your directed verdict motion, you did
18 argue that there's no one that said they saw Mr. Campbell
19 fire a gun?

20 A. Right. I said that? Is that in there?

21 Q. Yes.

22 A. I didn't think you asked me if it was, but, yeah.

23 Q. Page 484 of the transcript.

24 Did you see any basis to object to the indictment?

25 A. Not at the time, no.

1 Q. And that would have been prior to trial that you
2 would have to raise an objection to the indictment, right?

3 A. Right.

4 Q. And, actually, I think your testimony on that was
5 that it would have been a frivolous argument?

6 A. I said that when?

7 Q. Previously, when you were just testifying.

8 A. Object to the indictment?

9 Q. Right.

10 A. Our Grand Jury here indicts most cases. It's a
11 rubber stamp. I never made an objection to an indictment in
12 Charleston County.

13 Q. And you said you urged Mr. Campbell to testify, but,
14 ultimately, he decided not to testify?

15 A. Yes. It was -- again, that goes to -- I mean, part
16 of it goes to privilege. I can't tell you what our specific
17 conversation was, because I don't want to say what he told
18 me, but it was a mutual decision in the end, based on what he
19 was telling me. He never told me who. I deducted and I knew
20 who it was. And I told him I knew who it was. But it was
21 his decision not to testify.

22 And, again, part of that had to do with, if you are
23 sitting in a car, you know who the person is, they are
24 sitting right behind you, you won't talk about who it is, but
25 the prosecution can ask you who is that person. And so,

1 therefore, if he was to testify, the prosecution could have
2 said, who fired the gun. And if he says, I don't know, then
3 it makes my case look horrible.

4 Q. And were you retained in this case?

5 A. I was.

6 Q. And how long have you been practicing law?

7 A. 12 years.

8 Q. How much of that practice has been criminal?

9 A. 92 percent, 93 percent. Used to be 99. Now it's
10 going down a little bit.

11 Q. Did you meet with Mr. Campbell to discuss the
12 charges against him prior to trial?

13 A. Yes.

14 Q. Do you recall how many times you would have met with
15 him?

16 A. No. I do recall we had a lot of phone
17 conversations. And we had meetings at my office for trial
18 prep. We had initial meetings. No more than 10 or 15; no
19 less than 5 or 6. Like I said, I don't recall. A lot of
20 them blended into each other. The days before trial, you
21 meet five or six times to go over trial strategy. So I don't
22 recall.

23 Q. So you went over trial strategy with him?

24 A. Yes, we went over evidence and trial strategy, yes.

25 MS. OLIVE: Beg the Court's indulgence. That's all

1 the questions I have.

2 MR. WISE: Couple of questions on redirect.

3 REDIRECT EXAMINATION

4 BY MR. WISE:

5 Q. I don't know the precise wording of the indictment,
6 but you mentioned the indictment alleged that Mr. Campbell
7 did the shooting?

8 A. Yes. I think I have a copy of it here.

9 Q. Okay. You are better prepared than I am.

10 A. Probably not. When they sent me the box, I just
11 opened it up. I believe I have it.

12 Q. Let me at least redeem myself a little bit. Here's
13 a copy of the indictment. And on its face, it alleges what?

14 A. That Jerome Renaldo Campbell did kill and murder by
15 means of shooting the victim, Michael.

16 Q. On its face, that indictment is fine, correct?

17 A. Right.

18 Q. The problem is, again, he didn't do the killing, but
19 somebody else did, and he aided and abetted?

20 A. Not based on this.

21 Q. Right. But you could not have filed a motion to
22 quash that indictment because it's valid on its face?

23 A. Right.

24 Q. Now, they say indictments are notice documents. Do
25 you think that's notice that they are going to go with aiding

1 and abetting?

2 A. Do I think that document is? No, because it's two
3 sentences that says he shot him.

4 MR. WISE: Thank you.

5 THE COURT: Anything further?

6 MS. OLIVE: Nothing further.

7 THE COURT: You may step down. Call your next
8 witness.

9 MR. WISE: That's all for the applicant.

10 THE COURT: Anything from the State?

11 MS. OLIVE: Nothing from the State, Your Honor.

12 THE COURT: I will take it under advisement and let
13 y'all know something very soon. Have a good day.

14 (Whereupon, proceedings are adjourned.)
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Respondent.

ORDER OF DISMISSAL

019 2018 JAN 17 AM 9:48
JULIE A. JENNINGS
CLERK OF COURT

1091

from an incident on January 9, 2009. Applicant was represented by William Stephen Harris and Jason Todd Mikell. The prosecution was handled by Assistant Solicitors Gregory Voigt and Elizabeth B. Riddle of the Ninth Circuit Solicitor's Office.

On January 23, 2012, the matter was called to trial in the Charleston County Court of General Sessions before a jury and the Honorable Deadra Jefferson, circuit court judge. On January 27, 2012, the jury convicted Applicant on all four indictments. Judge Jefferson sentenced Applicant to concurrent terms of imprisonment of thirty years for murder, and ten years for each of the assault with intent to kill verdicts.

Applicant filed a timely notice of appeal and his appeal was perfected by Stephan Futeral, Esquire, and Thomas Nelson, Esquire. On appeal, Applicant argued the trial court abused its discretion by allowing the State to challenge and remove a juror without cause on the second day of trial, which he also asserted amounted to a de facto sixth preemptory challenge. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Campbell, No. 2014-UP-338 (S.C. Ct. App. filed August 7, 2013). Applicant filed a Petition for Rehearing, which was denied on October 23, 2013. The Remittitur was issued on December 2, 2013.

ALLEGATIONS RAISED

In his amended application, Applicant alleged he is being held in custody unlawfully based on allegations of:

1. Trial counsel was ineffective in that he failed to object to the trial judge charging the law of aiding and abetting when the indictment only alleged the applicant acted as the principal.
2. Trial counsel was ineffective for his failure to object to the trial judge charging

the hand of one, hand of all charge because the facts did not establish or prove the occupants of the automobile were acting in concert.

3. Trial counsel failed to object to the mutual combat charge as there was no evidence of mutual combat.
4. Trial was ineffective for not objecting to the failure to charge the law concerning the defense of others.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant testified first at the evidentiary hearing. He testified he was living in Charlotte at the time of the incident but was in Charleston visiting family and friends. He testified his niece was married to the brother of the man that was killed and there was a dispute about wanting to see her baby. He testified he hired counsel and that they had a good relationship. However, Applicant believed counsel should have objected to jury instructions on mutual combat, aiding and abetting, and the hand-of-one, hand-of-all jury instructions. Applicant testified he did not shoot a gun and did not encourage or conspire with anyone else to shot a gun. He testified he was in the car with Aaron Burn and John Watson when he left the scene. He also testified counsel failed to request a jury instruction on defense of others, although he acknowledged the trial court instructed the jury on self-defense. Applicant testified there was some evidence presented that his group was shot at, including sound from a surveillance video that was played during trial and gunshot residue on two of the people that were at the store. Applicant testified he was aware of the allegations against him. Applicant testified there was testimony presented at trial that at least two people with him had guns. Applicant testified he had an opportunity to testify at trial and he elected not to testify.

Trial counsel William Harris testified next. He testified Applicant's case file has been destroyed due to damage after trial, but that he remembers the case very well. He testified the case involved shots fired from a car speeding away from an apartment complex and decedent, who was standing by a gas station wall, was wounded by a ricochet bullet. He testified all the people at the store had gunshot residue on their persons, including on their hands. He elaborated that the State's expert explained the residue likely sprinkled down from the bullet as it traveled overhead, which he characterized as not credible. Counsel testified that he urged Applicant to testify so that he could tell his side of the story, but against counsel's advice, Applicant elected to testify because he did not want to be questioned by the prosecution, particularly about who was the shooter—a relative of Applicant's. Counsel testified he discussed this numerous times with Applicant and Applicant ultimately made the decision not to testify in his defense.

Counsel testified he requested a jury instruction on self-defense and defense of others, but the trial court declined to instruct the jury on defense of others. Counsel testified the trial court's refusal to charge defense of others hurt his argument during closing. He elaborated the video from the surveillance camera indicates people at the store shot towards Applicant and his group first, and the shots from Applicant's group were in response. However, counsel testified he did not make an objection to the trial court's refusal to charge defense of others following the jury charge. He testified he later regretted requesting a self-defense charge because of the particular instruction the trial court gave, including mutual combat language.

Counsel testified the indictment alleged Applicant was the shooter, not an accomplice, but the trial court instructed the jury on accomplice liability and the hand-of-one, hand-of-all. He testified there was evidence and testimony presented that there had been an altercation or dispute

earlier that day, but no evidence that Applicant or the two people in the car with him conspired to shoot anyone. However, he testified he did not object to this jury instruction. He testified he believes he did not object to this instruction because although everyone agreed Applicant was not the shooter, they were unsure who the actual shooter was, and therefore, it was not practical to argue Applicant did not conspire with the shooter when the specific shooter was unclear. Counsel testified the evidence presented showed Applicant was in the car with at least two other individuals and at least one individual from the car fired a shot. He testified there was also testimony from Frank Heyward that Applicant had driven by his house earlier the same day and said something to him while pointing a gun at him. He testified this is likely enough evidence to get a jury instruction on accomplice liability. However, counsel elaborated he believed he established to the jury that Heyward was a compulsive liar.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v.

Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action in regards to his allegations of ineffective assistance of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant.

Allegation: Trial counsel failed to object to the jury charge on aiding and abetting and hand-of-one, hand-of all

Applicant asserts trial counsel was ineffective for failing to object to the trial judge charging the law of aiding and abetting when the indictment only alleged the applicant acted as

the principal. Additionally, Applicant alleges trial counsel was ineffective for failing to object to the trial judge charging the hand of one, hand of all charge because the facts did not establish or prove the occupants of the automobile were acting in concert.

Counsel testified there was evidence presented that there had been an altercation or dispute earlier that day and that Applicant had driven by Heyward's home with a gun drawn, but no evidence was presented that Applicant or the two people in the car with him conspired to shoot anyone. He acknowledged it was a question for the jury as to whether Applicant and the others in the car had conspired or acted in concert to shoot the victims, and therefore, the jury instructions likely would have been given even if he had objected.

During a trial, the law to be charged is determined by the evidence presented. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). When instructing the jury on the law, the trial judge is required to charge only the current and correct law of South Carolina. State v. Buckner, 341 S.C. 241, 246, 534 S.E.2d 15, 18 (Ct. App. 2000). A trial judge's jury instructions are appropriate if they are substantially correct and adequately cover the law applicable to the particular case. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.").

This Court agrees and finds the jury instructions on aiding and abetting and hand-of-one, hand-of-all were properly given, and any objection made by counsel would have been denied. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation: Trial counsel failed to object to the jury charge on mutual combat

Applicant asserts trial counsel was ineffective for failing to object to the trial judge charging the law mutual combat when there was no evidence presented of mutual combat.

“Mutual combat exists when there is ‘mutual intent and willingness to fight.’ ” Jackson v. State, 355 S.C. 568, 571, 586 S.E.2d 562, 563 (2003) (quoting State v. Graham, 260 S.C. 449, 450, 196 S.E.2d 495 (1973)). Mutual intent is “manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat.” Id. Mutual combat bars a claim of self-defense because it negates the element of “not being at fault.” Id.

In this case, the State asserted that Applicant was not entitled to a self-defense charge based on mutual combat during the charge conference and again made similar arguments during its closing. As discussed above, the law to be charged at trial is determined by the evidence presented. See Holland, 385 S.C. at 165, 682 S.E.2d at 901. Here, there was some evidence presented that Applicant engaged in a mutual willingness to fight throughout the day of the incident. Therefore, the trial court’s instruction on mutual combat was supported by the evidence presented at trial and any objection would not have been successful. Therefore, this allegation is denied and dismissed with prejudice.

Allegation: counsel failed to object to the court’s failure to charge the law concerning the defense of others.

Applicant asserts trial counsel was ineffective for failing to object to the trial court’s refusal to instruct the jury on the law of defense of others. Counsel testified and the record reveals that counsel requested the trial court instruct the jury on defense of others during the charge conference. See Tr. P. 660-69. Ultimately, the trial court declined to instruct the jury on

the defense of others, noting there was no testimony presented that Applicant shot in defense of someone else. See Tr. P. 669. However, the trial court did instruct the jury on self-defense, which was supported by the evidence. Although Applicant acknowledges counsel requested and argued in support of a jury charge on defense of others, he alleges trial counsel was ineffective for failing to object to the lack of this particular charge at the conclusion of all jury instruction. This Court finds this argument must be denied and dismissed, as counsel acted in accordance with reasonable professional standards in requesting the defense of others instruction and arguing vigorously in support of the charge. Moreover, this Court finds Applicant cannot establish any requisite prejudice from counsel's alleged deficiency, as there is no reasonable likelihood the result of the proceeding would have been different, i.e., Applicant would have been acquitted, had counsel objected. Therefore, this allegation must be denied and dismissed with prejudice.

CONCLUSION

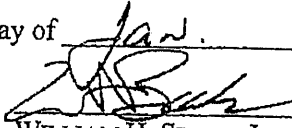
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. 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 must be denied and dismissed with prejudice; and
2. Applicant Jerome Campbell shall remain in the custody of the State.

AND IT IS SO ORDERED this 9 day of Jan., 2018.


WILLIAM H. SEALS, JR.
Presiding Judge
Ninth Judicial Circuit

Martin, South Carolina

STATE OF SOUTH CAROLINA)
CHARLESTON COUNTY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Jerome Campbell, # 349454)

Case No. 2014-CP-10-3019

Applicant,)

Vs.)

MOTION TO ALTER OR AMEND

State of South Carolina)

Respondent.)

Pursuant to Rule 59 (e) S.C. Rules of Civil Procedure, the Applicant, Jerome Campbell requests the Court to Alter or Amend his Order in the following particulars:

1. The Court failed to discuss *State vs. Taylor*, 356 S.C. 227, 589 S.E.2d1(2003) which held that it is improper for a trial court to charge both self-defense and mutual combat. As the Court pointed out in *Taylor* mutual combat negates self-defense. The Court failed to consider and rule upon the fact that trial counsel, by not objecting to the mutual combat charge, in essence permitted a charge to the jury that negated his self-defense charge. This was contrary to the holding in *Taylor* and prejudicial to the Applicant.

January 31st, 2018



C. Rauch Wise
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Applicant

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2014-CP-10-3019

**RETURN TO APPLICANT'S MOTION
TO ALTER OR AMEND JUDGMENT**

v.

Respondent.

I. Procedural History

On January 23, 2012, the matter was called to trial in the Charleston County Court of General Sessions before a jury and the Honorable Deadra Jefferson, circuit court judge. On January 27, 2012, the jury convicted Applicant on all four indictments. Judge Jefferson

sentenced Applicant to concurrent terms of imprisonment of thirty years for murder, and ten years for each of the assault with intent to kill verdicts.

Applicant filed a timely notice of appeal and his appeal was perfected by Stephan Futeral, Esquire, and Thomas Nelson, Esquire. On appeal, Applicant argued the trial court abused its discretion by allowing the State to challenge and remove a juror without cause on the second day of trial, which he also asserted amounted to a de facto sixth preemptory challenge. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Campbell, No. 2014-UP-338 (S.C. Ct. App. filed August 7, 2013). Applicant filed a Petition for Rehearing, which was denied on October 23, 2013. The Remittitur was issued on December 2, 2013.

II. Current Post-Conviction Relief Action

On May 12, 2014, Applicant filed an application for post-conviction relief, alleging ineffective assistance of counsel. Respondent made its Return on March 4, 2015, requesting an evidentiary hearing be held. Thereafter, Applicant filed an amended application alleging the following grounds for relief:

1. Trial counsel was ineffective in that he failed to object to the trial judge charging the law of aiding and abetting when the indictment only alleged the applicant acted as the principal.
2. Trial counsel was ineffective for his failure to object to the trial judge charging the hand of one, hand of all charge because the facts did not establish or prove the occupants of the automobile were acting in concert.
3. Trial counsel failed to object to the mutual combat charge as there was no evidence of mutual combat.
4. Trial was ineffective for not objecting to the failure to charge the law concerning the defense of others

An evidentiary hearing into the matter was convened January 12, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by C. Rauch Wise, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. Testimony was taken from Applicant and trial counsel. Following the evidentiary hearing, this Court denied the application. A formal order of dismissal was filed on January 17, 2018. On January 31, 2018, Applicant served a copy of his "Motion to Alter or Amend" on Respondent. This Return follows.

III. Applicant's Motion to Alter or Amend

In the Court's order of dismissal, the Court found there was evidence in the record to support a jury instruction on mutual combat and the trial court properly gave a mutual combat instruction, and therefore, counsel was not ineffective for not objecting to this jury instruction. In his "Motion to Alter or Amend," Applicant asserts "the Court failed to discuss State v. Taylor, 356 S.C. 227, 589 S.E.2d 1 (2003), which held that it is improper for a trial court to charge both self-defense and mutual combat." He argues the Court failed to consider and rule upon his claim that trial counsel was ineffective for failing to object to the mutual combat jury charge, thereby negating his self-defense charge in light of Taylor.

In response, Respondent submits this Court's ruling is both supported the record and applicable case law. The present case is distinguishable from Taylor. In Taylor, a murder prosecution, the defendant admitted to killing the decedent and relied entirely on self-defense at trial. Id. at 235, 589 S.E.2d at 5. The trial court gave jury instructions on both self-defense and mutual combat. Id. On appeal, South Carolina Supreme Court held there was insufficient evidence to warrant a jury charge on mutual combat, where there was no evidence that victim

was willing to engage in an armed encounter with defendant, there was no evidence victim knew that defendant was armed with a knife, and there was no pre-existing ill-will or dispute between the parties. Taylor, 356 S.C. at 234, 589 S.E.2d at 5. Moreover, the Court held if a defendant is engaged in mutual combat, self-defense is unavailable unless the defendant withdraws from the conflict before the killing occurs. Id. The Taylor Court held because the trial court erroneously gave an unwarranted mutual combat instruction, the properly given self-defense charge was negated by the trial court's unwarranted mutual combat charge which acted as a limitation on the defendant's ability to prove self-defense and prejudiced the defendant to such an extent that a new trial was warranted. Id.

In the present case, there was evidence to support a mutual combat jury instruction in Applicant's case, a crucial distinction from Taylor. Additionally, Applicant did not freely admit to firing a weapon and rely exclusively on self-defense, as Taylor did, but rather, denied ever firing a weapon. Based on these crucial distinctions, Taylor is not controlling on the present case. Respondent submits this Court's ruling are legally correct and supported by the record, and that this Court should deny Applicant's request to alter or amend its ruling as to this issue.

IV.

WHEREFORE, having made its Return to the motion, Respondent requests the relief requested in the motion be denied and that said motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

February 20, 2018

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jerome Campbell, SCDC # 349454,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2014-CP-10-3019

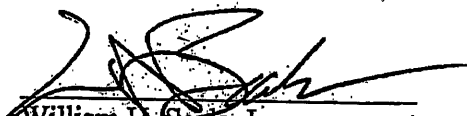
ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND
JUDGMENT

2018 MAR -7 PM 11:07
JULIA A. HARRIS, CLERK OF COURT

This matter comes before the Court by way of Applicant's "Motion to Alter or Amend."
The Respondent made its Return to this motion requesting it be denied and dismissed.

This Court's Order of Dismissal denying and dismissing Applicant's post-conviction relief application was filed on January 17, 2018. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's motion and Respondent's return, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Order of Dismissal shall stand as it was written.

AND IT IS SO ORDERED this 2 day of March, 2018.


William H. Seals, Jr.
Presiding Judge
Ninth Judicial Circuit

Marion, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case № 2014-CP-10-3019

Jerome Campbell, # 349454, ... AppLicant,

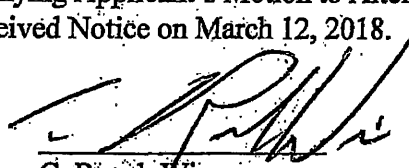
vs.

State of South Carolina, ... Respondent.

NOTICE OF INTENT TO APPEAL

Jerome Campbell appeals the Order of the Honorable William H. Seals, Jr. dated January 9, 2018, and filed on January 17, 2018 and the Order Denying Applicant's Motion to Alter or Amend Judgment filed on March 7, 2018. Applicant received Notice on March 12, 2018.

March 12th, 2018



C. Rauch Wise
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Applicant

OTHER COUNSEL OF RECORD

Megan Harrigan Jameson
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL 18 2018

CERTIORARI TO CHARLESTON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

S.C. SUPREME COURT

Appellate Case № 2018-000464
Lower Case No. 2014-CP-10-3019

Jerome Campbell, # 349454, ... Petitioner,

vs.

State of South Carolina, ... Respondent.

PETITION FOR WRIT OF CERTIORARI

C. RAUCH WISE
Attorney at Law
305 Main St.
Greenwood, SC 29646
(864) 229-5010
Rauchwise@gmail.com
S. C. Bar № 06188
Attorney for Petitioner

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Statement of Issues Presented

Question I: Did the Post Conviction Relief judge err in failing to find trial counsel was ineffective when he failed to object to the trial judge charging mutual combat which undercut his self defense charge in violation of the principles established in State v. Taylor 356 S.C. 227, 589 S.E.2d 1 (2003)?

Question II: Did the Post Conviction Relief Judge err in failing to find trial counsel was ineffective in failing to properly object to the failure of the trial judge to charge the law as to the defense of others?

Question III: Did the Post Conviction Relief Judge err in failing to find trial counsel was ineffective for his failing to object to the trial judge charging the hand of one is the hand of all and the law of aiding and abetting when the facts did not support the charge?

Statement of the Case

Procedural History

Jerome Campbell was tried before a jury on January 23-27, 2012 on charges of murder and three counts of assault and battery with intent to kill. The charges arose from an incident that occurred in Charleston, SC on January 9, 2009. He was convicted of all the charges and sentenced to thirty years for murder and ten years on the three assault and battery with intent to kill charges. The latter charges ran concurrent with the murder charge.

A timely Notice of Intent to Appeal was filed before the South Carolina Court of Appeals. The conviction was affirmed on August 7, 2013. A petition for rehearing was denied on October 23, 2013. No further appeal was taken.

Mr. Campbell filed his initial Post Conviction Relief Hearing on May 12, 2014. An Amended Petition was filed on January 12, 2017. A hearing on the Post Conviction Relief hearing was held before the Honorable William H. Seals, Jr. on January 12, 2017. By his order of January 17, 2018 Judge Seals denied the Petition. Mr. Campbell filed a Motion to Alter or Amend the Judgement on January 31, 2018. This was denied by Order filed March 7, 2018. Mr. Campbell filed his Notice of Appeal on March 12, 2018.

Factual History

The events that led to the shooting arose from a marital disputed between Charise Coaxum, the sister of Jerome Campbell, and her husband, Michael Allen. Mr. Allen and his wife resided at the Plantation Apartments. Anthony German and his brother Michael German, the deceased, resided at Georgetown Apartments. Frank Haigler, the brother of Michael Allen, testified he had been to the Plantation Apartment to try and mediate the differences between

Ms. Coaxum and Michael Allen. App. at 306, l 25 to 307, l 5. He testified he stayed at the Plantation apartment for about 45 minutes. App. at 308 ll 3-8.

Mr. Haigler testified he saw Mr. Campbell in front of the apartment of Ms. Coaxum, his sister-in-law, at Plantation apartments. App. at 303, l 4-6. He later testified Mr. Campbell was not at the Plantation apartments. App. at 308, ll 19-21. After Mr. Haigler left the Plantation apartment, he, with his brother Michael Allen, went to the Georgetown apartment of Anthony and Michael German. At this apartment Mr. Haigler said he saw Mr. Campbell with a pistol. App. at 304, l 3 to 305, l 7. Mr. Haigler testified that notwithstanding messages from Mr. Campbell for Michael Allen not to return to the Plantation apartment, he, Michael Allen, Anthony German, and Michael German went to the vicinity of the apartment.

He testified that he told the others to wait at the store while he went to the Plantation apartment. App. at 310, l 24 to 311, l 14. As he approached the apartment, he saw Mr. Campbell. He stated he and Mr. Campbell had a confrontation in which he was struck by Mr. Campbell. He also observed two other men with shotguns. App. at 313, ll 11-15. After being struck he fled the scene and stated he heard two gun shots. App. at 316, ll 7-14. After he fled the scene he heard a car speeding from the Plantation apartments and heard more gunshots. App. at 317, ll 7-11. No one was able to identify who was driving or who was shooting. As a result of the shooting, a ricochet bullet struck and killed Michael German. Mr. Campbell turned himself in to the police some two hours later. App. at 262, ll 3-6.

Argument

Question I

Did the Post Conviction Relief judge err in failing to find trial counsel ineffective when he failed to object to the trial judge charging mutual combat which undercut his self defense charge in violation of the principles established in State v. Taylor 356 S.C. 227, 589 S.E.2d 1 (2003)?

At the close of the case, a charge conference was held. Based upon the discussion of the parties, the trial judge elected to charge the law of mutual combat. This was apparently first suggested by the state when the solicitor stated "And again, I would just here mention the line of cases involving mutual combat and that's where mutual combat means you both bring guns to a fight, self defense is not a defense available to you and clearly - - - " App. at 665, l 24 to 666, l 2. In ruling on this issue, the trial judge stated "Well, that's part of the instruction and actually, self - - mutual combat is - - There are different parts of mutual combat. Of course, if he voluntarily participated in combat for purposes other than protection, then it's not self defense, even if during the combat he feared death or serious bodily injury." App. at 666, ll 3-9. Trial counsel then agreed that if the jury finds mutual combat, then they could not find self defense. App. at 667, ll 20-24. In discussing her jury charge the trial judge again stated she would charge mutual combat. App. at 670, ll 14-18. No objection was raised by defense counsel at that point.

The trial judge then charged mutual combat. The trial judge placed the mutual combat charge in the with the self defense charge right after stating the first element of self defense as being "without fault in bringing on the difficulty". App. at 759, ll 2-3. Before going to the second element of self-defense, the trial judge then gave the mutual combat charge. She told the

jury “If the defendant voluntarily participated in mutual combat for purposes other than protection, the killing of the victim would not be self defense.” App. 759, ll 11-13.

This charge by the trial judge was contrary to the holding of this Court in *State v. Taylor*, 356 S.C.227, 589 S.C.2nd 1 (2003), a case decided some nine years before this trial. Trial counsel admitted he was not familiar with the *Taylor* case. App. at 1077, ll 5-15. As this Court said in *Taylor*, “Although the court charged self-defense properly in Petitioner’s case, that charge was negated by the court’s unwarranted charge on mutual combat. We find that the court’s mutual combat charge acted as a limitation on the Petitioner’s ability to claim self-defense, and prejudiced him by transferring the *State’s burden* to disprove self-defense onto the Petitioner, forcing him to prove self-defense in violation of *Burkhart Addison, and Wiggins*.” *Id.* at 235, 589 S.E.2d at 5 (emphasis in original).

In his ruling, the PCR judge failed to address the *Taylor* opinion. App. at 1091. The failure to address the *Taylor* decision was called to the attention of the PCR judge through a Motion to Alter or Amend the Judgment. App. at 1101. In the Order denying the Rule 59 Motion, the PCR judge again failed to address the case. The closest the PCR judge came to addressing the *Taylor* issue is to say “Here, there is some evidence presented that Applicant engaged in a mutual willingness to fight throughout the day of the incident. Therefore, the trial court’s instruction on mutual combat was supported by the evidence presented at trial and any objection would not have been successful.” App. at 777 ll 22 to 778 l 1. This statement ignores the importance and significance of the *Taylor* decision. The PCR judge never addressed the burden shifting importance of the *Taylor* decision. Nor did it address this Court’s conclusion in *Taylor* that mutual combat seldom, if ever, should be charged with self-defense.

The same principles established in *Taylor* should apply in this case. Here the concept of “mutual combat” was not clearly established, if at all. While there had been disagreements and arguments between Mr. Campbell and the others, there is no evidence that each armed themselves with the idea or belief they were going to engage in mutual combat. In fact the record shows that Mr. Campbell had not told Mr. Haigler and his brother not to come to his sister’s apartment. App. at 338, l 25 to 339, l 6.

Mr. Frank Haigler testified he was trying to resolve a disagreement between his brother Michael Allen and his sister-in-law, who is the sister of Jerome Campbell. App. at 306, l 6 to 308, l 18. Michael Allen and his wife lived at the Plantation Apartments. Mr. Campbell was not present during the discussions at his brother’s Apartment. App. at 308, ll 19-21. Mr. Campbell and Frank Haigler had a confrontation after Mr. Haigler went to the apartment of Anthony and Michael German. This occurred after Mr. Haigler had been to the Plantation Apartment to discuss the issues with his brother’s wife. Nothing in this confrontation suggested either would arm themselves in mutual combat. App. at 304, l 9 to 305, l 9. After this confrontation, Mr. Haigler and his brothers decided to go to the store near Michael Allen’s apartment and have a beer. App. at 310, l 24 to 311, l 11. Mr. Haigler then went across the street to the apartment of his brother, Michael Allen. He was not armed. App. at 312 ll 2-14. Mr. Haigler testified he did not expect to find anyone at the Plantation apartment. App. at 340, ll 7-8.

Charise Coaxum, the sister of Mr. Campbell and wife of Michael Allen, testified, concerning the initial contact at Plantation apartments, that Mr. Haigler and his brother, along with Anthony German and Michael German came by the apartment earlier that day. They had made threats against Mr. Campbell. App. at 496, l 8 to 498, l 21. They left when Ms. Sandra

Campbell, the mother of Jerome Campbell and Charise Coaxum, threatened to call 911. At that point Ms. Coaxum left the apartment to spend the night on James Island with her mother. Ms. Coaxum's testimony was confirmed by her mother who arrived at the apartment between seven and eight after receiving a call from her grandchild. App. at 532, l 12 to 535, l 19. This testimony shows there was no mutual combat and no intent on the part of anyone to engage in mutual combat. There was certainly no evidence that Mr. Campbell intended to engage in mutual combat. Mr. Campbell had done nothing to encourage anyone to return to the Plantation apartments. There was no request by any of the parties to meet and settle their differences.

As trial counsel was not familiar with the *Taylor* decision there could be no decision on his part to use mutual combat as part of any defense strategy. He even admitted if the jury finds mutual combat, there would be no self defense. App. at 667, ll 22-24. The mutual combat charge in this case served only to confuse the jury as to the meaning of self defense and the burden of proof. As there was no trial strategy involved in failing to object to the charge, Mr. Campbell was prejudiced by his trial counsel failing to object to the mutual combat charge. As this Court has found an improper mutual combat charge is in fact prejudicial to a defendant as lessening the burden on the State, prejudice as required under *Strickland v. Washington*, 466 U.S. 668 (1984) has been established.

Question II

Did the Post Conviction Relief Judge err in failing to find that trial counsel was ineffective in failing to properly object to the failure of the trial judge to charge the law as to the defense of others?

In the charge conference, the judge stated:

However, I do not think that it would be appropriate for me to instruct defense of others because there is no testimony that he shot a weapon to defend someone else and that's what defense of others is about. It's about you having the ability or the legal right to basically stand in the shoes of someone else and to exercise their right to defend themselves. And so I don't think that - - And actually, to some extent it's - - it's cumulative because it's basically the same instruction. App. at 669, ll 15-22.

Trial counsel did not object to the decision of the trial judge not to charge defense of others at the time the trial judge made the statement. Nor did he raise an objection after the jury charge in which the trial court failed to charge defense of others.

The problem with the approach taken by the trial court is, as she acknowledged, no one knows the identity of the shooter, as no one could identify who was in fact in the car. As the trial court noted, "Mr. Campbell may not have shot the gun, but he certainly was part of the conclusive effort to make sure the gun was shot." App. at 660, ll 22-24. She further stated to the State, "if you're going to hold him culpable for the acts of the people in the car and say he conspired and he aided and abetted them in doing what they did, you cannot then deprive him of a defense as well that would be available" App. at 663, ll 16-23. If the car is being shot at by a third party, each occupant of the car would have the right of self defense and simultaneously in defense of others have the right to fire a weapon to protect them. The trial judge found that Campbell was part of the "conclusive effort to make sure the gun was shot." App. at 660, ll 23-24. She also found that this "conclusive effort" gave him the right to self defense, which would, as a matter of law, also give him the right fire a weapon to defend others in the car.

The issue of who fired first, whether the group in front of the convenience stores fired weapons and whether more than one weapon was fired, is in dispute. John Roberts,

the expert for the state, testified Michael German, the deceased, had gunshot residue on hands and opined it was possible for him to have fired a gun. App. at 401, ll 20-21. He also presented the theory that the readings could have come from a bullet striking the wall and vaporizing a portion of the lead bullet when it struck the wall. App. at 390, l 20 to 392, l 5. The expert for Mr. Campbell, Chris Robinson, opined that vaporizing a lead bullet by hitting a brick wall was not possible. App. at 584, l 22 to 585, l 17; 586, l 5-12. Mr. Robinson further testified that based upon his reading of the GSR tests, the readings from both Michael Allen and Michael German showed that one or both fired a firearm. App. at 587, l 2-21. He further opined that from the sounds heard on the recording of the convenience store more than one weapon was fired. App. at 598, l 14-19. He also concluded that the smoke seen in the store video came from a firearm fired directly underneath the camera. App. at 596, l 15-24.

Under the facts of this case, the State presented the case to the jury under a “hand of one is the hand of all” theory as well as “aiding and abetting.” Under this same theory, if one had the right of self defense then so did the other and the other also had the right of defense of others. The State will argue that Mr. Campbell was not without fault in bring on the difficulty. First, that is a jury question to be decided by a properly charged jury. When a question of a jury charge is raised, the evidence must be viewed in the light most favorable to the defendant. *State v. Knoten*, 347 S.C. 296, 555 S.E.2d 391 (2001). Under the facts, the evidence can be reasonably interpreted to mean that after Mr. Campbell’s initial encounter with Mr. Haigler, Mr. Campbell fled the scene and was withdrawing from the initial difficulty. “One’s right to self-defense is restored after withdrawal from

the initial difficulty with the victim if that withdrawal is communicated to the victim by word or act.” *State v. Bryant*, 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999).

As the evidence is susceptible of the fact that the fleeing automobile was fired upon first, then any occupant of the automobile, in returning the fire, would have had the right of self defense or the defense of others. The jury should have been properly instructed on the law of defense of others.

Question III

Did the Post Conviction Relief Judge err in failing to find trial counsel was ineffective for his failing to object to the trial judge charging the hand of one is the hand of all and the law of aiding and abetting when the facts did not support the charge?

The State never produced any witness who was able to identify who fired the fatal shot from the automobile. The indictment did not allege Mr. Campbell aided and abetted anyone. The indictment alleged Mr. Campbell himself fired the fatal shot. App. at 805 (indictment). The trial counsel at the PCR hearing testified that the state never knew who fired the fatal shot. App. at 1084 ll 7-12. The Post Conviction Relief judge also credited the theory of trial counsel that the record contained no evidence of a conspiracy between Mr. Campbell and the other occupants of the automobile.

In *Wilds v. State*, 407 S.C. 432, 756 S.E.2d 387 (2014) the South Carolina Court of Appeals held that trial counsel was ineffective in failing to object to the charge of aiding and abetting. The Court noted that an alternative theory, like a lesser included charge, may be charged only when the evidence would support such a charge. The

question here, put another way, is if the only charge against Mr. Campbell had been the charge of aiding and abetting, would the trial judge have been required to direct a verdict in favor of Mr. Campbell? If so, then the "aiding and abetting" and "hand of one is the hand of all" charges should not have been given.

The trial judge charged "Where two or more are acting with a common plan or intent are present at the commission of the crime, it does not matter who actually commits the crime, all are guilty. The hand of one is the hand of all." App. at 775, 118 to 776, 12. As to aiding and abetting the trial court said "Intent is also a necessary element for there must have been a common scheme or plan or intent to commit the crime and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act." App. at 776, 118-119.

In this case the trial judge treated the two concepts as virtually identical. The trial judge instructed that the State must prove an intent on the part of the two or more people to actually commit the crime.¹ Under this charge the State is required to prove that another person shot the deceased and Mr. Campbell, with malicious intent, intended for that person to fire the shot and committed some overt act to further this intent. "From the context of his last remarks, it is perfectly clear that the circuit judge meant the parties who

¹ As a general rule the "hand of one is the hand of all" theory involves a crime where the parties intent to commit one crime and during that crime a shooting occurs. As this Court has said, "There can be no doubt of the general rule of law that a person engaged in the commission of an unlawful act is legally responsible for all the consequences which naturally or necessarily flow from it, and that if he combines and confederates with others to accomplish an illegal purpose he is liable criminaliter for everything done by his confederates which follows incidentally in the execution of the common design, as one of its probable and natural consequences, even though what was done was not intended as a part of the original design or common plan." *State v. Williams*, 189 S.C. 19, 199 S.E. 906, 908 (1938)

did not fire the shot would be guilty if they were there with the malicious intent of aiding in the shooting; not any other enterprise. We think the charge was in accord with defendants' view of the law. If they wished it stated with more particularity, a request to that effect should have been submitted.” *State v. White*, 67 S.C. 320, ___, 45 S.E. 210, 211 (1903). No substantial circumstantial evidence in this record establishes such a malicious intent to aid and abet a shooting in this case.

Under the facts of this case, Mr. Campbell was fleeing the scene. No testimony established an agreement between Mr. Campbell and another to inflict any injury upon the individuals at the store. The evidence establishes they were fleeing. No evidence of an expressed or implied agreement was presented. Based upon the firing of a shotgun seconds before, a jury could not reasonably concluded there was an agreement to shoot and kill anyone as they left the scene. There was no testimony Mr. Campbell ordered or encouraged anyone else to fire a gun. Had the parties had the intent to inflict serious bodily injury or kill someone, Mr. Haigler would have either been killed or seriously injured. If an occupant of the car on their own decided to fire a revolver in the direction of the store that would not be a basis for finding Mr. Campbell aided and abetted in the crime.

This Court has not defined what is substantial circumstantial evidence. Under *Jackson v. Virginia*, 443 U.S. 307 (1979) it has to mean more than a scintilla of evidence. As one court has said “Substantial evidence, in a case depending upon circumstantial evidence, simply means that the proof must go beyond presenting the jury a choice so evenly balanced that a finding of guilt must rest, not on testimony, but on conjecture.”

Holloway v. State, 11 Ark. App. 69, 71, 666 S.W.2d 410, 411 (1984). In this case, for the jury to conclude that Mr. Campbell aided and abetted another person would simply be conjecture. The person could have just as likely fired the firearm on his own as with the encouragement of Mr. Campbell. To satisfy its burden, the State is required to prove more than it is slightly more likely Mr. Campbell aided and abetted. That would satisfy a preponderance of the evidence standard in a civil case, but it would fall short of the standard required by *Jackson*.

As no substantial circumstantial evidence exists in this case to justify the charges of “aiding and abetting” and the “hand of one is the hand of all,” Mr. Campbell was prejudiced by having this charge given to the jury. Trial counsel was ineffective and Mr. Campbell is entitled to a new trial.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Writ of Certiorari for Jerome Campbell, reverse the ruling of the Post Conviction Relief Judge and grant Mr. Campbell a new trial.

July 16, 2018



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S. C. Bar № 06188

Attorney for Jerome Campbell

RECEIVED

DEC 17 2018

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County
William H. Seals Jr., Circuit Court Judge

JEROME CAMPBELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA

RESPONDENT

APPELLATE CASE NO. 2018-000464

RETURN TO PETITION FOR A WRIT OF CERTIORARI

ALAN WILSON
Attorney General

SAMUEL L. KEY
Assistant Attorney General
S.C. Bar No. 103206

Post Office Box 11549
Columbia, S.C 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the PCR court properly find trial counsel was not ineffective for failing to object when the trial court charged mutual combat and self-defense?
- II. Did the PCR court properly find trial counsel was not ineffective for failing to object after the trial court did not give a defense of others charge even though trial counsel argued for a defense of others charge during the charge conference?
- III. Did the PCR court properly find trial counsel was not ineffective for failing to object after the trial court charged accomplice liability and aiding and abetting even though trial counsel argued against the charge during the charge conference?

STATEMENT OF THE CASE

Jerome Campbell was tried before a jury January 23–27, 2012, for one count of murder, and three counts of assault with intent to kill (AWIK). The charges stem from a gun-fight that occurred in January 2009.

The gun-fight arose from the culmination of two underlying disputes involving Campbell's relatives. The first dispute was an over the phone argument between Campbell's mother, Sandra Campbell (Mother), and Anthony German. Mother was the maternal great-grandmother of Anthony German's new-born child. Anthony German allegedly did not want Mother to visit his child. The second dispute was an argument between Campbell's sister (Charise Coaxum) and Mother, and Coaxum's husband (Michael Allen) and brother-in-law (Frank Haigler)¹ at Coaxum and Allen's apartment. Coaxum wanted to kick Allen out of their apartment. Mother was present during the argument in support of Coaxum, and Haigler was present in support of Allen. The argument ended peacefully, and Coaxum told Allen he could come back later to the apartment; however, she would have to let him in the apartment because she kept the only key. All parties involved in the second dispute left the apartment.

Throughout the day leading up to the gun-fight, Allen and the German brothers made threats towards Campbell, and Campbell made threats towards Allen and Anthony German. Both sides were aware that threats were made. Allen, and the German brothers were aware Campbell was armed. Anthony German armed himself because of the threats Campbell had made.

The gun-fight occurred when Allen tried to return home. On his way back home, Allen was accompanied by Haigler and the German brothers. The group went inside the BP station across the street from Allen's apartment complex. Allen and Haigler each purchased a beer. The

¹ While Haigler stated at trial that he and Allen were not related by blood, all parties refer to Haigler as Allen's brother.

group gathered in the BP's parking lot while Allen and Haigler drank their beer. Haigler decided to scout out whether it was safe for Allen to return home. Haigler encountered Campbell in the parking lot outside Allen's apartment. The two exchanged words, then Campbell allegedly turned and stated "Go get that. Go get that." (App. 313). Thereafter, two men wielding shotguns exited the apartment, Campbell punched Haigler in the face, and Haigler fled. Haigler testified he was shot at twice as he fled. (App. 313–316). Haigler almost made it back to the gas station when he heard, and then saw, Campbell's car approaching. Haigler jumped into the bushes across the street from the BP to hide. (App. 317). The evidence presented at trial suggests that gunshots came from Campbell's car, and from the BP parking lot. (App. 234–35, 385–87, 465). Michael German was struck in the head by a ricocheted bullet. Michael German died. (App. 190–94).

Campbell was charged with the murder of Michael German. Campbell was also charged with AWIK towards Frank Haigler, Michael Allen, and Anthony German. The State's case was based upon the theory of accomplice liability—the hand of one is the hand of all. (App. 730–42). The jury convicted Campbell as indicted, and the trial court sentenced him to serve concurrent terms of imprisonment of thirty years for murder, and ten years for each AWIK charge. (App. 782–83, 797–98).

Campbell appealed his convictions, and the court of appeals affirmed in an unpublished opinion. *State v. Campbell*, Op. No. 2014-UP-338 (S.C. Ct. App. filed August 7, 2013). Campbell commenced this PCR action on May 12, 2014.

ARGUMENT

In a PCR case, appellate courts will uphold the PCR court's factual findings if there is any evidence of probative value in the record to support them. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). However, appellate courts give no deference to the PCR court's conclusions of law, and review conclusions of law de novo. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

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). 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 (quoting *Strickland*, 466 U.S. at 694).

I. Did the PCR court properly find trial counsel was not ineffective for failing to object when the trial court charged mutual combat and self-defense?

The PCR court properly found trial counsel was not ineffective for failing to object to the trial court charging mutual combat and self-defense. Campbell argues trial counsel was deficient because the mutual combat charge under-cut his requested self-defense charge in violation of South Carolina law citing *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003). However, trial counsel was not deficient because *Taylor* is distinguishable from the instant case. In the instant case, the mutual combat charge was supported by the record. Campbell argues he was prejudiced by trial counsel's alleged deficiency because the mutual combat charge only served to confuse the jury as to the meaning of self-defense, and shifted the burden of proof. Campbell was not prejudiced because the trial court's charge on self-defense and mutual combat was not confusing, and did not shift the burden of proof away from the State.

"[T]he trial [court] is required to charge only the current and correct law . . . and the law to be charged to the jury is determined by the evidence at trial." *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003) (internal citations omitted). "[A] trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence." *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Jury instructions should be considered as a whole. *State v. Smith*, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994).

During the charge conference, trial counsel argued for the trial court to give a self-defense charge. (App. 655–667). The trial court agreed the facts supported a self-defense charge. (App. 669). The trial court charged the jury on self-defense. (App. 758–62). The trial court began its self-defense charge by stating:

The defendant has raised the defense of self-defense. Self-defense is a complete defense and if it is established, you must find the defendant not guilty. The State has the burden of disproving self-defense by proof beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant not guilty. . . . On the other hand if you have no reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant guilty.

(App. 758). The trial court then charged the jury on the first element of self-defense:

[T]he defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense. . . .

If the defendant voluntarily participated in mutual combat for purposes other than protection, the killing of the victim would not be self-defense. This is true even if during the combat the defendant feared death or serious bodily injury. However, if before the killing is committed the defendant withdraws and tried in good faith to avoid further conflict and either by word or act makes that fact known to the victim, he would be without fault in bringing on the difficulty.

For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by the acts and conduct of the parties and the circumstances surrounding the combat. In addition, it must be shown that both parties were armed with a deadly weapon.

(App. 759).

The PCR court found trial counsel was not ineffective for failing to object to the above referenced charge on self-defense. Specifically, the PCR court found Campbell was not deficient because the mutual combat charge was supported by the record. (App. 1098). The PCR court concluded that Campbell was not prejudiced because an objection to the mutual combat charge would have been unsuccessful because the charge was supported by the record. (App. 1098).

Campbell argues trial counsel was deficient for failing to object to the trial court's self-defense and mutual combat charge. The crux of Campbell's deficiency argument relies on *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003). Campbell's reliance on *Taylor* is misplaced, as *Taylor* is distinguishable from the instant case. Because the record supports the mutual combat charge, trial counsel was not deficient for not objecting to the charge.

In *Taylor*, Thel Taylor was arrested for the murder of Kevin Carter. 356 S.C. at 229–31, 589 S.E.2d at 2–3. Taylor and Robert Murphy got off work and went to Angela Wallace's house to meet Wallace, Myranda Stillinger, and Carter for drinks. *Id.* at 229, 589 S.E.2d at 2. At some point in the evening, Carter and Stillinger began arguing; Taylor intervened in an attempt to stop the argument. *Id.* Thereafter, Taylor and Carter began to fight. The fight began inside, but eventually moved outside. *Id.* at 229–30, 589 S.E.2d at 2. Eventually, Taylor drew a knife from his pocket and began stabbing Carter. Taylor stabbed Carter fifteen times. An autopsy report revealed that Carter died from a stab wound to the heart. *Id.* at 230, 589 S.E.2d at 2. At trial, Taylor admitted that he stabbed Carter, but claimed he acted in self-defense. *Id.* The trial court charged self-defense; however, the trial court also charged mutual combat. *Id.* at 230–31, 589

S.E.2d at 2–3. The jury convicted Taylor of murder and possession of a weapon during the conviction of a violent crime. *Id.* at 231, 589 S.E.2d at 3. On appeal, this Court reversed Taylor’s convictions.

The Court stated, “Because mutual combat requires mutual intent and willingness to fight, if a defendant is found to have been involved in mutual combat, the ‘no fault’ element of self-defense cannot be established.” 356 S.C. at 232, 589 S.E.2d at 3. The Court concluded the mutual combat charge was unwarranted because there was no evidence Carter knew Taylor was armed, and there was no pre-existing ill will between the parties. *Id.* at 234, 589 S.E.2d at 5.

Campbell suggests *Taylor* stands for the proposition that mutual combat and self-defense should not be charged together. However, *Taylor* does not stand for such. Since *Taylor*, the court of appeals has recognized that self-defense and mutual combat are not mutually exclusive. *See State v. Jackson*, 384 S.C. 29, 38 n. 5, 681 S.E.2d 17, 21 n. 5 (2009) (“We do not suggest mutual combat and self-defense are mutually exclusive; rather, in *Taylor*, there was no evidence that the victim was willing to engage in mutual combat with Taylor.”). Because mutual combat and self-defense are not mutually exclusive, trial counsel was not deficient for failing to object. Further, the mutual combat charge is supported by the record.

The mutual combat charge was supported by the evidence at trial. Specifically, Frank Haigler, Michael Allen, Anthony German, Charise Coaxum, and Mother’s testimonies. Haigler, Allen, and Anthony German’s testimonies show that their group knew Campbell was armed, and there was pre-existing ill will between the parties. Haigler stated he saw Campbell’s car drive up to the Germans’ apartment and he approached the car. He stated that as he approached the car he heard Campbell’s voice, and then the rear window rolled down and he saw a gun pointed at him.

(App. 304–05). He then informed everyone to back away from the car because “[Campbell’s] got a gun.” (App. 305).

Allen testified that Campbell had threatened him earlier the day of the incident. He stated Campbell drove past the Germans’ apartment and threatened Anthony German, “I know where you live at now. I know where you live at now.” (App. 417–18). Allen stated that Campbell also threatened him, yelling, “You better not come home. I’ll be there soon.” (App. 418).

Anthony German corroborated Haigler and Allen’s testimony. German stated that he heard Campbell threaten him directly. (App. 458). German stated that he recognized Campbell, and that he saw Campbell with a gun. (App. 458–59). German also stated that before the group left his apartment complex, he armed himself with a gun for protection from Campbell. (App. 460–61).

The record also contains evidence that Campbell knew Michael Allen, and the German brothers made threats against him. Coaxum’s testimony shows that Campbell was aware Michael Allen and Anthony German had made threats on his life. Coaxum testified that Allen, her husband, sent her a text message stating, “And your brother called me a punk. Tonight we’ll see. Real niggers do real things.” (App. 495–96). Coaxum testified Allen, Haigler, and the German brothers came over to her apartment looking for Campbell because “[Campbell] told them that he was going to be [at the apartment] and [Campbell] sent them a threat.” (App. 496). Coaxum further stated that Michael Allen told her, “We are Bloods and Bloods stick together. Your brother gonna die tonight.” (App. 498). Coaxum stated that Anthony German told Mother, “Your son gonna die tonight.” (App. 498). On cross-examination Coaxum stated that after the group left her apartment, “I called [Campbell] and told him that they were looking for him and they said that he was going to die tonight.” (App. 513).

Because the instant case is distinguishable from *Taylor*, and because the mutual combat charge is supported by the record, the PCR court properly found trial counsel was not deficient for failing to object to the trial court charging mutual combat and self-defense.

Campbell was not prejudiced because the trial court's charge did not shift the burden of disproving self-defense away from the State. The trial court properly submitted to the jury the question of whether Campbell was at fault in bringing on the difficulty. As stated above, the trial court charged the jury on the elements of self-defense. In charging the first element of self-defense, the trial court charged the law on mutual combat. The trial court charged that if the jury found Campbell engaged in mutual combat, then the State had met its burden of disproving the first element of self-defense. The trial court's instructions did not shift the burden of proof away from the State; therefore, Campbell was not prejudiced by the trial court charging mutual combat and self-defense.

The PCR court correctly found trial counsel was not ineffective for failing to object to the trial court charging mutual combat and self-defense. Certiorari should be denied as to this issue.

II. Did the PCR court properly find trial counsel was not ineffective for failing to object after the trial court did not give a defense of others charge even though trial counsel argued for a defense of others charge during the charge conference?

Trial counsel was not ineffective for not objecting after the trial court did not give a defense of others jury charge. Trial counsel was not deficient because he requested the defense of others jury charge, and argued vigorously in support of the charge. Campbell was not prejudiced because, even if counsel had objected, it is unlikely the trial court would have changed its ruling and given a defense of others charge.

Trial courts are required to charge the current and correct law, and the law to be charged is determined by the evidence at trial. *Taylor*, 356 S.C. at 231, 589 S.E.2d at 3. Trial counsel's

performance is measured under reasonable professional norms. *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

Trial counsel argued for a defense of others charge during the charge conference. (App. 660-69). The trial court ruled:

I do not think that it would be appropriate for me to instruct defense of others because there is no testimony that he shot a weapon to defend someone else and that's what defense of others is about. It's about you having the ability or the legal right to basically stand in the shoes of someone else and to exercise their right to defend themselves. - - And so I don't think that - - And actually, to some extent it's it's cumulative because it's basically the same instruction.

(App. 669). The trial court did not give a defense of others charge. Trial counsel did not object after the trial court charged the jury and take exception to the defense of others charge not being given.

At the PCR hearing, trial counsel stated he did not object after the trial court charged the jury because of the way the trial court ruled during the charge conference. (App. 1078).

The PCR Court found trial counsel trial was not deficient because he acted in accordance with reasonable professional standards by requesting "the defense of others instruction and arguing vigorously in support of the charge." (App. 1099). The PCR court found Campbell was not prejudiced because there is no reasonable likelihood "[Campbell] would have been acquitted, had [trial] counsel objected." (App. 1099).

Trial counsel acted within reasonable professional norms when he argued for a defense of others charge, the trial court ruled against him, and he did not re-hash the same arguments after the jury was charged. The PCR court did not err in finding trial counsel was not deficient for failing to object after the trial court made its ruling not to charge defense of others, and charged the jury pursuant to that ruling. Whether the trial court should have given a defense of others

charge was an issue preserved for appellate review; therefore, trial counsel was not deficient for failing to object to the trial court not charging defense of others.

The PCR court properly found trial counsel was not ineffective for failing to object to the trial court not giving a defense of others jury charge when the trial court had already ruled on the issue. Certiorari should be denied as to this issue.

III. Did the PCR court properly find trial counsel was not ineffective for failing to object after the trial court charged accomplice liability and aiding and abetting even though trial counsel argued against the charge during the charge conference?

Trial counsel was not ineffective for failing to object to the trial court giving an aiding and abetting and accomplice liability jury charge. Trial counsel was not deficient because the charge was supported by the evidence at trial. Campbell was not prejudiced because even if trial counsel had objected, the objection would not have been successful.

The PCR court found trial counsel was not deficient because the jury instructions on aiding and abetting and accomplice liability were properly given. The PCR court found Campbell was not prejudiced because any objection made by counsel would have been denied. (App. 1097).

Trial courts are required to charge the current and correct law, and the law to be charged is determined by the evidence at trial. *Taylor*, 356 S.C. at 231, 589 S.E.2d at 3.

Campbell asserts no substantial circumstantial evidence in the record establishes a malicious intent to aid and abet a shooting in this case. Specifically, Campbell asserts there was no testimony he ordered or encouraged anyone else to fire a gun. The State submits this argument is without merit.

Frank Haigler testified he walked from the gas station to the apartment, alone, to check and see if it was okay for his brother to go home. (App. 311). He stated that when he got close to the apartment, Campbell was waiting in the parking lot. (App. 312). Haigler stated that he called out to Campbell, and Campbell responded, "What you doing over here?" (App. 312). Haigler stated

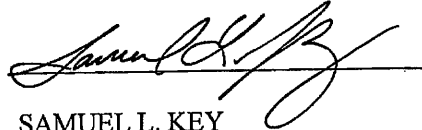
he tried to explain to Campbell that the situation between Coaxum (Campbell's sister) and Allen (Haigler's brother) had been worked out. Haigler stated that Campbell appeared to be "heightened." (App. 313). Haigler stated that Campbell then turned and said, "Go get that, go get that;" thereafter, two men wielding shotguns exited the apartment, and Campbell punched Haigler in the face. (App. 313). Haigler stated that after Campbell punched him, he spun around and fled, and two shots were fired at him. (App. 313-17).

Haigler's testimony supports the accomplice liability jury charge being given. It can reasonably be inferred that Campbell's statement, "Go get that, go get that," was an order to shoot; the trial court made this inference in its ruling on a directed verdict. (App. 484). The trial court properly gave an accomplice liability jury charge. Trial counsel was not deficient in failing to object to the trial court charging accomplice liability.

Trial counsel was not ineffective for failing to object to the trial court giving an accomplice liability jury charge. Campbell was not prejudiced because the accomplice liability charge was supported by record. Therefore, trial counsel was not ineffective for failing to object to the trial court charging accomplice liability. Certiorari should be denied as to this issue.

CONCLUSION

Based on the foregoing argument, trial counsel was not ineffective. Trial counsel did not render deficient performance, nor did Campbell suffer from any of the alleged deficiencies. Therefore the State requests certiorari be denied.

A handwritten signature in dark ink, appearing to read 'Samuel L. Key', is written over a horizontal line.

SAMUEL L. KEY
Assistant Attorney General

Post Office Box 11549
Columbia, S.C 29211
(803) 734-3737

ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JAN 02 2019

S.C. SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
Court of Common Pleas
Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case № 2018-000464

Jerome Campbell Petitioner,

vs.

The State of South Carolina Respondent.

REPLY TO RETURN

C. RAUCH WISE
Attorney at Law
305 Main St.
Greenwood, SC 29646
(864) 229-5010
Rauchwise@gmail.com
S. C. Bar № 06188
Attorney for Petitioner

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Question I

Did the Post Conviction Relief judge err in failing to find trial counsel was ineffective when he failed to object to the trial judge charging mutual combat which undercut his self defense charge in violation of the principles established in *State v. Taylor* 356 S.C. 227, 589 S.E.2d 1 (2003)?

Contrary to the position urged by the State in their return, there was not indication that the parties in this case intended to engage in mutual combat. As this Court has said “The case law does establish that there must be ‘mutual intent and willingness to fight’ to constitute mutual combat.” *State v. Taylor*, 356 S.C. 227, 232, 589 S.E.2d 1, 3 (2003). The Court in *Taylor* further said:

As mentioned, mutual combat acts [is] a bar to self-defense because it requires mutual agreement to fight on equal terms for purposes other than protection. This is inherently inconsistent with the concept of self-defense, and directly conflicts with the “no fault” finding necessary to establish self-defense. As such, it is only logical that the evidence of agreement to fight be plain, like the evidence of mutual combat present in the *Porter*, *Graham*, and *Mathis* cases.

Id. at 234, 589 S.E.2d at 4.

In the present case, the evidence as to mutual combat is not plain. By holding the evidence of mutual combat must be plain, the Court obviously meant more than just some evidence. The evidence of mutual combat referenced in the cases cited above is plain. “There was testimony that the appellant and the deceased were on the lookout for each other; that they were armed in anticipation of a combat; that each drew his pistol and each fired upon the other.” *State v. Mathis*, 174 S.C. 344, ___, 177 S.E. 318, 319 (1934); “As the deceased left his truck, appellant, who was in the barber shop and had observed the deceased’s return, walked into the

street, placing himself in a position where an encounter with the deceased could be expected. Appellant could see the weapon in the possession of the deceased, and the deceased knew that appellant was armed.” *State v. Graham*, 260 S.C. 449, 451, 196 S.E.2d 495, 496 (1973); “In the instant case, appellant returned with a gun to Slagle’s property at least twice in spite of prior verbal abuse, threats and gunshots.” *State v. Porter*, 269 S.C. 618, 622, 239 S.E.2d 641, 643 (1977). In the present case, nothing in the record established that Mr. Campbell knew the other party was armed, if a rusted pistol that would not fire constitutes being armed. App. at 238, ll 2-19. Without some evidence that Mr. Campbell knew the other party was armed, plain evidence of mutual combat has not been presented.

State v. Jackson, 384 S.C. 29, 681 S.E.2d 17 (Ct. App. 2009) is not support for the proposition that self defense and mutual combat are mutually exclusive. The Court first discussed *Taylor* saying, “No exception was taken to the charge on self-defense; rather, the supreme court held the mutual combat charge negated the self-defense charge and created unfair prejudice against Taylor.” *Id.* at 38, 681 S.E.2d at 21. The Court then dropped a footnote to say “We do not suggest mutual combat and self-defense are mutually exclusive; rather, in *Taylor*, there was no evidence that the victim was willing to engage in mutual combat with Taylor.” *Id.* at 38, 681 S.E.2d at 22, n. 5. In *Taylor*, some evidence of mutual combat existed as the court found “All witnesses agree that Angela insisted the two take the fight outside, and that they continued their struggle on the porch of the trailer and into the front yard.” *Taylor*, at 230, 589 S.E.2d at 3. Thus, as the evidence as to mutual combat was not plain, it was prejudicial in *Taylor* to charge it. The same principle applies in this case.

Question II

Did the Post Conviction Relief Judge err in failing to find trial counsel was ineffective in failing to properly object to the failure of the trial judge to charge the law as to the defense of others?

While defense counsel did argue for a defense of others charge, he did not object when the trial judge stated she would not charge defense of others and did not renew the objection after the charge. He therefore either waived the objection he had previously made or acquiesced in the ruling by the trial judge. Rule 20 of the South Carolina Rules of Criminal Procedure; *State v. Rios*, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) (By failing to contemporaneously object to the jury charges, Rios has waived his right to allege error on appeal.) When the trial judge asked at the end of the jury charge if there were any objections, trial counsel simply responded "None, Your Honor." App. at 781, 17.

The State incorrectly argues that the failure to object after the jury charge preserves the issue. If the trial judge has asked if there were any objections other than those previously discussed, then the State's argument may have some merit. But here, not only did trial counsel fail to raise an objection after the judge initially stated she would not give the defense of others charge, he in acquiesced in her charge when he raised no objection after being asked after the trial judge failed to charge defense of others. *State v. Rios*, 388 S.C. 335, 341, 696 S.E.2d 608, 612 (Ct. App. 2010) ("Later, after charging the jury, the trial court asked if there were any objections to the charges given. Neither the State nor Rios had any objections.")

Question III

Did the Post Conviction Relief Judge err in failing to find trial counsel was ineffective for his failing to object to the trial judge charging the hand of one is the hand of all and the law of aiding and abetting when the facts did not support the charge?

The only evidence the State urges to contend that the trial counsel was not ineffective in failing to object to the aiding and abetting charge is an ambiguous statement made before the car left the scene. In that statement Mr. Campbell allegedly said "Go get that, go get that." App. at 313, 111. The comment has no reference to shooting and to assume it references an instruction to shoot is speculation at best. If this is all the State can find to support an aiding and abetting charge, then the record in this case is woefully inadequate to sustain an aiding and abetting charge to the jury. The Post Conviction Relief judge erred in failing to find trial counsel was ineffective in failing to object to such a charge.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the Petition for Writ of Certiorari, this Court should grant the Petition for Writ of Certiorari and Order that Jerome Campbell be given a new trial.

December 27, 2018



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S. C. Bar No 06188

Attorney for Jerome Campbell

LAW OFFICE OF
C. RAUCH WISE
Attorney & Counselor at Law
305 Main Street
Greenwood, SC 29646
e-mail rauchwise@gmail.com

RECEIVED
SEP 08 2020
SC Court of Appeals

C. Rauch Wise

Telephone
(864) 229-5010
Facsimile
(864) 229-2665

September 3, 2020

Jenny Abbott Kitchings, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

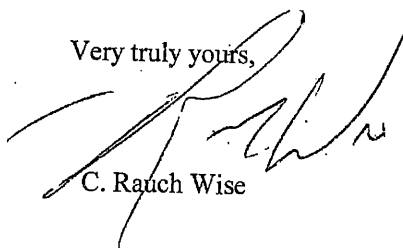
Re: Jerome Campbell vs. State of South Carolina, Appellate Case No. 2018-000464

Dear Ms. Kitchings:

Pursuant to South Carolina Rules of Appellate Practice Rule 208(b)(7) Supplemental Citations, I submit to the Court *State vs. Washington* decided September 2, 2020, Opinion No. 27992 decided by the South Carolina Court of Appeals. This case relates to Issue III of the Petition for Writ of Certiorari of Mr. Campbell.

With kindest regards, I am

Very truly yours,



C. Rauch Wise

CRW/slt

cc Samuel Leonard Key

The South Carolina Court of Appeals

Jerome Campbell, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2018-000464

ORDER

This matter is before the Court on a petition for a writ of certiorari. Based on the vote of the panel, the petition for a writ of certiorari is granted as to Question I. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR. The petition for a writ of certiorari is denied for the remaining questions.

FOR THE COURT

BY

V. Claire Allen

CLERK

Columbia, South Carolina

cc:

Clarence Rauch Wise, Esquire

Benjamin Limbaugh, Esquire

Jerome Campbell, 349454

The Honorable William H. Seals, Jr.

FILED
Feb 09 2021

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Mar 09 2021

SC Court of Appeals

CERTIORARI TO CHARLESTON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

Appellate Case № 2018-000464
Lower Case No. 2014-CP-10-3019

Jerome Campbell, # 349454, ... Petitioner,

vs.

State of South Carolina, ... Respondent.

BRIEF OF PETITIONER

C. RAUCH WISE
Attorney at Law
305 Main St.
Greenwood, SC 29646
(864) 229-5010
Rauchwise@gmail.com
S. C. Bar № 06188
Attorney for Petitioner

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Statement of Issue Presented

Did the Post Conviction Relief judge err in failing to find trial counsel was ineffective when he failed to object to the trial judge charging mutual combat which undercut the self-defense charge in violation of the principles established in *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003)?

Statement of the Case

Procedural History

Jerome Campbell was tried before a jury on January 23-27, 2012 on charges of murder and three counts of assault and battery with intent to kill. The charges arose from an incident that occurred in Charleston, SC on January 9, 2009. He was convicted of all the charges and sentenced to thirty years for murder and ten years on the three assault and battery with intent to kill charges. The judge ran the latter charges concurrent with the murder charge.

A timely Notice of Intent to Appeal was filed with the South Carolina Court of Appeals. The conviction was affirmed on August 7, 2013. A petition for rehearing was denied on October 23, 2013. Mr. Campbell did not appeal further.

Mr. Campbell filed his initial Post Conviction Relief Hearing on May 12, 2014. An Amended Petition was filed on January 12, 2017. A hearing on the Post Conviction Relief hearing was held before the Honorable William H. Seals, Jr. on January 12, 2017. By his Order of January 17, 2018, Judge Seals denied the Petition. Mr. Campbell filed a Motion to Alter or Amend the Judgement on January 31, 2018. This Motion was denied by Order filed March 7, 2018. Mr. Campbell filed his Notice of Appeal on March 12, 2018. This Court granted the Petition for Writ of Certiorari on February 9, 2021 on the single issue of whether trial counsel was ineffective in failing to object to the trial judge charging the law of mutual combat.

Factual History

The events that led to the shooting arose from a marital dispute between Charise Coaxum, the sister of Jerome Campbell, and her husband, Michael Allen. Mr. Allen and his wife resided at the Plantation Apartments. Anthony German and his brother Michael German, the deceased,

resided at Georgetown Apartments. Frank Haigler, the brother of Michael Allen, testified he had been to the Plantation Apartments to try and mediate the differences between Ms. Coaxum and Michael Allen. App. at 306, 1 25 to 307, 1 5. He testified he stayed at the Plantation apartment for about 45 minutes. App. at 308 11 3-8.

Mr. Haigler testified he saw Mr. Campbell in front of the apartment of Ms. Coaxum, his sister-in-law, at the Plantation apartment. App. at 303, 1 4-6. He later testified Mr. Campbell was not at the Plantation apartment. App. at 308, 11 19-21. After Mr. Haigler left the Plantation apartment, he, with his brother Michael Allen, went to the Georgetown apartment of Anthony and Michael German. At this apartment, Mr. Haigler said he saw Mr. Campbell with a pistol. App. at 304, 1 3 to 305, 1 7. Mr. Haigler testified that notwithstanding messages from Mr. Campbell for Michael Allen not to return to the Plantation apartment, he, Michael Allen, Anthony German, and Michael German went to the vicinity of the apartment. According to Google Earth, the distance between the two apartment complexes is approximately 4 miles.¹

Mr. Haigler testified that he told the others to wait at the store while he went to the Plantation apartment of Ms. Coaxum and Mr. Allen. App. at 310, 1 24 to 311, 1 14. As he approached the apartment, he saw Mr. Campbell. He stated he and Mr. Campbell had a confrontation in which he was struck by Mr. Campbell. He also observed two other men with shotguns. App. at 313, 11 11-15. After being struck, he fled the scene and stated he heard two gun shots, presumably from the shotguns. App. at 316, 11 7-14. After he fled the scene, he heard a car speeding from the Plantation Apartments and heard more gunshots. App. at 317, 11 7-11.

¹ The South Carolina Supreme Court, in an appeal, has taken judicial notice of distances. "Rand McNally's Road Atlas indicates Gray, Tennessee, is about ten miles from Johnson City, Tennessee." *State v. Arnold*, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004)

No one was able to identify who was driving or who was shooting. As a result of the shooting, a ricochet bullet struck and killed Michael German. Mr. Campbell turned himself in to the police some two hours later. App. at 262, ll 3-6.

Standard of Review

The South Carolina Supreme Court has established the Standard of Review in the appeal of a Post Conviction Relief Hearing. The Court said, “Our standard of review in PCR cases depends on the specific issue before us. We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. We review questions of law de novo with no deference to trial courts.” *Smalls v. State*, 422 S.C. 174, 180-181, 810 S.E.2d 836, 839 (2018)(internal citations omitted)

Argument

Question

Did the Post Conviction Relief judge err in failing to find trial counsel ineffective when he failed to object to the trial judge charging mutual combat which undercut the self defense charge in violation of the principles established in *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003)?

At the close of the case, a charge conference was held. Based upon the discussion of the parties, the trial judge elected to charge the law of mutual combat. This was apparently first suggested by the State when the solicitor stated "And again, I would just here mention the line of cases involving mutual combat and that's where mutual combat means you both bring guns to a fight, self defense is not a defense available to you and clearly - - -" App. at 665, ll 24 to 666, ll 2. In ruling on this issue, the trial judge stated "Well, that's part of the instruction and actually, self - - mutual combat is - - There are different parts of mutual combat. Of course, if he voluntarily participated in combat for purposes other than protection, then it's not self-defense, even if during the combat he feared death or serious bodily injury." App. at 666, ll 3-9. Trial counsel then agreed that if the jury finds mutual combat, then they could not find self-defense. App. at 667, ll 20-24. In discussing her jury charge the trial judge again stated she would charge mutual combat. App. at 670, ll 14-18. No objection was ever raised by defense counsel.

The trial judge then charged the law as to mutual combat. The trial judge placed the mutual combat charge in with the self-defense charge right after stating the first element of self-defense as being "without fault in bringing on the difficulty." App. at 759, ll 2-3. Mutual combat would, of course, eliminate the first element. One willingly participating in mutual

combat could not claim they were without fault in bringing on the difficulty. Before going to the second element of self-defense, the trial judge gave the mutual combat charge. She told the jury, "If the defendant voluntarily participated in mutual combat for purposes other than protection, the killing of the victim would not be self-defense." App. 759, ll 11-13.²

This charge by the trial judge was contrary to the holding of the South Carolina Supreme Court in *State v. Taylor*, 356 S.C.227, 589 S.E.2d 1 (2003), a case decided some nine years before this trial. Trial counsel admitted he was not familiar with the *Taylor* case. App. at 1077, ll 5-15. As the South Carolina Supreme Court said in *Taylor*, "Although the Court charged self-defense properly in Petitioner's case, that charge was negated by the Court's unwarranted charge on mutual combat. We find that the Court's mutual combat charge acted as a limitation on the Petitioner's ability to claim self-defense, and prejudiced him by transferring the *State's* burden to disprove self-defense onto the Petitioner, forcing him to prove self-defense in violation of *Burkhart Addison, and Wiggins*." *Id.* at 235, 589 S.E.2d at 5 (emphasis in original).

In his ruling, the PCR judge failed to address the *Taylor* opinion. App. at 1091. The failure to address the *Taylor* decision was called to the attention of the PCR judge through a Motion to Alter or Amend the Judgment. App. at 1101. In the Order denying the Rule 59 Motion, the PCR judge again failed to address the case. The closest the PCR judge came to addressing the *Taylor* issue is to say "Here, there is some evidence presented that Applicant engaged in a mutual willingness to fight throughout the day of the incident. Therefore, the trial court's instruction on mutual combat was supported by the evidence presented at trial and any

² How one could participate in mutual combat "for protection" is not explained nor can this writer think of any way it can be done. This statement only added to the confusion as to the charge.

objection would not have been successful.” App. at 777 ll 22 to 778 l 1. No facts support this conclusion. The PCR judge does not state facts to support this statement. This statement ignores the importance and significance of the *Taylor* decision. The PCR judge never addressed the burden shifting importance of the *Taylor* decision. Nor did it address the South Carolina Supreme Court’s conclusion in *Taylor* that mutual combat seldom, if ever, should be charged with self-defense.

Thus, the PCR judge never ruled on the key issue in this case. As such, this Court is not bound by the ruling of the PCR judge in this matter as there was no ruling by him. In addition, the failure of trial counsel to object to the mutual combat charge is an error of law and should be reviewed de novo in this case. The PCR judge also erred as a matter of law in finding that the facts of this case presented an issue of mutual combat. This is also reviewed by this court de novo.

The same principles established in *Taylor* should apply in this case. Here the concept of “mutual combat” was not clearly established, if at all. While there had been disagreements and arguments between Mr. Campbell and the others, there is no evidence that each armed themselves with the idea or belief they were going to engage in mutual combat at some point during the day. In fact, the record shows that Mr. Campbell had told Mr. Haigler and his brother not to come to his sister’s apartment. App. at 338, l 25 to 339, l 6. Nothing in the record suggests Mr. Campbell expected any of the others to come to the apartment of his sister.

Mr. Frank Haigler testified he was trying to resolve a disagreement between his brother Michael Allen and his sister-in-law, who is the sister of Jerome Campbell. App. at 306, l 6 to 308, l 18. Michael Allen and his wife lived at the Plantation Apartments. Mr. Campbell was not

present during the discussions at his sister's Apartment. App. at 308, ll 19-21. Mr. Campbell and Frank Haigler had a confrontation after Mr. Haigler went to the apartment of Anthony and Michael German. This occurred at another apartment complex and after Mr. Haigler had been to the Plantation Apartments to discuss the issues with his brother's wife. Nothing in this confrontation suggested either would arm themselves in mutual combat. App. at 304, l 9 to 305, l 9. After this confrontation, Mr. Haigler and his brothers decided to go to the store near Michael Allen's Plantation apartment and have a beer. App. at 310, l 24 to 311, l 11. Mr. Haigler then went across the street to the apartment of his brother, Michael Allen. He was not armed. App. at 312 ll 2-14. Mr. Haigler testified he did not expect to find anyone at the Plantation apartment. App. at 340, ll 7-8; 342, ll 2-3.

Charise Coaxum, the sister of Mr. Campbell and wife of Michael Allen, testified, concerning the initial contact at the Plantation Apartments, that Mr. Haigler and his brother, along with Anthony German and Michael German, came by the apartment earlier that day. They had made threats against Mr. Campbell. App. at 496, l 8 to 498, l 21. They left when Ms. Sandra Campbell, the mother of Jerome Campbell and Charise Coaxum, threatened to call 911. At that point, Ms. Coaxum left the apartment to spend the night on James Island with her mother. Ms. Coaxum's testimony was confirmed by her mother who arrived at the apartment between seven and eight after receiving a call from her grandchild. App. at 532, l 12 to 535, l 19. In fact, Frank Haigler testified he knew his brother did not have a key to the Plantation Apartment and that his sister in law was going to be in James Island. App. at 340, ll 5-8. This testimony shows there was no mutual combat and no intent on the part of anyone to engage in mutual combat. There was certainly no evidence that Mr. Campbell intended to engage in mutual

combat. Mr. Campbell had done nothing to encourage anyone to return to the Plantation Apartments. There was no request, expressed or implied, by any of the parties to meet and settle their differences. As trial counsel was not familiar with the *Taylor* decision, he made no decision on how to use mutual combat as part of any defense strategy. He even admitted if the jury finds mutual combat, there would be no self-defense. App. at 667, ll 22-24. In this respect, trial counsel erred as a matter of law in failing to object to the mutual combat charge. The mutual combat charge in this case served only to confuse the jury as to the meaning of self-defense and the burden of proof. As there was no trial strategy involved in failing to object to the charge, Mr. Campbell was prejudiced by his trial counsel failing to object to the mutual combat charge. It introduced a principle of law for which no evidence had been introduced. This can only serve to confuse the jury. The charge asked them to look for something that did not exist.

This Court cannot conclude beyond a reasonable doubt that the jury did not base their decision on facts that did not exist simply because the charge suggested those facts did exist. As this Court has found, an improper mutual combat charge is in fact prejudicial to a defendant as lessening the burden on the State, prejudice as required under *Strickland v. Washington*, 466 U.S. 668 (1984) has been established.

No facts in the record support the decision of the PCR judge that trial counsel was not deficient in failing to object to the mutual combat charge. First, there are no facts to support a mutual combat charge. Second, even if there were some facts, the PCR judge did not cite any facts that would justify trial counsel in not objecting to the mutual combat charge.

This Court has recently discussed the *Taylor* case and properly noted, "Although we have a limited number of cases in our jurisprudence on the law of mutual combat, that case law

unequivocally indicates that it is essential there is evidence of a pre-existing ill-will between the parties and that both parties are armed with deadly weapons and have knowledge that the other is armed.” *State v. Bowers*, 428 S.C. 21, 34, 832 S.E.2d 623, 630 (Ct. App. 2019), reh’g denied (Sept. 20, 2019), cert. granted (May 22, 2020). While there may be some argument of pre-existing ill-will, the record is completely devoid of any evidence that each knew the other would be armed at the scene of the shooting. Without this critical factor, mutual combat fails as matter of law. “If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury.” *State v. Blurton*, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002). On direct appeal, if an objection to the charge had been raised in this case, this Court would have been required to reverse the conviction.

In *Bowers*, this Court found the mere charge as to mutual combat was prejudicial because it negated self-defense. This Court said, “We find the erroneous charge on mutual combat was prejudicial because the charge effectively negated Appellant’s self-defense plea.” *Id.* at 37, 832 S.E.2d at 632. Similarly, the South Carolina Supreme Court in *Taylor* said, “Although the Court charged self-defense properly in Petitioner’s case, that charge was negated by the Court’s unwarranted charge on mutual combat.” *Id.* at 235, 589 S.E.2d at 5. The self-defense charge was negated in this case also. In *Taylor*, the South Carolina Supreme Court said as to mutual combat, “This finding, however, fails to recognize that requiring Petitioner to prove he withdrew from the fight removes the burden to disprove self-defense from the State, and improperly places it on the Petitioner.” *Id.* at 235, 589 S.E.2d at 5.

In this case, one side denied having a firearm. A gun shot residue test suggested they did have a firearm and fired it. App. at 387, ll 11-23; 588, ll 10-24; 632, ll 8-19. Also, the expert for

the defense testified in his opinion, three close shots were fired first before the more distant shots were fired. The second of the two distant shots seemed fainter, implying the shooter was moving away from the scene. App. at 598, ll 5-19. This testimony would suggest the people at the store fired first. In addition, an automobile parked at the Plantation Apartments had a bullet hole in it. App. at 207, ll 21 to 210, ll 4; 214, ll 22 to 216, ll 20. This suggests that a firearm had been fired from across the street of the Plantation Apartments in the vicinity of the store where the brothers were standing. The charge of mutual combat simply made it easier for the jury to decide the contested issues by concluding it was mutual combat due to both sides being armed. The mutual combat charge made such a finding an easy solution for the jury to make. Evidence showed both sides were armed.

This theme of both sides being mutually armed was used by the State in their closing argument. As the State argued, "If they did, and if we all bring guns to the gun fight, none of us get to say self-defense. All right? That's what mutual combat says and it's clear from his actions that he did." App. at 731, ll 12-14. The fact should be noted that this is not a correct statement of the law. Even if both sides are armed, a defendant may invoke self-defense. This argument by the State is based, at least in part, upon the jury charge where the Court stated, "In addition it must be shown that both parties were armed with a deadly weapon." App. at 759, ll 23-24. The ambiguous charge, with the comment by the solicitor, would have easily mislead the jury.

The prejudice to the defendant is that the mutual combat charge, as stated in *Taylor*, requires Mr. Campbell to prove he withdrew from the alleged mutual combat and that lessened the burden of the State to disprove self-defense. As the State in this case argued, if the jury believed both sides were armed it was mutual combat. Giving the jury this out was prejudicial.

As the South Carolina Supreme Court has said, “In deciding the prejudice prong in this PCR action, we examine the following factors, which are the same ones analyzed in deciding on direct appeal whether a similar error is harmless beyond a reasonable doubt.” *Edmond v. State*, 341 S.C. 340, 348, 534 S.E.2d 682, 686 (2000). In making a harmless error analysis on direct appeal, the Court said, “Engaging in this harmless error analysis, we note that our jurisprudence requires us not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict.” *State v. Tapp*, 398 S.C. 376, 389–90, 728 S.E.2d 468, 475 (2012).

1. The record reflects that after about two and a half hours of deliberation, the jury sent a note to the judge that stated, “The jury would like to have the instructions regarding self defense, including mutual combat and the hand of one is the hand of all repeated, please.” App. at 773, ll 12-15. After about two more hours of deliberations, the jury then reached a verdict. Based on the facts of this case, this Court cannot conclude that the error was harmless beyond a reasonable doubt.

The jury specifically mentioned “mutual combat” in their request to be re-charged.

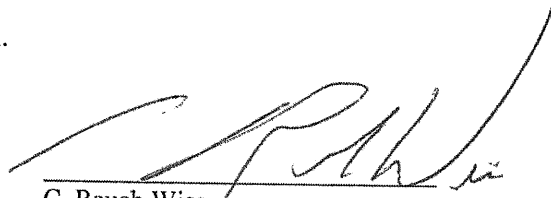
The reason that mutual combat is misleading and confusing to the jury is that a jury that properly understands the concept of “being without fault in bringing on the difficulty,” does not need to be told a person who agrees to meet another for a gun fight, cannot claim to be without fault in bring on the difficulty. The mutual combat charge simply enabled the solicitor to argue, as he did, “If they did, and if we all bring guns to the gun fight, none of us get to say self-defense. All right? That’s what mutual combat says and it’s clear from his actions that he did.” App. at 731, ll 12-14. The issue in this case is not, and usually never is, did both sides bring a

gun to the gunfight. The issue is whether did one side start the gunfight when the other side was not expecting it. Merely being in possession of a firearm does not, and should not, eliminate the right to self-defense.

CONCLUSION

For the foregoing reasons, this Court should reverse the ruling of the Post Conviction Relief Judge and grant Mr. Campbell a new trial.

March 10, 2021



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S. C. Bar No 06188

Attorney for Jerome Campbell

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Jul 14 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
William H. Seals Jr., Post-Conviction Relief Judge
Deadra L. Jefferson, Trial Judge

JEROME CAMPBELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA

RESPONDENT

APPELLATE CASE NO. 2018-000464

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General
S.C. Bar No. 103334

Post Office Box 11549
Columbia, S.C 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE PRESENTED

- I. Did the post-conviction relief court properly determined Petitioner failed to establish trial counsel was constitutionally ineffective for failing to object to the trial court's jury instructions because the instructions accurately and adequately conveyed the law based on the evidence presented during trial, and accordingly, any such objection to the mutual combat instruction would have been overruled, and moreover, Petitioner cannot establish the result of the trial would have been different but for counsel's failure to object to the mutual combat instruction?

STATEMENT OF THE CASE

Petitioner Jerome Campbell was tried before a jury January 23–27, 2012, for one count of murder, and three counts of assault with intent to kill (AWIK). The charges stem from a gun-fight that occurred in January 2009.

The gun-fight arose from the culmination of two underlying disputes involving Campbell's relatives. The first dispute was an over the phone argument between Campbell's mother, Sandra Campbell (Mother), and Anthony German. Mother was the maternal great-grandmother of Anthony German's new-born child. Anthony German allegedly did not want Mother to visit his child. The second dispute was an argument between Campbell's sister (Charise Coaxum) and Mother, and Coaxum's husband (Michael Allen) and brother-in-law (Frank Haigler)¹ at Coaxum and Allen's apartment. Coaxum wanted to kick Allen out of their apartment. Mother was present during the argument in support of Coaxum, and Haigler was present in support of Allen. The argument ended peacefully, and Coaxum told Allen he could come back later to the apartment; however, she would have to let him in the apartment because she kept the only key. All parties involved in the second dispute left the apartment.

Throughout the day leading up to the gun-fight, Allen and the German brothers made threats towards Campbell, and Campbell made threats towards Allen and Anthony German. Both sides were aware that threats were made. Allen, and the German brothers were aware Campbell was armed. Anthony German armed himself because of the threats Campbell had made.

The gun-fight occurred when Allen tried to return home. On his way back home, Allen was accompanied by Haigler and the German brothers. The group went inside the BP station

¹ While Haigler stated at trial that he and Allen were not related by blood, all parties refer to Haigler as Allen's brother.

across the street from Allen's apartment complex. Allen and Haigler each purchased a beer. The group gathered in the BP's parking lot while Allen and Haigler drank their beer. Haigler decided to scout out whether it was safe for Allen to return home. Haigler encountered Campbell in the parking lot outside Allen's apartment. The two exchanged words, then Campbell allegedly turned and stated "Go get that. Go get that." (App. 313). Thereafter, two men wielding shotguns exited the apartment, Campbell punched Haigler in the face, and Haigler fled. Haigler testified he was shot at twice as he fled. (App. 313–316). Haigler almost made it back to the gas station when he heard, and then saw, Campbell's car approaching. Haigler jumped into the bushes across the street from the BP to hide. (App. 317). The evidence presented at trial suggests that gunshots came from Campbell's car, and from the BP parking lot. (App. 234–35, 385–87, 465). Michael German was struck in the head by a ricocheted bullet. Michael German died. (App. 190–94).

Campbell was charged with the murder of Michael German. Campbell was also charged with AWIK towards Frank Haigler, Michael Allen, and Anthony German. The State's case was based upon the theory of accomplice liability—the hand of one is the hand of all. (App. 730–42). The jury convicted Campbell as indicted, and the trial court sentenced him to serve concurrent terms of imprisonment of thirty years for murder, and ten years for each AWIK charge. (App. 782–83, 797–98).

Campbell appealed his convictions, and the court of appeals affirmed in an unpublished opinion. *State v. Campbell*, Op. No. 2014-UP-338 (S.C. Ct. App. filed August 7, 2013). Campbell commenced this PCR action on May 12, 2014.

STANDARD OF REVIEW

In a PCR case, appellate courts will uphold the PCR court's factual findings if there is any evidence of probative value in the record to support them. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). However, appellate courts give no deference to the PCR court's conclusions of law, and review conclusions of law de novo. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

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). 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 (quoting *Strickland*, 466 U.S. at 694).

ARGUMENT

- I. The post-conviction relief court properly determined Petitioner failed to establish trial counsel was constitutionally ineffective for failing to object to the trial court's jury instructions because the instructions accurately and adequately conveyed the law based on the evidence presented during trial, and accordingly, any such objection to the mutual combat instruction would have been overruled, and moreover, Petitioner cannot establish the result of the trial would have been different but for counsel's failure to object to the mutual combat instruction

The PCR court properly found trial counsel was not ineffective for failing to object to the trial court charging mutual combat and self-defense. Campbell argues trial counsel was deficient because the mutual combat charge under-cut his requested self-defense charge in violation of South Carolina law citing *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003). However, trial counsel was not deficient because *Taylor* is distinguishable from the instant case. In the instant case, the mutual combat charge was supported by the record and nay such objection would have been overruled. Campbell argues he was prejudiced by trial counsel's alleged deficiency because the mutual combat charge only served to confuse the jury as to the meaning of self-defense, and shifted the burden of proof. Campbell was not prejudiced because the trial court's charge on self-defense and mutual combat was not confusing, and did not shift the burden of proof away from the State. This Court should affirm the post-conviction relief court's denial of relief on this basis

"[T]he trial [court] is required to charge only the current and correct law . . . and the law to be charged to the jury is determined by the evidence at trial." *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003) (internal citations omitted). "[A] trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence." *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Jury instructions should be considered as a whole. *State v. Smith*, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994).

During the charge conference, trial counsel argued for the trial court to give a self-defense charge. (App. 655–667). The trial court agreed the facts supported a self-defense charge. (App. 669). The trial court charged the jury on self-defense. (App. 758–62). The trial court began its self-defense charge by stating:

The defendant has raised the defense of self-defense. Self-defense is a complete defense and if it is established, you must find the defendant not guilty. The State has the burden of disproving self-defense by proof beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant not guilty. . . . On the other hand if you have no reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant guilty.

(App. 758). The trial court then charged the jury on the first element of self-defense:

[T]he defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense. . . .

If the defendant voluntarily participated in mutual combat for purposes other than protection, the killing of the victim would not be self-defense. This is true even if during the combat the defendant feared death or serious bodily injury. However, if before the killing is committed the defendant withdraws and tried in good faith to avoid further conflict and either by word or act makes that fact known to the victim, he would be without fault in bringing on the difficulty.

For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by the acts and conduct of the parties and the circumstances surrounding the combat. In addition, it must be shown that both parties were armed with a deadly weapon.

(App. 759).

The PCR court found trial counsel was not ineffective for failing to object to the above referenced charge on self-defense. Specifically, the PCR court found Campbell was not deficient because the mutual combat charge was supported by the record. (App. 1098). The PCR court

concluded that Campbell was not prejudiced because an objection to the mutual combat charge would have been unsuccessful because the charge was supported by the record. (App. 1098).

Campbell argues trial counsel was deficient for failing to object to the trial court's self-defense and mutual combat charge. The crux of Campbell's deficiency argument relies on *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003). Campbell's reliance on *Taylor* is misplaced, as *Taylor* is distinguishable from the instant case. Because the record supports the mutual combat charge, trial counsel was not deficient for not objecting to the charge.

In *Taylor*, Terri Taylor was arrested for the murder of Kevin Carter. 356 S.C. at 229–31, 589 S.E.2d at 2–3. Taylor and Robert Murphy got off work and went to Angela Wallace's house to meet Wallace, Myranda Stillinger, and Carter for drinks. *Id.* at 229, 589 S.E.2d at 2. At some point in the evening, Carter and Stillinger began arguing; Taylor intervened in an attempt to stop the argument. *Id.* Thereafter, Taylor and Carter began to fight. The fight began inside, but eventually moved outside. *Id.* at 229–30, 589 S.E.2d at 2. Eventually, Taylor drew a knife from his pocket and began stabbing Carter. Taylor stabbed Carter fifteen times. An autopsy report revealed that Carter died from a stab wound to the heart. *Id.* at 230, 589 S.E.2d at 2. At trial, Taylor admitted that he stabbed Carter, but claimed he acted in self-defense. *Id.* The trial court charged self-defense; however, the trial court also charged mutual combat. *Id.* at 230–31, 589 S.E.2d at 2–3. The jury convicted Taylor of murder and possession of a weapon during the conviction of a violent crime. *Id.* at 231, 589 S.E.2d at 3. On appeal, this Court reversed Taylor's convictions.

The *Taylor* Court stated, "Because mutual combat requires mutual intent and willingness to fight, if a defendant is found to have been involved in mutual combat, the 'no fault' element of self-defense cannot be established." 356 S.C. at 232, 589 S.E.2d at 3. The Court concluded the

mutual combat charge was unwarranted because there was no evidence Carter knew Taylor was armed, and there was no pre-existing ill will between the parties. *Id.* at 234, 589 S.E.2d at 5.

Campbell suggests *Taylor* stands for the proposition that mutual combat and self-defense should not be charged together. However, *Taylor* does not stand for such. Since *Taylor*, the court of appeals has recognized that self-defense and mutual combat are not mutually exclusive. *See State v. Jackson*, 384 S.C. 29, 38 n. 5, 681 S.E.2d 17, 21 n. 5 (2009) (“We do not suggest mutual combat and self-defense are mutually exclusive; rather, in *Taylor*, there was no evidence that the victim was willing to engage in mutual combat with Taylor.”). Because mutual combat and self-defense are not mutually exclusive, trial counsel was not deficient for failing to object. Further, the mutual combat charge is supported by the record.

The mutual combat charge was supported by the evidence at trial. Specifically, Frank Haigler, Michael Allen, Anthony German, Charise Coaxum, and Mother’s testimonies. Haigler, Allen, and Anthony German’s testimonies show that their group knew Campbell was armed, and there was pre-existing ill will between the parties. Haigler stated he saw Campbell’s car drive up to the Germans’ apartment and he approached the car. He stated that as he approached the car he heard Campbell’s voice, and then the rear window rolled down and he saw a gun pointed at him. (App. 304–05). He then informed everyone to back away from the car because “[Campbell’s] got a gun.” (App. 305).

Allen testified that Campbell had threatened him earlier the day of the incident. He stated Campbell drove past the Germans’ apartment and threatened Anthony German, “I know where you live at now. I know where you live at now.” (App. 417–18). Allen stated that Campbell also threatened him, yelling, “You better not come home. I’ll be there soon.” (App. 418).

Anthony German corroborated Haigler and Allen's testimony. German stated that he heard Campbell threaten him directly. (App. 458). German stated that he recognized Campbell, and that he saw Campbell with a gun. (App. 458–59). German also stated that before the group left his apartment complex, he armed himself with a gun for protection from Campbell. (App. 460–61).

The record also contains evidence that Campbell knew Michael Allen, and the German brothers made threats against him. Coaxum's testimony shows that Campbell was aware Michael Allen and Anthony German had made threats on his life. Coaxum testified that Allen, her husband, sent her a text message stating, "And your brother called me a punk. Tonight we'll see. Real niggers do real things." (App. 495–96). Coaxum testified Allen, Haigler, and the German brothers came over to her apartment looking for Campbell because "[Campbell] told them that he was going to be [at the apartment] and [Campbell] sent them a threat." (App. 496). Coaxum further stated that Michael Allen told her, "We are Bloods and Bloods stick together. Your brother gonna die tonight." (App. 498). Coaxum stated that Anthony German told Mother, "Your son gonna die tonight." (App. 498). On cross-examination Coaxum stated that after the group left her apartment, "I called [Campbell] and told him that they were looking for him and they said that he was going to die tonight." (App. 513).

Because the instant case is distinguishable from *Taylor*, and because the mutual combat charge is supported by the record, the PCR court properly found trial counsel was not deficient for failing to object to the trial court charging mutual combat and self-defense.

Campbell was not prejudiced because the trial court's charge did not shift the burden of disproving self-defense away from the State. The trial court properly submitted to the jury the question of whether Campbell was at fault in bringing on the difficulty. As stated above, the trial court charged the jury on the elements of self-defense. In charging the first element of self-defense,

the trial court charged the law on mutual combat. The trial court charged that if the jury found Campbell engaged in mutual combat, then the State had met its burden of disproving the first element of self-defense. The trial court's instructions did not shift the burden of proof away from the State; therefore, Campbell was not prejudiced by the trial court charging mutual combat and self-defense.

The PCR court correctly found trial counsel was not ineffective for failing to object to the trial court charging mutual combat and self-defense. Thus, relief should be denied.

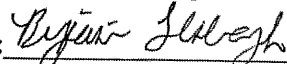
CONCLUSION

Based on the foregoing argument, trial counsel was not ineffective. Trial counsel did not render deficient performance, nor did Campbell suffer from any of the alleged deficiencies. Therefore the State requests relief be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

BENJAMIN HUNTER LIMBAUGH
S.C. Bar No. 103334
Assistant Attorney General

By: 
ATTORNEYS FOR PETITIONER

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge
Deadra I. Jefferson, Trial Judge

Appellate Case № 2018-000464
Lower Case No. 2014-CP-10-3019

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Aug 02 2021

SC Court of Appeals

Jerome Campbell, # 349454, ... Petitioner,

vs.

State of South Carolina, ... Respondent.

REPLY BRIEF OF PETITIONER

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 6188

Attorney for Petitioner

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Argument

Question

Did the Post Conviction Relief judge err in failing to find trial counsel ineffective when he failed to object to the trial judge charging mutual combat which undercut the self defense charge in violation of the principles established in *State v. Taylor*, 356 S.C. 227, 589 S.E.2d 1 (2003)?

In the States's brief they make numerous references to threats against Jerome Campbell and a willingness to fight by one or more of the group that went to the Plantation Apartments, but they completely fail to show any willingness on the part of Jerome Campbell to engage in mutual combat. The South Carolina Supreme Court in *State v. Taylor*, 356, S.C. 227, 589 S.E.2d 1 (2003) specifically held, "Texas and Colorado adhere to the rule than an 'antecedent agreement to fight' must exist for the court to charge mutual combat." *Id.* at 232, 589 S.E.2d at 4. The Court then stated, "We believe the restrictions placed on the applicability of mutual combat by the courts in Georgia, Colorado, and Texas are warranted." *Id.* The mere fact that both parties may have been armed, did not like each other, or had even made threats against each other even combined, does not rise to the level of mutual combat.¹ These facts do not establish an antecedent agreement to fight.

While there may have been some evidence through the treats that the associates of the

¹ In at least two states, a defendant requests a mutual combat charge to reduce the charge from murder to manslaughter. "Evidence of mutual combat or a physical struggle entered into willingly by both parties is sufficient provocation to require a voluntary manslaughter instruction. *People v. Brown*, 222 Ill. App. 3d 703, 720, 584 N.E.2d 355, 367 (1991); "A finding that a defendant was engaged in mutual combat at the time the victim was killed may authorize the jury to find the defendant guilty of voluntary manslaughter and not malice murder." *Moore v. State*, 307 Ga. 290, 295, 835 S.E.2d 610, 617 (2019)(internal citations omitted)

victim in this case were willing to engage in mutual combat, there is no evidence that Mr. Campbell had any desire to engage in mutual combat. A mere statement, even if considered a threat, saying "I know where you live at now." (Rec. on App. at 418, l 3) is hardly an agreement to engage in mutual combat. In the same conversation, Mr. Campbell is disavowed any intent to engage in mutual combat when he told Mr. Allen, "You better not come home, I will be there soon." Rec. on App. at 418, l 10. This comment cannot be stretched into an intent on Mr. Campbell's part to engage in mutual combat. Telling someone to stay away is the exact opposite of mutual combat.

The question as to whether mutual combat and self-defense are mutually exclusive is still unresolved. The footnote comment in *State v. Jackson*, 384 S.C. 29, 38, 681 S.E.2d 1, 21 n.5 (2009) is simply dicta. As mutual combat strikes such a dagger into the heart of self-defense, I should be given with self-defense only under the most unusual facts. It should be given only in those cases when the evidence, on at least one side, clearly establishes a factual scenario from which a jury could conclude the existence of mutual combat. This case is not such a case.

The evidence in the light most favorable to Mr. Campbell is that his automobile was fired upon as he was leaving the scene. This is not in keeping with any fact sufficient to invoke the doctrine of mutual combat. When two people are shooting at each other, a lay jury may well perceive that as mutual combat. It does not meet the legal definition, as the California Appellate Court stated, "As used in the present context, the phrase 'mutual combat' is not only ambiguous but a misnomer. The mutuality triggering the doctrine inheres not in the combat but in the preexisting intent to engage in it. Old but intact caselaw confirms that as used in this state's law of self-defense, 'mutual combat' means not merely a reciprocal exchange of blows but one

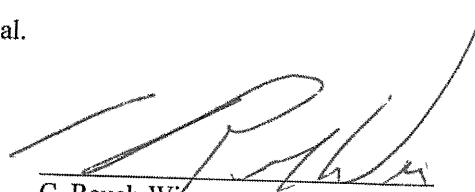
pursuant to mutual intention, consent, or agreement preceding the initiation of hostilities. *People v. Ross*, 155 Cal. App. 4th 1033, 1045, 66 Cal. Rptr. 3d 438, 447 (2007). In this case, no real definition was “mutual combat” was given. The phrase was defined as “there must be a mutual intent and willingness to fight.” Rec. on App. at 759. A lay jury, with no further definition, could easily conclude that when guns are being fired by both sides, there is “a mutual intent and willingness to fight.” The jury could have used this concept to avoid the more difficult question - who fired first?

The giving of a mutual combat charge in this case is prejudicial to Mr. Campbell and was therefore improper.

CONCLUSION

For the foregoing reasons and for the reasons set forth in the opening brief, this Court should reverse the determination that trial counsel was not ineffective, reverse the decision of the Post Conviction Relief judge and order a new trial.

August 2, 2021



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S. C. Bar № 06188

Attorney for Jerome Campbell

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jerome Campbell, Petitioner

v.

State of South Carolina, Respondent

Appellate Case № 2018-000464

Appeal from Charleston County
William H. Seals, Jr., Circuit Judge

Opinion № 5999
Heard February 16, 2023 - Filed July 19, 2023

Petition for Rehearing

Jerome Campbell, the Petitioner above, pursuant to Rule 221 of the South Carolina Appellate Court Rules, moves this Court to Rehear this matter based upon the following:

1. This Court erred in equating this case to the principles established in *State v. Graham*, 260 S.C. 449, 196 S.E.2d (1973) for the following reasons:

The record in this case does not establish a willingness to fight as to both parties which was shown in the *Graham* case. This Court acknowledges that Mr. Campbell told Michael Allen not to come to the Plantation Apartments, the residence of his niece. *Campbell v. State*, Op. № 5999 (S.C.Ct.App. filed July 19, 2023)(Howard Adv.Sh. № 28 at 54, 55. This does not indicate a willingness to fight. Nothing in the record, and the opinion cites no facts, from which Mr. Campbell had any reason to believe the four men would in fact come to the Plantation Apartments where Mr. Campbell was located. He never encouraged them to come. No evidence

suggests he knew they would be armed even if for some reason he should have anticipated they would come to the Plantation Apartment.

Likewise, the record establishes that the four men did not go to the Plantation apartments seeking a fight. Frank Haigler testified he went to the Plantation Apartment seeking to keep the matter from escalating. He stated, "I didn't want nothing to escalate that was already -- I didn't want the fire to start burning again that had been out, been put out." Rec. on App. at 311, ll 8-11. This does not even suggest a willingness to fight.

Frank Heigler did not know Anthony German had a firearm until they were on the way to the Plantation Apartments. He stated, "I didn't realize -- I didn't know Anthony had the gun until we was on the way back to my brother's house." Rec. on App. at 335, ll 4-6. Michael Allen also did not know Anthony had a firearm. He testified:

Q. (By Mr. Voight) Did you know Anthony had a weapon?

A. (By Mr. Allen) No, I didn't.

Rec. on App. at 428, ll 11-13.

With no proof in the record that anyone other than Anthony German knew Mr. German had a firearm, the record does not establish that any of the four men went to the Plantation Apartment to engage in mutual combat. If such had been the intent of Mr German, logic would dictate that he would have mentioned he had a firearm or one of the other people would have testified they told him to bring a firearm. No such testimony exists.

In *Graham* the defendant was armed. The victim in the case knew the defendant was armed. The defendant knew the victim was armed. Knowing that the victim was armed, the defendant elected to take his firearm with him from the barber shop into a public street to confront the armed victim. *Graham* is a classic case of mutual combat. The court in *Graham* said, "Under the circumstances the apparent willingness of each to engage in an armed encounter

with the other, sustained an inference that they were engaged in mutual combat at the time of the killing” *Id.* at 451, 196 S.E2d at 496.

As noted above, in this case there is no such affirmative knowledge by each party nor evidence of an “apparent willingness of each to engage in an armed encounter.” In *Graham*, the evidence was clear and unequivocal that each party knew the other to be armed at the time of the encounter. The same cannot be said of the facts in this case. As there is no direct testimony that each party knew the other was armed, this court, contrary to the clear holding in *Graham*, has impermissibly inferred the fact that both men knew the other was armed. The facts in *Graham* are that the evidence of each party knowing the other to be armed was objectively established. It was not inferred from ambiguous testimony. If such an inference is permissible simply because a firearm is later found on both parties, then mutual combat could be charged in any case where both sides are armed. This is not the law in South Carolina.

Georgia, which uses mutual combat to reduce murder to manslaughter, requires that the mutual intent to fight must be affirmatively shown. “In order to reduce the homicide from murder to voluntary manslaughter, as relates to the doctrine of mutual combat, it should affirmatively appear that at the time of the homicide both parties were in position and manifested intention to fight. Mere threats on the part of one party at the time of a fatal shot by the other will not suffice.” *Cornelious v. State*, 193 Ga. 25, 28–29, 17 S.E.2d 156, 158 (1941).¹ This court erred in holding the evidence established mutual combat.

2. This court incorrectly stated, “Campbell and the unknown gunmen entered Campbell’s

¹ The early South Carolina cases also indicate this was applicable in South Carolina. “where the parties are engaged in mutual combat-inasmuch as it is committed in hot blood, it is manslaughter. It is not every killing in passion that the law mitigates down to manslaughter; it must be passion, justly excited by legal provocation.” *State v. Smith*, 44 S.C.L. 341, 344 (S.C. App. L. 1857)

Impala and drove to the convenience store across the street, where Allen and the German brothers were standing.” *Campbell*, at 56. The exhibits show that the convenience store was across the street from an entrance to the Plantation Apartments. The most logical exit from the apartments is to drive toward the store. The testimony established that the Impala took a right turn out of the apartments and sped away. Anthony German stated, “[Y]ou could see a white Impala coming and then it made a right turn onto Carriage Lane coming from Plantation Apartments” Rec. on App. at 464, ll 12-14. Simply pulling out of an apartment complex and making a required turn is not evidence of a willingness to engage in mutual combat. In fact, leaving the scene of a confrontation is actually strong evidence of a desire not to engage in any altercation. No testimony exists that establishes affirmatively or by inference that Mr. Campbell knew the other three men would be at the convenience store.²

If Mr. Campbell had a desire to engaged in mutual combat, he simply would have waited where he was. He would not have left. The record offers no evidence that Mr. Campbell knew three other people would be at the convenience store. He was not, therefore, going toward trouble, but away from it. To the extent this court used the claim that Mr. Campbell was going toward the convenience store to establish that he had a willingness to fight, such use was improper.

3. After *State v. Young*, 429 S.C. 155, 838 S.E.2d 516 (2020), the solicitor in this case could have prosecuted Anthony German, Michael Allen and Frank Haigler for murder. If they had been convicted, the convictions would have been virtually impossible to uphold on appeal.

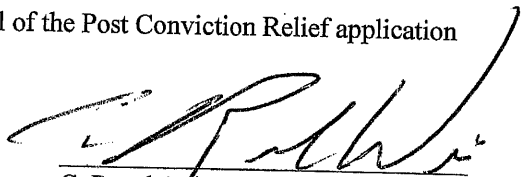
² The record is also devoid of any evidence that Mr. Campbell fired a weapon, other than the weapon was fired from his automobile. For this reason, the lower court charged the law as to accomplice liability. App. at 756, ll 16 to 758, ll 1-4. See, *State v. Washington*, 431 S.C. 394, 848 S.E.2d 779 (2020).

As noted above, neither Frank Haigler nor Michael Allen knew Anthony German had a firearm. None showed a willingness to fight. Under the logic of this court as to finding mutual combat existed, Frank Haigler, the man who approached Mr. Campbell for the sole purpose of stopping any controversy, would be guilty of murder. Michael Allen, who knew nothing about Mr. German being armed and who stayed at the store, would be guilty of murder. Anthony German would have been guilty of the murder of his brother. These convictions could not have been sustained under the facts of this case. And as the convictions could not have been sustained, then the charge of mutual combat was improper.

CONCLUSION

For the foregoing reasons, this court should re-hear this matter, amend the factual findings and conclusions of law, and reverse the denial of the Post Conviction Relief application in this matter.

August 17, 2023



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S.C. Bar No 6188

Attorney for Jerome Campbell

The South Carolina Court of Appeals

Jerome Campbell, Petitioner,

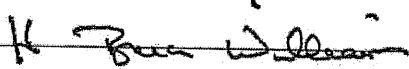
v.

State of South Carolina, Respondent.

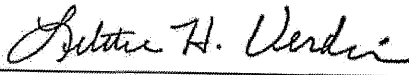
Appellate Case No. 2018-000464

ORDER

After careful consideration of the petition for rehearing, the Court withdraws Opinion Number 5999, filed July 19, 2023, and substitutes the attached opinion. Accordingly, the petition for rehearing is denied.

 C.J.

 J.

 J.

Columbia, South Carolina

cc:
Clarence Rauch Wise, Esquire
Zachary William Jones, Esquire
Jerome Campbell, 349454
The Honorable William H. Seals, Jr.

FILED
Oct 18 2023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jerome Campbell, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2018-000464

Appeal from Charleston County
William H. Seals, Jr., Circuit Court Judge

Opinion No. 5999
Heard February 16, 2023 – Filed July 19, 2023
Withdrawn, Substituted, and Refiled October 18, 2023

AFFIRMED

Clarence Rauch Wise, of Greenwood, for Petitioner.

Assistant Attorney General Zachary William Jones, of
Columbia, for Respondent.

GEATHERS, J.: In this post-conviction relief (PCR) action, Petitioner Jerome Campbell (Campbell) seeks review of an order dismissing his claim of ineffective assistance of counsel. Campbell argues that the PCR court erred in finding that Campbell's trial counsel was not ineffective in failing to object to the trial court's mutual combat charge. We affirm.

FACTS

This case involves a convoluted web of familial and domestic quarrels which ended in a deadly shootout between two groups at a gas station leaving Michael German (the victim) dead.

The first of these quarrels was a dispute between Jerome Campbell's nephew-in-law, Anthony German, and both Campbell's sister and Campbell's mother. Campbell's sister and mother called Anthony to ask if he and his wife would visit with his newborn child. He refused. Campbell was made aware of Anthony's refusal and promptly called Anthony and threatened to kill him for not visiting his mother and sister with the child.

The second quarrel arose from a marital dispute between Campbell's sister and her husband, Michael Allen (Allen), later that day. Campbell's mother and Allen's brother, Frank Haigler (Frank), were invited over to the apartment to mediate tensions, but their efforts proved unsuccessful. Anthony and his brother, the victim (the German brothers), then arrived and forced their way into Allen's apartment. According to witness testimony, while inside the apartment, both Anthony and Michael said to Campbell's mother that they were going to kill her son. After Campbell's mother threatened to call the police, Allen, Frank, and the German brothers (Anthony's Group) left Allen's apartment together and drove to Anthony's apartment. After they left, Campbell's sister and mother notified Campbell about the events, including the death threats. In response, Campbell called Anthony's Group to let them know that Campbell would be stopping by Anthony's apartment shortly.

Later that afternoon, Campbell arrived at Anthony's apartment in his white Chevrolet Impala accompanied by two individuals. As Campbell entered the parking lot of Anthony's apartment complex, he approached Anthony's Group, who were standing outside. Campbell shouted at the men, and a member of Anthony's Group, Frank, cautiously approached Campbell's vehicle. Campbell rolled down the rear side window and aimed a pistol at Frank. Frank shouted, "[y]o, everybody back up because he's got a gun." Anthony's mother—who was at Anthony's apartment at the time—heard Frank and yelled "[g]et in the house, get in the house[]" which prompted Campbell to speed off. Anthony's Group received a number of threatening phone calls from Campbell shortly after he left the complex. During one of the calls, Campbell told Allen of Anthony's Group while on speaker phone, "[y]ou better not come home. I'll be there soon."

In response to Campbell's threats, Anthony retrieved his pistol "for protection [from Campbell]." Anthony's Group then made their way to Allen's apartment

complex to confront Campbell. Instead of driving into the complex, they decided to park at a gas station across the street. Allen and the German brothers stayed back at the gas station while Frank crossed the street unarmed to speak to Campbell in an attempt to defuse the situation. In the parking lot of the apartment complex, Frank and Campbell had a brief exchange that culminated in Campbell punching Frank in the face. Campbell then gestured toward two unknown individuals who began to approach with shotguns.¹ Frank darted down an alleyway adjacent to the apartment complex and crawled towards the road in the direction of the gas station. Campbell and the two unknown gunmen entered his white Chevrolet Impala and drove toward the gas station across the street. Still at the gas station, Anthony's Group spotted the vehicle, dove to the ground, and a fusillade of gunshots were fired in both directions.² The victim was struck by gunfire and pronounced dead at the scene. The cause of death was determined to be a gunshot wound to the left side of his head. That night, Campbell surrendered himself to the police department.

On January 23–27, 2012, Campbell was tried before a jury and convicted of the victim's murder as well as three counts of assault with intent to kill (AWIK). Campbell was sentenced to thirty years' imprisonment for murder and ten years for each count of AWIK, to run concurrently. Campbell appealed, and this court affirmed his convictions in an unpublished opinion.³ On May 12, 2014, Campbell filed a PCR application. On January 9, 2018, his application was denied and dismissed with prejudice. The PCR court found that "the trial court's instruction on mutual combat was supported by the evidence presented at trial and any objection would not have been successful." This appeal followed.

STANDARD OF REVIEW

"In a PCR case, [our appellate courts] will uphold the PCR court's factual findings if there is any evidence of probative value in the record to support them." *Thompson v. State*, 423 S.C. 235, 239, 814 S.E.2d 487, 489 (2018). "However, this

¹ It is unclear from the record whether these were the same individuals who accompanied Campbell to Anthony's apartment earlier that day.

² There is conflicting evidence as to whether Anthony's pistol was ever fired. However, a high level of gunshot residue was found on the victim's hand. At trial, Chris Robinson, a forensic consultant employed as an expert witness, stated, "I can a hundred percent say [firing a weapon is] the only way in all my training that I know that you can get [gunshot residue] levels that were [] that high[.]"

³ *State v. Campbell*, Op. No. 2013-UP-338 (S.C. Ct. App. filed Aug. 7, 2013).

[c]ourt gives no deference to the PCR court's conclusions of law, and we review those conclusions de novo." *Id.*

LAW/ANALYSIS

I. Background on Mutual Combat

"The doctrine of mutual combat has existed in South Carolina since at least 1843," but had fallen out of common use until its recent resurgence. *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003). To constitute mutual combat, there must be "mutual intent and willingness to fight." *State v. Graham*, 260 S.C. 449, 450, 196 S.E.2d 495, 495 (1973). The intent to fight is "manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat." *Id.* Additionally, "[t]he State is required to prove the rival combatants were armed for the mutual combat with deadly weapons and each combatant knew the others were armed." *State v. Young*, 429 S.C. 155, 160, 838 S.E.2d 516, 519 (2020). In 2003, our supreme court in *Taylor* revised the long-established doctrine by cementing within our jurisprudence both the knowledge requirement between combatants and the requirement that "the fight arise out of a pre-existing dispute[.]" 356 S.C. at 233–234, 589 S.E.2d at 4–5.

To illustrate a scenario in which a newly-revised mutual combat charge would be warranted, the court in *Taylor* cited its reasoning in *Graham*:

[t]here was ill-will between the parties. They had threatened each other[,] and it is inferable that they had armed themselves to settle their differences at gun point. Under these circumstances, the apparent willingness of each to engage in an armed encounter with the other[] sustained an inference that they were engaged in mutual combat at the time of the killing[] and required that the issue be submitted to the jury for determination.

Id. at 234, 589 S.E.2d at 4 (quoting *Graham*, 260 S.C. at 452, 196 S.E.2d at 496) (bolding added). The court in *Taylor* distinguished its facts from *Graham* in finding that "[t]here is no evidence . . . that there was any pre-existing ill-will or dispute between [the combatants], and there is no evidence that [the victim] was willing to engage in an armed encounter with Petitioner." *Id.* at 234, 589 S.E.2d at 5.

II. Ineffective Assistance of Counsel

"A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution." *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). "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." *Thompson*, 423 S.C. at 239, 814 S.E.2d at 489. "Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim." *Strickland v. Washington*, 466 U.S. 668, 700 (1984). "[T]here is no reason for a court deciding an ineffective assistance claim . . . to address both components of the inquiry if the [appellant] makes an insufficient showing on one." *Id.* at 697.

A. Factual Basis for Mutual Combat Charge

Campbell argues that his trial counsel was deficient in failing to object to the mutual combat charge because there was a lack of factual support for the charge. We disagree.

With regard to a showing of deficient performance, a PCR applicant "must show that counsel's representation fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 687–88.

In the present case, the evidence supports a jury instruction on mutual combat. We believe the following set of facts gleaned from *Graham* resemble those before us on appeal:

Appellant and deceased had quarreled prior to the day of the killing. Both had made threats against the other[,] and appellant purchased a pistol on the night before the fatal encounter. They met in town shortly before the shooting and engaged in a heated discussion, during which appellant waved a pistol in the face of the deceased. The deceased, who apparently had no weapon at the time, then drove out of town in his truck, returning a short time later with his pistol. When the deceased returned, he parked his truck in front of a barber shop and got out with his pistol in his hand. As the deceased left his truck, appellant, who was in the barber shop and had observed the deceased's return, walked into the street, placing himself in a position

where an encounter with the deceased could be expected. Appellant could see the weapon in the possession of the deceased, and the deceased knew that appellant was armed. As appellant entered the street from the barber shop, both parties fired at each other. The deceased was mortally wounded and died a short time thereafter.

260 S.C. at 451, 196 S.E.2d at 496.

Other cases where courts of this state have approved mutual combat instructions were decided on similar fact patterns. *See, e.g., State v. Young*, 429 S.C. 155, 165, 838 S.E.2d 516, 521 (2020) (finding the gunmen were "clearly engaged in mutual combat" when, "although they were adversaries, [the mutual combatants] jointly incited one another to continue the cat-and-mouse gun battle that resulted in the victim's death"); *id.* at 167, 838 S.E.2d at 522 (Hearn, J., dissenting) (observing that mutual combat cases relied upon by the majority "involve[] individuals or groups on opposite sides who engaged in a gun battle where both sides *contemporaneously* opened fire on one another"); *State v. Mathis*, 174 S.C. 344, 348–49, 177 S.E. 318, 319 (1934) (finding no error in charging mutual combat when "[t]here was testimony that the appellant and the deceased were on the lookout for each other; that they were armed in anticipation of a combat; that each drew his pistol and each fired upon the other"); *State v. Porter*, 269 S.C. 618, 622–23, 239 S.E.2d 641, 643 (1977) (finding mutual combat when "[the] appellant returned with a gun to [the decedent's] property at least twice in spite of prior verbal abuse, threats[,] and gunshots"); *State v. Washington*, 424 S.C. 374, 412–13, 818 S.E.2d 459, 479–80 (Ct. App. 2018) (approving the trial court's refusal to charge self-defense because of mutual combat where the defendant followed the victim around in a club and "stared him down throughout the night," followed the victim out the door as everyone was leaving, and initiated a fight with the victim, resulting in a mutual brawl), *vacated in part and rev'd in part on other grounds*, 431 S.C. 394, 848 S.E.2d 779 (2020).

The case law of other states also contains opinions endorsing mutual combat charges on similar fact patterns where the parties' back-and-forth quarrels or threats culminated in a fatal encounter. *See, e.g., Carreker v. State*, 541 S.E.2d 364, 365–66 (Ga. 2001) (approving mutual combat charge where the defendant, in response to learning that the victim had threatened the defendant's brother with a rifle, armed himself, made threats to harm the victim to several witnesses, gathered a group, traveled to the victim's property, and fatally shot him); *Millen v. State*, 600 S.E.2d 604, 608–09 (Ga. Ct. App. 2004) (finding the evidence supported a mutual combat

charge when the victim and the defendant had been quarrelling throughout the evening, the victim's son arrived with a rifle, the defendant took shelter in an upstairs room, and the victim and her son went upstairs to confront the defendant); *State v. Abraham*, 854 A.2d 89, 95–96 (Conn. App. Ct. 2004) (finding a mutual combat charge was justified when the defendant knew of the ongoing quarrels between the victim and the defendant's friend, armed himself in response the victim's threat to "savagely" his friend, and fatally shot the victim during an ensuing altercation); *State v. Morales*, 160 A.3d 383, 394–95 (Conn. App. Ct. 2017) (finding a combat by agreement charge was supported because the defendant was present throughout repeated quarrels between the decedent and another combatant, the defendant accompanied the combatant to an agreed upon fist-fight with the victim, and the defendant was first to run to a gun as conflict escalated).

Here, the following events run parallel to those in the above cases. Campbell quarreled with and threatened to kill Anthony prior to the fatal encounter. Likewise, Anthony and his group made threats to Campbell's life to Campbell's mother and sister, who subsequently relayed the threats to Campbell. Campbell met with Anthony's Group, who were unarmed at the time, before the shooting and flashed a pistol at them. After a brief interval, Anthony collected his firearm to protect himself from Campbell, and Anthony's Group went to a gas station in close proximity to the apartment where Campbell claimed he would be waiting. After Frank's unsuccessful attempt to broker détente, two men accompanying Campbell were observed brandishing shotguns. By this point, a member of each group had threatened to kill a member of the other, and both had driven around town attempting to hunt the other down. Campbell and the unknown gunmen entered Campbell's Impala and drove to the gas station across the street, where Anthony's Group (save for Frank) were standing. Forensic evidence later supported a finding that both sides fired at each other, resulting in the victim's death.

"Under [the circumstances in *Graham*], the apparent willingness of each to engage in an armed encounter with the other[] sustained an inference that they were engaged in mutual combat at the time of the killing[] and required that the issue be submitted to the jury for determination." *Graham*, 260 S.C. at 452, 196 S.E.2d at 496. Similarly, in the present case, it is inferable from the mutual death threats and encounters in which firearms were brandished that each combatant was willing to engage in an armed encounter and that each knew the other was armed. *See id.* ("[I]t is inferable that [the combatants] had armed themselves to settle their differences at gun point"). In *Graham*, at least one of the parties did not know the other was armed until virtually the moment that gunshots were exchanged. The facts in the present case created an inference of mutual combat that necessitated a corresponding charge

to be submitted to the jury. Therefore, Campbell's trial counsel's decision not to object to the jury charge did not fall below an objective standard of reasonableness.

B. Permissibility of Burden Shifting

Campbell additionally argues that his trial counsel's failure to object to the mutual combat charge constituted ineffective assistance of counsel because the charge impermissibly shifted the burden of proof on self-defense to Campbell. Campbell's brief frames this as an issue of prejudice; however, the relevance of any prejudice to Campbell is predicated on whether his trial counsel was deficient in failing to object to the mutual combat charge. Thus, we must first determine whether Campbell's trial counsel was deficient in failing to object to the jury charge under this alternative rationale before considering whether to undertake a prejudice analysis. *See Strickland*, 466 U.S. at 697 ("[T]here is no reason for a court deciding an ineffective assistance claim . . . to address both components of the inquiry if the [appellant] makes an insufficient showing on one.").

"Mutual combat relates primarily to the law of self-defense." *State v. Bowers* (*Bowers II*), 436 S.C. 640, 647, 875 S.E.2d 608, 612 (2022).⁴ Self-defense comprises four elements—the first of which relates to the doctrine of mutual combat. *See id.* ("[Our supreme c]ourt has explained self-defense by referring to four elements."); *see also State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011) (listing each of the four elements of self-defense). Termed the "'no fault' element of self-defense[.]" the first element requires a defendant to be "without fault in bringing on the difficulty." *Taylor*, 356 S.C. at 232, 235, 589 S.E.2d at 3, 5 (quoting *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)). "[I]f a defendant is found to have been involved in mutual combat, the 'no fault' element of self-defense cannot be established." *Id.* at 232, 589 S.E.2d at 3. In other words, "mutual combat acts as a bar to self-defense . . ." *Id.* at 234, 589 S.E.2d at 4. A defendant may by word or act withdraw from mutual combat and restore their right to self-defense, but this action must be known to the opposing combatant. *See Young*, 429 S.C. at 161, 838 S.E.2d at 519 ("A combatant may withdraw from mutual combat if he 'endeavors in

⁴ Our supreme court granted certiorari on *State v. Bowers* (*Bowers I*), 428 S.C. 21, 832 S.E.2d 623 (Ct. App. 2019), *aff'd*, 436 S.C. 640, 875 S.E.2d 608 (2022), but on an issue different from the mutual combat issue before this court. *See Bowers II*, at 645–46, 875 S.E.2d at 611 ("The State does not challenge the court of appeals' analysis of the evidence or its ruling that the doctrine of mutual combat is not applicable. Rather, the State challenges whether the court of appeals' ruling on that issue requires reversal of the ABHAN conviction.").

good faith to decline further conflict[] and, either by word or act, makes that fact known to his adversary." (quoting *Graham*, 260 S.C. at 451, 196 S.E.2d at 496)).

Campbell takes issue with the circuit court's instruction that "[i]f the defendant voluntarily participated in mutual combat for purposes other than protection, the killing of the victim would not be self-defense." Specifically, Campbell believes the instruction conflicts with his understanding of *Taylor*'s holding "that it is improper for a trial court to charge both self-defense and mutual combat." However, this oversimplified interpretation of *Taylor* distorts its meaning. In *Taylor*, our supreme court found that the burden of proof impermissibly shifted to the defendant to prove self-defense when a self-defense "charge was negated by the court's *unwarranted* charge on mutual combat." 356 S.C. at 235, 589 S.E.2d at 5 (emphasis added).⁵ However, when evidence warrants a mutual combat charge, it may be charged to a jury even when read alongside a self-defense charge. See *State v. Jackson*, 384 S.C. 29, 38 n.5, 681 S.E.2d 17, 21 n.5 (Ct. App. 2009) ("We do not suggest mutual combat and self-defense are mutually exclusive; rather, in *Taylor*, there was no evidence that the victim was willing to engage in mutual combat with [the defendant].").

In the present case, the State presented evidence to support a jury charge on mutual combat. Because the charge was warranted, Campbell's trial counsel was not deficient in failing to object to its reading alongside the circuit court's jury charge on self-defense. See *Jackson*, 384 S.C. at n.5, 681 S.E.2d at n.5 (clarifying that when "there [is] no evidence [a] victim [is] willing to engage in mutual combat[,] " charging mutual combat and self-defense creates unfair prejudice; however, "mutual combat and self-defense are [not] mutually exclusive" when mutual combat is supported by the evidence).

CONCLUSION

Accordingly, the PCR court's dismissal of Campbell's ineffective assistance of counsel claim is

⁵ In a similar misunderstanding, Campbell asserts that this court in *Bowers I* "found that the mere charge as to mutual combat was prejudicial because it negated self-defense." The *Bowers* court found "the *erroneous* charge on mutual combat was prejudicial because the charge effectively negated Appellant's self-defense plea." *Bowers I*, 428 S.C. at 37, 832 S.E.2d at 632 (emphasis added). Like the description of the charge in *Taylor* as "unwarranted," the operative word in *Bowers* was "erroneous."

AFFIRMED.

WILLIAMS, C.J., and VERDIN, J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Oct 31 2023

SC Court of Appeals

Jerome Campbell, Petitioner

v.

State of South Carolina, Respondent

Appellate Case № 2018-000464

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1. This Court again erred in equating this case to the principles established in *State v. Graham*, 260 S.C. 449, 196 S.E.2d (1973) for the following reasons:

The record in this case does not established a willingness to fight as to both parties which was shown in the *Graham* case. This Court acknowledges that Mr. Campbell told Michael Allen not to come to the Plantation Apartments, the residence of his niece. *Campbell v. State*, Op. № 5999 (S.C.Ct.App. filed October 18, 2023)(Howard Adv.Sh. № 41 at 11, 13. This does not

indicate a willingness to fight. Nothing in the record establishes a willingness by both side to fight. The opinion cites no facts from which Mr. Campbell had any reason to believe the four men would in fact come to the Plantation Apartments where Mr. Campbell was located with a willingness to fight. He never encouraged them to come. No evidence suggests he knew they would be armed even if for some reason he should have anticipated they would come to the Plantation Apartment.

Likewise, the record establishes that the four men did not go to the Plantation apartments seeking a fight. Frank Haigler testified he went to the Plantation Apartment seeking to keep the matter from escalating. He stated, "I didn't want nothing to escalate that was already -- I didn't want the fire to start burning again that had been out, been put out." Rec. on App. at 311, ll 8-11. At the encounter between Mr. Campbell and Mr. Haigler at the Plantation Apartments, Mr. Haigler said, "Yo, just call your mom and your sister. This thing has been alleviated." Rec. at 313, ll 6-7. This does not even suggest a willingness to fight on the part of both parties.

Frank Heigler did not know Anthony German had a firearm until they were on the way to the Plantation Apartments. He stated, "I didn't realize -- I didn't know Anthony had the gun until we was on the way back to my brother's house." Rec. on App. at 335, ll 4-6. Michael Allen also did not know Anthony had a firearm. He testified:

Q. (By Mr. Voight) Did you know Anthony had a weapon?

A. (By Mr. Allen) No, I didn't.

Rec. on App. at 428, 11-13.

The record does not establish that any of the four men went to the Plantation Apartment to engage in mutual combat. Only one brought a firearm. Rec. on App. at 462, ll-16-23. If such had been the intent of Mr German, logic would dictate that he would have mentioned he had a

firearm or one of the other people would have testified they told him to bring a firearm. No such testimony exists.

In *Graham* the defendant was armed. The victim in the case knew the defendant was armed. The defendant knew the victim was armed. Knowing that the victim was armed, the defendant elected to take his firearm with him from the barber shop into a public street to confront the armed victim. *Graham* is a classic case of mutual combat. The court in *Graham* said, “Under the circumstances the apparent willingness of each to engage in an armed encounter with the other, sustained an inference that they were engaged in mutual combat at the time of the killing” *Id.* at 451, 196 S.E.2d at 496. Under the facts of *Graham*, the “apparent willingness” came from the fact that each knew the other was armed and each took an affirmative action to invoke an encounter. In this case, the record is totally devoid of any basis for Mr. Campbell to know the other party had a firearm. Knowledge by Mr. Campbell that the other side had a firearm cannot be inferred. Nor does the record establish any intent on the part of Mr. Campbell to have a confrontation at the Plantation Apartments. In fact, the record shows Mr. Campbell had told the four men to stay away from Plantation Apartments in order to avoid a confrontation. As this Court has said, “Moreover, it is essential that the agreement to fight be ‘entered into prior to the beginning of combat, also described as an antecedent agreement to fight.’” *State v. Bowers*, 428 S.C. 21, 32, 832 S.E.2d 623, 629 (Ct. App. 2019), *aff’d*, 436 S.C. 640, 875 S.E.2d 608 (2022). No such antecedent agreement to fight has been shown in this case.

As noted above, in this case there is no such affirmative knowledge of the possession of a deadly weapon by each party. Nor does evidence exist of an “apparent willingness of each party to engage in an armed encounter.” In *Graham*, the evidence was clear and unequivocal that each

party knew the other to be armed at the time of the encounter. The same cannot be said of the facts in this case. As there is no direct testimony that each party knew the other was armed, this court, contrary to the clear holding in *Graham*, has impermissibly inferred the fact that both parties knew the other was armed. The facts in *Graham* establish that each party knowing the other to be armed was objectively proven. In *Graham*, the knowledge was not inferred from ambiguous testimony. If such an inference is permissible simply because a firearm is later found on both parties, then mutual combat could be charged in any case where both sides are armed. This is not the law in South Carolina. As mutual combat eliminates self defense, the fact that both parties knew the other to be armed should not be left to an inference. This fact must be objectively proven.

Georgia, which uses mutual combat to reduce murder to manslaughter, requires that the mutual intent to fight must be affirmatively shown. "In order to reduce the homicide from murder to voluntary manslaughter, as relates to the doctrine of mutual combat, it should affirmatively appear that at the time of the homicide both parties were in position and manifested intention to fight. Mere threats on the part of one party at the time of a fatal shot by the other will not suffice." *Cornelious v. State*, 193 Ga. 25, 28–29, 17 S.E.2d 156, 158 (1941).¹ This court erred in holding the evidence established mutual combat. This Court further erred in relying upon *Carreker v. State*, 273 Ga. 371, 541 S.E.2d 364 (2001). In affirming the case, the court cited *Sinkfield v. State*, 266 Ga. 726, 727, 470 S.E.2d 649, 651 (1996) which held, "Moreover, we note

¹ The early South Carolina cases also indicate this was applicable in South Carolina. "where the parties are engaged in mutual combat-inasmuch as it is committed in hot blood, it is manslaughter. It is not every killing in passion that the law mitigates down to manslaughter; it must be passion, justly excited by legal provocation." *State v. Smith*, 44 S.C.L. 341, 344 (S.C. App. L. 1857)

that a charge on mutual combat enables a jury to find a criminal defendant guilty of voluntary manslaughter in lieu of murder. Hence, the mutual combat charge could only have benefitted Sinkfield, and we reject this enumeration as meritless.” A charge that benefits a defendant will not be held to be reversible error.

2. This court incorrectly stated, “Campbell and the unknown gunmen entered Campbell’s Impala and drove toward the convenience store across the street.” *Campbell*, at 13. The record does not establish who was in the automobile. As Officer Burkhardt stated, “We knew we had at least one person in the car, unknown if we had others.” Rec. 281, ll 3-4. Mr. Campbell was identified as being in the Impala. Rec. 229, ll 8-9.

3. The exhibits show that the convenience store was across the street from an entrance to the Plantation Apartments. The most logical exit from the apartments is to drive toward the store. The testimony established that the Impala took a right turn out of the apartments and sped away. Anthony German stated, “[Y]ou could see a white Impala coming and then it made a right turn onto Carriage Lane coming from Plantation Apartments” Rec. on App. at 464, ll 12-14. Simply pulling out of an apartment complex and making a required turn is not evidence of a willingness to engage in mutual combat. In fact, leaving the scene of a confrontation is actually strong evidence of a desire not to engage in any altercation. No testimony exists that establishes affirmatively or by inference that Mr. Campbell knew the other four men would be at the convenience store.²

If Mr. Campbell had a desire to engage in mutual combat, he simply would have waited

² The record is also devoid of any evidence that Mr. Campbell fired a weapon, other than the weapon was fired from his automobile. For this reason, the lower court charged the law as to accomplice liability. App. at 756, ll 16 to 758, ll 14. See, *State v. Washington*, 431 S.C. 394, 848 S.E.2d 779 (2020).

were he was. He would not have left. The record offers no evidence that Mr. Campbell knew three other people would be at the convenience store. He was not, therefore, going toward trouble, but away from it. To the extent this court used the claim that Mr. Campbell was going toward the convenience store to establish that he had a willingness to fight, such use was improper.

3. This Court correctly states in the opinion the long established principle that each party in mutual combat must know the other is armed to make mutual combat applicable. *Campbell* at 14. *See, also*, “Appellant could see the weapon in the possession of the deceased, and the deceased knew that appellant was armed.” *State v. Graham*, 260 S.C. 449, 451, 196 S.E.2d 495, 496 (1973); “The State is required to prove the rival combatants were armed for the mutual combat with deadly weapons and each combatant knew the others were armed.” *State v. Young*, 429 S.C. 155, 160, 838 S.E.2d 516, 519 (2020). What this court has not done is demonstrate that Mr. Campbell knew that any of the four individuals were armed. This Court correctly noted that at the contact at the Georgetown Apartments, the four individuals there were not armed. *Campbell*, at 17. The opinion does not explain how Mr. Campbell obtained the knowledge that any of the four individuals were armed when they came to the Plantation Apartments. Without this knowledge by Mr. Campbell, a mutual combat charge is not proper.

5. This Court improperly concluded, “The facts in the present case created an inference of mutual combat that necessitated a corresponding charge to be submitted to the jury.” *Campbell* at 18. This Court failed to state what facts permitted the jury to infer Mr. Campbell knew the other side was armed. Under such an analysis, the jury would be permitted to find mutual combat even when one side was not armed simply because they inferred it or believe one

party could infer the other side was armed even when they were not.

4. After *State v. Young*, 429 S.C. 155, 838 S.E.2d 516 (2020), the solicitor in this case could have prosecuted Anthony German, Michael Allen and Frank Haigler for murder. If they had been convicted, the convictions would have been virtually impossible to uphold on appeal because of the arguments now made by Mr. Campbell. As noted above, neither Frank Haigler nor Michael Allen knew Anthony German had a firearm. None showed a willingness to fight. Under the logic of this court as to finding mutual combat existed, Frank Haigler, the man who approached Mr. Campbell for the sole purpose of stopping any controversy, would be guilty of murder. Michael Allen, who knew nothing about Mr. German being armed and who stayed at the store, would be guilty of murder. Anthony German would have been guilty of the murder of his brother. These convictions could not have been sustained under the facts of this case. And as the convictions could not have been sustained, then the charge of mutual combat was improper.

CONCLUSION

For the foregoing reasons, this court should re-hear this matter, amend the factual findings and conclusions of law, and reverse the denial of the Post Conviction Relief application in this matter.

October 31, 2023



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
(864) 229-5010
rauchwise@gmail.com
S.C. Bar No 6188

Attorney for Jerome Campbell

The South Carolina Court of Appeals

Jerome Campbell, Petitioner,

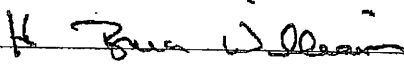
v.

State of South Carolina, Respondent.

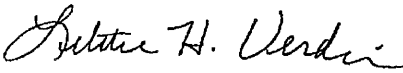
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ORDER

After careful consideration of the petition for rehearing, this court has discovered no material fact or principle of law that has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.

 J.

 J.

Columbia, South Carolina

cc:

Clarence Rauch Wise, Esquire

Zachary William Jones, Esquire

Jerome Campbell, 349454

The Honorable William H. Seals, Jr.

FILED
Nov 02 2023