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**Apr 12 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Florence County

Honorable D. Craig Brown, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

MICHAEL CHRISTIAN BARCLAY,

APPELLANT.

APPELLATE CASE NO. 2021-000976

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RECORD ON APPEAL

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JOANNA K. DELANY  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

W. JOSEPH MAYE  
Assistant Attorney General  
1000 Assembly Street, Room 519  
Columbia, SC 29201  
(803)734-3727

ATTORNEY FOR APPELLANT

E.L. CLEMENTS, III  
Solicitor, Eleventh Judicial Circuit  
205 E Main St #309  
Lexington, SC 29072  
(803) 785-8352

ATTORNEYS FOR RESPONDENT

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1 Judge, I do not think that the State has met its burden  
2 in establishing a hand of one/hand of all defense. By merely  
3 stating that this individual allegedly was present on scene  
4 at the time that this shooting occurred I do not believe  
5 rises to the level necessary to charge the jury with hand of  
6 one/hand of all.

7 THE COURT: Mr. --

8 MS. HENDERSON: I don't think we've heard any indication  
9 or reliable indication that these individuals set out  
10 together, that each took part in assigned or agreed-upon  
11 unlawful act. Excuse me. Let me rephrase that, Judge. I  
12 don't believe that we've heard any indication of some sort of  
13 concert, some sort of conspiracy, some sort of conspiring  
14 together to allow a hand of one/hand of all charge.

15 THE COURT: Mr. Clements?

16 MR. CLEMENTS: Your Honor, we think this is a hand of  
17 one/hand of all case, I don't know --

18 THE COURT: Do what?

19 MR. CLEMENTS: We believe if this is not a hand of one  
20 is the hand of all case, we don't know where one will be  
21 found. They were acting in concert. They were traveling  
22 down the road together in a line. They were -- they were all  
23 responding to the same stimulus that started this, and that  
24 was the shooting of the house on White -- ■ White Street,  
25 and they all went together to check that out and they all

1 went together to Byrd and Tanyard. They were all acting in  
2 concert with each other.

3 MS. HENDERSON: And, Judge, if I may --

4 MR. CLEMENTS: And Jimmy -- excuse me. Jimmy Hampton,  
5 Jr., testified as to such and put them all together.

6 MS. HENDERSON: And, Judge, I agree as to Mr. Clements'  
7 statement that we heard testimony that they were placed  
8 together. The testimony that I heard establishes a mere  
9 presence charge. The defendant was only merely present on  
10 the scene and there's no indication that he was connected to  
11 the charged crime.

12 THE COURT: Say that again?

13 MS. HENDERSON: I believe a mere presence charge is more  
14 appropriate.

15 (WHEREUPON, there was a pause in the proceedings, after  
16 which the proceedings resumed as follows.)

17 MR. CLEMENTS: Your Honor, we would also cite to a  
18 couple of cases. One is *In the Matter of McGee*, 278 S.E.2d  
19 506, where it involves juveniles even encouraging, you know,  
20 to be a part of the hand of one is the hand of all.

21 There's another case where a woman and her lover was  
22 going to kill her husband and, finally, he was going to do  
23 that and they thought he was going to do it and finally she  
24 said, well, if you're going to do it, just go ahead and do  
25 it, and that also held -- was held to be the hand of one was

1 the hand of all for mere encouragement.

2 MS. HENDERSON: Judge, I don't believe I've heard  
3 anything in the evidence and testimony this week establishing  
4 any sort of encouragement on the part of Mr. Barclay.

5 THE COURT: I'm going to charge hand of one/hand of all,  
6 and I'm also going to charge mere presence.

7 MS. HENDERSON: Thank you.

8 THE COURT: All right. But your exception or objection  
9 is so noted for the record.

10 MS. HENDERSON: Thank you, Judge.

11 THE COURT: Within the hand of one/hand of all charge,  
12 there's a sentence that says, however, mere presence at the  
13 scene of a crime is not sufficient to convict one as a  
14 principal on the theory of aiding and abetting. I'm taking  
15 that sentence out in the hand of one/hand of all and giving a  
16 more lengthy charge on mere presence after hand of one/hand  
17 of all. Okay?

18 MS. HENDERSON: Thank you, Judge.

19 THE COURT: And then go into the charge of murder.

20 I've instructed or asked my clerk to go get lunch orders  
21 for the jury since it appears that we will be here over lunch  
22 or through lunch.

23 Ross is making these corrections and additions to this  
24 charge. Once those are done, I'll have him print one out for  
25 each of you and you all can take a look at it.

1 MS. HENDERSON: No, sir, Judge.

2 THE COURT: All right. I will bring the jury back out.

3 MS. HENDERSON: Judge, may I have one more moment with  
4 Mr. Barclay? He just asked if we could chat one more minute.

5 THE COURT: Okay.

6 MS. HENDERSON: I'm sorry.

7 (WHEREUPON, there was a pause in the proceedings, after  
8 which the proceedings resumed as follows.)

9 MS. HENDERSON: Your Honor, may we approach?

10 THE COURT: Yes.

11 (WHEREUPON, a bench conference was held as follows.)

12 MS. HENDERSON: I apologize. Mr. Barclay wants to  
13 plead.

14 THE COURT: All right. Well, let's do it.

15 MS. HENDERSON: Let's do it.

16 (WHEREUPON, the bench conference ended and there was a  
17 pause in the proceedings, after which the proceedings  
18 resumed as follows.)

19 THE COURT: All right. Is the State ready to proceed?

20 MR. CLEMENTS: We are, Your Honor.

21 THE COURT: Ms. Henderson?

22 MS. HENDERSON: We are, Judge.

23 THE COURT: All right. It's my understanding the  
24 defendant at this time now wishes to enter a plea of guilty,  
25 a guilty plea pursuant to *North Carolina v. Alford*. Is that

1 correct, Ms. Henderson?

2 MS. HENDERSON: It is, Your Honor.

3 THE COURT: All right. Let's proceed.

4 Mr. Clements, do you want to come forward?

5 To the charge of voluntary manslaughter?

6 MR. CLEMENTS: Your Honor, Mr. Barclay is entering a  
7 plea to a lesser-included offense of his indicted charge of  
8 murder on Indictment 2019-GS-21-00579.

9 THE COURT: All right. Mr. Barclay, I previously placed  
10 you under oath. I'll remind you that you're still under  
11 oath. Okay?

12 THE DEFENDANT BARCLAY: Yes, sir.

13 THE COURT: Step over here with your lawyer. You are  
14 Michael Christian Barclay?

15 THE DEFENDANT BARCLAY: Yes, sir.

16 THE COURT: I need you to speak up. Okay?

17 THE DEFENDANT BARCLAY: Yes, sir.

18 THE COURT: Have you ever been treated for alcohol  
19 abuse, drug abuse or mental illness?

20 THE DEFENDANT BARCLAY: No, sir.

21 THE COURT: Within the last 24 hours, have you taken any  
22 medication, drugs or alcohol?

23 THE DEFENDANT BARCLAY: No, sir.

24 THE COURT: Are you aware of any physical, emotional or  
25 nervous problem that would prevent you or keep you from

1 understanding what's going on here today?

2 THE DEFENDANT BARCLAY: No, sir.

3 THE COURT: Sir?

4 THE DEFENDANT BARCLAY: No.

5 THE COURT: All right. The State indicates you wish and  
6 your lawyer indicates that you wish to enter a plea to the  
7 charge of voluntary manslaughter pursuant to *North Carolina*  
8 *v. Alford*. Is that correct?

9 THE DEFENDANT BARCLAY: Yes, sir.

10 THE COURT: Do you understand it carries up to 30 years?

11 THE DEFENDANT BARCLAY: Yes, sir.

12 THE COURT: The State is making a recommendation of a  
13 cap of 15 years. Is that your understanding?

14 THE DEFENDANT BARCLAY: That's fine. Yes, sir.

15 THE COURT: Now, you also understand that this charge  
16 that you're pleading guilty pursuant to *North Carolina v.*  
17 *Alford* is considered under South Carolina law to be a violent  
18 offense. Do you understand that?

19 THE DEFENDANT BARCLAY: Yes, sir.

20 THE COURT: Sir?

21 THE DEFENDANT BARCLAY: Yes, sir.

22 THE COURT: All right. Do you understand that it's also  
23 considered under South Carolina law to be a most serious  
24 offense which falls under the two-strike rule?

25 THE DEFENDANT BARCLAY: Yes, sir.

1 THE COURT: And, Ms. Henderson, you've explained to him  
2 the consequences of pleading to a violent, as well as a most  
3 serious offense?

4 MS. HENDERSON: Judge, I have, but I think he's  
5 confused. Could I have one more opportunity to speak with  
6 him about that?

7 THE COURT: Yeah.

8 (WHEREUPON, there was a pause in the proceedings, after  
9 which the proceedings resumed as follows.)

10 THE COURT: Ms. Henderson, have you explained it to him?

11 MS. HENDERSON: I have, Your Honor.

12 THE COURT: Are you satisfied he understands it?

13 MS. HENDERSON: I am, Judge. Your Honor, Mr. Barclay  
14 withdraws his plea.

15 THE COURT: All right. Let's go. All right. I'm going  
16 to bring the jury out.

17 Ms. Henderson, when I bring the jury out, you can rest.

18 MS. HENDERSON: Yes, sir.

19 THE COURT: And just renew all your prior motions and  
20 objections.

21 MS. HENDERSON: Yes, sir.

22 THE COURT: And then we'll go --

23 MS. HENDERSON: Thank you, Judge.

24 THE COURT: I'll go straight into the charge.

25 MS. HENDERSON: Thank you.

1 THE COURT: All right. Bring me the jury, please.

2 (WHEREUPON, the jury entered the courtroom at 11:20  
3 a.m.)

4 THE COURT: All right. Madam Forelady and ladies and  
5 gentlemen of the jury, I apologize that you had to be back  
6 there as long as you were. Thank you for your patience.

7 At this time -- but prior to sending you all out, the  
8 State rested its case. At this time, I'll recognize defense  
9 counsel.

10 Ms. Henderson?

11 MS. HENDERSON: Judge, the defense rests. We call no  
12 witnesses.

13 THE COURT: All right.

14 MS. HENDERSON: And I do renew -- I apologize, Judge. I  
15 renew all previous objections and motions.

16 THE COURT: All right. Ladies and gentlemen, you all  
17 have heard all the testimony and evidence that you're going  
18 to hear in this case.

19 As it relates to defense counsel's prior motions and  
20 objections, the Court's rulings remain the same. Okay?

21 MS. HENDERSON: Thank you, Judge.

22 THE COURT: As I said, you've heard all the evidence and  
23 testimony that you're going to hear in this case. What we're  
24 getting ready to do at this point is I am going to charge you  
25 on the law in this case. I'm going to charge you on the law

1 in this case.

2       Once I finish charging you on the applicable law, the  
3 lawyers will give closing arguments. The State will go  
4 first, followed by defense counsel, and then I will have a  
5 few conclusory remarks to give to you before sending you all  
6 back to begin your deliberations. Okay?

7       All right. Please listen very carefully to this charge,  
8 ladies and gentlemen.

9                                   CHARGE ON THE LAW

10       THE COURT: All right. Ladies and gentlemen, it's now  
11 my duty as a trial judge under the Constitution of this state  
12 to charge and instruct you on the law applicable to this  
13 case. It is your duty as jurors to accept and apply the law  
14 as I will now state it to you.

15       Furthermore, it is your exclusive duty to decide all the  
16 issues of fact in this case and to determine the effect,  
17 value, and weight of the evidence. Both the State of -- both  
18 the State and the defendant have a right to expect that you  
19 will carefully consider and evaluate the evidence and apply  
20 the law of this case to it so that at the end both the State  
21 of South Carolina and the defendant will receive a fair and  
22 impartial trial. I want you to understand that when I use  
23 the word defendant, I refer to Mr. Michael Christian Barclay.

24       Furthermore, it is important to understand that the  
25 State of South Carolina charges the defendant with the

1 offense known as murder. To this charge, the defendant has  
2 entered a plea of not guilty. This plea of not guilty places  
3 the burden of proof on the State to prove the guilt of the  
4 defendant to you, the jury, beyond a reasonable doubt.

5 Now, I'll remind you, ladies and gentlemen, that the  
6 fact that the defendant was arrested, charged, and indicted  
7 in this case is not evidence in the case and cannot be  
8 considered by you as evidence of guilt in this case, nor does  
9 it create any presumption or inference of guilt. The  
10 indictment, as I told you from the outset, is simply the  
11 formal written instrument which contains the charge made  
12 against the defendant. It is the formal document by which  
13 this case is brought into this court.

14 Now, during the trial, ladies and gentlemen, you and I  
15 have had separate duties to perform. As the trial judge, it  
16 is my responsibility to preside over this trial, and I also  
17 have the duty to rule upon the admissibility of the evidence  
18 offered during the process of the trial.

19 In that regard, you are to consider only the competent  
20 evidence before you and you are to disregard from your mind  
21 any testimony ordered stricken from the record of this case  
22 during the progress of the trial, if there was any. You are  
23 to consider only the testimony which has been presented from  
24 the witness stand, together with any exhibits admitted into  
25 the record of this case and any stipulations of counsel made

1 into the record, if there were any.

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

11 Now, ladies and gentlemen, in this trial you -- you are  
12 the sole and exclusive judge of the facts, and I am the judge  
13 of the law. Do not infer that I have any opinion about the  
14 facts in this case from anything that I have said during the  
15 course of this trial in ruling upon the admissibility of  
16 evidence or otherwise or from anything that I say during the  
17 course of this charge to you. In this regard, the law simply  
18 does not -- does not permit me to have an opinion about the  
19 facts. As jurors, it is your duty alone to determine the  
20 effect, value, and weight of the evidence presented during  
21 the course of this trial.

22 Now, in determining what the facts in this case are,  
23 ladies and gentlemen, you must judge the credibility, which  
24 simply means the believability of the witnesses and the value  
25 of weight to be given to their testimony. You alone must

1 decide the force and effect of the testimony.

2 Now, in making these decisions, there are many things ,  
3 that you may and should take into consideration, such as the  
4 appearance and manner of the witness on the stand, a  
5 characteristic often referred to as the demeanor of the  
6 witness.

7 Was the witness forthright or hesitant?

8 Was the witness's testimony consistent or did it contain  
9 discrepancies?

10 What was the ability of the witness to know the facts  
11 about which he or she testified?

12 Did the witness have a cause or reason to be biased and  
13 prejudiced in favor of the testimony that he or she gave?

14 Was the testimony of the witness corroborated or made  
15 stronger by other testimony and evidence or was it made  
16 weaker or impeached by such other testimony and evidence?

17 As jurors, please understand that you have the right to  
18 believe a small portion of a witness's testimony and discard  
19 the larger portion or vice versa. You may believe all of a  
20 witness's testimony or none. You may believe the testimony  
21 of a single witness against that of many witnesses or the  
22 other way around.

23 Now, in exercising your mental processes in attempting  
24 to decide the verdict, the law simply requires that you  
25 exercise your good judgment, your common sense, your sense of

1 logic and reason, and your experiences in life. You then  
2 apply these attributes to the evidence and apply the law as I  
3 state it to you and thus arrive at a verdict.

4 Now, it is vital to understand, ladies and gentlemen,  
5 that the defendant is presumed under the law to be innocent  
6 of this charge. The defendant has no obligation to prove his  
7 innocence. It is a fundamental rule of our law that a  
8 defendant, irrespective of the seriousness of the charge  
9 against him, is always presumed innocent of the crimes for  
10 which he is charged unless and until his guilt has been  
11 proven by evidence that satisfies you, the jury, beyond a  
12 reasonable doubt.

13 The presumption of innocence is not a mere legal theory  
14 or a legal phrase. The presumption of innocence is very  
15 important and you all, ladies and gentlemen, need to  
16 understand that this presumption accompanies the defendant  
17 from the time of his arrest and appearance in this court and  
18 continues with the defendant even after you retire to the  
19 jury room to deliberate. In other words, the defendant  
20 receives the benefit of the presumption of innocence until  
21 the very end of this trial when you, the jury, will  
22 deliberate upon the evidence and decide whether the State has  
23 proven his guilt beyond a reasonable doubt.

24 Now, ladies and gentlemen, what is a reasonable doubt in  
25 the law? A reasonable doubt is the kind of doubt that would

1 cause a reasonable person to hesitate to act. Proof beyond a  
2 reasonable doubt is proof that leaves you firmly convinced of  
3 the defendant's guilt.

4 Now, there are very few things in this world, ladies and  
5 gentlemen, that we know with absolute certainty. So even in  
6 a criminal case, the law does not require proof that  
7 overcomes every possible doubt. Now, if based on your  
8 consideration of the evidence you're firmly convinced that  
9 the defendant is guilty of the crime charged, you must find  
10 him guilty. If, on the other hand, you think there is a real  
11 possibility that he is not guilty, you must give him the  
12 benefit of the doubt and find him not guilty.

13 Ladies and gentlemen, please understand that reasonable  
14 doubt may arise from evidence which has been presented in the  
15 case or from the lack of evidence in the case. It is your  
16 responsibility to determine whether or not reasonable doubt  
17 exists as to the guilt of this defendant.

18 I charge you that the defendant is entitled to every  
19 reasonable doubt arising in the whole case. If upon any  
20 issues of fact essential to conviction and a verdict of  
21 guilty you have a reasonable doubt as to how that issue  
22 should be resolved, it would be your duty to resolve that  
23 reasonable doubt in favor of the defendant.

24 Thus, in summary, it is important to understand that the  
25 defendant is not required to prove his innocence. Instead,

1 the State is required by law to prove every essential element  
2 of the offense charged against the defendant by evidence  
3 which satisfies you of their guilt beyond a reasonable doubt.  
4 Only then can you convict the defendant and find him guilty.

5 Now, there are two types of evidence, ladies and  
6 gentlemen, that are generally presented during the course of  
7 a trial, direct evidence and circumstantial evidence.

8 Direct evidence is the testimony of a person who claims  
9 to have actual knowledge of a fact, such as an eyewitness.  
10 It is evidence which immediately establishes the main fact to  
11 be proved.

12 Circumstantial evidence is proof of a chain of facts and  
13 circumstances indicating the existence of a fact. It is  
14 evidence which immediately establishes collateral facts from  
15 which the main fact may be inferred. Circumstantial evidence  
16 is based on inference and not on personal knowledge or  
17 observation.

18 The law, ladies and gentlemen, makes absolutely no  
19 distinction between the weight or value to be given to either  
20 direct or circumstantial evidence, nor is a greater degree of  
21 certainty required of circumstantial evidence than of direct  
22 evidence. You should weigh all of the evidence in the case.  
23 If after weighing all of the evidence you are not convinced  
24 of the guilt of the defendant beyond a reasonable doubt, you  
25 must find the defendant not guilty.

1           Now, in order to establish criminal liability, criminal  
2 intent is required. For example, the mental state required  
3 to be proven by the State for a particular crime might be  
4 purpose, intent, knowledge, recklessness or criminal  
5 negligence. Criminal intent must be proven by the State  
6 beyond a reasonable doubt. Criminal intent is always a  
7 matter that must be determined by the jury from the  
8 circumstances surrounding the situation.

9           Now, ladies and gentlemen, there is no way to prove  
10 intent to a mathematical certainty. There is no way that  
11 medical science can dissect a person's brain and determine  
12 what the person had in mind. So the law says that criminal  
13 intent may be inferred from the circumstances shown to have  
14 existed. This is how you make a determination of whether or  
15 not the element requiring intent was present.

16           It is not necessary to establish intent by direct and  
17 positive evidence, but intent may be established by inference  
18 in the same way as any other fact by taking into  
19 consideration the acts of the parties and all of the facts  
20 and circumstances of the case.

21           Criminal intent is a mental state, a conscious  
22 wrongdoing. It is up to you to determine what the defendant  
23 intended to do based on the circumstances shown to have  
24 existed. Criminal intent can arise from action or a failure  
25 to act. It may arise from negligence, recklessness or an

1 indifference to duty or to consequences that is considered by  
2 the law to be the equivalent of criminal intent.

3 Now, an issue in this case, ladies and gentlemen, is the  
4 identification of the defendant as the person who committed  
5 the crime charged. The State has the burden of proving  
6 identity beyond a reasonable doubt. You must be satisfied  
7 beyond a reasonable doubt of the accuracy of the  
8 identification of the defendant before you may convict the  
9 defendant.

10 Identification testimony is an expression of belief or  
11 impression by a witness. You must determine the accuracy of  
12 the identification of the defendant. You must consider the  
13 believability of each identification witness in the same way  
14 as any other witness.

15 You may consider whether the witness had an adequate  
16 opportunity to observe the offender at the time of the  
17 offense. This will be affected by things like how long or  
18 short a time was available, how far or close the witness was,  
19 lighting conditions, and whether the witness had the chance  
20 to see or know the person in the past.

21 Once again, I instruct you the burden of proof on the  
22 State extends to every element of the crime charged, and this  
23 specifically includes the burden of proving beyond a  
24 reasonable doubt the identity of the defendant as the person  
25 who committed the crime. If after examining the testimony

1 you have a reasonable doubt as to the accuracy of the  
2 identification, you must find the defendant not guilty.

3 Now, there's been evidence presented during the course  
4 of this trial that witnesses made prior statements which were  
5 not consistent with the witness's testimony during the trial.  
6 You may use this evidence to decide whether to believe the  
7 witness. You may also use evidence of the earlier  
8 contradictory statements to determine the truth of those  
9 statements. It is up to you to decide whether to believe the  
10 earlier statements or the testimony given at trial.

11 If a witness is shown to have knowingly testified  
12 untruthfully concerning any material matter, you may consider  
13 this in determining whether to trust the witness's testimony  
14 as to other matters. You may reject all testimony of that  
15 witness or give all or part of the testimony the weight that  
16 you think it deserves.

17 During the trial you heard witnesses testify that they  
18 had a prior criminal record. A person who has a past  
19 criminal record is competent to testify during a trial. A  
20 past record does not affect the ability of that witness to  
21 testify.

22 The past record may only be considered by you, if at  
23 all, in determining the witness's believability. Remember,  
24 ladies and gentlemen, you are the sole judges of the facts in  
25 the case and of the believability of any and all of the

1 witnesses.

2 Now, during the course of the trial, you heard the  
3 testimony of witnesses that were qualified as expert  
4 witnesses. As I told you before, ladies and gentlemen, the  
5 rules of evidence ordinarily do not permit witnesses to  
6 testify to opinions or conclusions.

7 However, there's an exception to this rule for witnesses  
8 that we call expert witnesses. A witness who by education  
9 and experience has become expert in some art, science,  
10 profession or calling may state an opinion as to relevant and  
11 material matter in which the witness claims to be an expert  
12 and may also state the reason for the opinion.

13 You, ladies and gentlemen, should consider any expert  
14 opinion received in evidence in this case and, like any other  
15 evidence, give it the weight that you think it deserves. If  
16 you decide that the opinion of an expert witness is not based  
17 on sufficient education and experience or if you conclude  
18 that the reasons given in support of the opinion are not  
19 sound or that the opinion is outweighed by other evidence,  
20 you may disregard the opinion entirely.

21 An expert witness's testimony is to be given no greater  
22 weight than that of other witnesses simply because the  
23 witness is an expert. Further, you are not required to  
24 accept an expert's opinion, even though it is not  
25 contradicted.

1           Now, ladies and gentlemen, I instruct you and I  
2 emphasize to you that the fact that the defendant chose not  
3 to testify in this case is not a factor to be considered by  
4 you in any way in your deliberation and in your consideration  
5 on the question of the guilt or the innocence of the  
6 defendant. It must not be considered by you in any manner  
7 whatsoever.

8           A defendant has the constitutional right to remain  
9 silent and the assertion of this right must not be considered  
10 by you in your deliberations. I repeat, under your oath you  
11 are to draw no conclusion whatsoever from the fact that the  
12 defendant in this case chose not to testify. The fact that  
13 this defendant chose not to testify should not even be  
14 discussed in the jury room.

15           The burden of proof, as I have told you from the outset,  
16 is on the State. The defendant is not required to prove his  
17 innocence. The burden of proof remains on the State to prove  
18 guilt beyond a reasonable doubt.

19           Now, ladies and gentlemen, if a crime is committed by  
20 two or more people who are acting together in committing a  
21 crime, the act of one is the act of all. A person who joins  
22 with another to commit an unlawful act is criminally  
23 responsible for everything done by the other person which  
24 happens as a probable or natural consequence of the acts done  
25 in carrying out the common plan and purpose.

1 For example, two people can be guilty of killing another  
2 person when only one of the two had a gun, there was only one  
3 bullet, and only one of the two fired the shot that caused  
4 the death. If two or more people are together acting  
5 together assisting each other in committing the offense, the  
6 act of one is the act of all or, as it is sometimes said, the  
7 hand of one is the hand of all.

8 Prior knowledge that a crime is going to be committed  
9 without more is not sufficient to make a person guilty of  
10 that crime. Mere knowledge that another person is going to  
11 commit a crime, even if the defendant is present when the  
12 crime is committed, is not sufficient to convict the  
13 defendant as a principal.

14 Guilt as a principal is shown by actual or constructive  
15 presence at the scene as a result of prior arrangement.  
16 Therefore, a finding of a prior arranged plan or common  
17 scheme is necessary for a finding of guilt as a principal.

18 The State must prove beyond a reasonable doubt by  
19 competent evidence the theory of the hand of one is the hand  
20 of all. A principal in a crime is one who either actually  
21 commits the crime or who is present aiding, abetting or  
22 assisting in committing the crime.

23 When a person does an act in the presence of and with  
24 the assistance of another, the act is done by both. Where  
25 two or more are acting with a common plan or intent are

1 present at the commission of a crime, it does not matter who  
2 actually commits the crime. All are guilty. The hand of one  
3 is the hand of all. Present at the commission of a crime  
4 means to be sufficiently near to aid and abet and assist in  
5 the commission of the crime.

6 Intent is also a necessary element for there must have  
7 been a common design or intent to commit the crime and the  
8 crime must have been committed pursuant thereto with the  
9 person aiding and abetting by some overt act. Intent means  
10 intending the result which actually occurs, not accidentally  
11 or involuntarily. Intent may be shown by acts and conduct of  
12 the defendant and other circumstances from which you may  
13 naturally and reasonably infer intent. The State must prove  
14 these elements beyond a reasonable doubt.

15 Now, ladies and gentlemen, I will tell you that mere  
16 presence at the scene is not sufficient to prove someone  
17 guilty of a crime. A defendant's presence where a crime is  
18 being committed or mere association with a person who commits  
19 a crime does not make a defendant an accomplice or an aider  
20 and abettor of the person committing the crime.

21 The burden is on the State to prove every element of the  
22 crime charged. If you find after reviewing all of the  
23 evidence that the State has proved that the defendant was  
24 only present at the scene of a crime and that they have not  
25 proved beyond a reasonable doubt any other participation in

1 the crime, then you must find the defendant not guilty. The  
2 law is that proof of being at the scene of the crime is not  
3 sufficient to find someone guilty.

4 Now, the defendant in this case, ladies and gentlemen,  
5 is charged with the offense of murder. The State must prove  
6 beyond a reasonable doubt that the defendant killed another  
7 person with malice aforethought.

8 Malice is hatred, ill will or hostility toward another  
9 person. It is the intentional doing of a wrongful act  
10 without just cause or excuse and with an intent to inflict an  
11 injury or under circumstances that the law will infer an evil  
12 intent.

13 Malice aforethought does not require that malice exist  
14 for any particular time before the act is committed, but  
15 malice must exist in the mind of the defendant just before  
16 and at the time of the act is committed. Therefore, there  
17 must be a combination of the previous evil intent and the  
18 act.

19 Malice aforethought may be expressed or inferred. These  
20 terms, expressed and inferred, do not mean different kinds of  
21 malice, but merely the manner in which malice may be shown to  
22 exist, either by direct evidence or by inference from the  
23 facts and circumstances which are proved.

24 Expressed malice is shown when a person speaks words  
25 which express hatred or ill will for another or when the

1 person prepared beforehand to do the act which was later  
2 accomplished. For example, lying in wait for a person or any  
3 other acts of preparation going to show that the deed was  
4 within the defendant's mind would be expressed malice.  
5 Malice may be inferred from conduct showing a total disregard  
6 for human life.

7 Now, if the defendant, ladies and gentlemen, with malice  
8 aforethought attempts to kill another person but by mistake  
9 injures or kills a different person, the defendant still has  
10 the intent to kill. The intent to kill is merely transferred  
11 from the original person the defendant attempted to kill to  
12 the actual person killed or injured. The defendant would be  
13 guilty of -- hold on a second. Let me read that again.

14 If the defendant with malice aforethought attempts to  
15 kill another person but by mistake injures or kills a  
16 different person, the defendant still has the intent to kill.  
17 The intent to kill is merely transferred from the original  
18 person the defendant attempted to kill to the actual person  
19 killed.

20 Now, ladies and gentlemen, I have instructed you on the  
21 law in this case and what we are going to do at this point,  
22 as I told you before, is I'm going to allow the lawyers to  
23 make closing arguments to you. The State will go first,  
24 followed by defense counsel. Once closing arguments are  
25 concluded, then I will give you some conclusory statements

1 before sending you back to the jury room.

2 Before I recognize the attorneys to -- for closing  
3 arguments, I will remind you, ladies and gentlemen, that  
4 arguments of counsel is not evidence in this case. It's not  
5 evidence in this case. The evidence in this case is the  
6 testimony that you have heard, as well as exhibits that have  
7 been admitted during the course of this trial. All right?

8 Mr. Clements, you're recognized for closing argument.

9 MR. CLEMENTS: Thank you, Your Honor. May it please the  
10 Court. I beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 CLOSING ARGUMENT ON BEHALF OF THE STATE

13 MR. CLEMENTS: Where's Boogie? Where's Boogie? Where's  
14 Boogie? If they had found Boogie, we don't know what would  
15 have happened, but we do know one thing. That is [REDACTED]  
16 [REDACTED] would be here with us. She'd be 15 years old.  
17 Yesterday was the third anniversary of this terrible,  
18 terrible event.

19 It all boils down to some simple issues, and I'm going  
20 to tell you I don't intend to stand up here and go on and go  
21 through all of the evidence and go over everything in minute  
22 detail. I don't need to do that. Y'all are all too smart  
23 for that.

24 Y'all have probably got a lot better grasp than I do,  
25 particularly collectively. So when you go back to the jury

1 room and talk to each other, listen to each other. Put the  
2 pieces of the puzzle together.

3 Most times when you have a murder case you're trying to  
4 solve, one of the questions you ask is who had motive. Was  
5 there a motive in this case? And there was. Retaliation.  
6 Retaliation. It all started with a fight between Boogie and  
7 JJ Hampton. They broke that up. They sent JJ home on his  
8 way.

9 Well, shortly after, Boogie is gone, but they get a  
10 report that the house at [REDACTED] White Street has been shot up,  
11 and that's Aunt Dot of some of the Hamptons and grandmama of  
12 some of the young Hamptons. And they all took off and went  
13 to see what was happening there. They weren't there long  
14 before they gathered themselves together and took off looking  
15 for Boogie. They drove past Doc Lee. So he got in behind  
16 them and tried to figure out what was going on.

17 We've got plenty of testimony, plenty of testimony that  
18 there was a red car there at Byrd and Tanyard Street. There  
19 was a white car, and that was Josh Hampton, and he said he  
20 heard about his aunt's and went to try to find out what was  
21 going on. So he got in there with them and pulled in and  
22 when he heard gunshots, he took off.

23 We know there was a blue car. The driver of that said  
24 so, Jimmy Lee Hampton. He said he had KB with him. KB  
25 jumped out of the car and he heard gunshots, and Jimmy Lee,

1 Jr., tried to leave and KB jumped back in in the backseat.

2 There was plenty of people. There was a yard full of  
3 kids. There were plenty of people that testified as to  
4 seeing KB shooting, and plenty of people testified to there  
5 being a red car.

6 And George Dunn testified. You heard him. He said they  
7 started shooting at him and he had a voice like he was from  
8 up north and he asked him where's Boogie, but he didn't give  
9 anybody any time to answer or anything.

10 He just fired, with a complete and total disregard for  
11 human life, with a complete and total disregard for that 12-  
12 year-old girl that died there on her mama's -- on her  
13 grandmama's porch at the front door. Just totally cold,  
14 malice in the heart. If that's not malice, I don't know what  
15 is to drive up on a yard full of children and decide you're  
16 just going to spray bullets around. Terrible.

17 Let's get back to the red car. Tons of people testified  
18 that the red Dodge Challenger pulled up at ■ East Byrd  
19 Street, and it has been verified by many people at the scene  
20 and the white car and the blue car.

21 Several witnesses testified to hearing gunshots from  
22 more than one gun. Louder sounds, different sounds, but they  
23 said that there was more than one gun. And the State put up  
24 an analyst from SLED to tell you there were two different  
25 kinds of guns.

1           There was a .380. You saw in the pictures where the  
2 .380 shells were taken up across the street starting on one  
3 side and went to the other. She testified and said they all  
4 came from one gun. So you've got a .380.

5           Then what else do you have? You've got a 9 millimeter.  
6 A 9 millimeter was stuck in the wall and a 9 millimeter was  
7 retrieved from [REDACTED]'s chest, her chest cavity.

8           So what is the State's theory on that? The theory is  
9 that KB was the one shooting the .380, and the theory has  
10 been that it was Michael Barclay who shot the 9 millimeter.

11           Now, the judge just told you about direct evidence and  
12 circumstantial evidence, and direct evidence is when somebody  
13 sees something and they can tell you. Circumstantial  
14 evidence is when facts are there where you can infer other  
15 facts from.

16           Now, what does that mean? You would come to work here  
17 and sometimes we're working hard and we don't even look out  
18 the window and we came to work and it was sunny. So we know  
19 there's sunshine. Later on, we get up and somebody comes in  
20 from outside and they've got an umbrella in their hand and  
21 their hair is wet and they got wet on their shirt. There  
22 still may be sunshine out the window.

23           You didn't notice what went on between there, but what  
24 can you infer from those facts? Well, the person came  
25 through some rain. So evidently, it rained. That's just

1 inferred one fact from another that makes sense.

2       There's direct evidence, plenty of direct evidence, that  
3 Michael Barclay was driving that red Challenger. It was  
4 rented for him to drive because he was visiting from up in  
5 New York, so he had some transportation rented for by Jimmy  
6 Lee Hampton.

7       State's Exhibit 41. I'm not going to take the time to  
8 put all these on the screen. Y'all will have this in the  
9 jury room. You can look at it. Jimmy Lee Hampton said,  
10 yeah, I rented that. I rented it for Mike Mike, and he drove  
11 it, and he testified that's the only person he saw driving  
12 it.

13       Now, we've got where the direct evidence comes into play  
14 when the circumstantial evidence is this. Jimmy Lee Hampton  
15 said he saw Mike driving that during that week. He didn't  
16 see anybody else driving it. Other people saw him driving  
17 it, but he was driving it when they were at Aunt Dot's when  
18 they were checking on that shooting there that Boogie was  
19 suspected of, and then a red car takes off and it's in the  
20 lead.

21       And I didn't see who was in there, I couldn't see who  
22 was in there. Well, the red car leaves and then later  
23 there's a phone call made that said, hey, let's go turn it  
24 in. Jimmy Lee says okay.

25       Let me ask you this. If Michael Barclay was driving

1 that red Dodge Challenger to Aunt Dot's and was driving it  
2 when they left and got to Byrd and Tanyard Street, how in the  
3 world could somebody else jump in that car and be driving it  
4 other than Michael Barclay? They couldn't have.

5 Michael Barclay was driving it. Then they didn't see  
6 him for this short period of time, but they were following  
7 the whole time and then he leaves and then they go and turn  
8 the car in. The last time he saw it driving with somebody  
9 was Mike Mike. The next thing he sees it is let's turn it in  
10 from Mike Mike, and they did. And Jimmy Lee said he was  
11 wiping it down and he's like, well, what are you doing. I  
12 hope you didn't get me into something. He says, no, we're  
13 good, we're good.

14 Let me ask you a question. Rental car companies do what  
15 every time a car is turned in? They clean it from head to  
16 toe, don't they? They clean it from head to toe. So why in  
17 the world would you have a need for or even waste your time  
18 to clean the car or wipe it down? Because you know they're  
19 going to do it when you turn it in.

20 And he didn't clean it because there's plenty of stuff  
21 in it. You heard testimony from that when they exercised the  
22 search warrant on the car. There was plenty of things in  
23 there, but he was wiping it down. What do you think he was  
24 wiping down? The gearshift knob? The steering wheel? Why  
25 would he have the motive to do that? So he was trying to

1 distance himself from that car. It wouldn't make any sense  
2 to do anything else. Ask yourself that. Why wipe down the  
3 car? There were some things there that I guess maybe he  
4 didn't think of or didn't remember that was in the --

5 (WHEREUPON, the proceedings were interrupted by an  
6 audible ringing and voice.)

7 MS. HENDERSON: Judge, can we have a moment?

8 (WHEREUPON, there was a pause in the proceedings, after  
9 which the proceedings resumed as follows.)

10 THE DEPUTY: I think it's his ankle monitor.

11 THE COURT: Sir?

12 MS. HENDERSON: Judge, may we approach?

13 (WHEREUPON, a bench conference was held in the presence  
14 of the jury but out of the hearing of the jury as  
15 follows.)

16 MS. HENDERSON: Judge, his ankle monitor went off.

17 THE COURT: All right. Okay. They didn't take that off  
18 of him when he went to jail?

19 MS. HENDERSON: Apparently not, Judge.

20 (WHEREUPON, the bench conference continued off the  
21 record and then ended, after which the proceedings  
22 resumed as follows.)

23 THE COURT: All right.

24 MR. CLEMENTS: When law enforcement checked out the car,  
25 they found the rental agreement but also found something

1 else, which is State's Exhibit 40, and you can take this back  
2 in the jury room and look at it, but this is a program for a  
3 funeral. Why did we hear Michael Barclay was in South  
4 Carolina? He come for a funeral. This was in the glove box  
5 tying him right to that car.

6 Pictures were taken of that car and everybody ID'd it  
7 and said, "yeah, that's the car" that we asked. And there  
8 was something else there with it when they checked the car.  
9 That was the screen for the radio, the Bluetooth, and all of  
10 that. Here they are, State's Exhibit 22, State's Exhibit 23,  
11 and here, State's Exhibit 24. Number one, Michael's iPhone.  
12 And again, I encourage you when you're in the jury room to  
13 take -- take these items and look at them.

14 Take these pictures and look at them because they all  
15 fit together. They're all part of the story. Michael  
16 Barclay had custody and control of that vehicle the entire  
17 time he was here. How can we explain just all of a sudden  
18 that red car being at Byrd and Tanyard and shots being fired  
19 that it could be anybody but him?

20 It doesn't make any sense. Go with your common sense.  
21 Mike Mike was driving from the time of the party, driving to  
22 Aunt Dot's. That was confirmed, and at Byrd and Tanyard Mike  
23 Mike was driving there as well. That's the only thing that  
24 makes any sense.

25 When you go back there in your jury room, ask yourselves

1 questions. When you see something, ask why. You know, I  
2 want you to ask questions. I want you to look at this  
3 evidence hard, as closely as you can, and fit the pieces of  
4 the puzzle together.

5 Why do I want you to look so hard? I've got the burden  
6 of proof. I've got to prove beyond a reasonable doubt.  
7 That's a high burden. So I would encourage you to dig and  
8 look hard because we want the truth. We want the truth.

9 If Michael Barclay didn't do this, I pray you turn him  
10 loose, but I'm convinced by the evidence that he did. So  
11 look at it. When you put the puzzle together -- I think that  
12 used to be something we would do on rainy days when I was a  
13 child. I haven't seen a puzzle in I don't know when. Do  
14 people still do jigsaw puzzles?

15 Have you ever done one? You take the pieces and you try  
16 to make them fit. What do you got to do with the pieces?  
17 You've got to spin them around and turn them and fit them in  
18 the slot and know that they go there, but you have to work at  
19 it a little bit.

20 But there's plenty of facts in this case. I can go over  
21 them all. We'd be here a long time and then y'all would be  
22 mad with me, and I don't blame you. There's no need to do  
23 that. My intention is not to bore you to death with stuff  
24 that is just a recitation of something you already know.

25 And it's simple. We started out this case with the

1 question of where's Boogie. Let's end it with the question  
2 being answered as to where is Mike Mike.

3 Mike Mike is in that red car. Mike Mike is in that red  
4 car when the shots are being fired at Byrd and Tanyard. Mike  
5 Mike is in that car when [REDACTED] gets hit and dies right  
6 there on her grandmama's porch step. Mike Mike is in that  
7 car when he sped off. Mike Mike is in that car several hours  
8 later or sometime the next day, which wasn't too long because  
9 it was late at night when all of this started. Mike Mike was  
10 in that car wiping it down when Jimmy Lee, Jr., came for them  
11 to turn it in.

12 If you answered that question as to where is Mike Mike,  
13 you're going to tell what the solution to this case is.  
14 You're going to tell who was the participants there, and if  
15 Mike Mike wasn't there, where else would he be? I don't know  
16 if you know, but did the USS Enterprise come and they beamed  
17 him up, and somebody else jumped in the car seat and then  
18 later they beamed him back down, that little, short period of  
19 time? It was Mike Mike.

20 There's a lot of facts in this case that were reiterated  
21 from multiple witnesses. They weren't trying to reward  
22 anybody or punish anybody. They were just telling what they  
23 saw and what they heard, and you listened to them and you  
24 heard them. You can believe everything they said if you want  
25 to. If you want to and you're so inclined, you can believe

1 nothing of what they said or you can believe part of what  
2 they said. That's up to y'all.

3 I encourage you as you decide whether you're going to  
4 listen to all of what they said, believe all of it, believe  
5 it credible, believe that they are believable, that you look  
6 and you compare what they say to what other people around  
7 them said. I think you'll find out that most of those  
8 statements, although sometimes somebody gets confused about  
9 something, which I think is very rare in this case, that they  
10 track right together and they point to -- all those facts  
11 gathered together point to one fact that solves this case,  
12 and that is that Mike Mike is guilty of murder.

13 You know, I have heard lots of times people talk about  
14 circumstantial evidence. We had a lot of that here,  
15 particularly on that red car. You've got chain and you've  
16 got links and there's circumstantial evidence that's a chain.  
17 You get started and you go down that chain and it leads you  
18 to your conclusion, and I think that's a pretty good example,  
19 but I think I have a better one.

20 See this? It's made out of a lot of fibers, a lot of  
21 fibers, and this case has a lot of fibers and a lot of facts.  
22 And you twist them together and you twist them together and  
23 you see what you've got. Sometimes you can cut some of them  
24 even, but you've still got enough to hold, you know.

25 Take the facts and weave them together like this piece

1 of rope and grab a hold of it and pull and see where it comes  
2 to, and it's going to point to where all the facts lead and  
3 that is the conclusion that you cannot deny, and that is that  
4 Mike Mike was driving that car.

5 And we've had no testimony and nobody come forward that  
6 anybody else was driving that car. We've had nobody come  
7 forward and say, yeah, we all left Aunt Dot's and Mike Mike  
8 wasn't driving and he got out and somebody else was there.

9 Not only was he driving, I would submit to you he was  
10 leading the pack. They were going to pay somebody back.  
11 They had malice and hatred in their heart. Like I talked  
12 about in my opening statement, which was Monday -- it seems  
13 like eons ago now instead of just a couple of days, but I  
14 said they were like a rolling firing squad. They rolled up  
15 on Tanyard and Byrd and they opened fire, and an innocent  
16 person died, an innocent child, 12 years old, died. I guess  
17 the one thing we can be thankful for with them shooting a lot  
18 of shots is that nobody else got hit.

19 But this -- this is a heavy burden, a heavy sense of  
20 responsibility that you have trying to decide the facts of  
21 this case, but we chose you, both the State and the defense,  
22 because we knew you had the common sense to do the job and  
23 that's what I'm asking you to do is apply your common sense  
24 and, when you do, it's inescapable. There's no evidence of  
25 anybody else being behind that wheel. He was behind that

1 wheel right prior to the shooting and then after the shooting  
2 he had the car and turned it in.

3 It started out with where's Boogie and ends with where's  
4 Mike Mike. He's there guilty of murder. He had malice. He  
5 had malice aforethought. They got in the car and went  
6 hunting for their victim and then they killed an innocent  
7 person.

8 Thank you for abiding by your oath. Thank you for  
9 finding the facts true and accurate in this case. Thank you  
10 for giving Michael Barclay a fair trial. We've got to give  
11 him a fair trial. Y'all will do your job and give a fair  
12 trial, not an acquittal but a fair trial, which I believe to  
13 be a guilty verdict.

14 I thank you for giving the State of South Carolina a  
15 fair trial and for listening to us and listening to the  
16 judge's charge on the law and doing what is right. Thank  
17 you.

18 THE COURT: Ms. Henderson?

19 MS. HENDERSON: Thank you, Judge. May I have one  
20 moment?

21 THE COURT: Yes.

22 (WHEREUPON, there was a pause in the proceedings, after  
23 which the proceedings resumed as follows.)

24 MS. HENDERSON: Thank you, Judge.

25 Mr. Clements.

1 Mr. Barclay.

2 CLOSING ARGUMENT ON BEHALF OF DEFENDANT BARCLAY

3 MS. HENDERSON: Ladies and gentlemen of the jury, when  
4 Abraham Lincoln was a young attorney, he once found himself  
5 in court with an attorney on the other side whose version of  
6 their case came not from the facts and evidence and testimony  
7 presented before the Court, but from that attorney's own  
8 unsubstantiated statements and assumptions.

9 During his argument, Mr. Lincoln looked over at this  
10 other attorney and he asked, "Sir, how many legs does a cow  
11 have?"

12 The attorney responded, "Well, four."

13 Mr. Lincoln went on. "And tell me, sir, if you call a  
14 tail a leg, how many legs does that cow then have?"

15 The attorney responded this time with, "Five."

16 Mr. Lincoln slammed his hand down on the jury box and  
17 roared, "No, he would still have four. Just because you call  
18 a tail a leg doesn't mean it's a leg."

19 Ladies and gentlemen of the jury, how many tails has the  
20 State called legs in this case? Just because Mr. Clements  
21 says that Mr. Barclay shot a 9 millimeter does not mean that  
22 Mr. Barclay shot a 9 millimeter. Just because Mr. Clements  
23 says that Mr. Barclay was in a red car does not mean he was  
24 in a red car.

25 This case is based on speculation, assumptions, and

1 judgments, and let's talk about why. Why is because of Jimmy  
2 Lee Hampton, Sr. Let's run through this.

3 Michael Barclay is charged. He's not the only one  
4 charged. Jimmy Lee Hampton, Jr., is also charged. Demonta  
5 Kabora Hickson, KB, is also charged. Jimmy Lee Hampton, Sr.,  
6 his son was involved in that shooting and he went into damage  
7 control. He called his buddies in law enforcement. Chief  
8 McFadden --

9 MR. CLEMENTS: Your Honor, I object. I think she's  
10 arguing facts not in evidence.

11 MS. HENDERSON: Judge, it was in -- it was clearly in  
12 evidence. I spoke with Inv. McFadden, Chief McFadden, Inv.  
13 Strickland.

14 THE COURT: Ma'am --

15 MS. HENDERSON: I'm sorry. What was that?

16 THE COURT: Make sure your arguments plow the facts that  
17 are in evidence. Go ahead.

18 MS. HENDERSON: Certainly.

19 Mr. Hampton, Sr., contacted law enforcement, steered his  
20 -- steered the investigation away from his son and to Michael  
21 Barclay. Despite what the State may try and have you  
22 believe, that he was doing the right thing when Mr. Hampton,  
23 Sr., reached out to law enforcement because he was doing the  
24 right thing because of a 12-year-old child, no. He was  
25 protecting his son.

1           And to protect his son, he talked to his old buddies in  
2 law enforcement. This is a former Timmons ville police  
3 officer. He was the DARE officer, Drug Abuse Resistance  
4 Education, the DARE officer at Timmons ville High School.

5           He did federal prison time for selling the drugs, taking  
6 the drugs off of the street that he was supposed to be  
7 seizing and selling them. This former police officer who  
8 knows the folks in Timmons ville called his old buddies and  
9 steered the investigation away from his son. He didn't want  
10 him to go to prison. He knows what prison is like.

11           And Michael Barclay, in this man's mind, is the easy  
12 target. Michael Barclay doesn't live in Timmons ville. He  
13 was visiting. Michael Barclay is not a Hampton. Michael  
14 Barclay is not a Hickson. Michael Barclay is a Michael  
15 Barclay.

16           So Mr. Hampton, Sr., takes his sons to the -- takes his  
17 son and nephews to the police station, his old stomping  
18 grounds, to cooperate. Michael Barclay is not there. He is  
19 the scapegoat. Out of sight, out of mind, the easy target,  
20 but, ladies and gentlemen of the jury, the State's case does  
21 not fit together. The pieces that Mr. Clements told you to  
22 fit together, they can't.

23           The State wants you to believe that Michael Barclay  
24 drove that red Challenger to ■■■ East Byrd Street and shot  
25 that little girl, but the evidence that the State relies upon

1 in its case against Mr. Barclay doesn't mesh up. It is based  
2 on assumptions and presumptions and speculation. There is no  
3 reliable evidence to back it up. And when I say reliable  
4 evidence, I mean that evidence that you can trust.

5 The State would have you believe that the host of  
6 witnesses that it paraded in this week prove beyond a  
7 reasonable doubt that Michael Barclay shot out of that red  
8 Challenger and killed that little girl. So let's talk about  
9 the eyewitnesses.

10 Fanando Jackson, Jr., [REDACTED]'s brother. He stated  
11 cars pulled up, asked for Boogie, started shooting. He did  
12 not identify Michael Barclay as getting out of any cars and  
13 shooting. He did say the person shooting had dreads.  
14 Michael Barclay has never had dreads.

15 Let's talk about Jaquan Jackson, [REDACTED]'s cousin. He  
16 stated that he didn't see anybody get out of the cars as it  
17 happened so fast.

18 Let's talk about Sha'Tyra Gee. She testified that she  
19 saw KB get out and shoot. She said she could see shooting  
20 from the blue car. She couldn't see shots coming from the  
21 red car.

22 George Dunn. He stated that he couldn't see or  
23 recognize anyone. He did say that he saw someone exit a red  
24 car and there was shooting, but he did not identify anyone.

25 And, ladies and gentlemen of the jury, let me remind you

1 Mr. Dunn's rendition of this, this is the first time in three  
2 years that George Dunn has reported his version of what  
3 happened. Law enforcement never obtained any formal  
4 statements from him, no records, no reports, and you trust  
5 his memory.

6 Timothy Washington. He stated four to five cars pulled  
7 up and people outside of the cars were shooting, but he  
8 couldn't tell who they were.

9 Doc Smith. He said he heard gunshots down the street.  
10 He saw cars driving by. He decided to follow these cars to  
11 see what was going on. He didn't know who was driving the  
12 cars that night. He gave no reports to law enforcement. He  
13 did not call 9-1-1, but then the State calls him here to  
14 testify. Ladies and gentlemen, does this make sense?

15 And let's talk about law enforcement. Ladies and  
16 gentlemen, before I talk about law enforcement, I want to  
17 make one thing perfectly clear. I respect the police. I  
18 work with them. I know these folks personally. I go to  
19 church with some of them. My children go to school with  
20 their children. I appreciate and I respect them. I cannot  
21 imagine the sacrifices that these individuals go through  
22 every day. They put their lives on the line for us, and I am  
23 thankful for that.

24 But, ladies and gentlemen of the jury, we have to face  
25 the facts. I don't want to be up here pointing out what law

1 enforcement did wrong. I don't like being up here pointing  
2 out what law enforcement did wrong, but I have to because in  
3 Michael Barclay's case, those details matter. We must be  
4 able to trust this case, and we simply can't.

5 And, ladies and gentlemen, I know this information is a  
6 lot. I'm not going to go over it in detail again. I'm going  
7 to rely on you and your common sense and your judgment to put  
8 this information together and to sift through it and to  
9 synthesize it. Let's talk broadly.

10 Retired Timmons ville Police Chief Billy Brown told us  
11 that he prepared no reports in the course of his work on this  
12 case. Ladies and gentlemen, I'm not trying to make a  
13 mountain out of a mole hill, but law enforcement's systemic  
14 failure in documenting and reporting this case is serious.  
15 Every case must be documented.

16 Before you have a complete and accurate report of the  
17 case, you have to document that case. And despite how well  
18 we want to believe that our memories will serve us, no one  
19 can accurately regurgitate the detailed information required  
20 to prosecute a murder case three years later, and detailed  
21 information is important in this case because this case is  
22 based solely off of assumptions. You cannot convict an  
23 innocent man and you must have faith before convicting  
24 someone that you know the facts.

25 Mark Strickland, the Timmons ville lead investigator

1 handling the case until the Sheriff's Office took over. He  
2 didn't prepare any reports. We heard how he was demoted  
3 because of his failure to turn over his body-worn camera  
4 footage. Folks, this three-and-a-half hours of footage, as  
5 you heard, was provided to us back in May, the mere week  
6 before this trial was originally scheduled to go forward, and  
7 it gave us a real-time record of the night and day following  
8 the shooting.

9 It is the most important evidence in this case, and it  
10 shows Michael Barclay should have never been charged. Let me  
11 say this again. It shows Michael Barclay should have never  
12 been charged. It shows no credible evidence linking him to  
13 the shooting. If it did, the State would have shown it to  
14 y'all. They didn't because it shows a shoddy, improperly  
15 conducted investigation --

16 MR. CLEMENTS: Your Honor --

17 MS. HENDERSON: -- that calls into question the  
18 reliability.

19 MR. CLEMENTS: I object. Arguing facts not in evidence  
20 about video not being shown and video being shown.

21 THE COURT: Can the lawyers approach a minute, please?

22 (WHEREUPON, a bench conference was held in the presence  
23 of the jury but out of the hearing of the jury off the  
24 record, after which the proceedings resumed as follows.)

25 THE COURT: All right. You may continue, Ms. Henderson.

1 MS. HENDERSON: Thank you, Judge.

2 Ladies and gentlemen, moving on. I think the absolute  
3 world of Chief McFadden. He is a wonderful law enforcement,  
4 but in this case, ladies and gentlemen, he simply did not get  
5 it right. Despite his best intentions, he let his personal  
6 relationship with the individuals involved in this case, the  
7 Hampton family, the Jackson family, members of Timmonsville,  
8 cloud his professional judgment, cloud his ability to  
9 objectively look at this case without bias.

10 You heard him testify yesterday. He spoke to a lot of  
11 witnesses in conjunction with this case. He only documented  
12 or reported those conversations with those witnesses that fit  
13 his narrative of what he believed happened.

14 Ladies and gentlemen of the jury, he's supposed to  
15 document everything. It's not his determination to determine  
16 what evidence fits and what evidence does not fit. That's  
17 your job and, unfortunately, you can't do that because you  
18 don't have all of the evidence.

19 What we have in this case is the State telling you to  
20 find Michael Barclay guilty in that little girl's death, and  
21 the State's case against Michael Barclay is purely  
22 circumstantial. It's based on inferences and presumptions.  
23 It's based on the words of Jimmy Lee Hampton, Jr., the  
24 individual whose name is on the rental agreement of the car,  
25 the red Challenger allegedly involved in this shooting.

1 He's the individual that has responsibility and control  
2 over the vehicle. He's the individual that's driving the  
3 blue Charger that eyewitnesses identified KB Hickson, Demonta  
4 Kabora Hickson -- excuse me -- KB as getting out of and  
5 shooting from. He got up there on the stand and talked to  
6 you about agreements, conversations he had with the  
7 prosecutor's office about resolving his case. He is not  
8 reliable. He will say whatever he thinks Mr. Clements wants  
9 him to say to protect his skin.

10 Ladies and gentlemen of the jury, Mr. Clements' case  
11 against Michael Barclay is based upon the words of that man.  
12 That is not justice. And, ladies and gentlemen, the  
13 questions that remain in this case, they could have been  
14 answered, despite what Mr. Clements may tell you. Law  
15 enforcement could have searched every vehicle involved. Law  
16 enforcement could have searched the homes of the suspects or  
17 potential suspects involved.

18 And let's talk a minute about one of the suspects,  
19 Cedric Levern Young. We heard evidence this week that he  
20 shot up Dorothy Hickson's house at [REDACTED] White Street. We  
21 heard evidence this week that he was present at 301 Byrd  
22 Street when [REDACTED] F.J. [REDACTED] was shot. There was testimony that he  
23 was towards the opposite end of the house.

24 He ended up at his house at [REDACTED] Bridge Street. 9-1-1  
25 dispatched Mark Strickland to that home because his aunt made

1 a telephone call to 9-1-1 saying she overheard her nephew,  
2 Cedric Levern Young, say that he was jumped, he shot at the  
3 guys that jumped him and might have been involved in the  
4 shooting that killed that little girl. Ladies and gentlemen  
5 of the jury, despite what the State may have tried to imply  
6 to you this week, Cedric Levern Young is a suspect.

7 Let's go back to a little bit more about what law  
8 enforcement should have done. They sent evidence to SLED for  
9 testing. We heard Inv. McDaniel say that he swabbed the  
10 vehicle for DNA. DNA can link individuals to the scene, to  
11 the vehicle. He never sent that DNA in to SLED for testing.

12 Ask yourselves would the bullet that was in the home  
13 that we heard about allegedly being on White Street match up  
14 to the 9 millimeter that was found in [REDACTED]? Would the  
15 bullet in the doorway of the home above the door where  
16 [REDACTED] was found match up to the bullet inside of her?  
17 Ladies and gentlemen, we don't know.

18 Let's talk about what else law enforcement could have  
19 done. Surveillance. This is routine. This is easy. Go to  
20 stores, go to locations, say, hey, do you have video  
21 recordings of your store? If so, do you have video  
22 recordings on August 25th, August 26th, 2018? You review  
23 those footages. It'll be quick. It's easy. See if you see  
24 a red Charger. See if you see a blue car. See if you see a  
25 burgundy truck. See if you see a white truck.

1           Go to Enterprise. Again, the State's case is based  
2 solely upon the words of Jimmy Lee Hampton, Jr. We already  
3 know that his words are unreliable. So let's see. If we  
4 want to believe what he says, let's go to Enterprise and see  
5 if you see a red Challenger being brought up by that man. We  
6 don't know because law enforcement didn't try.

7           The State had the opportunity and the ability to turn  
8 this case of speculation into a case of certainty, and they  
9 simply didn't. The State has given you no indication that  
10 that man sitting right there goes by Mike Mike. That's an  
11 assumption.

12           The State has given you no indication that that man has  
13 a voice that sounds like somebody from up north. That's an  
14 assumption.

15           The State has given you no indication that that man was  
16 in that red Challenger at ■ East Byrd Street and shot the  
17 gun that killed that little girl. That's an assumption.

18           And the State relies upon this screenshot of the  
19 Bluetooth pairing device in the red Challenger, Michael's  
20 iPhone, because that's right there that means that that man  
21 did this. The State doesn't talk about the second phone  
22 that's linked to the car, an LG K-20 Plus. The State doesn't  
23 talk about the third phone that's linked to the car, T-Mobile  
24 Revival Plus.

25           Should you follow the State's line of thinking to say

1 that Michael's iPhone means that that individual was in that  
2 car and shot that little girl, you should also rely on that  
3 to say that number two should also have been charged, number  
4 three should have also been charged, but we don't know that  
5 because law enforcement did nothing to try to obtain the cell  
6 phone records related to these phones to see if they were  
7 related to this incident.

8 Ladies and gentlemen of the jury, this is not enough to  
9 convict that man. All we have are vague assertions placing  
10 him in that car, mere words of Jimmy Hampton, Jr., his co-  
11 defendant who has every reason to lie. As I said, he's the  
12 one named as driving the vehicle that KB got out of shooting  
13 from. He is the one named on the rental agreement as being  
14 responsible for that red Challenger that eyewitnesses place  
15 on scene. Of course, he will say that that guy was driving  
16 that car because that shirks his responsibility and keeps him  
17 from getting in trouble.

18 The State seems to rely on this funeral program in  
19 linking Mr. Barclay to this car. Ladies and gentlemen of the  
20 jury, I might have misheard, but to my recollection I did not  
21 hear anything definitively linking that man to this funeral  
22 program in that car. Following the State's line of thought,  
23 Jimmy Lee Hampton, Jr., very well could have been linked to  
24 this program. We don't know. This doesn't show anything.

25 Again, ladies and gentlemen, the State's case is based

1 solely upon assumptions in Michael Barclay's regard. Ladies  
2 and gentlemen of the jury, I told you at the start of this  
3 case Michael Barclay should have never been charged, and I  
4 say that again now. There is no credible evidence against  
5 Michael Barclay. The credible evidence that we do have  
6 doesn't point to Michael Barclay. It points to KB Hickson.  
7 It points to Jimmy Lee Hampton, Jr. It points to Cedric  
8 Levern Young, Boogie.

9 I cannot imagine, once again, the pain and the suffering  
10 and the trauma that this family has gone through. What  
11 happened to their child should have never happened, but,  
12 ladies and gentlemen of the jury, two wrongs do not make a  
13 right and an innocent man going to jail is not wrong in this  
14 case. Please find him not guilty.

15 THE COURT: Can the lawyers approach over here for just  
16 a second, please?

17 (WHEREUPON, a bench conference was held in the presence  
18 of the jury but out of the hearing of the jury off the  
19 record, after which the proceedings resumed as follows.)

20 THE COURT: All right. Ladies and gentlemen, you've now  
21 heard the closing arguments of the lawyers. I have a few  
22 more closing remarks to you before sending you back to the  
23 jury room.

24 I want you all, ladies and gentlemen, to clearly  
25 understand that you are not partisans or advocates for the

1 State of South Carolina or the defendant. It is your duty --  
2 it is your duty by your joint deliberations to determine the  
3 facts in this case, giving to the defendant the benefit of  
4 every reasonable doubt on each and every issue.

5 Then to the facts which you determine to be true, you  
6 should take and apply the law which has been given to you by  
7 this Court and thus arrive at a verdict in this case. Thus,  
8 when you have accomplished these responsibilities, you will  
9 have satisfied your oath as jurors, and you will have  
10 discharged your duty to this Court.

11 Now, once you retire to the jury room, Madam Forelady,  
12 the bailiff will give you the verdict form. All right? When  
13 you, the jury, arrive at a verdict in this case, you, Madam  
14 Forelady, will select the verdict as to the offense on the  
15 verdict form.

16 Now, if the State has failed to prove the guilt of the  
17 defendant beyond a reasonable doubt, your verdict will be not  
18 guilty. Likewise, if the State has proven the guilt of the  
19 defendant beyond a reasonable doubt, your verdict will be  
20 guilty.

21 Now, once a decision has been made, you, Madam Forelady,  
22 as I said, will check whichever choice is the verdict of the  
23 jury as to the offense charged. The verdict, ladies and  
24 gentlemen, that you render in this case must be the verdict  
25 of each and every juror. It must be your unanimous verdict.

1 All twelve of you must agree on the verdict which you  
2 authorize the forelady to write for the jury.

3 I want you all to further understand, ladies and  
4 gentlemen, that the order in which the choices of verdict  
5 appear on the verdict form are not suggestive of any verdict  
6 on the part of this Court. The verdict in this case is to be  
7 determined by you, the jury, not the Court.

8 Furthermore, please understand that even though I will  
9 give the verdict form to Madam Forelady, it is not her  
10 verdict alone. It is the verdict of all twelve of you, and I  
11 empathize again that it must be unanimous.

12 Now, I'm also going to give you all a copy of these  
13 instructions in written form. Now, during your  
14 deliberations, you may refer to the instructions to guide  
15 your decision making. You must consider the instructions as  
16 a whole and not follow some and ignore others.

17 Please, Madam Forelady, when a verdict is rendered in  
18 this case, return the instructions to the Court. All right?

19 Now, I'm going to ask you to retire to the jury room,  
20 but do not begin your deliberations until you're instructed  
21 to do so. The law requires that I consult with the attorneys  
22 to make sure that I have not left anything out of these  
23 instructions. After I have checked with the attorneys, the  
24 bailiff will bring in a copy of these instructions along with  
25 the verdict form and the items of evidence that have been

1 introduced during the course of this trial and instruct you  
2 to begin your deliberations.

3 Also, should you have any questions during your  
4 deliberations, you, Madam Forelady, will reduce such question  
5 to writing, knock on the door, let the bailiff know you all  
6 have a question, get the question in written form to the  
7 bailiff. They will in turn get it to me and I will answer it  
8 after consulting with the attorneys how I deem appropriate.  
9 Okay?

10 Likewise, ladies and gentlemen, once you all have  
11 reached a verdict in this case and you have filled out a  
12 unanimous verdict and you've filled out the verdict form,  
13 likewise knock on the door, let the bailiff know that you all  
14 have reached a unanimous verdict, and we'll get you back into  
15 the courtroom as quickly as possible.

16 Now, before I send you all to the jury room, everyone  
17 feeling okay? Anyone not feeling well?

18 (WHEREUPON, there was no verbal response.)

19 THE COURT: Okay. I'm going to ask you to step to the  
20 jury room, but once again, do not begin your deliberations  
21 until you're instructed to do so. Okay? Please step to the  
22 jury room.

23 (WHEREUPON, the jury exited the courtroom at 12:39 p.m.)

24 THE COURT: All right. Any exception or objection to  
25 the charge from the State?

1 MR. CLEMENTS: No, Your Honor.

2 THE COURT: Defense counsel?

3 MS. HENDERSON: Just other than that what we objected to  
4 earlier, Judge.

5 THE COURT: I'm sorry?

6 MS. HENDERSON: Just our earlier objections.

7 THE COURT: All right. Very well. So noted for the  
8 record.

9 If you all would come up here and look at the items of  
10 evidence, please.

11 (WHEREUPON, there was a pause in the proceedings to  
12 check the evidence, after which the proceedings resumed  
13 as follows.)

14 THE COURT: Well, let me ask the lawyers this. Any  
15 objection to me pulling out Ms. Reason from the hallway and  
16 excusing her back there?

17 MS. HENDERSON: None at all, Judge.

18 THE COURT: From the State?

19 MR. CLEMENTS: We don't care.

20 THE COURT: Defense counsel?

21 MS. HENDERSON: No, sir.

22 THE COURT: All right.

23 (WHEREUPON, there was a pause in the proceedings during  
24 which the alternate juror was released, after which the  
25 proceedings resumed as follows.)

1 (WHEREUPON, jury deliberations began at 12:44 p.m.)

2 (WHEREUPON, there was a break in the proceedings from  
3 12:44 p.m. until 1:20 p.m., after which the proceedings  
4 resumed as follows.)

5 THE COURT: All right. We've got the defendant back in  
6 here and the attorneys are in here as well.

7 I received a note from the jury or a question from the  
8 jury, and it reads as follows: Can we have the transcripts?

9 That's all it says. I'm assuming they're speaking of  
10 court transcripts.

11 So I guess we could handle this in one of two ways.  
12 Probably the easiest way is to bring them out here and just  
13 tell them, you know, they can listen to as much testimony as  
14 they need to. We can replay the testimony, but certainly  
15 there are no live -- or transcripts that are produced  
16 instantaneously as testimony is being taken.

17 And I've made this -- this is Court's Exhibit No. 4.  
18 Okay?

19 (WHEREUPON, the jury note was marked as Court's Exhibit  
20 No. 4.)

21 MR. CLEMENTS: No -- no objection from us.

22 MS. HENDERSON: Same from us, Your Honor.

23 THE COURT: Could you bring me the jury, please, sir?

24 (WHEREUPON, the jury entered the courtroom at 1:22 p.m.)

25 THE COURT: All right. Madam Forelady and ladies and

1 gentlemen of the jury, I received your note requesting  
2 transcripts. I'm assuming that you're talking about court  
3 transcripts. Court transcripts are not produced  
4 instantaneously, so to speak. Okay?

5 What we can do, if you all are interested in specific  
6 testimony from specific witnesses, my court reporter can play  
7 that testimony back for you all. You can listen to as much  
8 as you need to listen to, if you feel like you need to.

9 And I did not discuss this with the attorneys. However,  
10 I believe the attorneys would agree to a list of witnesses  
11 that testified in the case, if that would help you all  
12 determine what you needed to listen to. Okay?

13 So having said that, it'll take a few minutes to kind of  
14 get it queued up, so to speak, with my court reporter here.  
15 So having said that, I'm going to send you back to the jury  
16 room to continue your deliberations.

17 Any objection from the State and defense counsel in  
18 providing a list of witnesses?

19 MR. CLEMENTS: No objection, Your Honor.

20 THE COURT: Ms. Henderson?

21 MS. HENDERSON: No, sir, Judge.

22 THE COURT: Okay. And we can get that to you as quickly  
23 as we can. Okay? So I'm going to let you all step back to  
24 the jury room and you may continue your deliberations.

25 (WHEREUPON, the jury exited the courtroom at 1:24 p.m.)

1 THE COURT: All right. If you all will get me a list of  
2 witnesses, please.

3 (WHEREUPON, there was a break in the proceedings  
4 beginning at 1:25 p.m.)

5 (WHEREUPON, Court's Exhibit No. 5, list of witnesses,  
6 was provided to the jury.)

7 (WHEREUPON, Court's Exhibit No. 6, jury note was  
8 received listing three witnesses for hearing of  
9 testimony.)

10 (WHEREUPON, the proceedings resumed at 1:49 p.m.)

11 THE COURT: All right. I've been advised they've got a  
12 verdict. All right. It's my understanding that we've got  
13 everyone back in the courtroom. I was looking at the table.  
14 Y'all moved on me. I knew that. I just out of habit looked  
15 there.

16 I have everyone back in the courtroom. Y'all be seated.  
17 I'm sorry. I'm sorry.

18 It's my understanding the jury's got a verdict. So,  
19 evidently, they chose they did not need to hear this  
20 testimony. Okay?

21 I'll remind everyone in the courtroom that regardless of  
22 what the verdict is to keep your emotions in check. Failure  
23 to do so could result in you being held in contempt of court,  
24 resulting in a fine -- a fine and/or incarceration.

25 All right. Anything from the State before I bring the

1 jury out?

2 MR. CLEMENTS: No, Your Honor.

3 THE COURT: Defense counsel?

4 MS. HENDERSON: No, sir, Judge.

5 THE COURT: All right. Bring me the jury, please,  
6 ma'am.

7 (WHEREUPON, the jury entered the courtroom at 1:51 p.m.)

8 THE COURT: All right. Madam Forelady, it's my  
9 understanding you all have reached a verdict.

10 THE FORELADY: Yes, sir.

11 THE COURT: Now, we did receive your note out on those  
12 three individuals about the testimony. Before we could get  
13 it all queued up, I was advised -- the court reporter was in  
14 the process of doing that, but I was advised that you all had  
15 reached a verdict. Is that correct?

16 THE FORELADY: Yes, sir.

17 THE COURT: All right. Madam Clerk?

18 All right. You may publish the verdict.

19 VERDICT

20 THE CLERK: State of South Carolina, County of Florence,  
21 in the Court of General Sessions for the Twelfth Judicial  
22 Circuit, Indictment Number 2019-GS-21-579, State of South  
23 Carolina versus Michael Christian Barclay.

24 We, the jury, in the above captioned case on the charge  
25 of murder of **F.J.** unanimously find Michael

1 Christian Barclay guilty. Dated August 26th, 2021, signed  
2 Genniel Varner, Foreperson.

3 Members of the jury, if this is your verdict, please  
4 raise your right hand.

5 THE COURT: Let the record reflect that all twelve  
6 jurors raised their right hand in response to that question.

7 All right. Anything from the State at this time?

8 MR. CLEMENTS: No, Your Honor.

9 THE COURT: Defense counsel?

10 MS. HENDERSON: Judge, we would renew our previous  
11 motions. We would also ask that the jury be polled and move  
12 for a new trial.

13 THE COURT: Your request for a new trial is hereby  
14 denied, but it is so noted for the record.

15 MS. HENDERSON: Thank you, Judge.

16 THE COURT: Madam Clerk, would you poll the jury,  
17 please?

18 THE CLERK: Yes, sir.

19 All right. When I call your name, I need you to stand  
20 up and I'm going to ask you two questions. I just need you  
21 to answer yes or no to both questions.

22 122, Brittany Owens. Was this your verdict then in the  
23 jury room?

24 JUROR NUMBER 122: Yes.

25 THE CLERK: Is this still your verdict now?

1 makes mistakes. The important thing is to learn from  
2 mistakes.

3 SENTENCE

4 THE COURT: On Indictment 2019-GS-21-00579, the  
5 defendant is hereby committed to the State Department of  
6 Corrections for the balance of his natural life.

7 MS. HENDERSON: Thank you, Judge.

8 THE COURT: All right. Ladies and gentlemen, you all  
9 are done for this week. When I release you here, you're  
10 done.

11 They give you cards now. I think that they put money on  
12 them. They used to mail checks and I used to always like to  
13 say the proverbial check is in the mail. That's not the case  
14 anymore. Okay? I guess those cards will be --

15 Where's my clerk? Those cards will be ready to go  
16 tomorrow?

17 THE CLERK: I would give it until Saturday.

18 THE COURT: The banks aren't open on Saturday.

19 THE CLERK: I think they're debit cards at the gas  
20 station and the grocery store.

21 THE COURT: All right. Okay. You all are free to go.  
22 I am going to step off the bench and I want to speak to you  
23 in the jury room for just a second.

24 Anything further?

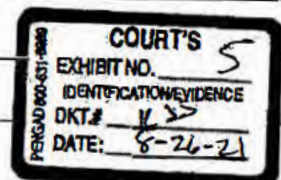
25 MS. HENDERSON: Nothing further, Judge.

can we have the  
transcripts?

-Genniel Varner  
08/26/21

FENGAD 000-811-8000	<b>COURT'S</b>
	EXHIBIT NO. <u>4</u>
	IDENTIFICATION/EVIDENCE
	DKT.# <u>135</u>
	DATE: <u>8-26-21</u>

John Hampton Jr.	JJ
Josh Hampton	<del>JK</del>
Fernando Jackson Jr.	
Jagwan Jackson	Jucy
James Jackson	
Sha'Tyra Gee	
Markus Moses	
George Dunn	
Timothy Washington	
Doc Smith	
Billy Brown	
Michelle Erchenmiller	
Kathleen Streett	
Mark Strickland	
Chase McDaniel	
Jimmy Lee Hampton Jr.	
Dr. Angelina Phillips	
Fernando Jackson Sr.	
Vernessa Jackson	
Thomas McFadden	



Jimmy Lee H. Jr

Shatira Lee

Doc Lee

FBIHQ 800-851-6808

**COURT'S**  
EXHIBIT NO. 6  
IDENTIFICATION/EVIDENCE  
DKT.# YDS  
DATE: 8-20-11

STATE OF SOUTH CAROLINA )  
 COUNTY OF FLORENCE )  
 )  
 THE STATE, )  
 )  
 v. )  
 )  
 Michael Barclay, )  
 )  
 DEFENDANT. )

IN THE COURT OF GENERAL SESSIONS  
 TWELFTH JUDICIAL CIRCUIT

Indictment No.: 2019-GS-21-06579

**SUPPLEMENTAL MOTION FOR  
 DISCOVERY**

FILED  
 APR 12 10 31 11  
 DORIS PATRICK O'LEARY  
 CLERK  
 FLORENCE COUNTY, SC

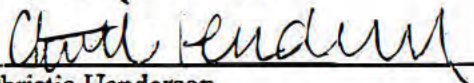
To: E.L. Clements, III, Solicitor, Twelfth Judicial Circuit:

Defendant moves for an order requiring the production by the prosecution of certain documents and tangible objects pursuant to Rule 5(a)(1)(C), SCRCrimP and Brady v. Maryland, 373 U.S. 83 (1963). Defendant avers the following requested items are relevant to the pending criminal action and material to the preparation of the defense:

1. All materials, worksheets, and/or reports generated in the above matter by the South Carolina Law Enforcement Division Forensic Services Laboratory (SLED LAB: L18-12706), including, but not limited to:
  - a. Cartridge case worksheet;
  - b. Bullet worksheet;
  - c. Weapons worksheet;
  - d. GSR SEM Data Packet;
  - e. Any other materials related to GSR and locations of particles;
  - f. Photographs; and
  - g. Notes.
2. A list of all agencies involved in the above-action.
3. A list of all officers, first responders, or other personnel with their respective agency names and ranks, present on the scene in the above-action.
4. A list of any other individuals which were present on the scene in the above-action.
5. A list of all law enforcement vehicles which were present on the scene in the above-action, along with the names of the officers assigned to the vehicles.
6. Copies of all photographs and recordings made relating to the above-incident.

- ⑦ Copies of the rental agreement and any other documents from Enterprise Rentals pertaining to the 2018 Red Dodge Challenger, VIN #2C3CD2BT2JH130957, License #DVN7453, rented by Jimmy Hampton Jr. involved in the above-action.
- ⑧ Copies of the rental agreement and any other documents from Enterprise Rentals pertaining to any other vehicles rented by Jimmy Hampton Jr. involved in the above-action.
- 9. Copies of victim [REDACTED] F. J. [REDACTED] s medical records from McLeod Regional Medical Center.
10. Copies of all investigative reports, documents, recordings, statements or other discoverable material relating to Cedric Levern Young being charged with the offense of discharging a firearm into a dwelling, arrest warrant number 2018A2120900053. →
11. Copy of the search warrant for the 2018 Red Dodge Challenger, VIN #2C3CD2BT2JH130957, drafted by Lt. Kathleen V. Street and executed by Cpl. Chase McDaniel, and any other documents related to said search of the vehicle.

Respectfully Submitted,

  
 Christie Henderson  
 Assistant Public Defender  
 180 N. Irby Street, MSC-N  
 Florence, SC 29501  
 (843) 665-3055

Date: April 12, 2021

FILED  
 2021 APR 12 12 31 11  
 DORIS PAULOS OTIARA  
 COOP. A. OS  
 FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA )  
 COUNTY OF FLORENCE )  
 State of South Carolina, )  
 )  
 v. )  
 )  
 Michael Christian Barclay, )  
 )  
 Defendant. )

IN THE COURT OF GENERAL SESSIONS  
 FOR THE TWELFTH JUDICIAL CIRCUIT  
 Warrant No.: 2018A2120900051  
 Indictment No.: 2019GS2100579

**NOTICE OF AND MOTIONS TO  
 CONTINUE AND RECONSIDER BOND**

JONES POLICE DEPARTMENT  
 OCP & CS  
 FLORENCE COUNTY, SC  
 2021 APR 29 10 11 AM  
 FILED

TO: EDGAR L. CLEMENTS, III, SOLICITOR:

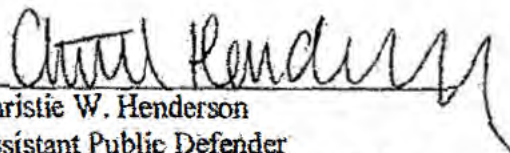
YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the above-named Defendant, Michael Christian Barclay, will move before the Court of General Sessions for the Twelfth Judicial Circuit for an Order for continuance and a reconsideration of bond on the charge of murder (2018A2120900051).

The Honorable D. Craig Brown previously set this case as a back-up trial for the week of May 24, 2021. Defense counsel subsequently learned of the existence of additional discoverable and potentially voluminous information and filed a supplemental motion for discovery on April 12, 2021; defense counsel is awaiting production by the prosecution of this requested information, which is material to the case and will require review and investigation. As such, pursuant to Rule 7 of the South Carolina Rules of Criminal Procedure, Defendant requests that his case be continued and struck from the May 24, 2021 trial list.

Furthermore, because Defendant has been detained without bond on the above-charge since August 31, 2018, was scheduled for trial, yet is awaiting discoverable information relevant and material to his defense, pursuant to section 17-15-55 of the South Carolina Code (2017), Defendant

respectfully requests that this Court reconsider setting a personal recognizance bond or surety bond in a reasonable amount.

Respectfully submitted,



Christie W. Henderson  
Assistant Public Defender  
12<sup>th</sup> Circuit Public Defender's Office  
180 N. Irby Street  
Florence, SC 29501  
(843) 665-3055  
Fax: (843) 665-4041

April 30, 2021  
Florence, SC

WITNESSES

Mark A Strickland Timmonsville Police Department

Thommas J Mcfadden Florence County Sheriff

E. J. Clements, III

ARREST WARRANT NUMBER

2018A2120900051 2018A2110200681  
2018A2110200680

ACTION OF GRAND JURY

TRUE BILL

*[Signature]*

Foreperson of Grand Jury  
Date: 4/4/2019

VERDICT

Foreperson of Petit Jury

Date

DOCKET NO. 2019-GS-21-00579

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

APRIL TERM 2019

THE STATE

vs.

MICHAEL CHRISTIAN BARCLAY

JIMMY LEE HAMPTON JR

DEMONTA KABORA HICKSON

Indictment for

MURDER

DEBRIS POULOS CHARRA  
CCCP & GS  
FLORENCE COUNTY, SC

2019 APR -4 PM 12:08

FILED

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF FLORENCE )

MURDER

At a Court of General Sessions, convened on APRIL 4, 2019 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- MURDER

That MICHAEL CHRISTIAN BARCLAY, JIMMY LEE HAMPTON, JR AND DEMONTA KABORA HICKSON did in Florence County, on or about August 25, 2018, willfully, feloniously, and intentionally kill the victim, [REDACTED] with malice aforethought, when they drove by [REDACTED] East Byrd Street in Timmonsville, South Carolina in Florence County searching for Cedric Young and opened fire on the house either express or implied, by means of shooting, and the victim did die as a proximate result thereof on or about August 25, 2018 in Florence County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III  
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Florence

STATE

INDICTMENT/CASE#: 2019-GS-21-00579

VS.

Michael Christian Barclay

AW#: 2018A2120900051

AKA: \_\_\_\_\_

Date of Offense: 8/25/2018

Race: Black Sex: M Age: 34

S.C. Code §: 16-03-0010; 16-03-0020

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

CDR Code #: 0116

Address: S Hill Rd

City, State, Zip: Timmonsville, SC 29161

DL#\* \_\_\_\_\_ SID# \_\_\_\_\_

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the above indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Murder / Murder

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

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  § 17-25-45  
(CSC w/minor 1<sup>st</sup> or CSC w/minor 3<sup>rd</sup>)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. \_\_\_\_\_ (def.'s Initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

[Signature] 15275  
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the  State Department of Correction  County Detention Center,

for a determinate term of Life days/months/years/Time Served  Youthful Offender Act not to exceed \_\_\_ years

and/or to pay a fine of \$\_\_\_\_; provided that upon the service of \_\_\_ days/months/years/Time Served and or payment of \$\_\_\_\_; plus costs and assessments as applicable; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC. 1030 days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

*DCB  
R-142*

STATE VS. Michael Christian Barday INDICTMENT/CASE# 2019-GS-21-00679

**SPECIAL CONDITIONS:**

- PTUP after \_\_\_\_\_ months/years
- And Other Terms Listed Below:**
- Substance Abuse Counseling       Completion of GED       Random Drug/Alcohol Testing
- Attend Voc. Rehab. Or Job Corp       No Contact with Victim       Domestic Violence Intervention Program
- Mental Health Counseling       May serve W/E beginning: \_\_\_\_\_
- Sex Offender Registry pursuant to S.C. Code § 23-3-430       Public Service Employment \_\_\_\_\_ days/hours
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Other: \_\_\_\_\_

- RESTITUTION:     Deferred     Def. Waives Hearing     Ordered

Total \$ \_\_\_\_\_ plus 20% fee: \_\_\_\_\_ \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_  Set by SCDPPPS

Recipient: \_\_\_\_\_

\*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____	Beginning	_____	\$ _____
§14-1-206 (Assessments 107.5%)				\$ _____
§14-1-211 (A)(1)(Conv. Surcharge)			\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)			\$100	\$ _____
§56-5-2995 (DUI Assessment)			\$12	\$ _____
§56-1-286 (DUI Breath Test)			\$25	\$ _____
§14-1-212 (Law Enforce. Funding)			\$26	\$ <u>75.00</u>
§14-1-213 (Drug Court Surcharge)			\$150	\$ _____
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)			\$41	\$ _____
§50-21-114 (BUI Breath Test Fee)			\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)			\$40/ea	\$ _____
3% to County (if paid in installments)			TBD	\$ <u>13.75</u>
<input type="checkbox"/> Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees			\$500	\$ _____
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund			TBD	\$ _____
			<b>TOTAL</b>	\$ <u>128.75</u>

Clerk of Court/Deputy Clerk: *M. K. Sullivan* Presiding Judge: *D. [Signature]*  
 Court Reporter: *V. [Signature]* Judge Code: *260*  
 Sentence Date: *8-26-21*

*DCB  
8-20-21*

## CERTIFICATE OF COUNSEL FOR APPELLANT

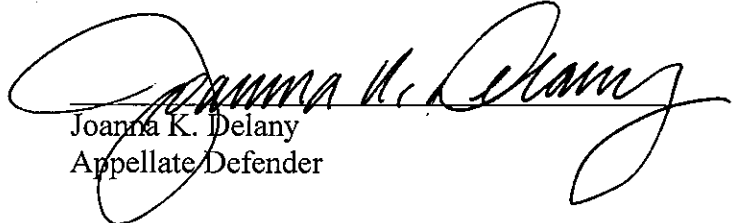
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

**RECEIVED**

**Apr 12 2023**

**SC Court of Appeals**



Joanna K. Delany  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 12th day of April, 2023.