

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

RECEIVED

Feb 05 2024

S.C. SUPREME COURT

LAWTON LEROY HOLLOWAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001372

APPENDIX

WANDA H. CARTER
Deputy Chief 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

JOSHUA A. EDWARDS
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
(803)734-2508

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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CLOSING ARGUMENTS

1 disproven self defense, they have not proven that this was
2 malice, and for those reasons you must find Mr. Holloway
3 not guilty of these charges.

4 MR. BULSA: Can she take this down?

5 (Break in proceedings.)

6 MR. BULSA: That's quite an explanation for 14 wounds
7 in the back and front. Jeremy was fixated on Lisa. Who
8 testified to that? Who came in this courtroom and
9 testified that Roy, who Lisa doesn't even call -- use that
10 name, she called him Lawton, who testified that Roy was
11 fixated on Lisa? Lisa just repeated what Roy told her.
12 Lisa didn't believe it. Listen to the call. She wasn't
13 afraid of him, he was a friend of hers. Jeremy worked with
14 her, he was a friend of hers. The defense wants you to
15 essentially ignore the defendant's statement because he'd
16 been drinking, he'd been up. Watch it. He knows what he's
17 talking about. He's trying to explain it away. He's
18 trying to justify what he did. Christina will tell you.
19 "She was scared of him, she got the hell out of there."
20 Christina wasn't scared of Jeremy. Please don't fall into
21 that trap, ladies and gentlemen. Please don't fall into
22 this trap. My God, if you're a man you stay there and you
23 protect your home, and you stay there and you wait for the
24 police and tell them what happened. If you're a man you're
25 going to tell them that my wife was getting raped. He

CLOSING ARGUMENTS

1 never did, never, never. What he told them was a bunch of
2 lies and we've refuted that. We have disproven
3 self-defense. We have disproven self-defense. This is
4 either murder or manslaughter. 14 stab wounds is either
5 malice or heat of passion because you think Jeremy may have
6 done something to enrage this man. Maybe it goes back to
7 the conversation at the creek, maybe it goes back to the
8 conversation at the house about Charlottesville. Those, I
9 submit to you, ladies and gentlemen, are your questions.
10 Jeremy was such a -- I mean, Roy -- they keep calling him
11 Roy but his name is Lawton to Lisa, they talk about what a
12 family man he was, how protective of his family he was, how
13 he loved his kids. Listen to this conversation -- or not a
14 conversation, this recitation to Andy Lawson. He only
15 names two children, and at one time he says he has just two
16 kids. He never talks about three kids. That's what kind
17 of family man he is. We don't have evidence to disprove
18 that he's a non-violent person when he's sober, but we
19 surely have evidence to prove that he's a violent person
20 when he is drunk, and that's what this is about. He was
21 out of work, depressed, irritable, unhappy with Jeremy,
22 calling him an a-hole, and he acted. Contrast their
23 attitudes. The only evidence of anybody being upset that
24 night was the defendant. The only evidence -- it all
25 comes -- he was the only one that was shown to have some

JURY CHARGE

1 sort of bad attitude. Jeremy was nice, Jeremy was kind,
2 Jeremy was a friend. "Jeremy didn't try to assault me.
3 Jeremy didn't try to make a pass at me." Jeremy walked her
4 out of the bar to her car. Jeremy went and brought his
5 drinks so they could share them. You can flip things all
6 kind of ways. They showed you the pictures of the bottles.
7 One of the bottles -- one of the Vodka bottles, the one
8 that was empty, was whose? It was their's. Jeremy just
9 brought another bottle in case they wanted more, he was
10 sharing, he was the good guy. Ladies and gentlemen, thank
11 you for your time and attention. The Judge is going to
12 charge you on the law at this time. He will charge you on
13 the burden of proof, the defendant went through all of
14 those steps -- we accept that responsibility. If you are
15 firmly convinced that this man killed Jeremy with malice
16 aforethought please convict him of murder. If you're
17 firmly convinced that he was acting upon sufficient legal
18 provocation in the heat of passion killed Jeremy Bell, find
19 him guilty of voluntary manslaughter. I submit to you the
20 State has disproven at least one of those elements of
21 self-defense, we don't have to disprove every single one
22 much them, the Judge will charge you those elements, that
23 there is no justification for what he did. Thank you.

24 THE COURT: Mr. Foreman and ladies and gentlemen of
25 the jury, you have seen and heard the evidence presented as

JURY CHARGE

1 well as the arguments of the lawyers and it is now my duty
2 and my obligation to instruct you on the law. It will then
3 be your duty and obligation to begin your deliberations
4 through which process you will decide the facts, apply the
5 law as I instruct it and render a fair and impartial
6 verdict. It is your exclusive duty to determine what the
7 facts are in this case, and you do that based on your
8 common sense evaluation and examination of the testimony
9 and the evidence received during this trial. You 12 alone
10 will decide what effect, value and weight is to be given to
11 testimony or evidence received. Quite simply, your
12 obligation as jurors is to give both the State and this
13 defendant a fair and impartial trial based on the evidence
14 presented and the law in this case. The indictment in this
15 case alleges two separate offenses against this defendant.
16 The first charge is murder, and the second charge is
17 possession of a knife or weapon during the commission of a
18 violent crime. Each charge is a separate and distinct
19 offense, and you must decide each charge separately on the
20 evidence and the law applicable to it uninfluenced by your
21 decision as to any other charge. You will be asked, Mr.
22 Foreman, to write a separate verdict of guilty or not
23 guilty for each charge. The indictment ending in 5437
24 charges the defendant with the offense of murder and
25 possession of a weapon during the commission of a violent

JURY CHARGE

1 crime. First the State alleges that the defendant did
2 commit murder in that Lawton Leroy Holloway did in
3 Spartanburg County, South Carolina, on or about
4 August 31st of 2017 feloniously, willfully and with malice
5 aforethought kill Jeremy Bell by stabbing him, and Mr. Bell
6 died as a proximate result thereof in violation of state
7 law. Secondly, the State alleges that the defendant,
8 Lawton Leroy Holloway, did in Spartanburg County, South
9 Carolina on or about August 31st of 2017 visibly display a
10 weapon during the commission of or attempted commission of
11 a violent crime in violation of state law. I remind you
12 that the fact that this defendant was arrested, charged and
13 indicted is not evidence, and cannot be considered by you
14 as evidence of guilt in this case, nor does it create a
15 presumption or an inference of guilt. The indictments are
16 simply the written instrument which contains the charges
17 made against him. It is the formal document which brings
18 him before the Court. This defendant has pled not guilty
19 to the indictment, and that plea puts the burden on the
20 State of South Carolina to prove his guilt beyond a
21 reasonable doubt. A person charged with committing a
22 criminal offense in this state is never required to prove
23 himself innocent. I charge you, it is a cardinal and vital
24 rule of law that in a criminal trial, no matter what the
25 seriousness of the charge may be for which he stands

JURY CHARGE

1 charged, the defendant is always presumed to be innocent of
2 the crime for which the indictment was issued unless guilt
3 has been proven by evidence satisfying you 12 of that guilt
4 beyond a reasonable doubt. The presumption of innocence
5 does not end when you begin your deliberations. It
6 accompanies this defendant throughout the trial until you
7 reach a verdict of guilt based on evidence satisfying you
8 of that guilt beyond a reasonable doubt. The presumption
9 of innocence has been described as a robe of innocence
10 placed about the shoulders of the defendant which remained
11 with him from the moment of his arrest and continues until
12 it has been stripped from his shoulders by evidence
13 satisfying you of his guilt beyond a reasonable doubt. The
14 presumption of innocence is not a mere legal theory, nor is
15 it a legal phrase, but it is a substantial right to which
16 every defendant is entitled unless you 12 are satisfied
17 from the evidence of his guilt beyond a reasonable doubt.
18 I remind you that during this trial you and I have several
19 duties to perform. As the trial judge it is my
20 responsibility to preside over the trial, and also I have
21 the duty to rule on the admissibility of evidence during
22 this trial. You are to consider the evidence before you.
23 If there were any testimony ordered stricken from the
24 record during the trial you must disregard it. You are to
25 consider only the testimony presented from the witness

JURY CHARGE

1 stand, the exhibits which have been made a part of the
2 record, and the stipulations of the lawyers. Additionally
3 I have the duty to charge you the law. As presiding judge
4 I am the sole judge of the law and it is your duty as
5 jurors to accept it and apply it as I now state it to you.
6 Ladies and gentlemen, I tell you that if you have any idea
7 as to what the law is or what it ought to be and what it
8 should be and it does not agree with what I now tell you
9 the law is, you must abandon your idea, because you have
10 sworn to accept the law and apply it as I now state it to
11 you. In every case tried in this courtroom before a jury,
12 you 12 become the sole and exclusive judge of the facts in
13 the case. A trial judge cannot make a comment or a
14 statement to a jury about a fact in the case. You 12 are
15 the sole judges of the facts in this case, and you are not
16 to infer from anything that I might have said during this
17 trial in ruling on admissibility of evidence or otherwise
18 that I have an opinion about a fact in this case, because
19 the law of this state does not allow a trial judge to have
20 an opinion about a fact in the case. Now, the State of
21 South Carolina has the burden of proving the defendant
22 guilty beyond a reasonable doubt. Proof beyond a
23 reasonable doubt is proof that leaves you firmly convinced
24 of his guilt. I tell you that there are very few things in
25 this world that we know with absolute certainty, and in

JURY CHARGE

1 criminal cases the law does not require proof that
2 overcomes every possible doubt. A reasonable doubt has
3 been described as the kind of doubt that would cause a
4 reasonable person to hesitate to act. If you have such a
5 doubt as to the guilt of this defendant, he is entitled to
6 a verdict of not guilty. Reasonable doubt may arise from
7 evidence in the case or from the absence or lack of
8 evidence in a case. Based on your consideration of the
9 evidence, if you are firmly convinced that he is guilty of
10 the crime charged you must find him guilty. But on the
11 other hand, if you think there is a real possibility he is
12 not guilty you must give the defendant the benefit of that
13 doubt and find him not guilty. You 12 alone must make the
14 determination of whether or not reasonable doubt exists as
15 to the guilt of this defendant. Now, ladies and gentlemen,
16 there are two types of evidence which are generally
17 presented in a trial, and they are known as direct evidence
18 and circumstantial evidence. Direct evidence is testimony
19 of a person who claims to have actual knowledge such as an
20 eye witness. It is evidence which immediately establishes
21 the main fact to be proven. Circumstantial evidence is
22 proof of a chain of facts and circumstances indicating the
23 existence of a fact. It is evidence which establishes
24 collateral facts. Circumstantial evidence is based on
25 inference and not personal knowledge or observation. The

JURY CHARGE

1 law of this state makes no distinction between the weight
2 or value to be given either direct or circumstantial
3 evidence, nor is a greater degree of certainty required of
4 circumstantial evidence. You 12 should weigh all of the
5 evidence, and after doing so if you are not convinced of
6 the guilt of this defendant beyond a reasonable doubt you
7 must say so and find him not guilty. Now, a statement
8 alleged to have been made by the defendant has been
9 admitted into evidence, and while this will Court has
10 determined that the statement is admissible, I instruct you
11 now that you 12 make the ultimate decision of whether or
12 not the defendant's statement -- whether or not he made the
13 statement. And if the defendant made the statement you
14 must determine whether the statement was made by him
15 voluntarily and of his own free will. This means that the
16 statement was not caused by pressure, force, fear, threats,
17 coercion or intimidation, or by hope of a promise of
18 leniency or a reward of any kind. In determining whether
19 the statement was voluntarily made you should consider both
20 the characteristics of the defendant and the details of any
21 question. Some of the factors to consider are age of the
22 defendant, the defendant's education or lack of education,
23 his mental ability or capacity, his IQ or intelligence, his
24 background and environment, the place and length of the
25 detention, the nature of the questioning. And the advice,

JURY CHARGE

1 or lack thereof, that he -- that the defendant had of his
2 constitutional rights including but not limited to the
3 right to remain silent, that any statement could be used
4 against him. And that he had a right to a lawyer, and that
5 if he could not afford a lawyer one would be pointed to
6 represent him without cost. And that he could also stop
7 making any statement at any time. You 12 must carefully
8 consider all of the surrounding circumstances before you
9 give any weight to an alleged statement. The State has the
10 burden of proving beyond a reasonable doubt that the
11 alleged statement was voluntarily made, and if you
12 determine it was you may give the statement further
13 consideration that you deem proper. You must decide what
14 weight you should give to the statement and you determine
15 the alleged -- if you determine the alleged statement was
16 not freely and voluntarily made you should not consider it
17 at all. Now, under the constitution of this state you 12
18 jurors are the finders of fact, and necessarily you must
19 determine the credibility of witnesses who have testified.
20 Credibility simply means believability. It is your duty as
21 jurors to analyze and evaluate the evidence and determine
22 what evidence -- which evidence is convincing to you. In
23 determining believability of witnesses who testified you
24 may believe one witness over several, you may believe
25 several over one. You may believe all of what a witness

JURY CHARGE

1 tells you, you may disregard all of what a witness tells
2 you. Whatever your good judgment and common sense tells
3 you is believable testimony is testimony you should accept
4 and reject testimony you find not to be credible. Now, an
5 accused when charged with a crime has the right to prove
6 his general good character. He may introduce evidence of
7 good character, which is inconsistent with a crime charged
8 against him. Evidence of general good character is for the
9 purpose of showing the improbability that the defendant
10 would have committed the crime charged. Good character of
11 the accused is like all other evidence and is entitled to
12 such effect and weight as you 12 may determine. Good
13 character evidence alone may create a reasonable doubt as
14 to the commission of the crime charged. Now, the rules of
15 evidence ordinarily do not permit witnesses to testify to a
16 opinion or conclusions, but an exception to this rule
17 exists for what we call an expert witness. A person -- a
18 witness, a person, who by education and experience has
19 become an expert in science, art, profession or calling may
20 state an opinion as to relevant and material matter in
21 which that witness claims to be an expert and they may give
22 reasons therefore. You should consider any expert
23 testimony received, and like all other evidence, give it
24 the weight you think it deserves. If you decide that the
25 opinion of the expect witness was not based on sufficient

JURY CHARGE

1 education or experience, or even I if you conclude that the
2 reasons given in support of the opinion are not sound, or
3 that the opinion is outweighed by other evidence, you may
4 disregard that opinion in its entirety. I tell you and
5 charge you that an expert witness' testimony is to be given
6 no greater weight than that of other witnesses simply
7 because that witness was qualified as an expert. Further
8 you are not required to accept an expert's opinion even if
9 it is not contradicted. Now, ladies and gentlemen, I
10 instruct you and I emphasize the fact that this defendant
11 did not testify is not a factor to be considered by you
12 during your deliberations and in your consideration of the
13 question of guilt or innocence of this defendant. It must
14 not be considered. A defendant has a constitutional right
15 to remain silent, and the assertion of his right must not
16 be considered in your deliberations. I repeat, you are to
17 draw no conclusion whatsoever from the fact that this
18 defendant did not testify and it should not be discussed in
19 the jury room. The defendant is not required to prove his
20 innocence. The burden of proof remains on the State to
21 prove guilt beyond a reasonable doubt. Now, criminal
22 intent is a necessary element of each crime that must be
23 proved by the State beyond a reasonable doubt. Criminal
24 intent is a matter that must be determined by you 12 from
25 the circumstances surrounding the situation. There is no

JURY CHARGE

1 way to prove to a mathematical certainty -- there is no way
2 that medical science can dissect a person's brain and
3 determine what he had in mind. So the law says that
4 criminal intent may be inferred from the circumstances
5 shown to have existed. It is a state of mind, which when
6 operated with an act is the commission of a crime. It is a
7 mental state, it is a conscious wrongdoing. So it is up to
8 you 12 to determine what the defendant intended to do based
9 on the circumstances shown. I tell you that the State must
10 prove criminal intent beyond a reasonable doubt just as it
11 must prove every element beyond a reasonable doubt. It is
12 not necessary to establish intent by direct and positive
13 evidence, it may be established in inference in the same
14 way as any other fact taking into consideration the acts of
15 the parties and the facts and circumstances. Now, the
16 State must prove intent. The State may prove motive, but
17 it is unnecessary for the State to do so, but they have to
18 prove intent. Now, there are four elements to
19 self-defense. First, the defendant must be without fault
20 in bringing on the difficulty. Secondly, the defendant
21 must have been in actual imminent danger of losing his life
22 or sustaining serious boldly injury, or he must have
23 actually believed he was in imminent danger of losing his
24 life or sustaining serious bodily injury. Third, if his
25 defense is based upon his belief of imminent danger and a

JURY CHARGE

1 reasonably prudent person of ordinary firmness and courage
2 would have entertained the same belief. If the defendant
3 actually was in imminent danger, then the circumstances
4 were such as would warrant a person of ordinary prudence,
5 firmness and courage to strike the fatal blow in order to
6 save himself from serious injury or losing his life. And
7 fourth, the defendant had no other probable means of
8 avoiding the danger of losing his own life, or sustaining
9 serious bodily injury than to act as he did in this case.
10 These are the elements of self-defense. A defendant in a
11 self defense case has the right to act on appearances. He
12 must have believed he was in imminent danger, not that he
13 was actually in such danger because he had the right to act
14 on appearances, and under the circumstances as they
15 appeared to him he believed he was in such danger and a
16 reasonable prudent man of ordinary firmness and courage
17 would have entertained the same belief. Words accompanied
18 by hostile acts may depend on the circumstances establish a
19 plea of self defense. If a defendant is justified in
20 striking the first blow, he is justified in continuing to
21 strike until it is apparent that the danger to his life and
22 body has ceased. Ordinarily a defendant is not justified
23 in employing a deadly weapon after the adversary has
24 disarmed or disabled. The law of self defense is based
25 upon the necessity to strike in order to save one's self or

JURY CHARGE

1 another from serious bodily harm or losing his own life.
2 The defendant is entitled to use the force reasonably
3 necessary to repel the assault. The test is whether the
4 defendant's force would be deemed necessary by a reasonable
5 person in a similar situation. The defendant is not
6 entitled to use more force than reasonably necessary.
7 There is no burden upon the defendant to prove self
8 defense. The defendant is not required to prove any
9 element of self defense. The burden is on the State to
10 disprove self-defense beyond a reasonable doubt. The
11 burden is on the State to disprove one or more elements of
12 self-defense, and if you have a reasonable doubt of the
13 defendant's guilt after considering all of the evidence,
14 including evidence of self defense, then you must find the
15 defendant not guilty. But on the other hand if you have no
16 reasonable doubt of the defendant's guilt after considering
17 all evidence, including evidence of self defense, then you
18 must find him guilty. Now, under the law of our state and
19 the law of self defense the defendant may take another's
20 life in the defense of others. The right to intervene to
21 protect another person is subject to the same rights and
22 limitations as the right of self defense. The defendant
23 may take the life of a person who assaults a friend,
24 relative, or bystander if the friend, relative or bystander
25 would have had the same right of self defense. Now, the

JURY CHARGE

1 defense of habitation is a defense of one's own dwelling.
2 If the defendant or a member of his family, his household,
3 is attacked in the defendant's own home, the defendant may
4 use the force which appears to be needed to protect himself
5 or his household member from death or serious bodily
6 injury. The defendant is entitled to use the force
7 reasonably necessary to repel the assault. The defendant
8 is not entitled to use more force than reasonably
9 necessary. When attacked in his own home the defendant may
10 justify or excuse the killing of his assailant if such act
11 is apparently necessary to save his own life or to protect
12 himself or a household member from great bodily harm. Now,
13 I charge you that voluntary intoxication is not an excuse
14 or a defense to a crime regardless of whether the crime is
15 one involving general or specific intent. A person who
16 voluntarily ingests alcohol and thereby becomes intoxicated
17 is no less responsible for the effect of his acts or words
18 while intoxicated. If one voluntarily drinks intoxicating
19 liquors, wines, or beer, or becomes intoxicated to whatever
20 degree, and while intoxicated commits an act which would be
21 a crime if it had been committed by a sober person, the
22 fact of intoxication would not relieve the intoxicated
23 person from responsibility. This defendant is charged with
24 murder. In order to prove the crime of murder, the State
25 must prove that the defendant killed another person with

JURY CHARGE

1 malice aforethought, expressed or implied. Malice is
2 hatred, it is ill-will, hostility towards another. It is
3 the intentional doing of a wrongful act without just cause
4 or excuse and with an intent to kill that the law would
5 infer an evil intent. Malice aforethought does not require
6 that malice exists for any particular time before the act
7 is committed, but it must exist in the mind of the
8 defendant just before and at the time the act is committed,
9 therefore there must be a combination of previous evil
10 intent and the act itself. Malice aforethought may be
11 expressed or inferred, and the terms expressed and infer do
12 not mean different kinds of malice, but merely that the
13 manner in which the malice may be shown to exist, that is
14 either by direct evidence or by inference from the facts
15 and circumstances which are proven. Expressed malice is
16 shown when a person speaks words which express hatred or
17 ill-will for another, or when the person prepared
18 beforehand to do an act which was later accomplished. For
19 example, lying in wait for a person or any other act of
20 preparation going to show that the deed was within the
21 defendant's mind, that would be expressed malice. It is
22 the wrongful intent to injure another and it indicates a
23 wicked or depraved spirit intent on doing wrong. It is the
24 doing of a wrongful act intentionally without just cause or
25 excuse. Intent means intending the result which actually

JURY CHARGE

1 occurs, not accidentally or involuntarily. Intent may be
2 shown by acts and conduct of the defendant and other
3 circumstances from which you may naturally and reasonably
4 infer intent. Evidence of character of act, the character
5 of the instrument used, the manner in which it was used,
6 the purpose to be accomplished and resulting wounds or
7 injuries may be considered in determining the intent with
8 which the act was committed. Now, if you find that the
9 State has failed to prove that this defendant is guilty of
10 the murder of Jeremy Bell you must find the defendant not
11 guilty -- if you find the State has failed to prove that
12 the defendant is guilty of the murder of Jeremy Bell you
13 must find him not guilty of the murder, and then you must
14 consider whether the State has proven the defendant is
15 guilty of voluntary manslaughter. To convict a person of
16 voluntary manslaughter the State must prove beyond a
17 reasonable doubt that this defendant unlawfully killed
18 another person; one, without malice and I previously
19 defined. Two, that while the defendant was in a state of
20 the sudden heat of passion, and three, which was caused by
21 a sufficient legal provocation. Both the state of heat of
22 passion and sufficient legal provocation must be present to
23 constitute voluntary manslaughter. Heat of passion is the
24 same as an uncontrolled impulse to do violence. The
25 provocation to trigger the heat of passion must have come

JURY CHARGE

1 from some act of the decedent. The provocation must be
2 enough to deprive one of self control. The provocation
3 must be severe enough to instantly produce such an extreme
4 degree of rage, sudden resettlement, or terror that a
5 reasonable person would be incapable of cool reflection.
6 Words alone, no matter how offensive, are not enough to
7 qualify as sufficient provocation. But words accompanied
8 by assault or an appearance of an assault by the decedent
9 may be sufficient to constitute provocation. If you
10 believe so in determining heat of passion existed, which
11 was caused by a sufficient legal provocation, the
12 surrounding circumstances of the defendant and the decedent
13 at the time of the killing must be taken into account.
14 Now, the defendant is charged with possession of a weapon
15 during the commission of a violent crime. And I tell you
16 and charge you that section 16-23-490 of our code of laws
17 in part says if a person visibly displays a knife during
18 the commission of a violent crime and is convicted of
19 committing a violent crime as defined by our code section
20 he is guilty of a separate crime. A knife is defined as an
21 instrument or tool consisting of a sharp cutting blade,
22 whether or not fastened to a handle, which is capable of
23 being used to inflict a cut, slash or wound. Our code of
24 laws provide that murder and voluntary manslaughter are a
25 violent crime. For you to find the defendant guilty of the

JURY CHARGE

1 separate offense of possession of a knife during the
2 commission of a violent crime you must first find the
3 defendant guilty of either committing a violent crime,
4 attempting to commit a violent crime, in this case murder
5 or voluntary manslaughter. If you find the defendant
6 guilty of murder or voluntary manslaughter you must then
7 determine whether the State has proved beyond a reasonable
8 doubt that the defendant visibly displayed a knife during
9 the commission of a violent crime. Mr. Foreman and ladies
10 and gentlemen, you 12 have been selected as fair and
11 impartial jurors sworn to impartially try and determine the
12 facts in this case, and you are to decide this case
13 according to the evidence that you have received. Now,
14 ladies and gentlemen, your verdict must be unanimous. Mr.
15 Foreman, when the jury agrees on the verdict you will
16 indicate the verdict in the space provided on the verdict
17 form I'm going to explain to you, sign your name as the
18 foreman, knock on the door of the jury room and we will
19 return the jury to the courtroom to accept your verdict.
20 Now, during your deliberations, Mr. Foreman, ladies and
21 gentlemen, you may only discuss this case in the jury room
22 while all 12 of you are together. Mr. Foreman, if a member
23 of the panel needs to refresh themselves in the restroom,
24 do whatever, then the deliberations must cease at that
25 time. All 12 must be together during the deliberations.

JURY CHARGE

1 Now, Mr. Foreman, this is the verdict form that is coming
2 back to you. My law clerk creates this in every case that
3 we try. It has the caption of the case, it has a number up
4 here that merely tells us that it goes with this indictment
5 and no other, that's all it is, okay? And here it is. It
6 says, question number one, we the jury unanimously -- do
7 you understand that your verdict must be unanimous -- we
8 the jury unanimously find the defendant, Lawton Leroy
9 Holloway, on the charge of murder not guilty or guilty. I
10 tell you that there is no significance to whether or not
11 guilty is first on the piece of paper or guilty is second,
12 they have to go in some order. I put them in this order in
13 every case I try, okay? And the choices are not guilty or
14 guilty. And then it says if you answered not guilty to
15 question one, answer question two, which is going to be
16 manslaughter. If you answer guilty to question one do not
17 answer question two. Manslaughter. And if you answered
18 guilty go to question three. Question two is, we, the
19 jury, unanimously find the defendant, Lawton Leroy Holloway
20 on the charge of voluntary manslaughter not guilty or
21 guilty. So again, if it's guilty on number one do not
22 answer question two. If it's not guilty on one, go to
23 question two. And it says, if you answered not guilty to
24 question two stop here. Sign your name, knock on the door.
25 But if you answer either question one or two guilty, you

JURY CHARGE

1 then must go to question three, because question three is
2 about the weapon, we, the jury, unanimously find the
3 defendant on the charge of possession of a weapon during
4 the commission of a violent crime, not guilty or guilty,
5 okay? Mr. Foreman, we're getting ready to send all 13
6 jurors out. When all -- hang on one second. When all 13
7 go out and go to the jury room, do not begin your
8 deliberations. There are lots of evidence up here, quite a
9 bit, probably close to a hundred pieces, 70 something, 80
10 anyway, close to 100. I have practiced law many years in
11 this courthouse and other courthouses before coming up here
12 on this bench and I tell you that it is so very easy to be
13 talking to a jury in a closing statement and have a piece
14 of evidence in my hand and I don't mean to do it and I
15 would walk back to the counsel table and sit down and I
16 would still have it there and I don't know that I have it,
17 and then the jury is missing a piece of evidence. All of
18 this belongs to you. I'm going to ask the lawyers -- as
19 soon as you leave, I'm going to ask the lawyers to come
20 forward with Madam Court Reporter because she has a list,
21 she's put these stickers on it, she knows what's in
22 evidence. I keep up with it to but they're going to get
23 with her. It will take them a few minutes here. They're
24 going to go through every single piece and make sure
25 nothing is missing. It is so easy to just not mean to do

JURY CHARGE

1 it as a lawyer, but you walk back to that table and just
2 lay it down and it is laying over there. Once they've
3 confirmed that it's all here, the bailiff is going to bring
4 the evidence to you, the bailiff is going to bring the
5 evidence to you along with this form. When the bailiff
6 brings that evidence to you along with this form, madam
7 alternate, he will retrieve you. You are not allowed to be
8 in there during deliberations. So when he comes and brings
9 this, Mr. Foreman, he is going to retrieve my alternate,
10 he'll have a place for you, segregate you and then that
11 will be your signal to begin your deliberations. I got one
12 question I want to ask of the lawyers. Let me see the
13 lawyers.

14 (Bench conference held off the record in the presence
15 Of the jury but out of the hearing of the jury.)

16 THE COURT: Discussing with the lawyers the item that
17 has been marked as a knife. On a firearm and ammunition I
18 will send one or the other back. We don't have a firearm
19 in this case. Just by representation, I would send the
20 ammunition back for your examination and if you wanted the
21 firearm or when you want it I would then send or retrieve
22 the ammunition and I would send the firearm, I would not
23 have them in the same room, I obviously can't do that with
24 a knife. So here is what I'm going to do, I'm going to
25 retain the knife in the courtroom. When the jury wants to

JURY CHARGE

1 see that knife, when the jury -- if you want to see that
2 knife, I'll talk to the lawyers some more about it, we'll
3 either do -- probably this, I will probably bring the jury
4 back in the courtroom, don't do any discussion in here, but
5 we'll pass it around so everyone can see it and then leave
6 it here and then you can return and begin your discussion.
7 Don't do any discussion if we do that. It's just a safety
8 issue about putting a weapon outside of the Court's
9 control, okay? I'll talk some more about the lawyers about
10 that, but you will not have that piece of evidence when it
11 first comes back there. When you get ready for that, if
12 you want it, let me know and I'll make some arrangements
13 for you to view that, okay? All right. Mr. Foreman, if
14 you will take all 13 out.

15 (The jury left the courtroom.)

16 THE COURT: Matters from the State?

17 MR. BULSA: No, Your Honor.

18 THE COURT: From the defense?

19 JAMES H. PRICE, III: Yes, sir. As I stated to the
20 Court yesterday in the charging conference, my client
21 instructed me that he did not want the charge of
22 manslaughter given to the jury. We made his wishes known
23 to the Court and we except to the manslaughter charge.

24 THE COURT: Yes, sir.

25 JAMES H. PRICE, III: Not as written but given to the

JURY VERDICT

1 jury.

2 THE COURT: From the solicitor? Anything?

3 MR. BULSA: No, sir.

4 THE COURT: Okay. Well, your exception is noted.

5 This Court understands it has a duty to charge the law of
6 the state, I believed that manslaughter is a proper charge.
7 It is noted that you objected to that yesterday, in fact,
8 he was -- he being the defendant, was under oath and we
9 had -- you actually put him up on the record to that
10 effect, and the Court is mindful of that, but nevertheless
11 that's the decision of the Court. Anything further?

12 MR. BULSA: No, sir.

13 (Evidence was submitted to the jury at 12:06 p.m. for
14 Deliberations.)

15 (A recess was taken.)

16 THE COURT: Everybody ready?

17 MR. BULSA: Yes, sir.

18 THE COURT: I'm told we have a verdict. Mr. Bailiff?

19 THE BAILIFF: Yes, sir.

20 (The jury returned to the courtroom.)

21 THE COURT: Mr. Foreman, has the jury reached its
22 verdict?

23 THE FOREMAN: Yes, sir, Your Honor, we have.

24 THE COURT: If you would please hand that to the
25 bailiff. The clerk will publish.

JURY VERDICT

1 THE CLERK: State of South Carolina, County of
2 Spartanburg. State of South Carolina versus Lawton Leroy
3 Holloway, indictment number 2017-GS-42-5436, we, the jury,
4 unanimously find the defendant, Lawton Leroy Holloway, on
5 the charge of murder, not guilty. We, the jury,
6 unanimously find the defendant, Lawton Leroy Holloway, on
7 the charge of voluntary manslaughter, guilty. We, the
8 jury, unanimously find the defendant, Lawton Leroy
9 Holloway, on the charge of possession of a weapon during
10 the commission of a violent crime, guilty. Signed today's
11 date, March 15th of 2019 by the foreperson, Lo Chong.
12 Ladies and gentlemen of the jury, is this your verdict and
13 still your verdict? If so, please raise your right hand.
14 So say you all.

15 THE COURT: Polling from the State?

16 MR. BULSA: No, sir.

17 THE COURT: From the defense?

18 JAMES H. PRICE, III: We wish to have the jury polled,
19 Your Honor.

20 MR. BULSA: May we approach before we do that?

21 THE COURT: Sure.

22 (Bench conference held off the record in the presence
23 Of the jury but out of the hearing of the jury.)

24 THE COURT: Madam Clerk, we will poll but we will poll
25 by number, by juror number, not name.

JURY VERDICT

1 THE CLERK: Okay. Ladies and gentlemen of the jury, I
2 will be asking you a question and that question is is this
3 your verdict and still your verdict. When I call your
4 juror number please answer yes or no. Juror No. 96?

5 THE JUROR: Yes.

6 THE CLERK: Juror number 161?

7 THE JUROR: Yes.

8 THE CLERK: Juror number 111?

9 THE JUROR: Yes.

10 THE CLERK: Juror number 190?

11 THE JUROR: Yes.

12 THE CLERK: Juror number 37?

13 THE JUROR: Yes.

14 THE CLERK: Juror number 198?

15 THE JUROR: Yes.

16 THE CLERK: Juror number 83?

17 THE JUROR: Yes.

18 THE CLERK: Juror No. 121?

19 THE JUROR: Yes.

20 THE CLERK: Juror number 116?

21 THE JUROR: Yes.

22 THE CLERK: Juror number 151?

23 THE JUROR: Yes.

24 THE CLERK: Juror number 31?

25 THE JUROR: Yes.

JURY VERDICT

1 THE CLERK: Juror number 119?

2 THE JUROR: Yes.

3 THE CLERK: So say you all. The jury has been polled.

4 THE COURT: Other matters from the defense at this
5 time?

6 JAMES H. PRICE, III: No, Your Honor.

7 THE COURT: Okay. Mr. Foreman, if you would kindly
8 come forward to Madam Clerk, you have to sign the
9 indictment.

10 (Break in proceedings.)

11 (The jury was excused.)

12 THE COURT: Do we have some matters from the State or
13 the defense?

14 MR. BULSA: None from the State.

15 JAMES H. PRICE, III: Yes, Your Honor. The defendant
16 would -- excuse me, Mr. Holloway, has several motions.
17 Number one would be a motion for a new trial based on the
18 insufficiency of the evidence to support a finding of guilt
19 on a manslaughter plea. And number two -- manslaughter
20 conviction, I'm sorry. Number two would be for a new trial
21 based on the Court's denial of the motions that we made as
22 far as a directed verdict at the close of the entire case
23 for the same reasons cited at those times. Does the Court
24 need me to go through all of those or am I protected on the
25 record?

JURY VERDICT

1 THE COURT: No, you're protected, I'll address it.

2 JAMES H. PRICE, III: Okay. And we would ask also for
3 a new trial being that prior to submitting the case to the
4 jury we specifically asked the Court not to submit the
5 charge of manslaughter. We wanted it all or nothing to on
6 the murder charge. We feel that there was not -- or Mr.
7 Holloway feels that there was not sufficient evidence of
8 manslaughter to submit that to the jury, so we would ask
9 for a new trial on that ground. I'm sorry, I'm tired.

10 THE COURT: Solicitor?

11 MR. BULSA: Your Honor made all of the appropriate
12 rulings and we stand by those rulings.

13 THE COURT: Thank you. The motion for a new trial for
14 insufficiency of the evidence for the jury -- to support
15 the jury's verdict is denied. There is sufficient evidence
16 in the record, the record is replete with evidence. It was
17 a hard fought case by both sides and well done by both
18 sides. Also the denial of the previous motion that you
19 raised on directed verdict at both the close of the State's
20 case and you renewed at the close of the case, you're
21 protected on those, Mr. Price. We went through those in
22 great detail. For the same reasons heretofore enunciated,
23 I'm not going to go back through them, but for the same
24 reasons they are denied. And as to the charge on
25 manslaughter, the defense did object to that, but that --

JURY VERDICT

1 the Court determined that that issue was before the Court
2 and the law necessitated that the Court charge manslaughter
3 along with the murder as a lesser-included offense. You
4 are protected on that. Anything further?

5 JAMES H. PRICE, III: No, sir.

6 THE COURT: Okay. Go to sentencing.

7 MR. BULSA: Do you want us to come around?

8 THE COURT: Yes, sir?

9 MR. BULSA: The weapon is actually five.

10 THE COURT: Right.

11 MR. BULSA: Your Honor, the defendant's criminal
12 history is a driving under the influence in 1992. Driving
13 under the influence in 1997. Fraudulent check in 2000.
14 Driving under the influence of 2011. Driving under the
15 influence in 2014. Your Honor, I'm told the victim's
16 family does not wish to speak at this time.

17 THE COURT: Mr. Price, or Ms. Price?

18 JAMES H. PRICE, III: I think I'm going to try to cure
19 the water at this point, although either one of them can
20 chime in at anytime, Your Honor. We were hired by Mr.
21 Holloway's family shortly after this happened. As we got
22 to know him and as we got to know the family we were
23 impressed by everything that we saw, everything that we
24 learned. You heard a lot of good things about Lawton
25 Holloway during this trial, character witnesses, his

JURY VERDICT

1 fiance. You had the opportunity of observing Mr. Holloway
2 on the stand when he testified on the immunity hearing.
3 Lawton Holloway is -- he stands convicted of manslaughter
4 today, but he is a good man. Something happened that
5 night, and there's no doubt in my mind that Lawton Holloway
6 believes what he said happened. I wasn't there. He has
7 been consistent from the get-go about that, and I can find
8 no reason whatsoever for there to be any other reasonable
9 explanation. You heard from character witnesses. From the
10 time this thing started I had been approached by probably a
11 couple dozen people all were shocked at hearing about Mr.
12 Holloway because of his reputation for non-violence, his
13 reputation for non-confrontation. All of those things were
14 true. Mr. Holloway has at all times been consistent in
15 expressing his desire for vindication, that he did not with
16 malice or any other reason other than protecting his
17 family, kill Jeremy Bell. He wanted his day in court.
18 You're aware that he turned down a manslaughter plea
19 ranging from ten to 15 years, not with any bad attitude or
20 anything, he simply wanted to assert his right to a jury
21 trial, which I'm sure that this Court will not hold against
22 him. It was, as you say, a hard fought trial but it was a
23 fair trial. I would ask the Court for leniency. I would
24 ask the Court for murder -- I mean, for mercy. I would ask
25 the Court to take into account his lack of a prior record

SENTENCING

1 as far as anything violent is concerned. He's getting
2 ready to hit 50 years, Your Honor, if anything violent in
3 his nature had occurred it would have happened long before
4 now. I think that's about all I've got to say.

5 THE COURT: Mr. Holloway, would you like to speak,
6 sir?

7 THE DEFENDANT: Yes, sir. I hate that Mr. Bell died
8 that night. I thought we were going to be friends. Hell,
9 we were drinking. He was going to rape and kill my family
10 and there was nothing I could do. I couldn't -- I couldn't
11 let him do it. He told me he was going to rape my
12 daughter. I couldn't let him do it. I didn't know that I
13 had to know all of this stuff before I protected my family.
14 I don't know what I would have done but I didn't have a
15 choice. I didn't think they would send me to prison for
16 protecting my family and my house. Yeah, I was drunk and I
17 couldn't remember -- I was scared when I got back. I was
18 terrified. I didn't know what to think. I couldn't think
19 straight. I mean, he came at me, like he wouldn't stop, he
20 wouldn't leave. I had asked him to leave and then he tells
21 me he's going to rape my 14 years old daughter. I didn't
22 know what to do. If I had ran he would have killed them,
23 and now I'm here. I just didn't think I would be going to
24 prison for protecting my family. That's the truth, Your
25 Honor.

SENTENCING

1 THE COURT: Yes, sir. Your lawyer is right, this
2 Court will never punish anyone for going to trial, but I
3 will say that the range that was offered was the State's,
4 not -- the Court is not involved in that. 2017-5436, on
5 the manslaughter, sir, you're confined to the department of
6 corrections for a period of 20 years, concurrent credit for
7 time. 2017-5436A, that's the weapon, five years in the
8 department of corrections, concurrent, credit for time. If
9 somebody will give me the days I will be happy to put that
10 on the face.

11 JAMES H. PRICE, III: He's been in prison continuously
12 since August 31st of 2017, I can't tell you what the days
13 are.

14 THE COURT: I'll leave it laying over here, if y'all
15 want to figure that up I will write them on the sentencing
16 sheet before you leave. Good luck to you, sir.

17 (End of trial proceedings.)

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1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had (as
6 reported by Linda Moffitt and edited by Michael C.
7 Watkins) and evidence introduced in the trial of the
8 captioned case relative to appeal in the Court of
9 General Sessions for Spartanburg County, South
10 Carolina, on the 11th-15th days of March, 2019.
11 I do further certify that I am neither of kin, counsel,
12 nor interest to any party hereto.

13

14

July 1, 2019

15

16

17


Michael C. Watkins

18

Court Reporter

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAWTON LEROY HOLLOWAY,

APPELLANT

APPELLATE CASE NO 2019-000477

FINAL BRIEF OF APPELLANT

TAYLOR D. GILLIAM
Appellate Defender

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

ATTORNEY FOR APPELLANT

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II.

The trial court erred in failing to suppress Appellant’s statement to law enforcement, where Appellant requested counsel after being advised of his Miranda rights, where law enforcement placed Appellant in an interview room after he invoked his right, where officers continued recording Appellant’s statements, and where Appellant’s statements made while he was in custody should have been suppressed 18

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court erred in denying Appellant immunity from prosecution, where he was attacked in his own home by a man who was threatening to inflict harm on Appellant and his family, where Appellant was in reasonable fear of his life, and where Appellant was therefore justified in using deadly force to defend himself?

II. Whether the trial court erred in failing to suppress Appellant's statement to law enforcement, where Appellant requested counsel after being advised of his Miranda rights, where law enforcement placed Appellant in an interview room after he invoked his right, where officers continued recording Appellant's statements, and where Appellant's statements made while he was in custody should have been suppressed?

STATEMENT OF THE CASE

On October 27, 2017, a Spartanburg County grand jury indicted Appellant for murder and possession of a weapon during a violent crime. R. 535. Appellant proceeded to a five-day trial before the Honorable R. Keith Kelly and a jury on March 11, 2019. R. 21. Appellant was represented by James “Chip” Price III, James Price IV, and E. Powers Price. Derrick Balsa, Lindsey Overby, and Russell Ghent appeared on behalf of the state.

The jury found Appellant not guilty on the murder charge, guilty of voluntary manslaughter, and guilty of the possession of a weapon during the commission of a violent crime. R. 527, ll. 1 – 10. Judge Kelly sentenced Appellant to twenty years’ incarceration on the manslaughter charge and five years on the weapons charge, concurrent. R. 534, ll. 1 – 10.

This appeal follows.

ARGUMENT

I. The trial court erred in denying Appellant immunity from prosecution, where he was attacked in his own home by a man who was threatening to inflict harm on Appellant and his family, where Appellant was in reasonable fear of his life, and where Appellant was therefore justified in using deadly force to defend himself.

Standard of review

A defendant's entitlement to immunity from prosecution under the Protection of Persons and Property Act must be decided pretrial using a preponderance of the evidence standard. State v. Duncan, 392 S.C. 404, 410-11, 709 S.E.2d 662, 665 (2011). Appellate courts review an immunity determination for abuse of discretion. State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). A trial court abuses its discretion when its ruling is based on an error of law, or when grounded in factual conclusions, is without evidentiary support. State v. Jones, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016).

Relevant facts

Appellant Lawton Holloway defended himself and his family against a trespasser in his home on August 31, 2017. A pre-trial motion asserting statutory immunity under the Protection of Persons and Property Act was filed on March 11, 2019. R. 1. At trial, Appellant moved for immunity and testified accordingly. R. 69, l. 25 – R. 124, l. 4. The trial court also heard testimony from two additional witnesses, Kristen Malpass and Andrew Lawson, officers with the Spartanburg County Sheriff's office. Immunity from prosecution was denied. R. 148, l. 3 – R. 153, l. 15.

The day before Jeremy Bell attacked Appellant, Appellant celebrated his son's eighteenth birthday. R. 70, ll. 8 – 25. Appellant lived with Lisa Wood, the boy's mother; they had been together for over ten years. Id. Appellant left the house around 10:00 a.m. to run errands. R. 71, l. 24 – R. 72, ll. 16. After he finished, he stopped by a restaurant called Kalahari's. R. 72, l. 21 – R. 73, l. 13. Wood and Appellant knew the owners of the restaurant and liked to play pool there. Id. While at Kalahari's, Appellant had a drink and spoke with the bartender, Christina. Id. Appellant mentioned that Wood was cooking a meal for their son's birthday, and Appellant offered to bring Christina some food later that day. Id.

After the dinner birthday celebration, Appellant asked a friend to stop by the house to inspect the floor for damage. R. 73, l. 14 – R. 74, l. 20. Appellant and his friend walked down a hill in his backyard and had a drink near the creek which ran through the yard. Id. Wood and some of the neighbors later joined Appellant; everyone socialized for an hour until it started raining. R. 74, ll. 13 – 20. Wood wanted to go to Kalahari's, so she and Appellant left their home around 10:00 p.m. and rode in Appellant's truck to the restaurant. R. 75, ll. 5 – 12.

At Kalahari's, Appellant saw Jeremy Bell, a coworker of Wood's. R. 75, l. 17 – R. 76, l. 15. Appellant stayed at the restaurant for a few hours. When it closed, the bartender Christina and Jeremy were invited back to Appellant and Wood's house. R. 76, l. 16 – R. 77, l. 22. Appellant and Lisa rode in his truck; Jeremy and Christina were in their own respective cars. Id. The group stopped at a convenience store and purchase beer and cigarettes. Bell drove to his own house, not far from Appellant's, and picked up liquor. Id. Appellant recalled arriving back at his own house around 2:30 a.m. on August 31, 2017. R. 77, ll. 16 – 17.

Wood warmed up dinner for Christina. After she finished eating, everyone walked down to the creek and made a campfire. R. 78, ll. 4 – 12. Appellant and Bell were both drinking. R.

81, ll. 10 – 11. Around 3:00 a.m., Christina left to go home. R. 79, l. 18 – R. 80, l. 12. Appellant walked up the hill to the driveway with her. Id. Bell then came inside to update an app on the television that allowed Wood to watch movies. R. 81, l. 18 – R. 83, l. 14. After Bell updated the software, Appellant, Wood, and Bell socialized. R. 83, l. 19 – R. 84, l. 21.

Wood became tired, laid down on the sofa with a blanket, and fell asleep. Id. Appellant and Bell continued talking. While discussing recent events in Charlottesville, Bell became belligerent so Appellant asked him to leave. R. 83, l. 14 – R. 86, l. 22. Bell became aggressive and got in Appellant’s face. Appellant then bagged up Bell’s liquor and insisted that he leave. R. 87, l. 12 – R. 88, l. 13. Bell apologized and the two men walked outside together. Bell got in his car and started it up. Id.

Appellant walked back down the hill to ensure that the fire had been extinguished. Id. When he walked back up to the house and entered through the back door, he realized he had not locked the front door. While walking to the front of the house to lock the door, he saw a figure in the living room straddling Wood. R. 88, l. 14 – R. 89, l. 20. Appellant approached the sofa, realized it was Bell, and noticed his hands around Wood’s neck. R. 89, ll. 11 – 25. Wood would later testify that she is a deep sleeper and “the house could burn down around [her] and [she] wouldn’t know it.” R. 292, ll. 15 – 24.

Appellant asked Bell what he was doing, and in response Bell indicated that he was going to sexually assault and kill Wood. R. 90, ll. 1 – 23. Bell also threatened to do the same to Appellant’s fourteen year-old daughter. Id. Appellant unsuccessfully attempted to wake Wood up. Appellant was concerned that she may be dead and understandably noted that he was scared and unsure what to do. Appellant described Bell’s demeanor as being “in a zone” and said “[i]t was like he didn’t recognize me.” R. 110, ll. 22 – 24.

The house did not contain any guns, save a pellet rifle used for snakes. R. 91, l. 2 – R. 92, l. 6. Appellant did not approach Bell out of fear that he may have retrieved a gun from his car. R. 92, l. 7 – R. 93, l. 15. Appellant ran into the kitchen and grabbed a knife. He was unable to locate a cell phone, and his home did not have a land line. Appellant credibly testified “[a]t that point the only thing I could see was life and death.” R. 93, ll. 11 – 13.

When Appellant got back into the living room, Bell rushed Appellant while informing him that he was going to kill Appellant. R. 93, ll. 16 – 25. Appellant described Bell as weighing 70 pounds more than him. The lights were off during the entire encounter. R. 95, ll. 4 – 5. In self-defense, Appellant stabbed Bell with the knife; R. 115, ll. 1 – 15.

Appellant then ran to Wood and discovered that she was not moving. R. 95, ll. 6 – 23. She woke up after he shook her, and Appellant told her to call the police. Id. Appellant told her “he tried to rape you.” Id. Appellant, frightened, located his truck keys and very slowly drove away from his home. R. 95, l. 24 – R. 96, l. 23. After only driving for half of a mile, he realized that he had not checked on the children in the home, and he turned around. Id. When he arrived back at the house, the police were there.

Kristen Malpass testified that she received the 911 call around 6:02 a.m. on August 31, 2017. R. 125, ll. 6 – 21. She was the first police officer to arrive at Appellant’s home; the fire department and EMS had already arrived by the time she got there. R. 125, l. 22 – R. 126, l. 3. It took her approximately fifteen minutes to arrive after receiving the call. R. 131, ll. 6 – 15.

She found Bell’s body. R. 126, ll. 19 – 24. Malpass claimed there was no evidence of a struggle outside of where Bell’s body was located. R. 129, ll. 12 – 19. She confirmed that Appellant told Wood that Bell was trying to sexually assault her. R. 131, ll. 1 – 5.

Andrew Lawson, an officer with the Spartanburg sheriff's department, drove to Appellant's home but did not go inside the residence. R. 135, ll. 6 – 14. He met with Appellant at the police station. R. 132, ll. 16 – 24. Lawson confirmed Appellant's testimony, including the threats to Wood and imminent attack from Bell. R. 135, l. 18 – R. 136, l. 10. Lawson attended the autopsy and recalled approximately fourteen stab wounds—located in the front, back, side, and neck/shoulder area—were noted. R. 133, ll. 17 – 23.

After the trial court heard testimony from those three witnesses, Appellant argued that his conduct was covered under the statute such that he was immune from prosecution. R. 138, l. 16 – R. 139, l. 10. The state's argument in response was twofold: that the facts did not allow for immunity and that the Act was unconstitutional. R. 139, l. 17 – R. 145, l. 17.

The trial judge denied the request for immunity. R. 148, l. 3 – R. 153, l. 15. He found that “the defendant's version of the event is not credible because it is not consistent with the other physical evidence in the case.” R. 148, ll. 19 – 22. This determination was based partially on the placement of the furniture, allegedly preventing Bell and Appellant from scuffling or running. R. 149, ll. 9 – 11. Additionally, the trial judge expressed doubt about Appellant's timeline and suggested that it would not have taken him fifteen minutes to drive one mile, round trip. R. 149, l. 11 – R. 150, l. 15. For those reasons and more, the trial judge did not find Appellant's testimony “reasonable and plausible” and denied immunity. R. 153, ll. 7 – 15.

Discussion

In 2006, the South Carolina General Assembly promulgated the Protection of Persons and Property Act to provide immunity from prosecution to persons acting in defense of themselves or others if they are found to be justified in using deadly force. S.C. Code Ann. § 16-

11-450; State v. Curry, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013). The Act codified the common law Castle Doctrine and extended its reach. S.C. Code Ann. § 16-11-420(A) (“It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business”).

“Under the Castle Doctrine, ‘[o]ne attacked, without fault on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense.’ ” State v. Jones, 416 S.C. 283, 291, 786 S.E.2d 132, 136 (citing State v. Gordon, 128 S.C. 422, 425, 122 S.E. 501, 502 (1924)). The Legislature adopted the Act based on its finding that “no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.” S.C. Code Ann. § 16-11-420(E).

Specifically, the immunity section of the Act provides:

A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

S.C. Code Ann. § 16-11-450(A) (2015). “[A]nother applicable provision of law” includes the common law of self-defense. State v. Scott, 424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018). See also Jones, 416 S.C. at 300 n.8, 786 S.E.2d at 141 n.8. This means a defendant may seek immunity from prosecution under the Act by “demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence.” Curry, 406 S.C. at 372, 752 S.E.2d at 267.

During the immunity hearing, a defendant must set out “a valid case of self-defense,” excluding the duty to retreat prong, “and the trial court must necessarily consider the elements of self-defense in determining a defendant’s entitlement to the Act’s immunity.” Id. at 371, 752 S.E.2d at 266. For immunity claims under this theory, “a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity.” Id. at 371, 752 S.E.2d at 266. Accordingly, a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence. If the defendant has failed to meet the elements of reasonable fear or the duty to retreat, the court should then determine whether section 16-11-440(A) or (C) is applicable.

There are four elements a defendant must establish to justify the use of deadly force under the common law of self-defense:

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). See also Curry, 406 S.C. at 371 n. 4, 752 S.E.2d at 266 n. 4 (citing State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)).

Section 16-11-440(A) may, under appropriate facts, replace the reasonable fear element of self-defense by providing a presumption that the person's fear was reasonable under certain circumstances. The presumption of subsection (A) does not apply, however, “if the victim has an equal right to be in the dwelling or residence.” Jones, 416 S.C. at 292, 786 S.E.2d at 137 (citing Curry, 406 S.C. at 370, 752 S.E.2d at 266).

Additionally, the Act contemplates immunity when a person acts in defense of another. “Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults a friend, relative, or bystander if that friend, relative, or bystander would likewise have the right to take the life of the assailant in self-defense.” State v. Long, 325 S.C. 59, 64, 480 S.E.2d 62, 64 (1997); see also Douglas v. State, 332 S.C. 67, 73, 504 S.E.2d 307, 310 (1998). When a person acts in defense of another, the person “is in the same situation and upon the same plane as those who act in defense of themselves.” State v. Hewitt, 205 S.C. 207, 207, 31 S.E.2d 257, 258 (1944). Only those facts “which excuse the killing in defense of self likewise excuse a killing in defense of [another].” Id.; see also, State v. Harvey, 110 S.C. 274, 96 S.E. 399, 400 (1918) (noting that “[w]hile a man may take life in defense of himself or another, yet the slayer, or the person in whose behalf the slayer strikes, must not only be without fault in provoking the difficulty, but there must be a necessity to kill”); State v. Norris, 253 S.C. 31, 38, 168 S.E.2d 564, 567 (1969) (holding “[t]he right of the father to defend his daughter is coextensive with the right of the daughter to defend herself”).

The right of one to justify a slaying on the ground that it was necessary in defense of another person stands upon the same plane or footing as, and is coextensive with, the right of the person to whose aid he or she goes, under the existing circumstances of the particular occasion; or as is sometimes stated, the right to justify killing in defense of another depends upon the same conditions as would be necessary to excuse such other person under the plea of self-defense.

40 Am.Jr.2d Homicide § 168 (2014). In other words, “[t]he right is commensurate with self-defense, and every fact requisite to excuse a killing in the defense of self must be present in order to excuse a killing in defense of another.” Id.

In State v. Sales, 285 S.C. 113, 328 S.E.2d 619 (1985), the South Carolina Supreme Court examined the defense of others instruction as it applied to the defendant in a criminal case. Sales’ sister and her boyfriend were fighting in their shared home over the boyfriend’s use of grocery money to buy liquor. The boyfriend hit the sister in the face with an iron poker. Sales’ nieces ran to his home and begged him to help his sister. Sales found his sister at her home holding her face. When his sister and boyfriend began to struggle over a heavy object, Sales separated the two. The boyfriend then swung the heavy object at Sales. A fight between Sales and the boyfriend ensued. The boyfriend died. The Court held the trial judge properly instructed the jury that, “under the law of self-defense, a person may not only take the life in his own defense but also in defense of a relative,” and “that the right to intervene to protect the relative is subject to the same limitations as the right of self-defense.” However, the judge instructed the jury on the duty to retreat, which the Court found to be in error. Instead, Sales had no duty to retreat because sister had no duty to retreat from her home and Sales assumed the rights and limitations of the person he acted to protect. Id. at 114-15, 328 S.E.2d at 619-620.

To effectuate its intent, the General Assembly created a statute providing for immunity from prosecution to “[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law.” S.C. Code Ann. § 16-11-450(A). One provision provides that:

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

S.C. Code Ann. § 16-11-450(A).¹ The presumption does not apply if the person “against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder.” S.C. Code Ann. § 16-11-440(B)(1).

In short, of the elements of self-defense and defense of others, a person entitled to immunity pursuant to section 16-11-440(A) need only prove by a preponderance of the evidence that he did not bring on the difficulty.²

¹ This provision of the Act mirrors the common law defense of habitation. “For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejection were reasonable under the circumstances.” State v. Rye, 375 S.C. 119, 124, 651 S.E.2d 321, 323 (2007). “Stated differently, unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger [of] sustaining serious injury or damage.” Id. “Instead, the defense of habitation provides that where one attempts to force himself into another’s dwelling, the law permits an owner to use reasonable force to expel the trespasser.” Id.

² “One attacked, without fault on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which is ordinarily an essential element of that defense.” State v. Gordon, 128 S.C. 422, 425, 122 S.E. 501, 502 (1924).

The South Carolina Supreme Court noted that a person who is a social guest has a right to be in the dwelling. State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). In that case, the deceased had been invited into the apartment of Curry’s mother. Id. at 368, 752 S.E.2d at 265. There was no indication that anyone requested the deceased leave. Id.

Unlike Curry, the decedent in the matter at bar had left Appellant’s home; the invitation had expired, and he was no longer allowed in the house. The undisputed testimony from Appellant was that Bell had overstayed his welcome and been ushered out the door to his car. Appellant testified that Bell got into his car and started it. Because he believed Bell to be driving away from his house and off the premises, Appellant went back down to the creek to extinguish the fire. Thus, Bell was no longer an invited guest on the property. When he returned, he was a trespasser. Alternatively, if he had never driven away, his continued presence on Appellant’s property was unlawful. See S.C. Code Ann. § 16-11-620 (stating that “any person who, having entered into the dwelling house ... without having been warned fails and refuses, without good cause or good excuse to leave immediately upon being ordered or requested to do so by the person in possession” commits a criminal offense); Wright v. United Parcel Service, Inc., 315 S.C. 521, 523, 445 S.E.2d 657, 659 (Ct. App. 1994) (stating that “[a]lthough the entry by a person on the premises of another may initially be lawful, the person became a trespasser when the person fails to depart after being asked by the owner to leave”); State v. Starnes, 213 S.C. 304, 312, 49 S.E.2d 209, 212 (1948) (explaining that “[i]f an intruder refuses to leave the dwelling house at the request of the householder, the latter may use the necessary force to eject him, and if in the effort to eject him, the life or safety of the householder or a member of the household is jeopardized, he may kill in self-defense”).

Here, Appellant used deadly force against the deceased and he is entitled to immunity pursuant to section 16-11-450(A) for the use of such force. According to the record evidence, the decedent was not lawfully in the residence. Wood never suggested that she extended an invitation that Bell stay; she was asleep at the time he left. Having satisfied the statutory requirements, Appellant was entitled to a presumption of reasonable fear of imminent peril or death or great bodily injury to himself or another person. Therefore, it was only necessary that Appellant show he was not at fault at bringing on the difficulty.

Also under the “another applicable provision of law” language of S.C. Code Ann. § 16-11-450(A), Appellant was entitled to the defense of habitation. The defense of habitation provides that defending one’s home or premises means ending an unwarranted intrusion through the use of reasonably necessary means of ejection. State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007). “One defending himself from imminent attack on his own premises is entitled to a charge of defense of habitation.” State v. Lee, 293 S.C. 536, 537, 362 S.E.2d 24, 25 (1987). “For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejection were reasonable under the circumstances.” Rye, 375 S.C. at 124, 651 S.E.2d at 323. Unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he or his property was in imminent danger of sustaining serious injury or damage. Id. Rather, the defense of habitation provides “where one attempts to force himself into another’s dwelling, the law permits an owner to use reasonable force to expel the trespasser.” Id. “The defense of habitation is analogous to self-defense and should be charged when the defendant presents evidence that he was ‘defending himself from imminent attack on his own premises.’ ” State v. Sullivan, 345 S.C. 169, 173, 547 S.E.2d 183, 185 (2001)

(quoting Lee, 293 S.C. at 537, 362 S.E.2d at 25). Although self-defense and habitation are analogous, the defenses are not identical. Rye, 375 S.C. at 124, 651 S.E.2d at 323.

When one becomes a trespasser, the law permits the owner of the home to employ such force, even to the taking of the life of the trespasser, as may be reasonably necessary to accomplish the expulsion. State v. Sparks, 179 S.C. 135, 137, 183 S.E. 719, 720 (1936).

A man who attempts to force himself into another's dwelling, or who, being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion.

State v. Bradley, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923). In State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (Ct. App. 2010), this Court held the defendant was entitled to a jury instruction on the defense of habitation.

It is undisputed that Appellant defended himself in his home. Law enforcement found the decedent's body inside Appellant's home. Based on Appellant's testimony, Bell was there unlawfully and had trespassed. Appellant was without fault in bringing about the difficulty; he defended himself from imminent attack on his own premises and was entitled to the defense of habitation.

The evidence presented to the trial judge demonstrated that Appellant was in actual fear of great bodily injury or losing his life or believed he was. During the hearing, Appellant testified that he stumbled upon Bell straddling Wood with his hands around her neck. Appellant was unsure whether Bell had armed himself with a weapon from his car. Understanding an impending sexual assault or worse about to occur, Appellant attempted to save Wood and his children from attack. After arming himself, Appellant was rushed by Bell. Thus, he was in actual fear of great bodily injury or losing his life while being rushed by a man larger than himself. Therefore, Appellant's

assertion that “the only thing [he] could see was life and death” was reasonable under the circumstances, including the explicit threat to kill Appellant, Wood, and their daughter. R. 93, ll. 11 – 13.

Appellant was also within his statutory right to use deadly force under S.C. Code Ann. § 16-11-440(C). There were no allegations of illegal activity in this case, unlike State v. Glenn, Op. No. 27935 (S.C. Sup. Ct. filed December 18, 2019) (Shearouse Adv. Sh. No. 49 at 25). Appellant was in his own home, somewhere he had a right to be, and had no duty to retreat. Further, he stood his ground when Bell attacked him and met force with force, as he reasonably believed it was necessary to prevent the commission of violent crime, namely the assault and subsequent killing of members of his family.

Appellant was attacked in his home, a place he had a right to be. Bell ran towards him while stating that he was going to kill Appellant. This occurred after Bell threatened to sexually assault and kill Wood. The actions and threatening words of Bell communicated his aggressiveness and intent to harm Appellant and his family.

Appellant reasonably believed deadly force was necessary to prevent the commission of a violent crime. Bell had previously left the house, gotten into his car, and cranked it. He was no longer subject to the prior invitation which allowed him to be a guest on Appellant’s property. Therefore, when he reentered the home, it was illegally. As such, Appellant was understandably startled and confused as to why Bell was in his home and on top of Wood. Coupled with Bell’s unambiguous threatening words and actions, Appellant was justified in responding with deadly force.

Appellant knew Bell had been in the military. R. 92, ll. 7 – 21. Together with Bell’s size and weight advantage, Appellant was concerned that Bell could kill him and then follow through

with his threats. Additionally, Bell had been to his car before illegally reentering Appellant's home and could have armed himself with a weapon in order to pursue his violent intentions.

In finding that Appellant was not in fear of imminent death or peril, the trial judge ascribed an erroneous standard to Appellant's son who had just turned eighteen years old and was on the autism spectrum:

And it's also notable that although he is an autistic child, the 18 [year] old, the young man who turned 18, it was noted several times by the defendant he is a very large fellow himself, physically large and there's no reason this Court would believe that if he heard his mom scream in the house that he would not come to her aid. So this Court finds that the second element to believe that reasonably he was in fear of imminent death or peril, that he fails that burden of proof.

R. 152, ll. 11 – 19. This reasoning fails to account for the possibility of a sound machine that many individuals with autism use to help sleep at night. An artificial sound machine could have prevented any noises from being heard by Appellant's son. Further, the above reasoning assumes that an eighteen year old with autism would act in accordance with typical standards rather than the generally muted fear response that accompanies individual who have been diagnosed with autism. Autism is a developmental disorder that affects a child's ability to communicate, use imagination, and establish relationships with others. See Amanda J. ex rel. Annette J. v. Clark County Sch. Dist., 267 F.3d 877, 883 (9th Cir.2001). Children with autism generally have significant deficits in language development, behavior, and social interaction. One of the primary ways that children learn is through imitation of the actions and sounds that they see and hear. Autistic children, however, generally have a greatly reduced ability to imitate. Cty. Sch. Bd. of Henrico Cty., Virginia v. Z.P. ex rel. R.P., 399 F.3d 298, 300 (4th Cir. 2005). People with autism are very sensitive to sounds; even if Appellant's son heard screams or other sounds, it likely would have scared him, thus causing him to hide, retreat, or place his hands over his ears. See Sumter Cty. Sch. Dist. 17 v. Heffernan ex rel. TH, 642 F.3d

478, 481 (4th Cir. 2011) (child “falls on the moderate-to-severe end of the autism spectrum. He is functionally non-verbal, in that he does not often use language spontaneously, and he is very sensitive to noise.”).

Additionally, the trial court stated, “it’s just curious to this Court as to why any man would not attempt to free Lisa from a choking before taking time to arm one’s self.” R. 153, ll. 7 – 9. Such a ruling holds Appellant to an arbitrary standard not rooted in South Carolina law. Considering the early morning hour, Bell’s intoxication, and the unknown status of whether Bell was armed, Appellant was allowed to arm himself. During the pre-trial hearing, Appellant established all of the elements necessary to prove immunity. Thus, Appellant was entitled to immunity under the Act. The trial judge erred in finding otherwise.

II. The trial court erred in failing to suppress Appellant’s statement to law enforcement, where Appellant requested counsel after being advised of his Miranda rights, where law enforcement placed Appellant in an interview room after he invoked his right, where officers continued recording Appellant’s statements, and where Appellant’s statements made while he was in custody should have been suppressed.

Standard of review

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The admission or exclusion of evidence rests in the sound discretion of the trial judge, and will not be reversed on appeal absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002) “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” State v. Jennings, 394 S.C. 473, 477–78,

716 S.E.2d 91, 93 (2011) (quoting Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)).

Relevant facts

A Jackson v. Denno³ hearing was held in Appellant’s case; the trial court heard testimony from Andrew Lawson. R. 52, l. 21 – R. 67, l. 16. He testified about his recollections from August 31, 2017. When he arrived at Appellant’s home, Appellant was in the custody of a different officer. R. 53, ll. 1 – 6. Lawson spoke with another officer who requested that he interview Appellant. Appellant was transported to the sheriff’s office and placed in an interview room which was equipped with video and audio recording capabilities. R. 53, ll. 16 – 24.

Lawson plainly admitted “the purpose of putting [Appellant] in that room was to get an interview from him.” R. 53, l. 25 – R. 54, l. 2. He claimed not to have been aware that Appellant had invoked his right to counsel at this point. R. 54, ll. 3 – 5. Supposedly after discovering this, Lawson informed Appellant that law enforcement was in the process of getting a search warrant to collect evidence from him. R. 54, ll. 12 – 15. Appellant had not been arrested at this point. R. 54, ll. 16 – 18. Lawson indicated that Appellant was held at the sheriff’s office for at least two hours, most of which was recorded and preserved for use at trial. R. 58, ll. 7 – 10.

During the pre-trial hearing, the state relied on a recorded “interaction” with Appellant that Lawson declined to refer to as an interview. (State’s Exhibit 4: Video). While in custody, Appellant complained that the handcuffs were too tight; an officer repositioned them in front of him. The officer can be seen in the video interacting with Appellant. The officer indicated that Appellant had been telling him “a bunch” and “some stuff about what’s been going on.” (Video

³ 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964)

9:10 – 9:30). The officer excused himself and left Appellant in the room with Lawson. Lawson informed Appellant that he “just want to get your side of it.” (9:45 – 10:00).

Immediately thereafter, Lawson stepped out of the room. Upon reentering, he advised Appellant that he was informed that Appellant had invoked his right to counsel at his house. (10:55 – 11:10). Lawson informed Appellant that he was in investigative detention and began asking Appellant for his name and identification. Mark Gaddy, another investigator, then walked into the room and stated:

We were informed that you invoked your right to an attorney at the scene. Now ... that’s fine; that doesn’t mean we can’t talk to you. But you need to understand that you invoked your right to an attorney at the scene. So at this point right here, are you wanting to go further and talk to us?

(12:15 – 13:00). Gaddy repeatedly pressed Appellant on whether he would speak with law enforcement. (13:00 – 16:00). Gaddy told Appellant he could either waive his right or Gaddy and Lawson would leave the room. (16:00 – 16:30). In response, Appellant again requested an attorney. (16:30 – 16:45). Both officers then left Appellant in the room alone. While alone in the room, Appellant seemingly fell asleep. (26:00). After waiting alone for over twenty minutes, Appellant went in search of the restroom and asked about using the telephone to call his mother. (39:00 – 41:00).

Law enforcement then began photographing Appellant. (48:30 – 50:00). Appellant inquired if this was going to occur without his attorney. Appellant then spoke about the events leading up to the stabbing with Lawson. (51:50 – 57:10). Another officer then attached ankle cuffs to Appellant’s legs. Appellant was later told he needed to prove his innocence. R. 63, l. 24 – R. 64, l. 13. None of the officers ever advised Appellant when he would receive the attorney he requested. His repeated requests for an attorney notwithstanding, an officer swabbed Appellant for DNA after allegedly obtaining a warrant. Again, Appellant inquired if the buccal

swab was going to occur without an attorney. No testimony was elicited from the officers suggesting any of the officers forwarded Appellant's request for an attorney.

After the Denno hearing, the trial judge ruled on the voluntariness of Appellant's statement. R. 153, l. 15 – R. 156, l. 15. Curiously, the trial judge distinguished Appellant's pre-trial testimony from his statements in the video:

He's Mirandized and in investigative detention, but before he's Mirandized he's really sort of Mirandized informally is what we talked about, but he certainly was formally Mirandized and in investigative detention, but he continues to talk. He repeats phrases that the dude is crazy, hurt, high, family, killed my kids. But he never says - - and I listened carefully last night as I was going through this because I knew it would be one of the issues, he never says that the dude attempted to rape Lisa, my wife, my girlfriend or fiancé.

R. 154, ll. 4 – 13. Appellant's statements, made after he repeatedly invoked his right to counsel, were used to cast doubt upon his testimony pre-trial. The statements prejudiced him, especially in the immunity hearing. The trial judge seemingly found Appellant not credible based upon minor discrepancies in his testimony. Appellant repeatedly stated that he protected himself and indicated that the decedent was going to kill him and his family at his house.

Discussion

The Fifth Amendment's privilege against self-incrimination provides an individual who has been accused of a crime the right to consult with an attorney and to have an attorney present during custodial interrogation. Miranda v. Arizona, 384 U.S. 436, 478–79, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). The Court went on to say that “[o]nce warnings have been given, the subsequent procedure is clear ... [i]f the individual states that he wants an attorney, the interrogation must cease until an attorney is present.” Id. In addition, police are restricted from initiating contact with a suspect when that contact is the “functional equivalent” of an interrogation. Rhode Island v. Innis, 446 U.S. 291, 301, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980).

The “functional equivalent” of an interrogation is “any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from a suspect.” Id. Once an accused has invoked his right to have an attorney present during custodial interrogation, he may not be subjected to further police interrogation “unless the accused himself initiates further communications, exchanges, or conversations with the police.” Edwards v. Arizona, 451 U.S. 477, 484–85, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981).

In Edwards, the accused was arrested on several charges, and given his Miranda rights at the police station. Edwards acknowledged that he understood his rights, and agreed to be questioned. The accused stated that “he wanted to make a deal,” but the interrogating officer advised him that he did not have the authority to make a deal and would need to talk to the county attorney. The accused called the attorney, but changed his mind, and hung up requesting an attorney of his own. The questioning terminated; the accused was returned to jail. Subsequently, two other detectives visited the accused. The accused was told that he had to talk to the detectives. He did, and confessed.

The United States Supreme Court established a bright line test for determining whether the right to counsel, once invoked, had been waived:

When an accused has invoked his right to have counsel present during a custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police initiated custodial interrogation, even if he had been advised of that right.

451 U.S. at 485, 101 S.Ct. at 1885. The Court further tempered its bright line ruling with the following exception:

“An accused ... having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has

been made available to him, unless the accused himself initiates further communication, exchanges or conversations with the police.”

451 U.S. at 485, 101 S.Ct. at 1885.

In Oregon v. Bradshaw, 462 U.S. 1039, 103 S.Ct. 2830, 77 L.Ed.2d 405 (1983), the United States Supreme Court considered what constituted initiation under the Edwards rule. The four justice plurality concluded in Bradshaw that “inquiries or statements ... relating to routine incidents of the custodial relationship would not suffice but that questions which evinced a willingness and a desire for a generalized discussion about the investigation would.” 462 U.S. at 1047, 103 S.Ct. at 2836.

The United States Supreme Court has stressed “the Edwards rule is not a constitutional mandate, but judicially prescribed prophylaxis.” Maryland v. Shatzer, 559 U.S. 98, 130 S.Ct. 1213, 1220, 175 L.Ed.2d 1045 (2010). As such, it is “justified only by reference to its prophylactic purpose.” Id. (quoting Davis v. United States, 512 U.S. 452, 458, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994)). According to the Court, the purpose behind the Edwards rule is “to prevent police from badgering a defendant into waiving his previously asserted Miranda rights.” Michigan v. Harvey, 494 U.S. 344, 350, 110 S.Ct. 1176, 108 L.Ed.2d 293 (1990). Stated differently, “[t]he rule ensures that any statement made in subsequent interrogation is not the result of coercive pressures.” Minnick v. Mississippi, 498 U.S. 146, 151, 111 S.Ct. 486, 112 L.Ed.2d 489 (1990).

When analyzing a criminal defendant's invocation of her right to counsel, a trial court must make two separate inquiries:

First, courts must determine whether the accused actually invoked his right to counsel. Second, if the accused invoked his right to counsel, courts may admit his responses to further questioning only on finding that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked.

Smith v. Illinois, 469 U.S. 91, 95, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984) (per curiam) (internal citations omitted).

In its ruling concerning Appellant's statements, the trial court failed to make findings in two regards. R. 154, l. 15 – R. 156, l. 15. There was no outright determination whether Appellant actually invoked his right to counsel. Secondly, the trial court never found that Appellant knowingly and intelligently waived the right he had invoked. As such, the court erred in allowing the statements to be used at trial.

The actions of Gaddy, Lawson, and the other officers constituted badgering and coercive pressure. Members of law enforcement repeatedly attempted to speak with Appellant who presumably had been awake all night. Further, he had been drinking. Lawson recognized Appellant's intoxication. R. 135, l. 18 – R. 136, l. 10. Nonetheless, officers repeatedly suggested he should prove his innocence. Multiple officers came and went while Appellant was in "investigative detention" during business hours on a Thursday morning when counsel could have more expeditiously been appointed. The state trampled on Appellant's right to have counsel appointed and continued to badger, invite commentary, and put pressure on Appellant without affording him his right to counsel which had been repeatedly invoked.

CONCLUSION

Regarding Issue I, Appellant respectfully requests this Court reverse the circuit court and hold he is entitled to immunity from prosecution pursuant to the Protection of Persons and Property Act. In the alternative, regarding Issue II, Appellant respectfully requests this Court reverse his conviction for voluntary manslaughter and remand for a new trial.

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of April, 2020.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 20014, order from the South Carolina Supreme Court entitled “Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.”

April 23, 2020

s/Taylor D. Gilliam

Taylor D. Gilliam

Appellate Defender

S.C. Commission on Indigent Defense

Division of Appellate Defense

1330 Lady Street, Suite 401

Post Office Box 11589

Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAWTON LEROY HOLLOWAY,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Final Brief of Appellant has been served upon opposing counsel this 23rd day of April by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS).

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2019-000477

THE STATE,

Respondent,

v.

LAWTON LEROY HOLLOWAY,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

180 Magnolia St.
Spartanburg, SC 29306
(864) 596-2386

ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE ISSUES

I.

The Protection of Persons and Property Act provides immunity from prosecution to murder defendants who prove to the court by a preponderance of evidence that they acted in self-defense. Holloway's motion for immunity was supported by dubious testimony inconsistent with physical evidence. Does evidence support the trial court's denial of immunity?

II.

Law enforcement officers may not coerce a confession. Holloway's rambling, drunken statements to police in the hours after the crime were volunteered without police interrogation. Does evidence support the trial court's finding that Holloway's statements to police were voluntary?

STATEMENT OF THE CASE

A Spartanburg County grand jury indicted Lawton Holloway for the murder of Jeremy Bell and for Possession of a Weapon during the Commission of a Violent Crime (PWDCVC). On March 11–15, 2019, Holloway proceeded to jury trial before the Honorable R. Keith Kelly. He was convicted of voluntary manslaughter and PWDCVC and sentenced to concurrent terms of twenty and five years' incarceration. This direct appeal follows.

STATEMENT OF FACTS

Appellant Lawton Holloway killed Jeremy Bell by stabbing him 14 times with a kitchen knife. The stabbing occurred at Holloway's girlfriend's home in the early morning hours of August 31, 2017. (R.p.181). Except for Holloway, there were no witnesses to the stabbing. Holloway sought immunity under the Protection of Persons and Property Act.¹

At a pretrial hearing, Holloway testified he and Bell were friends, and that Bell came over after drinking with Holloway and his girlfriend, Lisa Wood, at a local bar. (R.p.74-76). The three of them, along with another friend, continued drinking and socializing late into the night. According to Holloway, he and Bell had a contentious conversation about the respective merits of Apple and PC computers. (R.p.79). Holloway testified Bell eventually left the home and Holloway went to the back yard to put out a bonfire. Holloway claimed that when he came back inside, he saw Bell straddling Wood on the living room couch with his hands around her neck. Holloway claimed Bell looked at him and said: "I'm going to kill Lisa, I'm going to rape her, then I'm going to rape your daughter . . . I'm going to kill your entire family." (R.p.90). Holloway testified he retrieved a knife from the kitchen and returned to find Bell with his hands still around Wood's throat. Holloway claimed he screamed at Wood to wake up, but Bell charged at him. Holloway claimed Bell was "coming off of Lisa and he's running at me telling me he's going to kill her," and threatened to kill him as well. (R.p.93-94). Holloway admitted to stabbing Bell to

¹ S.C. Code Ann. § 16-11-410 et al.

death, but he gave no details explaining how the struggle transpired. According to Holloway, Wood somehow did not wake up through this entire event. Holloway admitted he then fled the home in his truck because he was “scared.” (R.p.96).

Holloway returned roughly a half hour later. An officer observed him standing silently near the front of the home. He was visibly intoxicated and appeared to have blood on his shoes. The officer sensed something was amiss with Holloway and asked more specifically about his connection to the home. Holloway told police he was there to check on his family and began to volunteer his version of events. It became clear he was admitting to stabbing Bell. Officers detained Holloway while they began to investigate the scene. Holloway continued to drunkenly volunteer information to police, but the officers did not interrogate him. Holloway’s statements were captured on police body camera videos. (State’s Exhibit Nos. 1 and 2). The Court viewed the videos during the pretrial hearing. (R.49).

To rebut Holloway’s version of events, the State presented the testimony of the first responding police officer. He testified he found Bell dead, “slumped up against the wall with blood all over the front of his body.” (R.p.126). There were 14 stab wounds in the front and back of his body. (R.p.133). A kitchen knife was on the floor near Bell’s body. (R.p.129). While Holloway told officers Bell had “chased him around the house like it was a TV show,” there were no signs of a struggle. (R.p.129–33). Wood denied that Bell attacked her. (R.p.130).

The trial court denied the motion for immunity. The court found “the defendant’s version of the event is not credible because it is not consistent with the

other physical evidence in the case.” (R.p.148). The trial court thoroughly announced his reasoning, recounting the facts presented at the hearing and essentially concluded he did not believe Holloway’s story. (R.p.148–50).

The Court also denied Holloway’s motion to suppress the statements he made to officers at the police station, finding they were voluntary. Officers brought Holloway to the police station and he was placed in an interview room. He continued to drunkenly volunteer information to the officer who brought him there while the officer listened without asking questions. A separate investigator entered the room to speak with Holloway and started to read Holloway his Miranda rights. (State’s Exhibit No. 4 at 9:30). Before he could ask any questions, another officer pulled him aside and advised him Holloway had invoked his right to counsel at the scene. The investigator then informed Holloway he would not ask him any questions about what happened, but wanted to take down his name and basic identifying information. (State’s Exhibit No. 4 at 10:55). Holloway continued to ramble. Another investigator came in and explained to Holloway that they could not speak with him any further unless he affirmatively waived his right to counsel and asked to speak further. Holloway continued to ramble and volunteer information, ignoring the officer’s advice. The officers repeatedly told him they could not continue speaking with him without a clear statement that he wanted to waive his right to counsel. Holloway continued to deflect the questions, give equivocal answers, and ask the officers questions of his own. Holloway finally

decided he wanted an attorney, and the officers immediately left the room. (State's Exhibit No. 4 at 16:30).

The court found the officers did not interrogate Holloway. He noted that Holloway "had the right to remain silent but he did not possess the ability to remain silent." (R.p.156). He accordingly denied the motion to exclude the video and the case proceeded to jury trial.

The State presented more comprehensive physical evidence at trial. A forensic pathologist testified that Bell had no defensive wounds. (R.p.372). He gave an opinion that the six wounds to Bell's back were inflicted before the wounds to his front, and that the eight wounds to the front of his torso and neck were likely inflicted after he had fallen down. (R.p.375).

Lisa Wood testified and confirmed she fell asleep on the couch in the living room, but she did not "pass out" from drinking. (R.p.272). She denied Bell attacked her. (R.p.282). She awoke and saw Holloway standing by the couch, noticed blood on the wall, and observed Bell slumped over making a "gurgling" sound. (R.p.274–76). She asked Holloway, "what did you do?" (R.p.276). Holloway responded by claiming that Bell was "going to rape" her. (R.p.276). Wood backed away from Holloway and told him to stay away from her. She called 911. (R.p.277).

The State also called Christina Cormican, the fourth person present at the home that night. Cormican was the bartender who served Holloway, Wood, and Bell earlier in the evening. She testified Holloway seemed "agitated" at the bar. (R.p.337). Contrary to Holloway's claims, she denied Bell ever acted in a

threatening manner, or that she feared him. (R.p.336). On the contrary, Bell was cordial, and even walked her to her car when they left the bar. (R.p.331). She denied hearing any arguments at Woods's house, but did hear Holloway refer to Bell as an "asshole." (R.p.334–35).

Holloway did not testify at trial.

ARGUMENT

I. Evidence supports the trial court's finding that Holloway failed to show he acted in self-defense.

Holloway claims the trial court abused his discretion by denying his motion for immunity. His argument fails because evidence supports the trial court's ruling. This Court should affirm.

A. Standard of Review

The appellate court reviews an immunity determination for abuse of discretion. A circuit court abuses its discretion when its ruling is based on an error of law, or when grounded in factual conclusions, is without evidentiary support. State v. Cervantes-Pavon, 426 S.C. 442, 449, 827 S.E.2d 564, 567 (2019), reh'g denied, (May 30, 2019).

B. Discussion

To be entitled to immunity from prosecution under the Protection of Persons and Property Act, a defendant bears the burden of proving by the preponderance of the evidence that he acted in self-defense. State v. Duncan, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011). When the killing occurs on his own premises, the defendant must show 1) he was without fault in bringing on the difficulty; 2) he reasonably believed he was in imminent danger of losing his life or sustaining serious bodily injury, or 3) he actually was in such imminent danger, and the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. State v. Curry, 406 S.C. 364, 371, 752 S.E.2d 263, 266 n.4 (2013).

Evidence supports the trial court's factual finding that Holloway failed to prove he acted in self-defense. The physical evidence alone (which Holloway ignores in his brief) disproves self-defense. There was evidence that:

- Bell was stabbed 14 times, including 6 times in the back. (R.p.363).
- The stab wounds to Bell's back were inflicted before the wounds to his front. (R.p.375).
- The wounds to his front were likely inflicted after he had fallen down. (R.p.365–66).
- Bell had no defensive wounds. (R.p.372).
- Holloway was uninjured. (R.p.350).
- There were no signs of a struggle. (R.p.279–80).
- Bell was unarmed.

Bell was over six feet tall and 278 pounds. It is simply unbelievable that Bell charged and attacked Holloway and received six wounds to his back and no defensive wounds, while Holloway was completely uninjured. Rather, the evidence (particularly the testimony of the pathologist) suggests Holloway stabbed Bell in the back when he wasn't looking, and finished the job by stabbing him in the chest and neck after he fell down. (R.p.365–75). Bell's body was found by the front door, not near the kitchen where it would have been had he charged at Holloway, who came from the kitchen with a knife. The trial court correctly noted "the defendant's version of the event is not credible because it is not consistent with the other physical evidence in the case." (R.p.148). The physical evidence alone supports the trial court's ruling.

The rest of the testimony further supports the trial court's ruling. Wood denied being attacked by Bell. She testified she did not feel anyone touching or trying to assault her. (R.p.278). Holloway's ridiculous story—that Wood slept through being straddled and choked by 300-pound Bell while he threatened to kill her entire family—is beyond belief. Both the court and jury rightly rejected it.

Every witness except Holloway denied Bell acted in an aggressive manner at any time that evening. (R.p.282, 334). On the other hand, Wood testified Holloway was distraught about losing his job a week before the killing. (R.p.305). Christina Cormican testified Holloway seemed “agitated” that night. (R.p.337). Holloway showed a consciousness of guilt when he fled the home after the stabbing. Nothing supports Holloway's version of events except his self-serving testimony.

Holloway claims it is “undisputed that [he] defended himself in his home.” Brief of Appellant at 15. Nothing could be further from the truth. Of course, the State could not offer its own eyewitness account of the stabbing because Holloway killed the only other witness. But the trial court is not required “to accept the accused's version of the underlying facts.” State v. Curry, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013). The trial court rejected Holloway's version of events.

Holloway's argument on appeal depends entirely on this Court accepting his farcical, self-serving story. In order to do that, the Court would have to overturn the trial court's credibility-based factual finding that Holloway's version of events was not believable. The abuse of discretion standard of review does not allow the appellate court to substitute its factual findings for those of the trial court. State v.

Larmand, 415 S.C. 23, 31, 780 S.E.2d 892, 896 (2015). The trial court's factual determinations regarding this "quintessential jury question" must be affirmed because they are supported by evidence. State v. Curry, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013).

The trial court's denial of immunity is strongly supported by the evidence. Holloway has not shown an abuse of discretion. This Court should affirm.

II. Evidence supports the trial court's finding that Holloway's statements to police were voluntary.

Holloway asserts the trial court should have excluded State's Exhibit No. 63, a redacted video recording of Holloway's conduct at the police station after he was detained. He claims police badgered and pressured into giving incriminating statements. A review of State's Exhibit No. 63 (identified as State's Exhibit No. 4 during the pretrial hearing) shows these assertions are patently false. Not only were Holloway's statements volunteered without interrogation, he has not offered an explanation how any specific statements were prejudicial to his case. The statements essentially consist of drunken, rambling claims that Holloway was defending his family when he killed Bell. This was Holloway's defense at trial. Accordingly, even if the video should have been excluded, it was not prejudicial to Holloway. His argument is meritless. This Court should affirm.

A. Standard of Review

Factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. When reviewing a trial court's ruling concerning voluntariness, this Court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence. State v. Parker, 381 S.C. 68, 74, 671 S.E.2d 619, 622 (Ct. App. 2008).

B. Discussion

Holloway's statements to police at the police station were not coerced; they were voluntary. The police-station video admitted as State's Exhibit No. 63 shows

the statements were not even made in response to police questioning as required by Miranda v. Arizona² and Jackson v. Denno.³ On the contrary, officers repeatedly told Holloway they could not interrogate him based on his earlier request for a lawyer. Holloway begged to speak with them further, repeating the same rambling assertions that Bell was trying to hurt his family. Even defense counsel admitted “he was rambling . . . he was talking so much you didn’t have time to ask him any questions.” (R.p.426). This is a far cry from the “badgering and coercive pressure” Holloway alleges in his brief. Contrary to Holloway’s false assertion on page 24 of his brief, the officers did not “repeatedly sugges[t] he prove his innocence.” Far from nefarious, the officers’ actions demonstrated remarkable restraint. The officers did not interrogate Holloway; he simply would not stop talking.

Furthermore, even if the video should have been excluded, the statements were not prejudicial to Holloway. On the contrary, they were completely self-serving statements to the effect that Holloway was defending his family. The same story was introduced—by Holloway—during Lisa Wood’s cross-examination and through hearsay statements recorded on Wood’s 911 call. (R.p.300, 441). He has not even identified any specific statements or explained how they were prejudicial. This Court should affirm.

² 384 U.S. 436 (1966).

³ 378 U.S. 368 (1964).

CONCLUSION

For all the foregoing reasons, the State respectfully asks that this Court affirm the decision of the court of appeals.

Respectfully submitted,

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit

BY:


for Joshua A. Edwards
Bar # 101188

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

June 26, 2020

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2019-000477

THE STATE,

Respondent,

v.

LAWTON LEROY HOLLOWAY,

Appellant.

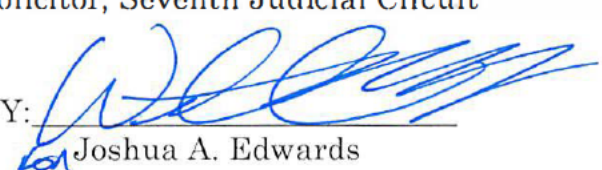
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

ALAN WILSON
Attorney General

JOSHUA A. EDWARDS
Assistant Attorney General

BARRY J. BARNETTE
Solicitor, Seventh Judicial Circuit

BY: 

for Joshua A. Edwards

Bar # 101188

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

June 26, 2020

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2019-000477

THE STATE,

Respondent,

v.

LAWTON LEROY HOLLOWAY,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Final Brief of Respondent on counsel of record for the Appellant by electronic mail to the address listed for counsel on AIS, and by subsequently depositing one copy of the same in the United States mail, postage prepaid, addressed to Taylor D. Gilliam, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 26th day of June, 2020.



Anne A. Mueller
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Lawton Leroy Holloway, Appellant.

Appellate Case No. 2019-000477

Appeal From Spartanburg County
R. Keith Kelly, Circuit Court Judge

Unpublished Opinion No. 2021-UP-406
Submitted November 1, 2021 – Filed November 17, 2021

AFFIRMED

Appellate Defender Taylor Davis Gilliam, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Joshua Abraham Edwards, both of
Columbia; and Solicitor Barry Joe Barnette, of
Spartanburg, all for Respondent.

PER CURIAM: Lawton L. Holloway appeals his convictions and concurrent sentences of twenty years' imprisonment for voluntary manslaughter and five years' imprisonment for possession of a weapon during the commission of a violent

crime. On appeal, Holloway argues the trial court erred in (1) denying his request for immunity pursuant to the Protection of Persons and Property Act (the Act)¹ and (2) failing to suppress his oral statements to police. We affirm.

1. The trial court did not err in denying Holloway's request for immunity because Holloway failed to prove by a preponderance of the evidence that his actions were covered by the Act. The trial court found Holloway's testimony regarding the incident not credible, which we find is supported by the record. *See State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) ("A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which [an appellate] court reviews under an abuse of discretion standard of review."); *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166-67 (2007) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support."); *State v. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 238 (Ct. App. 2014) ("[T]he abuse of discretion standard of review does not allow [an appellate] court to reweigh the evidence or second-guess the trial court's assessment of witness credibility."); S.C. Code Ann. § 16-11-440(C) (2015) ("A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime . . ."); S.C. Code Ann. § 16-11-450(A) (2015) ("A person who uses deadly force as permitted by the provisions of this article . . . is immune from criminal prosecution and civil action for the use of deadly force . . ."); *Curry*, 406 S.C. at 371, 752 S.E.2d at 266 ("[T]he trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. This includes all elements of self-defense, save the duty to retreat."); *id.* at 371 n.4, 752 S.E.2d at 266 n.4 (stating the four elements of self-defense include: (1) "the defendant must be without fault in bringing on the difficulty"; (2) "the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger"; (3) "if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life"; and (4) "the defendant had no other probable

¹ S.C. Code Ann. §§ 16-11-410 to -450 (2015).

means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance"); *State v. Starnes*, 340 S.C. 312, 322-23, 531 S.E.2d 907, 913 (2000) ("Under the theory of defense of others, one is not guilty of taking the life of an assailant who assaults a friend, relative, or bystander if that friend, relative, or bystander would likewise have the right to take the life of the assailant in self-defense."); *State v. Johnson*, 413 S.C. 458, 468, 776 S.E.2d 367, 372 (2015) ("[T]here is no requirement under the law that the trial court must believe a criminal defendant's version of events."); *id.* at 467, 776 S.E.2d at 371 ("[I]t is well-established under South Carolina law that credibility determinations are entitled to great deference."). To the extent Holloway argues the trial court erred in failing to grant immunity based on the defense of habitation and section 16-11-440(A), we find these arguments are not preserved for review because they were not raised to and ruled upon by the trial court. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("Issues not raised and ruled upon in the trial court will not be considered on appeal.").

2. The trial court did not err in refusing to suppress Holloway's oral statements to police because police advised Holloway of his *Miranda*² rights and Holloway continued to make unsolicited remarks to police regarding the incident after he invoked his right to counsel. Thus, the trial court did not err in finding Holloway's statements were admissible. *See State v. Parker*, 381 S.C. 68, 74, 671 S.E.2d 619, 622 (Ct. App. 2008) ("The trial [court] determines the admissibility of a statement upon proof of its voluntariness by a preponderance of the evidence."); *Berghuis v. Thompkins*, 560 U.S. 370, 382 (2010) (stating the State must establish the defendant voluntarily and knowingly waived his *Miranda* rights when giving a statement); *State v. Wannamaker*, 346 S.C. 495, 499, 552 S.E.2d 284, 286 (2001) ("The Fifth Amendment guarantees the right to speak with counsel upon request in a custodial setting."); *id.* ("If a suspect invokes [his] right to counsel, police interrogation must cease unless the suspect [himself] initiates further communication with police."); *State v. Johnson*, 413 S.C. 458, 466-67, 776 S.E.2d 367, 371 (2015) (stating a trial court must make two inquiries when considering a defendant's invocation of his or her right to counsel: (1) whether "the accused actually invoked his right to counsel" and (2) "if the accused invoked his right to counsel, courts may admit his responses to further questioning only on finding that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked" (quoting *Smith v. Illinois*, 469 U.S. 91, 95 (1984))); *State v. Grizzle*, 293 S.C. 19, 21, 358 S.E.2d 388, 389 (1987) (stating that to determine whether a person made a knowing and intelligent waiver

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

of his right to counsel, a court considers "the facts and circumstances of the case, including the background, experience[,] and conduct of the accused").

AFFIRMED.³

HUFF, THOMAS, and GEATHERS, JJ., concur.

³ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

County of SpartanburgLawton L. Holloway 379523

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2022CP4204266

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kirkland Correctional Institution
4344 Broad River Rd. Columbia, S.C 29210
2. Name and location of Court which imposed sentence Spartanburg County
Clerk of Court - General Sessions
3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which

Offense Code sentence was imposed:

- 0116 - (a) 2017A4210103240 Murder/Murder 16-23-0010
- 0549 - (b) 2017A4210103241 Weapons Possession 16-23-0490

- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 15, 2019
- (b) March 15, 2019
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Appeal from Spartanburg County General Sessions / Court of Appeal
- ii. (Affirmed)
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Same as above, Court of Appeal. (Affirmed)
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Nov 17, 2021
- ii. Nov 17, 2021
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

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- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attachment
- (b) "
- (c) "
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment
- (b) "
- (c) "
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct Appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Spartanburg County Court of General Session
- ii. _____
- iii. _____
- iv. _____

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

Ineffective Assistance of Counsel:

- A. The court erred in denying Appellate immunity from prosecution, where he was attacked in his own home by a man who was threatening to harm him and his family.
- B. Trial court erred in failing to suppress Appellant's statements to law enforcement, when Appellant requested counsel at the scene.
- C. Two months ago the Appellate found out that his attorney James Price died 18 months after his conviction. He died 9/12/2020 from a terminal lung disease. Attorney James Price never disclosed that he was in poor health. If the Appellant was aware of this, he would have gotten a different attorney to represent him in the murder case.
- D. Attorney James Price was difficult to work with. He had a poor attitude. He was a bit of a bully. This made it hard to interact with him. He would constantly forget my name.
- E. Appellant's appeal was denied. Defense of Habitation, which appeal consul, Taylor Gilliam, brought up was denied because it was unpreserved. In February 2018, I requested information from James Price concerning "Trespassing". He mailed a printout from West Law, which I have in my possession. Despite the information, my attorney never mentioned that I qualified for Defense of Habitation. The Judge gave a jury charge of Defense of Habitation (p 516 Transcript). The Judge recognized that I qualified for Immunity under Defense of Habitation, therefore, I should have been given Immunity. There was no valid reason for the court to abdicate its power and send my case to trial.
- F. My attorney failed to object to the bias jury charge the Judge read to the jury. "Defense of habitation is a defense of one's dwelling... Now I charge you that voluntary intoxication

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is not an excuse or defense to a crime regardless of whether the crime is on involving general or specific intent. A person who voluntarily ingest alcohol and thereby becomes intoxicated is no less responsible for the effect of his acts or words while intoxicated. If one voluntarily drinks intoxicating liquors, wines, or beer, or becomes intoxicated to whatever degree, and while intoxicated commits an act which would be a crime if it had been committed by a sober person, the fact of intoxication would not relieve the intoxicated person from responsibility” (p516 Transcript). At no point does the Judge educate the jury on Trespassing. The Judge never mentioned that J. Bell was 3 times over the legal limit for alcohol (p 445 line 12-21 transcript, Lindsey Mitchel, Forensic toxicology expert).

- G. Appellant attorney, David Gilliam filed my appeal on an issue that was not preserved, Defense of Habitation. This was a wasted opportunity and a valid issue could have been raised.
- H. The prosecutor made several false statements that my attorney failed to object. “Mr. Holloway walked Jeremy Bell out of the home, but since he never left, he was a welcomed visitor (p 139 Transcript, Bulsa) When Bell reentered the home he was trespassing or worse, committing burglary at night.
- I. Attorney James Price stated that J. Bell had been convicted of assault and battery. He was originally charged with domestic violence out of Darlington. The court would not allow the information. “there is nothing written that states the defense can’t introduce prior bad acts for a purpose. Is there habitual conduct under Rule 406 that might help? How about Rule 608 (B) (Bad acts relating to credibility) or Rule 803, hearsay exception.”

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(Secondary Sources SC Lawyer #6 8*Questions Every Trial Lawyer Should Consider Jan. 2020*).

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

Ineffective Assistance of Counsel:

A. The Appellant qualified for immunity under Defense of Habitation, S.C 16-11-450 (A)

State v. Rye 375 S.C 119,123,65

For Defense of Habitation to apply a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances.

When one becomes a trespasser, the law permits the owner of the home to employ such force, even to taking of a life of the trespasser, as may be reasonably necessary to accomplish expulsion State v. Sparks 179 S.C 135,137,183, S.E. 719,720 (1936)

Writ of Certiorari. John W. McCarty Appellate # 2021-000062

B. Appellant requested counsel at the scene. All statements should have been suppressed.

The Appellant was hauled into an interrogation room under duress.

First courts must determine whether the accused actually invoked his right to counsel.

Second, if the accused invoked his right to counsel, courts may admit his response to further questioning only on finding that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked.

State v. Illinois, 469 U.S. 91,95,105 S.Ct. 490, 83 L.E.2d 488 (1984).

In its ruling concerning Appellant's statement, the trial court failed to make findings in two regards. TR. 153, 1.15- Tr.155, 1.15. There was no outright determination whether appellant actually invoked his right to counsel. Secondly, the trial court never found that

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JANUARY 10, 2023

Appellant knowingly and intelligently waived the right he had invoked. As such, the court erred in allowing the statements to be used in trial (p 24 initial brief of Appellant Appellant case No 2019-000477

- C. If the Appellant was aware of Attorney James Price terminal illness, he would have chosen other legal representation.
- D. Attorney James Price harsh attitude made it difficult for the Appellant to speak freely.
- E. Attorney James Price failed to preserve Defense of Habitation, yet the Judge recognized that it applied. The Appellant qualified for Immunity.
- F. Attorney James Price failed to object to the bias jury charge. The Judge gave a charge of "Defense of Habitation Immunity"; Therefore, I should have been granted Immunity from prosecution.

The Prisoner's Guide to Survival, Author L. Powell Bellanger PSI Pub. Lyden WA.

"A jury has to be given instructions on all elements of a charged offense, not just some of them. Relevant terms in the instructions must be defined accurately. Incorrect or misleading definitions of terms such as *willfully*, *knowingly*, and *reasonable doubt* have resulted in the reversal of decisions in some cases..." the language of the jury instructions cannot shift the burden of proof to the defendant from the prosecutor who must prove the guilt of the person charged. The Supreme Court addressed this issue. *Francis v. Franklin*, 471 U.S. 307 (1985). Also the Jury instructions must be balanced; they cannot unfairly imply the guilt of the defendant or presumed knowledge. Failure to object to erroneous Jury Instructions. *Gray V. Lynn*, 6f.3d265 (5th Cir. 1993)

- G. Appellant Attorney Taylor Gilliam filed my appeal on an issue that was not preserved, Defense of Habitation. I agree that I qualified for defense of habitation, but he should

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SPARTANBURG COUNTY
AMY M. COX

have raised another issue that would have been covered under Direct Appeal. Wasted opportunity.

H. Attorney should have objected when the prosecutor made a number of false statements.

One example: "If J. Bell did not leave, he was a welcomed visitor" (p139 Tr.) When Bell reentered the home after being told to leave and ejected from the home, he was a trespasser, or worse, committing burglary at night. This act qualified me for immunity under Defense of Habitation.

I. Attorney James Price should have pushed to get J. Bell's conviction of assault and battery admitted. At the least, the jury should have known about this act. This was not Bell's first attempt at rape.

Rule 608 (B) Bad acts relating to credibility or Rule 803, hearsay exception." (Secondary Sources SC Lawyer #6 8 *Questions Every Trial Lawyer Should Consider Jan 2020*).

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(c) the disposition thereof:

- i. Affirmed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. November 17, 2021
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Unpublished Opinion No. 2021-UP-406
- ii. Sub Nov 1, 2021 - Filed Nov. 17, 2021
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. The court erred in denying Appellant Immunity
- ii. from prosecution, where he was attacked in his
- iii. own home by a man who was threatening to harm family...

(b) the proceedings in which each ground was raised:

- i. Trial Court erred in failing to suppress
- ii. Appellant's statements to law enforcement, when
- iii. Appellant requested Counsel.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Only 2 Reason were brought up in Direct Appeal.
 (b) The rest of the issues are being brought up in
 (c) PCR, per Appellant advice.

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Price Law James H Price III
1644 E. Washington St. Greenville SC 29601

ii. _____

iii. _____

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

i. Taylor D. Gilliam Division of Appellate Defense
1330 Lady St. Suite 401 Columbia SC 29201-3332

ii. _____

iii. _____

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

Immunity

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

No.

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, Lawton L. Holloway, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Lawton Holloway

SWORN to and subscribed before me this 1
day of November, 2022.

Melissa Opus (L.S.)
Notary Public

My Commission Expires: 12-01-2025

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SOUTH CAROLINA
Revised 3/2003

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

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

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

Lawton L. Holloway
Applicant

SWORN or affirmed to and subscribed before me this
1 day of November, 2022.

Melissa Opaj
Notary Public

My Commission Expires: 12-01-2025

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 Revised 3/2003

I am requesting Susan B. MacKeth to represent
me in the PCR process

Laurin J. Willaway
10/28/2022

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Lawton Holloway, #379523,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2022-CP-42-04266

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT**

NOW COMES Respondent, making its return to the post-conviction relief (hereafter “PCR”) application filed on November 4, 2022, by Lawton Holloway (hereafter “Applicant”). Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its October 2017 term, the Spartanburg County Grand Jury indicted Applicant for murder (count one) and possession of a weapon during the commission of a violent crime (count two) (2017-GS-42-05436). Applicant was represented by James H. Price, III, Esquire. Deputy Solicitor Derrick Bulsa, Esquire, of the Seventh Circuit Solicitor’s Office prosecuted the case. On March 11-15, 2019, Applicant proceeded to trial before the R. Keith Kelly, circuit court judge. Applicant was found guilty of the lesser-included offense of voluntary manslaughter and was found guilty as indicted on the weapons’ possession charge. Judge Kelly sentenced Applicant to twenty years’ imprisonment for voluntary manslaughter and five years’ imprisonment for the weapon possession charge, sentences running concurrently.

Applicant filed a timely notice of appeal on March 28, 2019, that was perfected by Taylor

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D. Gillam, Esquire. Briefing concluded on June 26, 2020. *State v. Holloway*, 2021-UP-406 (S.C. Ct. App. filed Nov. 17, 2021). The remittitur was issued on December 3, 2021.

II. Statement of Facts

Applicant killed Jeremy Bell by stabbing him fourteen times with a kitchen knife. The stabbing occurred at Applicant's girlfriend's home on August 31, 2017. (Tr. 180). There were no other witnesses to the stabbing.

At a pretrial hearing, Applicant testified he and Bell were friends, and that Bell came over after drinking with Applicant and his girlfriend, Lisa Wood, at a local bar. (Tr. 73–75). The three of them, along with another friend, continued drinking and socializing late into the night. According to Applicant, he and Bell had a contentious conversation about the merits of Apple and PC computers. (Tr. 78). Applicant testified Bell left the home and he went to the back yard to put out a bonfire. Applicant claimed that when he came back inside, he saw Bell straddling Wood on the living room couch with his hands around her neck. Applicant claimed Bell looked at him and said: "I'm going to kill Lisa, I'm going to rape her, then I'm going to rape your daughter . . . I'm going to kill your entire family." (Tr. 89). Applicant testified he retrieved a knife from the kitchen and returned to find Bell with his hands still around Wood's throat. Applicant claimed he screamed at Wood to wake up, but Bell charged at him. Applicant claimed Bell was "coming off of Lisa and he's running at me telling me he's going to kill her," and threatened to kill him. (Tr. 92–93). Applicant admitted to stabbing Bell to death, but he gave no details explaining how the struggle transpired. According to Applicant, Wood did not wake up through this entire event. Applicant admitted he then fled the home in his truck because he was "scared." (Tr. 95).

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SPARTANBURG COUNTY
AMY W. COX

Applicant returned about a half hour later. An officer observed him standing silently near the front of the home. He was visibly intoxicated and had blood on his shoes. The officer sensed something was amiss with Applicant and asked more specifically about his connection to the home. Applicant told police he was there to check on his family and began to volunteer his version of events. It became clear he was admitting to stabbing Bell. Officers detained Applicant while they began to investigate the scene. Applicant continued to drunkenly volunteer information to police, but the officers did not interrogate him. Applicant's statements were captured on police body camera videos. (State's Exhibits #1 and #2). The Court viewed the videos during the pretrial hearing. (Tr. 48).

To rebut Applicant's version of events, the State presented the testimony of the first responding police officer. He testified he found Bell dead, "slumped up against the wall with blood all over the front of his body." (Tr. 125). There were fourteen stab wounds total. (Tr. 132). A kitchen knife was on the floor near Bell's body. (Tr. 128). While Applicant told officers Bell had "chased him around the house like it was a TV show," there were no signs of a struggle. (Tr. 128-32). Wood denied that Bell attacked her. (Tr. 129).

The trial court denied the motion for immunity. The court found "the defendant's version of the event is not credible because it is not consistent with the other physical evidence in the case." (Tr. 147).

The Court also denied Applicant's motion to suppress the statements he made to officers at the police station, finding they were voluntary. Officers brought Applicant to the police station, and he was placed in an interview room. He continued to drunkenly volunteer information to the officer who brought him there while the officer listened without asking questions. A separate investigator entered the room to speak with Holloway and started to read

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Applicant his *Miranda* rights. (State's Exhibit #4). Before he could ask any questions, another officer pulled him aside and advised him Applicant had invoked his right to counsel at the scene. The investigator then informed Applicant he would not ask him any questions about what happened but wanted to take down his name and basic identifying information. (State's Exhibit #4 at 10:55). Applicant continued to ramble. Another investigator came in and explained to Applicant that they could not speak with him any further unless he affirmatively waived his right to counsel and asked to speak further. Applicant continued to ramble and volunteer information, ignoring the officer's advice. The officers repeatedly told him they could not continue speaking with him without a clear statement that he wanted to waive his right to counsel. Applicant continued to deflect the questions, give equivocal answers, and ask the officers questions of his own. Applicant finally decided he wanted an attorney, and the officers immediately left the room. (State's Exhibit #4 at 16:30). The Court found the officers did not interrogate Applicant. He noted that Applicant "had the right to remain silent but he did not possess the ability to remain silent." (Tr. 155). He accordingly denied the motion to exclude the video and the case proceeded to jury trial.

The State presented more comprehensive physical evidence at trial. A forensic pathologist testified that Bell had no defensive wounds. (Tr. 371). He gave an opinion that the six wounds to Bell's back were inflicted before the wounds to his front, and that the eight wounds to the front of his torso and neck were likely inflicted after he had fallen. (Tr. 374).

Lisa Wood testified and confirmed she fell asleep on the couch in the living room, but she did not "pass out" from drinking. (Tr. 271). She denied Bell attacked her. (Tr. 281). She awoke and saw Applicant standing by the couch, noticed blood on the wall, and observed Bell slumped over making a "gurgling" sound. (Tr. 273–75). She asked Applicant, "what did you

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do?” (Tr. 275). Applicant responded by claiming that Bell was “going to rape” her. (Tr. 275). Wood backed away from Applicant and told him to stay away from her. She called 911. (Tr. 276).

The State also called Christina Cormican, the fourth person present at the home that night. Cormican was the bartender who served Applicant, Wood, and Bell earlier in the evening. She testified Applicant seemed “agitated” at the bar. (Tr. 336). Contrary to Applicant’s claims, she denied Bell ever acted in a threatening manner, or that she feared him. (Tr. 335). On the contrary, Bell was cordial, and even walked her to her car when they left the bar. (Tr. 330). She denied hearing any arguments at Woods’s house but heard Applicant refer to Bell as an “asshole.” (Tr. 333–34).

III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. Ineffective Assistance of Counsel:

- a. The Court erred in denying Applicant immunity from prosecution, where he was attacked in his own home by a man who was threatening to harm him and family.
- b. Trial court erred in failing to suppress Applicant’s statements to law enforcement when Applicant requested counsel at the scene.
- c. Two months ago the Applicant found out that his attorney James Price died 18 months after his conviction. He died 9/12/2020 from a terminal lung disease. Attorney James Price never disclosed that he was in poor health. If the Applicant was aware of this, he would have gotten a different attorney to represent him in the murder case.
- d. Attorney James Price was difficult to work with. He had a poor attitude. He was a bit of a bully. This made it hard to interact with him. He would constantly forget my name.
- e. Applicant’s appeal was denied. Defense of Habitation, which appeal counsel Taylor Gilliam, brought up was denied because it was unpreserved. In February 2018, I requested information from James Price concerning “trespassing”. He mailed a printout from West Law, which I have in my possession. Despite the information, my attorney never mentioned that I qualified for Defense of Habitation. The Judge gave a jury charge of Defense.

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- of Habitation (p. 516 transcript). The Judge recognized that I qualified for Immunity under Defense of Habitation, therefore, I should have been given Immunity. There was no valid reason for the court to abdicate its power and send my case to trial.
- f. My attorney failed to object to the bias jury charge the Judge read to the jury. "defense of habitation is a defense of one's dwelling . . . now I charge to you that voluntary intoxication is not an excuse or defense to a crime regardless of whether the crime is on involving general or specific intent. A person who voluntarily ingest alcohol and thereby becomes intoxicated is no less responsible for the effect of his acts or words while intoxicated. If one voluntarily drinks intoxicating liquors, wines, or beer, or becomes intoxicated to whatever degree, and while intoxicated commits an act which would be a crime if it had been committed by a sober person, the fact of intoxication would not relieve the intoxicated person from responsibility" (p. 516 transcript). At no point does the Judge educate the jury on trespassing. The Judge never mentioned that J. Bell was three times over the legal limit for alcohol (p. 445 lines 12-21 transcript Lindsey Mitchel, Forensic toxicology expert).
 - g. Appellate attorney, David Gilliam filed my appeal on an issue that was not preserved, Defense of Habitation. This was a wasted opportunity and a valid issue could have been raised.
 - h. The prosecutor made several false statements that my attorney failed to object. "Mr. Holloway walked Jeremy Bell out of the home, but since he never left, he was a welcome visitor (p. 139 transcript, Balsa). When Bell reentered the home he was trespassing or worse, committing burglary at night.
 - i. Attorney James Price stated that J. Bell had been convicted of assault and battery. He was originally charged with domestic violence out of Darlington. The court would not allow the information. "There was nothing written that states the defense can't introduce prior bad acts for a purpose. Is there a habitual conduct under Rule 406 that might help? How about Rule 608(B) (Bad acts relating to credibility) or Rule 803, hearsay exception."

Attached to and incorporated herein are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the direct appeal records, the trial transcript, and the current PCR application. Respondent reserves the right to amend this return upon receipt of additional relevant information.

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IV. Argument

Ineffective Assistance of Trial Counsel

Applicant has raised many ineffective assistance of trial counsel allegations in his application. In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Effective assistance of counsel does not mean perfect or mistake-free representation. See *Weaver v. Massachusetts*, 137 S. Ct. 1899 (2017) (“[A] defendant has a right to effective representation, not a right to an attorney who performs his duties ‘mistake-free.’” (citation omitted)); *Burt v. Titlow*, 571 U.S. 12, 24 (2013) (“[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]”); *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. *Strickland*, 466 U.S. at 687-688.

When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing

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professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); *see Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (noting counsel’s strategic decisions are to be afforded “‘strong presumption’ of reasonableness that the defendant must overcome); *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Importantly, “[t]he likelihood of a different result must be *substantial*, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

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SOUTH CAROLINA

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Respondent contends that Applicant likely cannot meet his burden of proof concerning this allegation but requests a full evidentiary hearing to fully resolve the matter.

Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. *Evitts v. Lucey*, 469 U.S. 387 (1985). "Generally, in analyzing a claim of ineffective assistance of appellate counsel, this Court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). Applicant must show appellate counsel's performance was deficient, and he was prejudiced by the deficiency. *Gilchrist v. State*, 364 S.C. 173, 612 S.E.2d 702 (2005); *Anderson v. State*, 354 S.C. 431, 581 S.E.2d 834 (2003); *Thrift v. State*, 302 S.C. 535, 537, 397 S.E.2d 523, 525 (1990).

Appellate counsel has a professional duty to choose among potential issues according to their merit. *Jones v. Barnes*, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. *Tisdale v. State*, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (quoting *Jones v. Barnes*, 463 U.S. 745, 754 (1983) ("For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every

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‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy. . . .”). Respondent contends that Applicant likely cannot meet his burden of proof concerning this allegation but requests a full evidentiary hearing to fully resolve the matter.

V. Other Allegations Denied

Each and every other allegation in Applicant’s PCR application not explicitly admitted, qualified, or explained in this return is hereby denied by Respondent.

VI. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant’s court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCP and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances.

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including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRCP (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

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VII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to hold an evidentiary hearing regarding Applicant's allegations.

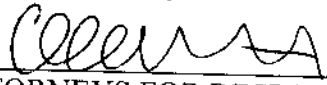
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-0386

January 11, 2023

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MARK W. COX

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Lawton Holloway, #379523

Applicant,

vs

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS

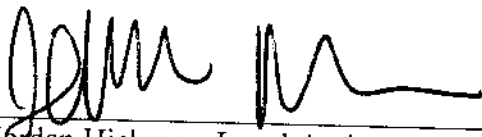
2022-CP-42-04266

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney Wade Richey, Esquire
Richey & Richey, PA
33 Market Point Dr, Greenville, SC 29607
Post Office Box 10916
Greenville, SC 29603-0916

DATED this the 11th day of January 2023.



 Jordan Hickman, Legal Assistant
 For Respondent

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 SPARTANBURG COUNTY
 AMY W. COX

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

IN THE COMMON PLEAS
7th JUDICIAL CIRCUIT

3 LAWTON L. HOLLOWAY,

4 Applicant,

5 vs.

CASE NO. 2022-CP-42-04266

6
7 STATE OF SOUTH CAROLINA,

8 Respondent.

9
10 HEARING BEFORE: HONORABLE FRANK R. ADDY

11 DATE: June 20, 2023

12 TIME: 1:35 PM

13 LOCATION: Spartanburg County Judicial Center
14 180 Magnolia Street
15 Spartanburg, SC 29306

16 REPORTED BY: LORA L. McDANIEL,
17 Registered Professional Reporter

18
19 APPEARANCES:

20 ATTORNEYS FOR THE APPLICANT
21 RODNEY W. RICHEY, ESQ.

22 ATTORNEYS FOR THE RESPONDENT
23 JOSHUA EDWARDS, ESQ.

1	I N D E X				
2	DIRECT CROSS REDIRECT RECROSS				
3	WITNESS/EXAMINATION				
4	<u>LAWTON HOLLOWAY</u>				
5	BY MR. RICHEY	5	--	28	--
6	BY MR. EDWARDS	--	25	--	--
7					
8	ANDREA GOODJOIN				
9	BY MR. RICHEY	28	--	--	--
10	BY MR. EDWARDS	--	--	--	--
11					
12	CLARA HARRISON				
13	BY MR. RICHEY	33	--	--	--
14	BY MR. EDWARDS	--	--	--	--
15					
16	POWERS PRICE				
17	BY MR. RICHEY	36	--	44	--
18	BY MR. EDWARDS	--	43	--	--
19					
20	JAMES H. PRICE				
21	BY MR. RICHEY	45	--	57	--
22	BY MR. EDWARDS	--	47	--	--
23					
24	CERTIFICATE OF REPORTER Page 64				
25					

1	E X H I B I T S		
2		FOR I.D.	IN EVD.
3	APPLICANT EXH. 1, Letter dated 2-12-19	15	15
4	APPLICANT EXH. 2, Incident Report	19	19
5			
6	RESP. EXH. 1, Letter dated 9-12-18	52	54
7	RESP. EXH. 2, Handwritten affidavit	53	54
8	RESP. EXH. 3, Letter dated 11-28-18	53	54
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1 THE COURT: If we could, we're going to go ahead
2 and go on the record. We are addressing first case this
3 afternoon, we're addressing Lawton Holloway versus State,
4 22-CP-42-4266. And Mr. Holloway is present with his attorney,
5 Mr. Richey.

6 And Mr. Holloway, my name is Frank Addy. I'm a
7 judge from Greenwood; okay, sir?

8 MR. HOLLOWAY: Yes, sir.

9 THE COURT: I have had an opportunity to review the
10 material that was e-mailed to me yesterday morning. And my
11 clerk and I have had a chance to review the pleadings involved
12 in this matter last week. My understanding is that
13 Mr. Holloway is serving a 20-year sentence for voluntary
14 manslaughter and, obviously, the events of that night. I did
15 have a chance to review the transcript, the details of what
16 occurred.

17 Mr. Richey, do you want to give me any kind of
18 overview? Obviously, his attorney has passed away since then.
19 Happy to hear from you or anything that you may want to present
20 as a preface.

21 MR. RICHEY: Your Honor, we have a series of issues
22 and documents we're going to present. And as to the issues
23 we're raising in the case, if The Court wants me to go through
24 some of that I can. As typical, I was going to present
25 Mr. Holloway and we're going to go through our documents in the

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 case.

2 THE COURT: That will be fine; however you want to
3 proceed.

4 MR. RICHEY: Thank you, Your Honor. We call
5 Mr. Holloway.

6 LAWTON L. HOLLOWAY
7 being first duly sworn, testified as follows:

8 THE COURT: Mr. Richey.

9 DIRECT EXAMINATION

10 BY MR. RICHEY:

11 Q. Would you state your name, please.

12 A. Lawton Holloway.

13 Q. Mr. Holloway, are you currently in the Department
14 of Corrections?

15 A. Yes, sir.

16 Q. What are you in there for?

17 A. Manslaughter, 25 years.

18 Q. And you filed an application for post-conviction
19 relief because you believe your trial counsel or counselors
20 ineffectively represented you; correct?

21 A. Yes.

22 Q. What date -- do you know when you were convicted?

23 A. I think it was March 19th, 20th. I think it was
24 like March 19, 2019.

25 Q. Who represented you on those charges?

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 A. Chip Price.

2 Q. Did anybody else represent you, or did he do it by
3 himself?

4 A. He had his son and daughter.

5 Q. They represented you from the start to the end of
6 the case?

7 A. Yes.

8 Q. Into the trial phase of it?

9 A. Yes.

10 Q. Did you have an opportunity to discuss the case
11 with them?

12 A. Yes.

13 Q. I'm going to go into a series of questions, series
14 of issues in the case. And the first one I'm going to talk
15 about in this case, your attorney, you were involved in
16 negotiations with the State about your case?

17 A. Yes, sir.

18 Q. And those negotiations were plea negotiations; is
19 that correct?

20 A. Yes.

21 Q. Do you recall being offered any type of plea? Zero
22 to ten?

23 A. I think initially I was offered something like zero
24 to 20. Open plea or something like that.

25 Q. Did you discuss that with your lawyer or lawyers?

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 A. Briefly. I mean, it was -- I think it was a first
2 plea deal. And we turned that down.

3 Q. You turned it down. Tell me the discussions you
4 had with the attorney to turn that initial one down.

5 A. The initial, I mean, in my mind, said I had
6 basically protected my family. I call it that. A man in my
7 home, trying to rape my wife, threatened to rape my daughter.
8 I just couldn't wrap my mind around being found guilty of
9 protecting my family. So they offered zero to 20. And it just
10 didn't seem reasonable.

11 Q. Let me take a step back. This case, where did this
12 case happen?

13 A. Duncan, which is Spartanburg County.

14 Q. Was it in your home --

15 A. It was in my home.

16 Q. -- outside of your home?

17 A. It was in my home, I'm sorry.

18 Q. I'm going to ask you these questions. I need you
19 to say it for the record.

20 A. Yes, it was in my home.

21 Q. Just brief bit of facts. This gentleman did what,
22 the alleged victim?

23 A. He had gotten to the point that I asked him to
24 leave. He pretended to leave. When I thought the gentleman
25 had left, he snuck back in my house. And I caught him trying

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 to rape my fiance, and he threatened to rape my daughter, my
2 step-daughter. At that point I went and got something to
3 protect myself.

4 Q. You went and got a knife; right?

5 A. Yes, sir.

6 Q. Go ahead. Are you finished?

7 A. When I got back, I was hoping that he had walked
8 out of the house or left, but he didn't. He was still there.
9 When I tried to talk to him, he lunged at me. That's how I
10 ended up taking the man's life.

11 Q. Based off your position on the facts, you believed
12 that offer was excessive?

13 A. Yes.

14 Q. Did you have any discussions about you could get
15 less than the 20 years?

16 A. Yes. My sisters hired them, and they talked to
17 them, that we had a decent case, that I had a stand-your-ground
18 case. It was a possibility we could win.

19 Q. Tell me what the lawyers said to you in terms of 20
20 years. Did the lawyer say I can get less than 20 when y'all
21 talked about the negotiations?

22 A. Yeah, he said he could definitely do better than 20
23 years.

24 Q. When you say he, who are you referring to?

25 A. I'm talking about Mr. Price.

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 Q. Mr. Chip Price?

2 A. Mr. Chip Price.

3 Q. Did you have any discussions with any other lawyers
4 about this plea offer?

5 A. I'm sure I talked to his daughter and his other
6 son, yes, but I can't remember exact dates.

7 Q. Was subsequently another offer made to you?

8 A. I believe the next offer was either ten years or 15
9 years.

10 Q. Ten to 15, does that sound about right?

11 A. That sounds about right.

12 Q. Did you discuss that offer with the attorney?

13 A. Yes.

14 Q. And were you advised to accept or decline?

15 A. They told me that I should take the deal. But the
16 problem was, I didn't understand how these deals worked. I
17 mean, to be honest, when I got 25 years, it wasn't until six
18 months after I got to prison and met other people that I was
19 told that 25 years didn't really mean 25 years. I didn't
20 realize it was 85 percent of 20. So I didn't understand the
21 plea deal at all.

22 I didn't understand how it worked, how it was going
23 to be beneficial. All I could see that I was -- I was stating
24 that I was guilty of something and all I was doing was
25 protecting my family.

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 Q. Under this plea offer that was ten to 15, were you
2 ever told and discussed what a ten-year sentence actually meant
3 at that point?

4 A. To my recollection, no.

5 Q. And you had about two years into this; is that
6 correct?

7 A. Yes.

8 Q. A ten-year sentence would've meant, roughly, about
9 six-and-a-half years; correct?

10 A. I understand that now. I didn't at the time. Yes.

11 Q. At the time, you were not told what the sentences
12 actually mean?

13 A. Right.

14 Q. And do you believe that -- if you were told --
15 because, based on your testimony, it is that you believed that
16 if you had 15 years, you have to do all 15; correct?

17 A. Yes. Yes.

18 Q. Yes?

19 A. Yes, sir.

20 Q. There was no discussion about 85 percent, 50 or
21 none of that?

22 A. No, I never heard of 85 percent until, like I said,
23 six months after I was in prison.

24 Q. And so -- did you have any discussions how the plea
25 offer related to the facts of your case?

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 Let me state that better. You were initially
2 charged with murder; right?

3 A. Right.

4 Q. Were you told that was 30 to life?

5 A. I'm going to say yes. I'm not really sure.
6 Probably.

7 Q. Let me say this. When you went to trial, on that
8 day of trial, you were facing a life sentence?

9 A. Yeah. I did not know that. I didn't know I was
10 facing a life sentence. I remember the warrant being written
11 out for murder. I had two warrants, both of them written out
12 murder. Murder. I remember asking the judge during the trial
13 if they could take manslaughter or leave manslaughter off
14 because I knew I hadn't murdered anybody.

15 Q. Regardless, you understood that you were facing a
16 murder charge; right?

17 A. I knew I was facing a murder charge.

18 Q. Did you know the penalty for that charge?

19 A. I knew it was probably 30 years. I didn't know it
20 was life.

21 Q. When you got this plea offer of ten to 15, you
22 weren't gauging it off the possible life sentence; correct?

23 A. No.

24 Q. Did your counsel ever advise you that you could get
25 life?

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 A. I don't remember having a conversation like that,
2 no.

3 Q. You don't remember them telling you, you could get
4 life in this case?

5 A. No.

6 Q. Do you believe that your counsel was ineffective by
7 not discussing these issues with you?

8 A. I would have to say yes.

9 Q. That he was?

10 A. He was, yes.

11 Q. Do you believe that you were prejudiced by not
12 knowing the full scope of this plea?

13 A. Absolutely.

14 Q. Tell me how you believe you were prejudiced.

15 A. If I fully understand the plea deal situation, I
16 would've taken the deal.

17 Q. You had some pretty good litigation available to
18 you; correct? You had witnesses who could come to court to
19 testify to help mitigate the penalty?

20 A. You mean like characters?

21 Q. Characters.

22 A. Yes, sir.

23 Q. You did?

24 A. Yes, sir.

25 Q. Let's get in a little bit to the case here. It was

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 your position that this gentleman was not lawfully in your
2 home; correct?

3 A. Correct.

4 Q. Tell me what you based that on.

5 A. I had asked him to leave. And I walked him out to
6 leave. And at the time I assumed that he left. I saw him get
7 in his car.

8 Q. At that time, was it your position this gentleman
9 was a trespasser on your property?

10 A. It is. I believed that he was a trespasser.

11 Q. Did you talk to your lawyers about him being a
12 trespasser other than being someone invited to your home?

13 A. Yes. Time and time again.

14 Q. The discussions you had with the lawyer, him being
15 a trespasser, was that -- could that make a difference in the
16 outcome of your case?

17 A. I mean, they sent me information about him being a
18 trespasser. But when I started studying over my trial after I
19 was convicted, there was no mention of trespasser in the jury
20 charge or the trial per se at all.

21 MR. RICHEY: Your Honor, can I approach the
22 witness?

23 THE COURT: Yes.

24 BY MR. RICHEY:

25 Q. I'm going to give this to you and let you look at

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 this. Do you know what this document is?

2 A. Yes, this is a letter that I wrote to you a few
3 weeks ago.

4 Q. When you wrote this letter -- turn to the next
5 page. What is that?

6 A. This is a letter from Price Law Firm giving me the
7 trespassing statutes that I had asked about prior to the trial.

8 Q. Did you read the statute when they sent it to you?

9 A. Yes.

10 Q. Did you believe that statute applied to your case?

11 A. Absolutely.

12 Q. You mentioned something about the trial transcript
13 and all that stuff. Can you repeat that as it relates to the
14 trespasser.

15 A. I don't understand the question. I'm sorry.

16 Q. You initially said something about trespass in your
17 case. You went through the transcript, and you did not see
18 that being argued; is that correct?

19 A. Right. So when I got to one of the jury charges,
20 defense of habitation, I had never heard of that. I looked it
21 up. When I read the charges, it talked about trespassing.
22 There was never any mention of trespassing anytime in my trial.
23 Basically the jury didn't even know that this guy was not
24 welcomed. He was an unwelcomed guest in my home.

25 MR. RICHEY: Your Honor, we offer this as Applicant

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 1.

2 MR. EDWARDS: No objection.

3 (APPLICANT EXH. 1, Letter dated 2-12-19, was marked
4 for identification and entered into evidence.)

5 BY MR. RICHEY:

6 Q. And the trespass issue was in your case; is that
7 correct? Let me say this. You had a stand-your-ground
8 hearing; is that correct?

9 A. Yes, sir.

10 Q. In that stand-your-ground hearing, y'all was
11 arguing you had a legal right to do what you did; correct?

12 A. Yes, sir.

13 Q. I'm going to show you, and I think the
14 stand-your-ground motion is part of the record already. I'm
15 going to pass this up to you and say -- let you look at that.
16 Is that the motion that was filed on your behalf?

17 A. Yes, sir.

18 Q. I'm going to ask you to turn to page 12.

19 A. Okay.

20 Q. I'm going to direct you to the last paragraph on
21 page 12. I want you to read the last paragraph, if you would.
22 The decedent.

23 A. The decedent, Jeremy Bell, reentered Holloway's
24 house uninvited, threatened Holloway and his family just prior
25 to stabbing because Jeremy was a trespasser on Holloway's

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 property. At no point -- and deadly force was reasonably
2 necessary to expel, Holloway meets the requirements of defense
3 of habitation and is entitled to immunity pursuant to South
4 Carolina Code 16-11-450(a).

5 Q. Is that the defense that you were expecting to be
6 raised in the case?

7 A. Yes, sir.

8 Q. Was that defense raised?

9 A. No, sir.

10 Q. Let me cut this down in two things.

11 The motion was filed and argued; correct?

12 A. Yes.

13 Q. And that was done pretrial; correct?

14 A. Yes.

15 Q. That was the issue in this thing, pretrial;
16 correct?

17 A. Correct.

18 Q. Is it your position that this should've carried
19 over to the trial?

20 A. That was my belief, yes.

21 Q. And at the trial, at the pretrial hearing, did you
22 testify?

23 A. I testified at the stand-your-ground hearing.

24 Q. Right.

25 A. Yes.

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 Q. And at the stand-your-ground hearing, that's
2 essentially what you said; is that correct?

3 A. Yes, sir.

4 Q. At the trial, did you testify at the trial?

5 A. No, sir.

6 Q. Is there any other way realistically this could've
7 came in without you?

8 A. After talking to you, no.

9 Q. At the time of trial, you didn't know it could come
10 in?

11 A. I didn't know this.

12 Q. Did you discuss that with your lawyers?

13 A. Yes.

14 Q. You've had an opportunity to review that motion
15 prior to the hearing; right?

16 A. Yes, sir.

17 Q. You're familiar with the issues in this motion;
18 correct?

19 A. Yes, sir.

20 Q. And you're familiar with how you wanted your case
21 presented; correct?

22 A. Yes, sir.

23 Q. You talked to Mr. Price or Ms. Price or anybody,
24 you talked to them about pursuing this defense?

25 A. Correct.

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 Q. I'm going to show you what this document is right
2 here. This victim had an incident down in Darlington; is that
3 correct?

4 A. Yes, sir.

5 Q. You're familiar with that incident?

6 A. Yes, sir.

7 Q. How are you familiar with it?

8 A. My sisters hired a private investigator. They got
9 information showing this man had previously raped a woman
10 before.

11 Q. Or assault?

12 A. Assaulted a woman before.

13 Q. You believed that was similar to your case?

14 A. From what the private investigator talked to me
15 about after, yes.

16 Q. Listen to my question. Do you believe that was
17 similar to your case?

18 A. Absolutely.

19 Q. You're basing it off the incident report and
20 information that you got from a person involved in your case,
21 the investigator?

22 A. Yes.

23 Q. Did you talk to Mr. Price about that?

24 A. Yes.

25 Q. And did you request that this be a part of your

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 trial?

2 A. Yes.

3 Q. And what was the response?

4 A. It was -- it couldn't be brought in because it was
5 prior bad acts.

6 Q. So they discussed with you the threshold of getting
7 the prior bad acts in?

8 A. They just said that they were going to move it --
9 do a motion to try to get it in, but it wasn't going to come
10 in.

11 Q. That was a central part of your case; correct?

12 A. Yes.

13 MR. RICHEY: Your Honor, we offer this as Applicant
14 2.

15 THE COURT: Without objection.

16 (APPLICANT EXH. 2, Incident Report, was marked for
17 identification and entered into evidence.)

18 BY MR. RICHEY:

19 Q. Do you have your application with you?

20 A. Yes.

21 Q. Can you take that out, please.

22 Do you have it?

23 A. I do.

24 Q. In your application, you raised several issues; is
25 that correct?

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 A. Yes, sir.

2 Q. And I think we've gone through number one, number
3 two. Number 3C. What do you allege in C?

4 A. C, I wrote: Two months ago the Appellant found out
5 his attorney, James Price, died 18 months after his conviction.
6 He died September 12, 2020 from terminal lung disease.
7 Attorney Price never disclosed that he was in poor health. If
8 the Applicant was aware of this, he would've got a different
9 attorney to represent him in a murder case.

10 Q. In this case, did you have any problem
11 communicating with Mr. Price?

12 A. Yes.

13 Q. How so?

14 A. He was difficult to communicate with, he was very
15 abrupt, curt, just hard to deal with.

16 Q. Do you believe his health interfered with you
17 communicating -- you could talk to him; correct?

18 A. I could talk to him.

19 Q. That's what you outlined in D; correct?

20 A. Yes. Do you want me to read that?

21 Q. You can tell it to me in your own words.

22 A. Just basically talking to him, you were made to
23 feel uncomfortable. He was very, I mean, very respected. I
24 respected him. He came with a good background. When you talk
25 to him, it was just -- he was kind of barking at you. You just

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 didn't feel comfortable having a conversation. It was always
2 talking down.

3 Q. Did that affect your understanding of the
4 discussions you had with him?

5 A. Yeah, because in my mind he's the professional. He
6 knows what he's doing. I just felt out of place anytime I
7 tried to say something.

8 Q. You basically left the case in his discretion; is
9 that what you're saying?

10 A. Yes, sir.

11 Q. I'm going to show you this. This is the opinion
12 from the Court of Appeals. I'm sure it's part of the record.
13 In this opinion you sought to appeal the ruling of the defense
14 application; correct?

15 A. Yes, sir.

16 Q. What did the appeals court rule in that case?

17 A. The trial court did not err in denying Holloway's
18 request for immunity because Holloway failed to prove by a
19 preponderance of the evidence that this evidence if -- that his
20 actions were covered by the act. The trial court found
21 Holloway's testimony regarding the incident not credible, which
22 we find is supported by the record. See State V. Curry.

23 Q. Turn to the last part of that. And the last part
24 of that, what does it say in terms of the record in the case?

25 A. To the extent Holloway argues that a trial court

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 erred in failing to grant immunity based on the defense of
2 habitation, in Sexton 16-11-4048, we find these arguments are
3 not preserved for review because they were not raised and ruled
4 upon by the trial court.

5 Q. So you believe that your lawyer was ineffective for
6 preserving this issue; correct?

7 A. Yes.

8 Q. Dealing with this jury charge, one of the issues
9 that you have with it, it didn't deal with the trespass; is
10 that correct?

11 A. That's correct.

12 Q. You believe if that had been a major focal point,
13 then your outcome would've been different?

14 A. Yes.

15 Q. Let's jump to H.

16 A. Okay.

17 Q. And we covered F and G. Can you tell The Court the
18 allegations you have in H.

19 A. Prosecutor made several false statements that my
20 attorney failed to object. Mr. Holloway walked Jeremy Bell out
21 of the home. Since he never left, he was a welcomed visitor.
22 Page 139, transcript also. When Bell reentered the home, he
23 was trespassing or worse, committing burglary at night.

24 Jeremy wasn't welcomed after I asked him to leave.

25 Q. You believe that the attorney should object to

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 that?

2 A. I mean, I would think so, yes.

3 Q. When we go to I, that talks about the Darlington
4 police report we have in the record; correct?

5 A. Yes, sir.

6 Q. I've got kind of a big picture question for you.
7 We've talked about several things from the trespass to the
8 incident to the case itself. In determining whether you
9 should've taken an offer that was all this thrown in -- the
10 trespass, the issues dealing with the case -- were they all
11 discussed with you in light of a plea offer?

12 Let me say it this way. When you sit down and
13 discuss whether you should take this ten-to-15-year plea or
14 whatever it was, did you go through a recitation of that police
15 report might not come in, or could come in? The trespass issue
16 and all the stuff we're raising, did you ever have a comparison
17 what that meant to whether you should accept this offer?

18 A. No.

19 Q. In this case, during the preparation of this case,
20 did your lawyers do any type of mock trial or anything?

21 A. Yes, sir.

22 Q. Did they discuss that with you?

23 A. Yes.

24 Q. What was -- do you know what they did?

25 A. I know that they hired an outside agency, did a

LAWTON HOLLOWAY DIR BY MR. RICHEY

1 mock trial, and the mock trial came back guilty.

2 Q. Do you know what you were found guilty of in the
3 mock trial?

4 A. I'm not sure, to be honest. I'm thinking murder,
5 but I'm not 100 percent sure.

6 Q. Did your lawyers discuss with you the impact of
7 that in your case?

8 A. Not to the point it deterred us from going to
9 trial. It just said the mock trial came back guilty, and we
10 needed to make some adjustments. It was never: No, we
11 shouldn't try this case, at no point should we go forward.

12 Q. When you say adjustments, what is that?

13 A. I mean, just -- I took it to mean they were going
14 to re-strategize.

15 Q. It wasn't told to you, the mock trial found you
16 guilty of a charge, you can get life?

17 A. No.

18 Q. No?

19 A. No.

20 Q. Testifying today, you're testifying that at no time
21 during this case you actually realized or believed that you
22 could get a life without parole sentence?

23 A. No.

24 Q. That you'll never get out?

25 A. No.

LAWTON HOLLOWAY CROSS BY MR. EDWARDS

1 MR. RICHEY: Please answer the questions the
2 attorney general has for you.

3 THE COURT: Mr. Edwards.

4 CROSS-EXAMINATION

5 BY MR. EDWARDS:

6 Q. Good afternoon, Mr. Holloway.

7 A. Good afternoon.

8 Q. I don't have many questions for you. In regards to
9 this plea offer --

10 A. Yes, sir.

11 Q. -- there were some discussions and there was more
12 than one plea offer that was given to you; correct?

13 A. Correct, yes.

14 Q. You said your attorneys did discuss all these
15 offers with you?

16 A. They did.

17 Q. Including the very final offer just before trial?

18 A. Yes.

19 Q. Do you recall signing a written document stating
20 that you were aware of the plea offer?

21 A. Yes.

22 Q. And that was ten to 15 years?

23 A. Yes.

24 Q. And if you would've accepted this plea offer, you
25 would've ended up with a shorter sentence that you're currently

LAWTON HOLLOWAY CROSS BY MR. EDWARDS

1 serving?

2 A. I understand that now, yes.

3 Q. They advised you to accept that plea offer?

4 A. They gave me a plea offer but I didn't fully
5 understand how it works. The amount of time I would've gotten,
6 I didn't understand. I didn't even know that it didn't mean --
7 the plea offer 15 to ten, I thought it meant literally 15
8 years.

9 Q. Instead of 85 percent?

10 A. Right. Didn't know anything about 85 percent until
11 I got to prison.

12 Q. They did discuss the potential sentence for murder,
13 which is what you were charged with; correct?

14 A. Right.

15 Q. You knew you could be facing 30 years to life on
16 that charge?

17 A. Yes.

18 Q. And they discussed the mock trial that they
19 conducted. They hired an independent consultant to do this
20 mock trial; correct?

21 A. Yes, sir.

22 Q. Is that at your request or was that their idea?

23 A. My sisters hired them so I imagine it was at their
24 request. I'm not sure.

25 Q. Just going into the facts a little bit in this

LAWTON HOLLOWAY CROSS BY MR. EDWARDS

1 case, I'm a little confused from the record. How many times
2 did you stab Mr. Bell in the back?

3 A. I have no idea.

4 Q. I think there were some stab wounds in the front
5 and some stab wounds in the back?

6 A. Yes.

7 Q. Why was it necessary -- I think the record says
8 seven stab wounds in the back?

9 A. In the trial transcript it says that the expert
10 didn't know which one came first. And that he likely turned.

11 Q. Can you explain now why you had to stab Mr. Bell in
12 the back seven times?

13 A. At that point I don't know -- I don't know why. At
14 that point it was fear. Just fear. I mean, when I caught him
15 in my house, my assumption is dark. I barely knew the guy.

16 He told me he was -- he was in the midst of raping
17 Lisa or attempting to rape Lisa. He was going to kill my
18 family. I assumed he had a weapon.

19 I couldn't imagine somebody walking into somebody's
20 house he barely knew. So I was terrified. I couldn't run. I
21 couldn't leave him because I got a daughter. I have kids in
22 the house. I think fear kicked in.

23 Q. He didn't have a weapon, did he?

24 A. No. I found that out after the fact.

25 Q. You never saw him with a weapon?

LAWTON HOLLOWAY REDIR BY MR. RICHEY

1 A. It was pitch black in the house. Every light in
2 the house was off.

3 MR. EDWARDS: I have no further questions.

4 MR. RICHEY: One follow-up.

5 REDIRECT EXAMINATION

6 BY MR. RICHEY:

7 Q. How much trouble have you been in, in your life?

8 A. I had DUI after I got divorced. That's it.

9 Q. Have you ever been to the Department of Corrections
10 other than now?

11 A. Long time ago. For a DUI. Not Department of
12 Corrections. It was county jail.

13 Q. You haven't been in this system a lot; right?

14 A. No, sir.

15 MR. RICHEY: Thank you.

16 THE COURT: Sir, you can step down. Thank you.

17 (The witness exited the witness stand).

18 THE COURT: Raise your right hand.

19 ANDREA HOLLOWAY GOODJOIN

20 being first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. RICHEY:

23 Q. Can you state your name, please.

24 A. Andrea Holloway Goodjoin.

25 Q. Ms. Goodjoin, do you know Lawton Holloway?

ANDREA GOODJOIN DIR BY MR. RICHEY

- 1 A. Yes.
- 2 Q. How do you know him?
- 3 A. He's my brother.
- 4 Q. At the time of this case, were you involved in the
5 case?
- 6 A. Yes. After we sought counsel for him.
- 7 Q. When I say involved, you were there when the case
8 was going on and you talked to him --
- 9 A. Yes.
- 10 Q. -- and all of this?
- 11 A. Yes.
- 12 Q. For lack of a better phrase, you were kind of in
13 the middle and your brother is in jail?
- 14 A. Yes.
- 15 Q. And you physically retained the attorney? You and
16 your sister?
- 17 A. Yes, that's correct.
- 18 Q. And you been in the courtroom and we talked about
19 this offer that your brother received. Were you aware of any
20 offers?
- 21 A. I was aware of an offer.
- 22 Q. How were you aware of that offer?
- 23 A. We were told that he could get, I think it was, ten
24 to 15 years on a plea deal.
- 25 Q. And did you have any discussions with anybody about

ANDREA GOODJOIN DIR BY MR. RICHEY

1 what that meant? Let me ask you this question first.

2 Have you been in the criminal justice system?

3 A. No.

4 Q. Have you been to jail?

5 A. No.

6 Q. Have you been to SCDC?

7 A. No.

8 Q. Have you been in any situation where you would
9 calculate time and know all this stuff?

10 A. No.

11 Q. Tell me about the discussions you had about this
12 plea offer.

13 A. We were told that he was given a plea deal, ten to
14 15 years. It was offered to him. That's what we was told.
15 There was no in-depth discussion, if that's what you're asking
16 me.

17 Q. And you and your sister paid for the mock trial;
18 correct?

19 A. We did.

20 Q. Did you know the results of the mock trial?

21 A. My recollection, I wasn't told that it was a guilty
22 plea. I thought it was -- what was the term? Like dead
23 locked.

24 Q. Hung jury?

25 A. Hung jury, yes.

ANDREA GOODJOIN DIR BY MR. RICHEY

1 Q. Were you aware when your brother went to court that
2 day, that he could get a life sentence and never get out?

3 A. No.

4 Q. You did not?

5 A. No.

6 Q. You didn't know if they found him guilty on this
7 murder, that he might not ever get out again?

8 A. No.

9 Q. Did you believe that he would win the trial?

10 A. I was hopeful that he would win the trial based on
11 the fact that this man was trespassing in his home after he was
12 asked to leave. There definitely was a hope, a possibility.

13 Q. When did you find out -- I use the phrase
14 loosely -- details about this plea offer?

15 A. When the trial --

16 Q. I know what your answer is going to be. As a
17 result of your conversation with someone here, did you
18 understand what that plea offer really meant?

19 A. Yes, but it wasn't from Attorney Price.

20 Q. Right. Based on your conversation with somebody in
21 the courthouse --

22 A. Yes.

23 Q. -- not the Prices, did you find out what it
24 actually meant?

25 A. Yes.

ANDREA GOODJOIN DIR BY MR. RICHEY

1 Q. What information did you discover?

2 A. Well, I was approached because the gentleman told
3 me about the plea deal.

4 Q. You can't tell me what he told you. Just tell me
5 what did you learn?

6 A. I learned that he could've gotten way less time and
7 that he could've gotten out in possibly five to six years. I
8 was just dumbfounded.

9 Q. That was the first time you understood really the
10 essence of what the offer was?

11 A. Yes.

12 Q. And had you known that -- 'cause you talked to your
13 brother --

14 A. Yes.

15 Q. -- during this time?

16 A. Yes.

17 Q. You went to see him and all that; right?

18 A. Yes.

19 Q. You had a report with him?

20 A. Yes. I came to see him every two weeks.

21 Q. Had you known that information, you think you could
22 probably have assisted your brother in this case?

23 A. Yes. If we were told that he could get life in
24 prison, that he could die in prison, oh, most definitely. Most
25 definitely. Because he listens to me. And my sister. We have

CLARA HARRISON DIR BY MR. RICHEY

1 his best interest at heart.

2 That's why we tried to seek the best attorney that
3 we could. That's why we agreed to do all the things that we
4 did because we didn't want this for him. Because he's a good
5 person.

6 Q. He really hadn't been in any trouble like this,
7 anywhere close to it; correct?

8 A. No.

9 Q. He's been pretty much mild mannered; is that
10 correct?

11 A. Yeah, he's gone to college. He's a good person.
12 Really respected in the community.

13 Q. And if you had known what you know now, you
14 would've protected your brother better in this case; correct?

15 A. Yes.

16 MR. RICHEY: Thank you. Answer the questions the
17 attorney general has.

18 MR. EDWARDS: I have no questions.

19 THE COURT: Ma'am, thank you. You can step down.

20 (The witness exited the witness stand).

21 CLARA HARRISON

22 being first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. RICHEY:

25 Q. Ma'am, state your name, please.

CLARA HARRISON DIR BY MR. RICHEY

1 A. Clara Harrison.

2 Q. Do you know Mr. Holloway?

3 A. Yes, I do.

4 Q. How do you know him?

5 A. He's my brother, my younger brother.

6 Q. And your sister was the previous witness; correct?

7 A. That's correct.

8 Q. And you were involved in his case; correct?

9 A. Correct.

10 Q. And is your position similar to your sister about
11 this plea offer?

12 A. Yes. Yes. It is. It was an eye-opening
13 experience to learn what we learned after the fact.

14 Q. Go ahead.

15 A. We had no idea. I mean, and my sister Andrea had
16 most contact as far as verbal contact with Roy during that
17 time. She would discuss with him and then she would tell me,
18 you know, different things about it.

19 If we had known that he was not -- my mother is
20 80-something years old. She just turned 89. If we had known
21 that he was at risk of coming out or not coming out or coming
22 out in a coffin, or something to that effect, dying in prison,
23 there was no way in the world -- we would have done everything
24 we could to say: You need to take this deal.

25 We never heard of anything like that, you know.

CLARA HARRISON DIR BY MR. RICHEY

1 Ten years to us is ten years. We had no idea that it could've
2 been a reduction. This was all new to us.

3 Q. Tell me the steps that y'all paid to fund this
4 case. What are some of the things y'all done?

5 A. First thing, unfortunately, my mother took a loan
6 out on her home, which we're still paying on now. Some of the
7 suggestions that we needed to do, you know, was another expense
8 we had to pay. We had to pay for a mock trial. We had to pay
9 for the private investigator. We actually had to pay for two
10 private investigators. We had to pay for blood splatter
11 expert.

12 Based on what we were doing, we had no idea -- if
13 we had known that, we wouldn't have went that route. If we had
14 known that there was not a possibility of him getting out,
15 there would not have been a need to mortgage a house. There
16 would not have been a need to do the steps that we did.

17 MR. RICHEY: Thank you, ma'am. Answer the
18 questions the attorney general have for you.

19 MR. EDWARDS: I have no questions.

20 THE COURT: Ma'am, thank you. You can step down.

21 (The witness exited the witness stand).

22 MR. RICHEY: We call Ms. Price.

23 THE COURT: While she's coming up, the other sister
24 who testified, Edith Goodjoin, is that her name?

25 MS. GOODJOIN: Andrea Goodjoin.

POWERS PRICE DIR BY MR. RICHEY

1 THE COURT: Andrea, G-O-O-D-J-O-I-N?

2 MS. GOODJOIN: Yes.

3 THE COURT: Thank you.

4 POWERS PRICE

5 being first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. RICHEY:

8 Q. Yes, ma'am. Can you state your name, please.

9 A. Powers Price.

10 Q. Ms. Price, you're an attorney?

11 A. I am.

12 Q. Where do you practice at?

13 A. I practice in Greenville.

14 Q. Were you one of the lawyers on Mr. Holloway's case?

15 A. I was.

16 Q. Did you have an opportunity to meet with him and
17 discuss with him his case?

18 A. I did.

19 Q. And was those discussions in a group or singular or
20 both?

21 A. Both.

22 Q. In terms of the strategy of this case, I'm going to
23 get right into it. I'm going to show you two exhibits up here.
24 Because you had a part in the trial itself; correct?

25 A. Correct.

POWERS PRICE DIR BY MR. RICHEY

1 Q. Who was the lead counsel in this case, or was there
2 a lead counsel?

3 A. My dad was, Chip Price.

4 Q. Did Mr. Price, Sr., did he make the critical
5 decisions in the case, or did you-all do a collaborative?

6 A. I would say we all had a hand in it with, of
7 course, the advice and consent of the client.

8 Q. You're familiar with what the strategy and the
9 thinking during the case was? You're familiar with that?

10 A. I am. It's been some time, yes.

11 Q. Y'all did the stand-your-ground hearing; correct?

12 A. We did.

13 Q. And the defense was that -- would be that his
14 killing was lawfully; correct?

15 A. Correct.

16 Q. And so did y'all position the case as the gentleman
17 being a trespasser, do you know?

18 A. That was my recollection. Stand-your-ground
19 hearing, yes.

20 Q. And this motion, was this drafted by you, or do you
21 know who drafted it?

22 A. I believe I did.

23 Q. You drafted it.

24 And you were in the courtroom when you heard
25 Mr. Holloway read this; is that correct?

POWERS PRICE DIR BY MR. RICHEY

1 A. Just now?

2 Q. Yes, in the courtroom when he read from that. Out
3 of that last paragraph, it said he was a trespasser, and he had
4 a right to expel him; correct?

5 A. Correct.

6 Q. So the legal basis that you're using in this, if
7 someone is a trespasser on your property, that you can use that
8 type of force to get him off; correct?

9 A. Correct.

10 Q. The trial of this case, did you-all abandon that at
11 trial? What was the trial strategy?

12 A. Mr. Holloway elected not to testify. I'm assuming
13 he reviewed all the evidence. He gave a number of statements
14 that all came out.

15 Q. Do you believe that his testimony was critical for
16 that defense?

17 A. I don't believe there's anything that he could've
18 added that he didn't already say, tell law enforcement that
19 night that was recorded and was already played to the jury.

20 Q. In the case, there was a 9-1-1 tape; is that
21 correct?

22 A. Correct.

23 Q. It was you-all's position that all of that was
24 enough that you didn't need him on the witness stand?

25 A. I don't believe that there's anything that

POWERS PRICE DIR BY MR. RICHEY

1 Mr. Holloway could've added given that the story kept changing.

2 Q. You didn't have any issue with his prior record or
3 anything like that testifying?

4 A. No.

5 Q. Would you think that he would be, lack of a better
6 phrase, he would be a good witness because of the lack of his
7 serious criminal record?

8 A. I believe he had credibility issues given that the
9 story kept changing what happened that night.

10 Q. The letter that he wrote Mr. Price, Sr.

11 A. This is IV.

12 Q. That he wrote, did you have an opportunity to see
13 that letter? Do you know anything about it?

14 A. I believe Mr. Holloway requested the trespassing
15 statutes so we sent it to him.

16 Q. Are you familiar with these two young ladies back
17 here?

18 A. Yes, sir.

19 Q. Do you know that they're his sisters; correct?

20 A. Yes, sir. We've met with them many times.

21 Q. Did you discuss the case with them?

22 A. We did.

23 Q. And Mr. Holloway?

24 A. Yes, we did.

25 Q. In discussing the case, there has been a lot of

POWERS PRICE DIR BY MR. RICHEY

1 talk about this plea offer. Can you just tell me how y'all
2 explained to him that -- let me say it this way. Was there a
3 discussion with him before trial that, if you lose, you can get
4 life without parole?

5 A. I'm sure there was. I mean, the magistrate could
6 not set a bond because he was facing life, so he had to have a
7 bond hearing in front of the circuit judge. I'm sure that we
8 informed him why a magistrate could not set a bond. I'm sure
9 we had that conversation prior to trial.

10 Q. My question was a little more pointed, Ms. Price.
11 When he went to trial that day, was he aware that, if he got
12 convicted, he could get life without -- as his sister said,
13 never get out again. Was he aware of that?

14 A. I believe so, yes.

15 Q. Did y'all discuss that with him?

16 A. I believe so, yes, sir.

17 Q. In terms of his plea offer, ten to 15, were you
18 aware of that?

19 A. I was, yes, sir.

20 Q. Did you have any discussions with Mr. Holloway
21 about that?

22 A. I believe so, yes, sir.

23 Q. And was your advice for him to accept or decline
24 that or what?

25 A. It was always Mr. Holloway's decision whether to

POWERS PRICE DIR BY MR. RICHEY

1 accept or decline that. Mr. Holloway was aware of the issues
2 that he had in his case.

3 Q. Did you make a recommendation as to whether he
4 should accept it or decline it?

5 A. Personally I don't remember making a recommendation
6 to him. However, we made him aware of all the issues in his
7 case.

8 Q. When you say issues in his case, you're referring
9 to all the trespass and the whole batch of it; correct?

10 A. Yes, sir, self-defense.

11 Q. And do you recall whether -- you took all those
12 factors, discussed it with him and said, hey, you get life.
13 This is ten to 15 years; it might be your best interest to get
14 out of this thing, for lack of a better phrase?

15 A. Yes, sir, there was a conversation before trial
16 about the offer still being on the table.

17 Q. You don't recall whether you even advised to take
18 it or decline. I know you said he has a right to make his own
19 decision; correct?

20 A. Correct.

21 Q. And you can't force him to plea guilty?

22 A. Correct.

23 Q. But you can make a recommendation; is that correct?

24 A. Correct.

25 Q. He didn't have to do it, but you could make it;

POWERS PRICE DIR BY MR. RICHEY

1 correct?

2 A. Correct.

3 Q. You don't recall what that recommendation was?

4 A. We stated it was a good offer based on the facts of
5 the case.

6 Q. You got that incident report up there, Ms. Price?

7 A. Yes.

8 Q. Do you recall that incident, recall discussing it
9 with him or anything?

10 A. Yes.

11 Q. Did you discuss how that could be used in this case
12 or not used?

13 A. Yes.

14 Q. What was your position on that?

15 A. Our position was that it would not be able to be
16 used, but that we would try.

17 Q. What was your basis for it not being used?

18 A. It's my understanding that Mr. Holloway was not
19 aware of this incident at the time of the stabbing.

20 Q. Because he wasn't aware of it, it's your position
21 it couldn't come in under the 404 prior bad act?

22 A. Correct.

23 Q. You discussed -- Mr. Price, I'm going to refer
24 to him as Mr. Price, Sr. You were actively involved with the
25 decisions that he was making, of course?

POWERS PRICE CROSS BY MR. EDWARDS

1 A. Yes.

2 Q. And he doesn't necessarily have to be here for us
3 to understand what the strategy and all that of the case was?

4 A. I don't believe so.

5 MR. RICHEY: Answer the questions the attorney
6 general have for you, please.

7 CROSS-EXAMINATION

8 BY MR. EDWARDS:

9 Q. Ms. Price, I don't have too much for you on
10 cross-examination. I just wanted to ask, you and your brother
11 and your father worked as a team on this case; correct?

12 A. We did, correct.

13 Q. Do you recall how many times that you met with
14 Mr. Holloway?

15 A. I would say at least five. Somewhere around there.

16 Q. Were there any times when either your father or
17 your brother met with Mr. Holloway while you were not present?

18 A. Yes, absolutely.

19 Q. Do you have knowledge as to how many times either
20 you or your brother or father or all of you together met with
21 Mr. Holloway?

22 A. I would say my dad at least five. My dad was not
23 great with technology. Anytime we had to show Mr. Holloway
24 videos of the discovery, he would bring at least one of us.
25 James probably went the most. Definitely more than five.

POWERS PRICE REDIR BY MR. RICHEY

1 MR. EDWARDS: I think that's all I have for you.

2 THE COURT: Do you remember the results of the
3 tests, the jury that y'all ran? Do you recall what those were?

4 THE WITNESS: I don't believe any jury found him
5 not guilty. I think there was a good split between voluntary
6 manslaughter and murder.

7 MR. RICHEY: I didn't hear your question, Judge.

8 THE COURT: I was asking what the results of the
9 test trial they ran. She indicated he was never found not
10 guilty. There was always a split between murder and
11 manslaughter. There seemed to be some confusion on that with
12 the two prior witnesses.

13 MR. RICHEY: I'm going to ask you a follow-up to
14 the judge's question.

15 REDIRECT EXAMINATION

16 BY MR. RICHEY:

17 Q. Did you talk to him about that?

18 A. We did.

19 Q. Did you tell him he was not found not guilty at
20 all?

21 A. I believe so, yes.

22 Q. He was aware the mock jury had found him guilty?

23 A. Correct.

24 MR. RICHEY: Thank you.

25 THE COURT: Thanks. You can step down.

JAMES H. PRICE DIR BY MR. RICHEY

1 MR. RICHEY: We call Mr. Price.

2 JAMES HARDEE PRICE, IV

3 being first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. RICHEY:

6 Q. Sir, would you state your name, please.

7 A. James Hardee Price, IV.

8 Q. Mr. Price, are you an attorney?

9 A. I am.

10 Q. Where do you practice?

11 A. At the Price Law Firm in Greenville, South
12 Carolina.

13 Q. Was the previous witness a lawyer in your office?

14 A. She was.

15 Q. Your father was a lawyer in that office; correct?

16 A. He was.

17 Q. Did the three of you-all work on this case
18 together?

19 A. Yes, sir.

20 Q. Is the testimony that Ms. Price gave, is it
21 accurate when she said the three of y'all kind of strategized
22 together?

23 A. Yes, sir.

24 Q. That it was a case that, all the time, all the
25 parties knew what the other one was doing in terms of strategy

JAMES H. PRICE DIR BY MR. RICHEY

1 and going to trial?

2 A. That would've been the idea, yes.

3 Q. We've discussed this. I'm going to go to the heart
4 of it. Did you have an opportunity to talk with Mr. Holloway?

5 A. Plenty of times. In fact, I visited Mr. Holloway
6 so often that I once joked with the guard at the jail that
7 they're going to start charging me rent.

8 Q. His sisters are there. Do you ever recall talking
9 to them?

10 A. Yes, sir.

11 Q. In terms of this offer, were you a part of any
12 discussions, did you have any discussions with Mr. Holloway
13 about the plea offer?

14 A. Yes, sir. In fact, I specifically remember a time
15 in November, I believe it was November 23, 2018, I met with
16 Mr. Holloway at the jail specifically to discuss the plea
17 offer. And he thought that, if it was ten years, the judge
18 could give him 30. I explained to him, no, this would've been
19 negotiated, it would've been between ten and 15. And he
20 would -- I'm sure, I went over the fact it's 85 percent.

21 His exact response was, if they're going to give me
22 time, then they're going to have to take it from me.

23 Q. So your position is he understood the sentences
24 that he could receive?

25 A. Yes, sir.

JAMES PRICE CROSS BY MR. EDWARDS

1 Q. In terms of this life sentence, was he aware at the
2 time that he went to trial that, if he lost, he could get life
3 without parole?

4 A. It is my understanding that he did know that.

5 Q. Do you know whether you told him, Mr. Price, Sr.,
6 or Ms. Price told him? Do you know -- did y'all tell him? Did
7 you tell him?

8 A. That was so long ago, but I'm confident that I did
9 tell him that. I vaguely remember telling him that he is
10 facing 30 to life right now.

11 MR. RICHEY: No other questions.

12 MR. EDWARDS: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. EDWARDS:

15 Q. Afternoon, Mr. Price.

16 A. Afternoon.

17 Q. How many years have you been practicing law?

18 A. I was sworn in, in November 2011.

19 Q. What is the primary focus of your law practice?

20 A. Right now it's becoming more family law.

21 Traditionally, its bread and butter is criminal defense. I
22 started off at the Solicitor's Office in Greenville in 2011 and
23 was there until October of 2016 when I went into the family
24 practice.

25 Q. Your time at the Solicitor's Office, I assume you

JAMES PRICE CROSS BY MR. EDWARDS

1 prosecuted a wide variety of different crimes?

2 A. You can say that.

3 Q. Are you familiar with suppression motions and
4 Fourth Amendment ground suppression, things of that nature?

5 A. I am.

6 Q. Your sister, are y'all roughly the same age?

7 A. I'm a little older.

8 Q. Do you know when your sister graduated law school?

9 A. She graduated the same year. I took some time off
10 between college and law school.

11 Q. When you practiced together with your father, did
12 your sister practice criminal law as well?

13 A. She did. She started off there.

14 Q. How many years was your father practicing law
15 around this case?

16 A. Probably over 40. I believe he graduated law
17 school in mid to late '70s.

18 Q. What was the primary area of his law practice?

19 A. Mostly criminal defense.

20 Q. Roughly, how many cases per year would you say --
21 how many clients per year, criminal defense, would you say your
22 father had towards the end of his career?

23 A. That I really couldn't tell you. I'm sorry.
24 Plenty. I'm sorry.

25 Q. More to the facts of this case. Let's talk about

JAMES PRICE CROSS BY MR. EDWARDS

1 your meetings and discussions with Mr. Holloway.

2 A. Of course.

3 Q. Your sister testified that you probably met more
4 with him more than anybody else of the three of you; is that
5 correct?

6 A. That is correct. It was mainly my job or kind of
7 the job I took on to prepare him to testify at trial because it
8 was our belief that he would have to tell his side of the
9 story.

10 Q. Did you discuss that decision with Mr. Holloway
11 over the course of your representation?

12 A. I did discuss that. Mr. Holloway had always been
13 reluctant to testify. He apparently had some book back there
14 with him that he was reading, written by an attorney. Forgive
15 me, I cannot remember the name. That attorney said a defendant
16 should never testify, supposedly.

17 Q. Based on the facts of this case, what was your
18 opinion about whether or not he should testify?

19 A. It was -- the discussion between us at the office
20 was we weren't crazy about that idea. It could always do more
21 harm than good. But we believe that, just based on
22 circumstances and facts we had, that Mr. Holloway would have to
23 tell his side of the story.

24 Q. To establish self-defense; correct?

25 A. Correct.

JAMES PRICE CROSS BY MR. EDWARDS

1 Q. You discussed it with him more than once. Whose
2 decision was it that Mr. Holloway chose not to testify?

3 A. Well, after the stand-your-ground motion hearing
4 and the testimony from the arresting officer -- forgive me if I
5 get anything wrong. It's been quite a while.

6 We all met with Mr. Holloway and determined that
7 there really wasn't anything that he could add that would --
8 versus what could be the potential outcome and fallout from him
9 testifying. We met with Mr. Holloway. We discussed the pros
10 and cons. It was Mr. Holloway's decision not to testify.

11 Q. It's in the record. He gave a lengthy statement to
12 law enforcement following this stabbing?

13 A. Correct.

14 Q. You discussed with him the possibility if -- you at
15 least attempted to have that statement suppressed?

16 A. We did attempt.

17 Q. That was not successful?

18 A. That's correct.

19 Q. He was aware of that; it could go either way.
20 There's no guarantee that the statement would be suppressed, of
21 course.

22 A. It's my understanding that he believed that anyway.

23 Q. Discuss this immunity hearing. You prepared with
24 Mr. Holloway before this immunity hearing. You were aware that
25 it was his belief that he was defending the home where he

JAMES PRICE CROSS BY MR. EDWARDS

1 lived; correct?

2 A. Yes, sir.

3 Q. Did you pursue that line of, I guess, line of
4 defense at the immunity hearing?

5 A. We did.

6 Q. Did you argue that to the judge?

7 A. We did.

8 Q. What's your understanding of the law whether
9 Mr. Bell was a trespasser under the trespassing statute? Would
10 that be controlling over whether he was allowed to use deadly
11 force against Mr. Bell?

12 A. It was definitely something we considered. Can you
13 rephrase the question.

14 Q. You discussed -- I guess there was testimony that
15 Mr. Holloway requested the trespassing or you sent the
16 trespassing statute to Mr. Holloway in jail. There was some
17 discussions about whether Mr. Bell would be the trespasser?

18 A. Right.

19 Q. Was it your understanding, whether he was legally a
20 trespasser under the statute, did it necessarily control
21 whether, for terms of the stand-your-ground Act, whether
22 Mr. Holloway was allowed to use self-defense at that time?

23 A. That's my understanding.

24 Q. Let's discuss the plea offers in this case. I'm
25 going to show you a document here. I'm going to ask that it be

JAMES PRICE CROSS BY MR. EDWARDS

1 marked as State's 1.

2 (RESP. EXH. 1, Letter dated 9-12-18, was marked for
'3 identification.)

4 BY MR. EDWARDS:

5 Q. Can you tell me what that document is.

6 A. This is a letter from my office to Mr. Holloway in
7 Spartanburg County Detention Center basically confirming that
8 there was an offer. And Mr. Holloway rejected, and that the
9 sentence he would have to serve was at 85 percent.

10 Q. What's the date on that?

11 A. September 12, 2018.

12 Q. Read the body. It's not very long.

13 A. Very much enjoyed our meeting last week. As you
14 instructed, we are preparing for trial. This letter will
15 confirm that the Solicitor officially offered you a plea to
16 voluntary manslaughter, which he did on September 10, 2018.
17 The offer is what is known as a, quote, straight up plea, end
18 quote, in that there would be no recommendation as far as a
19 sentence is concerned.

20 The penalty for voluntary manslaughter is a minimum
21 of two years; maximum, 30 years. It is not parole eligible,
22 and you would have to serve 85 percent of any sentence based on
23 current South Carolina law.

24 I understand from our most recent conversation that
25 you are not interested in a manslaughter plea and you want a

JAMES PRICE CROSS BY MR. EDWARDS

1 trial. However, I'm required to let you know of any plea
2 offer, which is the reason for this letter. We will see you
3 soon.

4 As always, I remain yours very truly, James H.
5 Price, III.

6 Q. That's your father?

7 A. Yes, sir.

8 (RESP. EXH. 2, Handwritten affidavit, was marked
9 for identification.)

10 BY MR. EDWARDS:

11 Q. Do you recognize this?

12 A. Yes. This is a handwritten letter or handwritten
13 statement signed by Mr. Holloway. Do you want me to read it?

14 Q. Sure.

15 A. State of South Carolina, County of Spartanburg,
16 affidavit. I was told today, November 21, 2018, that the
17 Solicitor offered me a guilty plea to manslaughter with a
18 negotiated sentence of less than 30 years. I reject that
19 offer. And it's signed Mr. Holloway on November 21, 2018.

20 (RESP. EXH. 3, Letter dated 11-28-18, was marked
21 for identification.)

22 BY MR. EDWARDS:

23 Q. Can you tell me whether you recognize this
24 document.

25 A. Yes. This is also a letter dated November 28, 2018

JAMES PRICE CROSS BY MR. EDWARDS

1 to Mr. Holloway when he was in the Spartanburg County Detention
2 Center.

3 Q. Read the second paragraph.

4 A. Of course. In the meantime, this will confirm that
5 we told you at the courthouse Monday before James and I left,
6 Mr. Bulsa had offered you a manslaughter plea for a sentence
7 between ten and 15 years. We believe that we could get him to
8 the ten year area. This will further confirm that you rejected
9 that plea offer and told us that you still want to go to trial,
10 which is your decision and a decision that we respect.

11 MR. EDWARDS: Your Honor, I offer State's 1 through
12 3.

13 THE COURT: Without objection?

14 MR. RICHEY: Yes, Your Honor.

15 THE COURT: Those are in evidence.

16 (RESP. EXH. 1, Letter dated 9-12-18, was entered
17 into evidence.)

18 (RESP. EXH. 2, Handwritten affidavit, was entered
19 into evidence.)

20 (RESP. EXH. 3, Letter dated 11-28-18, entered into
21 evidence.)

22 BY MR. EDWARDS:

23 Q. It appeared you did discuss the 85 percent rule on
24 manslaughter potential conviction of Mr. Holloway?

25 A. Yes. He was informed of that.

JAMES PRICE CROSS BY MR. EDWARDS

1 Q. Would you say your relationship with Mr. Holloway
2 was easy or would you describe him as more of a difficult
3 client?

4 A. I would have to say it would vary. I mean, it's
5 understandably that you would have good days and bad in the
6 detention center.

7 As I stated earlier, we had some issues with him
8 testifying. I explained the need for him to testify at the
9 time. And he was kind of fighting me on that based on the
10 book. At the end, he agreed with that decision; was my
11 understanding anyway.

12 I do remember getting on to him twice. And I mean
13 getting on to him, I was -- I believe we, as a group, became
14 angry at him one time when he was discussing his case with his
15 cellmates and trying to get their feedback on his testimony.

16 And there was another time when Mr. Holloway,
17 towards kind of close to trial, Mr. Holloway admitted to taking
18 pills that he would receive to help calm his nerves if he knew
19 that I was coming to visit him or someone from my law firm was
20 coming to visit him, that he would get from people in jail.

21 Q. Tell me a little bit more about this mock trial.
22 Is that something you normally do in your practice when you're
23 getting ready for trial?

24 A. I hadn't really been with the firm for that long.
25 It was something that I've known my father to use in the past

JAMES PRICE CROSS BY MR. EDWARDS

1 on a very serious trial such as murder trial.

2 Q. Just generally, what does that entail? Do you have
3 actual jurors that come in?

4 A. It's my understanding -- please don't hold me to
5 this, I could be wrong. It's my understanding this outfit puts
6 an ad in the paper saying: Hey, we need jurors. I don't know
7 if they say for what potential trial or anything. They will
8 get a group of people, and then they will go through certain
9 facts and kind of gauge their reaction and we get to watch.

10 Q. Did that inform your advice to Mr. Holloway?

11 A. It did. It gave us some insights on kind of
12 directions where to go, potential hot spots. And we relayed
13 that information to Mr. Holloway.

14 Q. I may have asked you this question already. He was
15 aware that murder carries up to a life sentence?

16 A. My understanding he did, yes. I vaguely remember
17 talking to him during discussion of the plea what he's facing
18 currently, murder versus the plea offer and voluntary
19 manslaughter. I can't give you any specific details on that,
20 I'm sorry.

21 Q. This issue about the victim having a prior arrest
22 for domestic violence, did you attempt to get that prior
23 conviction in at trial?

24 A. I do not recall. I believe a motion was filed,
25 though.

JAMES PRICE REDIR BY MR. RICHEY

1 MR. EDWARDS: Beg The Court's indulgence.

2 BY MR. EDWARDS:

3 Q. The allegation in this application talks about a
4 statement a prosecutor made about Mr. Holloway walking Mr. Bell
5 out of the home. But since he never left, he was a welcomed
6 visitor. Did you feel the need to object to that statement?

7 A. I did not. In all truthfulness, I was sitting
8 second chair. Quite honestly, I don't know if it led to that
9 level. I'm not sure.

10 MR. EDWARDS: That's all I have, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. RICHEY:

13 Q. These letters you mailed to the jail, do you know
14 whether he received these letters?

15 A. I'm unsure if he received those. I do know that --
16 I do recall him saying he received some letters from us in the
17 past. I don't know if those were the specific ones. He was
18 getting mail from us.

19 Q. Those letters doesn't reference the murder charge;
20 correct? They just talk about voluntary. Don't say anything
21 about the murder charge being dismissed; right?

22 A. Right.

23 MR. RICHEY: Thank you. That's all, Your Honor.

24 THE COURT: One quick question. I reviewed this
25 last night. It was not the full transcript that was handed to

JAMES PRICE REDIR BY MR. RICHEY

1 me before we began the hearing.

2 Correct me if I'm wrong, the defense of habitation
3 was raised in the stand-your-ground hearing; right?

4 THE WITNESS: I believe it was, Your Honor. I
5 don't have a copy of the transcript. With all due respect, it
6 was so long ago. I believe it was raised.

7 THE COURT: Is there any reason or was there any
8 reason why it wasn't raised in addition to self-defense? I
9 don't recall seeing a request for an instruction on habitation
10 in the actual trial itself. Can you speak to any of that?

11 THE WITNESS: I cannot, Your Honor. I'm sorry.

12 THE COURT: Any follow-up based on my questions?

13 MR. RICHEY: No, Your Honor.

14 THE COURT: Attorney General?

15 MR. EDWARDS: No, Your Honor.

16 THE COURT: Thank you very much. You can step
17 down.

18 (The witness exited the stand.)

19 MR. RICHEY: No other witnesses.

20 THE COURT: Any witnesses from the State?

21 MR. EDWARDS: No, Your Honor.

22 THE COURT: I do feel like I have a good
23 understanding of the issues; have not reviewed the transcript
24 in full. I was just relying on what the record on appeal was
25 from the AG's office. I think that's what they provided me as

JAMES PRICE REDIR BY MR. RICHEY

1 opposed to a full transcript. Anything you want to
2 particularly accentuate, Mr. Richey?

3 MR. RICHEY: No, Your Honor. I think the record is
4 as Court has reflected. Ask The Court to consider the
5 witnesses as well as the issues raised.

6 THE COURT: Attorney General, anything you want to?

7 MR. EDWARDS: Yes, Your Honor. Based on your last
8 question, there was mention of defense of habitation in the
9 closing argument, and it was charged to the jury.

10 THE COURT: It was charged?

11 MR. EDWARDS: As to the closing argument, on page
12 500, this is the very end of Mr. Price's closing argument, line
13 25; he talks about the defense of the home. Throughout the
14 closing argument, throughout the trial of this case that was
15 mentioned. It was more of a holistic defense because I think
16 the testimony pretty clearly established that they were friends
17 with Mr. Bell. He was originally invited into the home. I
18 think there was some alcohol involved.

19 THE COURT: Lot of alcohol involved.

20 MR. EDWARDS: Based on Mr. Holloway's statement to
21 the police and the testimony of Lisa Wood, his girlfriend, who
22 did not testify consistently with Mr. Holloway at all, I think
23 the argument for stand-your-ground and self-defense, they were
24 all interwoven; this is the home where they were living. I
25 think it was raised.

JAMES PRICE REDIR BY MR. RICHEY

1 THE COURT: Was there a specific charge on
2 habitation as a separate defense?

3 MR. EDWARDS: I believe so, Your Honor. I'm sorry,
4 I don't have this marked.

5 THE COURT: A few moments ago I found self-defense
6 instructions.

7 MR. EDWARDS: Page 515, 16, line 25 of 515, going
8 into 516, defense of habitation is a defense of one's own
9 dwelling. If the Defendant or a member of his family or
10 household is attacked in the defense of their own home, the
11 Defendant may use force.

12 THE COURT: You're right.

13 That kind of defense of others sort of thing.

14 MR. EDWARDS: I think it's all interwoven. Defense
15 of habitation is in there.

16 And I guess my argument on that would be really
17 more of a prejudice argument in that the jury had all the tools
18 they needed to decide this case based on the law.

19 I think the testimony here today speaks for itself
20 on the ineffective prong of Strickland, the lengths they went
21 to, to prepare this defense, the communication they had with
22 Mr. Holloway, things of that nature.

23 The follow-up to that would be the evidence against
24 Mr. Holloway was so strong and so overwhelming, none of these
25 alleged errors, even if they were errors, would've made a

JAMES PRICE REDIR BY MR. RICHEY

1 difference in this particular case. I would allow the brief of
2 the State and the direct appeal and on the record.

3 THE COURT: I understand that. I'm dealing with,
4 kind of dealing with ground G of his application where he
5 maintains that the issue of defense of habitation wasn't
6 preserved for appellate review.

7 I know the AG does a mountain load of appellate
8 work, error preservation is one of those little irritating
9 things with me. I don't understand why judges can't answer
10 questions that are put to them. That might be the only issue.
11 That was the main reason I'm looking at that question of
12 whether the defense of habitation, if it was charged, obviously
13 there is not some error. If there was a failure to request it,
14 then maybe that issue could've been handled on appeal
15 previously. I'm going to have to wade into this a little bit
16 deeper.

17 MR. EDWARDS: Can I follow-up?

18 THE COURT: Yes.

19 MR. EDWARDS: The issue on appeal was for the
20 defense of habitation. That was for the stand-your-ground
21 hearing, not for the jury charge request.

22 The preservation of the stand-your-ground hearing,
23 the stand-your-ground judge, he decided that issue based on the
24 totality of evidence and chiefly along the lines --

25 THE COURT: Credible.

JAMES PRICE REDIR BY MR. RICHEY

1 MR. EDWARDS: -- credible witness and his testimony
2 did not match the evidence in the case. The evidence -- in the
3 standard review of the 'stand-your-ground hearing, it's flipped.
4 It's the Defendant's burden to prove stand-your-ground case.
5 Again, circle back to the prejudice. The stand-your-ground
6 issue was decided on the fact that Mr. Holloway's story simply
7 was not believable and did not match with the physical
8 evidence. And the judge understands the law of
9 stand-your-ground, he understands what the statute says. I
10 think the fact that was not preserved for review does not
11 affect the ultimate outcome of that issue.

12 MR. RICHEY: Judge, I think one of the issues when
13 he said that is the issue that we raised in the
14 stand-your-ground motion, it's Mr. Holloway's position that the
15 victim was a trespasser in his home at the time the incident
16 occurred. And it seems from the record that issue was
17 abandoned at trial; that there wasn't an emphasis on he had a
18 lawful right actually to protect his family and property from a
19 trespasser on his property. I think it's spelled out in the
20 motion really well from what counsel said.

21 THE COURT: He had the right to eject the
22 trespasser using reasonable means, whether taking the life of
23 the decedent is reasonable for the jury.

24 MR. RICHEY: Yes, Your Honor.

25 THE COURT: Maybe I was getting there. That was

JAMES PRICE REDIR BY MR. RICHEY

1 one of the questions I had when I was looking at that last
2 night. To what extent defense of habitation. Generally it's
3 easier to prove. Then it becomes a question of reasonableness
4 of the tactics used to eject trespassers.

5 Again, I only had an hour or so to look at the
6 record on appeal. Obviously, I have more information. I'll
7 take it under advisement and, hopefully, have an order or
8 instructions for an order if not this week, probably week of
9 July 4th. Sorry if I can't get to you sooner.

10 MR. RICHEY: That's fine. Thank you, Your Honor.

11 THE COURT: We'll be at ease on this. Take care,
12 sir. Good to meet you.

13 (The hearing was concluded at 2:57 p.m.)

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JAMES PRICE REDIR BY MR. RICHEY

CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter
and Notary Public for the State of South Carolina at Large, do
hereby certify that the foregoing transcript is a true,
accurate, and complete record.

I further certify that I am neither related to, nor
counsel for, any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 4th day of December, 2023 at Spartanburg, Spartanburg
County, South Carolina.



Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

PRICE LAW

644 E. Washington Street | Greenville | SC 29601
P 864.271.3535 F 864.242.6560 | price-law-firm.com

February 12, 2019

LEGAL MAIL

Lawton Leroy Holloway
Spartanburg County Detention Center
950 California Avenue
Spartanburg, South Carolina 29303

Re: State v. Lawton Leroy Holloway
Warrant No.: 2017A4210103240

Dear Lawton:

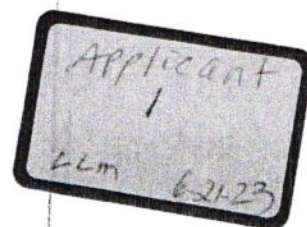
Enclosed is a copy of the Trespassing statute which you have requested. Please let us know if you require any other statutes.

As always, I remain,

Yours very truly,

James H. Price, IV

JHP4
Enclosure



WESTLAW

Code of Laws of South Carolina 1976 Annotated
Title 16. Crimes and Offenses

§ 16-11-620. Entering premises after warning or refusing to leave on request; jurisdiction and enforcement.
SC ST § 16-11-620 Code of Laws of South Carolina 1976 Annotated Title 16. Crimes and Offenses (Approx. 2 pages)

Code 1976 § 16-11-620

§ 16-11-620. Entering premises after warning or refusing to leave on request; jurisdiction and enforcement.

Currentness

Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days.

All municipal courts of this State as well as those of magistrates may try and determine criminal cases involving violations of this section occurring within the respective limits of such municipalities and magisterial districts. All peace officers of the State and its subdivisions shall enforce the provisions hereof within their respective jurisdictions.

The provisions of this section shall be construed as being in addition to, and not as superseding, any other statutes of the State relating to trespass or entry on lands of another.

Credits

HISTORY: 1962 Code § 16-388; 1960 (51) 1729; 1981 Act No. 76, § 3; 1996 Act No. 279, §

NOTES OF DECISIONS

In general

Statutory criminal trespass involves either (1) the entry of a dwelling house, place of business, or the premises of another within six months after being warned against such entry, or (2) the failure to leave a dwelling house, place of business or premises of another after having been requested to leave. *State v. Cross* (S.C.App. 1994) 323 S.C. 41, 448 S.E.2d 569, amended on denial of rehearing, rehearing denied. Trespass 81

For purposes of a prosecution for trespass, under § 16-11-620, public school land is "owned and possessed" by the respective school district trustees, pursuant to § 16-11-530; in other words, a trespass upon school lands is a trespass "on the premises of another" as proscribed by § 16-11-620. In *Interest of Joseph B.* (S.C. 1983) 278 S.C. 502, 299 S.E.2d 331.

Since this section [Code 1962 § 16-388] applies only to private property, a conviction

NOTES OF DECISIONS (20)

In general
Constitutional issues
Lawful entry
Lesser included offenses
Probable cause

682

thereunder for an alleged trespass upon public property is not warranted and cannot be sustained. *State v. Hanapole* (S.C. 1970) 255 S.C. 258, 178 S.E.2d 247.

[Accused not prejudiced by failure to require city to elect particular statute upon which prosecution based, where warrant charged single offense of trespass and jury instructed as to guilt of trespass as defined in this section [Code 1962 § 16-388]. *City of Rock Hill v. Hamm* (S.C. 1962) 241 S.C. 420, 128 S.E.2d 907, certiorari granted 84 S.Ct. 1902, 377 U.S. 988, 12 L.Ed.2d 1042, vacated 85 S.Ct. 384, 379 U.S. 306, 13 L.Ed.2d 300, rehearing denied 85 S.Ct. 698, 379 U.S. 995, 13 L.Ed.2d 614. Criminal Law ¶ 260.11(5)

Constitutional Issues

The operator of a privately-owned business may accept some customers and reject others on purely personal grounds in the absence of a statute to the contrary. *City of Greenville v. Peterson* (S.C. 1961) 239 S.C. 298, 122 S.E.2d 826, certiorari granted 82 S.Ct. 1577, 370 U.S. 935, 8 L.Ed.2d 806, reversed 83 S.Ct. 1119, 373 U.S. 244, 10 L.Ed.2d 323, concurring opinion 83 S.Ct. 1133, 373 U.S. 244, 10 L.Ed.2d 323. Constitutional Law ¶ 3027

In the absence of a statute forbidding discrimination based on race or color, the operator of a privately-owned place of business has the right to select the clientele he will serve irrespective of color. *City of Greenville v. Peterson* (S.C. 1961) 239 S.C. 298, 122 S.E.2d 826, certiorari granted 82 S.Ct. 1577, 370 U.S. 935, 8 L.Ed.2d 806, reversed 83 S.Ct. 1119, 373 U.S. 244, 10 L.Ed.2d 323, concurring opinion 83 S.Ct. 1133, 373 U.S. 244, 10 L.Ed.2d 323. Constitutional Law ¶ 3260(1)

Lesser included offenses

[Statutory trespass is not a lesser included offense of first degree burglary; statutory trespass requires a prior warning against entry or a request to leave while burglary does not require these elements. *State v. Cross* (S.C.App. 1994) 323 S.C. 41, 448 S.E.2d 569, amended on denial of rehearing, rehearing denied. Indictment And Information ¶ 191(.5)

Lawful entry

[Even if defendant were title owner of home in which his father was residing, police officers acted within the scope of their power when they arrested defendant without a warrant for trespass after notice when defendant refused to leave father's residence after being asked to do so; statute did not exclude an owner from class of persons who may be convicted of trespass after notice. *State v. Tyndall* (S.C.App. 1999) 336 S.C. 8, 518 S.E.2d 278, rehearing denied. Arrest ¶ 63.1; Trespass ¶ 81

Although an entry by a person on the premises of another may initially be lawful, the person becomes a trespasser when the person fails to depart after being asked to leave by the owner. *Wright v. United Parcel Service, Inc.* (S.C.App. 1994) 315 S.C. 521, 445 S.E.2d 657. Trespass ¶ 13

Police officers were not required, under § 16-11-620, to leave the premises when requested to do so where the officers were responding to a complaint and therefore had legal cause to be on the property, since the statute refers to a person who is on the property "without legal cause or good excuse." Furthermore, the statute provides a monetary fine or imprisonment as the remedy and does not grant the landowners the right to eject. *Town of Springdale v. Butler* (S.C. 1989) 299 S.C. 276, 384 S.E.2d 697.

Probable cause

Police officer had probable cause to arrest arrestee for offense of trespass after notice, and thus arrestee could not maintain action for false imprisonment and malicious prosecution; arrestee was told by police officer to leave premises of convenience store, but arrestee refused to do so. *Jackson v. City of Abbeville* (S.C.App. 2005) 366 S.C. 662, 623 S.E.2d 656. False Imprisonment ¶ 13; Malicious Prosecution ¶ 18(2)

Reasonable officer would have had probable cause to believe that arrestee had committed a criminal offense, and thus, an officer was entitled to qualified immunity on the arrestee's

§§ 1983 claim alleging that her Fourth Amendment rights were violated when she was arrested for trespassing; at the time of her arrest the officer knew that the arrestee was prohibited from entering the property of any hotel or motel within the city, and minutes after she signed a trespass warning in his presence, he saw her on the premises of an inn in the city. *Bryant v. City Of Cayce* (C.A.4 (S.C.) 2009) 332 Fed.Appx. 129, 2009 WL 1262407, Unreported, on remand 2010 WL 10827078. Civil Rights ¶ 1376(6)

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Code 1976 § 16-11-620, SC ST § 16-11-620
Current through 2018 Act No. 292, subject to technical revisions by the Code
Commissioner as authorized by law before official publication

684

AGENCY I.D.
SC0160000SUPPLEMENTAL INCIDENT REPORT
Darlington County Sheriff's Office

CASE NUMBER

201009-0118

NCIC
INQ. ENTD.☐ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 of 2 PAGES

☐ COMPLAINANT ☐ VICTIM # ☐ SUBJECT # ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS ☒ Witness	NAME (LAST, FIRST, MIDDLE) SMELL, KATIE		VICTIM RELATIONSHIP TO SUBJECT #1 #2 #3		RESIDENT J S O U	RACE W	SEX F	AGE 23	D.O.B. 1987	ETH N
	HEIGHT 5'04"	WEIGHT 140	HAIR BRO - Brown	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
ADDRESS WEST OLD CAMDEN ROAD		CITY Hartsville		STATE SC	ZIP CODE 29550-	LOCATION NO.	HOME PHONE D E	EMPLOYER PHONE D E		
☐ VICTIM NO. ☐ VISIBLE INJURY: ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL: ☐ NONE		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT		☐ ALONE		
EXPLAIN		☐ SUBJECT NO. ☐ USING: ALCOHOL ☐ DRUGS ☐ TYPE:		☐ ONE-MAN VEHICLE ☐ OTHER		☐ ASSISTED				
COMPUTER EQUIP. ☐ NONE ☐										
☐ COMPLAINANT ☐ VICTIM # ☐ SUBJECT # ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS ☒ Witness	NAME (LAST, FIRST, MIDDLE) CLUNEY, DANIEL		VICTIM RELATIONSHIP TO SUBJECT #1 #2 #3		RESIDENT J S O U	RACE W	SEX M	AGE 25	D.O.B. 1985	ETH N
	HEIGHT 5'09"	WEIGHT 250	HAIR BLK - Black	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
ADDRESS WEST OLD CAMDEN ROAD		CITY Hartsville		STATE SC	ZIP CODE 29550-	LOCATION NO.	HOME PHONE D E	EMPLOYER PHONE D E		
☐ VICTIM NO. ☐ VISIBLE INJURY: ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES		☐ VICTIM USING ALCOHOL: ☐ NONE		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT		☐ ALONE		
EXPLAIN		☐ SUBJECT NO. ☐ USING: ALCOHOL ☐ DRUGS ☐ TYPE:		☐ ONE-MAN VEHICLE ☐ OTHER		☐ ASSISTED				
COMPUTER EQUIP. ☐ NONE ☐										

STATED THAT HE SAW OFFENDER BELL YELLING, AND THREATENING VICTIM KIRBY, IN THE BEDROOM. WITNESS CLUNEY ALSO ADVISED THIS DEPUTY THAT VICTIM BELL HAD BROKEN HIS HARD DRIVE, THAT IS VALUED AT ABOUT \$125.00. VICTIM KIRBY AND WITNESS CLUNEY DID WRITE A VOLUNTARY STATEMENT, STATING WHAT HAD HAPPENED. OFFENDER BELL WAS TAKEN INTO CUSTODY FOR CRIMINAL DOMESTIC VIOLENCE, AND TRANSPORTED TO THE DARLINGTON COUNTY DETENTION CENTER.

JURISDICTION OF THEFT
LAW ENFORCEMENT AGENCYJURISDICTION OF RECOVERY
LAW ENFORCEMENT AGENCY

STATUS ☐ STOLEN ☐ RECOVERED ☐ FOUND ☐ TOWED ☐ SUSPECT ☐ VICTIM	TYPE ☐ VEHICLE ☐ GUN ☐ BOAT ☐ LICENSE PLATE ☐ SECURITIES/BONDS, STOCKS ☐ ARTICLE	VIN AND/OR LICENSE NO.	BOAT HULL NO. AND/OR REG. NO.				
		SERIAL AND/OR OWNER APPLIED NO.					
		YEAR OF REGISTRATION	YEAR OF EXPIRATION	YEAR	MAKE	TYPE	STATE
		MODEL	STYLE		COLOR	BRAND NAME	CALIBER
		NIC NO.	DENOMINATION		ISSUER	SECURITIES DATE	
		MISCELLANEOUS					

PROPERTY EST. ☐ STOLEN ☐ DAMAGED ☐ BURNED ☐ RECOVERED ☐ SEIZED ☐ COUNTERFEIT	TYPE (GROUP)	TOTAL VALUE	
ADMINISTRATIVE ☒ YES ☐ NO	SUBJECT IDENTIFIED	SUBJECT LOCATED	☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY		
REPORTING OFFICER(S) 16763 - DEPUTY MICHAEL B. BELL		DATE 09/06/2010	UNIT NUMBER 16763
APPROVING OFFICER 11570 - SGT. CLEVELAND O. HOWARD		DATE 09/06/2010	UNIT NUMBER 90172
FOLLOW-UP INVESTIGATION OFFICER ☒ YES ☐ NO 90172 - CPL. LARRY E. STIVENDER		DATE 09/06/2010	UNIT NUMBER 90172

Applicant
2
Lm 6-2-23

AGENCY I.D.
SC0160000INCIDENT REPORT
Darlington County Sheriff's Office
UNAPPROVED

CASE NUMBER

201009-0118

NCIC

INQ. ENTD.

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. 13C - CRIMINAL DOMESTIC VIOLENCE		☒ YES ☐ NO	☐ YES ☐ NO	20(Residence/Home)		☐ Individual ☐ Business ☐ Financial Ins ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
2.		☐ YES ☐ NO	☐ YES ☐ NO			
3.		☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						
WEST OLD CAMDEN ROAD, Hartsville, SC				ZIP CODE	29550-	
INCIDENT DATE		24 HR. CLOCK	TO	DATE	24 HR. CLOCK	WEAPON TYPE
09/05/2010		20:00		09/06/2010	0:33	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		DISP. DATE	DISP. TIME	TIME ARRIVED
SAME AS VICTIM, SAME AS VICTIM		#1 #2 #3		09/06/2010	0:19	0:33
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
WEST OLD CAMDEN ROAD		Hartsville		SC	29550-	
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
KIRBY, JENNIFER K		#1 #2 #3		☒ S ☐ O ☐ U	W	F
HEIGHT	WEIGHT	HAIR	EYES	AGE	ETH.	HOME PHONE
5'03"	115	BRO - Brown	BRO - Brown	25	N	
FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
WEST OLD CAMDEN ROAD		Hartsville		SC	29550-	
VISIBLE INJURY (VICT. 1) ☐ YES ☐ NO ☐ EXPLAIN -						
VICTIM (NO. 1): NONE ☒ USING: ALCOHOL ☐ DRUGS ☐ TYPE:						
TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐						
COMPLAINT OF NON-VISIBLE INJURIES: ☐ YES ☒ NO						
SUBJECT NO. 1		NAME, (LAST, FIRST, MIDDLE)		ALONE ☐ ASSISTED ☐	* J -- This Jurisdiction S -- State O -- Out of State U -- Unknown	
BELL, JEREMY						
FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		RACE		SEX	AGE	ETH.
		W		M	26	N
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
WEST OLD CAMDEN ROAD		Hartsville		SC	29550-	
SUBJECT (NO. 1) USING: ALCOHOL ☐ COMPUTER EQUIP. ☐		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST
DRUGS ☐		NONE ☒		09/05/2010 20:00		09/06/2010 0:40
TOTAL # ARRESTED 1						
ON THE ABOVE DATE AND TIME, THIS DEPUTY WAS DISPATCHED TO THE ABOVE LOCATION HIDDEN CREEK), IN REFERENCE TO A DOMESTIC. UPON ARRIVING ON SCENE, THIS DEPUTY FOUND OUT THAT THIS INCIDENT ACTUALLY TOOK PLACE AT WEST OLD CAMDEN. THIS DEPUTY DID SPEAK WITH THE COMPLAINANT, JENNIFER KIRBY. VICTIM KIRBY STATED THAT HER BOYFRIEND, JEREMY BELL, HELD HER DOWN AGAINST HER WILL, AND THREATENED HER. VICTIM KIRBY ALSO STATED THAT OFFENDER BELL HAD CHASED HER OUT OF THE HOUSE, AND KNOCKED HER DOWN. VICTIM KIRBY ADVISED THIS DEPUTY THAT IS WHEN OFFENDER BELL TOOK HER CELL PHONE, AND AT THAT TIME, SHE RAN OVER TO THE NEIGHBOR'S HOUSE. VICTIM KIRBY DID STATE THAT OFFENDER BELL DID NOT HIT HER. VICTIM KIRBY ALSO ADVISED THIS DEPUTY THAT SHE AND OFFENDER BELL HAD BEEN STAYING TOGETHER FOR ABOUT THREE MONTHS. THIS DEPUTY AND DEPUTY DAVID WENT OVER TO OFFENDER BELL'S RESIDENCE, AND TALKED TO HIM. IT WAS AT THAT TIME, THAT WE DETAINED HIM. THIS DEPUTY ALSO TALKED TO DAVID CLUNEY, WHO STATED THAT HIM AND HIS GIRLFRIEND (KATIE SMELL) WERE OVER AT OFFENDER BELL'S RESIDENCE, AT THE TIME OF THE INCIDENT, AND WITNESSED IT. WITNESS CLUNEY						
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		
TYPE (GROUP)						TOTAL VALUE
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SEIZED						
COUNTERFEIT						
SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE ☐ ADM. CLOSED ☐		
☒ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY		DATE		UNIT NUMBER		
16763 - DEPUTY MICHAEL B. BELL		09/06/2010		16763		
FOLLOW-UP INVESTIGATION OFFICER		DATE		UNIT NUMBER		
YES ☒ NO ☐ 90172 - CPL. LARRY E. STIVENDER		09/06/2010		90172		

PRICE LAW

644 E. Washington Street | Greenville | SC 29601
P 864.271.3535 F 864.242.6560 | price-law-firm.com

September 12, 2018

LEGAL MAIL

Lawton Leroy Holloway
Spartanburg County Detention Center
950 California Avenue
Spartanburg, South Carolina 29303

Re: State v. Lawton Leroy Holloway
Warrant No.: 2017A4210103240

Dear Roy:

I very much enjoyed our meeting last week. As you instructed we are preparing for trial.

This letter will confirm that the Solicitor officially offered you a plea to voluntary manslaughter which he did on September 10, 2018. The offer is what is known as a "straight up plea" in that there would be no recommendation as far as a sentence is concerned. The penalty for voluntary manslaughter is a minimum two (2) years, maximum thirty (30) years. It is not parole eligible and you would have to serve eighty-five percent (85%) of any sentence based on current South Carolina law.

I understand from our most recent conversation that you are not interested in a manslaughter plea and you want a trial. However, I am required to let you know of any plea offer which is the reason for this letter.

We will see you soon.

As always, I remain,

Yours very truly,

James H. Price, III

James H. Price, III

JHP/sac



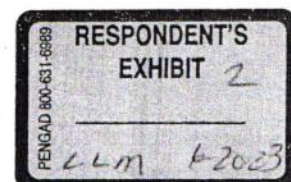
State of SC

County of Spartanburg

Alfredant

I was told today, 11/21/18 that
the Solicitor offered me a guilty plea
to manslaughter with a negotiated
sentence of less than 30 years. I
reject that offer.

Lester Hallway
11/21/18



PRICE LAW

644 E. Washington Street | Greenville | SC 29601
P 864.271.3535 F 864.242.6560 | price-law-firm.com

November 28, 2018

LEGAL MAIL

Lawton Leroy Holloway
Spartanburg County Detention Center
950 California Avenue
Spartanburg, South Carolina 29303

Re: State v. Lawton Leroy Holloway
Warrant No.: 2017A4210103240

Dear Lawton:

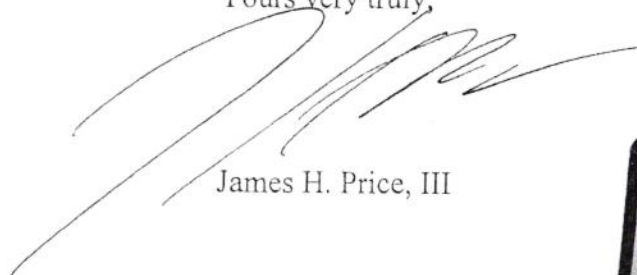
I am sorry that we didn't get to try your case this week. As we told you we were notified a day or so before Thanksgiving that the head Solicitor, Barry Barnette, had bumped our case to the number two case so that he could try some murder case which he started Monday. The earliest that we would get your case reset, according to Deputy Solicitor Derrick Bulsa, would be the end of January of 2019. We will let you know.

In the meantime, this will confirm what we told you at the courthouse Monday before James and I left – Mr. Bulsa had offered you a manslaughter plea for a sentence between 10 and 15 years. We believe that we could get him to the 10-year area. This will further confirm that you rejected that plea offer and told us that you still want to go to trial which is your decision and a decision that we respect.

Today, November 28, 2018, I received an email from Derrick Bulsa saying that he would keep his offer open through the end of calendar year 2018 if you were to change your mind.

As always, I remain,

Yours very truly,



James H. Price, III

JHP/sac



STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Lawton Holloway, #379523,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2022-CP-42-04266

**ORDER DENYING POST-CONVICTION
RELIEF**

Addy, J.

THIS MATTER COMES BEFORE THE COURT by way of an application for post-conviction relief (hereafter "PCR") filed on November 4, 2022 by Lawton Holloway (hereafter "Applicant"). This Court convened an evidentiary hearing on June 20, 2023, at the Spartanburg County Courthouse. Applicant was present with counsel, Rodney Richey, Esquire. Applicant testified, and also presented testimony from his sisters and trial attorneys James Price IV, Esquire, and Powers Price, Esquire. Following a thorough review of the record, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies the application with prejudice.

I. Procedural history.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its October 2017 term, the Spartanburg County Grand Jury indicted Applicant for murder (count one) and possession of a weapon during the commission of a violent crime (count two) (2017-GS-42-05436). Applicant was represented by James H. Price, III, Esquire, James Price IV, Esquire, and Powers Price, Esquire. Deputy Solicitor Derrick Balsa, Esquire, of the Seventh Circuit, was also present.

AM

2023 AUG 18 PM 4:53
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

FILED

Solicitor's Office, prosecuted the case. On March 11-15, 2019, Applicant proceeded to trial before The Honorable Keith Kelly. Applicant was found guilty of the lesser-included offense of voluntary manslaughter and was found guilty as indicted on the weapon possession charge. Judge Kelly sentenced Applicant to twenty years imprisonment for voluntary manslaughter and five years imprisonment for the weapons possession charge with all sentences to run concurrently.

Applicant filed a timely notice of appeal on March 28, 2019; the appeal was perfected by Taylor D. Gillam, Esquire. The Court of Appeals denied relief in an unpublished opinion. *State v. Holloway*, 2021-UP-406 (S.C. Ct. App. filed Nov. 17, 2021). The remittitur was issued on December 3, 2021.

II. Current action before the court.

In his PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpt; verbatim):

1. Ineffective Assistance of Counsel:

- a. The Court erred in denying Applicant immunity from prosecution, where he was attacked in his own home by a man who was threatening to harm him and family.
- b. Trial court erred in failing to suppress Applicant's statements to law enforcement when Applicant requested counsel at the scene.
- c. Two months ago the Applicant found out that his attorney James Price died 18 months after his conviction. He died 9/12/2020 from a terminal lung disease. Attorney James Price never disclosed that he was in poor health. If the Applicant was aware of this, he would have gotten a different attorney to represent him in the murder case.
- d. Attorney James Price was difficult to work with. He had a poor attitude. He was a bit of a bully. This made it hard to interact with him. He would constantly forget my name.
- e. Applicant's appeal was denied. Defense of Habitation, which appeal counsel, Taylor Gilliam, brought up was denied because it was unpreserved. In February 2018, I requested information from James Price concerning "trespassing". He mailed a printout from West Law, which I have in my possession. Despite the information, my attorney never mentioned that I qualified for Defense of Habitation. The Judge gave a jury charge of Defense

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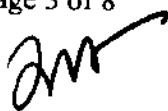
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of Habitation (p. 516 transcript). The Judge recognized that I qualified for Immunity under Defense of Habitation, therefore, I should have been given Immunity. There was no valid reason for the court to abdicate its power and send my case to trial.

- f. My attorney failed to object to the bias jury charge the Judge read to the jury. "defense of habitation is a defense of one's dwelling . . . now I charge to you that voluntary intoxication is not an excuse or defense to a crime regardless of whether the crime is on involving general or specific intent. A person who voluntarily ingest alcohol and thereby becomes intoxicate is no less responsible for the effect of his acts or words while intoxicated. If one voluntarily drinks intoxicating liquors, wines, or beer, or becomes intoxicated to whatever degree, and while intoxicated commits an act which would be a crime if it had been committed by a sober person, the fact of intoxication would not relieve the intoxicated person from responsibility" (p. 516 transcript). At no point does the Judge educate the jury on trespassing. The Judge never mentioned that J. Bell was three times over the legal limit for alcohol (p. 445 lines 12-21 transcript Lindsey Mitchel, Forensic toxicology expert).
- g. Appellate attorney, David Gilliam filed my appeal on an issue that was not preserved, Defense of Habitation. This was a wasted opportunity and a valid issue could have been raised.
- h. The prosecutor made several false statements that my attorney failed to object. "Mr. Holloway walked Jeremy Bell out of the home, but since he never left, he was a welcome visitor (p. 139 transcript, Balsa). When Bell reentered the home he was trespassing or worse, committing burglary at night.
- i. Attorney James Price stated that J. Bell had been convicted of assault and battery. He was originally charged with domestic violence out of Darlington. The court would not allow the information. "There was nothing written that states the defense can't introduce prior bad acts for a purpose. Is there a habitual conduct under Rule 406 that might help? How about Rule 608(B) (Bad acts relating to credibility) or Rule 803, hearsay exception."

III. Findings of fact and conclusions of law.

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Effective assistance of counsel does not mean perfect or mistake-free representation. *See Weaver v. Massachusetts*, 137 S. Ct. 1899 (2017) ("[A] defendant has a right to effective representation, not a right to an attorney who performs his duties 'mistake-free.'" (citation omitted)); *Burt v. Titlow*, 571 U.S. 12, 2013 (2013) ("[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the

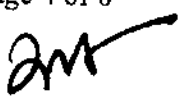


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right to effective assistance[.]”); *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland*, 466 U.S. at 686; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); *see Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (noting counsel’s strategic decisions are to be afforded “strong presumption” of reasonableness that the defendant must overcome); *Cullen v. Pinholter*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act



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reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

The Court finds Applicant has failed to demonstrate ineffective assistance of counsel. Applicant did not pursue his claim of ineffective assistance of appellate counsel at the evidentiary hearing. That claim is deemed abandoned. Applicant's claims related to trial court error are not cognizable in a PCR action and fail as a matter of law. To the extent Applicant alleges trial counsel was ineffective for failing to achieve suppression of his statements to law enforcement, the Court finds the allegation without merit. Counsel sought suppression of the



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trial court and court of appeals correctly determined his statement was voluntary and admissible. The other allegations will be taken up in turn.

Attorney James Price, III's health concerns.

Attorney James Price, III provided the bulk of representation at trial, but worked closely with co-counsel James Price IV and Powers Price throughout Applicant's case. James Price, III passed away in September 2020. Applicant complains that Attorney Price did not disclose he was having health difficulties and that he would have retained different counsel had he known.

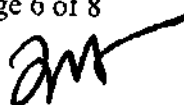
The Court finds this allegation without merit. This Court is unaware of any rule that attorneys must disclose health information to their clients absent an indication that the attorney's poor health could affect his representation. The record and testimony adduced at the evidentiary hearing reflect Mr. Price provided exemplary representation. Applicant failed to demonstrate how Mr. Price's health affected his representation and, therefore, has not shown prejudice.

Attorney James Price III's demeanor.

Applicant alleges Attorney Price was difficult to work with. Based on the testimony presented, the Court finds Applicant has failed to show ineffective assistance in this regard. To the extent that lawyers have different techniques to achieve some measure of client control, whereby the client is ultimately aided in their cause, the Court finds this assertion is not a valid ground for relief. Additionally, nothing in the record indicates that any gruffness on the part of Mr. Price prejudiced Applicant, and Applicant did not show Mr. Price's demeanor adversely affected his representation. Applicant failed to show deficiency or prejudice in this regard.

Failure to argue defense of habitation.

Despite Applicant's claims otherwise, this Court finds trial counsel did present argument related to defense of habitation at the immunity hearing and at trial. To the extent counsel failed



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to preserve a defense of others argument as an independent ground for immunity, Applicant was not prejudiced because the argument would not have been successful and was reasonably encompassed in the trial court's ruling that Applicant failed to show he acted in self-defense. Furthermore, the trial court did give a jury instruction on defense of habitation. (R.515-16). Counsel reasonably chose to focus more on a defense of others theory, which appears to have been a stronger defense based on the evidence. Applicant has failed to establish deficiency or prejudice.

Failure to object to solicitor's argument about the victim being a "welcome visitor."

Applicant failed to show this comment was improper. Moreover, the comment was made at the immunity hearing where the trial court sat as trier of fact. The trial court made its findings based on the evidence presented, not any argument by the solicitor. Applicant has failed to show deficiency or prejudice.

Failure to introduce victim's prior DV conviction.

The record reflects Applicant was unaware at the time of the incident that victim had been convicted of domestic violence. Trial counsel investigated the incident but correctly determined evidence of the conviction was inadmissible. (R.29-30). Furthermore, Applicant would have had to testify to admit this evidence, and counsel's testimony demonstrates he reasonably avoided presenting Applicant as a witness. Applicant has failed to show deficiency or prejudice.

Failure to object to trial court's jury instruction on defense of habitation and voluntary intoxication.

Because the trial court's jury instruction was a correct statement of law, counsel was not deficient for failing to object. As to failure to request an instruction related to trespassing, the Court finds the substance of this area of law was charged to the jury and argued by counsel.



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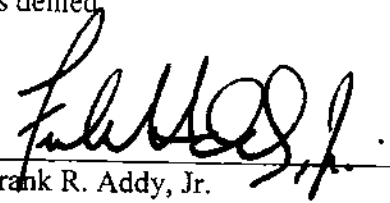
Applicant has failed to show deficiency or prejudice in this regard.

Failure to present offer and explain parole eligibility.

This Court finds credible trial counsel's testimony that all plea offers were relayed to Applicant and that the applicable parole eligibility was explained to Applicant. This Court finds Applicant's testimony, and that of his sisters, not credible in this regard. Counsel's testimony is corroborated by letters to Applicant showing he properly communicated all offers and explained parole eligibility. Counsel advised Applicant to take the offer because it was a "good offer" but Applicant refused. Applicant has failed to show deficiency or prejudice.

IV. Conclusion.

For all the foregoing reasons, the application is denied.


 Frank R. Addy, Jr.
 Presiding Circuit Court Judge

August 18, 2023
 Greenwood, South Carolina

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WITNESSES

Spartanburg County Sheriff's Office

Jimmy G. Owens

ARREST WARRANT NUMBER

2017A4210103240 (Count One)

2017A4210103241 (Count Two)

ACTION OF GRAND JURY

AE
Foreperson of Grand Jury

Date:

OCT 27 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

17-GS-42-5436

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 30 2017

TERM

THE STATE

vs.

Lawton Leroy Holloway

Indictment for

COUNT ONE-MURDER, COUNT TWO-
POSSESSION OF WEAPON DURING
VIOLENT CRIME

SC Code 16-03-0010, 0020, 16-23-490

CDR Code 116, 549

Class FEL-EXM

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SPARTANBURG COUNTY

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on OCT 27 2017, the

Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE-MURDER

The Defendant, Lawton Leroy Holloway did in Spartanburg County on or about August 31, 2017, feloniously, willfully, and with malice aforethought, kill one Jeremy Bell, by stabbing him and the victim died as a proximate result thereof, all in violation of Section 16-3-0010, 0020, Code of Laws of South Carolina, (1976, as amended).

COUNT TWO- POSSESSION OF WEAPON DURING VIOLENT CRIME

That the defendant, Lawton Leroy Holloway, did in Spartanburg County on or about August 31, 2017, visibly display a knife during the commission or attempted commission of a violent crime, to-wit: Murder, in violation of Code §16-23-490, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


Deputy Solicitor