Vol. III of III

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Horry County
Honorable Steven H. John, Circuit Court Judge
Appellate Case No. 2021-000677

THE STATE,

Petitioner,

vs.

DONNIELLE K. MATTHEWS,

Respondent.

APPENDIX

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MR. WILSON: Thank you, Your Honor.

THE COURT: Before I go into the explanation.

MR. WILSON: I understand your ruling. I, you know, I take exception, but I understand your ruling about what you're gonna charge.

THE COURT: All right. Thank you very much.

MR. WILSON: Thank you, sir.

THE COURT: All right. Anything else from the state?

MR. SPRATLIN: Your Honor, the Court would just ask for clarification. It's been a little while since I've tried a criminal case where the defense has introduced evidence as a prosecutor. I would just ask is the Court intending to follow *State v. Davie* regarding ---

THE COURT: What we're gonna do in that is the defendant has presented evidence, so the state must open in full. The defense gives their full and complete argument, then the state may reply to new matters or new arguments made by the defense.

MR. SPRATLIN: Yes, sir.

THE COURT: Not repeating of course. You have to open in full and give them your complete argument, but you do have the opportunity to reply to the defense.

MR. SPRATLIN: Yes, sir, Your Honor. And lastly, earlier in the trial ---

THE COURT: Do you agree with that, Mr. Wilson?

MR. WILSON: Yes, sir, I agree with that. What I was

going to ask, Your Honor, are they limited to one lawyer doing it or -- or can ---

THE COURT: Was it your intentions to have both of you do it?

MR. OSKIN: Mr. Oskin is gonna be doing it.

THE COURT: All right. Very good. Okay.

MR. WILSON: Fair enough.

MR. SPRATLIN: Your Honor, lastly, earlier in the trial, there was an exhibit entered into evidence, the statement of the defendant to Greg Lent and Jack Johnson in Orangeburg. The defense had an objection to the first, I think -- in the first like five minutes of it. There was 40 seconds and during the playing of that video, I actually silenced it so the jury could not hear it. I prepared a copy, which has redacted out that portion for the jury to take back with them to the jury room. If Mr. Wilson wishes to review it?

MR. WILSON: I trust them. I have no objection.

MR. SPRATLIN: I'm gonna review it one more time just to make sure.

THE COURT: All right. Do that and then the court reporter will substitute out the new one.

MR. SPRATLIN: Yes, sir, Your Honor. Thank you.

THE COURT: All right. Anything else then from the state?

MR. SPRATLIN: No, sir.

THE COURT: From the defense?

MR. WILSON: No, sir.

THE COURT: All right. Just so your client is prepared, Mr. Wilson ---

MR. WILSON: Yes, sir.

THE COURT: You know my standard practice that once the jury retires to deliberate, the defendant is delivered into the custody and control of the sheriff's office.

MR. WILSON: Yes, sir. We understand.

THE COURT: All right. Very good. So, with that, I will see y'all back at 9:15 tomorrow morning then.

MR. WILSON: Thank you, Your Honor.

MR. SPRATLIN: Thank you, Your Honor.

THE COURT: Thank y'all very much.

MR. WILSON: Thank you.

RECESS - 6:57 P.M. - END OF DAY FOUR

*******OFF THE RECORD*******

JUNE 18, 2021 - DAY FIVE

ON THE RECORD - 9:32 A.M.

BY THE COURT:

THE COURT: All right. Yesterday we were talking about murder and voluntary manslaughter, and there's two notes that I have put down and I forgot to put them in the record. Again, I'm referring to all of the evidence in the case when I made those decisions about charging murder and voluntary

manslaughter. But I did want to note there were two other comments or statements that were made in this case by the witness, and basically, the third party involved that night when she indicated that at the -- leaving the Denny's, when she said that the defendant struck the victim. She also made the comment that you should have married her and not me. And then when they got to the -- her residence and they dropped her off, she asked the defendant, are you getting into the seat, into the front seat and the defendant answered, no, with an attitude. So, all that just goes to those things that we talked about in deciding about murder and voluntary manslaughter.

Is the state ready for the jury to come in?

MR. OSKIN: Yes, sir, Your Honor.

THE COURT: Defense?

MR. WILSON: Your Honor, in response to your remarks, if I could, what I would like to do is -- and I know handed up to the Court a copy of -- of the *Sims* case on yesterday.

THE COURT: Yes, sir.

MR. WILSON: And what I'd didn't ask to do was to make it part of the record.

THE COURT: Well, go ahead and state the name of the case and its cite for the record?

MR. WILSON: Yes, sir. It's *State of South Carolina v. Heather Elizabeth Sims*, and this is dated -- it was heard on

April, I'm sorry, on December 4, 2018 and it was filed February 27, 2019.

THE COURT: All right.

MR. WILSON: And, Your Honor, also I had filed a request for the battered spouse syndrome charge with the Court, and actually I filed it with the clerk's office and I know the Court was sent a copy of it. However, I don't know that it's been filed with this clerk and made a part of this record. So, I'm asking the Court to allow me to put both of these documents into the record.

THE COURT: Well, you cited the case, so I don't know that you need to ---

MR. WILSON: This is not a case, Your Honor.

THE COURT: No, the first thing you talked about.

MR. WILSON: Yes, sir.

THE COURT: You cited the case, so and you've made reference to it. So, I don't think you to make that a copy of the case in the file, and let's just start with that.

MR. WILSON: All right, sir.

THE COURT: I read the case, gone through it. I understand the facts of that case, and I understand the facts of this case.

MR. WILSON: Yes, sir.

THE COURT: And I find that the facts of this case do warrant the presenting to the jury murder and voluntary

manslaughter, but I want the record to reflect that I've gone through several times that case and read through it and just do not find that it is appropriate to the facts of this case.

MR. WILSON: I understand, Your Honor.

THE COURT: And the other one, just mark that as a defendant's exhibit for identification.

MR. WILSON: Yes, sir, this is just a request to charge.

THE COURT: A request to charge, yes, sir.

MR. WILSON: Yes, sir.

THE COURT: Mark that a defendant's exhibit for identification.

MR. WILSON: Thank you, Your Honor.

DEFENDANT'S EXHIBIT NUMBER 27

MARKED FOR IDENTIFICATION

THE COURT: All right. So, with that, is the defense ready for the jury to come in?

MR. WILSON: Yes, sir.

THE COURT: Ask the jury to come in, please.

(REPORTER'S NOTE: Jury enters courtroom @ 9:39 a.m.)

THE COURT: All right, ladies and gentlemen, as I told you yesterday, we have concluded the evidentiary portion of the trial. There's gonna be no more evidence that is presented to you in this particular matter. We're now gonna go into the closing arguments of counsel. I'll remind you, as I told you at the very beginning, opening statements, closing

arguments, that's not evidence. The evidence has already been presented to you. Now, closing arguments are important. They are each side's summation of what they believe the evidence has shown to you during the course of the trial. Remembering of course, that you are the judges of the facts of this case and what they say to you is not evidence. After that, I will charge the law, the law that you will apply to the facts and evidence you've heard in the case, and then I'll give the case to you for your deliberations and unanimous decision.

So, with that, from the state?

MR. OSKIN: Yes, sir, Your Honor, may it please the Court?

THE COURT: Yes, sir.

CLOSING BY OSKIN:

MR. OSKIN: I tell him all the time, if I could kill him and bring him back, his ass would be dying five times a week. He makes me sick. I know I get on his nerves, but that's only because he's not used to a female jumping in his face like I do. I am not scared of his ass. LMAO. That's on May 4th, 2017.

On that same day, nothing in this world worse than a mother close to you that tries her hardest to play on your intelligence. #bitchIwillkillyouandcryatyourfuneral, #realtearstoo.

During the early morning hours of July 7th, 2017, at a

bar, in the presence of Antoinette Vereen, the defendant said I'm gonna have to kill, or something to that effect. And a couple of hours later, she committed an act that did in fact kill her husband, Dennis Green. She stabbed him twice in the right side of his rib cage, pierced his liver, pierced his heart.

She was jealous of a lady that they were out with that night, Antoinette Vereen, and in an act of jealous rage she killed her husband. She wasn't gonna let him break her heart, leave her for somebody that he looked better with. Those aren't my words; those are the defendant's words. You heard that through the evidence presented in this trial.

You've been here all week, you've heard a lot of evidence being admitted into the trial before you, and we've now reached the time where you're about to get the case and analyze all that evidence and apply it to the law in this case as His Honor is gonna charge it to you.

Let me tell you about the law that you're gonna be dealing with in deciding these matters today. As you know, you've been witness -- or you've been jurors for a murder trial. In the State of South Carolina, murder is the intentional killing of another with malice aforethought, expressed or implied.

You're also gonna be charged with voluntary manslaughter. Voluntary manslaughter is the killing of another in the heat

of passion with sufficient -- with sufficient legal provocation.

You're also gonna be charged, and as you can tell, you're gonna have to consider from the defense, self-defense -- you're gonna have to consider the concept of self-defense. What is self-defense? Self-defense states that the defendant must be without fault in bringing about the difficulty. She must be in imminent danger of serious bodily injury or death. There's no other way to avoid the danger than to act in a manner that the defendant did, and there's no duty to retreat.

So, I want to go ahead and clarify this for you right now -- and again, if I say anything different than His Honor does, you lean on him; he's the man in the robe for a reason. But and it's my burden to disprove self-defense beyond a reasonable doubt and I'm confident that the evidence does that, but I want to tell you how that fits. We have to disprove -- the four elements that I just told you, and if we disprove one of them, we disprove all of them. Imagine it -- compare it to a four-legged chair. If you can kick one of those legs out, the chair isn't working and we can't sit in it. But here we can prove beyond a reasonable doubt all elements of self-defense. And beyond a reasonable doubt, just so you understand what your job is, proof beyond a reasonable doubt is doubt that leaves you firmly convinced of the defendant's guilt, and you have that in this trial. We don't

know everything for certain without any doubt; I'm firmly convinced that when we wake up tomorrow, the sky isn't going to be an off color or some color we've never seen before. It's probably more than likely -- I firmly convinced it's gonna be a shade of blue or something compatible with the weather that we have going on. I don't need to go down that rabbit hole too much; you know what I mean. It's probably not gonna snow tomorrow in July in South Carolina; how about that. I'm firmly convinced of that.

You're also gonna hear about battered spouse and how that fits in to the law in our state, and how it applies to self-defense. And when, again, lean on His Honor for those descriptions. But when we disprove any one of those elements, you disprove the whole thing, and it's our burden to do so, and the evidence has done that.

Throughout this trial, again, you have heard testimony from that witness stand and you have seen videos, interviews of the defendant from the moment -- from the moments leading up to the stabbing, several hours after, to even a day. I know you heard everything, but it's important for me to walk you through those events so I can show you how they apply to the law that's gonna be charged to you.

The defendant and her husband, on the night of -- early morning hours of the 6th going into the 7th, they picked up Antoinette Vereen. Dennis had been with Antoinette Vereen

previously in a romantic way because they were in an open marriage, that being the defendant and Dennis. This was the night to meet Antoinette and to see where or if and how she fit into their relationship. Would -- would it pop off and they become all into each other that night; they didn't. Antoinette didn't expect it. Donnielle told you that's, even if the defendant agreed, that it was just more of a feeling out thing. But when they were together, they started off at his family's house briefly.

They picked her up -- they picked up Antoinette, and Antoinette sat in the front seat. Donnielle was in the back. And that was out of courtesy; that could be true. Antoinette said it was a little awkward sitting in the front seat of a married man's car. I think we'll agree it's an interesting situation, an interesting relationship dynamic. And the defendant even later said herself that what may offend Detective Lent or what matter to him or upset him, it wouldn't upset her. So, they ride from his family's house to Ricky's Dockside Bar, and they're having some drinks there. And that's when she first said something to the effect of, I'm gonna have to kill him. They go to Thee DollHouse. They're having fun. The night is progressing. They go to the restroom. Antoinette told you a little more about some personal issues she had going on at the time, so they're in the bathroom for a little bit. She also stated that the

defendant tried to kiss her at Thee DollHouse, and she said she kind of -- she said she wasn't feeling that in that moment; it was a little -- it was just a little much.

When they left Thee DollHouse they went to Denny's Restaurant in North Myrtle Beach. And you see the surveillance video of the three of them going into Denny's. You see them sitting at that table there towards the back corner. Again, the ladies go to the restroom, and they're there for a while. And again, you'll recall Antoinette saying a little bit more reason as to why she was in there. Donnielle said it was to see some nipple piercings as well. Again, they're at the table, and the defendant is sitting by Antoinette. Antoinette is kind of pushed up against the -- she's in the corner towards the wall there. They're talking and they're conversing. You'll see from the video, their interactions. And it's mostly friendly, but Antoinette said they reached a point where the defendant put her arm around her head and kissed her, and that she couldn't kind of get away from it, if she did, she would hit her head on the back of the glass. I don't know if the kiss was two seconds or two minutes, but you'll see from the video, you'll see the video showed that.

At that point, Dennis Green, the victim in this matter said, give her some space. Chill out, just don't be extra. That upset Donnielle. You see from that video -- I will

submit to you, on that video, you see her demeanor change, her posture change. It's not the fun, pushing, shoving, talking, laughing; it gets a little more directed at Dennis. And she even calls her dad. They get into some sort of verbal argument where, even she admitted it was almost kind of like a child's argument, you know, you're showing off, you know, don't be a bitch. Well, your momma is a bitch; then your daddy is a bitch; if my daddy is a bitch, I'm gonna call him right now. And then she calls her dad to tell him -- so Dennis could say it to him, I think that's what she said. The call was only for like 22 seconds. They didn't talk at that time, and that was inching closer to 5 o'clock. And you're gonna see from that Denny's video that they leave around approximately 4:57 a.m. You heard from all parties involved that they sat in the parking lot for roughly five minutes; that would put that about 5:02. And when they're in that car, the defendant punches Dennis Green while he's sitting in the driver's seat. I didn't make that up; Antoinette Green told you that from this witness stand. She also told you that Dennis looked at her -- once he was punched, he goes, really; that was his response. Antoinette is still in the front seat. They leave Denny's, let's say around 5:02; it could've been 5:01 and a half, it could've been 5:03. Let's say it's around 5:02. She stated that it was roughly, you know, around a nine-minute drive. You heard some other testimony about how

long that drive takes. It can really be depending on traffic, red lights, stop signs, following traffic rules. It could be anywhere from six to nine minutes to get to her house. I mean, you guys understand that having been in different traffic patterns at different times; I don't have to explain that to you. So, that would put -- that would put Antoinette getting to her house at 5:10. What happened in between the times? The defendant is still in the backseat stewing, mad, angry at Dennis. How do you know that; the text message at 5:06. That's the one you heard about a couple of times that said you showing off for another B; I told him he ain't no man, and he called me a bitch. I said his momma and he said my daddy. So, I wanted you to tell him yourself. And the next time I bring him to Baltimore, I want you to beat his ass. That's at 5:06. She's still mad from punching him moments earlier in the parking lot before they left Denny's. Antoinette gets inside. And you see from the video, she was dressed for a night out. She wasn't out in her pajamas; she wasn't out in cheerleading shorts and a tank top; she was dressed to the nines, she had her hair done, she was looking good, she was feeling good, she had some strapped up shoes. What I'm saying is, those shoes weren't easy to take off. So, as soon as she gets those shoes off and does get into her pajamas or gets ready for bed, she texts Dennis Green, and she says, you know -- this is at 5:13 -- she remembered sending it

but you see the evidence -- you've heard the evidence that she did. She said, you know, I still got love for you. You know, I ain't mad at you for what happened tonight, but I don't want to be around all the dumb shit. She specifically said I can't be around the dumb shit. And she told you, that the dumb shit was the argument at the table; it was her sitting in a car with a married couple and seeing her physically punch him.

If it's not abundantly obvious, it's important to remind you that Antoinette said that he didn't punch her back. She still had love for him. She didn't hide from the fact that she was very interested in him or that she had been sexually involved with him. She admits -- she clearly stated all of that. So, at 5:15 she sent that text.

Do you remember Antoinette getting out of that car, though? Do you remember her stepping outside that two-door vehicle? And you're gonna see a photo of it; it's a two-door car. Okay? A smaller car, not an Escalade, not a Mercedes SUV, it's not a big floor plan and all that; it's a small two-door type car. She had the seat open for Donnielle to get out. And, granted, the defendant said she could just climb through and that's fine, but she didn't. She said specifically, I'm not sitting up there with his ass.

Antoinette said, you know what, that's fine. The night's over, I'm getting to bed, and she texted him at 5:13. So the defendant was still in the back seat when she texted

him. What did the defendant see at 5:13? She saw another woman text Dennis that I still love you. I didn't want to be around that dumb shit, but I still got love for you. A woman who rebuffed some of her advances earlier, certainly not a woman that was more into her than the defendant was into her. There might've been some playful flirting and hanging out; there was no question. But you heard from Antoinette Vereen, her intentions, her impressions of the night, and it's proven that an altercation happened at that table started by the defendant through her text message. And why is that text so important? Because sitting in the back seat, the defendant saw it, and that caused her to explode into a jealous rage on top of the malice that she had been formulating for some time. And that's an important part to tell that in South Carolina, premeditation is not an element for murder. You can have premeditation, but you don't have to have it. Malice aforethought is the time that the evil act, or the hostility, or the ill will, it's the time that that act was conceived. I submit to you that this, in addition to previous statements and proof of her thoughts, all came together here. Sometimes premeditation happens months before; sometimes it's weeks before. And if it's only moments before, that's enough. Here you have proof of all of it. Back in May by if I could kill him and bring him back to life, he's dead five times a week. Same with the Facebook status, I'll kill you and cry for your

funeral -- I'll kill you and cry real tears at your funeral; I apologize. Hours before, I'm gonna have to kill him. That's exactly what she ended up doing.

At 5:19, Dennis Green walks into or gets into Seacoast Hospital the best he can. He's holding his right side. He's wearing a white shirt like I am. You can see this video, if you haven't already -- well, you have, but you'll be able to see it in its entirety. He walks in, he's holding his side. They're trying to get support staff for him. You see him -- you see some people respond. You see Dennis go to face the camera this way, and you see him fall out on the ground. You see his hand removed from his wounds. These wounds. State's 27, the right side, piercing his liver and his heart. That's what the white shirt became when he fell out on the floor.

He's transported from Seacoast Hospital to Grand Strand Hospital, and he's rushed into emergency surgery. Dennis didn't make it. He died because of those stab wounds again, to his right side.

It doesn't matter the context -- the context always matters, but Donnielle is unable to bring him back from her actions.

Mr. Spratlin told you when this trial started, life can change in an instant, and here it did. In that car, you heard the defendant say that Dennis said, Tink, I can't believe you stabbed me. That's not the only thing she told law

enforcement. At Seacoast Hospital, when Mark Martin arrived, he saw her in the hospital, he was trying to ask her what happened. That's when the first version of her story came up, later to be false. She said they stopped at a BP gas station or a gas station in North Myrtle Beach, and he went in to buy cigarettes, and when he did, he got stabbed. He knows who did it, and he didn't never tell. She was right about two of those things, but he didn't get stabbed by a stranger or adversary at the BP. She knew that when she said it.

She goes to Grand Strand Hospital where he's moved to. Officer Beaudoin then questioned her. She's responsive, she's aware of her rights, and she's a little calmer there. But you remember at Seacoast Hospital, she was probably anything but calm. The officer is trying to figure out what's going on and he told her to shut up and calm down. That's when she responded quickly, you shut your f-ing mouth, to a uniformed officer. And they reached a point, you'll see it on the video, where she's talking and he's not understanding her or not following her, and she again snaps into a -- snaps into a fit of anger.

When she gets to Grand Strand, she talks to Officer Beaudoin. She again tells the story about him being stabbed. She didn't know where it was, but he got stabbed in the side, and she had to drive him. More officers come from North Myrtle Beach, and she tells them the same thing. And I want

you to watch that video when she's -- when she's sticking -- when she's telling that story. When she's telling that. At first it was I don't know what happened. The second it was, he got stabbed by somebody at a gas station. And when she's telling that to the North Myrtle Beach officer, she walks outside with them, she smokes a cigarette. And when she's told to -- that she can't smoke right there at the entrance in the hospital, she gets up quick and she about moonwalks out of the way to go smoke her cigarette. She's talking, she's responsive, she's very, very active. She's a high energy person; she's moving, talking. I guess the fact that Officer Beaudoin -- Officer Martin at Seacoast mentioned that he didn't see any scratches, bruises, markings on her. She didn't know if she had any on her at Grand Strand Hospital. In fact, Beaudoin told her, is that a scratch on you? And there was a little -- there was a scratch on the side of her cheek there.

As I stated, Dennis didn't make it through surgery. He died. And the defendant around that time, went to Orangeburg to be -- to be with family, and Horry County Police went down there to talk to her again. Because at this point, they had followed up on some of the leads that she had said. They had checked out some of those gas stations. They had done the drive, they had heard from medics how fast that car was driving to get to the hospital. They start to confront the

defendant with the inconsistencies in her story.

But I want to talk to you about some of the other things she said in that statement that are very, very, very important to the matter at hand. She said, fighting with Dennis is like fighting with my brothers. It wasn't no bumps and bruises or anything, wasn't no reason to get the police involved. I tell his momma and my momma, you know, we mean kids, we bad children, but our relationship ain't his momma's business, our relationship ain't my momma's business; it's up to us. We do these things. We fuss, we fight, we argue. I'll fuss with anybody; I'll fuss with a brick wall. Later you see a fly come in there, and she instantly is ready to fight.

She's confronted with a lot of her inconsistencies. What's the major thing she does in that story? She forgot all about Antoinette Vereen. Why did she do that? Because Antoinette Vereen knew what happened in the minutes before Dennis was stabbed. She knew that Antoinette Vereen had texted Dennis saying she wasn't into dumb shit. How do you know that? Just go back to the body cam footage Bandon Beaudoin. The defendant specifically, at some point, talking to him says, yeah, we were out earlier, and she might've been referencing Ricky's Dockside, but she says almost verbatim that she wasn't with the dumb shit, and it wasn't in regards to any interaction with them, it was just something else going on that night or why they left that place. The video will say

why she said it, but it was eerie that she said thing that Antoinette had texted to Dennis minutes before she stabbed him. But I want you to notice that.

She's hiding the fact -- she's hiding Antoinette Vereen. She is selectively forgetting Antoinette Vereen was there. And she's being confronted with more inconsistencies. She's given every opportunity after being made well aware of her rights. She's given every opportunity to explain what happened, what are some more dynamics of the relationship, and she continues to say that, yeah, it's all good with me and him. Our relationship is different. You know we do this, but it ain't that bad. It's all -- it's all fair in love and war. We got each other; we're Bonnie and Clyde. She said except Bonnie didn't kill Clyde or Bonnie didn't love Clyde, but Bonnie and Clyde knew what every -- what each other were doing. The defendant knew everything she did that night. She knew everything Dennis was doing up until that moment. And then she finally -- she finally states that she stabbed him. She says she don't know how she stabbed him, or how she got him, but she was swinging that knife and she got him. She's again asked to give more detail, but that's all she has.

She said that they had poked and prodded each other before. He buys her knives, he buys her guns. But, you fast forward to the trial now, and now she tells the fourth story. Maybe the fifth story depending on how you want to break it

down. She didn't know -- he got stabbed at the gas station by a guy when he was buying cigarettes. She stabbed him, but she didn't know how she stabbed him. Now, she stabbed him because he was beating at her and she's a battered woman; that's what she's claiming.

She claims that he was -- she was going to grab her aux cord in the car or change the volume, and then that time slams on the breaks and throws her into the floorboard of the car, and as we had it demonstrated here, she said that in this two-door car with the glove box and console right there, she said that she was face down in that car, getting attached. She was in fear for her life. If she was in that position, in fact getting hit -- if she's getting hit, where is she getting hit at? Her back, her legs, not her shoulders, not the body language she displayed after finally telling the truth that she stabbed him in Orangeburg. Watch that video, too, and compare that to how she was acting at the hospital again moon walking for a cigarette. But after she told us she did it, then it was aching and moving. And they took photos at the hospital, at Grand Strand, no -- yeah, at Grand Strand of the left cheek, no black eyes, no busted nose, not a busted lip. The took more pictures in Orangeburg. It shows how that scratch on her cheek had heeled and where it was, in fact. There's her lip. You have to decide if that's busted or blackened to you. I submit to you that it's obvious that it's

not. Now, she did have most of her nails broken off, and the nails were found mostly in the car. She gave a lot of explanations for those nails, too. I think she something to the effect that knocked -- two got knocked off messing around, and so she just took the rest of them off that she could. And then it became they all popped off when I was getting beat fighting back.

That's a lot of inconsistencies. It's calculated consistencies. It's stories. And what are those; they're lies.

You heard her testify. You heard our exchange. In that exchange, she admitted to stabbing him twice. She said a lot of other things too. This goes to the crux of the issue, because it's obvious from the evidence that she stabbed him, that she meant to do it and that she was acting in malice or acting with malice aforethought. But, then she started adding more stuff that she had never said before when she had opportunities to. She started talking more about their relationship on the stand about how she was battered woman.

Keep in mind that when she gave this statement to Orangeburg, she was fully aware that he had passed away, completely aware, yet she still didn't tell the truth. She didn't say anything about it then, to the extent that she did here today or this week.

You heard testimony about her leaving and going to

Baltimore to get away, finally having that ability. Listen to that interview in Orangeburg, you're gonna hear her say that at the beginning, we weren't being honest about seeing other people. So, I'd get mad, and I'd run back home to Baltimore and teach him a lesson. Then he'd call and say he'd got it together. There's another explanation as to why she went to Baltimore. It wasn't to get away from him; it was to get even. Again, in these relationship dynamics, I won't pretend to understand them all, but that's why she left.

And you heard testimony from her sister that she was beaten, and everybody knew it. But you also heard that Donnielle got in the car with her sister and her dad and drove to down here. Who would take a vacation at a place where the person who is beating your sister senseless all the time and abusing her -- who would take a vacation there and put -- give that abuser any potential chance in finding her, hurting her, assaulting her? These are things you're gonna have to decide and compare. Strictly based off the evidence, but important points to make.

Donnielle said she was in Baltimore and they stayed in touch. Baltimore is about -- no less than at least eight hours up 95; a straight shot -- long shot, long drive, especially if you get stuck in D.C. traffic, but it's a very long ways away. Block a number, delete a Facebook, if you're in such fear for your life from a person. You are eight to

nine hours away, but you come back. Why did she come back? Because Donnielle was used to dating people that made provisions for her. That means they provided for her. She might -- she had no intentions of working at that time. She wasn't stuck in the house and having to listen to every demand that Dennis had. She wasn't. She clearly stated, that was in March of 2018, that she said that, almost a year after he passed. Those are the type of relationships she had been in.

She stated that she's from Baltimore. Her person that evaluated her said she had a tough upbringing, but that's not because of her relationship with Dennis -- or it's not -- her relation to Dennis isn't the sole reason for all that. She had a lot puppies. She stayed back with the dogs; she had dogs to take care of. Who would take care of the dogs if she left every weekend with him? That's a lot to take care of. She also stated those puppies could, you know, jump up on you excited. That could be the explanation for some scratches and bruises. She wasn't forced or confined to that house; long story short is what I'm saying.

She knew who she dated. She chose to be with him. She enjoyed being with him even though the relationship, again, it had its dynamics that's not for everybody.

She texted her friend, Lafayette, and she said, we're mean kids, you know, we do stuff to each other whether it be verbal or physical fights. We do mean stuff to each other,

but we get over it, and it's up to us to work it out. I'm not sitting up here and saying that they never fussed, fight, argued, pushed, shoved, punched each other, or that Dennis didn't engage in that; I'm not saying that he didn't. But what I am saying is that, the night that he was stabbed and killed, it was done with malice by the defendant. He proved how unexpected it was by saying Tink, you stabbed me.

You also heard some witness testimony to the relationship and where they lived. You heard from Alethia Price, the mother of two of his children. She stated that -- she stated that she was never physically harmed by him. She was never -- that Alethia was never physically harmed by Dennis. She was never physically assaulted by him, and she was never in fear for her life around Dennis. Now, I think she did say, she wished that Dennis was a better dad. She did say that she wishes -- she wished that, you know, Donnielle wouldn't have been with the kids; she wishes that he would have done more. I think she also stated that she wished it would've been them. But when he met Donnielle, he met her, and he chose her. That was his new number one and Dennis was her number one, although she still had other boyfriends, girlfriends, people that they would bring in. They reached a point where Alethia lived with them in the house, and again, she stated that she was not physically assaulted or harmed in that house or in fear for her life, nor did she see anything happen to the defendant

that made her fear for the defendant's life or being physically assaulted. She also said that, when she got too close to either one of them, that the other person would be jealous. If she was hanging around Dennis too much and the kids and doing the white picket fence family life thing, the defendant would get mad. If they were having too much girl time and not hanging around him as well, he would get mad. She was in the middle of something, and she was forced to be in the middle of by circumstance, and she enjoyed some parts of it too. Don't get me wrong. She -- they were sexually involved. They were romantically involved. She might've naively hoped that, you know, Dennis would have picked her and the kids, but he didn't do that; he wasn't gonna do that, but that's where she was and when she got tired of the jealousy on both sides, and certainly felt the jealously the defendant, she left the house. So, and before you testified there was illusions that the reason Alethia left him was because he beat her, he had had this pattern, and it wasn't true; you heard it from Alethia herself.

Ladies and gentlemen, the facts of this case as they apply to the law, prove that she is not a battered spouse. The testimony that proved that came from the defendant. It was inconsistent. She told lie after lie after lie after lie. And after almost four years, she finally told a story that's plausible according to their expert, as to how it happened.

If I could kill him and bring him back to life, he would be dying five times a week. Said in jest, but it became too real. You've seen all the testimony. There's no doubt she said them and there's no doubt that she did that in the car minutes after sending a text to her father about how upset she was. He was showing off for another woman, showing off, embarrassed her, and made her jealous. She told that same woman that they looked better together and they -- she shouldn't have even married him; Dennis should just leave her right now and marry Antoinette. Again, Antoinette's credibility proven by the text message. She punched him minutes before she sent that to her dad at 5:06.

The defendant wants you to believe that she stabbed him because he was beating her. I want you to look at the photos of this car that was searched. There's a lot there. You saw Mr. Spratlin and Mr. Wilson counting through it. There was a lot of cars -- a lot of pictures of that car and how it was processed. I want you to look at it. Does that car look like a place where a vicious beating occurred? Is there a broken shifter; is the radio busted; is there blood in the car from her face hit it allegedly and threw her into the seat? How could you even be face down, grab a knife from the cup holder, stab the guy, while you're getting pounded and plummeted? How can that happen? Evidence from those photos, I submit to you will show you that it can't. Did she grab that knife as she

was getting pulled into the front with her face down? Was it like the matrix? No broken cup holder? Again, the Denny's video moments prior, the text from Antoinette do not lie about the motive, unlike some other witnesses.

Again, why would she lie about Antoinette being there? Because Antoinette knew the truth. That punch was out of jealousy because of her anger, and she showed it to Dennis that night. The defendant's statements -- she knows the gig is up in Orangeburg. She knows that. She knows they knows -- they know -- she knows that they know she did it, and she keeps on lying. She finally admits to stabbing him. She tells them a version that doesn't line up with the events. So, now, four years later, which is a long time, she's came up with a story that's plausible with her evidence.

Ladies and gentlemen, I submit to you the truth is not in it for the defendant, not then, not four weeks ago when she met Dr. Danso, and not yesterday. The truth isn't being told because the truth is she was angry, she was upset, she was gonna lose the man that was providing for her because he looked better with Antoinette, and they had feelings for each other that really didn't involve the defendant as far as Antoinette was concerned. This is obviously malice because it was raised, it stemmed from jealousy, anger, hatred, and ill will, and she stabbed him twice.

Interesting way, again like I said earlier, is the aches

and pains that she tells Detective Lynch she hurts all day, but the day before she's moving fine. She was not beaten that night. She was not abused by Dennis. Her nails did not break off because he's beating her senseless. She had some marks on her, but I submit to you that scratch -- look at Dennis' hands. Does he have any nails? Did he have a defensive wound on his thumb? Could he have been driving a car and trying to bat away a knife? Would that have scratched someone's face when they're in close proximity to you stabbing you? Could that have been where that came from? The officers didn't see that at Seacoast.

Let's talk about our expert witness, the expert on battered spouse syndrome. I know -- I know that battered spouse syndrome is a thing. It's not a diagnosis, but it exists. I will not belittle that. I will not belittle women that go through that, sometimes men, but I will not belittle the women that go through that. But I am telling you that the evidence proves that that's not the defendant. Their expert said it best. It was her job -- it wasn't her job to diagnose; it wasn't her job to verify. She said she didn't talk to anyone other than the defendant. She only looked at statements from the defendant. She only relied on statements from the defendant. A defendant who has been proven and who has admitted to telling multiple lies, and the way that compares to the battered spouse syndrome is an objective test

she took and administered by her own psychologist, by their own expert show that she's malingering, faking bad. She also said that it was okay because still you have to rely on what the defendant said. She was doing her job with what she had. She was doing the best that she could. But the objective test proved that she exaggerated and that she was faking.

The Defendant's other expert crime scene inferred the defendant came up with a plausible story after four years looking at the evidence. He also said that it was plausible that her nails were broken off because of the rage that she had, that the knife could've been longer, or the rage that she had in grabbing the knife. He also said her hand could be bruised from grabbing the knife so hard as she was stabbing Dennis.

Her little sister did the best she could, but beating her four times, every time they go out, and having these body slams in proportion to the times they go out, it just didn't line up. I know she said she never lied, but Mr. Spratlin had her in a situation where two of the three things couldn't have been true, but she held firm that they were all true, that she didn't lie. But, maybe she didn't remember lying. And if you never remember lying, then sure, you never lied.

She also told you an eerily similar statement. She said that Dennis had beat her in the car, and this was the first time we heard any of that. He had beat her in the car, and

then she had to call her dad. Sound familiar?

Ladies and gentlemen, it's time for you to take in everything. Murder is the intentional killing of another with malice aforethought. Malice is an ill will, displayed hostility towards another, anger, depraved heart, wicked spirit. Jealous rage could lead to ill will. You can demonstrate ill will by the messages sent at 5:06 to her dad that she wanted his ass beat. Earlier she said that she was gonna have to kill. Months earlier, she was saying she was not scared of him, and that if she could, she'd kill him and bring him back to life. She can't bring him back to life. The evidence is gonna make her be accountable for her actions.

I suspect you'll have to decide -- malice is the biggest thing you will have to decide. What happened in that car, only Donnielle and Dennis know, and only one of them is here to tell about it. She stated that there was a fight in that car. I submit to you, she started it and she damned sure ended it.

Is that the heat of passion? Is that sufficient legal provocation? Potentially. Bur, if you add malice, you have murder. If you have malice, you have murder. You can get those elements confused, but if the circumstances can show that once you have malice, you have murder.

She did not act in self-defense. She provoked, attacked. Even her own expert said punching your abuser would be taking

it a little bit too far. Battered spouse syndrome or self-defense would say that the abuser was doing the act, started the act, initiated an act that would give the defendant no other choice. No other choice than to act like how she did. Serious bodily injury or death. She said she was concerned for her wellbeing. She murdered him in that car. She killed him in that car. She can't undo it, no matter how hard she tries; she can't bring him back. All the evidence you need to find her guilty is there.

You've heard from officers, myself, Mr. Spratlin, Attorney Wilson, experts. What you really need in this matter you've had for a long time, common sense. You need to utilize and piece it together. There's a theory in philosophy that's called Occam's razor, I believe. It says that if you have two different choices but one makes you make a lot of presumptions, you pick the simpler explanation. The simple explanation is that the defendant was jealous of Antoinette that night. When she saw the text that Antionette still loved him, didn't want to be around the bull shit, that sent her into a jealous rage. That rage is malice. She stabbed him, and that stabbing led to his death. She killed him. Because of that and all the evidence that came from that stand -- it's on this table. I want you to look at all of it. Take as much time as you need. You do that -- just do what your job is to do, which is to apply the evidence to the law as His Honor

gives it to you. Don't check your common sense at the door. Everything you need is in front of you. Return the verdict that the evidence demands; that verdict is guilty.

I'll be back after Mr. Wilson's closing.

THE COURT: All right. Mr. Wilson?

MR. WILSON: Thank you very much, Your Honor.

CLOSING BY WILSON:

MR. WILSON: When, when, when is enough enough? When is enough enough? When does a woman have the right to defend herself, when? When -- when does that occur or do they? When? How much? How much is enough till you can say no more; it ain't happening no more, not even one more time. When? When? Is there any wonder why people don't come forward and say, oh, I've been raped, or I've been abused, or I'm a beaten wife; is there any wonder? When you listen at what is happening in this courtroom this week, what you have to go through? No, they don't report it. Maybe they should; I wish that they would. I wish that every woman who has been hit by a man would come into this courtroom and testify and tell it. I wish they wouldn't hide it. I wish they wouldn't be ashamed of it. I wish they wouldn't be afraid of their batterer. That's what I wish. But that's not the world we live in. That is not the world we live in.

Ladies and gentlemen, I know this is the last opportunity I will have to speak with you. And I want to say publicly,

VOLUME III of III

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONNIELLE K. MATTHEWS,

APPELLANT.

APPELLATE CASE NO. 2021-000677

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INDEX

THE FOLLING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT #1 (DVD MARTIN BODY CAMERA), STATE'S EXHIBIT #14 (DVD BEAUDOIN BODY CAMERA), STATE'S EXHIBIT #33 (DVD FRANKLIN BODY CAMERA); AND STATE'S EXHIBIT #89 (DVD MATTHEWS INTERVIEW)

one, I want to thank you for your service. I know it's an imposition to be here all week long. You've got things that you need to do at home, probably got kids, got a husband or wife, got a job, and you had to leave all of those things and come here and be with us this week. I want you to know that we appreciate it. On behalf of Donnielle Matthews, I appreciate it. I appreciate it on behalf of the State of South Carolina.

And let me say this outset, you have no friends to reward, you have no enemies to punish. You have but one responsibility, to render a verdict that speaks the truth. That's it.

Let's talk about the State of South Carolina. You see, the state gets to decide who they're gonna try. They get to make that decision. You don't get a choice if you're a defendant. The state makes that decision for you. They get an indictment, and then they bring you in here, and then you got to come in here and you have to defend yourself. But the good things is, the law says that the State of South Carolina has the burden of proving every element of the crime that they charge you with. That is not placed on the defendant. It's placed on the State of South Carolina, and that's for a reason, because you can't always prove you didn't do something. Say I'm home at 3 o'clock in the morning in my bed resting. Somebody breaks in Conway National Bank, they come

knocking on my door at 4:30 a.m. and they say, hey, Ralph Wilson, we heard you broke in Conway National Bank. Come on down and give us a statement. I go down there, I give them a statement, I say, I didn't do it. So, you're lying, we don't believe you. We're gonna lock you up, and they lock me up. I got no alibi; I'm home by myself tending to my own business. How am I gonna prove that? How am I gonna prove that I didn't do it? You can't. Which is why the State of South Carolina is saddled with the burden of proving, not just that you didn't do it, but that beyond a reasonable doubt they must prove it.

In Civil Court, we have what we call by preponderance of the evidence. Well, that's a lessor burden, 51 percent of winning the case. Not true here. 51 percent don't win here. It's beyond a reasonable doubt.

The state has the burden of proving these things each and every element of every crime that they charge you with, and they have to prove it beyond a reasonable doubt. They cannot do that in this case. Do you know why they can't do it in this case? Because there is no evidence to prove it with. They said, well, she lied. So, let's -- we can't get her for anything else, let's get her for lying. Okay. Then you charge her with lying, and you convict her of lying, if that's what you think, and if that's what you think you can prove. But lying doesn't equal murder. Lying does not equal

manslaughter. Lying doesn't equal anything except lying.

Well, let me tell you this. See, the problem the State of South Carolina has in this case, there was nobody in that car but two people. Two people in that car. Antoinette was not in that car when this crime happened. She wasn't there. She doesn't know what happened. The state doesn't know what happened, and they haven't proven to you what happened in that car, which is what they must do. Not what happened at Denny's, not what happened in May, or not what she said in May. That is not what she's charged with. She's not charged with sending a threat in May. She is charged with murdering Dennis Green on July the 7th in that car.

Where is the proof? Not one -- you haven't heard one single person say this is what she did in that car. This is how she was acting in that car. She was outraged, she was angry, she was mad. Not a single person. In fact, ladies and gentlemen, remember Dennis, when they left Denny's -- and when we brought Ms. Jackson in here who was the waitress. She said, no, I didn't hear anybody arguing. They were getting along okay. Everybody was getting along fine when they left Denny's. The only person, the only person who says anything physical happened is who? The tall girl, the third wheel, or whatever she is; the only one. Is that self-serving on her part? Yeah. Yeah. She's upset because things didn't go that way that night that she wanted them to go, her and Dennis.

You know, a victim, talking about a victim, here's one right there. Beaten, and then you get charged with murder and you have to come in and defend that, of your husband, who was beating you. Where was all the concern about this when she was being beaten by the State of South Carolina? Where was all that concern then? It didn't exist. And, everybody knew it. You heard me time and time again ask, did you see these text messages, did you see these emails from family members who knew that she was being beaten. They knew it. Did they do anything about it? No. Nobody came to her rescue. And when she got tired, when he grabbed her this one time, it was one time too many. It was one time too many. Enough was enough.

You know, the state might have its theory of what they think happened; that's not evidence. Because I think it doesn't make it be true. I can think I'm King of England; that don't make it true. So, they come in here and they say, oh, you know, we want y'all to guess, because we don't really know what happened in there. We don't know, and she's told us some different stories about it. So, we don't know what happened, so y'all just guess, because we like this version. So, y'all take that and run with it. That's what they're asking you to do, because they certainly haven't proven to you what happened in that car. There ain't no doubt about that part, because they don't know. He said, oh, well, she might

have had this, and she might have been like this, and she might -- no, that's not proof. That's his theory. That's not evidence. What I say is not evidence, what they say is not evidence, and it's not proof.

And, yeah, I know that their lifestyle was different than ours -- than mine or maybe yours. I don't know. But I ask you not to hold that against her, whatever their lifestyle is. People are entitled to live their lives as they want, whether I agree with it or disagree with it; that's their business. When you get over 21, you make your own decisions. And I'd ask you to not judge them with that, because she's not on trial for her lifestyle. Yeah, she chose to be with a drug dealer in an abusive man. Not good choices. I'm not saying they were.

Let's talk for a minute, ladies and gentlemen, about what we do know in this case, because I think that's important. And, and -- and if you noticed, three times during the time the solicitor was standing up here, he was saying to you that the expert says that her story was probable; right? I mean that's what the solicitor said. He said, well, that's what the expert said, said that her story is probable. Well, if her story is probable, that's reasonable doubt, because that's what that is. If her story is probable, that means that, and even if they have a story that's probable, you're to give her the benefit of the doubt, because that is the law. So, if you

get in your jury room and you say to yourself, well, you know, what the solicitor said, that could be true, too, and -- but what she says, that could be true, too; then you've just decided she's not guilty, because the law says you must give her the benefit of any reasonable and every reasonable doubt that you have. And if there are two probable stories, if there are two probable stories, then you got to find her not guilty. That's not because I think that's a good way to do it, that's because that's our rule; that's our law.

But even beyond that, folks, even beyond that, all you've got to do is look at the physical evidence in this case. You see, physical evidence don't lie. It doesn't lie. You can't change it; it is what it is. It is what it is, and you can't make it be different if it's physical evidence. Bruises on his knuckles; that's physical evidence. You can't change it; it's there. You got a picture of it. It's in evidence, you'll have it. You can't change that, it's there. Now, you can argue all day about how it got there, but it's there. Those fingernails inside that car, scattered all over the place, under where? Under where he's got his foot on the gas, right down up under there, fingernails broken off down under there. Fingernails broken off down under the passenger side front seat. Fingernails all in the back. What you think is going on in there? Are they having church? No, he was beating the daylights out of her.

And, you know, the solicitor asked you about, well, those stab wounds, you know, they're right here. Folks, remember when she was on the witness stand -- and the solicitor was trying to trick her is what he was trying to do, he handed her the knife. He said, well, show me how you were holding this knife, and he was hoping that she was gonna grab it with her right hand, right? She didn't. Which hand did she grab it with? The left, because that's what she did. And if you'll remember, that's where she had the marks in her hand, in the left hand. Because when you grab a knife like this and you ain't got -- thank you. You grab a knife like this, it has little ridges at the bottom of it, which has imprints. So, if you hold it tight enough, which you're gonna have to do if you're gonna stab somebody, because you can't hold it like this here and stab them. So, if you grab it normally like this and you hold it in your hand, especially if you're a woman and your hands are softer than some hardhead like me, you're gonna have something in your hand.

The evidence in the car, let's go back to that. The scuff marks, remember we talked about that, but the officer, well, I don't know when he got there. Well, I know that they're there. Yeah, there are scuff marks there; I don't know when they got there. Well, that's true. You don't know when the fingernails got there either, right? They don't know that. They know when they got that car those scuff marks were

in there. Yeah, there as a fight in that car. And, you know, I don't even like using the word fight, because when you got a 200 -- six-foot, 225-pound man wailing on a 5'1" woman who is a 125 pounds, that ain't no fight. That is a beat down by anybody's imagination.

You know, and think about this for a second, will you, they're out this night, they're at Denny's. Really? And -- and they want you to believe that there's nothing going on with any of them all night long, right? But then when all of a sudden when they get in the car -- and you know what's important about this is, when they get in the car, nobody is there except who? The three of them. So, she can say whatever she wants to say about what happened in the car, right? Because she can't lie about what happened in Denny's. She tried to even lie about that. I'm talking about Antoinette. She wanted to lie about that, but she couldn't because why? There is a video. There is a video. Look at that video. When they come out of Denny's -- they leave Thee DollHouse and they go to Denny's, right? And she says, oh, well, I ain't never showed her my piercings. She didn't even want to admit that she told her about it, but then she couldn't deny that because she's either got them or she doesn't have them, right? But she knew about it, and so what did they do? When they leave Thee DollHouse, they go straight to Denny's. What do they do? Because now she knows about the

-- she knows that is, Donnielle, knows about the piercings. What do they do? And you watch the video, they walk straight right behind each other, like ducks in a row, gonna straight to the bathroom, where they stayed for 12 minutes until Dennis goes and knocks on the door, hey, what are y'all doing in there, come on out of there. What do you think they're doing in there, praying? No. They were looking at them piercings; that's what they were doing.

Folks, the other thing that's important, she says, oh, well, you know, I just, you know, I haven't been comfortable, you know, I wasn't comfortable. Watch that video at Denny's. They come out of the bathroom, what are they doing? Arms around each other, holding hands, coming out of the bathroom. But she's uncomfortable. No, she wasn't uncomfortable.

Ladies and gentlemen, really -- and I say this, you are almost judging the State of South Carolina. You're judging whether or not they have made out their case; that's what you're really judging. Has the state presented you with evidence beyond a reasonable doubt of the guilt of Donnielle of murder or manslaughter?

Now, murder, unlawful killing of one person by another with what we call malice. Malice is hatred, ill will, an intentional killing; not an accident, not in a fight, intentional killing. I could just walk over to you and I take something and stab you, or I walk up to you and I stick my gun

and shoot you intentionally, for no reason, just because I want to. That'd be murder.

Manslaughter would be more like if you -- because you have got to have two things to have manslaughter. All right? You've got to have sudden and passion, and sudden is the key word. It has to be sudden. Sudden heat and passion. It can't be something that happened a month ago or two years ago; it's got to be sudden, now, right then, that causes you to lose your cool, become enraged. But, the second thing that you must have, and you must have them both, is you must have a legal provocation for doing the act. You have to have both those things to have manslaughter.

There is no sudden heat and passion here. Sudden heat and passion would be let's say you're a man or let's say you're a woman, either way, it doesn't matter. You come home from work, you've been working all day, you come home from work, there is your husband or your wife in the bed with a third party who you don't know, undressed. You get angry, you grab the gun up, and you shoot him. Manslaughter, not murder. Sudden heat and passion, because you walked in that house and as soon as you saw it, you grabbed that gun and you shot him. That would be manslaughter; that's not murder.

She's not guilty of either of those things. The only thing she's guilty of, the only thing she's guilty of she picked a bad partner. She picked a bad partner. And you can

tell she loved him. Listen, even after, even after he's trying to beat her head in in the floor and she stabs him, what does she do? She drives him to the hospital, 90 miles an hour, passing the EMS people who then followed her from the hospital -- followed her from when they passed her as she's going to the hospital. Ninety miles an hour trying to get him to the hospital, running red lights. You heard that from the police, not from me. Does that really sound like somebody is trying to murder somebody? No. No.

You see, justice is justice. It don't matter where you find it, it don't matter. It is what it is. Justice is justice, and it applies equally in every situation. You know, when I was growing up, I always thought -- and my momma used to clean an insurance agency, she'd do the cleaning for them. And she -- me and her would walk past, not this courthouse, but it was the old courthouse, which is just up there on Third Avenue, and we'd walk -- we didn't have a car, so we'd walk and I would help her clean up. And every time I'd pass the courthouse, I always thought as a little boy, that's where you go to get justice. That's where justice is. That's where people do the right thing. That's what I always thought. But once I became a lawyer and I got to understand, no, this building is not justice. This is not justice. These walls are not justice. The outside frame of this building is not justice; it's you. It only exists if it exists in your hearts

and in your minds. If justice doesn't exist in your hearts and your minds, it doesn't exist in Horry County in this case, because it's you. You are it. You are the law in this case. You decide the facts. His Honor will tell you and all of us what the law is, and you're to take the law as he gives it to you, but not even His Honor will tell you what the facts are. That's your job. That's your job.

Ladies and gentlemen, I know you've seen all of this evidence, okay, over the last four days, and I'm not gonna sit here and go back through piece by piece of what you already saw. You heard every witness. And I do know, because I paid attention to you, you were watching everything that went on in this courtroom. You were listening, you were paying attention, and we appreciate that so much.

But I do want to talk about a couple a more things. I want to talk about Donnielle's story to you, because the solicitor has already told you that it's plausible, and it is. It's plausible, because it's the truth. That's why it's plausible. Because as I said, you can't change the facts. You can't change anything that happened in that car. When the police got there, the first thing they did, was they took pictures of the interior of the car. Do you know why they do that that? To see exactly what existed at the time they arrived. And what we do know, cause we saw this, too, remember? When they pulled up to the Seacoast Hospital, they

both got out; that is both Donnielle and Mr. Green, they both got out and walked into the door of the emergency room. They never got back to the car after that. So, whatever was in that car when they walked into that emergency room, stayed there until the police got there and took those pictures. Nobody went back to the car. She was the -- in there on video the entire time, laying down in the floor crying. You saw the pictures. So, you don't have to question whether or not, okay, well she ran back to the car and she got some stuff and put it in the floorboard and then she ran back and got something else and pulled the card out and laid it in the middle of the floor, and she puts some scuff marks in -- no. No. And she was driving 90 miles an hour from the time it happened to get to the hospital, and we know that because law enforcement told you that. So, when was she gonna fix the scene? When was she gonna plant the evidence? No.

But, you know, the other thing is self-defense. Let me -- let me tell you -- and again, His Honor is gonna give you the law, and if I say something that's inconsistent with anything His Honor tells you, you disregard what I say. He is the instructor of the law and you're to take the law as he gives it to you. When -- when they go back, when this car is -- is taken and they go through it and they look at it, all the pieces, if you look at them, will show you that this is self-defense.

Self-defense. One, you must not be at fault in bringing on the difficulty. Well, there's nobody in the car, so how do we know what happened? Who was at fault? Did he grab her and snatch her in the front seat as she said, hit the brakes, made her jerk forward, and then start beating her? Is that how it happened? I don't know; I wasn't there. The solicitor wasn't there either. He doesn't know either. That's why the law places the burden of proof on them because they're the ones who elected to charge her, so then they got to prove what happened in that car. They can't, because they don't know, but they want you to guess. So, you got to first prove or establish that you are not at fault in bringing on the difficulty. They said, oh, well, you know, at Denny's, she says that -- Verlene says, oh, well, she hit him. Well, it didn't happen then. Ain't nobody says it happened then. They drove, what ten, 12 minutes to her house to drop her off, and then another ten, 12 minutes to wherever they got before they got to the hospital. Right? That didn't happen then. So, they go what in May, she wrote these texts. Let's talk about that for a second. She is talking to her girlfriend about her man. All right. Listen, I hope never get any conversations I have with some of my male friends. I tell them, sometimes I want to wring my children's neck, because Lord knows I've said it. All right. So, if something happened to one of them, they gonna come looking at me. But my point simply is, is

that we say things, especially when we're talking to somebody that we like or we're comfortable with. We do. Okay? You talk to your girlfriends or your boyfriends or male friends about stuff that you're not gonna really do, but you certainly say it. Okay? Now, I ain't planning on wringing nobody's neck. Now, I said it, but I, you know, I got four kids; I ain't trying to wring their necks, but they make me feel like it sometimes. I'm just saying. My point, ladies and gentlemen, is, is that we all say things, and every one of those text messages had what, LOMA or LMAO, whatever the word is, with me laughing, you know -- I ain't gonna say all them other words, but it says all that stuff. Okay? Clearly, she is having fun joking with her friend about her man, and the friend, you know, we don't know what the friend said back, because that would be hearsay, so you couldn't hear that. But I can imagine similarly.

So, first thing, not at fault in bringing on the difficulty, and if it happened the way she says it happened, and this expert says that that's certainly plausible, that he -- he -- when she reached to put that cord in there to plug it up to her phone and he hit the brakes and brought her forward, and the things is, is that what is -- when she comes forward, her left side is to his right side, and she is left-handed. Well, she's ambidextrous, actually. She is face down. Now, if you look, you will see scratches on the side of the door of

where the passenger door is, there are scratches on that door. Did she put them there? I don't know. I wasn't there either, but it ain't my burden to prove anything. It's their burden to prove how those scratches got there, not mine. I can tell you this, her nails are over there where those scratches are; I can tell you that, because I see that on the pictures that we put into evidence.

Second thing, not at fault for bringing on the difficulty. And you got to know that you're in reasonable -- you're in reasonable fear of your own life or being seriously injured in some way. And folks, if you think driving down the road in a car and somebody hit the brakes and cause you to shove forward and they're beating you in the back with their fists, if that ain't gonna cause you serious bodily injury, then I got a used car for you. And my thing is, when you look at the size of these people, the size of this defendant, and the size of Mr. Green, it don't even matter. That would be like me getting a five-year-old child and figure I would start beating them and saying, oh, well it's self-defense, but you know, I can beat you if I want to, I just say self-defense. No, no, you don't get to beat your wife. That is not something we get to do as husbands.

They are people, they are human beings just like us, just like me. Yeah, sometimes you get a little upset. That don't give you the right to hit them. They will get you if you beat

your dog and you get caught at it, they will come and get you and put you in jail; they will. But you can beat your wife. I ain't never seen the likes of it. I love dogs; don't get me wrong, I'm a dog man, but that doesn't make sense to me. I can't beat my dog; I can darn sure beat my wife. No. No.

So, she's not at fault in bringing on the difficulty. She was in fear of sustaining bodily injury or worse. She had no reasonable means of avoiding the harm or the danger. How was she gonna avoid it? How? You're in a car, you're in the backseat; how you gonna get out. He's driving down the road. Then when he hits the brakes and you fall forward, how are you gonna get out the car? You can't avoid it. You've got to defend yourself. There's nothing left to do, ladies and gentlemen, except to defend yourself. And had she not, we might be here with him charged with murder.

I say all that, but then, again, I keep coming back to it is not the defendant's burden to prove these things. The state has to disprove them, and they have to disprove each element of each of those things beyond a reasonable doubt, which they cannot do because it's impossible to do under these circumstances. When they admit -- when the solicitor has stood up here and said to you, oh, yeah, the expert testified that her story is really probable. And did you hear anybody get up there from the state and say, oh, no, what he says ain't true. That ain't probable; it couldn't happen that way.

Did you hear one person say that? No. You know why? Because they can't. Because if they could, believe me, you saw how he had that expert from -- that come up here and, what's his name, Dr. Nelson, I believe it was, to come here with a big chart and tell you about trauma and all that stuff. They would've done the same thing -- they would have done exactly the same thing if they had somebody who could say that, that what you're saying, sir, is not true. It is not correct.

Another thing is, remember she kept saying -- that is Donnielle says I told these family members, Sabrina, and she called them out by name. Said I told them; they knew for years about the abuse. They knew why I left. Did you hear one of them get up and say that ain't true; I didn't know about that. No. Why? Because they knew. They knew. That's why they didn't get up here and say it, because it's true. And believe me, you see how after I finished my case, and they did rebuttal, and they called the doctor to get up there to testify. They would've done the same thing with the evidence. They had the option to do that, if they wanted to. They didn't do it, because they couldn't.

I'm not gonna be much longer, and I know you've been here for four days like the rest of us, and you're tired and you were here last night until after 7:00. It's been a long week for all of us. It has been. And I want you to remember that Donnielle has no burden of proof, that the state has to

disprove -- they have to disprove by evidence that -- beyond a reasonable doubt they have to prove to you that self-defense didn't exist in this case. They have to prove that, and they have to prove that all the elements of murder and/or all the elements of manslaughter existed. They can't do that either, because they weren't in the car and they don't know, and they don't know what happened in the car, and they've had nobody testify as to what happened in the car other than Donnielle. The only person who testified as to what happened in that car. That's uncontradicted in this record. Nobody else.

I know that when I -- when I sit down, I will think of ten more things that I wanted to tell you, but I can't get back up. Those are rules that we operate under. And I said to you at the outset of this trial, our system is the best I know. It's the best I know. I don't know of a system that's better. Is it perfect? No, it ain't perfect. It's got its flaws, but it's better than the next closest thing to it, I can tell you that. And if I had to take my chances, I'd always want to take it to a jury, because you represent the community. You represent society. You represent truth and justice. You know, those are not just words that we plaster on the wall or put on the back of -- of -- of money or something, those words have meaning. Those words have meaning. And for our system to have meaning and to have to work, it can only work if you, if you believe those words,

truth, justice, fairness.

I have, for the last number of years now, carried this case with Donnielle. I have done my job. I have done my job. And when I sit down, my job will be over. Yours will just begin. Under our rules, the state is represented by the solicitor's office; defendants are represented by counsel. The difference is, as a defense lawyer, my sole job is to represent my client within the rules that the Court sets. That's my sole job. I have no other responsibility. That's not true with the state. The state is not to represent anybody. What they're supposed to do is seek justice, no matter where that justice is. That's their jobs. It's not to convict people; it is to seek justice on behalf of the State of South Carolina. That is what they're supposed to be doing.

I want to say thank you for your attention. And as I said, I'm going -- I'm gonna think of some other stuff, but I wish I could tell you; I can't get back up here to tell you. So, but I do ask you, as I turn this case from my hands to yours, I ask you to protect the rights of Donnielle Matthews.

Thank you.

THE COURT: Final argument.

MR. OSKIN: Thank you.

REPLY CLOSING BY OSKIN:

MR. OSKIN: I just want it to be very clear to you, the jury, that we do not have to show every detail of what

happened in that car. We just have to prove to you with the evidence that she acted with malice aforethought when she stabbed her husband twice and killed him. We have done that. There's been no evidence presented from that stand, from that testimony from any of this -- of these exhibits, that shows she is being beaten when she reacts by stabbing him in the car. There's no evidence other than her testimony.

What has her testimony consistently proven to be? Lie after lie after like after lie.

She said she grabbed the knife out of instinct. What I wanted to show you from that stand was how quick she could open the knife, how quickly she opened it. I don't care what hand it was, she was quick with a knife, quick to use it.

Do not -- the state does not have to show you exactly what happened in that car. Otherwise, all you have to do -- all anyone would ever have to do is get somebody alone. If you killed someone and it's just and him, does that automatically mean not guilty? It does not. You have to look at the rest of the evidence, and that evidence has shown you that she stabbed him with malice aforethought. That's simple. It is that simple. She killed with malice aforethought; she's guilty of murder. When you have a six-foot, strong, angry, mean dude, you're gonna have more injuries than a scratch to your cheek here? If he slammed on his brakes and threw her into the front of the car, do you

remember asking her -- wouldn't her face get smashed up; wouldn't her nose be broken; wouldn't her lips be busted? Proven by the evidence and it's not her burden at all to prove her innocence. It's our burden to show you, and that's how we've shown that it's just another story from her.

You were told that I said her story was probable; that's not true, I didn't say that. You were also told that Alethia left him previously because he was beating her; that wasn't true either. This case is about the truth.

Mr. Wilson was talking about a plausible story, and if making up a plausible story four years later means you're not guilty, and that's what you find, then so be it. But ladies and gentlemen, that's why you judge the credibility of the witnesses and the evidence. People lie when they're charged with murder. That's what the defendant has done here, not once, twice, three times, four times, five times.

This comes down to malice. We want you to take in all of the texts, or messages, or comments about killing Dennis in context and jest, and that was jut LMAOs, and that was just funny, joking around or telling Antoinette that he was gonna kill her -- or that she was gonna kill him. Then she actually did. She was stewing in that back seat at 5:06, mad. She sees the text from Antoinette. Antoinette didn't appreciate the BS of that night. Jealous rage turned into malice that she had already had in her heart. She stabbed her husband two

times in the car. She didn't just come forth. She's now on trial and context absolutely matters. Context matters after you've seen a story -- after you've seen the evidence and you make your story fit that, and that story is not true. That's proven by the photos and the photos who no serious injury. She wasn't in fear for her life at that moment.

The only person in this courtroom who said she was beaten is her. The only thing that their expert had to rely on in making a determination, was her and her stories. But the objective tests show that she was malingering, lying, faking. Now, their expert had a different version of what happened, but you'll recall that Solicitor Spratlin also got their expert to say that it was plausible that she stabbed him from behind in the car, and it was plausible that her hand was bruised from gripping the knife so hard. He did his best to diminish the stab and he called it a jab. He said it barely pierced the heart. It barely pierced the heart? He also said the knife was talking as it moved. She stabbed him in the heart. Malice aforethought. The only person that says otherwise is her. Are you gonna take her word for it or are you gonna rely on the evidence? Are you gonna rely on the evidence in the verdict that it demands of you, that it tells you that you -- that you have to. You didn't check your common sense at the door. You didn't leave it.

Mr. Wilson is right, justice does come from y'all when

you're in that jury room. Lady justice is gonna be in there with you, and if you listen to her, she's gonna say what that this evidence commands, the defendant is guilty of killing Dennis Green with malice aforethought.

BY THE COURT:

THE COURT: All right, ladies and gentlemen, I want you to go to your jury room for about five minutes and take a short break. Come back and I'll give you the law in this particular matter.

Thank you.

(REPORTER'S NOTE: Jury exits courtroom @ 11:24 a.m.)

THE COURT: All right. We'll take a short break for about five minutes. Thank you very much.

RECESS - 11:24 A.M.

*******OFF THE RECORD*******

ON THE RECORD - 11:32 A.M.

THE COURT: Is the state ready for the jury to come in?

MR. SPRATLIN: Yes, Your Honor.

THE COURT: Defense?

MR. WILSON: Yes, sir.

THE COURT: Ask the jury to come in, please

(REPORTER'S NOTE: Jury enters courtroom @ 11:33 a.m.)

CHARGE TO JURY:

THE COURT: All right, ladies and gentlemen, it's now my duty and responsibility to give you the law that you will

apply to the facts and evidence you've heard in this case. I told you at the very beginning, I would not indicate to you in any way what I think the facts of this case are; it's not my job. It's your job and your responsibility. But, if you came into this courtroom with any preconceived ideas of what the law is, what it ought to be, what it should, what you hoped it would be, you'll disregard that. You will take the law as I give it to you and apply to the facts and evidence you've heard.

I told you at the very beginning, one of your jobs, duties, and responsibilities was to judge the credibility that is the believability of the witnesses that came before you and testified in this case. You can believe one witness against several, several against one, you can believe a portion of what a witness says, disregard the other portion of it, you can disregard it in its entirety the testimony of a particular witness if you've got a good and sound reason for doing so. You look at whether or not they exhibited to you any kind of interest, motive, bias, prejudice they may have in giving you the testimony. You obviously consider the opportunity for knowledge. Your job is to examine the facts. You don't have any friends to reward. You don't have any enemies to punish. It is examination of the facts.

Now, I allowed y'all to take notes, and I told you something about that at the beginning, and I'll remind you

again, some people are just better at it than others. Just because somebody writes something down on a piece of paper, does not make it more true than somebody's memory. We are relying on your collective wisdom in this particular matter.

In this particular case and virtually every case that's tried, there is two kinds of evidence, direct and circumstantial evidence. Direct evidence, that's the testimony of a person who claims to have knowledge of a fact. This is what I saw; this is what I heard; this is what took place in my presence. Circumstantial evidence is proof of a chain of facts indicating the existence of a fact. The law doesn't make any distinction between the two. But, to the extent that the state relies on circumstantial evidence, the circumstances have to be consistent with each and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt.

I told you at the very beginning and I'll tell you again a couple of times. The state has the burden of proving the defendant guilty of the crime or crimes charged beyond a reasonable doubt. And that rests with the state whether they use direct evidence, circumstantial evidence, some combination of the two.

The rules of evidence allow the Court to qualify some witnesses to give their opinion. Sometimes we call them expert witnesses. What they really are is people we're

allowing to give their opinion, because normally we don't allow you to do that. You have to tell us what I saw, what I heard, what took place in my presence. But some witnesses, by reason of their education, experience, and training in a certain field will allow you to give their opinion. But that doesn't give them any kind of special status. You judge all of the witnesses the same. You judge all of their credibility and believability the same under the rules that I've told you about just a minute ago.

Rules of evidence also provide that a witness may be discredited or impeached by showing the witness has been convicted of a crime. Now, as to this evidence, it's only on the issue of credibility or believability. A person who has a past criminal record can testify during a trial, and their past record doesn't affect their ability to testify. The past record may be considered by you, if it's to be considered at all, in the determining the witness' credibility or believability.

A statement alleged to have been made by the defendant has been admitted by the Court as evidence in this case. Now, while the Court determined that was proper as evidence in this case, you are the judges of the facts. That includes the statement. So, you determine was the statement made by the defendant, was it made voluntarily of their own freewill; was it caused or not caused by any kind of pressure, force, fear,

threats, coercion, intimidation, hope, or promise of leniency, or reward of any kind; you consider the characteristics of the defendant, the details of the questioning; you can consider the person's age, education, lack thereof, their mental ability or capacity, their background, environment, place and length of detention, and the nature of the question, and the advice or lack thereof of their constitutional rights. Any statement can and will be used against you in a court of law. You have the right to have a lawyer present. If you cannot afford one, one will be appointed to represent you. You can stop making a statement at any time. The state has the burden, as with everything, proving beyond a reasonable doubt that the alleged statement was the statement of the defendant and was made freely and voluntarily to you. And, if you so determine, then you give it whatever weight you believe it should have.

Voluntary intoxication is not an excuse or a defense to any crime. A person who voluntarily becomes intoxicated is just as responsible for the acts committed while intoxicated, as if the acts had been committed while they were sober. Voluntary intoxication does not relieve an intoxicated person from responsibility and cannot be considered as a defense to a crime.

I told you at the very beginning, the state brought the indictment, the charge, levied that against the defendant.

The defendant, at that point in time, pled not guilty. That put the burden of proof on the State of South Carolina to prove the defendant guilty beyond a reasonable doubt. When the defendant pled not guilty, the presumption of innocence came upon the defendant. That presumption of innocence didn't end at the start of the trial, it hasn't ended now. It does not end unless and until you believe from the evidence presented, the state has proved the defendant guilty beyond a reasonable doubt. We liken the presumption of innocence to a robe of righteousness. It's placed on the shoulders of the defendant, and it stays on the shoulders of the defendant, unless the state, if it can, rips that robe of righteousness from the shoulders of the defendant by evidence that convinces you of the guilt of the defendant of the crime or crimes charged beyond a reasonable doubt. It's not just some legal theory or legal phrase, it's an important right to which every defendant is entitled that you, the jury, must be satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

So, what's reasonable doubt? The kind of doubt that would cause an ordinary, reasonable person to hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Now, there are very few things we can know with absolute certainty, and the law doesn't require the State of South Carolina to give you

that kind of proof. What is required is based upon your consideration of the evidence, you are firmly convinced the defendant is guilty of the crime charged, you must find the defendant guilty. On the other hand, if you are not firmly convinced that the defendant is guilty of the crime charged, you must give the defendant the benefit of the doubt and find them not guilty.

So, what is the defendant charged with? The defendant is charged with the crime of murder. The state must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought. Malice is hatred, ill will, hostility towards another person. It's in the intentional doing of a wrongful act without just cause or excuse with an intent to inflict an injury, or it's under circumstances that the law would infer an evil intent. A malicious killing is where the act is done without legal justification or excuse. It indicates a wicked or depraved spirit, intent on doing wrong. Now, malice aforethought does not require that malice exists for any particular time before the act is committed, but it has to exist in the mind of the defendant just before and at the time the act is committed. It's a combination of the intent and the act. Malice aforethought could be expressed or inferred. That's merely the manner in which they are shown to exist, either by direct or circumstantial evidence from the facts and circumstances proven. Remember,

the defendant is not required to prove the absence of malice. And again, the state is required, as with everything, to prove the existence of malice beyond a reasonable doubt.

Now, if you find the state has failed to prove to you beyond a reasonable doubt the defendant committed the crime of murder, you may consider the lessor included offense of voluntary manslaughter. Again, the state has to prove this crime to you beyond a reasonable doubt. The state must prove regarding voluntary manslaughter that the defendant took the life of another in the sudden heat of passion based upon sufficient legal provocation. Both heat of passion and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter.

Now, sudden heat of passion, may for a time, affect a person's self-control. It may temporarily disturb a person's reasoning. Sudden heat of passion must be the type that would make an ordinary, reasonable person unable to coolly reflect on their actions and would produce an uncontrollable impulse to do violence.

Legal provocation must be the type that would make an ordinary, reasonable person become enraged and lose their control temporarily. Provocation needed for voluntary manslaughter must come from some act of or related to the victim. Now, words alone, however vulgar or insulting, are not enough. Where death is caused by the use of a deadly

weapon, the words must be accompanied by some overt, some kind of act which could've produced that heat of passion.

Now -- excuse me -- if the heat of passion had cooled off or there was enough time between the provocation, if any, and the killing for an ordinary, reasonable person to cool off, the killing is not voluntary manslaughter. You consider all the circumstances surrounding the killing, you may consider the nature of the provocation, if any, the defendant's mental and physical state, and the circumstances and relationships between the parties. If you have a reasonable doubt as to whether the defendant is guilty of a greater or a lessor offense, you must resolve that doubt in favor of the defendant and find the defendant guilty of the lessor offense, if the state has proved it to you beyond a reasonable doubt.

Now, in this matter, there has been raised the issue of self-defense. Now, even though the issue is raised by the defense, the state has the burden of disproving self-defense beyond a reasonable doubt. Again, no burden on the defendant. Self-defense, that's a complete defense, and if established, you must find the defendant not guilty, and that includes the defense of battered person syndrome. And again, the state has the burden of disproving self-defense or battered person syndrome by proof beyond a reasonable doubt. That's the state's burden all the time. If you have a reasonable doubt of the defendant's guilt after considering all the evidence

including self-defense or the battered person syndrome, you must find the defendant not guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt after considering all the evidence, including self-defense, battered person syndrome, you must find the defendant guilty.

So, what's self-defense? There are certain elements and certain sub-parts to it. First element, without fault. The defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which would reasonably calculated to and did provoke the deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to self-defense. Under battered person syndrome, if a defendant killed her abuser during a confrontation when the abuser clearly is the aggressor, the element may be satisfied. It also may be possible to be satisfied to characterize a battered person as the victim of a continuing assault at the hands of the batterer and that might be satisfied even though the battered person acts at a time when the batterer is not then being physically abusive.

The second element of self-defense, imminent danger. The defendant was actually in imminent danger of death or serious bodily injury or the defendant actually believed she was in imminent danger of death or serious bodily injury. If the defendant was actually in imminent danger of death or serious bodily injury, it must be shown that the circumstances would

again warrant an ordinary, reasonable person to have the firmness and courage to strike the fatal blow to prevent death or serious bodily injury. If the defendant believed she was in imminent danger of death or serious bodily injury, it must be shown that an ordinary, reasonable person, one of ordinary firmness and courage, would have had that same belief. In deciding whether the defendant was or believed she was in imminent danger of death or serious bodily injury, you consider all the facts and circumstances surrounding the matter including the physical condition, the characteristics of the defendant and the victim.

Right to act on appearances. The defendant does not have to show that she was actually in danger. It is enough that the defendant believed she was in imminent danger of death or serious bodily injury if a reasonable, ordinary person, one of ordinary firmness and courage would have had that belief. It's up to you to decide whether the defendant's fear of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation.

Under battered person syndrome, a battered person actually is in imminent danger of violence when they act, depending on the facts of the case. The defendant may act in self-defense if they believe they were in imminent danger of death or serious bodily harm even though the batterer is not

right then being physically abusive when the defendant acts. This is because a battered person can experience a heightened sense of imminent danger arising from the terror of physical and mental abuse. Often the terror does not decrease even when the batterer is absent or asleep. Where torture appears interminable, escape impossible, the belief that only death of the batterer can provide relief may be reasonable in the mind of a person of ordinary firmness and courage.

Prior difficulties. Evidence of prior difficulties between the defendant and the victim may be considered in deciding whether a threat exists. Whether the defendant had a reason to believe a threat existed and how serious that threat was.

Size and age. The relative sizes, ages, weights, of the parties may be considered in deciding the apparent or actual need for force in self-defense and the amount of force needed.

The reputation of the victim, if any, as a violent person may be considered in deciding whether there was a need for force, whether the defendant had a reason to believe there was a need for force, and whether deadly force was reasonable and necessary.

Prior instances of violence by the victim, if any, may be considered in deciding whether the defendant actually believed she was in imminent danger of death or serious bodily injury or was actually in imminent danger of death or serious bodily

injury.

Threats made by the victim, if any, may be considered in determining whether the defendant actually was or believed she was in imminent danger.

The third element of self-defense, no other way to avoid danger. The defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular circumstances.

Duty to retreat. The defendant has no duty to retreat, if by doing so, the danger of being killed or suffering serious bodily injury would increase. Under battered person syndrome, a battered person who is held hostage by the batterer, may have no other means of avoiding a battering than to kill the batterer in self-defense. A batterer who acts while on their own premises or who has no means of escape has no duty to retreat.

A person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily harm. Therefore, in self-defense, the defendant has the right to use the force needed to avoid death or serious bodily harm. The force used in self-defense does not have to be limited to the degree or amount of force used by the victim, if any. The defendant has the right to use so much force as would reasonably appear to be necessary for complete self-protection, that is what an

ordinary, reasonable person would have believed to be needed to prevent death or serious bodily harm. And, if the defendant is justified in defending themselves, then the defendant is also justified in continuing to defend themselves until it is apparent that the danger of death or serious bodily injury has ended.

So again, three elements: without fault, imminent danger, no other way to avoid danger with all of the subsets and qualifiers that I talked to you about, including but obviously not limited to the battered person syndrome.

All right, ladies and gentlemen, that's the law. That's the law you have to apply to facts and evidence you've heard in this case.

Now, I have prepared for you a verdict form that will aid you in writing your verdict. Pretty self-explanatory, State of South Carolina versus Donnielle Matthews Green. Murder, on the charge of murder, we the jury, by unanimous consent, find the defendant -- you have two choices. I have to put on -- had to put one before the other. Don't assign anything to that, ones got to go before the other; not guilty or guilty. If you find the defendant guilty of murder, that's the end of it. Knock on the door, let the bailiff know you reached a unanimous verdict. If you find the defendant not guilty of murder, you then proceed to the lessor included offense of voluntary manslaughter.

Voluntary manslaughter. On the charge of voluntary manslaughter, we, the jury, by unanimous consent find the defendant -- again, two choices; not guilty or guilty.

So, Madame Forelady, your jury deliberates and reaches a unanimous decision in this matter, take the verdict form, check the appropriate blocks, you sign your name, put today's date, knock on the door, and let the bailiff know that your jury has reached a verdict.

Unanimous, I've said it several times. It means exactly what you think it means, 12/0, not 11/1, 10/2, any combination thereof. So, Madame Forelady, you check the block, you're saying every single member of the jury agrees that's their verdict. So, after the verdict is read by the clerk's representative and the clerk's representative asks you to raise your right hand to affirm that is your verdict, all members of the jury will be able to do so. That's what you're saying, Madame Forelady, when you check the block and sign your name.

So, what I'm gonna ask that you do, Madame Forelady, is to take the 12 members of the jury to the jury room. Do not, do not begin your deliberations until the bailiff hands to you the verdict forms and all the exhibits. And you will have a laptop sent in with you if you want to play any of the discs or flash drives.

The two alternates, please stay with us.

Madame Forelady, take the other members of the jury to the jury room.

(REPORTER'S NOTE: Jury exits courtroom @ 12:04 p.m.)

BY THE COURT:

THE COURT: Alternates, is there any reason the Court should not excuse them at this particular point in time?

MR. SPRATLIN: I see no reason why, Your Honor.

THE COURT: Defense?

MR. WILSON: No, Your Honor.

THE COURT: All right. I want to thank both of you for your service. You weren't used in this case, but I'll tell you, I think in the last three or four cases I've had, I've had to substitute in an alternate for various reasons, somebody gets sick, whatever. It happens honestly, more often than you think, it just didn't happen in this particular case, but I appreciate your service. You were very valuable and we couldn't have continued without you, so I appreciate that. I'll excuse you from your jury service for this week, and also you have an exemption for three years from coming back to Circuit Court jury duty. So, with that, you are now excused.

Thank you very much.

(REPORTER'S NOTE: Alternates excused and exit courtroom @ 12:05 p.m.)

THE COURT: All right. Exceptions, deletions, additions to the charge from the state?

MR. SPRATLIN: No, Your Honor.

THE COURT: From the defense?

MR. WILSON: Your Honor, I don't have any additions or deletions. I would just renew my -- my objections that I stated earlier to voluntary manslaughter -- I'm sorry -- both the voluntary manslaughter charge and to the battered spouse of battered person syndrome.

THE COURT: All right. So -- and I understand that you presented a battered spouse charge and I did not read it word for word.

MR. WILSON: Yes, sir.

THE COURT: But it is there some sentence, some paragraph in there that you believe that I did not, in talking to the jury, tell them?

MR. WILSON: I think ---

THE COURT: Or you just wanted it the way you presented it?

MR. WILSON: Yes, sir, and -- and, Your Honor, I think part of that was, when I read the entire charge that I presented, I think it -- it says pretty much that, that -- and the Court discussed this the other day, that it sounds almost like a directive to tell them that if they find this, then they got to find them not guilty, and that's really, I think the essence of the battered spouse statute.

THE COURT: Okay. All right. What I was trying to say,

if I didn't say it properly, I thought your charge more was me telling them this is what you have to do, you have to do this, not that it's your decision. That's how I took that charge, not that, as I explained, self-defense is a complete defense including battered person syndrome, I told them that at the very beginning, and the state has to disprove it. So -- but it's their job. I took how you presented it to me as I was just directing them, you go in there and find them not guilty, that's how I took that charge, and that's why I didn't read it as such as you had presented it. But -- but I believe, and point it out to me if I didn't, I think I took every element of it and everything you said in there that -- that encompasses battered person syndrome, and did tell them that in my charge.

MR. WILSON: I understand, Your Honor.

THE COURT: All right. Very good.

MR. WILSON: Thank you.

THE COURT: All right. So, the defendant is now delivered into the custody and control of the sheriff's office while the jury deliberates.

Before y'all come forward, I want to tell all three of you, I respect and commend all three of you. You did exactly what the Court would expect you to do in representing your respective interest, the state or the defense. I commend you on the job that you did in presenting the matter to the jury,

and I appreciate that.

MR. WILSON: Thank you, Your Honor.

MR. SPRATLIN: Thank you, Your Honor.

MR. OSKIN: Thank you, Your Honor.

THE COURT: If y'all would come forward and look at the exhibits and make sure we've got the correct ones going to the jury please.

(REPORTER'S NOTE: Exhibits reviewed and consented to by counsel. Deliberations commence at 12:19 p.m.)

RECESS - 12:19 P.M.

*******OFF THE RECORD*******

ON THE RECORD - 1:27 P.M.

COURT'S EXHIBIT NUMBER 1

MARKED FOR IDENTIFICATION

THE COURT: We have a note from the jury and we've marked it as Court's Exhibit Number 1 and they some questions, and basically what they're asking is if either the state or the defense on State's Exhibit 89 has a timestamp where they could just go to these things rather than -- because it's what, two and a half hours or something like that long. So, that's what they're asking, does that exist?

MR. SPRATLIN: No, not with the redactions.

THE COURT: Okay. All right. So, we'll just have to tell them that they have to find these things on their own. All right.

Thank you, gentlemen.

MR. SPRATLIN: Thank you, sir.

RECESS - 1:28 P.M.

*******OFF THE RECORD*******

ON THE RECORD - 5:15 P.M.

VERDICT OF THE JURY

THE COURT: All right, ladies and gentlemen, y'all can have a seat. I understand the jury has returned a verdict in this particular matter. I do not know what it is. We'll all receive the verdict at the same time. That verdict will be received with respect and silence. I will not tolerate any kind of showing of emotion, outbursts, anything like that. If you cannot follow these directions, please leave the courtroom now, because if that happens, you will be detained by an Horry County Sheriff's Officer, and I will hold a contempt of court hearing whereby I can send you to the Department of Corrections for a period of one year. I don't want to do that, but I will do that. So, please, if you cannot control yourself, avail yourself at this time to leave the courtroom.

The state ready for the verdict?

MR. SPRATLIN: State's ready, Your Honor.

THE COURT: Defense?

MR. WILSON: Your Honor, I'm ready except that the family is on their way.

THE COURT: I mean they might ---

THE DEPUTY: They're on their way over.

THE COURT: I'll be glad to wait. That's fine. I'll have to go everything with them again, but that's all right.

MR. WILSON: I'm sorry, Your Honor.

THE COURT: No, that's all right. That's not a problem. Anybody else?

THE DEPUTY: Just a couple more, yes, sir, coming up, yes, sir.

THE COURT: Is that everybody then?

MR. WILSON: Yes, sir.

THE COURT: All right. All right. Let me -- let me go over this again. We're all gonna receive this verdict together. The only people that know what the verdict is right now is the jury themselves. The verdict will be received with respect and silence. I will not tolerate any kind of showing of emotion, outbursts, of any kind. If that happens, you'll be detained by the Horry County Sheriff's Office. I will hold a contempt of court hearing. I can send you to the Department of Corrections for a period of one year. I don't want to do that, but I will do that. So, please, if you cannot follow these instructions, leave the courtroom now.

Ask the jury to come in.

(REPORTER'S NOTE: Jury enters courtroom @ 5:25 p.m.)

THE COURT: Madame Forelady, has the jury reached a verdict in this matter?

MADAME FORELADY: Yes, Your Honor.

THE COURT: All right. Can you hand the verdict form to the clerk's representative? She'll come to you.

You may publish the verdict.

THE CLERK: 2017-GS-26-04252, the State of South Carolina, County of Horry v. Donnielle Matthews Green. On the charge of murder, we the jury, by unanimous consent, find the defendant not guilty.

On the charge of voluntary manslaughter, we the jury, by unanimous consent, find the defendant guilty. Signed by foreperson Tiffany Crauder, dated June the 18th, 2021.

THE COURT: All right, Madame Forelady, ladies and gentlemen of the jury, if this is your verdict, please so indicate by the raising of your right hand.

Put them down. All jurors having affirmed the verdict by the raising of their hand.

Does the state wish the jury polled?

MR. SPRATLIN: No, Your Honor.

THE COURT: Does the defense with the jury polled?

MR. WILSON: No, sir.

THE COURT: As to the jury itself, are there -- is there any objection to the Court excusing the jury from the state?

MR. SPRATLIN: No, Your Honor.

THE COURT: From the defense?

MR. WILSON: No, sir.

THE COURT: Ladies and gentlemen, I want to thank you for your service. You did exactly what the Court asked you to do. That is to listen to the facts and the evidence, apply the law that the Court gave to you, and reach a unanimous verdict in this particular matter. We understand we asked you to do a difficult thing, something you did not volunteer to do, but the criminal justice system cannot operate without the participation and the presence of its citizens. I want to thank you for your service. You've got an exemption now from coming back to Circuit Court jury duty for the next three years, and with that, you are now excused. Thank you very much.

(REPORTER'S NOTE: Jury exits courtroom @ 5:28 p.m. The following takes place outside the presence of the jury.)

THE COURT: Mr. Wilson?

MR. WILSON: Yes, sir.

THE COURT: Any motions at this point in time?

MR. WILSON: Yes, sir.

MOTIONS:

MR. WILSON: Your Honor, at this time, I would move for a judgment of acquittal notwithstanding the verdict, and ask for a new trial. I think that, Your Honor, during both my directed verdict motion and after when His Honor was charging the jury, I asked that voluntary manslaughter not be charged, and -- and the reason for that is, I did not believe that

there was any evidence in the record to support a manslaughter charge. And -- and what my fear now is, is that the jury did a compromised verdict as a result of that being one of the charges that was submitted to them. And so, I would, on that basis, ask the Court to set aside the verdict and to grant us a new trial in that regard.

The other thing, Your Honor, is I would also renew all of the motions that I made and objections that I made at the end of the state's case and at the end of the defense's case, and the motions and objections that I entered after the Court had -- was preparing to charge the jury.

THE COURT: All right, sir.

MR. WILSON: I would renew that.

THE COURT: All right. Thank you. As to all of the motions, obviously they've been made part of the record, and the Court's ruling on that, all your objections, are and have been preserved when you made them, at that time. The Court's ruling, I would respectfully again deny those objections that you made based upon the Court's ruling at the time.

MR. WILSON: Yes, sir.

THE COURT: Regarding your motion for a new trial, I believe that there was competent evidence presented in this matter that would sustain the jury's verdict in this matter. I do believe that there was evidence presented at the trial, and if that evidence was to be believed, and that again was

the jury's job, and by the verdict have so rendered they believed that evidence. It's more than sufficient evidence to convict the defendant of the crime of voluntary manslaughter. The statements she made on the night of the killing, previous comments she had made, the testimony as preserved in recorded messages, her various statements to law enforcement, the testimony of Antoinette Vereen, and the various aspects of comments that she said the defendant made at Dockside, comments she made outside Denny's, comments she made at her house when Antoinette was left off, her testimony about striking the victim, the testimony of the defendant's crime reconstruction expert about the gripping of the knife in response to cross-examination, the photos either indicating no or minor injuries to the defendant, some not being observable at either hospital where the victim was taken; all those things just as a subset of all of the evidence that has been presented in this case, I respectfully decline to grant your motion for a new trial.

MR. WILSON: Thank you, Your Honor.

BY THE COURT:

THE COURT: Now, regarding the sentencing in this -- in this matter, when there have been allegations of spousal abuse, 16-25-90 comes into play. Where the defense may make a request of the Court regarding a declaration of the defendant being a victim of spousal abuse, and that affects the length

of any sentence, if a sentence is imposed that confines the defendant to the Department of Corrections.

So, Mr. Wilson, are you prepared to make those arguments; do you need some time? Like I say on Monday or ---

MR. WILSON: Yes, sir, I would ask the Court to allow me to have until either Monday or Tuesday to make that.

THE COURT: All right. So, again, the Code Section is 16-25-90, and I would want those arguments made at the time that the Court would impose the sentence, so I do not intend to levy a sentence at this point in time. I would do it at that point in time. Obviously, the Court retains jurisdiction of this matter, this being a motion of the defense, as I understand it.

MR. WILSON: Absolutely, Your Honor.

THE COURT: All right, sir. So, I obviously retain jurisdiction over the matter and so, what we will do is, you can sit down, Mr. Wilson, I'm sorry. What we will do is we'll reconvene -- I'm trying to balance trials next week. Let's reconvene Tuesday morning at 9:30. We'll reconvene Tuesday morning at 9:30. That will give the state and the defense time to make their arguments regarding that particular issue. And obviously, I'll hear from the state and the defense at that point in time as to any sentence to be imposed on the defendant. All right?

MR. WILSON: Yes, sir.

THE COURT: So, I will see y'all Tuesday morning at 9:30.

MR. WILSON: Thank you, Your Honor.

THE COURT: We'll be at ease until then. Thank you very much.

MR. SPRATLIN: Thank you, Your Honor.

ADJOURNED - 5:37 P.M.

STATE OF SOUTH CAROLINA)	**IN THE COURT OF GENERAL SESSIONS**
COUNTY OF HORRY)	**2017-GS-26-04252**
STATE OF SOUTH CAROLINA,)	
)	
Plaintiff,)	**Transcript of Record**
)	(Sentencing Hearing)
vs.)	
)	June 22, 2021
DONNIELLE MATTHEWS GREEN,)	
)	
Defendant.)	

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Martin D. Spratlin, Esquire
Seth A. Oskin, Esquire
Attorney for Plaintiff

Ralph J. Wilson, Sr., Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

I N D E X

E X H I B I T S

No. ID EV

(No exhibits were marked or admitted.)

JUNE 22, 2021

ON THE RECORD - 9:37 A.M.

THE COURT: All right. Gentleman, just for your information, I have with me Judge Steven DeBerry, newly elected Circuit Judge. He's with me this particular week.

All right. We are here in the matter of the State of South Carolina versus Donnielle Matthews Green, that being -- being docket number 2017-GS-26-4252, whereby the defendant was convicted by a jury this past Friday, June 18th, of the crime of voluntary manslaughter. The purpose of today's hearing is for the Court to hear from the parties pursuant to 16-25-90 as to whether or not the Court should declare the defendant a victim of spousal abuse. This declaration if made by the Court would allow the defendant to be eligible for parole after serving one-fourth of any prison term, if such is given by the Court. Also, in conjunction with this, we will be doing the sentencing of the defendant.

Does the state have the sentencing sheet?

MR. OSKIN: Yes, sir, Your Honor.

THE COURT: All right. Have you shown that to Mr. Wilson?

MR. WILSON: Yes, sir.

THE COURT: All right. Thank you.

MR. OSKIN: If I approach?

THE COURT: If you'd bring that up, please.

All right. If you don't mind, probably I would like for y'all to address the Court on both matters at the same time. So, if the state would just give me your position regarding the request under 16-25-90, and any information you would like the Court to consider regarding sentencing, including if there's anyone that wants to speak to the Court.

MR. OSKIN: Yes, sir. Your Honor, if it may please the Court?

THE COURT: All right. Yes, sir.

ARGUMENT BY OSKIN:

MR. OSKIN: First, in regards to sentencing under 16-25-90, the state would respectfully request that you do not find her as a battered spouse for purposes of sentencing. Your Honor, this is based off *State v. Grooms*, the preponderance of the evidence standard, which clearly states that you are to -- you are able to interpret credible evidence specifically stating that the use of the term credible evidence indicates that the legislature intended the defendant's evidence to be in fact trustworthy.

Your Honor, we would argue that most of the testimony came from the defendant in this matter, and for reasons proven at jury trial that that evidence is untrustworthy. As you know, you do have discretion in this matter under *State v. Hawes*. The only evidence presented in this matter from the defendant's testimony. We would first ask that you rule in

accordance with the jury's decision. They were charged on self-defense and battered spouse. They decided that she was not either of those things and convicted her of voluntary manslaughter. She told many different stories throughout this investigation. She first stated that the victim was stabbed when he was buying cigarettes. She said she didn't know what happened. Then it was she accidently stabbed him, and then now it has become she stabbed him because he's -- she's battered.

The statement to Detective Greg Lent did indicate mutual combat. She said fighting with him was like fighting with his brother -- with her brothers. There was no reason to get police involved, no bumps, no bruises. She often stated that she was the primary aggressor and that she would get in his face. Other evidence presented at trial stated that -- text messages between her and a close friend, she stated that, you know, Dennis wasn't used to a woman like her getting back in his face. She specifically stated that she was not scared of him in those same text messages. And photos of any bruising on her leg were from a month before and there was no evidence that the victim in this matter committed anything like that.

I want to focus on Dr. Danso's testimony. She relied solely, again, on what she was told by this defendant. However, objective tests that she administered showed that this defendant was exaggerating her stories. I believe the

simple term was she was faking bad. Her -- and she even clearly stated on the record that her evidence -- that her job was to diagnose and to not verify, and she said that she simply relied on statements by the defendant.

Her sister also testified on her behalf, Your Honor. I would simply indicate there was some very obvious credibility issues with the sister. I would respectfully submit to the Court that the truth wasn't in her. During that testimony, she got up and told about wild stories that occurred while she was present. She also told stories that lined up exactly with how the event of this stabbing occurred.

Further, Your Honor, there's no history of police reports, there's no history of medical records, no long history of photos or documented abuse. I think that she clearly stated that she was the primary aggressor as much as he was. There was -- they would fight and, you know, she'd give it as good as she got it ever. This relationship status, no matter what they consented to, I mean, it has several dynamics. She certainly should be punished for that, but those dynamics did lead to jealousy, and the state believes that's the still the reason for the killing of Dennis Green. And just that there's not enough credible evidence as proven by her conviction last week in order for Your Honor to find her battered. We would ask -- it's untrustworthy, and she should not be found battered.

In regard to sentencing, Your Honor, as you know, on July 7th, 2017, Dennis Green was killed by the defendant while driving his vehicle in the Little River, North Myrtle Beach section of Horry County. She admitted to doing that stabbing. She stabbed him twice in the ribcage piercing his liver and piercing his heart. Your Honor, the defendant does have no prior record, however, this intentional killing certainly speaks for itself in that regard.

Your Honor, the defendant has been on an ankle monitor since August of 2017. During that time, Your Honor, she's not been restricted to her house. She's been free to go on about her life. She's even been able to engage in other relationships. You know Dennis Green was a father of three, he was a son, he was a brother, he was a cousin. He's greatly missed by his family, and he's the one person who could rebut these accusations, but obviously he's not here to do that.

Mr. Derrell Stevenson is present on behalf of the family.

Your Honor, the state would -- it's a two to 30-year sentence. If battered spouse syndrome is not found by Your Honor, then that's what the family asks for, what they want to ask for in this matter with regards to sentencing range.

THE COURT: All right, sir. Did ---

MR. OSKIN: Mr. Derrell Stevenson.

THE COURT: All right. Very good. Yes, sir. If you

want to come around. Come right around there and if you'd just state your name for the record and then I'll be glad to hear from you, sir.

MR. STEVENSON: My name is Derrell Stevenson. Dennis was my first cousin. I call him my brother from another mother. My aunt had a help in raising me as well as being part of my life, too. I just want to thank Your Honor for letting me speak today.

THE COURT: Yes, sir.

MR. STEVENSON: Sunday was Father's Day. I got up Sunday morning, got my kids dressed, made them breakfast, and I went and sat at the graveyard for a hour talking to him and letting him know that I was still here, I still love him, and I miss him. And this situation has caused a lot strain and stress on my family. His mother, when this happened, she was in the hospital for a couple of weeks because of she lost her son and to a senseless act that could've been prevented. He's leaving three boys, young boys to grow up without a father. They ask questions, you know, and I really ask Your Honor that you could give the max on this because this was a very senseless act, and it really could've been prevented.

Thank you.

THE COURT: Thank you, sir.

Anything else, Solicitor?

MR. OSKIN: Your Honor, we would just again indicate to

the Court that we stand with our victim and our victim's family on this matter.

THE COURT: All right. Thank you.

MR. OSKIN: Yes, sir.

THE COURT: All right. Mr. Wilson, let me hear from you, please.

ARGUMENT BY WILSON:

MR. WILSON: Thank you. Your Honor, in regards first of all to sentencing under 16-25-90, I've prepared a memo that I submitted to the Court.

THE COURT: Yes, sir.

MR. WILSON: And I'd just ask that it be made part of the record.

Your Honor, in that regard, let me say first of all that the evidence of her being battered is not contradicted in any way whatsoever by the state. There is nothing that I know of that was placed in the record in the trial of this case that contradicted the fact that she was being beaten or abused by her -- even by her own testimony.

And second of all, the sister did testify. And the sister testified consistent with what Ms. Green had already testified to, that she had been battered, and that she observed those batterings personally. This was not secondhand information. She said I saw it, I was there, it happened, I saw it. Uncontradicted. Nobody got up and said that didn't

happen. The other thing is that I think is supported here is the fact that Greg Lent, when he went down to Orangeburg to do his interview of Ms. Green, he says that he looked in her phone and he saw pictures of bruises on her body, as best I recall his testimony. But even more importantly, Dr. Danso, in her presentation indicated that she talked to her and that she also saw these memos or these text messages that had gone back and forth between the defendant and her family members of Mr. Green indicating that there had been abuse. Now, the Court did not allow those documents into evidence during the trial of the case, but it was certainly testified to that these were emails or text messages or Facebook messages that went back and forth for years between the family members of Mr. Green and this particular defendant. Nobody has said that that didn't happen, that she didn't have those conversations with them. We just weren't able to put the documents into, into the trial of this case. And the reason that we were able to do that is because when we tried to serve them with subpoenas to get them here, they hid from us, and we could not -- we had process servers trying to track them down for weeks and weren't able to get them because every house we went to, they'd say, oh, well, they don't live here. And no that's not in the record, but I just wanted the Court to understand that's what happened.

In addition, Your Honor, the -- Dr. Danso, who is a

clinical psychologist, and her expertise is in the field of battered people or battered persons, if you will. And, she makes the conclusion that she was a battered person. Now, yeah, she did say some other stuff, but that's not the issue. The issue is was she a battered person, or at least is there credible evidence in the record which suggests that she may very well be, and that is some kind of proof by a preponderance of the evidence at least. And I would submit to the Court that there is not just a preponderance, this is actually overwhelming evidence from her, from her sister, from Dr. Danso, from Greg Lent, all who say yeah there is -- there's certainly evidence that she was abused.

Now, is there proof beyond a reasonable doubt? Arguably -- you could argue that, well, maybe it's not beyond a reasonable doubt because she lied about some other things that happened. But that's not the test. The test is not whether the proof rises to a level beyond a reasonable doubt. The test is whether or not there is credible evidence from the record that His Honor can make a determination based on her believability, believability and credibility of all the witnesses that by a preponderance of the evidence she was a battered person. And I would submit to this Court that when you consider all those things collectively, not just one of them alone, but when you look at all of those things which are indicia of what happened collectively, then I think that there

is certainly more than enough for preponderance of the evidence that she was, in fact, a battered person.

Secondly, Your Honor, I would also ask this Court to consider giving her credit for the four years that she spent on an ankle monitor. For four years, she had an ankle monitor, from August of 2017 when she was released, I think it was August 6th, 2017, when she was released up until the end of this trial, that monitor remained on her ankle the entire time. The other thing is the order that was issued by the Court at that time required her to live at a certain location. So, as a -- she was not, as I could understand it, free to move about. She had to live at that home in Orangeburg because that was a condition of the order. So, she was in some way confined and restrained from free movement in and about different places. In order to live any other place, she would've had to have come back to the Court and ask for permission to do that because the order was very specific about where she had to live. And that was because the victims lived in Horry County and the Court, I'm sure, did not want her here, and she had to reside at the residence of her grandmother in Orangeburg, South Carolina. Of course, her and her husband had been living in Atlanta prior to this. She was not living in Orangeburg. So, so, for her to live in Orangeburg was a change of residence for her.

Having said all that, Your Honor, I would ask the Court

to sentence her under 16-25-90, and also to sentence her -- and I understand that 24-13-40 is discretionary with this Court. It is not mandatory as I understand it. I think it's discretionary with this Court to make that determination. And as to whether or not you're going to sentence her under 24-13-40. And I would also ask the Court to consider the fact that Donnielle is 36 years of age. And she and Mr. Green, I think the testimony was that they'd been together basically since 2011, for a substantial period of time. And that they lived in Atlanta for a number of those years, and they have no children they have, but that she was a caretaker for his children. And I think that's another thing that, that's clear in this record that throughout this relationship she was looking after his children and trying to be a good stepparent, if you will, to those kids. I understand that that's not necessarily a mitigating factor, I'm just trying to explain to the Court that even though what the jury has found her guilty of is a crime, and it's certainly something that -- that we think is -- is not a good thing; obviously, getting found guilty of any crime is not a good thing. And we just ask the Court to take all those factors into consideration in the sentencing of Ms. Green.

Thank you, Your Honor.

THE COURT: Thank you. And is there anyone that wanted to speak on behalf of the defendant?

MR. WILSON: No, Your Honor.

THE COURT: All right. Thank you.

All right. Gentlemen, if you don't mind, I'm gonna take a short break, and I will come back in and give you the Court's ruling on the 16-25-90 declaration as well as impose the sentence on Ms. Matthews regarding the conviction of the crime of voluntary manslaughter. So, just give me a few minutes and I'll come back in.

Thank you very much.

MR. WILSON: Thank you, Your Honor.

RECESS - 9:57 A.M.

*******OFF THE RECORD*******

ON THE RECORD - 10:11 A.M.

RULING AND SENTENCE OF THE COURT:

THE COURT: In this matter under 16-25-90, regarding a request to declare the defendant a victim of spousal abuse, if the person convicted of the crime presents credible evidence that shows a history of criminal domestic violence suffered at the hands of the household member, they may be eligible for parole -- that doesn't mean they are automatically granted it but they are eligible for parole after serving one-fourth of their prison term. The defendant must persuade the Court by proof which leads the trier of fact, the Court, to find the existence of domestic violence is more probable than its non-existence. The defendant's evidence must be in fact

trustworthy, not simply plausible. Basically, a greater weight or the preponderance of the evidence standard, showing that the existence is -- of domestic violence is trustworthy.

In this particular matter, while the Court did not allow certain communications, email communications and messages into evidence before the jury, they were in evidence for identification. The defendant had an expert that the Court allowed to give her opinion, Dr. Danso, that did testify that in her opinion, based upon the results of her conversations with the defendant, the tests administered, all the information that was presented to her that the defendant was a victim of spousal abuse. The defendant so testified to that. Defendant's sister so testified. While there may be certain questions about the sister's testimony, that evidence exists. Using this standard that the existence of domestic violence is more probable than its nonexistence, that the evidence is in fact trustworthy and not just plausible, I am declaring that the defendant in this matter, Donnielle K. Matthews Green is a victim of spousal abuse.

As far as sentencing in this matter -- would the defendant please rise? 2017-GS-26-4252, State of South Carolina, County of Horry versus Donnielle K. Matthews regarding voluntary manslaughter, the sentence of the court is Defendant is committed to the State Department of Corrections for a determinate term of 30 years. The defendant is given

credit for the actual time she spent in jail, but the defendant is not given credit for any time on electronic monitoring.

I have also placed on the fact of the sentencing sheet that the Court declares the defendant a victim of spousal abuse under 16-25-90.

Thank you very much.

MR. WILSON: Thank you very much, Your Honor.

MR. SPRATLIN: Thank you, Your Honor.

THE COURT: Thank you, gentlemen.

MR. OSKIN: Thank you, Your Honor.

MR. SPRATLIN: Thank you, Your Honor.

ADJOURNED - 10:17 A.M.

Voluntary Statement

Case Number: 2017-16542

Time: 0745 Place: Grand Strand Hospital Page ___ of ___

I, Donnielle Green am ___ years old and live at

9185 Carr Circ SW Covington GA Phone #: 678-431-5711

I am giving this statement to: Brandon K Beaudoin #241

I volunteer the following information of my own free will, for whatever purpose it may serve:

We left Myrtlewood villas on 48th Ave around 12:31am, went to Ricky's Chickside in Little River, stayed for about an hour & left to go to Three Doll House in North Myrtle. We stopped for cigarettes somewhere between Dodges & the BP gas station right past applebee's in North Myrtle. Dennis SAT in the car gave me the cigarettes, drove close to O'Reilys & pulled over & told me to take him to the hospital.

I have read each page of this statement consisting of 1 *page(s), each page of which bears my signature, and corrections, if any, bear my initials and I certify that the facts contained herein are true and correct. I also certify that I have received a copy of this statement.*

Signature: Donnielle K Green **Date:** June 7, 2017 July

Witness: B K B #241

WITNESSES

Jack Johnson Jr Horry County Police Department

Jim Chat Field

ARREST WARRANT NUMBER

2017A2610202059
CDR: 0116 16-03-0010, 0020
DOA: 7/11/2017

ACTION OF GRAND JURY

TRUE BILL

Bill Hyatt
Foreperson of Grand Jury
Date: NOV 29 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-26-04252

The State of South Carolina

County of Horry

Seth Oskin 17H04339

COURT OF GENERAL SESSIONS

NOVEMBER, 2017 TERM

THE STATE

vs.

Donnielle K Matthews **B/F**
[redacted] **Carr Circle**
Covington, GA 30014

DOB: 1985-[redacted]
SSN:[redacted]

ATTORNEY: ~~Byron Elvester Gipson~~ Ralph Wilson, Sr.

Indictment for

MURDER

Jimmy A. Richardson, II, Solicitor

ORIGINAL

FILED
HORRY COUNTY
2017 NOV 30 AM 10:47
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

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RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

DATE RECEIVED FROM
GRAND JURY

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on **November 13, 2017**, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That **Donnielle K Matthews** did, in Horry County, on or about July 7, 2017, willfully, feloniously, and intentionally kill the victim, Dennis Green, with malice aforethought, either express or implied, by means of stabbing, and the victim did die as a proximate result thereof on or about July 7, 2017 in ~~the Little River section of~~ Horry County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

CERTIFIED COPY

STATE OF SOUTH CAROLINA

1070

COUNTY OF HORRY

STATE VS. Donnielle K Matthews

AKA:

Race: BLACK Sex: F Age: 36

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City,State,Zip: Covington, GA 30014

DL#: SID#:

*CDL ☐ CMV ☐ Hazmat ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017GS2604252

A/W#: 2017A2610202059

Date of Offense: 7/7/2017

S.C. Code § : 16-03-0010, 0020

CDR Code #: 0116

RECEIVED

Jun 24 2021

SC Court of Appeals

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Voluntary Manslaughter

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)

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

ATTEST:

Oskin, Seth — 102340 SC Bar# — Defendant — Wilson, Sr., Ralph J. Attorney for Defendant — SCB06176 SC Bar#

WHEREFORE, the Defendant is committed to the ☑ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 30 [redacted]/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment

of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,

which are incorporated by reference. 16-25-90 The Defendant is a Victim of Spousal Abuse.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

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

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. NO

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

SPECIAL CONDITIONS: Credit for time on electronic monitoring.

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: $ _____ Plus 20% fee: $ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive ~~weekly~~/monthly pmts. of $ 25.00 beginning 7/22/2021

$ _____ paid to Public Defender Fund

Other: _____

*Fine:		$
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
Proviso (Public Def/Probation)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§14-1-213 (Drug Court Surcharge)	$150	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Renee Ellis

Court Reporter: Kay Richardson

Presiding Judge

Judge Code:

Sentence Date: 6/22/21

FILED HORRY COUNTY JUN 22 2021 RENEE N. ELLIS CLERK OF COURT HORRY COUNTY, S.C.

CERTIFIED COPY RENEE N. ELLIS CLERK OF COURT HORRY COUNTY, S.C.

SCCA/217 (04/2018)

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,

Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 13th day of May, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONNIELLE K. MATTHEWS,

APPELLANT.

APPELLATE CASE NO. 2021-000677

FINAL BRIEF OF APPELLANT

LARA M. CAUDY
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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TABLE OF AUTHORITIES

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by charging the jury on the lesser included offense of voluntary manslaughter when there was no evidence Appellant stabbed the decedent, her husband, in the sudden heat of passion, rather the evidence showed Appellant either acted with malice or in self-defense, and where Appellant was prejudiced because the jury compromised and found her guilty of voluntary manslaughter?

STATEMENT OF THE CASE

A Horry County grand jury indicted Appellant on November 13, 2017 for the offense of murder. R. 1068-1069. A pretrial hearing on several motions *in limine* was held on July 28, 2020 before the Honorable Steven H. John. Assistant Solicitors Martin Spratlin and Seth Oskin represented the state. Ralph J. Wilson, Sr. represented Appellant. Appellant's case was called to trial on June 14, 2021 before Judge John, and a jury. R. 1. Assistant Solicitors Martin Spratlin and Seth Oskin represented the state. R. 1. Ralph J. Wilson, Sr. represented Appellant. R. 1.

On June 18, 2021, the jury acquitted Appellant of murder, but found her guilty of the lesser included offense of voluntary manslaughter. R. 1045, ll. 5-16. After a hearing on June 22, 2021, Judge John found Appellant presented credible evidence pursuant to S.C. Code Ann. § 16-25-90 "of a history of domestic violence . . . suffered at the hands of" the decedent, her husband. R. 1064, l. 15 – 1065, l. 19. This finding makes Appellant eligible for parole after serving one-fourth of her sentence. See S.C. Code Ann. § 16-25-90. Appellant was subsequently sentenced to thirty years imprisonment. R. 1065, ll. 20-25.

This appeal follows.

STATEMENT OF FACTS

Appellant and the decedent, Dennis Green, met in Myrtle Beach in June 2011. R. 660, ll. 6-11. Appellant, who is from Baltimore, was staying with her grandmother in Orangeburg for the summer. R. 658, ll. 4-23. While there, she traveled to Myrtle Beach. Appellant met Green at a strip club. They exchanged numbers that night, went out to breakfast the following morning, and, more or less, "were together ever since." R. 659, l. 17 – 660, l. 18. After Appellant returned to Orangeburg, she visited Green in Myrtle Beach on weekends that summer until she returned to Baltimore at the end of July 2011. R. 660, l. 20 – 661, l. 5. In October 2011, Appellant moved to Little River, in Horry County, where Green lived. Appellant and Green rented a condo together and got engaged in December 2011. R. 661, l. 1 – 662, l. 14.

Green became physically abusive toward Appellant starting around January 2012. R. 662, l. 16 – 663, l. 24. The first time Appellant recalled Green being abusive was when Green "slapped" her because they ran "out of peaches." On the second occasion, Appellant remembered Green struck her and they "tussled" because Appellant was not ready to go out to celebrate her birthday when Green returned home. R. 662, l. 16 – 663, l. 6. The abuse continued until Green's death in July 2017.

In February 2012, Green introduced Appellant to the mother of his children, Alethia Price. R. 664, l. 2 – 665, l. 24. Appellant and Alethia got along well and the three began a sexual relationship. Appellant, Green, Alethia, and their children moved into an apartment together in Longs shortly thereafter. R. 668, l. 11 – 669, l. 19. This living arrangement and intimate relationship lasted about a month. R. 546, ll. 2-4; R. 670, ll. 16-22. Alethia and the children eventually moved out because Green became jealous of the relationship between Appellant and Alethia and arguments ensued. According to Alethia, Appellant was also jealous of the

relationship between Green and Alethia. She claimed, "Both of them were jealous if I got too close [to] the other one." R. 546, l. 25 – 547, l. 10. Green was also abusive. Appellant testified, "You never knew what might set him off and he would slap you, punch you, throw you, something." Alethia "got tired of it" and left. R. 671, ll. 1-25.

Around April 2012, Appellant's sister, Demetria Matthews, came from Baltimore to live with Appellant and Green. Demetria stayed with the couple for six to eight months. R. 674, ll. 4-12; R. 868, l. 12 – 869, l. 4. While Demetria was there, the couple went out "drinking" more. R. 674, ll. 13-19. Appellant quickly learned that Green was "an angry drunk." R. 674, ll. 17-19. The "beatings" continued during this time. They often occurred in the car on the way home after the couple had been out drinking or once the couple returned home. R. 674, ll. 13-23. Green was rarely physically abusive in front of others. R. 674, l. 22 – 675, l. 3.

Demetria described one night when she went to a bar with Appellant, Green, and one of Green's friends. R. 870, ll. 14-16. Green was agitated at the bar because "he was ready to leave" but Appellant and Demetria wanted to stay longer. R. 870, ll. 16-19. The group eventually left the bar and got into the car. R. 870, ll. 19-20. Appellant was in the driver's seat, Green was in the front passenger seat, and Demetria and Green's friend were in the backseat. R. 870, ll. 21-23. Demetria testified that Green "punched her [Appellant] in the face while she was driving" "because she [Appellant] talked back to him." R. 870, ll. 23-25. Demetria and Green's friend had to intervene. R. 870, l. 25 – 871, l. 3. Demetria described several other occasions in which she witnessed Green strike or beat Appellant. R. 871, l. 6 – 872, l. 3. Demetria eventually returned to Baltimore after Green became physically aggressive toward her. Specifically, on the way home from a friend's house one night, Green stopped the car, pulled Demetria out of the backseat, and

punched her because he was angry she had previously intervened in a separate altercation that night. R. 872, l. 11 – 873, l. 24.

Appellant left Green on several occasions because of the abuse. The first time she left was in January 2013. R. 679, l. 16 – 680, l. 7. Appellant moved back to Baltimore and lived with her family for approximately eight months. R. 680, ll. 8-13. Around August 2013, Appellant returned to Myrtle Beach to vacation with her family. She "wound up telling Dennis [Green] that [they] were coming down." R. 680, ll. 15-25. Green picked Appellant up from a hotel and she spent a couple of days with him. R. 680, l. 25 – 681, l. 5. She was supposed to return to Baltimore with her family at the end of the week. R. 682, ll. 2-12. However, on the second night she was there, Green punched Appellant in the mouth while they were drinking and, because of the visible injury to her face, Appellant hid from her father. When her family could not find her at the end of the week, they returned to Baltimore without her. R. 682, ll. 2-24.

Appellant left Green again sometime in 2014. R. 683, ll. 3-9. She returned to Baltimore for several months. R. 683, ll. 10-21. While she was away, Green moved from Horry County to Covington, Georgia. R. 683, l. 22 – 684, l. 7. Green eventually picked Appellant up from Baltimore and she moved to Georgia with him. R. 683, l. 22 – 684, l. 7. The couple lived in an apartment in Covington from 2014 until Green's death in July 2017. R. 686, ll. 2-7.

While Appellant and Green were living in Georgia, Green worked for a landscaping company called Pro Cutters. R. 686, ll. 16-22. He worked Monday through Thursday. R. 687, ll. 2-5. Every Thursday night, Green would drive back to Little River to see his children and family. He would stay in South Carolina until Sunday night. R. 687, ll. 2-12. Appellant never traveled with Green to Little River. She opted to remain in Georgia with their dogs. R. 687, ll. 13-16. Appellant did not like coming to Little River because Green tended to be more abusive while the

couple was there. R. 694, ll. 10-23. She "would have to worry about him getting mad and punching [her] in the face." R. 694, ll. 10-15.

Appellant stayed with Green despite the abuse because he was the "sole provider for [her] entire existence." R. 691, ll. 1-7. Green refused to allow Appellant to work. R. 688, l. 23 – 689, l. 4. He paid all the bills. "He paid for everything." R. 689, ll. 5-17. "It got to a point" where Appellant "was totally and completely dependent on him." R. 691, ll. 1-7. Appellant also stayed with Green because she loved him. R. 689, ll. 22-25. They "were happy." R. 689, ll. 22-25. "[I]n [her] mind . . . the good outweighed the bad." R. 689, l. 22 – 690, l. 1.

During the first week of July 2017, Appellant's mother traveled from Baltimore to Myrtle Beach to celebrate the Fourth of July. R. 693, ll. 13-15. Green was also in Myrtle Beach at the time. He had traveled to Little River the Thursday before as usual. R. 695, ll. 1-8. He planned to stay the week because his son's birthday was Wednesday, July 5. R. 693, ll. 16-19. Appellant did not plan to come to Myrtle Beach. R. 694, ll. 1-8. However, on Monday, July 3, her mother asked her to come up. Green likewise "started calling" and told Appellant she "might as well come on" since her mother was in town. Appellant "let the two of them talk [her] into coming to the beach." R. 693, ll. 19-25. She drove up on the night of the third. R. 695, ll. 11-12.

While she was in Myrtle Beach, Appellant and Green stayed at the condo her mother had rented. R. 697, ll. 1-23. They celebrated the Fourth of July and Green's youngest son's birthday with family. See R. 698, l. 22 - 703, l. 25. On the night of July 6, 2017, Green wanted Appellant to meet another woman he was seeing, Antoinette Vereen. R. 708, ll. 14-21. Appellant learned about Antoinette sometime between March and May 2017. R. 708, l. 22 – 709, l. 2. Green saw other women throughout the entirety of his relationship with Appellant. It was "normal." R. 710, l. 4 – 711, l. 6. The couple occasionally "brought other women into their marriage." R. 323, l. 22

– 324, l. 3; R. 344, ll. 22-25; R. 379, l. 21 – 380, l. 5. Green was "excited" about Appellant and Antoinette meeting that night. R. 712, ll. 7-11.

"The agreement was that [they] weren't going to be out long" because Appellant was tired. She had watched Green's children all day. R. 714, ll. 1-4. Green drove. They picked up Antoinette at her house around half past midnight on the morning of July 7, 2017. R. 349, ll. 18-21. As Antoinette was walking to the car, Green and Appellant "talked about her legs." She had long legs. R. 715, ll. 2-7. Appellant got out of the car, which only had two doors, to allow Antoinette to get inside. Antoinette was about to climb into the backseat, but Appellant told her she did not want her to get into the backseat "with them legs." Appellant got into the backseat and Antoinette got in the front seat. R. 715, ll. 7-11. Dennis drove them to Ricky's Dockside, a bar in Little River. R. 322, l. 18 – 323, l. 8; R. 348, ll. 5-8; R. 716, ll. 20-25.

When they arrived at Ricky's Dockside, Appellant and Antoinette sat at the bar. Green got them all drinks. Green was back and forth between the bar and the pool tables while Appellant and Antoinette talked at the bar. Green wanted the women to "to get to know each other." R. 717, ll. 3-21. They stayed at Ricky's Dockside for about forty-five minutes to an hour. R. 718, l. 22 – 719, l. 1. Each of them had about two drinks. R. 718, ll. 12-21.

After Ricky's Dockside, they went to Thee DollHouse, a strip club in North Myrtle Beach. R. 350, ll. 1-5; R. 376, l. 24 – 377, l. 1. Green drove, Antoinette sat in the front passenger seat, and Appellant sat in the backseat. R. 719, ll. 22-23. They stayed at Thee DollHouse for about an hour and a half to two hours. R. 351, ll. 2-5; R. 722, ll. 4-9. They each had at least two to three drinks there. R. 721, l. 24 – 722, l. 3. Antoinette claimed Appellant "c[a]me on to [her]" while they were at Thee DollHouse and tried to kiss her while the women were in the bathroom. R. 351, l. 12 – 352, l. 1. While Antoinette was "open" to having a three person relationship with Appellant and

Green, she was "uncomfortable" when Appellant tried to kiss her because they had just met. R. 352, ll. 2-16; R. 370, l. 1 – 371, l. 8. However, the women were "laughing and talking and flirting" the "whole night." R. 725, ll. 9-12.

They eventually left Thee DollHouse around 4:00 am and went to Denny's, a diner in North Myrtle Beach. R. 352, l. 20 – 353, l. 5. Appellant reminded Green that he "promised" her they would not be "out all night." This agitated Green. R. 722, ll. 10-19. When they arrived at Denny's, Appellant and Antoinette went straight to the bathroom. R. 355, ll. 2-12; R. 723, ll. 6-22. Antoinette had told Appellant about her nipple piercings while they were at Thee DollHouse and Appellant wanted to see them. R. 372, ll. 18-20; R. 722, l. 25 – 723, l. 15. The women were in the bathroom for so long (twelve minutes) that Green "came and knocked on the door." R. 355, ll. 10-17; R. 373, ll. 15-18; R. 723, l. 23 – 724, l. 4. When they finally came out, Green asked them what "the F" they were doing and what took so long. R. 357, ll. 1-4.

The group stayed at Denny's for about forty-five minutes. R. 177, ll. 17-19. The waitress who served the three testified Appellant and Antoinette seemed to "still [be] having a good time." R. 832, l. 19 – 833, l. 1. However, Green "seemed tired and a little bit aggravated." R. 833, ll. 2-5. He appeared "ready to leave." R. 833, ll. 2-5. Antoinette confirmed that "by a certain point" Green "was ready to go." R. 359, ll. 2-4. The waitress did not notice any "tension" among the group nor did she hear any of them raise their voice or be disrespectful. R. 833, ll. 9-17. She had no reason to believe there was any "animosity or hostility going on." R. 834, ll. 2-11. Antoinette likewise stated there was no "arguing or hostility" at the table. R. 358, ll. 22-24.

Appellant recalled that while they were sitting at the table, Green "said something about me [Appellant] being disrespectful." R. 726, ll. 16-18. In response, Appellant told Green "you're acting like a B-I-T-C-H, and he called me one, and I said your mom is one, and he said, your dad

is one." R. 726, ll. 18-20. Appellant explained, "[W]hat I said to him is something that I say all the time whenever he says that to me, I say your mother, . . . but he's never made that remark about my dad." R. 726, ll. 20-23. Taken aback, Appellant called her father and gave the phone to Green. Green "just . . . mumbled . . . something and then slid the phone back across the table." R. 726, l. 25 – 727, l. 3. Appellant then quickly texted her father an explanation as to why she called. She told him Green was "showing out" because commenting about her father was "not something he would have normally done or said." Appellant thought Green was acting different because Antoinette was around.[1] R. 727, ll. 5-12.

When they left Denny's, Appellant got into the back seat of the car where she had been sitting all night. Antoinette sat in the front passenger seat and Green drove. R. 731, ll. 3-14. Appellant denied hitting Green when they first got into the car. R. 731, ll. 15-24. She testified, "I would not hit him because he would hit me back." She elaborated, "I would never swing on him first. Like I just wouldn't. Because I would get beat up. . . . Or dragged or whatever he felt like he was gonna do." R. 731, l. 25 – 732, l. 9. Conversely, during the state's presentation of evidence, Antoinette claimed that when they first got into the car in the Denny's parking lot, Appellant hit Green on "the side of his face" with a "closed fist." R. 362, ll. 2-17. Antoinette further claimed Appellant told Green "you shouldn't have married me; you should've married her [Antoinette]." R. 362, ll. 18-22.

Green drove Antoinette straight home. R. 362, ll. 3-20. On the way to her house, the group was listing to music. Antoinette was singing. R. 732, l. 25 – 733, l. 12. When Antoinette got out

[1] The state admitted the content of the text message during its case in chief. Appellant allegedly texted her father at 5:06 am on July 7, 2017. It read, "He's showing off for somebody else. I told him he ain't no man and called him a bitch. He says my daddy is a bitch. So I called you so he could say it to you himself. He hangs up the phone. The next time I bring this muthafucker to Baltimore [you] better beat his ass." R. 514, ll. 8-21.

of the car at her house, she "lift[ed] the seat up" and asked Appellant "if she wanted to get in the front seat." R. 363, l. 19 – 364, l. 2; R. 732, ll. 13-20. Appellant told her no. R. 364, ll. 1-7; R. 732, ll. 16-20. Antoinette "shrugged her shoulders and put the seat back and said bye and closed the door." R. 732, ll. 23-24. At trial, Appellant explained that at the time she was sitting with her back up against the window on the passenger side and her legs across the backseat. Her feet were behind the driver's seat. R. 732, ll. 20-22; R. 733, l. 22 – 734, l. 6.

After they dropped Antoinette off, Green "started fussing and calling [Appellant] names." Appellant was "like, yeah, yeah, whatever." R. 734, ll. 13-17. Appellant then reached for her "auxiliary cord" that was plugged into the radio at the front of the car. She explained that her auxiliary cord was "a white cord that goes from the radio to your phone and you play music from your phone, and it plays through the radio in the car." R. 734, l. 13 – 735, l. 11. As Appellant was reaching for the cord, Green, who knew Appellant "was about to turn the music on and turn it up loud, like to ignore him," grabbed Appellant's arm, hit the brake, and pulled her into the front of the car. R. 735, ll. 12-25. When Green hit the brakes, Appellant "flew forward" and hit her head on the glove compartment. R. 736, ll. 3-7. Appellant was "pretty much down on the floor." R. 735, ll. 17-18. Her head and shoulders were down on the floorboard of the front passenger seat while her legs and feet were across the center console between the driver's seat and the front passenger seat. R. 736, ll. 3-11.

Green stopped the car in the middle of the road not that far from Antoinette's house. R. 736, ll. 19-23. After pulling her forward, Green began hitting Appellant on "any part of [her] body that was available to be hit," including her head, shoulders, and legs. R. 736, ll. 13-18. Appellant was trying to get up. She used her right arm, which was "down on the floor underneath [her] body," to try to push herself back up. R. 737, ll. 5-9. Every time Appellant would push herself

up, Green would hit her on the head and everything "would . . . be black." R. 737, ll. 5-11. She repeatedly asked Green to stop, but he never stopped. R. 738, ll. 17-24.

Appellant could not remember how long this went on. R. 737, ll. 11-12. She was "reaching" and "swinging" with her left arm. R. 737, ll. 9-13. Green continued to hit her. R. 740, ll. 3-9. Eventually, she located a knife in the cupholder of the center console. R. 737, ll. 12-14. She grabbed it with her left hand and "swung" it toward Green "like get off me, stop hitting me." R. 737, ll. 12-15; R. 740, ll. 3-9. Appellant knew of no other way to stop Green from beating her. R. 738, l. 25 – 739, l. 25. She was trapped in the car with him and had nowhere to go. She was afraid for her "safety" and "well-being." R. 739, ll. 14-16.

Green continued to hit Appellant. After a while, he realized he had been stabbed and stopped. R. 740, ll. 3-10. Appellant was able to regain her "balance" and "get up in the front." R. 740, ll. 10-11. Surprised, Green said "baby, I can't believe you stabbed me." R. 740, ll. 11-12. Appellant was crying and told Green she was sorry, that she had told him to stop hitting her. Green also apologized and tried to calm Appellant down, who began to panic when she saw the blood. R. 740, ll. 12-23. Green took the knife from Appellant and told her she "needed to take him to the hospital." R. 740, l. 16 – 741, l. 7. The knife was never recovered. The last time Appellant saw it was when Green took it out of her hand. R. 747, ll. 2-6.

Somehow, although Appellant could not remember how, Appellant and Green switched seats and Appellant drove Green to the hospital. R. 741, l. 11 – 742, l. 1. The two "talked all the way to the hospital" and came up with a "plan" of what "to tell the police." R. 743, ll. 11-18. The plan was for Appellant to tell the police that Green "stopped at a store" and Appellant did not know what happened. R. 743, ll. 19-22. Green came up with this story because "he didn't want [Appellant] to get in trouble." R. 743, ll. 23-25.

Appellant did as Green instructed. She told officers at Seacoast Medical Center and later at Grand Strand Medical Center after Green was transferred, that Green stopped at a gas station in North Myrtle Beach to purchase cigarettes and when he returned to the car he said he had been stabbed and asked her to take him to the hospital. R. 408, l. 10 – 414, l. 5; R. 444, l. 24 – 445, l. 2; State's Exhibit No. 1 (DVD Martin Bodycam); State's Exhibit No. 14 (DVD Beaudoin Bodycam); State's Exhibit No. 23 (Voluntary Statement); State's Exhibit No. 33 (DVD Franklin Bodycam). Appellant did not think Green was going to die. They "had a whole conversation on the way to the hospital" and Green "kept saying he was okay." R. 744, ll. 11-14. A nurse at Grand Strand later told Appellant that Green was stable. R. 745, ll. 12-17.

Around midday, a detective told Appellant she should leave the hospital and "get some rest" since she had been up all night. R. 610, ll. 17-25; R. 625, l. 17 – 626, l. 8. Appellant returned to the condo her mother had rented. While she was there, an officer arrived and told her Green had passed. R. 626, ll. 9-17. He ultimately died from two stab wounds to the right chest, which caused massive blood loss. R. 593, ll. 1-2; R. 594, ll. 3-17; R. 595, ll. 2-19.

After being informed of Green's death, Appellant left Myrtle Beach with her mother, who was scheduled to leave that day, and, with permission from law enforcement, traveled to Orangeburg, where her grandmother lived. R. 626, l. 18 – 627, l. 2. The next day, July 8, 2017, Detectives Gregory Lent and Jack Johnson, with the Horry County Police Department, traveled to Orangeburg to interview Appellant. R. 616, l. 24 – 617, l. 2. They already had a warrant for her arrest. R. 627, ll. 4-6. The detectives picked Appellant up from her grandmother's house and took her to the Orangeburg County Sheriff's Office to be interviewed. R. 627, ll. 7-20. They did not tell her they already had a warrant. R. 627, ll. 7-12.

During her interview with Johnson and Lent, Appellant was very emotional and did not provide a lot of details. State's Exhibit No. 89 (DVD Matthews Interview). She frequently stated, "I don't know." State's Exhibit No. 89 (DVD Matthews Interview). She told Lent that Green stopped in the middle of the road. It was dark. Green hit her. State's Exhibit No. 89 (DVD Matthews Interview). She ultimately struck him with the knife. State's Exhibit No. 89 (DVD Matthews Interview).

Appellant presented the testimony of Whitney Danso, a clinical psychologist. R. 784, ll. 6-13. Danso was qualified as an expert in clinical psychology without objection. R. 787, l. 24 – 788, l. 3. She determined Appellant met the diagnostic criteria for posttraumatic dress disorder (PTSD). R. 791, ll. 19-24. It was apparent that Appellant "had been a victim of domestic violence." R. 793, ll. 2-3. Green "slowly developed control over different aspects of [Appellant's] life." R. 793, ll. 20-22. Appellant and Green's relationship was characterized by "escalating violence." R. 794, ll. 9-17. Over time, Green "became increasingly more violent" toward Appellant. For example, "blows started being directed to her head versus . . . being slapped or smacked." R. 794, ll. 10-13. Appellant feared Green. R. 799, ll. 17-19.

Appellant also presented the testimony of Christopher Robinson, who was qualified as an expert in crime scene reconstruction without objection. R. 844, l. 20 – 845, l. 1. Robinson reviewed all of the evidence in the case, including the police reports, the autopsy report, Appellant's interviews with law enforcement, and photographs from the "crime scene" and autopsy. R. 846, l. 17 – 847, l. 9. He also listened to Appellant's testimony before the jury. R. 851, ll. 10-11. Based on all the evidence, Robinson concluded that a "serious struggle" occurred inside the car. R. 850, ll. 10-24. "A vast majority" of Appellant's fingernails were broken off and found scattered throughout the car, mostly in the front. R. 850, l. 10 – 851, l. 21. A shoeprint was found on the

back seat of the car "as if someone were pushing off of the seat with their foot." R. 853, ll. 21-24. Green had bruises on the knuckles of his right hand. R. 847, ll. 15-22. Appellant had "scratches and abrasions" on the left side of her face. R. 848, ll. 1-3. Appellant also had bruises on the palm of her left hand. R. 848, ll. 9-12. Robinson maintained that in order to cause such bruising, Appellant must have gripped an object "extremely tight, like she was holding it for dear life." R. 849, ll. 14-20. Lastly, Robinson testified that Green's wounds were not very deep. R. 852, l. 23 – 853, l. 16. The wounds "were shallow in the sense" that not even half the blade entered Green's body. R. 856, ll. 6-10. Robinson described the wounds as "jab wounds . . . like stop, get off me, just like little poke wounds, if you will." R. 853, ll. 16-20. Robinson concluded that Appellant's account of what occurred was "forensically plausible." R. 856, ll. 1-5. None of the physical evidence was inconsistent with her account of what occurred. R. 856, ll. 15-21.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Niles, 412 S.C. 515, 521, 772 S.E.2d 877, 880 (2015) (citing State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). "Thus, this Court is bound by the trial court's factual findings unless the appellant can demonstrate that the trial court's conclusions either lack evidentiary support or are controlled by an error of law." Id. (citing State v. Laney, 367 S.C. 639, 644, 627 S.E.2d 726, 729 (2006)).

"The trial court must determine the law to be charged based on the evidence at trial." State v. Smith, 363 S.C. 111, 115, 609 S.E.2d 528, 530 (Ct. App. 2005) (citing State v. Crosby, 355 S.C. 47, 51, 584 S.E.2d 110, 112 (2003)). "When the record contains no evidence to support it, a voluntary manslaughter jury charge should not be given." Id. (citing State v. Cooley, 342 S.C. 63, 67-68, 536 S.E.2d 666, 668-669 (2000)).

ARGUMENT

The trial judge erred by charging the jury on the lesser included offense of voluntary manslaughter when there was no evidence Appellant stabbed the decedent, her husband, in the sudden heat of passion, rather the evidence showed Appellant either acted with malice or in self-defense, and where Appellant was prejudiced because the jury compromised and found her guilty of voluntary manslaughter.

Relevant Facts

During the charge conference, the state requested the trial judge charge the jury on the lesser included offense of voluntary manslaughter. R. 956, l. 24 – 957, l. 1. The assistant solicitor asserted there was evidence the decedent was "flirting" and "with another woman that night." R. 957, ll. 1-3. Such evidence the solicitor contended "is a provocation that could make a person be so overcome with rage and jealousy that they basically acted on impulse as required in . . . State v. Sims, 426 S.C. 115."[2] R. 956, l. 24 – 957, l. 7.

Defense counsel objected to the charge. He argued there was no evidence of sudden heat of passion or of "a sufficient legal provocation to reduce the charge from murder to manslaughter." R. 957, ll. 14-18.

The judge immediately granted the state's request. He determined there was "evidence in the record that it could've occurred based on the heat of passion and sufficient legal provocation." R. 957, l. 23 – 958, l. 2.

Defense counsel took exception to the judge's ruling. R. 958, ll. 19-25. Also citing to State v. Sims, 426 S.C. 115, 825 S.E.2d 731 (Ct. App. 2019), counsel again asserted that there was no evidence of sudden heat of passion or sufficient legal provocation to support the charge. R. 959, l.

[2] State v. Sims, 426 S.C. 115, 825 S.E.2d 731 (Ct. App. 2019).

4 – 960, l. 12. He argued, "I don't see the evidence of sudden heat of passion. There has been no testimony about that and I know that the state is trying to find some way to . . . show that there was some sudden heat and anger and passion. Not one single witness said, oh, she was all angry and literally ready to stab him. Nobody said that . . . oh , she was just out of control . . . I just don't see the sudden heat and passion, and I don't see the sufficient legal provocation . . ." R. 959, l. 25 – 960, l. 12.

In response, the assistant solicitor argued, "I would just add that the legal provocation in this case is probably the most classic, lawful example of voluntary manslaughter. Seeing your spouse involved with another person, seeing your spouse romantic with another person, having that or seeing your lover, whether it was the man [Green] or the woman [Antoinette] that she was upset about, seeing your lover involved with another person. And the heat of passion, we believe, can be shown based upon the testimony about the jealous rage that was discussed by the . . . crime scene expert of the defense." R. 960, l. 17 – 961, l. 1. The solicitor further maintained that Appellant's "last statement to Detective Lynch[3] [sic] was, I don't know how I stabbed him, I just stabbed him. That was the equivalent of that last statement. That is in and of itself showing that she was acting under the uncontrollable impulse, which *Sims* talks about, and for that reason, Your Honor, I believe voluntary manslaughter is appropriate to charge." R. 961, ll. 8-15.

Correctly, defense counsel emphasized, "Your Honor, saying that you don't know what happened is not the same as sudden heat and passion. It is not the same thing in any sense of the word." R. 961, ll. 16-18. Lastly, counsel argued, "The solicitor can't have it both ways. On the one hand they're saying, okay, she just stabbed him for no reason. But then at the same time say,

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[3] The solicitor likely meant Detective Gregory Lent as Appellant did not give any statements to Detective William Lynch. See R. 505, l. 4 – 540, l. 6; R. 608, l. 17 – 643, l. 22.

well, yeah, but we want to hedge our bet so we'll say, well maybe if she didn't do it because she was just mad at him, and she just stabbed him for no reason, then maybe she did it because she was - - she was in a sudden heat and passion. There is nothing in this record that says that." R. 961, l. 23 – 962, l. 5.

The judge stood by his earlier ruling. He found there was evidence to support the charge, asserting, "Again, you go back to the statement testified and what the defendant said at . . . the Dockside. Then, you combine that with her text message to her father; how she acted at that time; testimony she hit the defendant [sic]; testimony that the knife grabbing; plausible explanation; self-defense or jealous rage . . . the defendant testified that the victim hit her. Well, the jury could believe it's not self-defense, her actions after she got hit. So, all that indicates, along with all the other evidence, photographs, testimony of all the parties, and taking it all into consideration, indicates that the jury could believe sudden heat of passion based on sufficient legal provocation." R. 962, ll. 7-21.

The following morning, before closing arguments, the trial judge provided additional reasoning in support of his decision to charge voluntary manslaughter. He indicated that he was "referring to all of the evidence in the case" when he decided to charge voluntary manslaughter. R. 969, l. 21 – 970, l. 1. Without specifying how the evidence supported a charge on the lesser included offense, the judge cited to Antoinette's testimony that Appellant allegedly struck the decedent in the car immediately after they left Denny's and said "you should have married her and not me" as well as Appellant's refusal to get into the front seat after Green dropped Antoinette off at her house that morning. R. 970, ll. 1-12.

After the judge charged the jury, Appellant renewed her objection to the instruction on voluntary manslaughter. R. 1040, ll. 3-7. After deliberating for nearly five hours, the jury acquitted

Appellant of murder, but found her guilty of the lesser included offense of voluntary manslaughter. R. 1042, l. 9 – 1045, l. 16.

Discussion

The trial judge erred by charging the jury on the lesser included offense of voluntary manslaughter because there was no evidence Appellant stabbed Green in the sudden heat of passion, rather the evidence showed Appellant either acted with malice or in self-defense. Appellant was prejudiced because the jury ultimately compromised and found her guilty of this lesser included offense.

"Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." State v. Starnes, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010) (citing State v. Wharton, 381 S.C. 209, 214, 672 S.E.2d. 786, 788 (2009)). "Both heat of passion and sufficient legal provocation must be present at the time of the killing." State v. Sims, 426 S.C. 115, 131, 825 S.E.2d 731, 739 (Ct. App. 2019) (quoting State v. Sams, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014)). "A defendant is not entitled to a voluntary manslaughter charge merely because he was in a heat of passion." Starnes, 388 S.C. at 596-597, 698 S.E.2d at 608. "Conversely, a defendant is not entitled to voluntary manslaughter merely because he was legally provoked." Id.

In Starnes, our Supreme Court clarified the law regarding how a defendant's fear following an attack or threatening act relates to voluntary manslaughter. 388 S.C. at 597-599, 698 S.E.2d at 608-609; See Sims, 426 S.C. at 132, 825 S.E.2d at 740. The Court stated:

> We also have held that fear resulting from an attack can constitute a basis for voluntary manslaughter. See State v. Wiggins, 330 S.C. 538, 549, 500 S.E.2d 489, 495 (1998) ("[F]ear can constitute a basis for voluntary manslaughter."). Yet the presence of fear does not end the inquiry regarding the propriety of a voluntary manslaughter instruction. We have consistently held that **sudden heat of passion upon sufficient legal provocation is defined as an act or event that "must be**

> **such as would *naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence.*"** Pittman, 373 S.C. at 572, 647 S.E.2d at 167.[4] While the act or event "need not dethrone the reason entirely, or shut out knowledge and volition," **it must cause a person to lose control.** Id.
>
> We reaffirm the principle that a person's fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion. However, **the mere fact that a person is afraid is not sufficient, by itself, to entitle a defendant to a voluntary manslaughter charge. Consistent with our law on voluntary manslaughter, in order to constitute "sudden heat of passion upon sufficient legal provocation," the fear must be the result of sufficient legal provocation and *cause the defendant to lose control and create an uncontrollable impulse to do violence.*** Succinctly stated, to warrant a voluntary manslaughter charge, the defendant's fear must manifest itself in an uncontrollable impulse to do violence.
>
> **A person may act in a deliberate, controlled manner, notwithstanding the fact that he is afraid or in fear.** Conversely, a person can be acting under an uncontrollable impulse to do violence and be incapable of cool reflection as a result of fear. The latter situation constitutes sudden heat of passion, but the former does not. Evidence that fear caused a person to kill another person in a sudden heat of passion will mitigate a homicide from murder to manslaughter—it will not justify it. This is the distinction between voluntary manslaughter and self-defense.

Id. (emphasis added).

"In determining whether the act which caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing." State v. Smith, 391 S.C. 408, 413, 706 S.E.2d 12, 15 (2011) (citing State v. Norris, 253 S.C. 31, 35, 168 S.E.2d 564, 566 (1969)).

In Cook v. State, 415 S.C. 551, 555, 784 S.E.2d 665, 667 (2015), Cook objected to the state's request for a voluntary manslaughter instruction. The trial judge relied on the following facts in determining that a charge on voluntary manslaughter was supported by the evidence: (1)

[4] State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007).

the defendant was in fear, (2) he shot the decedent twice, and (3) he stated "before I knew it, I fired a shot." Id. at 557, 784 S.E.2d at 668. However, our Supreme Court held Cook's actions did not suggest he was acting in the sudden heat of passion. Id. at 559, 784 S.E.2d at 669. The Court explained, "We do not believe the fact that Cook shot Victim twice or his statement 'before I knew it, I fired a shot' is evidence that Cook's fear manifested in an uncontrollable impulse to do violence." Id. at 558, 784 S.E.2d at 668. The Court further stated:

> Here, Cook stated he tried to walk away from Victim, but Victim kept cutting him off. The fact that Cook was trying to walk away from the conflict does not suggest Cook was incapable of cooling off. In addition, Bridges testified that Cook and Victim were talking softly and that he could hardly tell they were arguing. This too does not suggest that Cook was acting under an uncontrollable impulse to do violence as surely if one was so enraged to kill, one would not be talking softly with the victim right before the act. Further, at no point during Cook's statement does he indicate he lacked control over his actions. Accordingly, we believe the facts of this case suggest Cook shot Victim either with malice or in self-defense.

Id. at 557, 784 S.E.2d at 668.

Likewise, the Supreme Court concluded there was no evidence of sudden heat of passion in Starnes and, therefore, upheld the trial court's refusal to charge the jury on voluntary manslaughter. Starnes, 388 S.C. at 599-600, 698 S.E.2d at 609. Starnes and the two decedents, Bill and Jared, were engaged in a drug purchase with a fourth individual, Jody, at Starnes' home when Jared "pulled a gun on" Jody. Id. at 595, 698 S.E.2d at 607. Starnes testified Jared's action "scared" him, and he went into his bedroom to retrieve his gun. Id. at 595, 698 S.E.2d at 607. As Starnes exited his bedroom, "Bill said 'whoa' and was pointing a gun at him." Id. at 595, 698 S.E.2d at 607. Starnes then shot Bill and Jared. Id. On appeal, the Court acknowledged the evidence of Starnes' fear, but concluded there was no evidence Starnes was "out of control as a result of his fear or was acting under an uncontrollable impulse to do violence." Id. at 599, 698 S.E.2d at 609. The Court also held the evidence showed Starnes

"deliberately and intentionally shot Jared and Bill and that he either shot the men with malice aforethought or in self-defense." Id.

Similarly, in State v. Sims, this Court held there was no evidence Sims shot her husband, David, in the sudden heat of passion, and, therefore, agreed with Sims that the trial court erred by charging the jury on voluntary manslaughter. 426 S.C. at 137, 825 S.E.2d at 742. Sims testified that "she was in the bathroom alone when David entered with pliers and a knife and began calling her a liar." Id. Sims said David then "got physical with her over control of her phone." Id. David then began threatening her and taunting her with the knife. Out of fear, Sims grabbed a gun she had placed in the bathroom vanity. Id. "Even though she was afraid, Sims said she held the gun by her side and asked David to stop what he was doing, indicating she did not want to use the gun." Id. "Sims also told police she grabbed the gun hoping to 'scare' David so he would stop his threatening behavior, adding that she had never meant to shoot him." Id. at 138, 825 S.E.2d at 743. "According to Sims, David became even angrier, continuing to threaten her as she tried to back out of the bathroom." Id. "As she tried to back out, Sims testified that David lunged at her and 'my hand went up and I shot, and I shot out of reaction. I didn't think, nor did I ever want to do that, but it was a reaction because I was scared.'" Id. It was undisputed that Sims only shot David once. Id. "After shooting David, Sims immediately began administering CPR and called 911." Id.

Like the defendants in Starnes and Cook, this Court held "the only evidence in the record [was] that Sims deliberately and intentionally shot David and that she either shot him with malice aforethought or in self-defense." Id. Accordingly, the Court held the trial court erred by charging the jury on the lesser included offense of voluntary manslaughter because there was no evidence to support the charge.

Likewise, there was no evidence in this case that Appellant killed Green in the sudden heat of passion. Appellant testified that after they dropped Antoinette off, Green "started fussing" and calling her names. In an effort to ignore Green, Appellant reached for her auxiliary cord so she could play music from her phone. As Appellant was reaching up front, Green grabbed her arm, hit the brakes, and pulled her into the front of the car. When Green hit the brakes, Appellant "flew forward" and hit her head on the glove compartment. Appellant was "pretty much down on the floor." Her head and shoulders were down on the floorboard of the front passenger seat while her legs and feet were across the center console between the driver's seat and the front passenger seat. After pulling her forward, Green began hitting Appellant on her head, shoulders, and legs. Appellant tried to push herself up using her right arm. However, every time Appellant would push herself up, Green would hit her on the head. Appellant repeatedly asked Green to stop, but he never stopped. Appellant began "reaching" and "swinging" with her left arm while Green continued to hit her. Eventually, she located a knife in the cupholder of the center console. She grabbed the knife with her left hand and "swung" it toward Green "like get off me, stop hitting me." See State v. Niles, 412 S.C. 515, 523, 772 S.E.2d 877, 881 (2015) ("Because Niles . . . lacked the intent to harm the victim, we cannot see how a voluntary manslaughter charge would have been appropriate under these facts.").

Appellant knew of no other way to stop Green from beating her. She was trapped in the car with him and had nowhere to go. While acknowledging that she stabbed Green out of fear, Appellant never indicated that she lost control or was overcome with an uncontrollable impulse to do violence. See Starnes, 388 S.C. at 599, 698 S.E.2d at 609 ("A person may act in a deliberate, controlled manner, notwithstanding the fact that he is afraid or in fear."); Id. at 598, 698 S.E.2d at 609 ("[T]he fear must . . . cause the defendant to lose control and create an uncontrollable impulse

to do violence."); Cook, 415 S.C. at 557, 784 S.E.2d at 668 ("[A]t no point during Cook's statement does he indicate he lacked control over his actions. Accordingly, we believe the facts of this case suggest Cook shot Victim either with malice or in self-defense.").

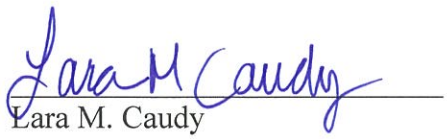
After stabbing Green, Appellant cried and told Green she was sorry, that she had told him to stop hitting her. Appellant immediately drove Green to the emergency room, speeding along the way, and helped him inside. See State v. Oates, 421 S.C. 1, 28, 803 S.E.2d 911, 926 (Ct. App. 2017) (finding "Appellant's behavior and words immediately after the shooting were relevant to his state of mind immediately before and during the shooting"). Accordingly, the only evidence in the record is that Appellant deliberately and intentionally stabbed Green and that she either stabbed him with malice or in self-defense. Charging voluntary manslaughter was error as there was no evidence Appellant was overcome with an uncontrollable impulse to do violence.

Respectfully, because there was no evidence Appellant stabbed Green in the sudden heat of passion, this Court should hold the trial judge erred by charging the jury on voluntary manslaughter, reverse Appellant's conviction and sentence, and remand for a new trial.

CONCLUSION

Appellant respectfully requests this Court reverse her conviction and sentence and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of June, 2022.

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, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 1, 2022

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Steven H. John, Circuit Court Judge

Appellate Case No. 2021-000677

THE STATE, Respondent,

v.

DONNIELLE K. MATTHEWS, Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in instructing the jury on the lesser included offense of voluntary manslaughter when evidence existed from which the jury could infer that Appellant killed Victim in the heat of passion upon sufficient legal provocation?

STATEMENT OF THE CASE

In November 2017, a Horry County Grand Jury indicted Appellant for one count of murder. Prior to trial, Appellant moved for immunity from prosecution under the Protection of Persons and Property Act. S.C. Code § 16-11-440. On July 28-29, 2020, an evidentiary hearing was held before the Honorable Steven John regarding Appellant's motion for immunity and the admissibility of Appellant's statements under Jackson v. Denno[1]. After testifying at the immunity/Denno hearing, Appellant withdrew her motion for immunity under the Act. (R. 221-26). On June 14-18, 2021, a jury trial was held in the Horry County Court of General Sessions with the Honorable Steven John presiding. Appellant was represented by Ralph Wilson, Sr., Esq. The State was represented by Assistant Solicitors Martin Spratlin and Seth Oskin of the Fifteenth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant of the lesser included offense of voluntary manslaughter. A sentencing hearing was convened on June 22, 2021 to determine whether Appellant was a victim of spousal abuse within the meaning of S.C. Code § 16-25-90. The trial judge sentenced Appellant to thirty years' imprisonment but determined that Appellant qualified as a victim of spousal abuse under S.C. Code § 16-25-90. Appellant filed a timely notice of appeal and an initial brief.

[1] Jackson v. Denno, 378 U.S. 368 (1964).

STATEMENT OF FACTS

Appellant met Dennis Green (Victim) in June 2011. (R. 660). The two began dating soon thereafter and by the end of 2011, Appellant and Victim were engaged to be married. (R. 662). At the time Appellant and Victim met, Victim was also in a romantic relationship with the mother of his children, Alethia Price. (R. 543-44). At some point, Victim, Appellant, and Price began a polyamorous relationship. (R. 545). After a brief period of living together, Price moved out of Victim and Appellant's apartment. (R. 544-48). According to Price, she moved out because her presence in the home sparked jealousy by Victim and Appellant if she got too close to either person. (R. 547). Price maintained a sexual relationship with Victim and Appellant until Victim and Appellant got married in 2015. (R. 551-52, State's Exhibit #89).

Appellant and Victim made their marital home in Covington, Georgia, but Victim often travelled to Horry County on the weekends while Appellant remained behind in Georgia. (R. 684-87). In early 2017, Victim met Antoinette Vereen (Antoinette) at a club in Horry County. (R. 344). Victim disclosed that he was in an open marriage and that he and Appellant would often bring other women into their marriage. (R. 344). Antoinette and Victim continued to see each other for a number of weeks and eventually became sexually intimate. (R. 346, 371).

During the week of July 4, 2017, Appellant was invited to spend the week in Myrtle Beach by her mother and Victim. (R. 693). In the early morning hours of July 7, 2017, Appellant and Victim planned to spend the evening with Antoinette in order for Antoinette and Appellant to get to know each other. (R. 346). At approximately 12:30 AM, Appellant and Victim picked up Antoinette from her home in the Longs area of Horry County. (R. 347-49). After briefly stopping at Victim's mother's house, the trio went to Ricky's Dockside bar in Little River where they had a few alcoholic beverages. (R. 347-48). After approximately one hour, the three left

Ricky's Dockside and went to a strip club called Thee Dollhouse. (R. 350). At the strip club, the trio continued to drink alcohol. At some point, Appellant followed Antoinette to the bathroom and attempted to kiss her. (R. 351-52). The attempted kiss made Antoinette uncomfortable, and she rebuffed Appellant's advances. (R. 352).

At approximately 4:00 AM, the three left the strip club and went to eat at Denny's. (R. 353). While at Denny's, Appellant followed Antoinette to the bathroom a second time and tried to kiss her when she exited the bathroom stall. Antoinette rebuffed Appellant's advances a second time. (R. 355-56). When the two returned to the table, Appellant tried to kiss Antoinette a third time. As Antoinette tried to pull away, Victim asked Appellant to give Antoinette some space. (R. 357-58). Approximately thirty minutes after their food arrived, Victim indicated he was ready to leave. (R. 358-59). The trio left the restaurant and walked to Victim's car. Victim got in the driver's seat while, Antoinette got in the passenger's side, and Appellant got in the backseat. (R. 361-62). Shortly after getting into the car, Appellant hit Victim in the side of the face with a closed fist and exclaimed "you shouldn't have married me; you should've married her." (R. 362, lines 12-20). Victim drove Antoinette home. When they arrived at her home, Antoinette offered the front seat to Appellant. According to Antoinette, "with an attitude, [Appellant] said no, I'll sit in the back seat." (R. 364, line 7). Once inside her home, Antoinette sent Victim three text messages beginning at approximately 5:13 AM saying that she loved him and missed him. (R. 364-66). Antoinette would later opine "I think [Appellant] was more so jealous of how [Victim] maybe had looked at me. [Appellant] wanted me for herself." (R. 372, lines 14-15).

At approximately 5:19 AM, Matthew Harden, a security officer at Seacoast Hospital, witnessed Appellant arrive in the emergency with Victim. (R. 298). Victim had been stabbed

twice in the right side of his chest. (R. 594-95). When Victim and Appellant arrived, Officer Mark Martin of the Horry County Police Department was sitting in the parking lot of Seacoast Hospital typing reports. (R. 272). Martin was alerted by security that a stabbing victim had just come into the emergency room. (R. 272). Martin entered the hospital to speak with Appellant and his interaction was recorded on his body camera. (State's Exhibit #1). Martin described Appellant's demeanor as "hysterical" and "belligerent". (R. 273, lines 10-11). Appellant repeatedly told Martin that she did not know what happened, but also said she and Appellant stopped at a gas station in North Myrtle Beach. (State's Exhibit #1). According to Appellant, Victim returned from the gas station holding his stomach. Appellant physically demonstrated how Victim held his stomach for Martin. (State's Exhibit #1). Appellant asserted "[Victim] knows these people, he might not tell you." (State's Exhibit #1).

Victim was subsequently transported to from Seacoast Hospital to Grand Strand Medical Center in Myrtle Beach. At Grand Strand, Appellant spoke with Officer Brandon Beaudoin of the North Myrtle Beach Police Department. (R. 408). The interaction was recorded on Beaudoin's body camera. (State's Exhibit #14). Appellant told Beaudoin that she and Victim stopped at a gas station past Dodge's Chicken. (State's Exhibit #14). According to Appellant, Victim got back in the car after going into the gas station and told her to take him to the hospital. (State's Exhibit #14). Appellant gave a written statement to Beaudoin and asked if Beaudoin wanted to photograph her hands. (State's Exhibit #14, #23). However, Appellant never told Beaudoin that Victim attacked her or otherwise mentioned sustaining any physical harm from Victim.

Appellant spoke to law enforcement a third time when she spoke with Detective Andrew Franklin of the North Myrtle Beach Police Department outside the waiting room of Grand Strand

Medical Center. (R. 439-40). Their interaction was captured on Franklin's body camera. (State's Exhibit #33). Appellant again told Franklin that she and Victim stopped at a gas station and Victim went inside to get cigarettes. (State's Exhibit #33). Once he returned to the car, Victim asked Appellant to move to the driver's seat and then he revealed that he had been stabbed. (State's Exhibit #33). Appellant emphasized that she didn't want to sound stupid or for the police to think she was a dumb blonde. (State's Exhibit #33). Appellant said that a friend of hers broke two of her fingernails. (State's Exhibit #33). When asked who she and Victim were partying with, Appellant did not mention Antoinette and said "we weren't partying with anybody." (State's Exhibit #33). Appellant once again declined to tell law enforcement that she was physically assaulted by Victim in any way. (State's Exhibit #33). Toward the end of the interview, Appellant declared "everybody is a suspect, nobody likes [Victim]; they're jealous, he got the pretty girl...." (State's Exhibit #33).

Victim subsequently died at Grand Strand Medical Center from a stab wound that pierced his heart. (R. 595). Law enforcement allowed Appellant to leave Horry County and return to her mother's home in Orangeburg. (R. 625). Detective Greg Lent and Detective Jack Johnson of the Horry County Police Department traveled to Orangeburg to speak with Appellant at her mother's house on July 8, 2017. (R. 614-15). Appellant accompanied Lent and Johnson to the Orangeburg Police Department to be interviewed and their interview was recorded. (R. 617, State's Exhibit #89). During her fourth interview with law enforcement, Appellant claimed she and Victim fought each other previously, but it "wasn't a big deal" and it was like "fighting my brother." (State's Exhibit #89 22:30-23:30). Later in the interview, while acknowledging that she and Victim fought during the morning of July 7, Appellant maintained she wasn't afraid of Victim. Throughout the interview, Appellant did not tell law enforcement about Antoinette and her role

in the evening, but Appellant seemingly referred to Antoinette when she acknowledged they ran into one of Victim's girlfriends at Ricky's and that person went with them to the strip club. (State's Exhibit #89). Appellant claimed not to know who this person was, but admitted the girlfriend was at Denny's when Appellant and Victim arrived. (State's Exhibit #89). Appellant claimed that she and Victim left Denny's alone and when they got to their car, Appellant initially got in the back seat but eventually moved into the front seat as they left the parking lot. (State's Exhibit #89).

After leaving Denny's Appellant claimed, she and Victim stopped at two separate places on their way home, but could not recall where they stopped. After the second stop, Victim returned to the car and handed Appellant a pack of cigarettes. (State's Exhibit #89). Victim told Appellant to take him to the hospital and Appellant noticed Victim was bleeding. (State's Exhibit #89). Appellant initially claimed that she did not remember stabbing Victim, but later stated that Victim said "oh my God, I can't believe you just stabbed me. (State's Exhibit #89 02:11:00-02:12:00). Appellant also stated that she only stabbed Victim once when she was asked how many times she stabbed him. Appellant also claimed Victim asked her not to say anything about the stabbing. At the conclusion of the interview, Appellant was placed under arrest for murder.

At trial, Appellant admitted in opening statements that she stabbed Victim, but maintained she did so in self-defense after Victim attacked her in the car. (R. 260). Antoinette testified on behalf of the State at trial. Antoinette testified Appellant told her at Ricky's Dockside that "[Appellant] was to the point to where she would kill, she had been through so much to the point where she would kill." (R. 392). Appellant did not specify who she would kill. (R. 392). The State entered text messages from Appellant's phone at trial. One text sent to a friend on May 4, 2017 read:

> Yo I've been quiet about a lot of things throughout our entire relationship...six years in I just can't find it in me to just shut up...[Victim] gets away with a lot I just don't tell anybody the things he does it let him know that I know what he does...it pisses me off so bad when he tried to play innocent or make ne (sic) seem like I'm being crazy OR STUPID!! I can overlook a lot but after a while, **I just snap**...he know this and still plays with me like I won't fuck him up...but then I go back to being quiet lmao?

(R. 532, lines 13-22)(emphasis added). Another text message from Appellant to her father that was sent at 5:06 AM on July 7 read:

> He showing off for somebody else...I told him he ain't no man and called him a bitch...He says my daddy is a bitch...So I called you do (sic) he could say it to go himself...He hangs up the phone. The next time I bring this muthafucker to Baltimore to (sic) better beat his ass..."

(R. 514, lines 17-21). Appellant testified in her own defense at trial. Appellant denied that she hit Victim inside the car, but instead maintained that Victim pulled her into the front when she reached for her phone charger in the front console. (R. 731, 735-37). According to Appellant, she stabbed Victim as they were fighting in the front seat. (R. 739). Soon thereafter, Appellant claimed Victim told her to make up a story regarding how he was stabbed. (R. 743). On cross examination, Appellant admitted her story about Victim being stabbed at the gas station was a lie and admitted she didn't tell law enforcement about Antoinette's role in the evening. (R. 763, 767-68).

Appellant also presented the testimony of Dr. Whitney Danso. Dr. Danso administered two diagnostic tests to Appellant and diagnosed Appellant with Post Traumatic Stress Disorder (PTSD) as a result. (R. 790-91). In rebuttal, the State presented the testimony of clinical psychologist Robert Charles Nelson. Nelson doubted Appellant's PTSD diagnosis and determined that the diagnostic tests administered by Dr. Danso indicated Appellant was malingering. (R. 921-22, 929). At the conclusion of trial, the jury convicted Appellant of the lesser-included offense of voluntary manslaughter.

STANDARD OF REVIEW

"The law to be charged must be determined from the evidence presented at trial." State v. Crosby, 355 S.C. 47, 51, 584 S.E.2d 110, 112 (2003). "A trial judge must charge a lesser included offense if there is any evidence from which the jury could infer the defendant committed the lesser rather than the greater offense." State v. White, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Sims, 426 S.C. 115, 129, 825 S.E.2d 731, 738 (Ct. App. 2019) (quoting Cook v. State, 415 S.C. 551, 556, 784 S.E.2d 665, 667 (2015)). "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." Id.

ARGUMENT

The trial judge did not err in instructing the jury on the lesser included offense of voluntary manslaughter because evidence existed from which the jury could infer that Appellant killed Victim in the heat of passion upon sufficient legal provocation.

Appellant contends the trial judge erred in charging the jury on the lesser included offense of voluntary manslaughter because there was no evidence Appellant stabbed Victim in the sudden heat of passion upon sufficient legal provocation. Appellant argues there was only evidence that she acted with malice or that she acted in self-defense. Appellant's argument ignores her own testimony and the testimony of Antoinette Vereen. Antoinette testified that Appellant was jealous of her relationship with Victim and that jealously was manifested in angry statements made by Appellant when the trio left Denny's, Appellant's physical assault of Victim in the car, and Appellant's angry demeanor when they reached Antoinette's house. (R. 362-72). Antoinette also testified that despite Appellant's jealousy, she sent text messages to Victim saying she loved him within minutes of Victim arriving at the hospital with the stab wounds inflicted by Appellant. (R. 363-66). While Appellant denied hitting Victim in the car, Appellant claimed that Victim grabbed her and pulled her into the front seat and began to hit her. (R. 731, 736-39). Thus, there was evidence before the trial judge that Appellant was angry at Victim over marital infidelity just prior to Appellant stabbing Victim and that Appellant and Victim were engaged in a physical altercation before the stabbing. Accordingly, the trial judge properly instructed the jury on the lesser included offense of voluntary manslaughter because evidence existed from which the jury could infer that Appellant killed Victim in the heat of passion upon sufficient legal provocation.

"To justify charging [a] lesser crime, the evidence presented must allow a rational inference the defendant was guilty only of the lesser offense." State v. Geiger, 370 S.C. 600, 607,

635 S.E.2d 669, 673 (Ct. App. 2006). "The court looks to the totality of the evidence in evaluating whether such an inference has been created." Id. "A trial judge must charge a lesser included offense if there is any evidence from which the jury could infer the defendant committed the lesser rather than the greater offense." White, 361 S.C. at 412, 605 S.E.2d at 542. "In determining whether the evidence requires a charge on a lesser included offense, the court views the facts in a light most favorable to the defendant." State v. Brayboy, 387 S.C. 174, 179, 691 S.E.2d 482, 485 (Ct. App. 2010).

Voluntary manslaughter is a lesser included offense of murder. State v. Sams, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014). "Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000). "Heat of passion alone will not suffice to reduce murder to voluntary manslaughter. Both heat of passion and sufficient legal provocation must be present at the time of the killing." State v. Pittman, 373 S.C. 527, 572, 647 S.E.2d 144, 167 (2007). "In determining whether the act which cause death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing." State v. Gardner, 219 S.C. 97, 104, 64 S.E.2d 130, 134 (1951).

Fighting is sufficient legal provocation to warrant a voluntary manslaughter instruction. State v. Davis, 278 S.C. 544, 546, 298 S.E.2d 778, 779 (1983). "An overt, threatening act or physical encounter may constitute sufficient legal provocation." State v. Hernandez, 386 S.C. 655, 661, 690 S.E.2d 582, 585 (2010). "Adultery may, in some instances, serve as 'sufficient legal provocation.'" State v. Gadsden, 314 S.C. 229, 233, 442 S.E.2d 594, 597 (1994).

"The sudden heat of passion, upon sufficient legal provocation, which mitigates a felonious killing to manslaughter, while it need not dethrone reason entirely, or shut out knowledge and volition, must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence." State v. Walker, 324 S.C. 257, 260, 478 S.E.2d 280, 281 (1996). "Even when a person's passion has been sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable person would have cooled, the killing would be murder and not manslaughter." State v. Knoten, 347 S.C. 296, 303, 555 S.E.2d 391, 395 (2001). "Whether an accused cooled off prior to a violent act must be determined by a review of all the circumstances surrounding the event and the people involved." Hernandez, 386 S.C. at 661, 690 S.E.2d at 585.

Here the trial judge made the following ruling on the State's request to charge the jury on the offense of voluntary manslaughter:

> All right, sir. I'm going to charge voluntary manslaughter. I do believe there is some evidence in the record to—there is evidence in the record that it could've occurred based on the heat of passion and sufficient legal provocation. Again, referring to some of the testimony that I talked about at the—in denying the motion for directed verdict[2], that same evidence would also indicate voluntary manslaughter, and I'm going to charge that to the jury and charge that them to (sic) as lessor included offense.

(R. 957, line 23-R. 958, line 6). The trial judge further elaborated on the specific facts that led to his ruling:

> All right. Yesterday we were talking about murder and voluntary manslaughter, and there's two notes that I have put down and I forgot to put them in the record.

[2] When ruling on Appellant's motion for a directed verdict, the trial judge noted his role was not "to judge the credibility or the believability of the testimony and the evidence presented. My job is to look at whether or not the evidence exists." (R. 955, lines 1-3).

> Again, I'm referring to all of the evidence in the case when I made those decisions about charging murder and voluntary manslaughter. But I did want to note there were two other comments or statements that were made in this case by the witness, and basically, the third party involved that night when she indicated that at the—leaving the Denny's, when she said that the defendant struck the victim. She also made the comment that you should have married her and not me. And then when they got to the—her residence and they dropped her off, she asked the defendant, are you getting into the seat, into the front seat and the defendant answered, no, with an attitude. So, all that just goes to those things that we talked about in deciding about murder and voluntary manslaughter.

(R. 969, line 21-R. 970, line 12).

The aforementioned rulings show the trial judge properly determined that evidence existed from which the jury could conclude that Appellant killed Victim in the heat of passion upon sufficient legal provocation. Because both heat of passion and sufficient legal provocation must be present to warrant a charge on voluntary manslaughter, it is instructive to address each element separately.

Heat of Passion

Here, the trial judge was presented with evidence regarding the unique nature of Appellant and Victim's relationship, the testimony of Antoinette as well as Appellant's own text messages showing her state of mind just prior to the stabbing, and a timeline of events showing that Appellant had very little time to cool down and reflect on her actions. Appellant freely admitted she and Victim were in an open relationship. (State's Exhibit #89). Despite the openness of their relationship, Appellant was not immune from the jealousy that may arise in a polyamorous relationship. Antoinette testified that Appellant attempted to kiss her three times throughout the night, but Appellant's attempts were not reciprocated by Antoinette. (R. 352-58). Antoinette opined that Appellant was jealous of Antoinette and Victim's relationship because Appellant wanted Antoinette all for herself. (R. 372). Appellant's anger and jealously was demonstrated in her assault of Victim that was accompanied by the comment "you shouldn't

have married me; you should've married her." (R. 362, lines 19-20). Appellant was apparently still angry when the trio arrived at Antoinette's home and Appellant refused to move to the front seat. (R. 364). Appellant's behavior was further demonstrated by Officer Martin's interaction with her in the immediate aftermath of the stabbing and his description of Appellant's demeanor as "hysterical" and "belligerent." (State's Exhibit #1, R. 273, lines 10-11).

In addition to Antoinette's testimony, the trial judge had Appellant's text messages to consider as evidence that Appellant was acting in the heat of passion. The State produced a text message sent from Appellant's phone approximately two months before Victim's death where Appellant confided to a friend "I can overlook a lot but after a while, **I just snap**..." (R. 532, lines 19-20). Appellant also sent a message to her father at 5:06 AM that threatened physical harm upon Victim the next time he came to Baltimore. (R. 514, lines 17-21). This text message was evidence of both Appellant's anger towards Victim and her wish to inflict physical violence upon Victim in the minutes immediately before she stabbed him.

In addition to evidence of Appellant's angry state of mind just prior to the stabbing, the trial judge had evidence of how little time Appellant had to cool down from her anger. Antoinette estimated that she, Victim, and Appellant left Denny's at approximately 4:57 AM. (R. 367). Victim took her straight home and she arrived at her home approximately 5:09 AM. (R. 368). A few minutes after she went inside her home, Antoinette texted Victim that she loved him at 5:13 AM. (R. 368). At approximately 5:19 AM, or ten minutes after Appellant and Victim dropped off Antoinette at her home, Victim arrived at the hospital with two stab wounds. (R. 298). Appellant would later claim she remembered the events leading up to the stabbing but did not remember the stabbing itself. (State's Exhibit #89 02:09:20-02:09:30). Therefore, there was evidence before the trial judge, that over an approximately ten minute period of time, Appellant

was so angry with Victim she could not remember stabbing him later. This was evidence that Appellant experienced an uncontrollable impulse to do violence. When considering the testimony of Antoinette, Appellant's text messages, and the short timeline of events, the trial judge appropriately concluded that evidence existed from which the jury could infer that Appellant was acting under the heat of passion when she stabbed Victim.

Sufficient Legal Provocation

The trial judge was presented with evidence of sufficient legal provocation from both the State and the defense. Antoinette testified that Appellant hit Victim inside their car and then said "you shouldn't have married me; you should've married her." (R. 362, lines 19-20). Thus, Antoinette's testimony alone establishes a physical confrontation between Appellant and Victim regarding Victim's infidelity. Even if the jury were to disbelieve Antoinette's testimony, Appellant freely admitted in her own testimony that she and Victim had a physical altercation after Victim pulled her into the front seat of the car. (R. 736-39). Therefore, while Appellant claimed she was acting in self-defense in response to Victim's physical aggression, her testimony is evidence from which a jury could determine that she stabbed Victim upon sufficient legal provocation. Voluntary manslaughter and self-defense are not mutually exclusive. See State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998) (finding the State presented sufficient evidence to create an jury issue regarding whether defendant was acting in self-defense or was guilty of voluntary manslaughter). The jury could have believed Appellant's testimony that Victim assaulted her in the car, but still determine that she did not satisfy the four elements of self-defense but rather killed Appellant after sufficient legal provocation. The trial judge appropriately declined to weigh the evidence presented and merely concluded that evidence existed from which a jury could infer that Appellant acted upon sufficient legal provocation.

Because evidence existed that Appellant stabbed Victim while in the heat of passion upon sufficient legal provocation, the trial judge properly instructed the jury on the lesser included offense of voluntary manslaughter. Appellant's conviction and sentence should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

May 17, 2022

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Steven H. John, Circuit Court Judge

Appellate Case No. 2021-000677

THE STATE, Respondent,

v.

DONNIELLE K. MATTHEWS, Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Leigh Ann Stone, certify that I have served the within Final Brief of Respondent on Appellant by email to the address listed in AIS for:

Lara M. Caudy, Esquire
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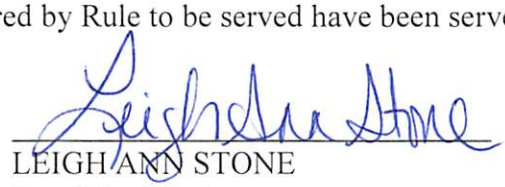
I further certify that all parties required by Rule to be served have been served.
This seventeenth day of May, 2022.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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v.

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Appellate Case No. 2021-000677

Appeal From Horry County
Steven H. John, Circuit Court Judge

Unpublished Opinion No. 2023-UP-399
Submitted November 1, 2023 – Filed December 13, 2023

REVERSED

Appellate Defender Lara Mary Caudy, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Attorney General Mark Reynolds Farthing, both of Columbia; and Solicitor Jimmy A. Richardson, II, of Conway, all for Respondent.

PER CURIAM: Donnielle K. Matthews appeals her conviction for voluntary manslaughter and sentence of thirty years' imprisonment. On appeal, Matthews argues the trial court erred by instructing the jury on the lesser-included offense of

voluntary manslaughter, contending there was no evidence she acted in a sudden heat of passion because she deliberately and intentionally stabbed Dennis Green out of fear. We reverse pursuant to Rule 220(b), SCACR.

An Horry County grand jury indicted Matthews for the murder of her husband, Dennis Green, who died of stab wounds following an altercation in the couple's car. The trial court instructed the jury on self-defense, murder, and, over Matthews's objection, voluntary manslaughter.

We hold the trial court abused its discretion by instructing the jury on voluntary manslaughter. *See Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion."). Viewing the evidence in the light most favorable to Matthews, we hold there was no evidence presented from which a juror could reasonably infer Matthews acted in the sudden heat of passion. Although there was evidence Green provoked Matthews by forcibly pulling her from the back seat into the front floorboard of their car and hitting her repeatedly, the evidence did not show Green lacked control over her actions or acted under an uncontrollable impulse to do violence, despite her fear, when she stabbed Green. *See State v. Niles*, 412 S.C. 515, 522, 772 S.E.2d 877, 880 (2015) ("When determining whether the evidence requires a charge on voluntary manslaughter, the court must view the facts in the light most favorable to the defendant."); *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000) ("Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation."); *State v. Sams*, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014) (explaining a sudden heat of passion "must be such as would naturally disturb the sway of reason and render the mind of an ordinary person incapable of cool reflection and produce what may be called an uncontrollable impulse to do violence."); *State v. Starnes*, 388 S.C. 590, 599-600, 698 S.E.2d 604, 609 (2010) (concluding the defendant was not entitled to a voluntary manslaughter instruction even though he testified he was in fear when he shot the victims because there was no evidence he was "out of control as a result of his fear or was acting under an uncontrollable impulse to do violence"). Here, Matthews testified she stabbed Green in self-defense when he refused to stop hitting her despite her telling him to stop. She explained Green was still hitting her "even after [she] had swung the knife." Moreover, Green had only two stab wounds, which a crime scene reconstruction expert characterized as "shallow" and "little poke wounds." *See State v. Smith*, 391 S.C. 408, 413, 706 S.E.2d 12, 15 (2011) (concluding the defendant was not entitled to a voluntary manslaughter instruction because "he was not enraged, incapable of 'cool reflection,' or acting

'under an uncontrollable impulse to do violence'" at the time of killing; thus, he did not act in the sudden heat of passion). Although Matthews may not have been calm when she arrived at the hospital less than ten minutes after the stabbing, Matthews was composed enough to drive Green to the hospital immediately following the stabbing. *See State v. Sims*, 426 S.C. 115, 137-39, 825 S.E.2d 731, 742-43 (Ct. App. 2019) (holding there was no evidence Sims shot her husband in a sudden heat of passion when the evidence showed Sims, although afraid, "deliberately and intentionally" shot him after telling him to stop what he was doing, which "indicat[ed] she did not want to use the gun," and as soon as she shot him she began "immediately" administering CPR and called 911). Viewing the evidence in the light most favorable to Matthews, we hold there was no evidence presented from which a juror could reasonably infer Matthews lacked control over her actions at the time of the stabbing. Thus, the trial court erred. *See State v. Geiger*, 370 S.C. 600, 607, 635 S.E.2d 669, 673 (Ct. App. 2006) ("To justify charging the lesser crime, the evidence presented must allow a rational inference the defendant was guilty only of the lesser offense."). Further, because the jury found Matthews guilty of the erroneous charge, the trial court's error in instructing the jury on voluntary manslaughter was not harmless. *See State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) ("When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" (quoting *State v. Kerr*, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218 (Ct. App. 1998))).

REVERSED.[1]

MCDONALD and VINSON, JJ., and BROMELL HOLMES, A.J., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Steven H. John, Circuit Court Judge
Appellate Case Tracking No. 2021-000677
Opinion No. 2023-UP-399

State of South Carolina, Respondent,

vs.

Donnielle K. Matthews, Appellant.

PETITION FOR REHEARING

Through an unpublished decision issued on December 13, 2023, this Court reversed Appellant Donnielle K. Matthews's conviction for voluntary manslaughter. State v. Matthews, Op. No. 2023-UP-399 (S.C. Ct. App. filed Dec. 13, 2023). In doing so, this Court concluded—upon expressly "[v]iewing the evidence *in a light most favorable to Matthews*"—the trial judge reversibly erred by instructing the jury on the lesser-included offense of voluntary manslaughter. (emphasis added). Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondent ("the State") respectfully petitions for rehearing because this Court misconstrued the applicable law and applied the wrong standard when evaluating whether the evidence presented during trial supported a voluntary manslaughter instruction in Matthews's.

As previously noted, this Court expressly indicated it viewed the evidence "in a light most favorable to Matthews" before concluding there was no evidence presented from which the jury could reasonably infer Matthews acted in the sudden heat of passion. And, in so doing, this Court cited to our Supreme Court's decision in State v. Niles, 412 S.C. 515, 772 S.E.2d 877 (2015), for

the proposition: "When determining whether the evidence requires a charge on voluntary manslaughter, the court must view the facts in the light most favorable to the defendant."

Critically though, the proper standard for evaluating whether a jury charge—on voluntary manslaughter or anything else—is warranted by the evidence does *not* involve an evaluation of the evidence in favor of one side or the other but, instead, simply involves looking to whether there is *any evidence* to support the requested charge. See State v. Drafts, 288 S.C. 30, 32, 340 S.E.2d 784, 785 (1986) ("A trial judge is required to charge a jury on a lesser included offense if there is evidence from which it could be inferred that a defendant committed the lesser offense rather than the greater."); State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002) ("A trial court has a duty to give a requested instruction that correctly states the law applicable to the issues and which is supported by the evidence. If *any evidence* exists to support a charge, it should be given." (emphasis added)). And, in the specific context of voluntary manslaughter, our Supreme Court has emphasized: "To warrant a court's eliminating the offense of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." State v. Lowry, 315 S.C. 396, 399, 434 S.E.2d 272, 274 (1993).

In applying a different standard and viewing the evidence in a light most favorable to Matthews's on appeal, this Court appeared to rely on the language it identified from Niles suggesting such a review of the evidence in a light most favorable to the defendant was the proper analysis that should be applied. However though, Niles—and all the cases the Niles relied upon—involved a situation in which *the defendant* was the moving party seeking a voluntary manslaughter and the defendant's request was denied. See Niles, 412 S.C. at 518, 772 S.E.2d at 878 (evaluating whether the trial judge erred by refusing Niles's request for a voluntary manslaughter jury instruction). Conversely, in this case, *the State* was the moving party, which

makes it the exact opposite situation addressed by the Supreme Court in Niles and, thus, meant a different analysis was warranted. See State v. Wharton, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009) ("To warrant the court in eliminating the offense of manslaughter it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter.").

Accordingly, this Court erroneously applied an incorrect standard on appeal by viewing the evidence solely in a light most favorable to Matthews when determining whether a voluntary manslaughter instruction was supported by the evidence presented during trial. And, when the proper analysis is conducted, the trial judge—for all the reasons previously discussed in the State's brief and during trial—properly instructed the jury on voluntary manslaughter and left it to the jury to resolve the factual disputes raised by the evidence. See State v. Gardner, 219 S.C. 97, 104, 64 S.E.2d 130, 134 (1951) ("[T]o warrant the Court in eliminating the offense of manslaughter, it should *very clearly appear that there is no evidence whatsoever* tending to reduce the crime from murder to manslaughter." (emphasis added)). For all the foregoing reasons coupled with the reasons articulated in the State's brief, the State respectfully asks this Court to reconsider the matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion affirming the decision of trial judge after correctly finding the trial court did not abuse its discretion or otherwise err by instructing the jury on the lesser-included offense of voluntary manslaughter.

Respectfully submitted,

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December 15, 2023

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Steven H. John, Circuit Court Judge
Appellate Case Tracking No. 2021-000677
Opinion No. 2023-UP-399

State of South Carolina, Respondent,

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Donnielle K. Matthews, Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served the State's Petition for Rehearing on Lara M. Caudy, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 15th day of December, 2023.

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The South Carolina Court of Appeals

The State, Respondent,

v.

Donnielle K. Matthews, Appellant.

Appellate Case No. 2021-000677

ORDER

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

Stephanie P. McDonald J.

_____ J.

Jan B. Bramlett Holmes

_____ A.J.

Columbia, South Carolina

cc:
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The Honorable Steven H. John

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