VOLUME II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Beaufort County

Honorable Robert J. Bonds, Circuit Court Judge

AARON SCOTT YOUNG, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000011

APPENDIX

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THE FOLLOWING EXHIBTS ARE ON FILE WITH THIS COURT:

APPLICANT'S EXHIBIT NO. 1 (AUDIOS OF 911 CALLS)

a gun, it was a .9 millimeter. How many shots did it hold? Enough according to Aaron Young. We know Aaron Young was armed not just because Jontu Singleton says so, not just because Aaron Young's father took them to the gun but because Aaron Young himself admits it. And while I recognize the defense has made a big deal out of there's no fingerprints, there's no DNA, there's no question Tyrone Robinson was armed, Aaron Young was armed.

We know that Aaron Young chased Tyrone Robinson into at least two neighborhoods. We know the original fight started up here at Old Wild Horse Road where the Young's live. We know that they chased Tyrone Robinson again with Aaron Young, Senior driving and Aaron Young, Junior with the gun in his hand into this neighborhood down here, Oakview, Spanish Wells, Muddy Creek. We knew that because Aaron Young, Junior said they did it. In fact we also know that at that time Aaron Young, Junior said I tried to kill him, I tried to shoot him there but the gun wouldn't go off. The gun jammed. Something that made him so angry that as he's sitting by himself not even being questioned he yells the gun jammed. I know how to work a gun. I now how to work that real well.

This was the first time that Aaron Young says he tried to kill Tyrone Robinson then but the gun wouldn't work. We know they chased them here. We know that Robinson got away

and went down here to Allen Road. Right here where Charlese Mitchell hears the shots. We know that when they go down there the truck goes down there the first time because when the truck is leaving the neighborhood it almost runs Tyrone Delaney off the road. And that's before the second rapid fired shots, before the three shots that came after before Khalil S. was killed. We know they chased Tyrone Robinson into Allen Road not once, twice, they were down there.

We know it because Charlese Mitchell, who is related to both, sees the truck leave. We know there was a shooting, we know that Tyrone Robinson as the truck gets here, is somewhere in this area here, and fires back at the Young's hitting Khalil S. and we know that bullet cut his heart and he bled to death. These are the facts that we know. They're not disputed. No reasonable alternative than those facts that we absolutely know.

The judge is gonna charge you the law in South Carolina concerning mutual combat. And if he tells you anything different than I do please take what he says as reliable. But I would submit to you this is exactly what you're gonna hear from the judge when it comes to the law in South Carolina. That everyone is presumed to know the consequences of his act if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are

being used, and death results to one of the participating parties everyone engaged in such combat is equally guilty regardless of whether a deadly weapon was used or not.

I know the defense has made a good point of well there's no actual evidence that he actually pointed it at Tyrone Robinson. And I would submit to you that him saying I tried to kill him but the gun jammed. Generally guns jam when you try to pull the trigger. I don't know what he would a been shooting at to see inside the truck in order for the gun to jam. But it doesn't matter because as far as mutual combat is concerned it doesn't matter whether the gun was used or not for the law in South Carolina somebody has to voluntarily enter into mutual combat they have to be armed and they have know the other person's armed and we know that.

Not only did Aaron Young know that Tyrone Robinson was armed, if you remember his tape he actually tells you what the gun was. He compares the shot of a .9 millimeter to a .38 caliber and says the .38 caliber is gonna kill you much quicker than the .9 millimeter. He knew. He said it's T's gun. You don't have T's gun and it's a .38. He knew he was armed because Tyrone Robinson came to his house and shot at him right before they got that gun and went chasing after him.

For mutual combat, ladies and gentlemen, they enter

into mutual combat, they're armed, they know the other one's armed, and death results. There's no question about that either. Taking what you know with the law as the judge is going to instruct it what you know is Aaron Young and Tyrone Robinson entered into mutual combat, that child is dead and they are both equally responsible for the murder of Khalil S. That's the law and that's what you know.

There's one other thing about this. In the concept of mutual combat there's a recognition that it involves participating parties. Obviously Khalil S. his only crime was playing in the neighborhood. He wasn't involved as a participating party. What the judge will tell you about that is the law of what's called transferred intent.

And what's relevant is not, in determining mutual combat the victim, the identity of the victim, but the mind set of the defendant. What was Aaron Young thinking? How was he thinking? All of that is relevant because it tells yo whether or not he voluntarily entered into this gun battle. Let's take a look at some of what Aaron Young said, and I'd ask you to look at the monitor, and see if you can determine from this his mind set.

(STATE'S EXHIBIT NUMBER THIRTY-EIGHT PUBLISHED TO THE JURY.)

SOLICITOR STONE: The last clip I want to talk to you about very briefly. He's describing as they're leaving, as

they are in this truck going by and he hears the three shots, having already seen the children when they go into the neighborhood, seeing the children as he's coming out of the neighborhood, hearing three shots, what does he say to his dad? "Man, turn around."

When you're determining whether or not Aaron Young mutually agreed or got involved in this running gun battle ask yourself that. What's the mentality? There's just been a shooting right in the middle of children and what's his mentality? "Turn around."

The defense makes the offer to you that quote unquote run, they were fleeing, they were leaving the neighborhood, this was over. Ask yourself they didn't go down that neighborhood just once they went down twice. They went down they didn't find what they were looking for. They weren't able to kill Tyrone Robinson they went back to their house more likely than not greasing up the gun so it wouldn't jam this time and then went back down there a second time. And even after that, even after when they see the kids going there and they had all stopped when they see the kids going back and they hear the three shots what does Aaron Young say? "Man, turn around." Is he finished? Has he concluded this mutual combat? No. Never. You know why? Because of all those things he just said. "You don't come to my house and do that and then walk away free. How did he

know I was coming back down there? Cause he knows me. Cause he knows me."

They fought, they had guns, and the feeling was mutual. Aaron Young didn't like Tyrone Robinson and Tyrone Robinson didn't like him and they took their fight into the neighborhoods. They took it into the neighborhoods. And the state law says as it should you're all responsible.

Now I've also charged Aaron Young with attempted murder. The attempted murder of Tyrone Robinson. And we get that from three sources. You hear it from Tyrone Robinson who tells Charlese when he gets to the house "They're shooting at me." At a separate time you hear him tell Tyrone Delaney outside of the presence of Charlese using vulgar language "they're shooting at me." So you hear it from Tyrone. But you also hear it from Aaron Young because in his statement he messes up a couple of times and he gives you a pretty good idea that he did some shooting at Tyrone himself. I'm gonna ask you to go back to the monitor.

(STATE'S EXHIBIT NUMBER THIRTY-EIGHT PUBLISHED TO THE JURY.)

SOLICITOR STONE: So what were you shooting at?

(STATE'S EXHIBIT NUMBER THIRTY-EIGHT PUBLISHED TO THE JURY.)

SOLICITOR STONE: He made a mistake. What were you

shooting at? Him. Now he backed up on that. He was pretty quick to say "you know what the gun didn't go off I take it back." But what else did he say in that interview? And I don't have to play that for you cause I imagine you remember it. Recite, y'all are never gonna get the whole story out of me." He didn't tell the whole story. He left some stuff out.

You hear it the attempted murder that he wanted to kill him but the gun didn't go off. And you hear it from him that he said "who were you shooting at?" "Him." You hear it from Tyrone Robinson, "they're shooting at me." He says it in an excited state. Why would he be excited unless they were in fact shooting at him? And here's another thing. That truck is speeding out in the neighborhood to some extent that it almost ran Tyrone Delaney off the road. What are they excited about unless they're shooting at him?

As to the attempted murder charge you hear it from Robinson, you hear it from Young, and you also hear it from the witnesses at the scene and the 911 tape.

(STATE'S EXHIBIT NUMBER TWO PUBLISHED TO THE JURY.)

SOLICITOR STONE: Three pieces of evidence. Tyrone Robinson, "They're shooting at me." Young, "I shot at him I missed." And in fact if you recall Albertin actually ask him "Did you intend to shoot at Tyrone?" And she was trying to give him an out. "Did you really mean to shoot at

Tyrone?" Did he say no? No. That's all he said. You have that. Play that. What did he say?

(STATE'S EXHIBIT NUMBER THIRTY-EIGHT PUBLISHED TO THE JURY.)

SOLICITOR STONE: "Don't like that do you? Don't like that do you? "Did you really mean to shoot Tyrone?" The short answer is, yes, yes, and if I could have I would have. And there's something else too. Dan DeFreese a forty-nine year expert at the State Law Enforcement Division in ballistics and tool mark identifications and bullet trajectories testified yesterday that the trajectories put into this car were accurate. They were in the right angle to show how the bullets entered into the car.

If you look very closely at this picture there's got to be a question. Item Number 13 which matched by the way to that gun pulled out of this door panel does that look like that's coming from the same angle that these two are? According to Young the car's parked behind the house and he shoots at the car. And quite frankly these shots right here probably look just like somebody shooting down from a truck. But not that one. Not that one. Young got a shot off.

And that one indicates that that's different, that that's in a different place than these. And different from the ones that were in the back of that car. Probably from a further distance and p probably in this neighborhood right

here where he says the gun jammed. And that's physical evidence and that's as to the attempted murder.

Now, it is in many ways not our job, not my job, not your job, and even the judge's job to explain why the law is as it is in South Carolina. Why is somebody responsible, why is everybody responsible when only one person could possibly have fired the fatal bullet? Why do we say that there is such a thing as mutual combat? Why do I come in here and yesterday when I explained to you what I would be asking you I said I'm going to ask you to do one thing, to give us a verdict that speaks the truth but not just the truth, the whole truth. Cause part of the truth is already been spoken from a jury sitting right where you're sitting that said Tyrone Robinson is responsible for the killing of Khalil S. That's part of the truth.

The other part of the truth that I'm asking you for is the whole truth which is its not just Tyrone Robinson is responsible for Khalil S. s death, it is also Aaron Young. And for that matter Aaron Young, Senior who is not before you right now.

That's the whole truth. And I want you to think just a moment about how much Aaron Young, Junior and Tyrone Robinson have in common when it comes to this case. Tyrone Robinson was armed. Aaron Young was armed. Tyrone Robinson went to Aaron Young's house with a gun. Aaron Young went to

Tyrone Robinson's house with a gun. He didn't find him, he found his uncle but that's where he went cause he said straight to his house.

They both used that car. Aaron Young said, You know what? Tyrone is using that car as a set up. He put it there cause he knew I was coming back and he knew I would go there and he would be able to see me. He was using it as a set up. So is Aaron Young. Why do you think he was shooting the car? He wasn't mad at the car, he was trying to flush out Tyrone Robinson. Tyrone Robinson didn't shoot Khalil S. Neither did Aaron Young. Tyrone Robinson intended to shoot that truck to kill Aaron Young just like Aaron Young intended to kill Tyrone Robinson.

Tyrone Robinson, "Oh I didn't mean for Khalil S. to die." Neither did Aaron Young. The both of 'em killed him just as surely as we're sitting here, both of 'em did. A part of this truth has already been told. Tyrone Robinson is responsible. The rest of the truth is, is so is Aaron Young. And why is the law like it is? It goes back to the two lines in this that I haven't talked about. Everyone is presumed to know the consequences of his act. Everyone presumes to know the consequences of their act. And everybody is equally responsible for the naturel consequences.

Let's talk about the natural consequences. They're

going through neighborhoods. Is it a natural consequence if you take a gun like this and you go chasing somebody through neighborhoods that at some point they might turn around and shoot back? You know they're armed. Is that a natural reaction? Certainly. And at some point Tyrone Robinson was bound to turn around and shoot back and he did. Was it a natural consequence that somebody would get hurt if you're shooting in a neighborhood with a car that is parked up against the house? Aaron Young went to a lot of trouble saying you know what I never hit the house. But that's good because there was a one month old child in the house. We're lucky - I guess we're lucky - that we only had one dead child instead of two. Right there right where Aaron Young was shooting in a neighborhood with kids.

And by the way, in case Aaron Young said well I knew where my shots were going. Remember this item here that our expert from ballistics testified this is a glancing bullet, a bullet that hit the side of the car and went from back to front. Bullet hits this car right here on the side going this way going towards the children. The glancing blow that goes off is it a natural consequence that somebody in this neighborhood is going to get hurt when you're shooting at cars behind a house?

And by the way, take a look at these pictures. How many shots are in that car? If you add them up you're

gonna find about seven. The clip holds thirty-four and there were ten left. Where are the bullets, where did they go? They went one of three places. One, he's sprayed this whole neighborhood when he missed the car. Two, he actually got off a lot more shots than he's willing to tell us about over in the Oakview Spanish Wells area. Or three, he's - they're shooting back at each other and he's shooting when Charlese hears the first set of shots prior to the truck leaving the first time.

Where are the other bullets? The natural consequences of somebody would get hurt in these neighborhoods? That's why the law is what it is. That's they way of this. That's why in mutual combat everybody is responsible for their acts and the natural consequences that come from them because when you take guns and you leave and instead of calling the police you decide to do it yourself and you chase them through two neighborhoods, seven miles of Hilton Head, people are gonna get hurt. And in this case a child died.

That's why the law is what it is. That's the why. And we know it not because the judge is gonna tell us that. Not because the statute tells us, not because this board tells you that. You know you're responsible for your acts because it's in your heart and you know that. You know that. And it doesn't matter who fired the fatal bullet cause they're all fatal. It doesn't matter whose gun shot it cause every

gun is fatal. That's why the law is but we all know that.

If you have any questions think back on that 911 call when you heard those people in that community on the phone. And you heard 'em crying and screaming as they were trying to breathe life into this eight-year-old child who was literally drowning in his own blood. Do you think they care where the fight started? Do you think they care which gun fired it? Do you think they care what Tyrone did to deserve it or why he made Aaron mad or why Aaron made Tyrone mad? Do the people in that community care? They care that they lost a child.

Parents lost a child that's what they care about. And was that the natural consequence? Think back on the very last 911 call you heard, the very last one. The lady called in and said I heard rapid shots, definitely gun shots. What's the very last thing she said? There are children down there, children down there. That's what this case is about. Thank you.

THE COURT: Thank you, Mr. Stone. Can we take the exhibits down please, sir.

SOLICITOR STONE: I'm sorry. Yes, sir.

THE COURT: Thank you.

MR. VAUX: May it please the court.

THE COURT: Yes, sir, Mr. Vaux.

MR. VAUX: Thank you. If you would just leave that

right there. Thank you.

Good morning again, ladies and gentlemen. Representing a defendant in a criminal case as an attorney is probably the highest compliment that a trial attorney can be given because the defendant puts his life in our hands. You see our job is two fold. Our job is to see and insure that the defendant receives a fair trial and that the state proves the defendant guilty beyond a reasonable doubt. We have no obligation to do anything. So let's take a look at what the state has established thus far leaving the hysterics aside.

The state established that Khalil S. an eight year old little boy, was shot to death by Tyrone Robinson. We know that Tyrone Robinson by virtue of their witness was quote drunk as a bitch dressed in mismatched socks, in red shorts about three thirty in the afternoon. That he goes to Darrell Ferguson's house which is next to Jake Washington's house still dressed in his shirtless and his red shorts, mismatched socks, a couple of quarts of beer, driving drunk, and gets into an argument with Jake Washington. Gets into an argument with Darrell Ferguson. Gets back in his car driving drunk goes to the Young's house gets out at the Young's house according to the state's witness unprovoked and starts shooting.

Shoots in the ground, shoots at the house next door. And we know that they got the bullet out of the house next

door. Do the Young's shoot back? No.

Stupidly and as I indicated in the opening comment a lifestyle mistake they didn't call 911. The Young's sometimes after that cause Jontu again testifies that the - that Tyrone leaves, that they get in the truck, Jontu the state's witness gets into the truck with the Young's and they go looking for him.

Now while Jontu, the state's witness, is in the truck, no gun is pointed at Robinson, no gun is fired at all, and that's the time that the solicitor would have you believe they sped up a few roads and all the rest of it. But did the state produce any evidence to that effect other than what Mr. Stone said? And the answer to that is no.

They go home and they drop off Jontu. Jontu sees them get back into the truck with Ebony Campbell and they go towards Mr. Benny Young's house off of Redtip or Mustang Lane. In the meantime Ms. Mitchell is at home, Charlese Mitchell, and is visited by Mr. Robinson who's still dressed in his red shorts and his pistol. She's concerned enough that after letting him use the phone she and her boyfriend ask him to leave for whatever reason we don't know.

She says there are ten to fifteen minutes between the shots but there is no evidence that the shots came from the same kind of gun. There is no evidence who fired the first set of shots. There's nothing. We don't know that and the

state conveniently in their 911 tape we don't know what order they came in. There's no time established. There's no time on any of that evidence. That could have been twenty minutes, thirty minutes apart. We have no idea.

Now, what also is important is that nobody puts either Tyrone Robinson or the Young's at the house at the time of the first set of shots. Certainly Ms. Mitchell doesn't. She hears the shots and it's after the first set of shots that Mr. Robinson comes to her house. After hearing the second set of shots Ms. Mitchell calls the boys into the house. Then she sees a grey truck drive by and it's somewhere's in this area and hear's three shots. She then hears screaming and there's a little boy dead on the ground.

That truck is leaving the area. It is retreating. At that point Mr. Delaney is now home, he had seen a grey truck. He didn't see who was in the truck, he didn't see who was driving the truck and he sees the truck somewhere other than Marshland Road. He sees the truck -

I'm not - Frankly I don't remember where he saw the truck but it was not near the house. And I don't recall what direction it was going in. He was going towards Marshland Road but if he was on the Cross Island that truck could have been any truck going either way. If it was on Spanish Wells it would have been going towards Wild Horse Road.

Now, Tyrone Robinson says to him those blank blank's shot at me. Well I submit to you that could have been most anybody given Mr. Robinson's conduct, Mr. Robinson's - just behavior on Hilton Head with Mr. Ferguson, with Mr. Singleton, with Mr. Washington, any of those people, half of Hilton Head could have felt that way. And I'm gonna get to more of that in a second. So we don't know who Mr. Robinson - You know, language obviously was not a consideration to Mr. Robinson but don't you think that if Mr. Robinson felt that it was Young who shot at him he would have said those blank blank blank Young's or that whatever Aaron shot at me. Why would you just say those M F'ers?

You would identify who they were and we're gonna talk about this in a second. We'll never know who they were. Dominic Griffin - And every time you try a case and I been doing this forty something years now - Every time you try a case there's something in here in the case that's not a great deal of relevance but it just makes you wonder.

Mr. Griffin is at home in this house and he's specific that he's in this area of the house. And the car is back here. Now from Jontu we know that they go by there and Jontu knocks on the door to visit with his stepson.

Now is that really relevant? No. But doesn't it tell you something? If you're running around in the neighborhood shooting people having an ongoing mutual combat and gun

battle when in the world do you say whoa, everybody stop, time out, I want to go visit with my son? Does that make a lot of sense? You're driving around the neighborhood and you're shootin up the neighborhood which of course Jontu says that it happened when do you state time out to go have a visitation?

Now times important because we know that Tyrone Robinson arrived at the Young's house about four o'clock or a little bit after. And we know that this whole thing is over with and done with and Robinson is stopped by and yelling - is stopped on the side of the road before five thirty so there's not a lot of time. But Dominic is at home and he doesn't hear Jontu knock on the door, he doesn't hear the first set of gunshots. He hears the second set of gun shots, he doesn't hear the third set of gunshots and he does hear his stepson say Tyrone Robinson killed my friend.

Now Mr. Seifert testified that he has a conversation with Junior on the side of the road and that establishes the time. We know what time that it was over with and by that point we know that the Young's had taken the gun to the grandfather's house which simply shrinks the time that's involved for all this to have taken place as the solicitor would have you believe.

We know that Captain Bromage identifies the gun and we know that Captain Bromage exaggerates to try and influence

you by calling it a submachine gun. Now is that really important? No. Except for the fact that it gives you the mind set. Why would he mislead you? You know that's a tantamount to not telling the truth. When you misstate something like that you finally give it up on cross-examination and then you fight with a defense lawyer about it that's just not right. So Brandon Cooler he ID's the gun he carries out the search warrant on the Young's house.

Now do they find drugs in this house? No. Had they guarded the house from the time of the shooting until they carried out the search warrant? Yes. Did they find any more guns in the house or ammunition or anything else? No. And he took a statement from Ebony Campbell. Derrick Nelson processed the truck. He matched up the wooden sticks with the bullet holes. The windows were clear. Remember I went to some trouble to show that you could see in the car to be sure there was nobody in the car. I still don't understand why you had to break the window if the window hadn't been tampered with in some way but maybe I'll just never understand that.

Wendy Conant testified about receiving evidence transporting evidence and performing certain test. I'm gonna come back to the test in a second. Now Mr. DeFreese forty-nine years which is even longer than I practiced law testified about casings and bullets and found in the car but

found no blood. Now don't you think it's convenient that he doesn't testify about the bullet that killed the child?

Forty nine years he doesn't forget about something like that.

The lead investigator, Albertin, she interviewed Junior who denied ever pointing the gun at Tyrone. He denied shooting the child and he indicated that Tyrone had broken into his home previously. Now you know where I come from when I said to you in my opening statement about terrorism. You know this guy had broken into the Young's house, he comes into the yard starts shooting up the yard.

Now, the problem that I have with this case as a defense lawyer other than the fact that what they've produced to you is purely circumstantial is the absence of any real proof. Now it's emotional. You can't kill an eight year old child without being emotional, all right. I got four children, I got a son, he sits there. If you kill that child when he was eight I'd gone crazy with emotion with grief. But that's not the basis on which you make a decision.

I want you to think why the state didn't put up the evidence that it has within it's control. Now unlike us they have an obligation to do that. We have no obligation. They're obligated by law and they're obligated by their responsibility to you. Not only don't I have an obligation

but the judge will instruct you to that effect. Remember that it's the state's job. So let me ask a couple of questions.

They collected evidence. Where is it? Why is it that I have to drag out of the witnesses about the DNA? Why is it that I have to drag out from the witnesses about the blood - I mean the gunshot residue? Why is that I have to drag out about the blood? If you're being fair, if you are being forthright you don't hide that stuff.

Two: Where is Tyrone Robinson? Now, I concede to you that he is a convicted murderer. He had been found guilty of that and he's serving a life sentence. But hadn't the state called him as a witness? He's certainly within their control. I mean he's in the prison system somewhere's. If they can subpoena all the rest of these people and produce the sheriff's department people they certainly ought to be able to produce somebody that is in the prison system.

His only comment is that the M F'ers shot at him. But we don't know which and who they're talking about. But he could identify Aaron Young, Junior unlike Charlese Mitchell, unlike Mr. Griffin or unlike anybody else. He could have gotten on that witness stand and say, ladies and gentlemen, that blank blank blank blank blank that's right there shot at me and tried to kill me. What do we hear? Silence is deafening. Okay. That man is responsible for not doing

that. He didn't call Tyrone and I submit to you that he didn't call him because he was scared of what he was gonna say and the state didn't want you to have the whole story.

Where is the statement by Ebony Campbell? Albertin said she took it. Didn't produce it. Where is the statement from Ms. Washington? We heard her on the 911. Where is the mutual combat? Where is the running gun battle? Where are the witnesses who saw the running gun battle? Where are the witnesses who heard the running gun battle? And where is the bullet that Moran takes to or whoever takes it and goes up to the Medical University? Where is the results of the analysis by the forty-nine year old man, forty-nine year old experienced man?

Now you know it's the little things in a trial that tell the tale. Little things like why Bromage exaggerated and tried to mislead you. Why is that the state didn't tell the whole tale? Why didn't the state put up all of the evidence? We'll never know. Now you're entitled to construe those intentional misstatements, those omissions, and the reluctance to disclose the contents of the file. And you heard Albertin when I ask you about the contents of the file. I don't have it with me I'll have to go get it. I have to look it up to give you the truth of the matter against the statement in favor of the defendant Mr. Young.

Now as I said in my opening statement I can't condone

the lifestyle, and I don't condone the language, but is that enough to convict this young man of murder and attempted murder?

Ladies and gentlemen, I submit to you that Aaron Junior was mad and he was mad with provocation. He shot up the car, we admit that. But he's not charged with shooting up the car. He vented his anger in the wrong way grant you that. But then he retreated. As a passenger in the car they come down here and they turn and they go over here. They're leaving.

Now Solicitor Stone would have you believe that they're simply going back to fight another day. We'll never know that. We know they didn't start this fight. We know that regardless of what the past history was the Young's didn't go looking for Mr. Robinson the Young's were defending themselves. Now, if you wanted to get into a running gun battle, and you wanted to get into mutual combat, he had a gun that held thirty something bullets, he had a box of ammunition, and Robinson had a six shot revolver. I mean the odds are strongly in his favor. Why would he retreat? He wouldn't have. That makes no sense.

Now you know juries like you come into the courtroom and they have the job that you all have today and you probably have very little experience. You remember Your Honor said to you it's doubtful any of you all have served

on a jury before. Well it's doubtful that you have. And so you come in and this whole thing revolves around what is reasonable doubt.

And so you would think that somehow or another you're supposed to have an answer to that. And let me show you that lawyers have probably used billions of words trying to define it and written hundreds of items trying to explain it but sometimes the simplest approach is the best and that is reasonable doubt is a doubt for which you can give a reason. Okay. So lets look for a reason for a second.

I submit to you that reasonable doubt is doubt when the lead investigator for the entire sheriff's department for this entire case who takes statements who takes physical evidence who supervises the whole thing when she testifies under oath - let me make sure I get this right - that she does not have a single piece of evidence that Aaron Young, Junior shot at Tyrone Robinson or even pointed the gun at Tyrone Robinson, or engaged in mutual combat, and with that I submit to you that Tyrone - that Aaron is guilty only of vandalism stupid as that sounds but that is he shot up the car. Not charged with it but that's what it is.

Now, the solicitor gives you this piece of commentary here and let's look at it. Everyone is presumed to know the consequences of his act and if one voluntarily enters into mutual combat - and we maintain that we don't have mutual

combat here but we'll talk about that. Is it the natural consequence - is it to know the consequence of your act when after committing vandalism here you drive around and you come down here and you get out on a public highway and you - I don't know how far that is but it's a pretty good distance - that somebody is gonna start shooting at children. Okay.

Don't think so. And look at this. And death results to one of the participating parties. We have that.

Now, I submit to you that based on what I've said about Tyrone Robinson, the lack of introducing collected evidence, the comments and the testimony of the lead investigating officer about the lack of evidence, has got to supply you with reasonable doubt as to murder and as to attempted murder. And we ask that you bring back a verdict while it may be painful while it may not make you - no verdict in this case after sitting here for two days is gonna make you happy, but that it's right. Not necessarily fair but is right in accordance with the law. It speaks the truth as to the fact that Tyrone Robinson started this mess and he ended it when he shot and killed that child and not Aaron Young, Junior. Thank you.

THE COURT: Thank you, Mr. Vaux.

Now, ladies and gentlemen, you have been very patient and attentive throughout the arguments presented by Mr. Stone and Mr. Vaux and I ask you now to please give that

same attention to me as I instruct you or charge you as to what the law is.

Let me tell you at the outset before I begin these instructions, they are scripted and I can tell you it's gonna take about thirty-five to forty minutes. If any of you feel that you need to have a break so that you can be attentive throughout that thirty-five or forty minutes I can declare a brief recess and let you do that right now. And this is a decision that does not have to unanimous, if any one of you needs a break then all of you will get the break. Anybody need one just raise your hand?

(NO RESPONSE.)

THE COURT: All right. Thank you. I appreciate that and we'll proceed on.

As I said it now becomes my duty as the trial judge in this case to instruct you or charge you as to what the law is. And it is your duty as jurors to accept the law as I tell it to you now and to apply the law to the facts of the case that you find to exist, because as jurors it is your duty to decide all issues of fact in the case and for that reason you have to determine the effect, the purpose, the value, the weight and the truth of the evidence that has been introduced in this trial.

Both the state and the defendant have the right to expect that you will conscientiously consider and evaluate

the evidence and that you will apply the law of the case to that evidence to the end that both the state and the defendant will receive a fair and impartial trial at your hands.

Throughout the course of this charge when I use the word defendant I'm referring to Mr. Aaron Scott Young, Junior. Mr. Young has been indicted by the Grand Jury of Beaufort County and charged in this indictment with murder. This indictment says that in Beaufort County on or about September the 1st of 2012 Aaron Scott Young, Junior did willfully, unlawfully and with malice aforethought, engage in mutual combat with Tyrone Robinson and thereby caused the victim Khalil S. to be shot and killed in the area of Marshland Drive and Allen Road in Hilton Head Island, and that Khalil S. did die in Beaufort County as a result thereof in violation of the law.

The next indictment charges Mr. Young with attempted murder and that indictment says on the same date September the 1st, 2012, here in Beaufort County the defendant Aaron Young, Junior with the intent to kill and with malice aforethought, either expressed or implied, attempted to murder the victim Tyrone Robinson in violation of the law.

I remind you again as I told you before this trial began that the indictments are not evidence nor are they proof of the charges that they contain, they are simply

charging documents, legal documents, that tell us, you and me, what these charges are all about. And as you know Mr. Young has entered pleas of not guilty to the charges contained in the indictment.

The plea of not guilty by a defendant to a criminal charge places the burden of proof on the state to prove the guilt of the defendant beyond a reasonable doubt before you as a jury can convict him and find him guilty. Mr. Young is presumed in law to be innocent of the charges contained in these indictments. It is a fundamental rule of our law of evidence that a defendant regardless of the nature of the charges, the number of the charges, the seriousness of the charges against him, will always be presumed innocent of the charges for which he has bene indicted unless and until his guilt has been proven by evidence, evidence that satisfies you as a jury of his guilt beyond a reasonable doubt.

The presumption of innocence is not an empty legal theory. It is not a mere phrase. The presumption of innocence is a substantial right. It is like a robe of righteousness that is placed about the shoulders of a defendant and it assigns to that defendant the class of the innocent. And that presumptive robe of righteousness considers - continues to rest about the shoulders of a defendant throughout the course of the trial. It even follows him through your deliberations as you go into your

jury room and begin to talk about this case.

The presumption of innocence continues to exist to the benefit of the defendant until you are satisfied that his guilt has been proven by evidence that satisfies you of that guilt beyond a reasonable doubt. So, the state has that burden then of proving the defendant guilty beyond a reasonable doubt.

Some of you may have served as jurors in civil cases before and if you did serve as a juror in a civil case the judge told you that it is only necessary that the party who has the burden of proof produce evidence to you that is more convincing on that side of the argument than the evidence is on the other side of the argument. But in criminal cases the state's proof has to be more powerful than that. Here it must be beyond a reasonable doubt. So what then is proof beyond a reasonable doubt?

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Now there are very few things in this world that you and I know with absolute certainty and in criminal cases the law does not require proof that over comes every possible doubt, and so if based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged you must find him guilty.

If on the other hand you think there is a real

possibility that he is not guilty you must give him the benefit of the doubt and find him not guilty. I tell you that reasonable doubt could arise from evidence in the case or it might arise from the lack of evidence in the case. But you as a jury must determine whether or not reasonable doubt exist as to the guilt of this defendant.

I tell you that he is entitled to every reasonable doubt which arises in the case. And so if on any issue of fact which is necessary to a conviction you have a reasonable doubt as to how that issue should be resolved it is your duty to resolve that reasonable doubt in favor of the defendant, because the defendant is never required to prove his innocence, but the state is required in law to prove every essential element of the offense charged against him by evidence that satisfies you of his guilt beyond a reasonable doubt before you could convict him and find him guilty.

And in that regard I tell you now and I emphasize to you that the fact that the defendant in this case did not himself testify in his own behalf is not a factor to be considered by you in any way in your deliberations and in your consideration on the question of his guilt or innocence. It must not be considered by you in any manner whatsoever against him or militate against him in any respect whatsoever because the defendant has a

constitutional right to remain silent. And if he chooses to assert that constitutional right that fact cannot and must not be used against him and must not be considered by you in your deliberations.

And so under your oath then you are to reach no inference and draw no conclusion whatsoever from the fact that Mr. Young did not himself testify in this case. That should not even be discussed by you in the jury room. The burden of proof as I've told you is upon the state to prove guilt beyond a reasonable doubt and the fact that the defendant did not testify is not a factor to be considered by you in determining his guilt or his innocence.

And so, ladies and gentlemen, if then upon the whole case you have a reasonable doubt as to the guilt or the innocence of the defendant, he is entitled to that reasonable doubt and would be entitled to an acquittal and a verdict of not guilty.

But if on the other hand upon the whole case you find that the state has proven by evidence that satisfies you as a jury of the guilt of the defendant beyond a reasonable doubt then as such circumstances it is equally your duty to convict the defendant and to find him guilty.

Now, ladies and gentlemen, during the trial each of us, you and I, have our separate duties to perform. As the trial judge it's my job to preside over the trial of this

case and I also have the duty to rule upon or pass upon the admissibility of the evidence which has been introduced and you are to consider only the competent evidence before you in this case as I've instructed you earlier. The testimony which has been offered from the stand and the items or the documents which have been offered into the trial of this case under our rules.

I have the additional duty to then charge you as to what the law is in this case. As the presiding judge I am made the sole judge of the law of the case and it is your duty to accept the law as I charge it to you now to be the correct law. You might have brought some preferences about the law with you into your service this week. You might have some ideas about what you think the law ought to be. You might not like the law that in instruct you in this regard.

But I tell you if you've got some preferences or some preconceived ideas about what the law is or what it ought to be you're obligated under your oath to forget what you think the law is or what you would like for it to be because you're obligated by the oath that you took to accept the law as I charge it to you now to be the correct law.

Now when ever case tried in our courts before a jury you as the jury as I have told you before the sole and exclusive judge of the facts of the case. You're the judge

of the facts and I'm the judge of the law. Our constitution has said that a trial judge can't comment upon the facts of the case, I can't innovate or state or hint to you how I might feel about the facts of the case. Since you're the sole judge of the facts of the case I don't have a right to have any opinion about the facts of the case, and so you're not to infer from anything that I have said to you during this trial, or, anything that I am saying to you now during this charge that I have an opinion about the facts of the case. The law does not permit that. So it's solely a matter then for you as the jury to determine the facts of the case and in doing that you have to decide the effect, the value, the weight, and the truth of the evidence that has been presented in this trial.

Now as you consider what the facts of the case are there are a lot of things that you can take into account. You have to pass upon the credibility or the admissibility - Excuse me, the credibility or the believability, the credibility or the believability of the testimony that you've heard and the witnesses who have offered that testimony. You and you alone have to decide the force and the effect and the truth of the testimony that you've heard.

Now there are a lot of things that you can take into account and when you consider that matter of truth. You can take into account the appearance, the manner of the witness

as he or she testified from the witness stand. You have the right to ask yourself whether the witness is forthright or hesitant. Was a witnesses testimony consistent or did it contain discrepancies? What was the ability of a witness to know the things that he or she was telling you about? Did the witness have an interest to be served by the testimony that was being offered in this case? Was the testimony of a witness made stronger by other evidence or was it made weaker by other evidence in the case?

You have heard in this particular case witnesses who have been qualified as expert witnesses. Normally lay witnesses, that is normal people like you and me, can express their opinions about things that they have seen or heard. They can tell you what they saw or what they heard as some of the witnesses have done in this case. But they can't tell you what conclusions or what opinions they reached as a result of what they saw or heard.

But expert witnesses are different from that. Expert witnesses are people who have been trained or have experience in certain fields and they are qualified in those fields. And once they're qualified as experts in those fields they're allowed to give you their opinions about those matters in which they have been qualified. But you're not bound by the testimony of an expert witness. You can accept or reject the testimony of an expert witness just

like you can any witness. Because as jurors, ladies and gentlemen, you've got the right to believe a small part of what a single witness tells you and to disbelieve the larger part of the testimony of that same witness.

Or you can do it the other way around. Believe the larger part and disbelieve the smaller part. Or you can believe everything that a witness tells you or none of what a witness tells you. But you don't exercise those considerations arbitrarily. There's got to be some reason for you to do it and so what we ask you to do then in determining the issue of truth is to exercise your mental processes.

And as you determine what you consider to be true we ask you to use your good judgment, your common sense, your sense of logic and reason, and your experiences in life. And you apply these abilities that each of you has that you have brought into your service this week from your separate and distinct walks of life, to bear on what you have heard in this courtroom and once you have done that you will be able to determine the truth. And once you have found the truth you take that truth and you wrap it in the mantle of the law that I am now giving you. And those two things will come together, the truth that you find and the law that I give you, to result in a verdict which will speak the truth of this case.

Now, ladies and gentlemen, I want to instruct you as to the law of the case as it bears on the separate charges which are brought in these indictments. I charge you first as to the law for the crime of murder.

Murder is defined in our law as the killing of any person with malice aforethought either expressed or implied. In order for the state to prove the defendant guilty of murder, it must be proven beyond a reasonable doubt that the defendant killed or caused the death of a person, and the killing was done with malice aforethought. The state does not have to require any motive for the killing but it is required to prove malice.

So what is malice in the eyes of the law as an essential element of the crime of murder? Malice is the intentional doing of a wrongful act without just cause or excuse and with the intent to inflict injury. Malice aforethought is the deliberate and willfully on purpose to do the unlawful act.

Aforethought means that the intention to do the unlawful act was conceived or planned sometime before the actual commission of the unlawful act but it does not need to exist for any particular length of time prior to the act in order to be malice. Malice is a word that suggest a wickedness, or a hatred, or a determination to do what one knows to be wrong without just cause or legal provocation.

As I've said malice need not be in the mind of the killing or the one causing the death at any particular length of time before the act in order to render the killing murder. If it is present in the mind of the one doing the killing or causing it at any length of time prior to the act then it's presence would be sufficient to render the killing murder.

Malice can be expressed or inferred. Malice is said to be expressed when there is shown a violent deliberate intention to unlawfully take away the life of another human being. Malice can be inferred where there's no excuse or legal provocation for the killing and when circumstances surrounding the killing show an abandoned heart, a malignant heart, malice then is a hatred, it's an ill will, it is hostility toward another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances under which the law would infer an evil intent.

I tell you, ladies and gentlemen, that the defendant is not required to prove the absence of malice. But the state is required to prove the presence of malice beyond a reasonable doubt.

Now, Ladies and gentlemen, as you have heard throughout the trial of this case it is undisputed that Mr. Young did not fire the fatal bullet that killed Khalil S. And so the state seeks and ask for a conviction at your hands

under the theory of mutual combat. Now I tell you that mutual combat exist when there is a mutual intent and willingness to fight between persons or groups of people.

Mutual intent is shown by acts and conduct of the parties and circumstances attending and leading up to the combat. The circumstances necessary to establish mutual combat include whether there is any evidence of preexisting evil or ill will between the parties, or, any dispute between the parties, and whether the combatants agree to be armed because the history of ill will and an agreement to be armed are necessary before a defendant is engaged or deemed to have been engaged in mutual combat.

Now if you find that mutual combat exist in this particular case I tell you that everyone is presumed to know the consequences of his acts. And if one voluntarily enters a mutual combat where deadly weapons are used, knowing that they are being used, and if death results to one of the participating parties, everyone engaged in such combat is equally guilty. Regardless of whether he used a deadly weapon or not and regardless of whether he was on one side or another, that is, on the side of the one who fires the shot or not, all are equally responsible for the act where all are participating in mutual combat.

I tell you that in this charge and in every charge criminal intent is a necessary element of the crime that has

to be proven by the state beyond a reasonable doubt. Criminal intent is always a matter that has to be determined by you as a jury from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty, there is no way medical science can dissect a person's brain and determine what he had in mind, and so the law says that criminal intent may be inferred from the circumstances which were shown to have existed at the time, and that's how you decide whether criminal intent was actually present.

Criminal intent then is a state of mind and it operates jointly with an act in the commission of a crime. It is a mental state, it is a conscious wrong doing, and it's up to you as a jury to determine what the defendant intended to do based on the circumstances shown to have existed. I tell you that the state has to prove criminal intent beyond a reasonable doubt just as it has to prove every other element beyond a reasonable doubt as I have explained that to you.

And on the question of intent, ladies and gentlemen, we deal with what we call in the law transferred intent because once again it is undisputed that Mr. Robinson fired the shot that killed Khalil S. It is also undisputed that Mr. Robinson had no intent of killing Khalil S. Mr. Robinson was found guilt of the crime under the law of transferred intent because if a defendant with malice

aforethought tries to kill another person, but by mistake injures or kills a different person, the defendant still has the intent to kill. The intent to kill is merely transferred from the original person that the defendant intended to kill to the actual person who was killed or injured.

Now in this particular case you have to decide whether or not the transferred intent that followed Mr. Robinson in that case also followed to Mr. Young under the mutual combat theory that all who are involved are equally responsible for the acts of anyone. That's a decision that you, ladies and gentlemen, have to decide.

Now, ladies and gentlemen, I next instruct you on the other charge in the indictment and that is attempted murder because Mr. Young is also charged with the attempted murder of Tyrone Robinson. And under our law the statute says that a person who with the intent to kill attempts to kill another person with malice aforethought, either expressed or implied, that person is guilty of attempted murder.

So, what do we mean by an attempt in the eyes of the law? An attempt is an act which is done in partial execution of a design to commit a crime. There has to be an intent as I have just described that to you that the act shall be committed. And an act not done not in full execution of the crime but in pursuance of the intent, that

is, some act acting toward the act which is intended.

Now an attempt is different from the preparation to commit the crime. It is also different from the intent, the sole intent to commit a crime because the law does not punish one for the mere entertainment of a criminal intent for thinking about committing a crime. To bring the law into action it is necessary that some act must be done in pursuant to the intent. Immediately and directly tending to the commission of the crime an act which should the crime had been carried out which constitute a part and a partial of the crime itself. But it doesn't reach to the accomplishment of the original intent because it is prevented or it's voluntarily abandoned.

And so attempted murder then is the attempt with malice aforethought as I have just described that to you in connection with murder the description is the same. To commit the crime of attempted murder the state has the burden of proving that the defendant had the intent to kill, that he attempted to kill, and that he had malice aforethought in connection with the crime of attempted murder in so far as Mr. Robinson is concerned.

Now, ladies and gentlemen, by operation of law there is included in that greater crime of attempted murder what we call a lesser and included offense of assault and battery in the first degree, so, I now instruct you on the offense of

assault and battery in the first degree.

The law says that if a person - that a person commits the offense of assault and battery in the first degree if the person unlawfully offers, or attempts, to injure another person with the present ability to do it, and that the act or the attempt is accomplished by means likely to produce death or great bodily injury. Obviously you know what we mean by death. Let me define for you what great bodily injury means. Great bodily injury means bodily injury which causes a substantial risk of death, or, which causes serious permanent disfigurement or protracted loss or impairment of a function of a bodily member or organ.

So to recap that, the lesser included offense of assault and battery in the first degree would require proof beyond a reasonable doubt that the defendant offered or attempted to injure Tyrone Robinson and he had the present ability to do it and the act was accomplished by means likely to produce death or great bodily injury as I have defined that to you.

Now, ladies and gentlemen, the state attempts to meet it's burden of proof in this case by offering both direct and circumstantial evidence. There are two types of evidence which are generally presented during the trial. Direct evidence is evidence that directly proves the existence of a fact and doesn't require any conclusions on

your behalf. Of course direct evidence of an eye witness who takes the stand and tells you what he or she saw or what he or she heard. That's direct evidence. Somebody comes in and says I saw it or I heard it and here it is. It doesn't require you to conclude anything about what was seen or heard, you were told what was seen or heard.

Now circumstantial evidence on the other hand is proof of a chain of facts and circumstances that leads to the existence of another fact. In other words it requires some deduction on your part. A simplistic example which I use and have used over the years doesn't have anything to do with crime, it has to do with the weather which I suppose the way we're surrounded these days is probably appropriate, a cold winter night like we've been having you look out across your lawn and you see the dry brown dead grass of winter and you go to bed. And you wake up the next morning and you look out across your lawn and you see it's covered with snow and you see in that snow footprints or tracks that go up to your front door.

Well what can you conclude from that? Quite simply you can conclude that after you went to bed last night it snowed. You didn't see a single flake fall but you know it did. And you know that sometime after it snowed somebody came to your front door. You didn't see them but you know that they came there. And you did all those things of

course by using your simple powers of deduction. And the law says that crimes can be proven by circumstantial evidence. The law makes no distinction between the weight or the value that you give to either direct evidence or circumstantial evidence.

However to the extent that the state relies on circumstantial evidence all the circumstances must be consistent with each other, and, when taken together they must point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior suspicious then the proof has failed.

The state has the burden of proving the defendant guilty beyond a reasonable doubt and the burden rest on the state regardless of whether it relies on direct evidence or circumstantial evidence or some combination of the two.

Ladies and gentlemen, there has been offered into the record of this case a statement made by the defendant in this case. You saw it on the screen, you saw the transcript as you followed it. You have to decide whether or not the statement was made, and if you decide that it was made, then you have to decide whether he made the statement voluntarily. And then you will have to decide the weight that you will give to the statement. You have to decide whether that statement was a product of the free will and the free choice of Mr. Young. The state has to prove that

the statement was voluntary and they have to prove that beyond a reasonable doubt.

If you determine that the statement was given freely and voluntarily, then you can give it what weight that you think it should receive. If you determine that it was not the free and voluntary will of Mr. Young, then you should not consider it as evidence. And when you decide whether the statement was free and voluntarily given you have to decide the totality of the circumstances. You can consider his age, his educational background if you know it, his mental ability and things of that nature.

And when you decide whether its been voluntarily given or not you should consider whether he was advised of and understood his constitutional rights because our law says that before any questions can be ask of someone who is in custody they have to be advised, that they have the right to remain silent, that if they use the statement it can be used - if they make a statement it can be used against them, that they have the right to have a lawyer present, if they can't afford one one will be appointed to represent them free of charge.

You can determine the place, the length of the incarceration, the nature of the questioning and all of those things. You must consider all of the circumstances that are surrounding this statement before you can give any

weight to it and if you are satisfied beyond a reasonable doubt that it was made by Mr. Young uninfluenced by a promise of reward or threat of harm, if you find beyond a reasonable doubt that it was given voluntarily, if you find that he had received his rights in those regards and understood them, then you can give it the weight that you think it should receive.

If you find that the state has not met its burden in that regard then you cannot give it any weight whatsoever.

Now, ladies and gentlemen, finally, that's a word you been hanging on for a while to hear finally. Let me tell you that you don't serve as jurors in this or in any case as partisans or advocates either for the State of South Carolina or for the defendant. You don't serve as jurors to punish your enemies nor to reward your friends. Obviously that would be a perverted system of justice and would not be justice at all.

You have been selected by both the state and the defendant to serve as fair and impartial jurors. It is your duty then by your joint deliberations to determine the truth of this case giving to this defendant the benefit of every reasonable doubt on each and every issue. And then to the facts which you determine to be true, you apply the law which I have just given you and thus arrive at a verdict which will speak the truth of this case. That's what the

word verdict means. It comes from a Latin phrase, it means a truthful saying. And once you have done that you will have discharged your duty as jurors and you will have carried out the oath that you took yesterday to well and truly try this case and render a true verdict according to the law and the evidence so help you God. We have every reason to know that you will do just that and we have every reason to expect that you will do nothing less than that.

Now, ladies and gentlemen, I'm going to instruct you now as to what the forms of the verdict are in this case. I have written them down on this sheet of paper. They are written in a certain order, that order doesn't have anything to do with an inference of a conclusion that can be drawn by you as to whether the defendant is guilty or not guilty. I simply write them down here in the order that I find easiest to explain.

There are two separate charges, murder and attempted murder. You will write a separate verdict for each of those two charges. Your verdict on one charge does not necessarily control your verdict on another charge. Mr. Young can be convicted or acquitted of either or both of these charges depending upon your view of the evidence and the law that you have heard. I've given the verdict to the Forelady cause she's got to fill it out.

Madam Forelady, the first possible verdict form as to

the charge of murder is, "we the jury find the defendant Aaron Scott Young" and the first possible verdict form is guilty of murder. That's the verdict that you will arrive at if you find that the state has met it's burden of proof on each of those elements as I have instructed you beyond a reasonable doubt. If that's the verdict form that you arrive at, Madam Forelady, you will indicate that by putting an X or a check mark in the space you see provided.

The second possible form of verdict on that charge is "We the jury find the defendant on the charge of murder not guilty". That's the verdict that you will arrive at if you find that the state has failed to meet its burden of proof as to any of those elements of the charges as I have instructed you and if that's the verdict that you arrive at as to the charge of murder, likewise, you will indicate that by putting an X or a check mark there.

As to the charge of attempted murder there are three possible verdict forms because as I just told you there is a lesser included charge there. As well as to the charge of attempted murder the possible verdict forms are guilty of attempted murder. If the state has met it's burden of proof as to each of the elements of the crime of attempted murder as I have instructed you beyond a reasonable doubt that would be your verdict and you would indicate that by putting an X or a check mark there.

If you find that the state has not met it's burden of proof in that regard you would consider the crime of assault and battery in the first degree. If the state has met it's burden of proof as to each of the elements of assault and battery in the first degree that would be your verdict and you would indicate that by putting a check mark there.

If you find that the state has failed to meet it's burden of proof as to those other two charges beyond a reasonable doubt the verdict would be not guilty and you would indicate that in the space provided.

I've given the verdict form to the Forelady because she's the person that's got to fill it out but it's not gonna her verdict. The verdict has to be unanimous, all twelve of you have to agree to what the verdict is, Madam Forelady, before you could fill that out and sign that form.

I'm gonna send you to your jury room now. I ask that you wait just a moment before you being your deliberations. As hard as you might find it to believe I may have left something out of what I've been telling you. Or I may have misstated something and if I have I have to bring you back out and correct that. But if I don't have to bring you back out to correct anything we will send in these items of evidence and once the items of evidence have been brought into you then you can begin your deliberations but not before. The sketch here is demonstrative evidence, it

cannot go into the jury room so take a good look at it before you go in there.

The rest of these items are items of evidence and they will be introduced to you. So please now go to your jury room, wait to begin your deliberations. Your food might already be there, it's supposed to be there, if it is you can just chow down. And you can - While you're eating you can deliberate or if you choose not to discuss this case while you're eating that's up to you. You've been on our time all week now we're gonna be on your time. Go to your jury room; wait until you hear further before you begin your deliberations.

Mr. Bittick, Ms. Michels, if you will stay right where you are. You can take your notebooks - your notes back with you, yes.

(JURY EXITS COURTROOM TO DELIBERATE AT 12:30 P.M..)

THE COURT: Can we have a separate jury - Do we have a separate room that we can put these folks in, a separate jury room that's not being used?

THE BAILIFF: We can put them in another one.

THE COURT: Good. Mr. Bittick, Ms. Michels, you all were alternate jurors and it appears that we're not gonna need your services but we can't tell right this minute - You have been ask to serve as alternates because if any of these original twelve hadn't showed up today for example and

you were not there we would have to start this whole case over, everything done is wasted. But the fact that you were here gave us the peace of mind to know that we were gonna be able to conclude this trial today. And you're just as capable of reaching a verdict as they were.

You've paid as good attention as they were but the fact is right now it looks like all of them are in good health and they're gonna be able to survive until a verdict is arrived at in this case. So I'm gonna send you to an alternate jury room down there and ask that you wait there. Well your food will be brought into you for one thing and there are magazines in there and you can make yourself as comfortable as you can in that jury room. And if it looks like we're not gonna need you I will excuse you later but I'm asking you to stay with us for a while. Okay. Thank you, folks.

(ALTERNATE JURORS EXIT COURTROOM AT 12:32 P.M..)

THE COURT: Folks, other than previously - Excuse me.

Other than previously noted are there any exceptions or request for additional charge from the state, Mr. Stone?

SOLICITOR STONE: No, sir.

THE COURT: Mr. Vaux?

MR. VAUX: No, sir.

THE COURT: Thank you. All right. Folks, if you all will confer about the evidence and its all together and when

that's done we can send those items in. And Ms. Nelson can run up to the hotel and discharge herself while the jury is deliberating. Okay.

(COURT IN RECESS AT 12:33 P.M..)

(COURT BACK IN SESSION AT 01:21 P.M..)

THE COURT: Thank you, folks. Please be seated. I'm sorry. Folks, we have a question from the jury. As a matter of fact they took this question with them into the jury room and I obviously did not do a good job of explaining the offenses. They say "Can we have the definitions of murder, attempted murder, assault and battery first degree, mutual combat definitions?" As I say before they sat down they wrote these questions so they hadn't given a whole lot of thought to it.

What ever you read into that you can read into it I'll just tell you. Let me take a minute to get those things back together. Thankfully I have not put all this up.

Okay, I'm prepared to recharge on those. Everybody ready?

SOLICITOR STONE: Yes, sir.

MR. VAUX: Yes, sir.

THE COURT: Okay. You can bring in the jury.

Mike, if you'll ask them to bring in the two alternates as well.

THE BAILIFF: Do you want the two alternates to come in

too, Judge?

THE COURT: Yeah. Sorry I didn't tell you earlier.

Wanda, you want to go ahead and mark this and give it back to me?

MADAM COURT REPORTER: Yes, sir.

THE COURT: Thank you.

(WHEREUPON, COURT'S EXHIBIT NUMBER TWO, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

(JURY REENTERS COURTROOM AT 01:25 P.M..)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: Thank you. Ladies and gentlemen, you have ask to get the definition again of murder, attempted murder, assault and battery in the first degree and mutual combat.

I will now recharge you on those particular definitions. I had to send back into the chambers to get a book that I carried back there. I forgot it was back there so it might be a slight delay but in part of this but I think we can put it all together in the same order that I gave it to you earlier. Let's begin with murder.

Murder is the killing of any person with malice aforethought either expressed or implied. In order for the state to prove the defendant guilty of murder, it must be proven beyond a reasonable doubt that the defendant killed a person, or in this case under the state's theory. caused the death of a person with malice aforethought. The state is

not required to prove any motive for the killing but it is required to prove malice so then a key element is malice.

Malice is the intentional Malice is the intentional doing of a wrongful act without just cause or excuse and with the intent to inflict injury. Malice aforethought is the deliberate and willfully on purpose to do the unlawful act.

Aforethought means that the intention to do the unlawful act was conceived or planned sometime before the actual commission of the unlawful act, but it need not exist for any particular length of time prior to the act.

Malice is a word that suggest a wickedness, or a hatred, or a determination to do what one knows to be wrong without just cause or excuse or legal provocation. Malice need not be in the mind of the one doing the act for any particular length of time before the act of killing in order to render the killing murder. If it is present in the mind of the one doing the killing or causing the death any length of time before the act then it's presence would be sufficient to render the killing murder.

Malice can be expressed or it can be inferred. Malice is said to be expressed when there is shown a violent deliberate intention to unlawfully take away the life of another human being. It can be inferred when there is no excuse or legal provocation for the killing and when the

circumstances surrounding the killing show an abandoned heart, a malignant heart bent upon this type of mischief.

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

The state is required to prove the presence of malice beyond a reasonable doubt. The defendant is not required to prove the absence of malice.

Now, ladies and gentlemen, as we know and has been apparent throughout the trial of this case the defendant Mr. Young is not charged with firing the shot that killed Khalil S. As the indictment indicates he is charged under a theory surrounding mutual combat. And so mutual combat exist when there is a mutual intent and a willingness to fight. Mutual intent is manifested or shown by acts and conduct of the parties and the circumstances attending and leading up to the combat itself. The circumstances necessary to establish mutual combat include whether there is any evidence of preexisting ill will or dispute between the two parties, that is, Mr. Young in this case and Mr. Robinson, and whether the combatants agreed to be armed. It requires a history of ill will and an agreement to be armed before a defendant is deemed to have engaged in mutual

combat.

Because under the law of mutual combat everyone is presumed to know the consequences of his acts. And if one voluntarily enters into a mutual combat where deadly weapons are used, knowing that they are being used, and death results to one of the participating parties, or in this case under the state's theory an innocent third party, everyone engaged in such combat is equally guilty. Regardless of whether he used a deadly weapon or not and regardless of whether he was on one side or another it makes no difference where all are participating in mutual combat all are equally responsible for the natural consequences that are incurred.

Criminal intent is a necessary element of these crimes and it has to be proven beyond a reasonable doubt. Criminal intent is always a matter that has to be determined by the jury from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty, there is no way that medical science can dissect a person's brain and determine what he had in mind, so the law says that criminal intent may be inferred from the circumstances which were shown to have existed, and that's how you make a determination as to whether criminal intent was present.

Criminal intent then is a state of mind and it operates jointly with an act in the commission of a crime. Criminal intent is a mental state, it is a conscious wrong doing, so

it's up to you as a jury to determine what the defendant intended to do based on the circumstances which are shown to have existed. I tell you that the state has to prove criminal intent beyond a reasonable doubt as it has to prove every other element beyond a reasonable doubt.

Now once again, ladies and gentlemen, as we know in this case Mr. Tyrone Robinson who fired the shot that killed Mr. Singleton did not intend to kill - Excuse me - Yeah - did not intend to kill Khalil. But under a theory of transferred intent if a defendant, in this case Mr. Robinson, with malice aforethought tries to kill another person, but by mistake injures or kills a different person, Khalil, the defendant still has the intent to kill. The intent to kill is simply transferred from the original person who the defendant intended to kill to the actual person who was killed or injured. That is the doctrine of transferred intent.

Now you, ladies and gentlemen, have to determine beyond a reasonable doubt first of all whether there was mutual combat because that is an essential element of the state's proof in regard to this, not only that the young man was murdered with malice aforethought, but in this particular case that there was mutual combat between Mr. Robinson and Mr. Young which made the acts of one of them attributable to the acts of the other, and that the transferred intent that

applied to Mr. Robinson in the death of Khalil S. also applied to Mr. Young. All right.

Now the next charge is attempted murder. Under our law a person who with the intent to kill attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder. I had previously defined for you intent. I have also previously defined for you malice. So what you have to determine is whether or not Mr. Young with the intent to kill Mr. Robinson and with malice attempted to kill Robinson.

So, what is an attempt in the eyes of the law? An attempt is an act which is done in partial execution of a design or a plan to commit a crime. There has to be an intent that the act shall be done. And there has to be an act but not the completion of the act but an act done in pursuance or in partial completion of the intent. So an attempt is different from preparation to commit a crime, and it is also different from the intent to commit a crime because it is not against the law to prepare to commit a crime or even to think about committing a crime. So the mere entertainment of a criminal intent is not in and of itself an attempt to commit a crime. that is, some act acting toward the act which is intended.

To bring the law of attempt to commit a crime into action it is necessary that some act should be done in

pursuant to the intent which immediately and directly tending toward the commission of the crime. An act in other words that if the crime had actually been perpetrated it would constitute a part and a partial of the crime itself. But it doesn't reach to the accomplishment of the crime obviously in that case it would not be an attempt, it would be a completed act. It does not reach the accomplishment or the completion of the act because its prevented or it's voluntarily abandoned. That's the law on intent.

And as I told you here is included in that law or in that charge a lesser included charge of assault and battery in the first degree. In other words if you find that the state has failed to meet it's burden of proof as to the elements of attempted murder, then you may consider the offense of assault and battery in the first degree. Or you can consider it separately if you choose to.

A person commits the offense of assault and battery in the first degree if the person unlawfully offers, or attempts, as I've just described that to you, to injure another person with the present ability to do it, and the act is accomplished by means likely to produce death or great bodily injury. And so the state has to prove in this regard to sustain a conviction on the charge of assault and battery in the first degree that Mr. Young offered or attempted to injury another person. In this case Mr.

Robinson and he had the present ability to carry out that injury and the act or the attempt was accomplished by means that were likely to produce death or great bodily injury.

Of course we know what death is, I need not define that. But great bodily injury means bodily injury which causes a substantial rise of death, or, which causes serious permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

Ladies and gentlemen, I think I have answered all of the definitions that you sent out for me. I will ask you to go back in and continue to deliberations please. Thank you.

MADAM FORELADY: Thank you.

THE COURT: Thank you. And, folks, if you will go back to your alternate jury room please as well. Thank you.

(JURY EXITS COURTROOM AT 01:38 P.M..)

THE BAILIFF: The jury is clear, Your Honor.

THE COURT: Thank you. Mr. Stone, exceptions or request for additional charge?

SOLICITOR STONE: No, sir.

THE COURT: Thank you. Mr. Vaux?

MR. VAUX: Yes, sir.

THE COURT: Yes, sir.

MR. VAUX: First, Your Honor, I would ask that you preinstruct them on intent and malice. Without doing so you omit a key part of the charge of murder. Second, - -

THE COURT: I'm sorry, say that again now.

MR. VAUX: Without including the definition of intent and malice you said as I previously had instructed you about malice you leave out the two key elements of the - of murder. Second -

THE COURT: Did I not completely charge them on malice this time?

SOLICITOR STONE: You did. I understand what Mr. Vaux is saying but what you did is you said previously when you were doing attempted murder ---

THE COURT: Yes.

SOLICITOR STONE: --- you had just got through giving charges on malice as well as intent ---

THE COURT: Right.

SOLICITOR STONE: --- at the murder charge. So when you said previously you weren't talking about the first charge, you were talking about --

MR. VAUX: I took it - I didn't take it that it was the complete charge on intent and malice.

THE COURT: No. I had - When I was charging murder I gave the same malice charge that I gave before.

MR. VAUX: Right. Okay.

THE COURT: I chose not to give the malice charge when I was charging attempted murder cause I had just given it once already. I mean just two seconds before. And actually

that's the same way I did it when I charged them the first time I think.

MR. VAUX: Then this time you added in the portion about mutual combat you added portions of third party which I don't believe you included the first time.

THE COURT: I did not. I did not.

MR. VAUX: And I think that's a comment on the facts and it's an unfair burden if you will on the defendant and I would take exception to that.

THE COURT: I understand. And I know that you're right, I did add it this time. I added it for clarification because the charge on - from Brown refers to - refers to a death of one of the participants. And of course that is not the theory that we're operating under in this particular case and I don't think it's a correct statement of the law as I had previously held the law to be in my previous rulings pretrial. Because if the mutual combat applies only to the circumstances where in this case Mr. Robinson or Mr. Young were killed then I would have granted your motion to quash the indictment initially.

But as you recall I denied that motion on the basis of the fact that I held that the transferred intent is a matter of law for these purposes would transfer into an innocent third party for the reasons I put on the record at that time. But you're right, I did add it and if I got it wrong

in pretrial I got it wrong again but I think it's a correct statement of the facts and the law.

MR. VAUX: Can I have one second?

THE COURT: All right.

MR. VAUX: My only other comment is that the parties took no exception to your beginning instructions and to change it now is confusing to the jury and misleading to them.

THE COURT: I understand. Of course its not unusual when we recharge to try to make it a little plainer than we did before to avoid confusion. But you're right it's different, there's no question about that and I trust it was not misleading but if it was I'll be corrected by somebody else I'm sure.

MR. VAUX: Yes, sir.

THE COURT: Thank you.

MR. VAUX: Thank you.

THE COURT: Thank you. All right.

SOLICITOR STONE: Thank you, Your Honor.

THE COURT: Thank you all.

(COURT IN RECESS AT 02:00 P.M..)

(COURT BACK IN SESSION AT 03:20 P.M..)

THE COURT: Thank you, folks, you all can be seated.

The question from the jury ask for a copy of the transcript of Mr. Young's interview. And as it was

correctly pointed out at side bar the transcript itself is not in evidence. The video is, the transcript is an aide and therefore the only way to do this within the rules is to replay the video with the transcription below it. I do think the transcription is necessary to assist the jurors understanding some of it. The jury will be preinstructed of course that they're ear is as good as the transcriber's and they are to resolve any differences between what they think it says and what it says in favor of what they think it says. All right, are both sides ready for the jury?

SOLICITOR STONE: Yes, sir, the state's ready.

MR. VAUX: Yes, sir.

THE COURT: Good. Bring us the jury please.

(JURY REENTERS COURTROOM AT 03:25 P.M..)

THE COURT: Ladies and gentlemen, you had ask for us to send in a copy of the transcript of Mr. Aaron Young's interview. The transcript itself is not in evidence and so I could not send the transcript in. The transcript as I told you earlier is an aide to assist you if it provides assistance and understanding what the audio actually says and so I brought you back out so that you could hear it replayed. You can hear what he's saying you can see what the transcriber says. I remind you again that the transcriber is just typing what he or she thought Aaron Young was saying.

Now if your hearing says that he was saying one thing and the transcription says something else, you go with your hearing cause your hearing is just as good as the transcribers. But if it serves as an aide to you of course you can follow it, so that's the reason we're going to replay the transcription and of the video and the audio of Mr. Young's statement. Okay.

Yes, sir.

(WHEREUPON, STATE'S EXHIBIT NUMBER THIRTY-EIGHT, PUBLISHED TO THE JURY AT 03:28 P.M..)

THE COURT: Ladies and gentlemen, that completes the interview. I'm gonna ask you to go back to your jury room and continue deliberations. Let us know if you need anything further. Thank you.

(JURY EXITS COURTROOM AT 03:44 P.M..)

THE COURT: Thank you. Mr. Stone, anything further from the state?

SOLICITOR STONE: No, sir.

THE COURT: Mr. Vaux, from the defense?

MR. VAUX: No, sir.

THE COURT: All right. Thank you. Folks, we'll continue to stand at ease until we hear from the jury. Thank you.

(WHEREUPON, COURT'S EXHIBIT NUMBER THREE, IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

(COURT AT EASE AT 03:45 P.M..)

(COURT BACK IN SESSION AT 03:58 P.M..)

THE COURT: Thank you, folks, please be seated.

Ladies and gentlemen, we are advised that the jury has reached a verdict. Are both the state and the defense ready to receive the verdict?

SOLICITOR STONE: The state's ready, Your Honor.

MR. VAUX: The defense is ready.

THE COURT: Thank you. Folks, those of you who have been here following this case for the last couple of days with considerable interest, I appreciate very much the dignity and the respect that you have shown these proceedings throughout. As the verdict is announced there may be some emotional feelings that whel up in you; I understand that. It will be expected. There might be relief there might be disappointment.

I don't know what its gonna be and I don't want to prolong this any longer other than to ask you to please continue to use the same respect, dignity, the decorum and restraint that you have used throughout these proceedings. But if you feel like you might not be able to control your emotions when the verdict is announced, whatever it is, I'd be glad to give you this opportunity to leave the courtroom. If you remain here I will expect you to abide by those instructions. Thank you.

Bring us the jury.

THE BAILIFF: The jury is entering the courtroom, Your Honor.

THE COURT: Thank you, ma'am.

(JURY REENTERS COURTROOM AT 04:00 P.M..)

THE COURT: Thank you. Madam Forelady, have you reached a verdict?

MADAM FORELADY: Yes we have.

THE COURT: Is it a unanimous verdict?

MADAM FORELADY: It is.

THE COURT: Will you please hand it to the bailiff please, ma'am?

(VERDICT RECEIVED UP BY THE COURT.)

THE COURT: Thank you. Madam Clerk, you may publish the verdict.

MADAM CLERK: As to Indictment of 2012-GS-07-1932 the charge of murder we the jury find the defendant Aaron Scott Junior guilty of murder.

As to Indictment Number 2014-GS-07-1940 the charge of attempted murder we the jury find the defendant Aaron Scott Junior guilty of attempted murder.

THE COURT: Now you can ask the question.

MADAM CLERK: Madam Forelady, ladies and gentlemen of the jury, if this is the decision of each and everyone of you please indicate so by raising your right hand?

(ALL JURORS AFFIRMED BY RAISING THEIR RIGHT HANDS.)

(OUTBURST FROM THE COURTROOM.)

A. No. No. No. No. No. No.

MADAM CLERK: Put your hands down.

THE COURT: We will give just a moment to let them deal with her.

A. Oh, no, not my -- You all wrong, you all is wrong. He's not guilty. He ain't guilty. Not my brother. Oh, you all can't do this.

(BLACK FEMALE ESCORTED FROM THE COURTROOM.)

THE COURT: Mr. Vaux, does the defense desire polling the jury?

MR. VAUX: Yes, sir, Your Honor.

THE COURT: Ladies and gentlemen, you are now going to be polled by the clerk. That means your names are gonna be called individually. As your names are called if you will please stand in place right where you are she will ask you is this your verdict, was this your verdict, and is it still your verdict or questions to that effect, and please give whatever the appropriate answer is.

Madam Clerk.

MADAM CLERK: Juror 123, please stand.

(ASIAN MALE STOOD.)

MADAM CLERK: Is this yoru verdict?

JUROR ONE TWENTY-THREE: Yes.

MADAM CLERK: Is this still your verdict?

JUROR ONE TWENTY-THREE: Yes.

MADAM CLERK: You may be seated.

Juror two eighty-five.

(BLACK FEMALE STOOD.)

MADAM CLERK: Is this your verdict?

JUROR TWO EIGHTY-FIVE: Yes.

MADAM CLERK: Is this still your verdict?

JUROR TWO EIGHTY-FIVE: Yes.

Juror forty-one.

(WHITE MALE STOOD.)

(DISTURBANCE AND OUTBURST FROM THE COURTROOM HALLWAY.)

MADAM CLERK: Is this your verdict?

JUROR FORTY-ONE: Yes, ma'am.

MADAM CLERK: Is it still your verdict?

JUROR FORTY-ONE: Yes, ma'am.

MADAM CLERK: Juror four thirty-seven.

(HISPANIC FEMALE STANDS.)

MADAM CLERK: Is this your verdict?

JUROR FOUR THIRTY-SEVEN: Yes.

MADAM CLERK: Is this still your verdict?

JUROR FOUR THIRTY-SEVEN: Yes.

MADAM CLERK: Juror one twenty-four.

(WHITE FEMALE STANDS.)

MADAM CLERK: Is this your verdict?

JUROR FOUR THIRTY-SEVEN: Yes.
MADAM CLERK: Is this still your verdict?
JUROR FOUR THIRTY-SEVEN: Yes.
MADAM CLERK: Juror forty-five.
(WHITE FEMALE STOOD.)
MADAM CLERK: Is this your verdict?
JUROR FORTY-FIVE: Yes.
MADAM CLERK: Is this still your verdict?
JUROR FORTY-FIVE: Yes.
MADAM CLERK: Juror Fifty-nine.
(WHITE FEMALE STOOD.)
MADAM CLERK: Is this your verdict?
JUROR FIFTY-NINE: Yes.
MADAM CLERK: Is this still your verdict?
JUROR FIFTY-NINE: Yes.
MADAM CLERK: Juror three sixty-seven.
(BLACK FEMALE STOOD.)
MADAM CLERK: Is this your verdict?
JUROR THREE SIXTY-SEVEN: Yes.
MADAM CLERK: Is this still your verdict?
JUROR THREE SIXTY-SEVEN: Yes.
MADAM CLERK: Juror nineteen.
(WHITE FEMALE STANDS.)
JUROR NINETEEN: Yes.
MADAM CLERK: Is this still your verdict?

JUROR THREE SIXTY-SEVEN: Yes.

MADAM CLERK: Juror four one one.

(WHITE FEMALE STANDS.)

MADAM CLERK: Is this your verdict?

JUROR ONE-ELEVEN: Yes, ma'am.

MADAM CLERK: Is this still your verdict?

JUROR ONE-ELEVEN: Yes, ma'am.

MADAM CLERK: Juror three eighty-six.

(WHITE FEMALE STANDS.)

MADAM CLERK: Is this your verdict?

JUROR THREE EIGHTY-SIX: Yes.

MADAM CLERK: Is this still your verdict?

JUROR THREE EIGHTY-SIX: Yes.

MADAM CLERK: Juror three sixty.

(WHITE FEMALE STANDS.)

MADAM CLERK: Is this your verdict?

JUROR THREE SIXTY: Yes.

MADAM CLERK: Is this still your verdict?'

JUROR THREE SIXTY: Yes.

THE COURT: Thank you.

MADAM CLERK: You're welcome.

THE COURT: Is there anything further before the jury is dismissed, Mr. Vaux?

MR. VAUX: No, Your Honor.

SOLICITOR STONE: No, sir.

(DEFENDANT REMOVING BRAIDS FROM HIS HAIR.)

THE COURT: Thank you. Ladies and gentlemen, I want to thank you for your service this week. The emotions which you have heard expressed in this courtroom today are understandable. You heard on September the 1st of 2012 the emotions that were expressed over the 911 call when the event that set all of these proceedings into motion began.

Those were heart felt emotions as well for obvious reasons. Because that was a tragic event lives were taken, a life was taken, all lives were changed including lives in this courtroom today. But none of that, none of that falls at your feet, none of that is your responsibility. You have done what you were ask to do. You have listened to the evidence and the testimony and you have rendered a verdict which you found to be true according to your view of the evidence and the law.

You don't have to answer to anyone except your own conscious for the verdict that you have reached. I have sat here today and yesterday and I have heard the evidence in this case. I was a trial judge in the earlier trial. I heard the evidence in that trial as well. And I can tell you, ladies and gentlemen, that you don't need to have any fear of your conscious for the decision that you have reached in this particular case.

Ladies and gentlemen, you're gonna be excused now.

There is still a matter of sentencing that's my responsibility not yours. You are free to stay for that if you want to but if you've had all of this you want to you're free to go.

Madam Forelady, I'm gonna ask that you remain in the jury room for just a moment. The Clerk has to bring the indictments down there for you to sign those. You've signed the sentence sheet but there's a place on the indictment that has to be signed as well. That can be done in the jury room, she'll bring that down there to you.

You were exposed this week to a side of life that is foreign to you all and we understand that and we apologize for that. We have to deal with those things in this court more often than we would like. I appreciate the fact that you have given this attention and that you have given thoughtful deliberation. I never comment upon the verdicts which jurors reach. I'm glad that those are your decisions and not mine.

But I do comment upon the quality of your service. You have been thoughtful, you have been attentive, you have been prompt, you have been thorough and deliberate in your evaluations. You did not rush to judgment. You have ask for more about the law, you have ask for more about the facts, you did not make a decision in this case until you were sure it was the right decision and that's the way this

process should work. And we appreciate the thoroughness that you have brought to it.

Let me tell you that I hope you never find yourself caught up in this situation. I hope you never find yourself seated over here where the Singleton family is seated, the family of the victim. I hope you never find yourself seated over here where the relatives of Mr. Young who were so emotional and understandably so were seated. I hope you never find yourself or any relatives of yours that are dear to you caught up in a situation like this. But let me tell you, you don't have to volunteer to get caught up in this situation. These folks didn't volunteer to get caught up in it either.

And while I hope that that never happens to you, or to any family member, if it ever does and if you ever find yourself seated in this courtroom, or one like it, where these folks are seated, where these folks are seated, when the jury comes in on Monday morning like you all did Monday morning it's gonna be the jury that's gonna be selected to try your case and when you turn and you look into the faces of those jurors you're gonna hope that you look into faces of people just like yourselves. People who have better things to do and who would rather be doing those things but who have been willing to set those things aside and help us do the things that we have to do, unpleasant things

sometimes, but necessary things, things that cannot be done without your services.

The last thing that you want us to do to try a case that you have a personal interest in is to wonder around the streets of Beaufort to see if we can't scrape up twelve people who don't have a better thing in the world to do than to come in this courtroom and decide your case.

Nobody wants that kind of juror. They want folks like you. These folks wanted folks like you and you have given that sort of jury and we are all grateful for that. You are now free to talk about this case with anybody that you want to if you care to but you don't have to.

And so if someone should ask you about how you did what you did why you did what you did what went on in the jury room, what your impression was of this proceeding, you don't have to talk about those matters if you don't want to. You are free to say anything that you would like to however if you care to.

Ladies and gentlemen, I won't belabor the point any more. Bad weather's coming in and I'm gonna let you go with our thanks for what you've done in this case. Thank you.

(JURY DISMISSED AT 04:10 P.M..)

THE COURT: Mr. Vaux, I'll be glad now to hear motions.

MR. VAUX: Your Honor, we ask that you act as the thirteenth juror and to basically either grant a new trial

or to act as the thirteenth juror.

THE COURT: Thank you, Mr. Vaux. I find that this was throughout a quintessential jury question. All of the issues were presented to the jury, the issue of guilt and innocence of course obviously always. The issue of whether mutual combat applied, or whether transferred intent applied. Those matters which are obviously are now issues for Appellate review or will be as they should be.

The jury heard everything that we've heard. The verdict of the jury was supported by the evidence in this case, once again taking that evidence in the light that it needs to be taken in. It is supported by the evidence and for that reason I must respectfully deny your motion for a new trial. I decline to act as a thirteenth juror in this case. The twelve jurors who did act I felt acted within the facts and the law and so the motions are respectfully denied.

MR. VAUX: Thank you, Your Honor.

THE COURT: All right. Is the state ready to proceed to sentencing?

SOLICITOR STONE: The state is ready, Your Honor. If I could have just a moment to speak to the family for just a moment.

THE COURT: All right. Thank you.

Mr. Vaux, is the defense ready to proceed to

sentencing?

MR. VAUX: Yes, sir.

THE COURT: Thank you.

MR. VAUX: Your Honor, may Mr. Young, Senior, the grandfather come forward?

THE COURT: I'll be glad to hear from him. You talking about Mr. Benny Young?

MR. VAUX: Yes, sir.

THE COURT: Yeah. I'll be glad to. What does security say to that, gentlemen? I'm gonna leave that up to you all. I can hear - I'll be glad to hear him if he wants to stay outside behind the bar. I'll leave those questions up to the folks who are in charge of security. I never usurp their responsibilities in that regard.

(MR. VAUX AND DEFENDANT AARON YOUNG STAND.)

THE COURT: You ready, Ms. Wanda?

Mr. Solicitor.

SOLICITOR STONE: Your Honor, his prior record is a disturbing school for 19 - from 2011 a few months prior to this incident taking place, and I think in fact that there was actually some reference to that in his statement that we had taken out to make sure that the jury did not have any of that information. I've spoken to the family, the family does not wish to address you. Of course, Your Honor, as you know they addressed you after the Tyrone Robinson case and

that was certainly a difficult ordeal. But from that standpoint, Your Honor, you are more than familiar with the facts of the case and the circumstances and so from that standpoint that is our position. We will leave that to you.

THE COURT: Thank you. Mr. Vaux, I'll be glad now to hear from you, from Mr. Young, or anyone on his behalf.

MR. VAUX: Your Honor, I'd like for Benny Young to speak, the grandfather.

THE COURT: All right. Mr. Benny Young, I'll be glad to hear from you, sir.

BENNY YOUNG: Judge, ever since this thing happened our family they emotionally tore up from both parts. They have been here, my grandson and everything but, Your Honor, in all fairness we feel and more than we feel like the people in the community also felt that if the law enforcement had dealt with Mr. Tyrone Robinson when he was on this rampage tearing up Hilton Head, tearing up Spanish Wells, tearing up Marshland Road we would still have Khalil. Now you're blaming it all on little Aaron. But they took a stand because nobody else wouldn't take a stand against Tyrone Robinson.

(BENNY YOUNG SLAPPED HAND ON COURTROOM BAR/DIVIDER AND POINTING.)

BENNY YOUNG: Law enforcement, you know this too but Khalil had to die and --

(EMOTIONAL OUTBURST FROM COURTROOM.)

THE COURT: Mr. Young.

THE DEFENDANT: They don't care, y'all, I don't care, y'all, they already convicted me so there ain't nothing you can tell me, brother, that's all right.

Bob Bromage, you all know and all that stuff you all did you all promised me I wouldn't be tried y'all and y'all know this and you all didn't bring this up and you sat right here and --

BENNY YOUNG: Aaron. Aaron.

(SHOUTING FROM DEFENDANT AND PERSON IN COURTROOM.)

THE DEFENDANT: Nothing, nothing, mother fucker, you all better remember my face fuckin nigger.

BENNY YOUNG: Aaron.

THE DEFENDANT: You know you did that files stuff, man. Khalil brother ---

(OUTBURST FROM DEFENDANT AND MULTIPLE PARTIES IN COURTROOM.)

THE COURT: You can take Mr. Young, take Mr. Young.

THE DEFENDANT: --- that's why I say that in my testimony right or wrong. Everything you all, you all, you all, say nothin, nothin, we gave up them --

(DEFENDANT ESCORTED FROM COURTROOM TO HOLDING CELL.)

(LOUDER OUTBURST/DISTURBANCE FROM THE COURTROOM.)

THE COURT: Folks.

(COURT STANDING AND STRIKING THE BENCH.)

THE COURT: Let me tell you, this is not a circus.

BENNY YOUNG: I understand.

THE COURT: This is not Marshland Road. This is a court of law.

BENNY YOUNG: Yes, sir.

THE COURT: And if I hear another outburst like that unfortunately other members of Aaron Young's family is gonna spend the night in jail. I don't want to do that. I've got all that I need to do in dealing with this case. I'll be glad to hear anything positive that you want to say on behalf of your relatives so I can take that into account in passing sentence.

I will not hear another word of condemnation against a police officer or court officials or anybody else who make up a part of this process. This jury has spoken, his guilt has been determined. Tyrone Robinson is spending the rest of his life in jail. They have dealt with him and now I'm going to deal with Aaron Young, Junior. I do not want to have to put you all in jail either.

And, Mr. Benny Young, you brought that on by your own outburst and I can appreciate your emotion. I understand that. I'm a grandfather myself but I want you to know that that sort of outburst over in that neighborhood is the sort of thing and that temperate by everybody on both sides of

this is what leads to events like this in the first place.

BENNY YOUNG: Yes, sir, Your Honor.

THE COURT: Now if there's anything else you want to tell me about your grandson ---

BENNY YOUNG: Yes, Your Honor.

THE COURT: --- I'll be glad to hear from you but I'm not gonna hear another word of condemnation about these folks.

BENNY YOUNG: I understand that, Your Honor, that's just the way it happened. I may have said something disrespectful to the courts and I'm sorry about that but that's just the way it happened. And I can't change that, Your Honor.

THE COURT: All right, sir. I understand that.

BENNY YOUNG: And I appreciate the court going through the decision of all this and I would really appreciate lenience on my grandson.

THE COURT: I understand that, Mr. Young. Thank you.

Does anybody else wish to be heard on this matter?

MR. VAUX: No, sir, other than me.

THE COURT: All right. Mr. Vaux, I'll be glad now to hear from you, sir.

MR. VAUX: Yes, sir. I just need a second.

THE COURT: I understand.

MR. VAUX: Your Honor, this is a unique situation.

THE COURT: Right.

MR. VAUX: Obviously from a law point of view and the new law but it's also - People know it's wrong to kill somebody.

THE COURT: Right.

MR. VAUX: And I mean we don't need to presuppose that, we've learned that. But I'm not sure that within society that the business about mutual combat is fully understood and appreciated as I think Your Honor said the or the solicitor said the case has been on the books since 1918 and as the Chief Justice said it ain't used very often.

THE COURT: Right.

MR. VAUX: I can tell you it's the first time it's been used in Beaufort County in forty-two and a half years. Your Honor I think was a year or two ahead of me in law school and you've tried a lot more criminal cases than I have and maybe you tried a mutual combat case before ---

THE COURT: No, sir.

MR. VAUX: --- but I think if you had I'd heard about it.

THE COURT: It's the first one here.

MR. VAUX: And so, Your Honor, from that point of view I'd ask that you not give him the maximum. I think you can send a message that you need to send.

THE COURT: Right.

MR. VAUX: Not saying obviously that I agree with the jury's verdict, I understand it. But you - And I think - I don't think the solicitor would disagree with me - the point of the - in addition to the death of Khalil which was a tragedy he has handled that from the point of view of the person who pulled the trigger.

THE COURT: Right.

MR. VAUX: I think part of the reason that he's taken the stand he's taken is to send a message ---

THE COURT: Right.

MR. VAUX: --- to St. Helen, to Bluffton. We've had a couple of shootings this year in Bluffton which are group mob, gag, whatever you want to call it.

THE COURT: Right.

MR. VAUX: You can send that message without dropping the bomb imposing a life sentence. I don't think frankly as a biased attorney that it's fair to sentence him to the same thing that you sentenced Tyrone to.

THE COURT: I don't disagree with that.

MR. VAUX: And that's what I'd ask and I'd ask that you - And he's a young man. He can be rehabilitated I hope after this afternoon. Thank you.

THE COURT: Thank you. I understand that not only the death Khalil and everything that's happened since that time my understanding is that most of these folks are related.

Some are Robinson's and some are Young's are related. As a matter of fact we had the one juror who was related to everybody on both sides. And so I can appreciate the fact that that even adds to the emotional terror for both families and make it probably more difficult for those folks to deal with each other in the future.

And, Mr. Benny Young, I appreciate the emotions that you have. I can understand that. What I was talking to you about was the venting of those emotions in such a way that it created a disturbance here in the courtroom when it did. I would expect you to have the feelings that you had. I understand that.

BENNY YOUNG: Thank you, Your Honor.

THE COURT: Okay. Thank you. I appreciate where you're coming from and I'm sorry that you as an innocent party as innocent as the parties are caught up in this. Victims in your own rights of some sort. Family members all have to suffer loss as their loss is permanent. Your loss thankfully is not that same but its still a severe loss.

Do we have sentencing sheets here?

Would you all check and see if Mr. Young wishes to come out for the sentencing and if he wishes to say anything? If he does not he does not have to.

MR. VAUX: Your Honor, may I be excused just a second?

THE COURT: Sure.

(DEFENDANT REENTERS COURTROOM.)

THE COURT: Mr. Vaux, do you know if Mr. Aaron Young, Junior has anything he wants to say at this time?

MR. VAUX: He does not, Your Honor.

THE COURT: Thank you.

MR. VAUX: Now he says he wishes to say something, Your Honor.

THE COURT: All right. Mr. Young, I'll be glad to hear from you. Understand that the jury has spoken and I accept the jury's verdict. What I want to hear from you is there anything that you feel I should take into account in deciding whether to sentence you to thirty years in jail or life imprisonment. Those are - Or anything in between of course. Those are the choices that I have and that's what I'm trying to decide right now. So anything that you can tell me that will help me make that decision I'll be glad to hear from you.

MR. VAUX: He says he has nothing to say, Your Honor.

THE COURT: All right. Thank you.

(PAUSE.)

THE COURT: Mr. Young, on the charge of murder under Indictment Number 1932 and the charge of attempted murder under Indictment Number 1940 the sentences are the same, you are to be committed to the State Department of Corrections for a period of thirty years. The sentences run concurrent

to each other, get credit for time served.

SOLICITOR STONE: Thank you, Your Honor.

THE COURT: Thank you.

MR. VAUX: Thank you, Your Honor.

THE COURT: Thank you all.

(DEFENDANT ESCORTED FROM THE COURTROOM.)

THE COURT: All right, folks, we're still in session please. Thank you.

Mr. Solicitor, I take it that concludes the work of the court?

SOLICITOR STONE: I apologize, Your Honor. Yes, sir.

SOLICITOR STONE: Yes, sir.

THE COURT: All right. Thank you. Thank you ladies and gentlemen, court is adjourned. Sine die. Thank you.

(COURT ADJOURNED AT 04:15 P.M..)

(END OF TRANSCRIPT OF RECORD.)

RECEIVED
APR 01 2020
Referred to Cpt Lt/M. Brown
Answered S. Denton

Aaron Scott Young Jr., # 363175
Kirkland Correctional Institution (F2B-257)
4344 Broad River Road
Columbia, South Carolina 29210

2020 MAR 30 PM 12:22
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

March 24, 2020

Jerri Ann Roseneau
Clerk of Court
P.O. Drawer 1148
Beaufort, South Carolina 29901

Re: Application for Post-Conviction Relief

Dear, Jerri Ann Roseneau

Enclosed is my application for Post Conviction Relief which consists of 54 pages in it's entirety. I ask that you scan and copy all pages front and back and file this application. In addition, I would like for you to foward me a clocked stamped copy for my personal files to the address above at the heading of this letter.

God Bless!
Aaron Scott Young Jr.
Aaron Scott Young Jr.

FORM 5

2020 CP-07-792

STATE OF SOUTH CAROLINA)
)
County of Beaufort)

IN THE COURT OF COMMON PLEAS

Daron Scott Young Jr., # 363175)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2020 MAR 30 PM 12:22
JEROME A. ROSEBEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS – READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional Institution
   4344 Broad River Road, Columbia, South Carolina
2. Name and location of Court which imposed sentence Beaufort, South Carolina
3. Name(s) of co-defendant(s) (if any) Daron Scott Young Sr., # 283580
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) Murder Indictment # 2012GS0701932
   (b) Attempted Murder Indictment # 2014GS071940

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) February 25, 2015; 30 years

(b) February 25 2015; 30 years

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. South Carolina Supreme Court

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed both Convictions

ii. Affirmed both Convictions

iii. _____

(c) the date of each such result:

i. August 22, 2018

ii. February 5, 2020

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. State v. Young, 424 S.C. 424, 813 S.E.2d 486 (Ct. App. 2018)

ii. Opinion No. 27942

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

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

(a) See Attachment

(b) _____

(c) _____

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

(a) See Attachment

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Petition for Rehearing

ii. Petition for a Writ of Certiorari

iii. Petition for Rehearing

iv. _____

(b) the name and location of the Court in which each was filed:

i. South Carolina Court of Appeals

ii. South Carolina Supreme Court

iii. South Carolina Supreme Court

iv. South Carolina Supreme Court

(c) the disposition thereof:

i. Convictions Affirmed; Rehearing Denied

ii. Writ of Certiorari granted

iii. Convictions Affirmed

iv. Rehearing Denied

(d) the date of each such disposition:

i. September 20, 2018

ii. May 9, 2019

iii. February 5, 2020

iv. March 12, 2020

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

_____

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Because the appeals stage only corrects errors of law; motions and instructions.

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

_____

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

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

i. Robert Vaux
P.O. Box 769, Bluffton, SC 29910

ii. F. Elliotte Quinn IV
103 Grandview Dr. Suite A. P.O. Box 2610. Summerville, SC 29484

iii. Jennifer Dunlap
200 Meeting St. Ste 301. Charleston, SC 29401

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

i. Trial Attorney

ii. Appeals Attorney

iii. Appeals Attorney

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

Reversal and Vaction of both Murder and Attempted Murder Convictions.

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

No

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Richland)

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

Aaron Scott Young Jr.

SWORN to and subscribed before me this 24th day of March, 2020.

BM Mangold (L.S.)
Notary Public

My Commission Expires:

BETH A. MANGOLD
Notary Public, State of South Carolina
My Commission Expires 8/10/2028

Revised 3/2003

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

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

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Aaron Scott Young Jr.
Applicant

SWORN or affirmed to and subscribed before me this 24th day of March, 2020.

BMangold
Notary Public

BETH A. MANGOLD
Notary Public, State of South Carolina
My Commission Expires 8/10/2028

My Commission Expires:

2020 MAR 30 PM 12: 22
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Revised 3/2003

10(a): Applicant was denied the right to effective assistance of counsel - guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I §§ 3 and 14 of the South Carolina Constitution - during the guilt - or - innocence phase of his trial.

11(a): Supporting facts: Trial counsel's performance during the guilt- or innocence phase was both unreasonable and prejudicial. See Strickland v. Washington, 466 U.S. 668 (1984): Counsel's acts or omissions included, but are not limited to the following:

Trial counsel was ineffective for failing to move for a dismissal of Applicants charges at the Preliminary Hearing when the state failed to present any evidence of probable cause.

Trial counsel was ineffective for failing to object to the trial courts erroneous failure to instruct "specific intent to kill" as an essential element of attempted murder.

Trial counsel was ineffective for failing to move the courts for a mistrial after trial courts prejudicial ruling in regards to the burden shifting instruction as it related to the Murder charge.

Trial counsel was ineffective for failing to test the voluntariness of Applicants statement

Trial counsel was ineffective for failing to object to trial courts erroneous failure to charge only the current and correct law of South Carolina.

Trial counsel was ineffective for failing to object to trial courts biased and prejudical remarks while on Applicants directed verdict motion for murder.

Trial counsel was ineffective for failing to investigate whether the county grand jury had been legally impaneled.

Trial counsel was ineffective for failing to object to the fatal variance at trial between the murder indictment and the jury instructions which permitted conviction for transferred intent.

Trial counsel was ineffective for failing to object to the trial courts erroneous burden shifting ruling in regards to Applicants motion to quash the murder indictment which failed to include an essential element of the offense charged.

Trial counsel was ineffective for failing to file a meritorious motion to supress unlawfully seized statements.

Trial counsel was ineffective for failing to object to the introduction of evidence regarding two third party hearsay witnesses not presented at Applicants preliminary hearing.

Trial counsel was ineffective for failing to object to the trial courts erroneous failure to give jury instructions that fit the facts of the case as it related to the murder charge.

Trial counsel was ineffective for failing to file a meritorious motion to supress unlawfully seized physical evidence.

Trial counsel was ineffective for failing to move for a dismissal of Applicant's charge at the Preliminary Hearing when the state failed to present any evidence of probable cause.

On September 28, 2012 Applicant appeared before the Honorable Richard A. Brooks at approximately 9:00 a.m. to conduct a Preliminary Hearing on the merits of whether any probable cause existed on the offense charged.

Preliminary Hearings are to determine whether there is sufficient evidence against the accused to warrant presenting his case to the grand jury and, if so, to fix bail the offense is bailable. See, Coleman, ET Al v. Alabama. 399 U.S. 1 (1970)

At the hearing, the state failed to present any witnesses who could have given sworn testimony and undergo cross-examination to suffice evidence of probable cause in support of the offense charged.

Subsequently, magistrate Brooks ruled he would post pone the determination of whether there was sufficient probable cause to hold Applicant in a further proceeding.

Trial counsel was ineffective for failing to move the court for a dismissal of Applicant's charges due to a lack of probable cause.

Applicant asserts trial counsels error was substantial and prejudicial because the state produced the testimony of witnesses at trial that he wasn't provided of or afforded the opportunity to cross-examine at the critical preliminary hearing stage violating his Sixth Amendment Right to confront his accusers.

Trial counsel was ineffective for failing to object to the trial courts erroneous failure to instruct "specific intent to kill" as an essential element of attempted murder.

Section 16-3-29 of the South Carolina Code of laws (Supp. 2014) defines attempted murder: A person who, with intent to attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder.

Because the crime is defined by statute, we first look to the language of the statute to determine what the Legislature intended the elements of the crime to be including the level of intent required. See, Gvinyard v. State, 260 S.C. 220, 227, 195 S.E. 2d 392 395 (1973) ("The power of Legislature to declare what act shall constitute crimes... includes the power to make the commission of the act criminal without regard to the intent or Knowledge of the accused.... Therefore, whether Knowledge and intent are necessary elements of a statutory crime must be determined by the langvage of the statute.... (Citing State v. Manos, 179 S.C. 45, 49-50, 183 S.E. 582, 584 (1936))).

The phrase "with the intent to kill" in Section 16-3-29 does not clearly indicate what level of intent the Legislature meant to require the State to prove because the word "intent" can mean anything from purpose to negligence. See, State v. Jefferies, 316 S.C. 13. 18, 446 S.E. 2d 427, 430 (1994).

Attempted murder would require the "specific intent to kill", and "specific intent" means that the defendant consciously intended the completion of acts comprising the [attempted] offense..." 340 S.C. at 397, 532 S.E. 2d at 285.

Reviewing the trial transcript this Court will find that the trial court did not instruct the jury "specific intent to kill" is an essential element of attempted murder. See. Trial Transcript p. 560, line 3 - p. 561, line 9.

Applicant asserts that a constitutional charge would have had an impact on the jury's verdict.

Trial counsels failure to repeatedly object to the erroneous jury instruction led to representation that fell below the prevailing norms of the legal profession and that his performance was objectively unreasonable.

Trial counsel was ineffective for failing to move the courts for a mistrial after trial courts prejudicial ruling in regards to the burden shifting instruction as it related to the Murder charge.

While recharging the jury on Mutual Combat the trial courts erroneously broaden the language of the doctrine which shifted the burden of proof unconstitutionally from the state to the Applicant. See. Trial Transcript p. 568. line 2-8.

Trial counsel objected to the burden shifting jury instruction as erroneously stating Mutual Combat extends to third party, non combatants and the trial courts denied counsels objection. See, Trial Transcript p. 564. line 3- p. 565. line 8.

Mandatory presumptions are unconstitutional in criminal cases, however, because they shift to the defendant the burden of persuasion as to an element of the crime. See. Sandstrom v. Montana, (1979) 442 U.S. 510.

Trial courts made the acknowledgement that he may have given an incorrect statement of law but neglected to rectify such by declaring the current and correct law. See, Trial Transcript p. 565. line 9-14.

Applicant asserts trial counsel was ineffective for failing to move for a mistrial after trial court denied his objection

Trial counsels error created a due process structural defect in Applicants trial. The structural defect in the constitution of the trial mechanism, affected the framework within which the trial proceeds, rather than simply an error in the trial process itself.

Trial counsel was ineffective for failing to test the voluntariness of Applicants statement.

Applicant maintains that Trial counsel was ineffective for failing to test the voluntariness of Applicants statement as it related to the completeness of the Miranda Warning. Reviewing the trial transcript, this court will find that the State's witness Investigator Doug Seifert gave inconsistent testimony in regards to the audio video recording of Applicants Miranda Rights. See. Trial Transcript p. 215, line 21- p. 217, line 11.

Trial counsel exercised his ineffectiveness in failing to impeach a state witness who gave inconsistent testimony on the record while under oath.

The testimony of an inconsistent testimonial statement of any witness can not be received as evidence of any fact touching the issue. Therefore, a hearing regarding the merits was required.

Trial counsel further demonstrated his lack of competence by failing to test the voluntariness of Applicants statement during the Jackson v. Denno hearing. See. Trial Transcript p. 223, line 24- p. 224, line 4.

It is clear Trial counsel deprived Applicants constitutional right in the proceedings failing to object to the use of the confession

and to have a fair hearing and a reliable determination on the issue of voluntariness, a determination uninfluenced by the truth or falsity of the confession.

This procedure conformed to the orthodox rule approved by the United States Supreme Court in Jackson v. Denno (June 22, 1964), 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed. 2d 908, A.L.R. 3d 1205.

Trial counsel was ineffective for failing to object to trial courts erroneous failure to charge only the current and correct law of South Caroline.

While recharging the jury on Murder the trial courts erroneously omitted essential langauge of the statute which unconstitutionally shifted the burden of proof from the State to the Applicant. See. Trial Transcript p. 555. line 20-25.

In general, the trial judge is required to charge only the current and correct law of South Carolina. See. Cohens v. Atkins. 333 S.C. 345. 509 S.E. 2d 286 (Ct. App. 1998).
A jury charge is correct if it contains the correct definition of the law when read as a whole. See. Keaton v. Greenville Hosp. Sys., 334 S.C. 488. 514 S.E. 2d 570 (1999).

Applicant asserts the omission of langauge which trial counsel failed to object to should have been corrected because it may have caused the emotions of the jury to be excited and compel them to irrational behavior to which resulted in Applicant receiving the prejudicial effects of a constitutional violation.

Trial counsel was ineffective for failing to object to trial courts biased and prejudicial remarks while ruling on Applicants directed verdict motion for murder.

To state a claim that a Judge improperly favors the prosecution. Applicant must show either actual bias or the appearance of bias creating presumption of actual bias. See. Wallace v. Bell, 387 F. Supp. 3d 728.

The State's witness, lead investigator Sergeant Laurel Albertin, testified under oath on the record that there was no evidence to suggest Applicant saw Robinson on Allen Road. See. Trial Transcript p. 456, line 12-19.

While ruling on Applicants motion for directed verdict the trial courts stated: "I'm not even sure that they knew Mr. Robinson was there until they were riding away and heard the shots." See. Trial Transcript p. 491, line 9-11.

Additionally, there was no evidence presented to show Applicant was engaged in any combative or threatening act at the time Robinson fired the fatal shot.

To the contrary, the evidence presented indicated Applicant was fleeing based on witness testimony that they were "speeding up out of Allen Road onto Marshland Road." See.

p. 273. line 26 - p. 274. line 1.

Trial courts acknowledged this in his statement that "they shot and they left in a hurry." See. Trial Transcript p. 491. line 8.

However, in final disposition denying Applicants motion for directed motion trial courts ruled that leaving the scene did not establish the end of mutual combat because Applicant was "just going to live to fight another day" and it did not show that a "truce has been declared." See. Trial Transcript p. 491. line 18 - p. 492. line 6.

Trial judge must act with absolute impartiality in the performance of judicial duties. See. Canon 3. of Rule 501. SCACR.

While we accord great weight to the trial judge's assurance of his own impartiality, we find a judge impartiality might reasonably be questioned when his factual findings are not supported by the record. See. Ellis v. Procter and Gamble Distributing Company 433 S.E. 2d 856 (1993).

Trial counsel's failure to raise an objection, to the trial courts biased remarks and ruling led to Applicant receiving the effect and result of conviction by unreasonable representation.

Trial counsel was ineffective for failing to investigate whether the county grand jury had been legally impaneled.

Applicant was allegedly indicted on October 30, 2014 at a Court of General Sessions by the Grand Jurors of Beaufort County for the common law offenses of murder "16-3-10" and attempted murder "16-3-29."
See. Murder Indictment # 2012630701932
See. Attempted Murder Indictment # 2014630701940

Applicant asserts the Beaufort County Grand Jury never returned any indictments for the offenses charged October 30, 2014. Therefore, the notices hold no binding legal effect depriving him of life and liberty without due process of law in violation of the state constitution. Because he was entitled to be indicted and tried by indictment from a legally qualified grand jury.

Trial counsel failed to act with reasonable diligence in a timely manner contesting the legality and sufficiency of the process of the grand jury before the jury rendered its verdict pursuant to Section 14-7-1140.

Trial counsel was ineffective for failing to object to the fatal variance at trial between the Murder Indictment and the jury instructions which permitted conviction for transferred intent.

Applicant was indicted for the common law offense of Murder which the South Carolina Code defines as " the killing of any person with malice aforethought either express or implied," S.C. Code Ann § 16-3-10.

At trial the state broadned the indictment by amending transferred intent into it's notice without being returned by the grand jury. See. Murder Indictment # 2012GS0701932

According to Section 17-19-10 of the South Carolina Code of Laws. A defendant in a criminal case is entitled to be tried only on the charges set forth in the indictment.
See. Stirone v. United States, 361 U.S. 212 (A court can not permit a defendant to be tried on charges that are not made in the indictment against him.

Applicant asserts the variance in the indictment was prejudicial because it suprised him at trial and hindered the preparation of his defense violating his Fifth Amendment Right.

Trial counsel's failure to object to the transferred intent charge to the jury was constitutionally impermissible.

There is a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different.

Trial counsel was ineffective for failing to object to the trial courts erroneous burden shifting ruling in regards to Applicants motion to quash the murder indictment which failed to include an essential element of the offense charged.

Applicant was indicted for the common law offense of Murder which the South Carolina Code defines as "the killing of any person with malice aforethought either express or implied." S.C. Code Ann § 16-3-10.

Section 17-19-30 states:

"Every indictment for murder shall be deemed and adjudged sufficient and good in law which, in addition to setting forth the time and place, together with a plain statement divested of all useless phraseology of the manner in which the death of the deceased was caused, charges that the defendant did feloniously, willfully and of his malice aforethought kill and murder the deceased.

Applicant asserts the indictment is defective on it's face because it does not contain the words and the common law of South Carolina that the Applicant killed and "murdered" the deceased which is a critical element of Murder. See. Murder Indictment # 2018GS0701932

Mere citation to the applicable statute does not give the defendant notice of the nature of the offense. An indictment that must rely on statutory citation does not fully, directly, and expressly without any uncertainty

or ambiguity set forth all the elements necessary to constitute the offense intended to be punished." See. Hamling v. United States, 418 U.S. 87, 117, 94 S.Ct. 2887, 2907-08, 41 L.Ed. 2d 590 (1974).

Therefore, due to trial counsels failure to object to the trial courts erroneous ruling. Applicant was convicted for an offense to which he was not adequately charged by returned indictment by the grand jury.

Trial counsel was ineffective for failing to file a meritorious motion to supress unlawfully seized statements.

A law enforcement officers failure to administer Miranda Warnings prior to custodial interrogation creates a presumption of compulsion. and the confession is admissible with no need for the time consuming and difficult inquiry into voluntariness for the Miranda safeguards to apply. (1) the suspect must be in custody. and (2) the questioning must meet the legal definition of interrogation. The government bears the burden of showing that these rights were waived and the voluntariness of the statements.

Applicant asserts the record reflects officer Laurel Albertin under oath testified she did not administer him his Fifth Amendment Right against self-incrimination also Known as Miranda Warning prior to custodial interrogation. Transcript page. 445 line 20-23.

Accord." the prosecution is barred from using any statements in its case. whether exculpatory or inculpatory. obtained from a suspect during custodial interrogation unless it first demonstrates that the suspect was afforded the procedural safeguards against self incrimination Known as the Miranda Warning. See. Miranda v. Arizona. Supra at 384 U.S. 444 at 86 S.Ct. 1612.

Applicant asserts after apperent subjection to psychelegical pressure he gave an incriminating statement to the Beaufort County Sheriff's Office unvoluntarily.

The "fruit of the poisonous tree doctrine" holds that where evidence would have not come to light but for the illegal actions of police and evidence has been obtain by exploitation of that illegality) evidence "must" be excluded. Brown v. Illinois. 442 U.S. 590, S.Ct. 2284, 45 L.Ed. 2d 416.

Because Applicants counsel failed to move to supress the confession. the State's case was not subjected the meaningful adversarial testing which under our system of Justice.

Trial counsel was ineffective for failing to object to the introduction in evidence of two third party hearsay witnesses not presented at Applicants preliminary hearing.

On September 28, 2012 Applicant appeared before The Honorable Richard A. Brooks at approximately 9:00 a.m. to conduct a Preliminary Hearing on the merits of whether any probable cause existed on the offenses charged.

At the hearing, the state failed to present any witnesses who could have given sworn testimony and undergo cross-examination to suffice evidence of probable cause in support of the offenses charged.

However, at trial the state produced the testimony of two third party hearsay witnesses that Applicant wasn't prior noted of or afforded the opportunity to cross-examine at the critical preliminary hearing stage violating his Sixth Amendment Right to confront his accusers.

The Sixth Amendment's Confrontation Clause, made applicable to the States through the Fourteenth Amendment, Pointer v. Texas, 380 U.S 400; Davis v. Alaska, 415 U.S. 308

provides: " In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him ...

Trial counsel's failure to object to the testimony of the state third party witnesses permitted conviction of evidence at trial when formally there was none ...

Trial counsel was ineffective for failing to object to the trial court erroneous failure to give jury instructions that fit the facts of the case as it related to the murder charge.

The state's witness, lead investigator Sergeant Laurel Albertin testified under oath on the record that there was no evidence to suggest Applicant saw Robinson on Allen Road. See. Trial Transcript p. 466, line 12-19.

While ruling on Applicant's request for jury instructions on the end of mutual combat the trial court stated: "I'm not even sure that they knew Mr. Robinson was there until they were riding away and heard the shots." See. Trial Transcript p. 491, line 9-11.

Additionally, there was no evidence presented to show Applicant was engaged in any combative or threatening act at the time Robinson fired the fatal shot.

To the contrary, the evidence presented indicated Applicant was fleeing based on witness testimony that they were "speeding up out of Allen Road onto Marshland Road." See. p. 373, line 25- p. 374, line 1.

Trial courts acknowledged this statement that "they shot and they left in a hurry." See Trial Transcript p. 491 line 8.

However, in final disposition denying Applicant's request for jury instructions trial courts ruled leaving the scene did not establish the end of mutual

combat because Applicant was "just going to live to fight another day" and it did not show that a "truce has been declared." See, Trial Transcript p. 491, line 18 - p. 492, line 6.

Applicant asserts while this may have been the case, and the jury could have agreed, the facts remains if there was any evidence to support withdrawal, the trial judge should have given the charge State v. Smith, 391 S.C. 488 ("If there is any evidence to warrant a jury instruction, a trial court must, upon request, give the instruction."); State v. Shuler, 344 S.C. 604 ("If there is any evidence to support a charge, the trial judge should grant the request.

The trial court commits reversible error if it fails to give a requested charge on an issue raised by evidence.

At a minimum, Applicants conduct of driving away constituted some evidence of his withdrawal such that a charge on this issue was warranted.

Trial counsels failure to object to trial courts denial to give requested jury instructions deprived Applicant of his due process procedural right against life and liberty with process of law.

Trial counsel was ineffective for failing to file a meritorious motion to supress unlawfully seized physical evidence.

On Sept. 1, 2012, Curtis Evans, a corperal with the Beaufort County Sheriff's Office chatted with Applicant's co-defendat Aaron Young Sr., inside the Hilton Head Island police substation.

Evans was supposed to simply stand guard of suspect, Aaron Young Sr., who was being held in the shooting death of the victim Khalil Singleton.

But Evans chatter with Young Sr., turned into unauthorized questioning that gave away to false promises.

In a recording captured on Evans body microphone, he can be heard telling Young Sr., he could avoid the murder charge if he cooperated with detectives. And when Young Sr., requested a attorney, Evans continued his questioning, failing to relay Young Sr., request to investigators.

Young Sr., did cooperate - revealing where a gun, a key piece of evidence, was hidden.

Where "the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that leads itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult

with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied "the Assistance of Counsel" in violation of the Sixth Amendment to the Constitution as made obligatory upon the States by the Fourteenth Amendment and that no statement elicited by the police during the interrogation may be used at trial. Escobedo v. State of Illinois, 378 U.S. 478.

We conclude that law enforcement officers, absent the prior knowledge and approval of the county and district attorneys, are without authority to enter into immunity agreements. State v. Ralston, 225 P.3d 741.

Applicants assert trial counsel was ineffective for failing to suppress physical evidence illgeally seized as a result of his co-defendants botched interrogation.

The "fruit of the poisonous tree doctrine" holds that where evidence would have not come to light but for the illegal actions of police and evidence has been obtain by exploitation of that illegality evidence "must" be excluded. Brown v. Illinois, 442 U.S. 590.

Applicant asserts trial counsel's failure to file a meritorious motion to supress the physical evidence "fell below an objective standard of reasonableness" and, thus constituted deficient performance.

Judge Tupper - Do not have a recording - Will have Cannot get them

Non existent Place

VAUX & MARSCHER, P.A.

ATTORNEYS AND COUNSELORS AT LAW
POST OFFICE BOX 769 (MAILING)
1251 MAY RIVER ROAD (PHYSICAL)
BLUFFTON, SOUTH CAROLINA 29910
843.757.2888 (OFFICE)
843.757.2889 (FAX)

ROBERTS VAUX
WILLIAM F. MARSCHER, III

OF COUNSEL:
JAMES P. SCHEIDER, JR.
MAC DUNAWAY, DC ONLY

ASSOCIATES:
ANTONIA LUCIA, SC & NY
MARK S. BERGLIND
JUSTIN JOHN PRICE
ROBERTS VAUX, JR.

WRITER'S EMAIL: heleen.cilli@vaux-marscher.com

November 29, 2012

Called on 1/22/13 - Call in Morning

Beaufort Magistrate
104 Ribaut Road
Post Office Box 2207
Beaufort, SC 29901

1/23 - Left a message to Anna Schaeffer.

Re: **State vs. Aaron Young, Sr.**
Case No.: 2012A0720300088

State vs. Aaron Young, Jr.
Case No.'s: 2012A0720300115 and 2012A0720300087 and 2012A0720300113

Dear Sir/Madame:

We represent the above defendants. We would like to request a copy of the tape from the Preliminary Hearing which was heard on September 28, 2012 at 9:00 a.m., in front of The Honorable Richard A. Brooks. Enclosed is our check in the amount of $10.00.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

VAUX & MARSCHER, P.A.

Heleen Cilli,
Legal Assistant to Tabor Vaux

\\VMSERVER2\Data\VM\Documents for Files\Open Files\Young, Aaron Sr. and Jr. vs. State\Letter requesting tape for Preliminary 11.29.12.doc

Preliminary - 255-3744

OTHER OFFICE LOCATION:
16 WILLIAM POPE DRIVE, SUITE 202
OKATIE, SOUTH CAROLINA 29909

Exhibit A

VAUX & MARSCHER, P.A.

ATTORNEYS AND COUNSELORS AT LAW
POST OFFICE BOX 769 (MAILING)
1251 MAY RIVER ROAD (PHYSICAL)
BLUFFTON, SOUTH CAROLINA 29910
843.757.2888 (OFFICE)
843.757.2889 (FAX)

ROBERTS VAUX
WILLIAM F. MARSCHER, III

OF COUNSEL:
JAMES P. SCHEIDER, JR.
MAC DUNAWAY, DC ONLY

ASSOCIATES:
ANTONIA LUCIA, SC & NY
MARK S. BERGLIND
JUSTIN JOHN PRICE
ROBERTS VAUX, JR.

WRITER'S EMAIL: heleen.cilli@vaux-marscher.com

November 29, 2012

Beaufort Magistrate
104 Ribaut Road
Post Office Box 2207
Beaufort, SC 29901

Re: **State vs. Aaron Young, Sr.**
Case No.: 2012A0720300088

State vs. Aaron Young, Jr.
Case No.'s: 2012A0720300115 and 2012A0720300087 and 2012A0720300113

Dear Sir/Madame:

We represent the above defendants. We would like to request a copy of the tape from the Preliminary Hearing which was heard on September 28, 2012 at 9:00 a.m., in front of The Honorable Richard A. Brooks. Enclosed is our check in the amount of $10.00.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

VAUX & MARSCHER, P.A.

Heleen Cilli,
Legal Assistant to Tabor Vaux

\\VMSERVER2\Data\VM\Documents for Files\Open Files\Young, Aaron Sr. and Jr. vs. State\Letter requesting tape for Preliminary 11.29.12.doc

OTHER OFFICE LOCATION:

16 WILLIAM POPE DRIVE, SUITE 202
OKATIE, SOUTH CAROLINA 29909

Exhibit A

Affidavit

Case No. 2018-07-GS-01932

2014-07-GS-01940

On February 22, 2019 I mailed a letter dated February 22, 2019 to the

Beaufort County Clerk of Court

P.O. Drawer H23

Beaufort, South Carolina

Requesting a copy of information regarding the county grand jurors, which is in conjunction with above case numbers.

SUBSCRIBED AND SWORN before me this 22nd day of February, 2019

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION Expires:

BETH A. MANGOLD
Notary Public, State of South Carolina
My Commission Expires 8/10/2028

Aaron Young Jr.

Exhibit #1

Aaron Young Jr # 368175
KIRKLAND CORRECTIONAL INSTITUTE
4344 BROAD RIVER ROAD
COLUMBIA, SC 29210

Case No. 2012-07-GS-01932
2014-07-GS-01940

February 22, 2019

Beaufort County Clerk of Court
P.O. Drawer 1128
Beaufort, SC 29901

Once again I am writing for the purpose of obtaining the following documents to prepare a adequate defense on my behalf and to ensure protection of my due process right guranteed by the Fourteenth Amendment of the U.S.C.. Pursuant to: F.O.I.A. & Evans v. State, 316 S.C. 53, 56, 447 S.E. 2d 175, 176 (1993).

1) The Beaufort County Grand Jury Impanelment documents that convended on October 30, 2014 and other supporting materials.

2) The state petition and the courts order affirming impanelment of the States Grand Jury of Beaufort in the term of October 2014.

You sent me a response dated January 10, 2019 telling me to contact the

Office of the Clerk

Exhibit C # 2

1000 Assembly Street
Rembert Dennis Building
Suite 519
Columbia, South Carolina

I contacted them by letter dated January 27, 2019 requesting the aforesaid documents.

I was notified and forwarded back to this office by letter dated February 1, 2019. Stating I should ask you to handle this manner.

So again I ask that you please address this request in a timely fashion. Time is of the ess

Thank you and good day

Aaron S. Young Sr

enclosures:
State Grand Jury of South Carolina Office of Clerk - letter.
Beaufort County Office of the Clerk of Court letter.
A personal letter to the State Grand Jury of South Carolina Office of Clerk.
Affidavit.

Exhibit C #3

Office of the Clerk of Court

Beaufort County
Post Office Drawer 1128
Beaufort, South Carolina 29901-1128
843.255.5050

Jerri Ann Roseneau
Clerk of Court

Lynn Geren
Judicial Clerk

January 10, 2019

Aaron Young, Jr. #363175 (F2-250)
Kirkland Correctional Institute
4344 Broad River Road
Columbia, SC 29210

RE: Aaron Young, Jr.

Dear Mr. Young:

In response to your correspondence received December 10, 2018, please find enclosed:

1. A copy of the 14th Circuit Court calendar for 2014. This information is available to the public at the South Carolina judicial website, www.sccourts.org.

2. We are unable to release information regarding the county grand jurors.

3. Any and all questions regarding "State Grand Jurors" should be addressed to the Office of the Clerk-State Grand Jury in Columbia, South Carolina. For your information, I've enclosed the name and address of the Clerk of Court.

Should you require further information from our office, please feel free to contact us.

Sincerely,

Lynn Geren
Judicial Clerk

Exhibit #4

Aaron young JR # 363175
KIRKLAND CORRECTIONAL INSTITUTION
4344 LARUAD RIVER ROAD
COLUMBIA, SC 29210

JANUARY 27, 2019.

JAMES R. PARKS
Office of the Clerk
1000 Assembly Street
Rembert Dennis Building, Suite 519
Columbia, South Carolina 29201.

I am writing for the purpose of obtaining the following documents to prepare a adequate defense on my behalf and to ensure protection of my due process rights guaranteed by the Fifth Amend. of the USC.

1.) The Beaufort County Grand Jury Impanelment documents that convended on October 30, 2014 and other supporting materials.

2) The State petition and the courts order affirming impanelment of the State Grand jury County of Beaufort in the term of October 2014

Exhibit #5

State Grand Jury of South Carolina

JAMES R. PARKS
CLERK OF COURT

Office of the Clerk
1000 Assembly Street
Rembert Dennis Building
Suite 519
Columbia, South Carolina 29201

POST OFFICE BOX 1
COLUMBIA, SC 29211-
TELEPHONE: 803-734-(
FAX: 803-734-(

February 1, 2019

Aaron Young, Jr, 363175
Kirkland Correctional Inst.
4344 Broad River Road
Columbia SC 29210

We have received you inquiry:

___ A copy of all enclosed has been forwarded to: __Your Attorney ___ Public Defender's Office

___ For matters concerning PCR's, please contact the Office of the Attorney General, PCR Division, P.O. Box 11549, Columbia, S.C. 29211.

___ SCDC calculates credit for time served. Please contact your classification caseworker at your institution for assistance.

___ We need more information:
___ Case Number ___ Charge ___ SSN ___ Court Location ___ Date of Arrest

___ This office does not provide Legal Advice or Legal Forms.

___ Please speak with your attorney regarding your request.

___ **There is no record of the Indictments you referenced.**

__ Please find a copy of your sentencing sheets enclosed.

_X_ Please contact the **Beaufort Clerk of Court** for this matter.

Beaufort County Clerk of Court
PO Drawer 1128
Beaufort, SC 29901

Exhibit C #6

Office of the Clerk of Court

Beaufort County
Post Office Drawer 1128
Beaufort, South Carolina 29901-1128
843.255.5050

Jerri Ann Roseneau
Clerk of Court

Lynn Geren
Judical Clerk

February 28, 2019

Aaron Young, Jr. #363175
Kirkland Correctional Institute
4344 Broad River Road
Columbia, SC 29210

RE: Aaron Scott Young, Jr.
Arrest Warrant #2012A0720300113
Docket #2012GS0701932

Aaron Young, Jr.
Direct Indictment – Docket # 2014GS0701940

Dear Mr. Young:

Thank you for your recent correspondence. The above referenced documents, stamped "True Bill" and signed by the Foreman of the Grand Jury on October 30, 2004, can be copied and mailed to you. The cost of the copies is $3.50. Please send our office a Money Order, made payable to Beaufort County Clerk of Court, and we will send you these documents.

County Grand Jury selection and procedures are written in the South Carolina Code of Laws. (Section 14-7-1510 through Section 14-7-1560)

Sincerely,

Lynn Geren
Judicial Clerk
Beaufort County Clerk of Court

Exhibit C #7

Affidavit

Case No. 2012-07-GS-01952

2014-07-GS-01940

On March 11, 2019 I mailed a letter dated March 11, 2019 to the

Beaufort County Clerk of Court

P.O. Drawer 1128

Beaufort, South Carolina 29901

Requesting a copy of the following documents below. Which is in conjunction with the above case numbers.

1) Receipt of acknowledgement showing you received the enclosed letter and affidavit from Aaron Young Jr. dated March 11, 2019.

2) The Beaufort County Grand Jury Impanelment documents that convended on October 30, 2014 and other supporting materials.

3) The state petition and court order affirming impanelment of the Beaufort County Grand Jury in the term of October 2014.

4) The exculpatory material pertaining to case numbers 2012-07-GS-01952 and 2014-07-GS-01940. This includes any and all arrest warrants, "prelim" hearing agreements, indictments, nolle indictments, police supplemental reports, and transcribed recordings in documentation.

Exhibit D #1

SUBSCRIBED AND SWORN before
me this 11th day of MARCH, 2019

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION Expires: MARCH 8, 2026

Exhibit D #2

Aaron Young Jr # 363175
KIRKLAND CORRECTIONAL INSTITUTION
4344 Broad River Road
Columbia, South Carolina 29210

Case No.: 2018-07-GS-01952
2014-07-GS-01940

March 11, 2019

Beaufort County Clerk of Court
P.O. Drawer 1128
Beaufort, South Carolina 29901

This is the third time I have contacted this office to obtain certain documents to prepare an adequate defense on my behalf and to ensure protection of my due process right guranteed by the Fourteenth Amendment of the U.S.C. Only to receive blatent ignorance and numerous frivolous procedures of obtaining them. Which this Department is obligated to provide pursuant to The Freedom Of Information Act which clearly states:

The South Carolina Freedom of Information Act is codified at sections 30-4-10 to -165 in the South Carolina Code. Upon request, FOIA mandates disclosure of records held by a "public body" unless the documents fall within enumerated exemptions." South Carolina's FOIA was designed to guarantee the public reasonable access to certain activities of the government. In enacting FOIA, the South Carolina legislature expressly provided that disclosure is the dominant objective.

Exhibit D #3

of the act:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

Thus, FOIA creates an affirmative duty on the part of public bodies to disclose information to any member of the public who requests it.

The Key operative provision of FOIA provides: "Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by **§ 30-4-40** in accordance with reasonable rules concerning time and place of access. A "public body" includes among other things any department of the state, any [redacted] state board, commission, agency, or authority, any public or government body, political subdivision of the state, or any organization, corporation, or agency supported in whole or part by public funds or expending public funds. A "public record" is defined broadly to include "all books, papers, maps, photographs, cards, tapes, recordings, or

other documentary materials regardless of physical form or characteristics prepared owned, used, in the possession of, or retained by a public body.

So I ask that you please provide me with the following documents below to which are obtainable through this office in accordance to the **F.O.I.A.**

1) Receipt of acknowledgment showing you received the enclosed letter and affidavit from Aaron Young Jr. dated **March 11, 2019.**

2) The Beaufort County Grand Jury Impanelment documents that convended on **October 30, 2014** and other supporting materials.

3) The state petition and the court order affirming impanelment of the Beaufort County Grand Jury in the term of **October 2014.**

4) The exculpatory material pertaining to case numbers **2012-07-GS-01932** and **2014-07-GS-01940.** This includes any and all arrest warrants, prelim agreements, indictments, nolle indictments, police supplement reports, and transcribed recordings in documentation.

Good Day.

Aaron S. Young Jr.
Aaron Scott Young Jr.

Exhibit D #5

Affidavit
Case No.. 2012-07-GS-01932
2014-07-GS-01940

On April 1, 2019 I mailed a letter dated April 1, 2019 to the

Beaufort County Clerk of Court
P.O. Drawer 1128
Beaufort, South Carolina 29901

Requesting a copy of the following documents below. Which are in conjunction with the previous letter enclosed revolving around the case numbers above.

1) Receipt of acknowledgement showing you received the enclosed letter and affidavit from Aaron Young Jr. dated April 1, 2019 within (10) ten days as set forth in accordance with the Freedom of Information Act.

2) The Beaufort County Grand Jury Impanelment documents that convended on October 30, 2014 and other supporting materials pursuant to the authority of: Evans v. State, 363 S.C. 495 611 S.E. 2d 516 (2005).

3) The state petition and court order affirming impanelment of the County Grand Jury of Beaufort in the term of October 2014

Exhibit E #1

pursuant to the authority of: Evans v. State, 363 S.C. 495 611 S.E. 2d 510 (2005).

4) The exculpatory material pertaining to case numbers 2012-07-GS-01932 and 2014-07-GS-01940. This includes any and all arrest warrants, preliminary hearing agreements/ proceedings, indictments, nolle indictments, police supplemental reports, and transcribed recordings in documentation pursuant to the authority of: The Freedom Of Information Act.

SUBSCRIBED AND SWORN before me this 1st day of April, 2019

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: BETH A. MANGOLD Notary Public, State of South Carolina My Commission Expires 8/10/2028

RECEIVED
APR 01 2019
KIRKLAND R&E CENTER
MAILROOM

Exhibit E #3

Aaron Young Jr# 363175
Kirkland Correctional Institution
4344 Broad River Road
Columbia. South Carolina 29210

Case No.. 2012-07-65-01932
2014-07-65-01940

April 1 . 2019

Jerri Ann Roseneau
Beaufort County Clerk of Court
P.O. Drawer 1128
Beaufort . South Carolina 29901

Re: The Freedom Of Information Act ; Evans v. State . 363 S.C. 495 611 S.E. 2d 510 (2005)

Dear. Sir / Ma'am

This correspondence is in regards to this agencies failure to diligently respond with an receipt of acknowledgement within (10) ten days to my affidavit and letter dated **March 11. 2019** to which are enclosed. In accordance with the **Freedom Of Information Act**. So I am writing for the purpose of obtaining the following documents below as before requested in the previous aforesaid correspondence within (10) ten working days of this agencies receipt of this correspondence. To prepare adequate defenses on my behalf and ensure protection

Exhibit E #3

of my due process rights guaranteed by the Fourteenth Amendment of the United States Consitilution.

1) The Beaufort County Grand Jury Impanelment documents that convended on **October 30, 2014** and other supporting materials pursvant to the authority of: **Evans v. State, 363 S.C. 495 611 S.E. 2d 510 (2005).**

2) The state petition and court order affirming impanelment of the County Grand Jury of Beaufort in the term of **October 2014.** pursvant to the authority of: **Evans v. State. 363 S.C. 495 (2005).**

3) The exculpatory material pertaining to case numbers **2012-07-GS-01932** and **2014-07-GS-01940**. This includes any and all arrest warrants, preliminary hearing agreements / proceedings, indictments, nolle indictments, police supplemental reports, and transcribed recordings in documentation pursvant to the authority of: **The Freedom of Information Act.**

Please respond diligently and competently to this correspondence in it's timely manner.

Good Day

Aaron S. Yang Jr.

Enclosures: Copy of Affidavit and Letter dated March 11, 2019

F.O.I.A. REQUEST.

Exhibit E #4

Affidavit

Case No.. 2012-07-GS-01938

2014-07-GS-01940

On July 1, 2019 I mailed a letter dated July 1, 2019 to

Peter L. Fuge

Chief Administrative Judge of Fourteenth Judicial Circuit

P.O. Box 1124

102 Ribaut Road

Beaufort, South Carolina 29901

Requesting a copy of the following documents below. Which are in conjunction with the case numbers above.

1) Receipt of acKnowledgement showing you received the enclosed affidavit and letter from Aaron Young Jr. dated July 1, 2019 within (10) ten days as set forth in accordance with the Freedom of Information Act.

2) The Beaufort County Grand Jury Impanelment documents that convended on October 30, 2014 and other supporting materials pursuant to the authority of: Evans v. State, 363 S.C. 495 611 S.E. 2d 510 (2005).

3) The state petition and court order affirming impanelment of the county grand jury of Beaufort in the term of October 2014 pursuant to the authority of: Evans v. State, 363 S.C. 495 611 S.E. 2d 510 (2005).

Exhibit F #1

SUBSCRIBED AND SWORN before me this 1st day of July, 2019.

BM Mangold

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: BETH A. MANGOLD
Notary Public, State of South Carolina
My Commission Expires 8/10/2028

Exhibit F #2

Aaron S. Young Jr. # 363175.
KIRKLAND CORRECTIONAL INST.
4344 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29210

July 1, 2019

Peter L. Fuge
Chief Administrative Judge of Fourteenth Judicial Circuit
P.O. Box 1124
102 Ribaut Road
Beaufort, South Carolina 29901

Re: Grand Jury Impanelment Documents : Evans v. State, 363 S.C. 495 611 S.E. 2d 510 (2005).

Dear, Chief Fuge

I am writing for the perpose of obtaining the following documents below. To ensure protection of my due process rights guaranteed by the Fourteenth Amendment to the United States Consititution.

1) The Beaufort County Grand Jury Impanelment documents that convended on October 30, 2014 and other supporting materials pursuant to the authority of : Evans v. State, 363 S.C. 495 611 S.E. 2d 510 (2005).

CMLF #3

2) The state petition and court order affirming impanelment of the county grand jury of Beaufort in the term of October 2014 pursuant to the authority of : Evans v. State, 363 S.C. 496 611 S.E. 2d 510 (2005).

Records show that I have contacted the
Beaufort County Clerk of Court
P.O. Drawer 1128
Beaufort, South Carolina 29901

As well as the
State Grand Jury of South Carolina
Office of the Clerk
1000 Assembly Street
Rembert Dennis Building
Suite 519
Columbia, South Carolina 29201

in an effort to retrieve above mentioned documents only to receive blatant ignorance and numerous frivolous procedures of obtaining them. I have researched Title 14 South Carolina Code of Laws. And, found out that October is not a month that the Grand Jury for Beaufort Court meets. So I am writing in regards to the above and hereby request that you order the release of the documents to me.

Thank you
Respectfully
Aaron S. Gay Jr.

Exhibit F #4

Aaron Young Jr. / # 363175
Kirkland Correctional Inst.
4344 Broad River Road
Columbia. SC 29210

Jan 27. 2020

Solicitor. Fourteenth Circuit Office
P.O. Box 1880
Bluffton. SC 29910

Re: Grand Jury Impanelment Documents

Dear. Sir / Madam

I am writing for the purpose of obtaining the following documents.

1) The Beaufort County Grand Jury Impanelment Documents that convended on October 30. 2014 and other supporting materials.

2) The state petition and order affirming inpanelment of the Beaufort County grand jury of Beaufort in the term of October 2014.

I have contacted Judge Carmen T Mullen and was advised to contact this office for above mentioned documents.

This is my last source of relief before I contact the following for administrative assistance.

- The Supreme Court of South Carolina
- South Carolina Court Administration
- Office of Counsel Misconduct.

I need these documents in pursuit of adequate representation on my behalf ensuring protection of my procedural due process right guranteed by the 5th and 14th Amendments of the U.S.C.

Thank you and Good Day

Aaron Scott Young Jr.

Exhibit G #2

CERTIFICATE OF SERVICE

The undersigned certifies on January 27th, 2020 he caused a copy of the foregoing letter to the Solicitor, Fourteenth Circuit Office to be served by placing copies in the U.S. Mail. and addressed as follows:

Solicitor. Fourteenth Circuit Office
P.O. Box 1880
Bluffton, SC 29910

Aaron Scott Young Jr.
Kirkland Correctional Inst.
4344 Broad River Road
Columbia. SC 29210

Exhibit C #3

Affidavit

Case No. 2012-07-65-01932

2014-07-65-01940

On January 28, 2020 I mailed a letter dated January 27, 2020 to

Jerri Ann Roseneau
Beaufort Clerk of Court
P.O. Drawer 1128
Beaufort, SC 29901

Requesting a copy of the following documents below. which are in conjunction with the case numbers above.

1) true and correct copy of my Arrest Warrants certified clock stamped.

2) A true and correct copy of my Indictments certifed clock stamped.

3) A true and correct copy of The Beaufort County Grand Jury Impanelment Documents that convended on October 30, 2014 and other supporting materials certified clock stamped

4) A true and correct copy of the state petition and order affirming Impanelment of the Beaufort County Grand

Jury in the term of October 2014 certified clock stamped.

5) A true and correct copy of the multi jurisdictional agreement that was entered into between the municipality and the state for the purpose of my arrest and investigation certified clock stamped.

SUBSCRIBED AND SWORN before me this 28th day of January, 2020.

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES:

BETH A. MANGOLD
Notary Public, State of South Carolina
My Commission Expires 8/10/2028

KCI MAILROOM
JAN 28 2020

Columbia, SC

Exhibit H #2

Aaron Young Jr. # 363175
Kirkland Correctional Inst.
4344 Broad River Road
Columbia. SC 29210

January 27. 2020

Jerri Ann Roseneau
Clerk of Court
P.O. Drawer 1128
Beaufort, SC 29901

Re: Sought After Documents

This correspondence is in regards to me receiving the following documents from the Beaufort County Clerk of Court below after numerous neglected request in the year 2019. These documents are sought after for preperation of my Post Conviction Relief and to ensure protection of my due process right Pursuant to the authorites of: The 6th and 14th Amendments of the U.S.C., The F.O.I.A. and Evans v. State. 363 S.C. 495.

1.) A true and correct copy of my Arrest Warrants certifed clock stamped.

2) A true and correct copy of my Indictments certified clock stamped.

3) A true and correct copy of the multi jurisdictional agreement that was entered into between the municipality and the state for the purpose of my arrest and investigation certified clock stamped.

4) A true and correct copy of The Beaufort County Grand Jury Impanelment Documents that convended on October 30, 2014 and other supporting materials certified clock stamped.

5) A true and correct copy of the state petition and order affirming Impanelment of the Beaufort County Grand Jury in the term of October 2014 certified clock stamped.

This is my last request of relief before I contact the following for administrative assistance.

- The Supreme Court of Supreme Court
- South Carolina Court Administration
- Office of Office Misconduct

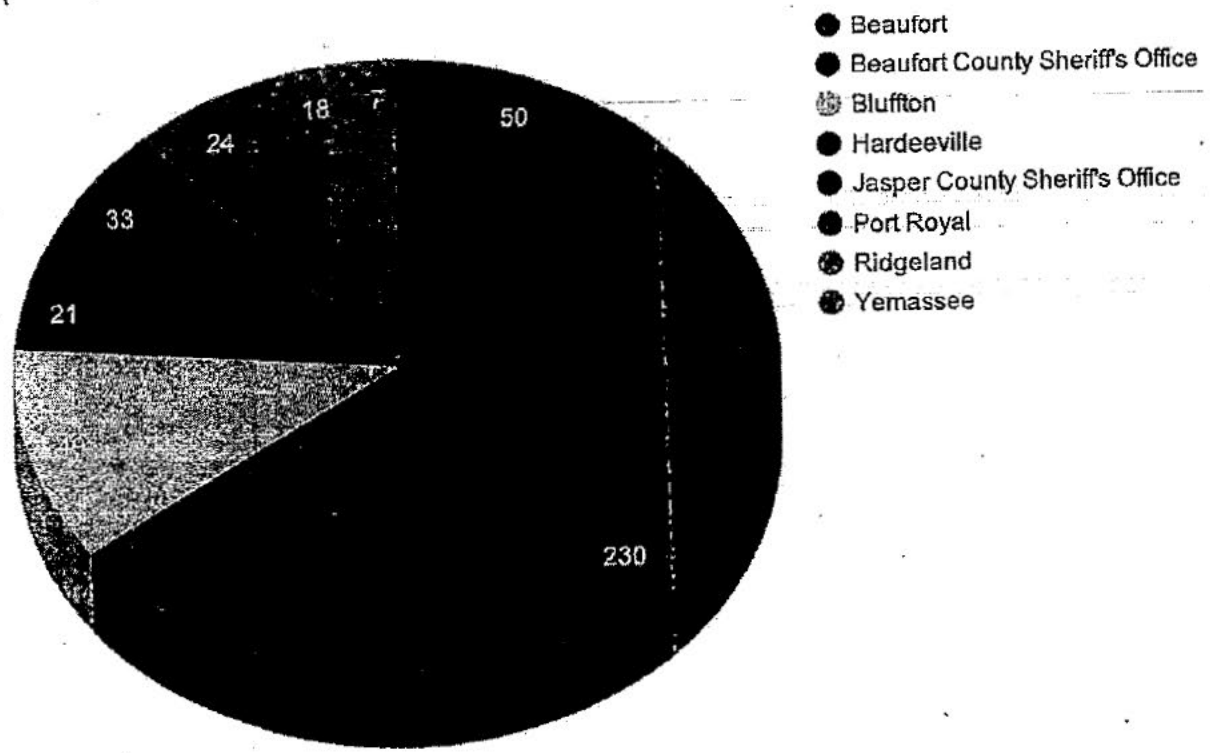
Thank you and Good Day

CERTIFICATE OF SERVICE

The undersigned certifies on January 28th, 2020 he caused a copy of the foregoing letter to the Beaufort County Clerk of Court to be served by placing copies in the U.S. Mail and addressed as follows:

Jerri Ann Roseneau
Clerk of Court
P.O. Drawer 1128
Beaufort, SC 29901

AARON SCOTT YOUNG JR.
KIRKLAND CORRECTIONAL INST.
4344 BROAD RIVER ROAD
COLUMBIA, SC 29210



**Number of sworn and reserve officers and students*

A BOTCHED INTERROGATION

On Sept. 1, 2012, Curtis Evans, a corporal with the Beaufort County Sheriff's Office, chatted with a murder suspect inside the Hilton Head Island police substation.

Evans was supposed to simply stand guard of the suspect, Aaron Young Sr., who was being held in the shooting death of 8-year-old Khalil S.

Exhibit I #1

But Evans' chatter with the suspect turned into unauthorized questioning, according to an internal investigation later conducted by the sheriff's office. And that gave way to false promises that would ultimately raise questions about the integrity of the investigation. It also collapsed a trial in the high-profile murder case.

In a recording captured on Evans' body microphone, he can be heard telling Young that he could avoid the murder charge if he cooperated with detectives. And when Young requests an attorney, Evans continues his questioning, failing to relay Young's request to investigators.

Young did cooperate – revealing where a gun, a key piece of evidence, was hidden. He was charged with murder despite Evans' promise.

The problems didn't stop there.

During an internal investigation by the sheriff's office, Evans lied about the unauthorized interrogation. While he claimed to have made no promises to the suspect, the audio recording of the interview was discovered the day before the suspect's first trial was set to begin in April 2014.

The interrogation should have been processed as evidence so it could be heard by the prosecution and the defense.

Evans' behavior led to charges of coercion by Young's attorney and a months-long delay in the suspect's trial.

In addition to the delays, Evans' behavior cost taxpayers money. After the trial collapsed, a judge ruled to try the three suspects in the case separately instead of together.

REDEEMED: YEMASSEE POLICE OFFICER MAKES MOST OF SECOND CHANCE

Evans was fired in May 2014 over the bungled investigation – and hired by the Port Royal Police Department nine months later.

Beaufort County Sheriff P.J. Tanner and 14th Circuit Solicitor Duffie Stone declined to comment on Evans' re-hire. And efforts to reach Evans for comment were unsuccessful.

Exhibit I #2

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2012GS0701932

At a Court of General Sessions, convened on October 30, 2014, the Grand Jurors of Beaufort County present upon their oath:

Murder / Murder

That in Beaufort County on or about September 1, 2012, Aaron Scott Young Jr. did willfully, unlawfully and with malice aforethought, engage in mutual combat with Tyrone Robinson and thereby cause the victim Khalil S. to be shot and killed in the area of Marshland Drive and Allen Road, Hilton Head Island, SC, and that Khalil S. did die in Beaufort County as a proximate result thereof on September 1, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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

Solicitor

WITNESSES

Inv. L. Albertin-BCSO

ARREST WARRANT NUMBER

2012A0720300113

ACTION OF GRAND JURY

True Bill

Jennifer Snyder
Foreperson of Grand Jury
Date: OCT 2 0 2014

VERDICT

Foreperson of Petit Jury
Date:
INDICT

Exhibit J

DOCKET NO. 2012GS0701932

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

vs.

Aaron Scott Young Jr

Amended Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2014GS0701940

At a Court of General Sessions, convened on October 30, 2014 the Grand Jurors of Beaufort County present upon their oath:

Attempted Murder

That in Beaufort County, South Carolina, on or about September 1, 2012 the Defendant, Aaron Young, Jr with intent to kill and malice aforethought, either express or implied, attempted to murder the victim, Tyrone Robinson, in violation of Section 16-03-29 of the Code of Laws of South Carolina (2010, as amended).

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

Solicitor

WITNESSES

B Bromage and L Albertin- BCSO

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

True Bill

Jennifer Snider

Foreperson of Grand Jury

Date: OCT 30 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

Exhibit K

DOCKET NO. 2014GS0701940

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

vs.

Aaron Young, Jr

Indictment for

Attempted Murder

SC Code: 16-03-0029
CDR Code:3410

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)	THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNT OF BEAUFORT)	CASE NO.: 2020-CP-07-00~~798~~ 792
AARON SCOTT YOUNG, JR.)	
)	AMENDMENT TO POST-CONVICTION
Applicant,)	RELIEF APPLICATION
)	
State of South Carolina,)	
)	
Respondent.)	
)	

FILED
2020 MAR -1 AM 11:28
BEAUFORT COUNTY, S.C.
CLERK OF COURT

That the Applicant would Amend his original Application for Post-Conviction Relief filed on March 26, 2020 as follows:

1. Appellate Counsel was ineffective in failing to argue in the Petition for Rehearing or in the Petition for Writ of Certiorari that the decision of the South Carolina Supreme Court in State v. Young 429 S.C. 155, 838 S.E.2d 516 (2020) violated the *ex pose facto* provision Article I, Section 4 of the Constitution of the State of South Carolina and Article I, Section 10, c1 1 of the Constitution of the United States of America.

2. Any and all other issues as they may arise from the PCR Trial.

Respectfully submitted,

Tommy A. Thomas
Attorney at Law
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

February 23, 2023

STATE OF SOUTH CAROLINA)	THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNT OF BEAUFORT)	CASE NO.: 2020-CP-07-00~~798~~ 792
AARON SCOTT YOUNG, JR.)	
)	CERTIFICATE OF SERVICE
Applicant,)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

2023 MAR -1 AM 11:38
JEANNETTE BOSSEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I emailed, a copy of the Amended Post Conviction Relief Application to the Attorney General's Office, at:

Danielle Dixon, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549
Danielle.dixon@scag.gov

Jacquelyn E. Miller
Paralegal to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
February 27, 2023

660

STATE OF SOUTH CAROLINA)	THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNT OF BEAUFORT)	CASE NO.: 2020-CP-07-00792
AARON SCOTT YOUNG, JR.)	
)	AMENDMENT TO POST-CONVICTION
Applicant,)	RELIEF APPLICATION
)	
State of South Carolina,)	
)	
Respondent.)	

2023 MAR 13 PM 12:13
BERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

That the Applicant would Amend his original Application for Post-Conviction Relief filed on March 26, 2020 as follows:

1. Trial counsel was ineffective for failure to object to and or preserve for Appeal the issue of admission of the 911 recording. This 911 call was in violation of the confrontation clause as well as hearsay. That this 911 call was used in an attempt to establish the fact that Mr. Young actually shot at the co-defendant, Tyrone Robinson.
   a. That trial counsel was further ineffective for failure to object to the admission of the 911 recording in that it allowed the prosecution to argue the timeline in favor of the concept of mutual combat.
2. Any and all other issues as they may arise from the PCR Trial.

Respectfully submitted,

Tommy A. Thomas
Attorney at Law
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

March 9, 2023

STATE OF SOUTH CAROLINA)	THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNT OF BEAUFORT)	CASE NO.: 2020-CP-07-00798
)	792
AARON SCOTT YOUNG, JR.)	
)	CERTIFICATE OF SERVICE
Applicant,)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

JERRI ANN ROSEMEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT
2023 MAR 13 PM 12: 13

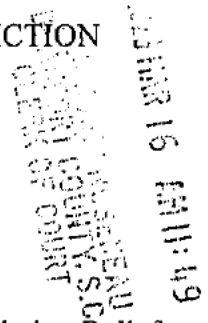
I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I emailed, a copy of the second Amended Post Conviction Relief Application to the Attorney General's Office, at:

Danielle Dixon, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549
Danielle.dixon@scag.gov

Jacquelyn E. Miller
Paralegal to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
March 9, 2023

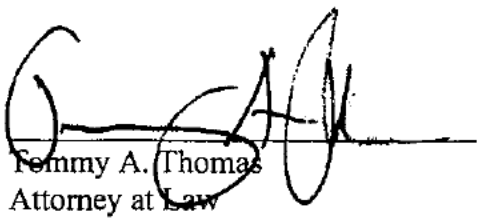
STATE OF SOUTH CAROLINA)	THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNT OF BEAUFORT)	CASE NO.: 2020-CP-07-00798 792
AARON SCOTT YOUNG, JR.)	THIRD
)	AMENDMENT TO POST-CONVICTION
Applicant,)	RELIEF APPLICATION
)	
State of South Carolina,)	
)	
Respondent.)	
)	



That the Applicant would Amend his original Application for Post-Conviction Relief filed on March 26, 2020 as follows:

1. Trial counsel was ineffective for failure to properly advise and explain a plea offer made by the State.
2. The Application was tried twice. The first trial was stopped on a motion of the State. That jeopardy attached when the jury was selected in the first trial. Trial counsel failed to object and argue the issue of double jeopardy.
3. Failure to adequately object to differences in the initial charge to the Jury by the court and the response to a question submitted to the Court by the Jury during deliberation.
4. Any and all other issues as they may arise from the PCR Trial.

Respectfully submitted,



Tommy A. Thomas
Attorney at Law
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

March 13, 2023

STATE OF SOUTH CAROLINA)	THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNT OF BEAUFORT)	CASE NO.: 2020-CP-07-00798
AARON SCOTT YOUNG, JR.)	
)	CERTIFICATE OF SERVICE
Applicant,)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

2023 MAR 16 AM 11:49
BEAUFORT COUNTY, S.C.
CLERK OF COURT

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I emailed, a copy of the third Amended Post Conviction Relief Application to the Attorney General's Office, at:

Danielle Dixon, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549
Danielle.dixon@scag.gov



Jacquelyn E. Miller
Paralegal to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
March 13, 2023

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
	)	2020 JUL 13 PM 1:23
Aaron Scott Young, Jr. #363175,	)	Case No.: 2020-CP-07-792
Applicant,	)	
	)	**RETURN**
v.	)	
State of South Carolina,	)	
Respondent.	)	

The State (Respondent), making its Return to the application for Post-Conviction Relief (PCR) filed on March 26, 2020, would respectfully show this Court:

PROCEDURAL HISTORY

Aaron Scott Young, Jr. (Applicant) is presently confined pursuant to orders of the Beaufort County Clerk of Court. During its October 2014 term, the Beaufort County Grand Jury indicted Applicant for murder (2012-GS-07-1932) and attempted murder (2014-GS-07-1940). On February 23, 2015, Young's case was called to trial before the Honorable Thomas W. Cooper. Roberts Vaux, Esquire, represented him during the trial. Solicitor Isaac McDuffie Stone and Deputy Solicitor Sean Thornton represented the State. On February 25, 2015, the jury returned verdicts of guilty on both charges. Judge Cooper sentenced Young to thirty years imprisonment on the murder conviction and thirty years concurrent, on the attempted murder conviction.

Applicant appealed his convictions. On December 7, 2016, Applicant filed a Final Brief of Appellant in the South Carolina Court of Appeals. Applicant also filed his final reply brief that same day. The State had previously filed its Final Brief of Respondent on November 30,

2016. After argument on June 6, 2018, the Court of Appeals issued an unpublished opinion on August 22, 2018, Applicant sought rehearing, which the Court of Appeals denied on September 20, 2018. On October 18, 2018, Applicant filed a petition for certiorari review in this Court. The State filed a return to the petition on November 29, 2018. On May 9, 2019, the South Carolina Supreme Court granted the petition. Applicant filed his Brief of Petitioner on June 6, 2019. Respondent filed its Brief of Respondent on August 6, 2019. The South Carolina Supreme Court affirmed Applicant's convictions by published opinion (Op. No. 27942) filed on February 5, 2020. Applicant filed a Petition for Rehearing on February 19, 2020. The Court denied Applicant's Petition for Rehearing by Order dated March 12, 2020. The Remittitur was issued to the lower court on March 12, 2020. This application for post-conviction relief follows.

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Trial counsel was ineffective for failing to move for a dismissal of Applicant's charges at the preliminary hearing when the state failed to present any evidence of probable cause
2. Trial counsel was ineffective for failing to object to the trial court's erroneous failure to instruct "specific intent to kill" as an essential element of attempted murder
3. Trial counsel was ineffective for failing to move the courts for a mistrial after trial courts prejudicial ruling in regards to the burden shifting instruction as it related to the murder charge
4. Trial counsel was ineffective for failing to test the voluntariness of Applicant's statement
5. Trial counsel was ineffective for failing to object to trial court's erroneous failure to charge only the current and correct law of South Carolina
6. Trial counsel was ineffective for failing to object to trial courts biased and prejudicial remarks while on Applicants directed verdict motion for murder
7. Trial counsel was ineffective for failing toz investigate whether the county grand jury had been legally impaneled
8. Trial counsel was ineffective for failing to object to the fatal variance at trial between the murder indictment and the jury instructions which permitted conviction for transferred intent

9. Trial counsel was ineffective for failing to object to the trial courts erroneous burden ruling in regards to Applicants motion to quash the murder indictment when failed to include essential element of the offense charged
10. Trial counsel was ineffective for failing to file a meritorious motion to suppress unlawfully seized statements
11. Trial counsel was ineffective for failing to object to the introduction of evidence regarding two third party hearsay witnesses not presented at Applicants preliminary hearing
12. Trial counsel was ineffective for failing to object to the trial courts erroneous failure to give jury instructions that fit the facts of the case as it related to the murder charge
13. Trial counsel was ineffective for failing to file a meritorious motion to suppress unlawfully seized physical evidence.

In relief sought, Applicant is seeking: "Reversal and vacation of both murder and attempted murder convictions."

Attached to this Return and incorporated by reference are the records of the Beaufort County Clerk of Court regarding the subject convictions, the plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials. Applicant alleges he received ineffective assistance of counsel. Nevertheless, Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant's claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann.

§ 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney's performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler,* 286 S.C. at 442, 334 S.E.2d at 814. The defendant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky,* 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State,* 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*,

286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (*quoting Strickland,* 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Strickland,* 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." *Harrington*, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court "must judge the reasonableness of counsel's challenged conduct on the

facts of the particular case, viewed at the time of counsel's conduct." *Strickland,* 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Id.*

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington,* 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. *Harrington,* 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable

probability is a probability "sufficient to undermine confidence in the outcome." *Strickland,* 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Strickland,* at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Respondent submits Applicant cannot satisfy either requirement of *Strickland.* However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See*

Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S/C?231. 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See Love* (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)-(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in

advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

CONCLUSION

WHEREFORE, the State respectfully requests this Court convene an evidentiary hearing on the allegation of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
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July 10, 2020

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
Aaron Scott Young, Jr., #363175 Applicant,	)	Case No.: 2020-CP-07-792
v.	)	Certificate of Service by Mail
State of South Carolina Respondent,	)	

2020 JUL 13 PM 1:23
JEROLAIN ROSEBUCAU
BEAUFORT DIST., S.C.
COUNTY

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Kristian Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this 10th day of July, 2020.

Jennifer Jennison

Jennifer Jennison, Administrative Coordinator
For Respondent

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	2020-CP-07-00792

Aaron Scott Young, Jr.,

Plaintiff,

vs.

State of South Carolina,

Defendant.

TRANSCRIPT OF HEARING

March 15, 2023
Beaufort, South Carolina

B E F O R E:

The Honorable Robert Bonds, Judge Presiding

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

Danielle Dixon, Esquire
Assistant Attorney General
For the Respondent

Tommy A. Thomas, Esquire
For the Applicant Young, Jr.

Cathy L. Young, CVR-M
Official Circuit Court Reporter
Post Office Box 4604
Beaufort, South Carolina 29903

I N D E X

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PROCEEDINGS

* * * * *

THE COURT: All right, what have we got this morning?

MS. DIXON: Yes, sir, Your Honor, may it please the Court? Danielle Dixon, Assistant Attorney General on behalf of the State of South Carolina. This is the case of Aaron Young, Jr., Docket Number 2020-CP-07-00792. Mr. Young is currently serving a 30-year sentence. He was indicted by the Beaufort County Grand Jury in October of 2014 for murder and attempted murder, and those are Indictment Numbers 2012-GS-07-1932 and 2014-GS-07-1940. His codefendants for this charge were his father, who is Aaron Young, Sr., and then Tyrone Robinson. And these charges arose from the fatal shooting of an eight-year-old on September 1st, 2012. Mr. Young proceeded to a jury trial before the Honorable Thomas W. Cooper on February 23rd, 2015. He was represented by Roberts Vaux. And prior to this the State had planned to try all three codefendants together, and they actually started the trial April 21st through 23rd. During a Jackson v. Denno hearing there was some information that was discovered, and thereafter the Court ultimately

ended up granting the Defendant's motion to sever the trial. So they were retried separately at later dates. The State's theory at trial was that the Youngs were involved in a shootout with Robinson, and the child was hit by gunfire from Robinson's gun. And they tried the Youngs under a theory of mutual combat, and Mr. Young was convicted as indicted and sentenced to 30 years for murder, and 30 years for attempted murder to be served concurrently. He did file a direct appeal. He was represented by Frederick Elliott Quinn and Jennifer Dunlap. They argued the Court erred in denying his motion for a directed verdict as to the murder charge, when the State's mutual combat theory was not supported by South Carolina law or evidence. That this Court erred in denying his request for a jury charge on the end of mutual combat. And the Court erred in denying his motion for a directed verdict on the attempted murder charge. The Court of Appeals affirmed on the merits. He did file a petition for rehearing that was denied, and a petition for writ of cert to the State Supreme Court which was granted, and, ultimately, our State Supreme Court found that mutual combat could extend to the facts of this case under a theory of

transferred intent and hand of one, hand of all. A remitter was sent on March 12th, 2020. He timely filed his application March 26th, 2020, raising various claims of ineffective assistance of counsel. He has since filed three amendments. I have spoken with Mr. Tommy Thomas, and I think we've kind of narrowed the issues today that he's planning to go forward on, and I'll let him read those to you at this time.

THE COURT: That'll be fine. Good morning, Counsel.

MR. THOMAS: Good morning, Your Honor, if it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. THOMAS: And if I may approach, I'll hand this up to the Court.

THE COURT: Sure.

MR. THOMAS: Lots of moving parts in this case, and I felt like it was best to try to narrow these issues that we intend to go forward on today. Your Honor, if it please the Court on that list, there is one other list that I've spoken to Ms. Dixon about, and that is a Miranda issue, whether or not Miranda rights were actually given to my client. And then, of course, anything that may emerge at trial ---

THE COURT: Yes, sir.

MR. THOMAS: -- we would reserve the right to amend. Your Honor, we agree with the statement by the Attorney General. We would also though bring your attention to -- and we will get to that, to the order of the Supreme Court's order in regards to the mutual combat. We are arguing, as part of this, that it is an ex post facto application, and there are parts of that order that tend to state that it extends ex post facto to the factual situation of the third party being shot and killed, and that would be the basis for our argument. I would contend that it is not solely on the issue of an extension of hand of one, hand of all.

THE COURT: All right. Well, I will tell you it's ironic, I'm very familiar with mutual combat, because I tried ---

MR. THOMAS: Yes, sir.

THE COURT: -- a four-day murder case last week ---

MR. THOMAS: Oh, wow.

THE COURT: -- in Jasper County that was a mutual combat case.

MR. THOMAS: Yes, sir.

THE COURT: So I knew very little about it 12

days ago. But have heard a lot about it in the intervening time.

MR. THOMAS: I knew very little about it when I started reading this case, Your Honor.

THE COURT: Yes, sir, all right.

MR. THOMAS: And thank you so much.

THE COURT: Sure.

MR. THOMAS: Your Honor, we're going to -- I think the best way to tell this story, we're gonna do it a little bit differently, if it please the Court? I'm gonna call appellate counsel, Elliott Quinn, to the stand first.

THE COURT: Yes, sir.

MR. THOMAS: Okay.

WITNESS: Good morning, Your Honor.

THE COURT: Good morning.

(Witness is sworn.)

* * * * *

Frederick Elliott Quinn,

having been duly sworn,

testifies as follows:

* * * * *

MR. THOMAS: May it please the Court?

THE COURT: Yes, sir, your witness.

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Do you mind if I call you Elliott?

A. Please.

Q. Okay, Elliott. Did you have an opportunity to represent Aaron Young, Jr. in an appeal?

A. I did. I represented Aaron Young, Jr. from -- after trial through the Supreme Court.

Q. All right, sir. And do you mind if I ask, were you retained, or were you appointed?

A. I was pro bono appellate counsel through the appellate practice project of the South Carolina Bar, so I -- I was working with appellate defense as pro bono appellate counsel.

Q. Okay, all right. If you would, could you give us just a kind of brief description of your involvement in this case?

A. My involvement in this case would have begun when I received all of the materials from the appellate defense. And the appeal -- the notice of appeal had been filed, but everything else on the appeal remained open as to what issues to raise, how to advance the appeal, and took it from there through the Court of Appeals, and like I said, through the Supreme Court.

Q. Yes, sir. Could you give us just a very

brief factual basis of what your appeal was; what it was based on?

A. The issues on the appeal or the factual basis of the case?

Q. Both actually, if you could.

A. Happy to. So my recollection of the case is that there are three main parties, Mr. Robinson, Mr. Young, Jr. and Mr. Young, Sr. Mr. Robinson is known to both of the Youngs. He appears at the Youngs' home, I think walks down the driveway, and has some words with them, pulls out a pistol. A scuffle ensues between Mr. Young, Sr. and Mr. Robinson, and -- or maybe between Mr. Young, Jr. and Mr. Robinson, but one of them has a scuffle to try to get the gun away from him. Mr. Robinson backs up, fires some shots into the ground and then flees. After that, Mr. Young, Jr. and Mr. Young, Sr. obtain a weapon, get in their vehicle and go to look for Mr. Robinson. The -- the facts were in dispute, both a trial and on appeal. Our position was that the record showed that they never found Mr. Robinson after that, except for one time they saw him, but Mr. Young, Jr. testified that he didn't point a weapon at him, didn't raise his weapon, because he could see that his gun was jammed. At one point Mr.

Young, Jr. fired a number of rounds into Mr. Robinson's car when they found that. As they were leaving that scene, apparently Mr. Robinson was hiding behind a tree. As Mr. Young, Sr. was driving taking a left turn, and Mr. Young, Jr. was in the passenger seat, Mr. Robinson appeared from behind the tree and fired shots at them. One of those shots went past the truck and hit the victim, who was jumping on a trampoline and killed him, and that was the end of the incident that day. The issues that we raised on appeal from those facts were Mr. Young, Jr. was tired on a theory of mutual combat. There is case law in South Carolina on mutual combat, but most of it is back in the 1800s or early 1900s, as the Judge apparently is now aware from his trial last week, it is not a -- or has not been a common theory. So he was tried on a murder charge under a mutual combat theory. But then there was the additional twist that the victim was not one of the combatants. And so how did mutual combat, transferred intent, hand of one is hand of all, did those things interplay in a way that South Carolina recognized as a basis for a murder charge? So that was one component. Another component was, was Mr. Young, Jr. actually engaged in mutual combat at the

time the fatal shot was fired? It's recognized under South Carolina law that a person can be engaged in mutual combat, but if they retreat from that combat or they end that combat, they're no longer engaged in mutual combat, they can't be tried on a mutual combat theory. So we advanced the issue that he never found Mr. Robinson. They were leaving, the incident was over at the time the fatal shots were fired, so he could not be guilty of murder through a mutual combat theory.

Q. So they were retreating?

A. Correct, they were retreating. Well, and advance in multiple ways. One was that there was never any mutual combat. If I recall correctly, and, again, this was years ago, mutual combat requires that the combatants be armed and that they intend to engage in combat. Mr. Robinson fired shots at Mr. Young, Jr. and Sr.'s home. At that time, the Youngs were not armed, so they couldn't be engaged in mutual combat. After that, they never found Mr. Robinson again in a place where both of them wanted to engage in combat or tried to engage in combat. So we maintain that there never was mutual combat or, alternatively, if there was mutual combat at one point in time, it had ended by the

time the fatal shot was fired. Those were the theories or the issues on appeal on the murder charge; and then, additionally, on the attempted murder charge we argued that a directed verdict should have been granted, because there was neither direct nor compelling circumstantial evidence that Mr. Young, Jr. at any point in time attempted to cause any harm to Mr. Robinson, who my understanding is the -- the person that was -- who he was attempting to murder, or any other person for that matter.

Q. Right. Was -- did you find, in your preparation in the direct evidence, that Mr. Young, Jr. actually fired at the -- I apologize --

A. Mr. Robinson?

Q. Mr. Robinson, yes, sir.

A. Again, there was conflicting evidence. Obviously, the Supreme Court and the Court of Appeals disagreed with his appellate counsel in this, but my perspective, my reading of the record was that there was no point that anybody presented any evidence that Mr. Young, Jr. ever fired a weapon except when he fired it at Mr. Robinson's unoccupied car, which it was apparent it was unoccupied, he could see no one was in it.

Q. Okay. Now -- so you had -- how many issues did you present to the -- to the Court?

A. If I recall correctly, I believe they were raised as three main issues. Does South Carolina law recognize mutual combat in the way in which it was used to convict Mr. Young, Jr., was mutual -- did mutual combat ever exist, or alternatively had it ended, and then the directed verdict on attempted murder, so those three issues.

Q. Okay. Were there any other issues that you were able to identify?

A. Certainly I read the entirety of the record, listened to -- well, watched his interrogation, listened to the 911 calls, and attempted to identify any potential issue for appeal.

Q. Right.

A. The -- the problems, there were a number of things that I initially thought might be a good issue for appeal. It turned out there wasn't anything there. I -- I couldn't identify something that seemed like a likely error. And then also can only raise issues that have been preserved below.

Q. Okay. Were there any issues that you identified that were not preserved?

A. I recall being interested in and thinking I

-- I may have hit on an issue that was worth raising in terms of a confrontation clause issue. I recall from years ago, maybe law school, that there's a case out there, Crawford v. Washington, where the United States Supreme Court said that an accused has a right to confront anybody that is presenting testimony or evidence against him. And in this case I recall that there was a woman named Charlese Mitchell, who I believe she testified as to statements that Robinson made to her, but Robinson was never called as a witness in the trial and never presented testimony, so Mr. Young, Jr. was not able to cross-examine Mr. Robinson as to those statements. And then I also recall there being at least one, potentially two, 911 calls that were admitted into evidence that contained statements that were at least arguably relevant to the attempted murder charge, as well as -- as to whether they were engaged in mutual combat. And I thought that there may be a confrontation clause issue there as well, but confrontation clause issues were not raised at trial.

Q. Okay. Okay. And do you remember, were the 911 calls that were admitted as evidence in the trial?

A. Again, this is years ago, so I'm operating off my best recollection, but I recall them being admitted at trial. And -- and I believe that is the case, because I -- I do recall that we submitted them as part of the record on appeal.

Q. Okay. And -- and you listened to the 911 calls?

A. I did.

Q. Okay. Let me ask you also about the issue of ex post facto application. You indicated that -- that there was no -- basically, the only case law in South Carolina was old, and that this was an extension -- there was no case law regarding a third party victim. What -- did you consider that, and, if so, what were your thoughts about that?

A. I don't recall considering the exact legal doctrine constitutional provision of ex post facto law. I do recall considering extensively does South Carolina law recognize this? And so while I may not have considered it exactly as ex post facto, I certainly considered is this something that is recognized in, or would be an extension of existing South Carolina law versus an entirely new crime, entirely new legal theory. So I guess that would be my answer as to whether I considered ex post facto

law and then the other thing would be I don't recall anything as to ex post facto law being raised at trial below.

Q. Let me ask you this. In your opinion in handling this appeal, do you feel like the Court's -- Supreme Court's ruling in this applied retroactively this concept of -- of -- of murder to a transferred intent to a third party via mutual combat?

A. I suppose that will ultimately be for the Judge here, and, potentially, in any appellate courts in South Carolina to tell us. My -- I reread those Supreme Court's opinion in preparation for today ---

Q. Right.

A. -- and it does use language regarding extending. It depends, I suppose, on what it means for a law to be ex post facto and retroactive. My -- for what it's worth, I am not a Circuit Court Judge or a Appellate Judge, but my reading as appellate counsel would be that the crime charged here was murder, and that the Appellate Courts were -- and Trial Court were applying existing South Carolina common law, just applying it to a new set of facts.

Q. Let me -- you're familiar with the Supreme Court's order, aren't you, I would think?

A. The Supreme Court's decision?

Q. Decision, yes, sir.

A. Yes, sir.

Q. Do you mind if I show you a copy of that?

A. No.

Q. Okay.

MR. THOMAS: Your Honor, may I approach? And ---

THE COURT: Yes, sir.

MR. THOMAS: -- I think you have that in your -- in your packet.

THE COURT: I was provided that, yes, sir.

MR. THOMAS: Yes, sir. If I can beg the Court's indulgence, Your Honor, I've got tons of paper here.

THE COURT: Take your time.

MR. THOMAS: May I approach, Your Honor?

THE COURT: Yes, sir.

BY MR. THOMAS:

Q. And, Counsel, what I'm specifically looking for, and I apologize that I don't -- did not write the page down, but maybe you can find it quicker than I. The Court in its ruling says, "That as a result, we extend our mutual combat jurisprudence to

permit finding on mutual combatants criminally liable in situations where an innocent bystander is killed by one of the combatants." To me that kind of jumped out when I read that order. I can try to find it for you, and I'm sorry. Let's see.

A. I -- I found it.

Q. Did you? Okay.

A. The copy of the Supreme Court's decision that you gave me does not have any page numbers, but ---

Q. Okay.

A. -- it is on the -- I believe it would be on the eighth page, the same page on which footnotes five and six appear.

Q. Okay. Yes, sir. So since you handled this appeal, is it -- would it be your opinion that this extends the concept of mutual combat to include transferred intent third parties, as well as the old theory about, you know, combatants shooting back and forth at each other?

A. To my knowledge, this decision would be the first decision in South Carolina in which the legal doctrines of mutual combat and transferred intent, or hand of one and hand of all, were applied together.

Q. Right. In hindsight, would you have raised that issue before the Court, or would it -- would it have even been a proper argument since the Court had not ruled yet?

A. In hindsight, I would not have raised it for a number of reasons, one of which would be that that issue was not raised below, and, therefore, wasn't preserved; but, secondarily, as to what you just mentioned, we argued that South Carolina law does not recognize this legal theory. I think inherent in that is if you don't recognize this, if you are going to all of a sudden recognize it as the first recognition of it, that may be ex post facto law. Now, of course, that depends on whether this is an initial recognition of this crime or theory of murder, or is this merely a new application of existing law.

Q. Right. Did you find in your research any cases to support the concept that this was something that was extended in the concept of mutual combat, or was this something new?

A. I did fairly extensive research nationally and found cases in other jurisdictions that had dealt with this factual situation. I was not able to find any case law in South Carolina dealing with

this factual situation. Having said that, it certainly -- there were numerous cases in South Carolina recognizing mutual combat. There were numerous cases in South Carolina recognizing transferred intent, and hand of one is hand of all, but I -- I did not find any case that applied those two things together.

Q. All right. And I -- it took me a while, this was new to me, I -- from my old practice had some understanding of mutual combat, but I think you did an excellent job on this appeal as well that you put forth.

A. Thank you.

MR. THOMAS: Your Honor, if I can beg the Court's indulgence for just a second?

THE COURT: Yes, sir.

MR. THOMAS: Your Honor, if it please the Court, I have no further questions.

THE COURT: All right, cross-examine?

MS. DIXON: May it please the Court?

CROSS-EXAMINATION

BY MS. DIXON:

Q. How are you today?

A. Doing all right, how are you?

Q. I'm doing well, thank you. I just want to

clarify. I think -- did you testify during your direct examination that in hindsight you would not have raised the ex fact -- ex post facto issue?

A. Sitting here today I can't say that had I given it further consideration, that there was anything that would have caused me to raise it. I don't know anything today that changes what I thought then.

Q. Gotcha. And did you believe that trial counsel below did a thorough job of presenting all the arguments about mutual combat, and why it should not apply to these facts to the Trial Court?

A. Yes. I have no criticism of trial counsel's raising of the mutual combat issues. It is certainly a complicated and at that point somewhat novel issue, so it, I think, wasn't the easiest thing to raise, but I think trial counsel certainly raised the issues that we wanted to argue as to mutual combat.

Q. Gotcha. And then you, of course, addressed those in your briefs to the Supreme Court and the Court of Appeals?

A. Yes. We were able to take trial counsel's arguments as to mutual combat and convert those into all of the issues that we thought were appropriate

to raise as to mutual combat.

Q. All right.

MS. DIXON: Nothing further, Your Honor.

THE COURT: All right.

MR. THOMAS: Your Honor, if I may, just one.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. Counselor, is it -- would it be fair to say that this issue of mutual combat and -- that that issue didn't really become ripe until the Court issued its order?

A. I'm sorry, I'm not sure that I understand the question.

Q. If -- if we're talking -- and let me -- if we're talking about ex post facto, and, you know, you had indicated that you wouldn't necessarily have raised it, one, because it wasn't preserved, but you didn't know. I mean the issue of the ex post facto, that issue didn't become apparent -- didn't arrive or become ripe until the Supreme Court issued their order?

A. If the Supreme Court's decision means that South Carolina has recognized a -- a new law ---

Q. Right.

A. -- a new version of murder -- if a new

version of murder is enough to trigger the ex post facto clause, then I would agree with you that there was no way for trial or appellate counsel to know that until the Supreme Court had issued its decision.

Q. Okay. And, in fact, that piece of the order that we -- we read about we extend our mutual combat jurisprudence to permit finding all mutual combat criminally liable in situations where an innocent bystander is killed by one of the combatants, that -- in your opinion, that extends, or that creates something that didn't exist in South Carolina prior to this -- to this order?

A. I cannot go that far. I can say that in my opinion this extends the mutual combat jurisprudence to a new factual situation. Is that a new South Carolina Law? Does that trigger the ex post facto clause? I don't have an opinion as to that.

Q. Okay, all right.

MR. THOMAS: Thank you, Your Honor. Thank you.

THE COURT: Anything else?

MS. DIXON: Nothing further.

THE COURT: All right, thank you, sir.

THE WITNESS: May I be excused?

THE COURT: Yes, sir, Mr. Quinn.

THE WITNESS: Thank you.

THE COURT: You can call your next witness, sir.

MR. THOMAS: Your Honor, if it please the Court, we'll call Mr. Vaux to the stand.

(Witness is sworn.)

* * * * *

Roberts Vaux,

having been duly sworn,

testifies as follows:

* * * * *

MR. THOMAS: May it please the Court?

THE COURT: Your witness, yes, sir.

DIRECT EXAMINATION

BY MR. THOMAS:

Q. All right, Mr. Vaux. Thank you for being here this morning.

A. Yes, sir.

Q. You had an opportunity to represent Aaron Young, Jr.?

A. Yes, sir.

Q. All right, sir. And in your representation you had, what, two trials, kind of one that -- that ---

A. You're gonna get into the trial of the first one? We got into the hearing when it came to light

that there was a -- an undisclosed video, and that caused problems and then, subsequently, the division into two separate trials where Mr. Robinson was tried first, and then Mr. Young and his father were tried separately.

Q. All right. And in the first trial did they try to try all three ---

A. Yes, sir.

Q. -- codefendants together?

A. Yes, sir.

Q. Okay. And then after that they split them into separate trials?

A. Yes, sir.

Q. Okay. And was the jury impaneled in that case?

A. I don't recall.

Q. All right, sir.

A. The record would reflect that though.

Q. Okay.

A. Far better than my recollection.

Q. Yes, sir. Now in representation of Mr. Young, a pretty complicated case?

A. It was a unique case, yes, sir, still is, in my opinion.

Q. Yes, sir. And so what all did you do in

preparation for this?

A. Well, it -- it was interesting because the facts were largely not in dispute. I mean the facts were fairly -- they weren't stipulated, but they -- they were clear, and they were obvious. There were some -- there was some problems with the facts, but -- but by and large. So there was the -- the -- the law side of it, and then there was the -- the trial side of it, if you would. I'm not sure that's eloquently put into ---

Q. Yes, sir. What were -- what were the facts, if you can ---

A. All right, well, there's no question that it started off as Mr. Quinn stated, he -- I thought he stated the facts, resuscitated them very clearly.

Q. Yes, sir.

A. There was a confrontation that the Youngs has, and then there was a -- it went from there to Bryant Road, as I recall, which is somewhere between Muddy Creek and Marshland. And from there it went to Allen Road where the shooting took place. So there were -- so three sites; if you would. And the facts at each of the sites I -- I don't think were -- were in -- in dispute. Robinson showed up at their house uninvited, shot the gun in the ground,

left. They got to Bryant Road where I guess the Youngs had chased them, or were following trying to find them. Found them on Bryant Road. There was some question as to whether or not Aaron -- I call him Aaron ---

Q. Yes, sir.

A. -- Aaron pointed the gun at Robinson or not. That was a question of fact?

Q. Okay. Was there any evidence that he ever shot at Robinson?

A. Oh, no, no, there's no evidence that he shot the gun at him because the gun jammed. My recollection is there's some reason in the record there was something that said that basically -- I -- I can't say that. No, he never shot the gun.

Q. Yes, sir.

A. Yeah, then -- so they -- then when the gun -- when the gun didn't fire, or it didn't shoot, or it didn't discharge, Robinson left Bryant Road and went to Allen Road, parked the car, and then was hiding, or at least the Youngs couldn't find him, and the Youngs shot at the car. Now, I can't remember how much -- how many times he shot the car, but somebody described it was looking like it was Swiss cheese.

Q. Yes, sir.

A. And so when that was done and over with, they got in the car -- their car and left. And, you know, Mr. Stone had a -- a model yard of the scene, which was I thought helpful to us of Allen Road. Because it showed the house where Mr. Robinson's car was parked outside, and where their -- the Youngs were standing. And then it showed the road going, basically, east towards the ocean, towards Marshland Road along Allen Road, to where they then got to Marshland Road took a left going north, and the shot came from, essentially, for some reason, the direction of where Robinson's car had been going between east and north towards Marshland Road, and where Robinson was shooting at the Youngs and the bullet killed the young child.

Q. So there was no dispute that Tyrone Robinson fired the shot that killed the young -- the young man?

A. Oh, yes, sir.

Q. All right.

A. There was no dispute about that at all.

Q. Right.

A. I think everybody admitted that.

Q. Right. And in preparation of this, I read

your -- the transcript, I think you did a really good job with this. Your argument -- what were your arguments? What were your kind of theory on things?

A. Right, so -- so here's, you know, in looking at this thing, and you go back ten years, I'm sort of an old man, I'm beginning to forget some of this stuff. But if you look back at the -- on the writ of cert to the Court of Appeals, and I was looking at that this morning, and the exchange, at least I think it was in there, was an exchange between Judge Cooper and myself in discussing it. So you had -- and this is where -- let me digress for just a second ---

Q. Yes, sir.

A. -- okay?

Q. Okay.

A. In preparing for this thing you -- you think, well, can you win this thing on the law? And I thought we stood a fair chance of winning it on the law. Mistakenly, but I thought that. But you also have to understand if you don't win it on the law, then you best figure out what's gonna happen when you try the case, because you are exposing yourself.

Q. Okay.

A. And I had some grave concern about that, because of the confrontation on Bryant Road. The rest of it I was not as concerned about, the other two sites. So I spent a great deal of time trying to win this case on the law.

Q. Yes, sir.

A. And we looked at every jurisdiction in the United States on the theory of mutual combat, and we looked at every jurisdiction in the United States on the theory of transferred intent. And as Mr. Quinn said, the two had never been married before in South Carolina, at least not that I could find to this case. And I was scared of what would happen as a result of that marriage, if, in fact, Judge Cooper let it in. I worked very hard -- we got Judge Cooper for the first trial, and I wanted Judge Cooper, because I think frankly that he was one of the finest trial judges that I've every practiced in front of in the 51 years that I've been practicing, and I tried a number of cases in front of him, and I -- I've known him a long time, I went to law school with him, he was a couple years ahead of me.

Q. Okay.

A. And so I worked very hard to get him for the second trial, because, frankly, with all due

respect, Your Honor, I thought that Judge Cooper was on the of the trial judges that was -- I don't know how to say this delicately, he had the intellectual capacity to understand the -- the complexity of the transfer's intent and mutual combat.

Q. Okay.

A. It didn't do me any good, but that was my thought process.

Q. All right.

A. Now in the -- in the record on page 100 -- or transcript 193 ---

Q. I'm sorry, what page?

A. I thought it was 193, but at any rate ---

Q. Okay.

A. -- the concept is prior to this, if my memory is correct, there had been -- as Mr. Quinn said, there are cases back in the 1800s, maybe early 1900s, about mutual combat. There was one or more -- one case maybe in 1900, and some in 1800s, but it was a passing comment by then Justice Toal, before she became Chief Justice, as to mutual combat. But nobody had ever said that you can take mutual combat, and the killing of an uninvolved third party by someone who didn't pull -- and charge someone who didn't pull the trigger or was the one who hit the

fatal blow. That that was -- that was permissive, because you really have -- you not only have transferred intent, but 10:24.54 so you've sort of got -- it's almost specific intent too. It's just -- it just didn't make sense to me that you can carry that -- that there was -- that the law would take that quantum leap. But I was scared as to what would happen if the Court did take that quantum leap, because you've got a jury and you've got a nine-year-old little boy, and you've got a shooting -- I can't -- I can't remember the timespan, but this thing had to have lasted a couple -- a couple of hours from the time it started at their house. And it -- it just was the facts were not -- they weren't favorable for a jury to -- to -- they're gonna find -- I was scared they were gonna find and lash out at somebody.

Q. Let me ask you this. Based on your testimony, it made me think about what we were talking about -- about ex post facto. It was your defense, would it be fair to summarize it, I mean really simply that what the factual situation showed, there was no crime committed by -- by Mr. Young, Jr.?

A. I thought that -- that's correct. I -- I

cannot sit here honestly today and say that the thought of the legal theory of ex post facto ever came to my mind during the trial ---

Q. Yes, sir.

A. -- of this case. I -- I was frantically trying to figure out how to apply two theories -- I like the expression, to marry two theories that never dated, in South Carolina.

Q. And unless they were married, then Mr. Young wouldn't be guilty of a crime?

A. He wouldn't be guilty of anything. But I go back to when -- I'm not the appellate lawyer --

Q. Yes, sir.

A. -- okay? I was a trial lawyer. I was. I'm too old of a man. This was my last criminal case, and I was exhausted when it was over with, and I get exhausted just thinking about going back over it, but I -- I wasn't worried about ex post facto, I was worried about, if I didn't win this case on the law what the jury was gonna do.

Q. Okay. So you -- so you didn't -- so you did not raise that issue ex post facto?

A. I didn't raise it ex post facto. It wasn't -- I don't -- I was worried about transferred intent, and -- and --

Q. Yes, sir.

A. -- and mutual combat.

Q. Okay. Let me ask you about the 911 calls.

A. Yes, sir.

Q. You know, there were four calls.

MR. THOMAS: Your Honor, I don't know, this might be a good opportunity at this point, Your Honor, to play those. They were introduced into evidence at trial. They were also introduced into evidence before the Supreme Court. We have had them here, they're fairly short. If you would like, we would like to move at this point in time to have them played for the Court.

MS. DIXON: No objection.

THE COURT: All right, yes, sir.

MR. THOMAS: Thank you, Your Honor.

THE COURT: So you want them admitted into evidence in this hearing?

MR. THOMAS: Yes, we'd like to admit them.

THE COURT: All right, so it's admitted without objection and feel free to publish, yes, sir.

(Applicant's Exhibit Number 1, Audios of 911 Calls, is marked and entered without objection.)

MADAM CLERK: There are four entries. Do you know which entry will be played?

MR. THOMAS: At -- let's see, they're all September 1st, 2012. Let's see, you just want to play them from the beginning?

MS. DIXON: That's fine.

MR. THOMAS: I don't think we can tell.

(Audio is played.)

MR. THOMAS: Your Honor, may we stop it there and let me ask a few -- it is possible if I could ask a few questions?

THE COURT: Sure.

BY MR. THOMAS:

Q. Mr. Vaux, after you've heard that call, do you remember that one?

A. I mean I remember the -- I remember -- I thought Solicitor Stone did a very good matter, because he started the trial, Your Honor, by playing -- the first evidence were the 911 calls, which you couldn't cross examine. They just played them. So I thought from a strategic point of view it was an intelligent way -- I guess I remember them generally. I don't remember them specifically.

Q. Okay.

MR. THOMAS: Your Honor, for the record, as far as what I've got, I think this was the first call.

THE COURT: All right.

BY MR. THOMAS:

Q. Mr. Vaux, you said that you didn't get an opportunity -- did you get an opportunity to object to them being played?

A. I don't remember whether I did or not. I don't -- I don't -- I can't -- I don't -- I didn't object -- I thought -- I couldn't think of any grounds -- I can't think of any grounds today to object because it come in under ---

Q. Right.

A. They put up the -- they didn't just put up the -- play what she just played. They put up the operator.

Q. Yes, sir.

A. And she authenticated the record.

Q. And then they were introduced.

A. And then they were introduced as evidence.

Q. Without objection; is that right?

A. Without objection.

MR. THOMAS: Your Honor, can we play the second call, please?

THE COURT: Yes, sir.

(Second call is being played.)

MR. THOMAS: Your Honor, if it please the Court, may I ask a few questions?

THE COURT: Yes, sir.

BY MR. THOMAS:

Q. Mr. Vaux, this is ---

MR. THOMAS: And Your Honor, this is the second call.

BY MR. THOMAS:

Q. Mr. Vaux, in listening to this call -- well, let me ask you this first, Mr. Young or either Mr. Young, Sr. or Mr. Young, Jr., they did have a gun; is that correct?

A. Yes, sir.

Q. And what type of gun was it; do you remember?

A. They had a weapon of some sort, I don't remember ---

Q. Okay.

A. -- what it was.

Q. And I know this thing is hard to hear, and we're kind of running on memory, but I think she says six or eight shots, it's like an automatic weapon. And were they contending in this trial, the State was contending in that he had an automatic weapon?

A. They had a weapon, I don't ---

Q. Then they -- then they had the gun?

A. Yes, sir, I don't -- I mean I don't think they were contending it was anything other than what they introduced into evidence.

Q. All right, sir. And this lady that called in, you didn't get an opportunity to cross-examine her, did you?

A. When I was looking at that, it looked -- they didn't -- as I understood it, they didn't introduce that call for the -- for the purpose of what she said was, in fact, that they got the emergency phone call.

Q. Okay. But the jury did hear it?

A. They heard it.

Q. Okay. Was there a transcript of this floating around somewhere?

A. No. I was trying to think if we -- I know Judge Cooper, I think he gave some sort of an instruction to the jury, but I -- I don't recall specifically.

MR. THOMAS: And I'm so sorry, Your Honor, if we could play the audio?

THE WITNESS: Your Honor, could I have a drink of water please?

THE COURT: Yes, could we get some water for Mr. Vaux?

MR. THOMAS: I've got some.

THE WITNESS: Thank you, sir.

THE COURT: Go ahead.

BY MR. THOMAS:

Q. Are you ready, Mr. Vaux?

A. Yes, sir.

Q. Okay.

(Audio being played for the jury.)

BY MR. THOMAS:

Q. Mr. Vaux, again, I know we're running on memory, in this -- in this third call, the way I heard it, she said the guy who had on red shorts; do you remember -- do you remember that identification of -- I guess of the shooter?

A. No, I -- I don't remember, I mean she could have.

Q. Okay.

A. It -- the -- the -- the -- that particular call was the one that was most disturbing to me. And as I recall, one of the witnesses, and I don't remember the -- the names of one of them, but it may have been Ms. Washington herself testified at the trial. And -- and that was as bad as the 911 call, and she -- she was there, and she was a witness. She was -- and she experienced it, she lived through

it.

Q. I looked through the transcript, and I didn't see because I checked that to see, and I didn't see where she -- where she was a witness.

A. Yeah, she wasn't, then there was somebody else that was there, as well, and it was just the -- there was -- as I recall, it was not --

Q. I think -- was it Charlese Mitchell?

A. I don't -- I don't remember the name, but there was a lady that was there, well, there was a man that was there.

Q. Yes, sir.

A. And -- 'cause the little boy's mother, as I recall, the mother and father were at work, or both -- the mother and father weren't husband and wife, but they -- the mother was at work, and the little boy was staying with a friend or a relative.

Q. Yes, yes, sir.

A. And was running from one house to another.

MR. THOMAS: Your Honor, if it please the Court may we play the last ---

THE COURT: Yes, sir.

MR. THOAMS: -- the last call?

(Audio being played for the jury.)

MR. THOMAS: May it please the Court, Your

Honor?

THE COURT: Yes, sir.

BY MR. THOMAS:

Q. Mr. Vaux, in listening to this, there appears to be -- well, I guess there appears to be distinctly two different people speaking. We would assume, I guess, that's Ms. Washington who's calling back.

A. There's the caller and then there's an operator.

Q. All right. Did you hear another voice that was calmer that was making comments?

A. I can't really tell in listening for that.

Q. Okay.

A. I was listening just to the person who made the call and the telephone operator.

Q. All right.

A. That's who I was paying attention to.

Q. Did you hear in that call the identification of a gray truck, and they -- they say a gray or green Lexus?

A. I heard the gray truck and the -- I knew that the Defendants had a gray truck.

Q. Gray truck. And that was Mr. Young, Jr. and -- and Mr. Young, Sr.

A. His father.

Q. Yes, sir.

A. I didn't -- I didn't -- did not recall that Tyrone Robinson's car was a Lexus, and I'm not sure that was the car that was shot up. I thought that the car that was shot up was a Lincoln, but -- or a Cadillac, that's just a memory.

Q. Okay. All right. Did you hear where they said, "Yes, and the two were shooting at each other"?

A. Yes, sir.

Q. Okay. And you would assume that by shooting at each other, they're talking about the Youngs and Tyrone?

A. That would -- I would say that.

Q. Okay. Let me ask you this. You had testified earlier that there wasn't any evidence that there was any mutual combat. In other words, that the Youngs actually ever fired at Tyrone?

A. Yes, sir.

Q. But in this 911 call, there's a comment made that they were shooting at each other?

A. Yes, sir.

Q. Would it be fair to say that that's the first time anything comes into this trial that

indicates that the Youngs were actually shooting at the other codefendant?

A. I thought that was helpful to us for this reason.

Q. Yes, sir.

A. If it was the State's position that they were shooting at each other, they didn't produce any evidence to that. They didn't put up any witnesses to testify to that effect. They had a telephone call that said that.

Q. Right.

A. But there was nobody that said that. And, in fact, the testimony was, in fact, they weren't shooting at each other.

Q. Okay.

A. Right? The testimony was Robinson shot either at or around the Youngs at the Young's house, incident number one. And the second run-in was on Bryant Road when the shots were fired. The third site was on Allen Road, and the Youngs shot Robinson in a car, was -- I can't remember whether Robinson's car was a Lexus, or what it was.

Q. Yes, sir.

A. And then the next thing is that Robinson shoots at the Youngs.

Q. Okay.

A. But -- so if you -- if you could look at that model that Mr. Stone had, it clearly shows where the car was that was shot up, and it showed in scale, 'cause I wanted -- I measured it, and then went out to the scene to make sure that the scale -- the thing was drawn to scale. And then you can -- so you can see in perspective how far it was from where the car was that was shot up to Marshland Road, and then where the child was shot, which was sort of on an angle, and then where the car was on Marshland Road. And I distinctly remember arguing to Judge Cooper the fact that they had retreated.

Q. Yes, sir.

A. He didn't buy it, but I -- it was ---

Q. And you were able to use that map to show ---

A. Yes, sir.

Q. -- that they were some distance ---

A. Yeah.

Q. -- apart?

A. And -- and the fact that -- and the other thing is the fact that the 911 call there was no mutual combat in that sense.

Q. But you were concerned -- you were concerned

about that comment made that they were shooting at each other?

A. But I'll give you another side, it was -- it allowed us to argue the fact that the State didn't prove their case.

Q. Yes, sir.

A. They put up something and, in fact, it wasn't true.

Q. Right. Were you ever able to determine who these people were that were calling in?

A. Yeah. The -- the -- there was a lady who -- who -- I don't remember the names of the people who testified ---

Q. Yes, sir.

A. -- but -- but they were the -- the -- at least one of the ones who testified were one of the ones who made the phone call.

Q. Okay. But it appears that the one who on that call was Ms. Washington.

A. I -- I ---

Q. Yes, sir. And were you able to cross-examine these people about these 911 calls?

A. Of course not.

Q. Okay.

A. I mean was I -- I take that back, I was able

to cross-examine the telephone operator.

Q. Yes, sir.

A. "Did you receive a phone call?" "Yes." "Did you get a true and accurate copy?" "Yes." The business records, I don't see how you keep it up.

Q. Okay. Did you ever consider these to be testimonial, these calls?

A. Not as to the facts of what happened, but ---

Q. Yeah.

A. -- other than the fact that they received the 911 call, and then somebody -- some kid -- it'd been alleged that some kid had been shot.

Q. Yes, sir.

MR. THOMAS: Your Honor, if I could beg the Court's indulgence just for a second?

THE COURT: Yes, sir.

BY MR. THOMAS:

Q. Let me ask you, if you don't mind, kind of moving to this thing about the jury charge, I noticed when I read the transcript that you made an objection to Judge Cooper about some changes. There was a -- there was a -- a note that came back from the jury.

A. Uh-huh.

Q. And then -- and then what happened after that?

A. I don't -- you know, I don't remember that. I was -- I had -- I was -- I remember the note coming back, and I was -- it gave me a glimmer of hope that maybe we -- we could get somebody -- wanted somebody to hold out. The -- the -- it was difficult because Judge Cooper had to formulate the charge.

Q. Yes, sir.

A. This is not something that you can go into the jury charge book and just read it out, so he had to -- he had to comport it. And with extensive talks -- discussions about the jury charge, when we gave him the -- the notebook that we prepared with the case law from every jurisdiction on mutual combat and transfer of intent. If you look at the transcript on page 186, we talked about that -- that book, and we talked -- in -- in -- in detail about, and I can't remember the name, but it's Commonwealth v. Red Line, or Red Line v. Commonwealth, a Pennsylvania case. And then the North Carolina case and the Georgia case in trying to come up with jury charge. And to Judge Cooper's credit he changed the jury charge, and I can't -- I remember that, but I

can't remember what ---

Q. Yes.

A. -- the details were of that, but to his credit he -- he -- I think he realized that he had done something that he needed to adjust a little bit.

Q. All right.

MR. THOMAS: Your Honor, for the Court's information, and I apologize, I think I've got the transcript that was provided to me as part of the record on appeal.

THE COURT: Yes, sir.

MR. THOMAS: I have some pages numbers that I'll be more than happy to give to the Court.

THE COURT: All right.

MS. DIXON: Judge, there's three different pages -- page numbers on what we gave you, so I just want to clarify which set of numbers he's gonna be --

THE COURT: Right.

MR. THOMAS: Yeah. It starts over on five, it starts with ---

MS. DIXON: For the record, Your Honor, these are gonna be the numbers at the top of the page of what you have.

THE COURT: Right. Okay.

MR. THOMAS: All right. Your Honor, if it please the Court, we're gonna be talking about -- it starts on page 555, lines 11 through 13, and then 562, lines 23 through 25, page 563, lines 18 through 19, and then on the same page, lines 23 through 25.

THE COURT: Yes, sir.

MR. THOMAS: Page 564, lines three through six, lines eight through 10, and then page 565, lines five through eight, and I think that summarizes the -- Mr. Vaux's argument pretty well.

BY MR. THOMAS:

Q. Mr. Vaux, do you remember the jury came back asking for a recharge on murder, attempted murder, assault and battery first degree and mutual combat?

A. I didn't remember it until you raised the issue, but, specifically, I remember --

Q. Yes.

A. -- they asked for a recharge.

Q. Yes, sir.

A. And I went back and looked, and just looked at page 555, where Judge Cooper says that they asked this definition for murder, attempted murder and assault and battery in the first degree and mutual combat.

Q. Okay. Do you remember -- it appears that

you had kind of a -- a three-point ---

A. What page are you on now?

Q. I am now on page 562. Basically, 62, 63 and 64 and 65, but I think it starts on 62, and you had on line 23 through 25 you make your objection.

A. (Reviews document.) Yes, sir, I see that.

Q. Yes, sir.

A. And the question is?

Q. And you said, "I didn't take it that it was the complete charge ---

A. Of intent and malice.

Q. -- intent and malice, yes, sir.

A. Yeah.

Q. What -- what -- what was your objection on that?

A. If you -- and I'm straining the memory, but if you go back and look on page 187 and 188 of the transcript, there's a long discussion on causation and implied malice as to the law in Pennsylvania, and then was trans -- was taken and looked at by Georgia and North Carolina, okay? And Georgia, and I think I've got this right in my mind, Georgia codified mutual combat, North Carolina did not. And North Carolina said the Supreme Court, as I recall, said that you could not -- you couldn't do what --

what they were trying to do in South Carolina to the Youngs, because they needed to do it by codification, not by common law, unless they tried them under the common law, and they didn't try this under the common law. So we were trying to get the charge molded to fit -- to fit the situation, and I did not think that Judge Cooper had done that is what I'm talking about.

Q. Yes, sir. Okay.

A. I hope that answers the question.

Q. It does, and then ---

A. I don't know whether I'm making any sense or not at this point.

Q. Yes, sir, it does. If you go on over to 564, and it begins on lines three and six.

A. 54.

Q. 564, yes, sir.

A. 54 or 64?

Q. 64.

A. And what?

Q. You say you added in the portion about mutual combat. You added portions of third party, which I don't believe you included in your first -- first time, I guess, first charge.

A. I didn't remember that, but that makes

sense.

Q. And you say it was a comment on the facts.

A. Yes, sir, which I think it was. I think that's part of the problem. When -- when you've got this jury charge, if it wasn't codified, that's one thing, but if it's not, you're almost commenting on the facts.

Q. Yes, sir. And then I think your final objection is on 565, lines five through eight. And then I think what you're saying is that the parties took no exception to its original charge. And to change it now is confusing to the jury and misleading.

A. That I had -- I had co-counsel, Robbie Ferguson, who, one of the young finest -- when I say young, he's in his forties, but one of the finest trial lawyers around. And Robbie was feeding me the things to say, to tell you the truth.

Q. Yes, sir.

A. Now, he was a lot smarter than I was. I was not smart enough to have done all that.

Q. As far as representation of Mr. Young, do you think there's anything that you could have done stronger to -- to have promoted those issues?

A. I was afraid you were going to ask me that

question. You know, I've known Mr. Young for a long time.

Q. Yes, sir.

A. More importantly, or more succinctly, I've known his father -- grandfather who's sitting in the back of the courtroom, one of my very good friends. Aaron is -- I just -- I like Aaron, I've always liked Aaron very much. I tried my very level best to get Aaron to accept the plea, and he wouldn't do it. And I got -- and I imposed on my friendship with Judge Cooper to try and get him to help me to get him to take the plea, and I worked Judge Cooper. And I got a plea offer of ten years to run concurrent on the two charges, and I couldn't get him to accept it. And I was scared to death that if we didn't win on the law, and these two theories got married together, the baby was gonna be a 30-year sentence.

Q. And that ---

A. I wish I -- I wish I -- I wish I could have done something. I don't know what I could have done, but I gave it my very level best ---

Q. Yes, sir.

A. -- of -- of all the cases that I've tried, and when I was with the Solicitor's Office I helped

try two death penalty cases. I defended three death penalty cases and defended four other murder cases. And I don't know how many criminal cases I've tried, but a bunch.

Q. Yes, sir.

A. And I -- of all the ones I've tried, this was the one that -- that has haunted me in my 51 years. Some got the way it was worded, some didn't, but I did not like the result of the marriage of the -- of this -- I keep saying the marriage, of what happened when you joined this mutual combat and implied transferred intent. I just did not -- I was scared to death of what was gonna happen, and I was trying to minimize the loss.

Q. And that was exactly my next topic was the plea offer.

A. Okay.

Q. The plea offer was -- was it -- it was for ten years?

A. Yes, sir.

Q. And I guess that would have been on a manslaughter?

A. Yes, sir.

Q. Okay.

A. And the State agreed to it. Cooper agreed

to it. I recommended it.

Q. Yes, sir. Do you think that Mr. Young understood -- I mean it's a complex case, do you think he understood that exposure on -- like -- like you say, if the marriage worked out and ---

A. I -- I don't -- I don't, you know, I can't tell you whether he understood it or not. I know that between Ferguson and myself we did our damnedest. And frankly, and I don't know this, I just -- it was my impression and my perception Stone wanted him to take the plea. Stone was scared as to what Cooper was gonna do on the marriage. It was no -- it was no foregone conclusion. Everybody -- everybody wanted him to take the plea but -- but Mr. Young. Even his grandfather wanted him to take the plea.

Q. Yes, sir. I don't know if you do it this way. I have over the years in my practice presented it as a balance. In other words, you know, the balance of what could happen to you versus, you know, what -- what the bird in the hand, so to speak, of that plea.

A. Minimize the loss.

Q. Yes, sir. And then, you know, and then the client makes a decision on how much risk they want

to take.

A. Exactly.

Q. And I was just -- I guess the point of the question is, do you think, or could you tell if he understood the complexities of this?

A. Lord, I hope so. We spent -- I can't tell you how many hours I spent in the jail with him, and -- and just trying to get that point across to him, as -- as to the -- to the complexities of it, but --

Q. Yes, sir.

A. -- I -- I did my level best to -- to get it explained to him.

MR. THOMAS: Your Honor, may I approach?

THE COURT: Yes, sir.

BY MR. THOMAS:

Q. Yes, sir, I saw you reaching for your cup.

A. No, I -- I got ---

Q. Oh, you got one?

A. Yeah.

Q. Okay.

A. Thank you.

Q. Okay.

A. I just kind of woke up with a little scratchy throat, I think it's the pollen too.

Q. It's working on me. One -- I think one of

the final questions I have is in regard -- in talking with my client, he has concern about Miranda.

A. Okay.

Q. And I noticed in the transcript that the officer testifies that there was no written document that he signed, but he had given him his Miranda rights, and that's when they arrested him from the car.

A. Right.

Q. In your investigation of the case, were you able to determine whether he was properly Mirandized or not?

A. I thought that was a shaky area, a quagmire, for the State.

Q. Yes sir.

A. My problem was that missing tape, the one that caused the no go, okay?

Q. Yeah.

A. And I'm doing this from memory, but it was the darndest thing that I've experienced in my 40 -- at that point 40 years. They arrested him, Your Honor, and -- and I don't remember the reason why, but they didn't take him into the substation on Hilton Head.

Q. Okay.

A. They put him in the car, and he's sitting in the car by himself. They had his dad -- as I recall, they had his daddy and Robinson in the substation. I guess they didn't have enough room or a conference room. So they had three of them, they want to separate these things, it made sense. So they left Aaron Jr. in the car, but they leave the -- the video running, and I wonder if they did it on purpose or not, I don't know, but he's in the car by himself, the doors are locked, and he carries on a conversation. There wasn't a policeman, there wasn't anybody threatening him or anything, there wasn't anybody there or anything, he's sitting in this car by himself in the dark having a conversation with himself.

Q. And that was used?

A. Huh?

Q. And that was used at trial?

A. Oh yeah.

Q. Yeah.

A. And I don't know how you fix that.

Q. Do -- do you remember, did he make this statement -- I know it's hard for me to determine from listening to that.

A. No, I don't think -- I don't think -- in essence, he didn't make -- he -- he -- he was video -- videotaped or recording by himself and carrying on a conversation with himself. And, frankly, I was concerned about his -- whether he was on drugs or -- or what have you, 'cause I mean it was a little bizarre, okay? I don't know about you, but I've never had a client just carrying on a conversation with himself on a couple of different occasions, and it be taped and available, you know what I mean. So it's a problem.

Q. I watched that video, and it didn't appear to me that he makes a -- a confession so to speak, I didn't ---

A. It's not a confession confession, but it doesn't help.

Q. No, but it didn't help.

A. It didn't help.

Q. Yeah.

A. No, he didn't say, "I pointed the gun and I killed," that's not what -- he didn't say anything like that.

Q. Right. And didn't support, unless I misread it, didn't support the fact that he was involved in mutual combat.

A. No, I wasn't -- that -- it was -- that wasn't a mutual combat. Here's what my concern was. I thought that it damaged him badly on the attempted murder.

Q. Oh.

A. Okay? Now watch what happens. This was my concern. And I know I explained this to him clearly. I didn't think they had a sufficient between the facts and the law to convict him of murder, but I thought they had the facts of convicting on attempted murder. So they attempt -- get him for attempted murder ten years. Knowing Judge Cooper, he was going to lower the hammer. This is a nine-year-old little boy, or an eight-year-old little boy's dead. We've got gangs running around Hilton Head. Someone's going to jail, if you knew Judge Cooper and you knew what was going on.

Q. Right.

A. So he was looking at ten years. So that's what -- and I used that, I said, "Look, you know, so you're gonna get -- you're gonna get ten years," I said this to Duffie, right? And that's when he agreed that he would let the thing go on manslaughter and let him get ten years. That was the worse case that he was gonna get.

Q. Yes, sir. And to your opinion, was there any way that you could have kept that video out, would -- would Miranda have applied to that at all?

A. I don't -- I don't see how it is. Miranda is when somebody questions you.

Q. Uh-huh.

A. They didn't question him. He's just carrying on a conversation.

Q. Yes, sir.

MR. THOMAS: Your Honor, if I could beg the Court's indulgence just for a second, sir?

THE COURT: Yes, sir, go right ahead.

BY MR. THOMAS:

Q. Did you -- just kind of cleaning up, I think we're ---

A. Yes, sir.

Q. -- almost done here. Did you ever think about objecting to the 911 calls as them being hearsay? I mean there seems to be multiple ---

A. Well, I think they are hearsay, but I think they come under the exception of the hearsay under the Business Records Act.

Q. Okay.

A. I mean the fact -- they're certainly irrelevant.

Q. Yes, sir.

A. Right. There's no question about the fact that the -- the 911 operator received the telephone call in the course of normal course of business. I don't see how you can keep that out.

Q. Did the Court do an 803 analysis?

A. I don't remember that.

Q. You don't remember, yeah. And do you know -- well, I guess -- and -- and you don't know whether they did a prejudicial outweighs the probative value?

A. There was discussion of that.

Q. Okay. All right. Did you -- did you think there was a confrontation clause problem?

A. Why do you think there was one?

Q. Just that if they were -- if you put the -- you were unable to cross-examine those witnesses, that -- especially that made the statement about they were shooting at each other.

A. But the point is that it came out in -- during testimony ---

Q. Uh-huh.

A. -- hat there was no shooting at each other.

Q. Yes, sir.

A. So, you know, there's that part of the

charge where the judge says they have to prove each scenario of one of the allegations.

Q. All right.

A. And they didn't do it, and we raised that.

Q. Yes, sir.

A. And I thought that was an ability to show a weakness in the State's case.

Q. One other thing that jumped out at me in listening to the 911 calls, in your testimony, you know, we're talking about some time, you know, you had said that this goes over a period of, I can't remember, an hour or so.

A. I -- I don't remember. I said, you -- you know, I -- I grew up on Hilton Head, so I -- I know where all these places are.

Q. Yes, sir.

A. And on top of which I visited them all. I mean I don't know how long it took, but it took somewhere between -- it had to take them somewheres between 45 minutes and a hour and a half.

Q. It seems to me, and it just -- it's just something I noticed in listening to it, and preparing the case, that the 911 calls bring all these actions together closer in time than they might have been. I didn't see any date timestamps

on anything that I had. I didn't -- I've listened to it, I didn't hear it, and it seems like one of these is happening right after the other when, as you describe it, it was possible that they were -- I think it hurts them -- the argument about retreating.

A. It does, but the -- the -- if you go back and listen, or -- and I don't know that the transcript shows it as much as the -- the trans -- if it's on tape, the testimony about the -- the shooting of the car, and then the time that transpired there, and then the argument that was made to Judge Cooper about the retreat, I thought that it was clear that -- that -- that the -- they had broke -- broken it off, because it was clear from the testimony that when they were shooting up Robinson's car, they never saw Robinson. And Robinson never appeared until after they had left, had driven down Allen Road and gotten onto Marshall Road. All right?

Q. Yes, sir.

A. So there was no -- certainly no mutual combat going on there. Now I mean whether it was why he hid, I guess he wouldn't get shot then, and then he came out, but -- but there was enough time,

and clearly the -- the Youngs had broken it off, and gotten in their car and driven off. And I thought that showed that -- that they had a) broken off the mutual combat, and b) retreated.

Q. Yes, sir. Yes, sir.

MR. THOMAS: Your Honor, can I beg the Court's indulgence just for a second?

THE COURT: Yes, sir. Go ahead.

(BRIEF PAUSE)

MR. THOMAS: Your Honor, I think that is everything we have.

Mr. Baux, thank you so much for your time.

THE WITNESS: Yes, sir, thank you, Mr. Thomas.

THE COURT: All right. Cross-examination?

MS. DIXON: Yes, your Honor. Can we take about a five-minute break?

THE COURT: Sure, you can stand down, sir.

WITNESS: Okay, thank you.

THE COURT: And we'll take a few minutes, okay?

(BRIEF RECESS)

THE COURT: All right. Attorney General, are you ready for your cross-examination?

MS. DIXON: I am, Your Honor.

THE COURT: Go right ahead, ma'am.

MS. DIXON: May it please the Court?

CROSS-EXAMINATION

BY MS. DIXON:

Q. How have you been, Mr. Vaux?

A. I'm well, thank you. How are you?

Q. I'm doing well. And we've talked a little bit today about -- or you've talked a little bit today about this shootout. Can you tell the Court about how long a period did law enforcement believe this whole incident, from the time that they -- that Mr. Robinson left the Youngs' house until I guess --

A. I would assume -- as I say, I -- I think it had to have been at least 45 minutes to an hour to transcribe from the time the shot was fired at the Youngs' house to the time the young boy was killed.

Q. So this wasn't a five-minute done quickly kind of over thing, this was a drawn out ---

A. No, there were three -- like I said, there were three separate what I call three separate instances.

Q. Uh-huh. And then I believe you testified that it took place at various locations?

A. It took place at the Youngs' house.

Q. Uh-huh.

A. It took place on -- I think it was Bryant Road, which is a road that connects Muddy Creek and

Marshland, and then it took place on Allen Road, which is probably 100 yards off of Marshall Road.

Q. Okay. So not an isolated area, but a larger area; would you agree with that?

A. Yes.

Q. Okay. And so when law enforcement started getting these 911 calls about these shootings that were taking place over a large span of time ---

A. That's -- that's -- that's not correct.

Q. No? Okay.

A. Yes. Part of the problem is that Robinson had been terrorizing Hilton Head for years ---

Q. Uh-huh.

A. -- and nobody did anything about it. And part of the problem was that instead of calling 911 and saying, "Robinson's in my yard shooting a gun," they didn't do that, all right, which was a problem. So there was no 911 call from the shots at the Youngs' house.

Q. Okay.

A. There was no 911 call from Bryant Road because there were no witnesses to that, other than the two automobiles.

Q. Okay.

A. Those 911 calls all came from one central

time, which was to our advantage.

Q. Okay.

A. Because it -- there was no -- there was no protraction, it all happened right there instantly.

Q. Okay, okay, gotcha. In terms of the State's evidence, what do you think was the most damaging evidence for Mr. Young?

A. Probably the -- the -- the conversation that he had with himself. And looking back on it, you know, ten years ago, it starts to come back to you a little bit, the jury asked -- the jury -- and there was a transcript of that, and Judge Cooper wouldn't let that in. He played the tape again. And I thought that the charge was interesting that he gave the jury about the -- see I don't know exactly what it was, but the -- that the jury was to -- to -- not pay, my words, not pay attention to the transcript, but to listen to the tape. And what they heard was controlling, not what they saw on the tape, because what they heard was just as valid as what ---

Q. What kind of statements did they hear?

A. You know, I don't remember what -- I just, you know, I don't remember the specifics of what Aaron said.

Q. All right.

A. But I just remembered it wasn't helpful. From the point of view of pointing the gun at Robinson on Bryant Road. That's the part that I was concerned about. The rest of it I wasn't -- I mean I was concerned about it obviously, but not to the same degree.

Q. So you don't recall today any of the specific statements, but only that your impression was that it was damaging?

A. Yeah.

Q. Okay.

A. It -- it sure wasn't helpful.

Q. Did you review that and all the other evidence with Mr. Young?

A. Oh, yeah. Yeah, that's -- that's -- we went over that. That was the part that this was of a concern to me, that he was going to get a minimum of ten years for -- for attempted -- the attempted murder.

Q. Okay. And do you think you had sufficient time to discuss with him the charges and the evidence?

A. What?

Q. With Mr. Young.

A. Two years? Yes, ma'am.

Q. And let's see, do you recall -- you did talk about discussing the ten-year plea offer with him, correct?

A. Yes, ma'am.

Q. And did you explain to him the maximum sentence he would face if he were convicted?

A. I thought that he'd be looking at 30 years.

Q. Thirty years, okay. And did you explain the strength and witnesses of the State's evidence to him?

A. Yes, ma'am.

Q. And the likelihood of a conviction?

A. I told him that if -- if we didn't win this thing on the marriage of the implied -- of the transferred intent and the mutual combat, that I thought we would have some problems. I thought the jury, because of this nine-year-old little boy being killed and shot, and all the attended circumstances I thought that we would have some problems, yes.

Q. Gotcha. And in terms of going back to the confession real quick, do you recall there being a Jackson v. Denno hearing on this statement?

A. I remember there being a hearing, I don't remember the ---

Q. Okay.

A. I'd have to look at -- I don't trust my memory to compare it with the records.

Q. Okay. But if it's in the transcript, you would ---

A. Yeah, I have no -- have no -- no disagreement with the transcript.

Q. Gotcha. Let's see. And I think you testified on direct you did pretty extensive research into the law of mutual combat, correct?

A. If you look at the transcript on page 187, 78, 83, yes, ma'am.

Q. And did you try to argue that they had retreated from the mutual combat?

A. Yes, ma'am, that they -- that that -- I mean I put up evidence that they did, in fact, retreat.

Q. And did you discuss a jury charge on that with the judge?

A. Yes, ma'am.

Q. And did the judge agree with you?

A. I don't remember what he did.

Q. Okay, okay. And you said earlier you don't recall if the jury was sworn?

A. You mean for the first one?

Q. On the first -- I'm sorry, on the first trial.

A. I don't. In the heat of the trial and trying to -- we discovered this conversation that he had by himself, I was more interested about that than I was about the confrontation. I mean there really was no confrontation, he was just sitting there by himself.

Q. Gotcha.

MS. DIXON: Just a moment, Your Honor.

THE COURT: Yes, ma'am.

MS. DIXON: Nothing further, Your Honor.

THE COURT: All right, thank you. Any redirect?

MR. THOMAS: Your Honor, if it pleases the Court, I might have one or two at the most.

THE COURT: Go right ahead.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. Counsel, you have indicated -- you said about -- they asked you about the jury being sworn in the first trial?

A. Yes, both of you asked me.

Q. Okay. And I guess the question is, did -- did you have any idea or any concept the jury might have attached to the first trial -- I mean that jeopardy may have attached?

A. I remember discussing it with Robbie, and we

didn't think that it had.

Q. Okay.

A. For what I don't remember why now, we'd have to look at the transcript of -- of that first trial, or the first -- I don't know whether it was a -- who would call it a trial, but the first session, let's say.

THE COURT: Yes, sir.

BY MR. THOMAS:

Q. Okay. But you did -- you did talk -- think about it?

A. Yeah, we -- we discussed it. I don't remember the -- the -- what ---

Q. Okay.

A. We were more concerned, frankly, what we didn't want to have happen is we did not want to be tried jointly with Robinson.

Q. Uh-huh.

A. I can tell you that.

Q. Yes.

A. I mean there wasn't any questions of the fact that Robinson shot the child.

Q. Right.

A. And there wasn't any question in my mind that the jury was going to hang Robertson. And so I

didn't want to be with him.

Q. Yes, sir.

MR. THOMAS: I have no further questions, Your Honor.

THE COURT: Anything else, Attorney General?

MS. DIXON: Nothing from the State at this time.

THE COURT: All right, thank you, Mr. Vaux.

THE WITNESS: Thank you, sir.

THE COURT: You can be seated.

THE WITNESS: Nice to see you.

THE COURT: Yes, sir.

MS. DIXON: Judge, I would ask, we did subpoena him, if he could just stay until after ---

THE COURT: You want him to say?

MS. DIXON: Just in case ---

THE COURT: All right, so ----

MS. DIXON: -- they bring up something --

THE COURT: -- if you would stay Mr. Vaux ---

THE WITNESS: Oh, yes, sir.

THE COURT: -- in case they decide they need you.

THE WITNESS: Okay.

MS. DIXON: Because I have may have one more witness.

THE COURT: All right. Yes, sir, you can call

your next witness.

MR. THOMAS: Your Honor, if it please the Court, we'd call Aaron Young, Jr.

THE COURT: Okay.

(Witness is sworn.)

* * * * *

Aaron Young, Jr.,

having been duly sworn,

testifies as follows:

* * * * *

THE COURT: Hey, Mr. Young, good morning.

MR. THOMAS: If it please the Court, Your Honor?

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Mr. Young, you are incarcerated at the South Carolina Department of Corrections?

A. Yes, sir.

Q. And you are serving time for what?

A. Murder and attempted murder.

THE COURT: Okay. Speak up just a little bit, okay? No, no, getting close to those don't matter, because actually they're just for her purposes of recording; so it's really your voice isn't being amplified in here, so if you'll just speak up for

me. Thank you.

WITNESS: Okay.

BY MR. THOMAS:

Q. Mr. Young, now you were originally charged with what?

A. Discharging a firearm into an unoccupied vehicle.

Q. Okay. And then you were at some later date charged with murder and attempted murder?

A. Yes, sir.

Q. Okay. And you have filed -- you had an appeal?

A. Yes, sir.

Q. And now you're at a stage where you have filed a post-conviction relief application ---

A. Yes.

Q. -- and you're at your hearing?

A. Yes, sir.

Q. Now, you and I have talked about this. You understand that there are certain exposure should the Court grant your relief?

A. Yes, sir.

Q. That these charges could be reinstated?

A. Yes, sir.

Q. You could be taken back to trial?

A. Yes, sir.
Q. And that murder especially carries a penalty of up to life without parole?
A. Yes, sir.
Q. You understand that risk?
A. Yes, sir.
Q. And you're willing to accept that risk?
A. Yes, sir.
Q. You want to go forward today?
A. Yes, sir.
Q. Okay. Did you make bond?
A. Yes, sir.
Q. Did you spend any time in the Detention Center?
A. Yes, about a year and a half.
Q. And then you made bond after that year and a half?
A. Yes, sir.
Q. All right, sir. And you were out on bond for how long before your trial started?
A. I want to say about six, seven months.
Q. Okay. The reason I ask that, while you were in the Detention Center did you have an opportunity to -- to meet freely with Mr. Vaux?
A. Yes, sir.

Q. Okay. And how many times did y'all meet?
A. Probably like five, six times.
Q. Okay. And when you met with him, did y'all talk about -- or what did y'all -- what did you discuss with your attorney?
A. Basically, Mr. Vaux was trying to understand the structure of the case. He's like -- it was something that's new that nobody ever seen, and he was basically trying to understand how the prosecution was going to prosecute the case where it was something that has never been done before.
Q. Right. What did you understand?
A. That in order for me to be held guilty of murder or attempted murder, that you have to kill somebody, you have to -- either -- either it's felony murder, hands of one hands of all, or straight up murder by your own hand. But I didn't see that I was guilty of any of that or attempted murder, because I never pointed a weapon at Tyrone or fired a weapon at Tyrone.
Q. Okay. Did you ever fire a weapon at Tyrone?
A. No, sir.
Q. Okay. And you certainly didn't fire a weapon at the young child?
A. No, sir.

Q. Now did you review the discovery with Mr. Vaux?

A. He went over a little bit of things, but mainly he was still -- he was trying to figure out how they were going to try the case. It was something, like I said, he probably went over a few statements, but he was really trying to figure out how to try the case. That was his main concern.

Q. Okay. Did you listen to the 911 calls?

A. No.

Q. Okay. Did you see any other videos? Did you see the video of yourself in regards to ---

A. Not until trial.

Q. Yes, sir.

A. Not until trial.

Q. Not until trial?

A. Yeah.

Q. Okay. And how about statements, did you go over any kind of witness statements with Mr. Vaux?

A. Me or anybody else?

Q. You, did you ---

A. Yeah, he went over the statements.

Q. You went over the witness statements?

A. Yes, sir.

Q. Okay. And what was the theory -- I call it

a theory of defense, how did you think that Mr. Vaux was going to represent you and defend you?

A. Basically by the facts of the case.

Q. Okay.

A. Through the facts of the case, and the law that applied to that.

Q. And we talked about this plea offer. Did you talk to Mr. Vaux about the plea offer?

A. Yes, I did.

Q. And what did you understand about the plea offer?

A. Basically, he was gonna give me a ten-year plea if I -- they would give me ten years if I pled guilty to murder and attempted murder, but I felt like I didn't -- I didn't -- I was innocent, I didn't murder anybody, I didn't attempt to kill anybody, so I didn't take the plea.

Q. And that was based upon your understanding of what -- what murder -- of the law?

A. Yes, sir.

Q. Okay. And do you feel like that -- that Mr. Vaux explained all of that, those legal issues ---

A. It was just a one -- it was just a one-time thing. He just told me that -- he did tell me that it would be crazy for me not to take the plea, but

it wasn't -- it wasn't something that was stressed, it was a one-time thing, he told me about it, and he told me I'd be crazy not take the plea, but after that there was nothing else said. Like he wasn't consistent like him telling me to take the plea. It was just a one-time thing.

Q. All right.

A. Yes, sir.

Q. What I'm curious about is, and only you know the answer to this, what's your understanding of what these legal concepts were, and what did -- what in your mind did you understand in regards to what your chances of being convicted were?

A. None.

Q. Okay. You didn't understand all that?

A. No, sir, in my eyes, I was innocent.

Q. Okay. Now, did you -- did you -- you said you did not hear the 911 calls?

A. No.

Q. When did you hear those?

A. At trial.

Q. In the courtroom?

A. Yes, sir.

Q. Okay. What happened at the first trial to -- to your understanding?

A. Well, Tyrone was about to cross-examine my father, and then they said that there was -- Mr. Vaux stood up and said there wasn't -- that he -- that he just got word that there's new evidence that hasn't been disclosed to him by the -- by the prosecution or something, and they stopped the trial. And that was during the Jackson v. Denno hearing.

Q. Okay. That was after the Jackson v. Denno hearing?

A. During.

Q. During the Jackson v. Denno hearing?

A. Yes, sir.

Q. Okay. And was there a jury there?

A. No, but I think -- I think it was already impaneled, but I'm not sure.

Q. All right. Do you know if they pulled a jury?

A. I -- I think so, I'm not sure. You've got to -- you've got to check the records.

Q. Okay, okay. But you and I have talked about this, and you had said that you thought that it was a double jeopardy issue. Why did you think that?

A. Because I thought by the time we got to -- to jury -- Jackson v. Denno -- Jackson v. Denno, the

jury has already been impaneled.

Q. All right.

A. It doesn't make it that far unless the jury hasn't been impaneled already.

Q. Now -- so you didn't have really any involvement with Mr. Vaux in regards to the 911 calls?

A. No, sir.

Q. Okay. Did he talk with you -- Charlese Mitchell was one of the witnesses?

A. Yes, sir.

Q. And did you discuss with Mr. Vaux -- did you have a -- was there a statement from Charlese? Did you go over that with him?

A. She gave a statement that Tyrone -- Tyrone gave her a third party -- I guess it was like a third-party hearsay statement, and he told her that we -- somebody was shooting -- either we were shooting at him, or somebody else was shooting at him.

Q. Okay. And you talked to Mr. Vaux about that?

A. Yes, sir.

Q. And what did you tell Mr. Vaux about that? Anything?

A. I didn't tell him anything.
Q. Was it true?
A. No.
Q. All right. Now ---
MR. THOMAS: Your Honor, I beg the Court's indulgence just for a second.
THE COURT: Sure, yes, sir.
BY MR. THOMAS:
Q. How involved were you in this case as far as participation with Mr. Vaux?
A. I really didn't have so much say-so, I just let him do his job.
Q. All right. How old are you?
A. Twenty-nine.
Q. And education-wise, how far did you go in school?
A. Eleventh grade, but I got my GED.
Q. You got your GED?
A. Yes, sir.
Q. Since you've been incarcerated?
A. No, in the County.
Q. Oh, in the County?
A. Yes, sir.
Q. Did you understand any of these legal arguments?

A. No, not really. I didn't even know that they charged me with mutual combat and implied transferred intent, it doesn't go together, that's why I didn't take the plea, because I -- I knew that -- well, in my mind I thought that it -- the facts of the case don't support the law, that's why I didn't take the plea.

Q. And -- and that's why you didn't take the plea?

A. Yes, sir.

Q. Okay. Aaron, you and I talked about this, and I know you've been waiting a long time for this hearing, is there anything else that you'd like to bring to the Court's attention? Anything you think I have forgotten or left out?

A. No, sir.

Q. You're asking the Court to grant your post-conviction?

A. Yes, sir.

MR. THOMAS: Your Honor, I think that may be my last question, Your Honor, if I could have just a few minutes to look at my notes.

THE COURT: Yes, sir.

(Brief pause.)

MR. THOMAS: Your Honor, I don't believe I have

any further questions.

THE COURT: Cross-examination?

MS. DIXON: May it please the Court?

THE COURT: Yes, ma'am.

CROSS-EXAMINATION

BY MS. DIXON:

Q. How are you today, Mr. Young.

A. Fine. How are you?

Q. Good, thank you. And I think on direct you said you never fired at Mr. Robinson, right?

A. No.

Q. You never fired at, of course, the child. What about the car?

A. Yes, ma'am.

Q. How many times?

A. Like eight ---

Q. Eight.

A. -- nine.

Q. Nine?

A. Yes, ma'am.

Q. Multiple -- you would agree many, many times at the car ---

A. Yes, ma'am.

Q. -- correct? And then let's see, in terms of your statement, do you recall your statement?

A. Statement? But I -- I was never Mirandized, like they just -- they just -- they -- at first they threw me in the back of a cop car, then they transported me to the Beaufort County Sheriff's Station. And when they transported me to the Beaufort County Sheriff's Station, they just -- they kept coming and asking me questions, but at first I told them that I didn't want to talk to them, but they kept pursuing. And that's -- that's the statement they used at trial, but nobody ever Mirandized me.

Q. What was the statement?

A. They basically asked me what happened on Allen Road and what happened on Marshland, and what happened between me and Tyrone.

Q. Were there any statements you made while you were sitting alone in the room?

A. Ma'am?

Q. Were there any statements you made while you were sitting alone in the room?

A. Yeah, I was talking to myself.

Q. Talking to yourself about what?

A. Basically what they were trying to do. I knew -- I knew something wasn't right, 'cause I was kinda -- I was talking about that to myself.

Q. Like about what? What were you saying?

A. They're trying to make it -- make it seem like me and my father killed -- we had a shootout on Allen Road.

Q. Did you discuss that you knew how to use a gun?

A. Yes, ma'am.

Q. Did you discuss that if you -- you could have killed Mr. Robinson if you had wanted to, or been trying, or something like that?

A. I don't recall.

Q. You don't recall that part of it? Okay. Do you recall the Court having a Jackson v. Denno hearing?

A. Yes, ma'am.

Q. Do you know the purpose of that hearing?

A. Yes, ma'am.

Q. What is the purpose of that hearing?

A. To determine voluntary statements.

Q. Correct.

A. Whether or not the statement -- the confession was truth.

Q. So you would agree that was an issue that was before the Trial Court?

A. What's -- what now?

Q. The issue of your statement, the voluntariness of it was something that the Trial Court did consider; would you agree with that?

A. No, ma'am. They never tested the voluntariness of my statement.

Q. So you disagree that there was a Jackson v. Denno hearing?

A. There was a Jackson v. Denno hearing, but when counsel -- when the judge asked Mr. Vaux did he want to challenge the voluntariness of my statement, he said no.

Q. Okay.

MS. DIXON: I have nothing further, Your Honor.

THE COURT: All right, anything else counsel?

MR. THOMAS: Just one.

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. Mr. Young, have you ever killed anybody -- did -- did you ever kill anybody there?

A. No, sir.

MR. THOMAS: Nothing further, Your Honor.

THE COURT: All right, anything else? Attorney General, anything else?

MS. DIXON: Nothing further from this witness --

THE COURT: All right.
MS. DIXON: -- Your Honor.
THE COURT: Again, thank you very much, you can go back and sit next to your attorney.
THE WITNESS: Thank you.
MS. DIXON: May I have just one quick moment with Mr. Vaux? I just want to ask him ---
THE COURT: Sure. Let me ask, any other ---
MS. DIXON: I'm sorry.
THE COURT: That's all right.
MS. DIXON: I thought we were done.
THE COURT: Any other witnesses?
MR. THOMAS: No, Your Honor.
THE COURT: All right. Go ahead.
MS. DIXON: Thank you, Your Honor, just one moment.
(Brief pause.)
THE COURT: Are you calling Mr. Vaux?
MS. DIXON: Yes, sir, Your Honor.
THE COURT: All right.
MS. DIXON: The State will recall Mr. Vaux, and this will be very brief, but ---
THE COURT: Sure. All right, Mr. Vaux, you're still under oath.
THE WITNESS: Yes, sir, Your Honor.

DIRECT EXAMINATION ON RECALL

BY MS. DIXON:

Q. Mr. Vaux, you were here and you heard Mr. Young's testimony about the discovery?

A. Yes, ma'am.

Q. Do you recall whether you reviewed this discovery with him?

A. Yes, ma'am. I remember distinctly sitting in the -- the interview room at the jail, and going through the statements because we had a hard time reading them and had to make copies to get them darkened up. And we went through the statements line-by-line.

Q. And did you review all the discovery with him?

A. Yes, ma'am. I -- I mean I -- I remember the statements specifically. I can't, you know, we went through -- the -- the big thing was the -- were the statements, 'cause at that time we didn't have the -- we didn't have that tape at the time of the first trial, and then I was concerned about the tape and went through it with him, and in between that -- that second charge.

Q. And did you engage in a lot of conversations with him about the issues in this case?

A. I spent hours with him ---
Q. Hours?
A. -- and his father.
Q. And did you, to the best of your ability, explain it in a way he could understand?
A. Yes, ma'am.
Q. And did you have any concerns with his ability to understand?
A. I didn't have any concerns -- do I think he understood the severity or the seriousness of it? Yes.
Q. Okay.
A. The concepts, there were a lot of us who -- who didn't totally understand the concept.
Q. Right.
A. And until the Supreme Court came down with the -- this most recent opinion, you know, I mean that -- I thought the opinion was -- was well written. It -- and it's understandable, but I -- I think that -- until then, I -- I still think there's a muddy, murky area.
Q. Gotcha.
MS. DIXON: Nothing further from the State.
THE COURT: Counsel?
MR. THOMAS: Nothing -- nothing, Your Honor.

THE COURT: All right, thank you, Mr. Vaux.

THE WITNESS: Thank you. Your Honor, may I be excused?

THE COURT: I think you can be excused now, sir.

MS. DIXON: You may be excused, thank you.

THE COURT: Have a great day.

THE WITNESS: You too.

THE COURT: All right, Attorney General, you can call your next witness.

MS. DIXON: Yes, Your Honor, the State calls Sean Thornton to the stand.

THE COURT: All right.

(Witness is sworn.)

* * * * *

Sean Thornton,

having been duly sworn,

testifies as follows:

* * * * *

THE COURT: All right, go right ahead, yes, ma'am.

DIRECT EXAMINATION

BY MS. DIXON:

Q. Mr. Thornton, how are you today?

A. Other than fighting a pollen induced headache that I'm sure everybody's dealing with

right now, I'm fine, ma'am, thank you.

Q. And what was your involvement in Mr. Young's case?

A. I sat with the Solicitor, Duffie Stone, who is my immediate supervisor, on, as I recall, all three cases. Once they were separate I also assisted him at the tail -- at the -- at the first trial is when I became involved when we had the issue with the tape.

Q. Okay.

A. I became involved at that point for the trial of that first one that got interrupted in the end, and all three of the subsequent trials.

Q. And just to kind of back up and give some background, did the State initially intend to try all three codefendants together?

A. Yes, ma'am. The original plan, Solicitor Stone was going to try all three of them together. And during the pretrial in -- in that case, we actually got the case, we got it ready. In the pretrial for that case, there kept being mentioned of -- of the potential -- they had a -- I think it was Dr. Salas, I think it's S-A-L-A-S, if memory serves. Dr. Salas was an expert that was really hired, I believe, on behalf of Aaron Young, Sr. And

the issue involved that he had been made promises, or that it was her opinion that he had been made some sort of promise if he took law enforcement to the gun. And I don't remember how specific it was, but she basically kept, in this pretrial hearing, was talking about the fact that -- that from what Mr. Young, Sr. had told her, that -- that there were -- that there was some promise made about whether, you know, he took him to the gun, they, being law enforcement, that -- that he would derive some benefit.

Q. And ---

A. And -- I'm sorry.

Q. -- just to clarify, was that promise or alleged promise made to Mr. Young, Sr. or Mr. Young, Jr.?

A. That was made to Aaron Sr.

Q. Senior, okay.

A. And so at that point we, we being Solicitor Stone, ordered me to go to law enforcement, and ask them basically go to -- 'cause we had already, obviously, you know, we're at trial now, we assumed we had everything, we had discussions with him about it. We asked them to go and retrieve any other tapes, if there's anything at all. So I think we

asked them just go search your hard drive from that day, or -- and, again, I don't know how all their stuff is stored; but anyway they found a tape, and it was the -- it -- it was mostly audio. There was video associated with it, but it's a dashcam. I know most the folks in here -- I know Mr. Wise in the background, he would know this, but before bodycams everybody had a dashcam or a car cam. So that's basically what this was, but the mic on some of those is actually worn by the deputy. So it is a -- I say it's mostly audio, there is a video, but you can't really see anything, it's just looking at the front of the building. On the tape it is heard, "Hey, if you, you know, if you," and they're talking to Aaron Young, Sr., if you take us to the gun," I think they said, "you know, we won't" -- "we won't charge you for the murder," or, "won't do something about the murder," it was something to that affect to Mr. Young, Sr. Obviously, we didn't know anything about that, and since we didn't know about it, the defense didn't know about it, so they brought it -- they found this tape, brought it into us. It was immediately turned over to the defense. They went back in Chambers. We talked about it with Judge Cooper, and because, obviously, at that point,

the Solicitor -- I -- I do remember this specifically, the Solicitor and I had a discussion about it even then, and it was like, "You can't -- we can't try this case together, because there's no way we can use the -- the gun that's been discussed that -- that Aaron Young, Sr. and Jr. had. Junior had possession of it, but against Senior, because he was made this promise, and that's what led him to it. So then just as an initial matter, you know, we were pretty confident we could not use it against Senior. Obviously, that raised a lot of other issues, so we decided at that point to join in with the motion, because there was -- the motion had been made, and I don't remember if it was Senior's counsel, Junior's counsel or both, it probably was both because it was Robbie Ferguson, as I recall, and Roberts Vaux, and they were working somewhat together, I believe, at some point. Anyway, so we joined in the motion -- the State joined in the motion for severance at that point, and the Judge severed the trial, and, obviously, because everybody had to regroup based on this new evidence, what it meant, what evidence could or could not be used, they, you know, the -- I think what he said -- I looked over the transcript a little bit in

preparation for today. I think what he said was something to the effect of that when the Solicitor gets everything back ready, you can call it again, I'm gonna leave that to him. And I believe Judge Cooper tried all three cases, I'm pretty sure he did. I know he did both of the Youngs, but I believe he did Robinson's trial as well.

Q. And in terms of that first trial, do you recall whether y'all had selected a jury?

A. Yes, ma'am, a jury -- a jury was picked, but they were not sworn.

Q. So the jury was not sworn?

A. No, ma'am. It -- that is -- and -- and, again, I -- I don't know the experience of all the attorneys. Like I don't do, as we discussed, I -- I don't have any knowledge of appellate work. I don't do it and don't want to, but Mr. Wise will know this, it is very common for judges to go ahead and pick a jury, and then not swear them on the off-chance that something does happen, because jeopardy attaches when the jury is sworn.

Q. Yeah.

A. So there was a jury selected, but then they were released because we were doing all the pretrial matters, and we never got out of the pretrial

matters before all this tape stuff came about. And at that point, the Judge granted the motion for severance and we stopped the proceedings.

Q. And then moving onto Mr. Young, Jr.'s trial itself ---

A. Yes, ma'am.

Q. -- do you recall that statement he made?

A. Yes, ma'am, I -- I would agree with -- I mean I don't agree with everything Mr. Vaux said, but -- but I understand what his perspective is, but -- but I -- I do agree with him that that was -- that was certainly -- I don't know, I hate to say what is or is not the best evidence in a case, because you never know what a jury's gonna latch onto. I will say that his statement was not good for him in several -- several ways. One of which was he said, and I don't -- it's -- I don't have it verbatim, I didn't relisten to it, but I will tell you that I know one of the things he -- he -- that I remember him saying was he was visibly agitated about the fact that -- that he knew how to use a gun, and I think his quote was, "I know how to use a gun very well." And what I remember gathering from the statement was that he was -- that the reason he didn't shoot Tyrone Robinson was because the gun

jammed, and he said, "You know, I know how to use a gun, and I know how to use a gun very well." That I'm pretty sure is a direct quote. Now, the other part is just my recollection. The other thing he said that I recall, and, again, if the -- if the actual tape is different, obviously, that's correct, this is just my memory of it, was that if -- if he had gotten -- if he had been able to do this, or kill Tyrone in Ridgeland, nobody would ever know about it. And for people who don't -- aren't familiar with this area, Ridgeland is a lot more rural than Beaufort County and Hilton Head are. So there were several things, and the interesting thing about the statement was that was while he was by himself -- he was by himself in a room. There wasn't anybody even asking the questions at that point. So the folks had come in and left, and the best statements he gave against himself were when nobody else was in the room when he was talking to himself. I -- I remember distinctly sitting with the Solicitor and I heard the detectives coming down the hallway and praying they would not open the door, because I didn't want them to mess up his stream of consciousness that he was giving, and discussions about the gun, and how he knew how to

use it, and all these other things he was talking about. But that was definitely not good for him.

Q. So to clarify, there was no law enforcement in the room?

A. Not for the best statements, and I will say he did have a Jackson v. Denno, I went back and looked at it, and I think Doug Seifert testified that he Mirandized him.

Q. Okay.

A. And I think Roberts Vaux -- I -- I think Roberts went through two or three objections at the end of the Denno hearing, and one of them was the prejudicial vs. probative argument, and I think the Judge's response was, "Well, the most prejudicial stuff came out of his mouth when nobody else was in the room," which is true.

MS. DIXON: Just a moment, Your Honor.

THE COURT: Yes, ma'am.

BY MS. DIXON:

Q. Do you recall whether the Judge gave any type of instruction about the 911 call?

A. Yes, ma'am. Judge Cooper gives a pretty standard instruction. I say standard, standard for him, and I -- I've given it to several other judges as well who have used it. It's not uncommon, I know

I've heard you and -- and opposing counsel earlier talking about the use of transcripts.

Q. Uh-huh.

A. We use them sometimes because sometimes, as you've heard, things can be very hard to hear on these 911 calls.

Q. Uh-huh.

A. Sometimes in interview rooms, things can be hard to hear. I -- I've always liked the -- the charge that Judge Cooper gives. I've been in front of him a number of times for years, and what he basically says is, "You know, ladies and gentlemen of the jury, the transcripts are not evidence, so we don't -- we don't seek to introduce the transcripts themselves. We use them as a demonstrative to aid the jury." So what he tells the jury is, you know, you have to rely on you -- what you see and what you hear, and I'm paraphrasing, I didn't go back to the, you know, whatever the exact charge is, but typically the one he uses says something to the effect of, you have to be the judge, you know, just like every other fact in the case. So if -- if what's on the screen is a transcript, that is only as a -- a demonstrative to help you. If what you hear differs from the transcript, then you go with

what you hear, because the tape is the evidence, not the transcript. So that's --that's typically what he does, and I do believe that's what he did in this case.

Q. Gotcha.

MS. DIXON: Your Honor, nothing further from the State.

THE COURT: All right. Cross-examination?

MR. THOMAS: Your Honor, I beg the Court just a couple.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Good afternoon.

A. Yes, sir. Good afternoon.

Q. Just a couple of questions. Let's see, you talk about a Dr. Salas.

A. Yes, sir, and - and I -- I don't know for sure the spelling, but I think that -- I think it was a man, Salas, was ---

Q. Okay.

A. -- an expert hired by Aaron Young, Sr. but I ---

Q. But they didn't testify in Junior's case?

A. No, sir, I don't believe so.

Q. Okay.
A. I think that was all going on at the very first trial when they were all being tried together.
Q. I was curious in this, because I had a case with this problem. Did that promised by law enforcement about the gun -- did that create a burden shifting problem? You know, "If you tell us where the gun is or take us to the gun, we won't prosecute you for murder. You can prove yourself that -- prove that you didn't ---
A. I know if -- if we would have -- if we would have -- I -- I suppose if you would have -- if we would have, you know, it's possible against Senior maybe if ---
Q. Yeah.
A. -- the statement would have been used, or the gun would have been used, but we didn't use the gun against Senior.
Q. And I guess ---
A. That's one of the reasons I think ---
Q. Right.
A. -- the trials were split.
Q. Right.
A. And I think rightfully so.
Q. And I'm thinking thinking standing on my

feet sometimes is not a good thing.

A. I'm thinking sitting down, so I, you know, we're probably about the same ---

Q. Yeah, yeah. If it was -- if it was burden shifting on Senior, would it have excluded the gun? Would it have excluded the gun in Junior, as it was obtained by some problematic ---

A. I would say not because it -- it -- because he missed, you know, my argument would be no, because Junior doesn't have the -- his father's Fourth Amendment Rights.

Q. Right.

A. Only his father does.

Q. Okay, all right. And that just kind of jumped in my mind as we were talking. The ---

A. I may be wrong. Mr. Wise just put his hand over his head and groaned at me, so I may have gotten that wrong.

Q. Okay.

A. But ---

Q. Yeah.

A. -- you know, in my experience I would tell you that generally it's been my understanding of the law that one person cannot claim the Fourth Amendment rights of another person.

Q. Now, you said the jury was selected, but it wasn't sworn?

A. Yes, sir.

Q. Okay. All right.

A. And I -- I did -- and I want you to know that I'm not like -- not just relying on my memory for that.

Q. Uh-huh.

A. I also went back to -- went back to the transcript in the first trial, and it's pretty clear that there's, you know, that they are picked, and there's no discussion whatsoever of them being sworn, they're immediately released. And then I fast forwarded to the other -- the second trials, where Judge Cooper does what he always does, and what every judge I've ever had does where they tell the jury you, you know, understand that, you know, raise your hand, and then the Clerk -- the court reporter always puts jury sworn. There was no such discussion whatsoever in the first trial which coincided with my recollection.

Q. Okay. Thank you.

A. Yes, sir.

Q. Let's see, in regards to this statement, he was actually in a room, wasn't he, when the ---

A. Yes.

Q. -- when the camera was on ---

A. He -- he was in -- my recollection was that it was one of their interview rooms, and the reason I say that is because it was all audio and video recorded, and that's typically the rooms that they have audio and video recorded. He was in an interview room, and they had asked a couple of questions, and he had given some kind of generic answers. I think he might have referred to Tyrone Robinson as T, or something like that, and about maybe him approaching the house, and this is memory ---

Q. Yeah.

A. -- I did not go back and doublecheck this, but it was something to that effect. And then they leave the room, and then he -- it -- it appeared to me, this is just my speculation, it just appeared to me that he was just kind of aggravated with the situation. He seemed -- he was, you know, he was pretty -- very coherent, but pretty visibly angry, and he kept, again, he kept mentioning about the gun, and he knows how to work the gun and etcetera, so ---

Q. And clearly he was under arrest at that

time, or he was detained?

A. He certainly was detained.

Q. He was detained.

A. He was detained?

Q. I mean he was in -- he was in a room, and -- and, again, I believe the testimony was that Doug Seifert had Mirandized him and had let the other officers know, I think at that time, might have been Lieutenant Bromage, I'm sorry, Captain Bromage, something, anyway, and Laura Alberton, who was one of the people who was talking to him, she may have been the main one interviewing him in the room.

Q. Right.

A. Doug Seifert, I think, testified that he not only gave him -- Mirandized him verbally, but that he had told the other officers that he had been Mirandized.

Q. Right. And then I think that it comes out of the transcript that they did not read ---

A. They did not read -- I believe you're correct, sir. I don't believe they re-Mirandized.

Q. Okay. All right. Now you talk about the Jackson v. Denno hearing, and the Jackson v. Denno hearing is basically directed at that statement, or ---

A. Yes, sir, I -- I believe it is directed in -- in the statement as -- in total. I think we played the entire thing for the Judge in total, and then I think Mr. Vaux made his arguments based on that.

Q. All right. And the thing that leads up to the next question, which I didn't see, and I could be wrong, in the transcript I didn't see where there was any kind of 803 analysis of the 911 calls. Was that because there was no objection from Mr. Vaux?

A. I don't believe Mr. Vaux objected to the 911 calls.

Q. All right.

A. No, sir.

Q. All right.

A. And I -- I will tell you we -- I won't say every trial, but in almost every trial I have, we -- we pretty routinely use 911 calls. That's -- that's -- to say not uncommon would -- would not really get it done. I mean I use this in probably 90 percent or more of the trials.

Q. Tell me, 911, in your experience, could a 911 call become testimonial?

A. I would never say that it's not possible.

Q. All right.

A. I will tell you that I've been dealing with this now for -- as a Public Defender and as a Prosecutor for 25 years, I don't know that I've ever personally been on a case of all the ones I've ever done where a 911 call has been excluded either when I was a defense lawyer asking for it or ---

Q. Yeah.

A. -- later on as a -- as a prosecutor. So I'm not saying it's not physically possible, but I would consider it personally highly unlikely. They're typically not considered testimonial, in which case you're out of Crawford, and then you just go by, you know, you could do a business record as an exception, you could do excited utterance, you could do present sense impression. So, you know, in my experience, no, sir. I -- I -- I would not sit up here and tell you that it's -- that it's -- you couldn't create a scenario where you could do that, but this -- this isn't it.

Q. Okay. All right, thank you. Let's see, all right, was there -- there wasn't -- I -- I couldn't find it, there was a transcript of the 911 calls?

A. I -- I don't -- the problem I have is, sir, as I did three of these things, and I don't know. Typically we do, and I know in one of the three

trials, it may have been -- it may have been Senior, typically we do those, and -- and -- and, you know, just Cooper again, he has that -- that we -- I actually have a copy of it in my office. At any time we use a transcript and there's an objection to the transcript, I always, you know, offer that as a -- for clarification material. So forgive me, and I -- I cannot sit here and tell you for sure, but it -- I would think that we would have, just because I know we did in some of the trials.

Q. So -- and I was a little bit confused about your statement about Judge Cooper. Did the jury have the transcript for the 911 calls?

A. Not -- not -- no, what -- what we would do, and -- and I think what we did in this case is it was played on a monitor. In other words, what we typically do is, we get a transcript done, and then we have it overlaid over, for lack of a better word, and I'm not the technical guy in the office, and -- and, you know, the older I get, the worse I get with this stuff, but we basically take what, in essence, is like a PowerPoint of the audio of the 911, and then overlay a transcript over it, but we don't -- we don't -- when we introduce the exhibit, it is just the audio, it is not -- does not have the

transcript overlay. So typically, we don't hand to the jury a transcript, it's simply they are watching the transcript roll as the audio is playing.

Q. Gotcha. So the charge by Judge Cooper was not that you've got the -- the audio and the transcript, and -- and you're supposed to give preference to the audio, it was that it didn't have the transcript?

A. Right. In other words, the transcript -- I think what -- I think what -- and, again, I don't remember which case it was, I apologize.

Q. Yeah.

A. I mean one of the things I think the jury came out and asked about -- something about a transcript, and I don't remember if it was about his statement.

Q. I think it was in -- in -- in ---

A. It might have been.

Q. Yeah.

A. And -- and what he would have said -- I think what he said was, you know, they don't get the transcript, we don't send that back, that's not evidence. The evidence is the tape. I can replay the tape for you.

Q. Okay.

A. So -- so that -- that is the reason he has explained, and this was 20 years ago probably, but the reason he explained to me that -- that that is proper is, and I agree with him, for whatever that's worth, is that, you know, we don't -- we're not introducing a transcript, you know, even if I had a court reporter or third party do it, it isn't evidence. That's their -- for lack of a better word interpretation of the evidence. We do think it helps us demonstrative because as you guys have seen, some of the, you know, some of the stuff is hard to hear, but -- but I think it is proper and fair to tell the jury this is not evidence. The evidence is the, you know, audio or video, or both.

MR. THOMAS: Your Honor, I don't think I have any further questions.

THE COURT: All right, thank you. Anything else?

MS. DIXON: Nothing further from the State.

THE COURT: All right. Solicitor, thank you very much.

MR. THOMAS: Thank you, Your Honor.

MS. DIXON: And, Judge, we don't have anymore -- other witnesses. I do -- would like to clarify for the record just the materials that we've handed up

to you, what those are.

THE COURT: Yes, ma'am.

MS. DIXON: That would include the trial transcript, the appellate records from the Court of Appeals, the appellate records from the State Supreme Court, and then the Clerk of Court records from the underlying conviction, as well as his SCDC records. We did also hand up the PCR records. And we would also ask, we gave you, as part of Aaron Sr.'s trial, the transcript of this first trial ---

THE COURT: Right.

MS. DIXON: -- where all there were -- were the Defendants at that time, and we would ask that also be made a part of this record. We do think it's relevant now that they are raising an issue related to it.

THE COURT: Your response?

MR. THOMAS: I think that -- I was just looking at my documents, Your Honor, I think that includes everything that we have. Of course, we handed up the list of the issues. We also had copies of the appellate records, but I think you already have that.

THE COURT: Yes, sir.

MR. THOMAS: I think that's everything that --

so we would agree. I think that everything has been presented to the Court.

THE COURT: All right. Anybody -- any closing remarks anybody wants to make?

MR. THOMAS: Your Honor ---

THE COURT: You don't have to, whatever you want. I'm here and I'm listening.

MR. THOMAS: No, I know just -- the case is so complicated and I -- I apologize in advance for even asking for this, I didn't know if the Court would entertain, not a brief, but like a closing memoranda on some of these issues. It's just -- I'll be glad to argue them today, but it's -- there's so much information, I'm afraid I might miss something.

THE COURT: I -- I will tell you my preference is to go ahead and have them heard today.

MR. THOMAS: Yes, sir.

THE COURT: I -- I think that it -- amongst other things, I actually have reviewed I believe almost everything in this matter. And it's freshest in my mind now, and I would rather have that heard today in the sooner rather than -- than later.

MR. THOMAS: And that's fine.

THE COURT: So I'm happy to hear from you, sir.

MR. THOMAS: Your Honor, if it please the Court?

CLOSING STATEMENTS BY MR. THOMAS

Your Honor, there's a couple, I think, of -- of pretty strong issues in this case, not to say that the others are not. But the things that jump out to me, one, is this thing about the ex post facto. I think that issue became right in the time that the Supreme Court issued that order. If you look at that order, you know, yeah, they talk about hand of one hand of all, accomplice liability is all kind of in there, but I think the most telling thing in there, which I think -- I think if it's hand in hand with what Mr. Vaux was saying. You know, he searched, he -- he realized that he -- he reached out and looked. He didn't find any evidence of whether or not, you know, you can marry these things about mutual combat and third party liability. And Elliott from -- that did the appeal, he say the same thing. You know, we -- that was our argument, not the ex post facto, but in regards to the marriage that there's no case law. There's no case law directly to support -- you start talking about some liability under mutual combat, generally it's -- it's -- mutual combat, it's this party and this party, and they're shooting at each other, and somebody in that group gets shot and killed, and

everybody's responsible for it. So I think that the Supreme Court in saying this thing about we extend our mutual combat jurisdiction is most telling in this order, that what they are saying is that they are creating something new that didn't exist in South Carolina before. Mr. Vaux's testimony -- I spoke with him when he testified on the stand, he said, "We didn't think there was a crime committed." And, you know, we've got concerns that, you know, that the Court could marry these two things together, which would create a crime. So I think clearly from today -- well, from the date of the order forward, yeah, that's -- that's the law in South Carolina. But in the cases that I looked at, and I'll be more than happy to -- I do have copies of them. One of the cases says, which makes perfectly good sense, and that is -- that's the thing, this stuff is so much. State vs. Hewitt, and I'll be glad to hand these up to the Court afterwards, it says, basically, give fair warning of the effect and permit individuals to rely on their meaning until explicitly changed, reliance. You go out and you've got to have notice of, you know, if it's printed, it's in statute, you have notice of it. It's implied that you have notice of this. And

I think one of the biggest things in this case is that, as far as ex post facto, there wasn't any notice, legal notice. And what the Court did was extend this concept of liability in creating a new liability, without giving Mr. Young any notice. His testimony was I didn't think I was guilty of anything. The evidence in the case is that he never fired his gun, well, except into the car. He was charged with some sort of shooting up the car, but he never fired the -- the gun at Tyrone, he never fired the gun into the woods. Now, it was because -- maybe you could argue that it was because it jammed, but he never fired it. So he thought that Tyrone was the one that unfortunately shot and killed the child, he didn't do it. And I think that goes hand-in-hand with the thing about the Court as far as it saying that there was -- he had the right to rely upon the law as it was on the State of South Carolina at the time until it was extended by the Supreme Court. So I think clearly -- I think it's a strong case for an ex post facto -- ex post facto argument. Appellate counsel said that he didn't include it. I'm not sure that he necessarily had to or should have. I think it is an argument that, one, it wasn't preserved by Mr. Vaux; two, you know,

they didn't have any notice of it either that that was gonna happen, although Judge Cooper is talking about marrying these things and creating that; but I clearly think it becomes ripe at the time that the Supreme Court issues its order, and I think that under the PCR statute, which is 17-27-10, it says, "A conviction or sentence violated U.S. or South Carolina Constitution of laws for the State of South Carolina, ex post facto. It's both in the Federal Constitution and State Constitution.

THE COURT: All right.

MR. THOMAS: So clearly it's properly before the Court, pursuant to the PCR application, and I think it has a lot of strength. The -- the other thing is the 911 calls. If you address the 911 calls, just from a common sense approach, they are -- they're entered into without objection. There is -- without the objection, there's no 803 analysis whether or not, you know, the probative nature of it, you know, outweighs the prejudicial aspect of it. Clearly, they're prejudicial. And the reason I think they're prejudicial is that we listened to all of this stuff, but in this -- and I did try to do a transcript of what -- of what was on the call, it says that, one, the gray truck, okay? Talks about

what vehicles were involved. Then it says, yes, the two were shooting at each other, mutual combat. That comes in through this 911 call. Now Mr. Vaux said that he was going to use it to his advantage, but I don't see how. I think the case is stronger, because there is no direct -- I think everybody will admit there's no direct evidence that Mr. Young, Jr. fired his weapon at the other combatant. So I think, one, there's a problem with saying that there is mutual combat as far as evidence is concerned, but this provides it. And not only is it hearsay, but it is hearsay upon hearsay. If you listen to this fourth tape, there's a voice in there that's clear. Ms. Washington is the one who is extremely upset. It's a difficult tape to listen to, but she's not the one, someone else is saying that, yes, and the two shots were shooting at each other, and they talk about Tyrone Robinson, and in the third tape they talk about the guy in the red shorts who was Tyrone Robinson, and I think the objection should be made. I think it's testimonial. And just to say that we can put in anything we want to put into evidence because we can have the person, the -- the records person come, testify, yes, this is -- this is the 911 call and authenticate it is a back

door to allowing this testimony to come in. And maybe in some cases it doesn't matter, but it matters in this case because I think clearly it says it implicates -- it provides evidence that they were shooting at each other. So we don't know. You know, if you go to -- to 803, you know, and you say that -- and I apologize again to the Court. Okay, if we say that it was present sense impression, who's the impression? Especially that tape four, we don't know who's speaking. We don't know if it's Ms. Washington, who didn't testify by the -- by the way, or it sounds to me, and I certainly could be wrong, it's another party, they're calmer, and if you listen to the tape you can hear them saying the -- the gray truck -- the Lexus, and then you hear them say that they were shooting at each other, so we've got another party in there. Does the excited utterance apply to them? I don't know. And then whether or not it was a present sense impression, we don't know who they are. So I think this is an unusual case. We've got the -- the Solicitor saying, well, I've never had a case, which may be true, where we weren't able to get the 911 calls in, because we put up the recordkeeper and we authenticate them and we get them in. Well, that

may be true, but this case is so unusual, it is so different, and it's just by chance that, you know, we allow evidence into the jury of them shooting at each other in the mutual combat through a 911 type. I think if we had done the analysis, I think the prejudicial clearly outweighs the probative value. I mean what we were trying to prove through the 911? Were we trying to prove that they were shooting at each other and they were involved in mutual combat? I don't know. But I think this then goes hand-in-hand with what appellate counsel talked about, is that they thought enough of this claim that they actually worked it up. We looked into that, we prepared it, but then we found out that it was not preserved. And he says that, you know, hearsay, is it a hearsay exception, I don't think it is. I don't think it would have passed 803. And then confrontation clause, who are these people? Where are these people? The Solicitor didn't bring them. The Solicitor didn't bring Ms. Washington. She is obviously the person -- the main person speaking in three and four, which I think for my client are the most damaging. She's not -- they could have called her then. She's not there, and we don't know who the calm person or the third party or whoever that

is that's speaking on the fourth tape, we don't even know who they are. So I think that he clearly, under the confrontation clause, had the right to have those people on the stand and to confront them, and that wasn't provided. So I think that there is a significant problem with the 911 calls. I think there is a significant problem with the ex post facto. And then, you know, if we move onto the other things, I think they're, you know, whether or not he completely understood about the taking of the guilty plea and the other things that we had presented. I think those are the two strongest issues, Your Honor.

THE COURT: If you would briefly talk to me about the failing to object to the jury charge, remind me of that.

MR. THOMAS: What happened on the jury charge was that my client believes that he wasn't really effective, and he was ineffective in addressing the jury charge. It's different, Mr. Vaux testified about it at three different sections that he objected to. My client feels like he could have been stronger in that objection. It wasn't preserved -- well, I guess it was preserved for appeal, but it wasn't brought up on appeal. But

that's -- he feels like Mr. Vaux was not effective ---

THE COURT: All right.

MR. THOMAS: -- in regards to that.

THE COURT: All right, thank you.

MR. THOMAS: Yes, sir. Thank you for time.

THE COURT: Yeah, I didn't mean to cut you off, I was just asking about that.

MR. THOMAS: No, no.

THE COURT: Have you got anything else, or are you done?

MR. THOMAS: I don't think so, Your Honor, you -- you know, you've heard the case, and -- and you certainly are, you know, capable of -- of, you know, reviewing all the other issues. I think they are the two most important, and I thank you for your time and listening to me.

THE COURT: All right, sure.

MR. THOMAS: Thank you.

THE COURT: Yes, sir. Attorney General?

MS. DIXON: Yes, sir, may ---

THE COURT: Yes, ma'am.

MS. DIXON: -- it please the Court?

CLOSING STATEMENTS BY MS. DIXON

I think I'm gonna kind of track the order he

went in. So starting with the issue regarding the ex post facto violation, and I believe he made the comment that that issue became ripe at the time the Supreme Court issued its order. And I wanted to just briefly touch on this because they had initially framed this as ineffective assistance of appellate counsel for failing to raise this in a petition for rehearing to the Supreme Court or on cert to the South Carolina Supreme -- I'm sorry, I said that backwards. They originally raised this for ineffectiveness is failure to raise this issue in a petition for rehearing to the Court of Appeals or on cert to our State Supreme Court. And I just want to note for the record that the Sixth Amendment right to the effective assistance of counsel does not extend to discretionary review. It only extends to the first appeal of the right, and that pretty much ends after the Court of Appeals issues its opinion. And I've got a couple of cites for that. That would be Folkes v. Nelson, it's a Fourth Circuit case, that's 34 F 4th 258, and that's actually a habeas case. But in that case the claim was that appellate counsel was ineffective for not filing a petition for rehearing from the Court of Appeals' decision. And that opinion basically

explains the ineffective assistance of counsel claims cannot be brought based on counsel's failure to file a PFR from the Court of Appeals. Douglas v. State is a State Court case that has the same holding, that's 359 S.C. 213, no right to ineffective assistance of counsel when seeking discretionary review. And this is a quote "We decline to impose a duty of appellate counsel to pursue rehearing or cert following the decision of the Court of Appeals." So to the extent that he had initially framed it that way, we would assert that the Sixth Amendment does not go that far, and he, of course, said here earlier that it became ripe when the Supreme Court issued its opinion. And we would just submit that at that point there's no Sixth Amendment right to counsel anyway, so we can't base a claim on that. We would further submit there's no ex post facto here. The document of mutual combat, this is a direct quote from State v. Taylor, 356 S.C. 227, this is a 2003 case, "The doctrine of mutual combat has existed in South Carolina since 1843." This was not a new law. The statute that he was charged under was not a new statute. We would just submit that this was not new. To the extent that they are arguing they didn't have legal notice

of this, I would just note that they did, in fact, he was indicted. He was indicted for murder, and there was actually a motion to quash, and that's in the transcript. And the issue in that motion to quash was this very issue we've been discussing today, which is whether mutual combat can extend to the facts of this case. That is a decision that was litigated at trial. That is a decision that was argued to the Court of Appeals. And that is a decision that was argued to the Supreme Court. It was affirmed by both Appellate Courts in our State. So I think that issue, in and of itself, has been clearly argued, clearly litigated. And then in terms of ex post facto, in general, I would also just submit there's -- there is a difference between creating a law and expanding a law, and here this is not the creation of a new law. This is at most the expansion of a pre-existing law, but all of these laws have existed in South Carolina well before this crime was committed. Leading on to the 911 calls, we would submit that, first of all, there were hearsay exceptions to these. The 911 operator was there. This is a business record. Of course you could hear the excitement of the person in the background as all this was going on. We would

further submit that the -- any prejudicial impact or any -- I'm saying it backwards, excuse me, Your Honor.

THE COURT: No, that's all right.

MS. DIXON: That the prejudice out -- does not outweigh the probative impact of this. Under 403, we would submit that this would have been properly admitted had that objection been raised. In terms of the confrontation clause issue, the 911 call itself we submit was nontestimonial, and in support of that we would cite to Davis v. Washington, that's a United States Supreme Court case, 547 U.S. 813, that's 2006. And it basically in that case says, "Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency." At the time these calls were made, several callers noted hearing multiple sets of gunshots going off. This was through a broad range, a broad neighborhood. It was an ongoing thing. The police needed to know what does this vehicle look like? Where are these people going? Because they needed to stop this ongoing threat. And so the purpose of those 911 calls was to aid the police so

that we can stop this emergency. For further support of that, we would cite, too, this is a South Carolina case, State v. Thompson, 420 S.C. 386. And in this case our Court of Appeals found no violation in a 911 call. Even though the dispatcher and a man at the scene informed them, Thompson was no longer at her apartment. The questions were necessary to gather information. They found this because the questions were necessary to gather information to assist officers in determining where the perpetrator went and if needed medical attention. We would submit that the facts here are similar to the facts of State v. Thompson in that it's a similar situation. You have a 911 call. They're gathering information to try to stop an ongoing emergency. I will note CERT was granted on that case, but it was later dismissed by our State Supreme Court as improvidently granted, that was dismissed on April 3rd, 2019. Moving on, in terms of whether the lawyer failed to properly advise him about the ten-year plea offer, we would just submit that the trial counsel gave credible testimony that he did, in fact, explain that plea offer to the best of his ability extensively. Explained the consequences of a conviction at trial, explained to him the pros and

cons of the -- the -- of the State's case and gave him valid information to make that decision. In terms of the double jeopardy argument, we submit that the jury was never sworn, and so jeopardy would not have attached if the jury was not sworn. Number six, trial counsel was ineffective in handling an objection to a charge. We would submit, Your Honor, if counsel did object, that change is in the transcript if you want to review it. I don't know what more a lawyer can do, a trial lawyer, other than to make an objection whenever they see one that needs to be made. And then in terms of the Miranda issue, we would note -- we would submit that he was in a room by himself talking to himself. There were no police interrogating him. We would also submit that the record will reflect that he was given Miranda warnings.

THE COURT: All right.

MR. THOMAS: Your Honor, may I do a one-minute reply?

THE COURT: I'll give you five minutes. I'll give you all the time you need. Yes, sir.

MR. THOMAS: Thank you. Your Honor, and I'll hand the cases up, and the Attorney General has copies of them. The case that I found that is the

simplest explanation about ex post facto is the State v. Horne, and it's a 1984 case. And this is talking about a gentleman who stabbed this lady, and she was pregnant, and the killing of a fetus, and whether or not prior to that whether or not they could be charged with homicide. And the Court says at the time of the stabbing, no South Carolina decision had held that the killing of a viable human being constituted a criminal homicide. And then it goes on to say, "Therefore, the conviction of voluntary manslaughter must be reversed from the date of this decision henceforth, the law of feticide shall apply in this State." And it's talking about ex post facto, but isn't this exactly what we have in this case? Prior to this Court's ruling, we had no law that said that Mr. Young would be responsible for any crime, and after the Court's decision, Mr. Young is responsible, and he has -- it's applied retroactively, he has no notice of this, and I believe that it is ex post facto.

THE COURT: All right, okay.

MR. THOMAS: Your Honor, if -- if it pleases the Court, may I hand these up?

THE COURT: Sure.

MR. THOMAS: Okay.

THE COURT: Anything?

MS. DIXON: Just real briefly, and I'll keep this real short. I just want to note ---

THE COURT: Okay.

MS. DIXON: -- for the record, obviously, as you know, the standard under Strickland deficiency and prejudice, deficiency is measured by reasonableness under prevailing professional norms, and we would submit that this lawyer went above and beyond challenging this doctrine, and the application of this doctrine researched every jurisdiction, had extensive conversations on the record about it. This issue has been heavily litigated, and we would submit counsel was more than effective under prevailing professional norms.

THE COURT: All right, I thank y'all. I think that concludes the hearing. I will have something to you hopefully by week's end.

MR. THOMAS: Thank you.

THE COURT: Okay?

MR. THOMAS: Yes, sir.

MS. DIXON: Thank you.

THE COURT: Thank you very much.

MR. THOMAS: Okay, thank you.

THE COURT: All right.

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Aaron Scott Young, Jr. #363175 Applicant,	)	Case No.: 2020-CP-07-~~798~~ 792
v.	)	**ORDER OF DISMISSAL**
State of South Carolina,	)	
Respondent.	)	

2023 OCT -2 PM 2:23
BEAUFORT COUNTY, S.C.
CLERK OF COURT
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Aaron Scott Young, Jr. (Applicant) on March 26, 2020. On March 15, 2023, an evidentiary hearing convened before the Honorable Robert Bonds. Applicant was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. During the hearing, Applicant testified on his own behalf and called as witnesses appellate counsel Frederick Elliott Quinn and trial counsel Roberts Vaux. Respondent recalled Roberts Vaux and also called Deputy Solicitor Sean Thornton. Following a thorough review of the transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate thirty-year sentence. In October 2014, the Beaufort County Grand Jury indicted Applicant for murder (2012-GS-07-1932) and attempted murder (2014-GS-07-1940). On February 23, 2015, Applicant proceeded to a jury trial before the Honorable Thomas W. Cooper. Roberts Vaux, Esquire, represented Applicant. Solicitor Isaac McDuffie Stone and Deputy

Solicitor Sean Thornton prosecuted the case. The jury convicted Applicant as indicted, and Judge Cooper sentenced him to concurrent sentences of thirty years for each charge.

Applicant filed a timely notice of appeal, which was perfected by F. Elliotte Quinn IV and Jennifer K. Dunlap, Esquires. On appeal, Applicant argued the trial court erred in denying (1) his motion for a directed verdict on the murder charge because the State's mutual combat theory was not supported by South Carolina law or evidence; (2) his request for a jury charge on the end of mutual combat; and (3) his motion for a directed verdict on attempted murder. The Court of Appeals affirmed all issues on the merits. Applicant filed a motion to reconsider, which was denied. Applicant filed a petition for a writ of certiorari in the South Carolina Supreme Court, which was granted. Following argument, the Supreme Court issued an opinion affirming. Notably, the Court held "mutual combat can properly serve as the basis for a murder charge for the death of a non-combatant under the 'hand of one is the hand of all' theory of accomplice liability." Applicant filed a petition for rehearing, which was denied. The remittitur was sent March 12, 2020.

BRIEF SUMMARY OF TRIAL TESTIMONY

On September 1, 2012, eight-year-old Khalil S. was fatally shot during an ongoing gun battle between Applicant; Applicant's father, Aaron Young, Sr.; and Tyrone Robinson. Over the course of an hour, the three men traversed several locations in Hilton Head, eventually ending in front of a group of children jumping on a trampoline. It was there Khalil was shot and killed.

The evidence indicated Robinson fired the fatal shot. (R. 281, 568). At trial, however, the State proceeded against Applicant on the murder charge under a theory of mutual combat. Trial counsel moved to quash the murder indictment, arguing mutual combat is not a crime in South Carolina, and the doctrine of transferred intend does not apply to mutual combat. The trial court

denied his motion.

At trial, Jontu Singleton testified that on the afternoon of the incident, he and Robinson drove to the Youngs' residence. When they arrived, Applicant and his father were outside; Robinson exited his vehicle carrying a .38 caliber revolver and began yelling at Applicant. Singleton testified Young, Sr. saw the gun and began struggling with Robinson. Robinson fired the gun, and Young, Sr. backed away; Robinson fired one or two more shots at the ground before returning to his vehicle and speeding away. Singleton remained at the Youngs' home.

According to Singleton, immediately after Robinson left, the Youngs went inside and retrieved a semi-automatic pistol and ammunition. The Youngs and Singleton then entered Young, Sr.'s gray truck and began to search for Robinson. Young, Sr. drove while Applicant assembled the pistol in the passenger seat. (App. 368-69). The three men drove around their neighborhood for approximately ten minutes but could not find Robinson. Singleton then exited the vehicle.

During trial the State entered four 911 calls placed that afternoon involving the shootout.[1] In the first call, the caller (Kathleen Fayfich) indicated she had just heard eight gunshots in rapid succession at the beginning of Allen Road. She relayed there were children in the area. The operator indicated she would send an officer.

In the second call, the unidentified caller relayed she heard possible gunshots somewhere on Allen Road, off Marshland Road. She relayed she heard six or eight shots that sounded like they were coming from automatic weapons. The caller stated the shots were at one end of the road, and it sounded like they drove to the other end of the road and fired again. The dispatcher asked, "Just now?" The caller replied, "Just now." The dispatcher stated officers had been dispatched to the area.

[1] These 911 calls were also entered into evidence and played at the PCR hearing. (PCR 34).

In the third call, the caller (later identified as Miss Washington) screamed hysterically, "We need an ambulance. Somebody got shot." The caller—who remained hysterical—stated a boy had gotten shot and was bleeding from his mouth. The dispatcher stated offers were on the way. The dispatcher asked if the caller knew the child, where the child had been shot, and if the caller saw cars in the area. At that point, the caller hysterically yelled, "They shot my cousin! I know him! Listen, who was the guy who had on red shorts?" Shortly thereafter the call was disconnected.

In the fourth call, the caller said, "We have a lady on the line who has some information about where the shots were fired just now." In the background a voice is yelling. The caller stated, "She say a gray truck and a gray Lexus. They came towards Spanish Wells and she do know one of them." The caller further relayed the vehicles were shooting at each other. The dispatcher asked who she thought the shooter was, and a voice in the background said Tyrone Robinson.

The State also produced witnesses who testified about the shootout. Charlese Mitchell, who lived off Allen Road, testified she heard three sets of gunshots around 4:00 p.m. that afternoon. (R. 300-29). After the first round of shots, she saw a grey truck driven by Young, Sr. speeding down the road. (R. 328). Robinson, who was related to Mitchell, came to her door after she heard the first round of shots; she let him in and noticed a gun sticking out of his pocket. (R. 309-10). Robinson, who appeared scared, said, "Those M. F. was shooting at me." (R. 310). At that point, Mitchell's fiancé, Tyrone Delaney, came home and the two men stepped outside to talk. (R. 310). Robinson left the yard and minutes later Mitchell heard another set of rapid gunshots. (R. 311). A few minutes after the second round of shots, Mitchell heard three more shots and again observed Young, Sr. speeding down Allen Road. (R. 323-25).

Tyrone Delaney testified he was driving down Spanish Wells Road between 4:00 and 5:00 p.m. when a grey truck sped towards him and forced him to pull over. (R. 330-32). When he arrived home, Robinson was there and asked Delaney if he had seen a grey truck. (R. 333). After Delaney told Robinson about his encounter with the truck, Robinson replied, "Yeah they was shootin at me so I shoot back at them." (R. 333). Delaney testified he heard rapid gunshots after Robinson left their house. (R. 334). Minutes later, he heard three gunshots that seemed to come from a different type of weapon. (R. 335).

Between 5:00 and 5:30 p.m. that day, Applicant, Young, Sr., and his girlfriend, Ebony Campbell, were stopped by police in Young, Sr.'s grey truck. (R. 391, 398). While on the side of the road, Officers located spent shell casings matching a 9 MM firearm in the back of the truck. (R. 392). The two men were then taken to the police station where they were Mirandized and interviewed. (R. 394-96). Young, Sr. told officers where they could retrieve the black bag containing the gun and ammunition. (R. 401-03). Applicant gave a statement to Investigator Albertin admitting to the shootout with Robinson, firing numerous bullets into Robinson's vehicle, and his failed attempt to kill Robinson. (R. 471-493). After officers located and arrested Robinson, they processed his vehicle and located numerous bullets lodged in his car. (R. 419, 430-31). Agent Frank DeFreese, an expert of firearm's marks and ballistics, determined the bullets in Robinson's car originated from Applicant's 9 MM semi-automatic pistol. (R. 466-67).

CURRENT APPLICATION

On March 26, 2020, Applicant timely filed this PCR application alleging he is being held in custody unlawfully for the following reasons:

1. Trial counsel was ineffective for failing to move for a dismissal of Applicant's charges at the preliminary hearing when the state failed to present any evidence of probable cause
2. Trial counsel was ineffective for failing to object to the trial court's erroneous

failure to instruct "specific intent to kill" as an essential element of attempted murder

3. Trial counsel was ineffective for failing to move the courts for a mistrial after trial courts prejudicial ruling in regards to the burden shifting instruction as it related to the murder charge
4. Trial counsel was ineffective for failing to test the voluntariness of Applicant's statement
5. Trial counsel was ineffective for failing to object to trial court's erroneous failure to charge only the current and correct law of South Carolina
6. Trial counsel was ineffective for failing to object to trial courts biased and prejudicial remarks while on Applicants directed verdict motion for murder
7. Trial counsel was ineffective for failing toz investigate whether the county grand jury had been legally impaneled
8. Trial counsel was ineffective for failing to object to the fatal variance at trial between the murder indictment and the jury instructions which permitted conviction for transferred intent
9. Trial counsel was ineffective for failing to object to the trial courts erroneous burden ruling in regards to Applicants motion to quash the murder indictment when failed to include essential element of the offense charged
10. Trial counsel was ineffective for failing to file a meritorious motion to suppress unlawfully seized statements
11. Trial counsel was ineffective for failing to object to the introduction of evidence regarding two third party hearsay witnesses not presented at Applicants preliminary hearing
12. Trial counsel was ineffective for failing to object to the trial courts erroneous failure to give jury instructions that fit the facts of the case as it related to the murder charge
13. Trial counsel was ineffective for failing to file a meritorious motion to suppress unlawfully seized physical evidence.

Respondent filed a return requesting an evidentiary hearing.

On March 14, 2023, Applicant, through Counsel, filed a "Statement of the Issues for Trial," setting forth the following issues:

> 1. Counsel failed to properly advise about a ten year plea offer;
>
> 2. Counsel failed to object to introduction of 911 calls on the grounds of hearsay and confrontation clause: the 911 calls establish a timeline that benefited the State's argument that there was no retreat by the Youngs;
>
> 3. Double jeopardy attached after the first attempt to try all co-defendants in a single trail and was later abandoned;
>
> 4. Appellate courts ruling produced an ex post facto violation;

5. Trial counsel failed to preserve the 911 calls issue for appeal.

6. Trial counsel was ineffective in handling an objection to a change in jury charge from the initial charge to the recharge after a jury question.

At the hearing, Applicant proceeded on the grounds raised in his Statement of the Issue for Trial and raised as an additional ground whether Applicant was advised of his Miranda rights.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the plea transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony.[2] After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies

[2] This Court will reference PCR testimony where relevant below.

the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to properly advise about ten-year plea offer

Applicant first contends counsel was ineffective for not properly advising him about a ten-year plea offer. This Court finds Applicant has not met his burden of proof in this regard.

At the PCR hearing, Applicant testified he was not guilty of murder or attempted murder because he never pointed or fired a weapon at Robinson or the young child. He recalled counsel advising him of a ten-year offer, but he testified he did not accept it because he believed he was innocent. Specifically, he stated he did not attempt to kill anyone. Applicant testified counsel told him it would be crazy for him not to take the plea, but he stated it was a one-time conversation. Applicant averred he did not believe he could be convicted because, in his eyes, he was innocent. He clarified he did not accept the plea because he thought the facts didn't support the law.

Vaux testified "the facts were largely not in dispute"; the confrontation began at the Youngs' house, moved to Bryant Road, and ended at Allen Road, where the fatal shooting occurred. He recalled testimony that the Youngs shot at Robinson's car so many times that it looked like Swiss cheese. Vaux agreed the evidence showed Robinson fired the fatal shot. Vaux testified he thought they had a fair chance at winning the legal issue he raised regarding mutual combat, but he had concerns about the facts if they did not win the legal argument. He explained mutual combat and transferred intent had never been merged in South Carolina, and he researched those doctrines in every jurisdiction in the United States to prepare for trial. Vaux was concerned that if they did not win the legal argument, Applicant would likely be convicted based on the facts.

Vaux testified the State offered a plea to manslaughter with concurrent sentences of ten years on the two charges. He testified he attempted to persuade Applicant to take the deal but was unable to. Vaux testified the trial judge had agreed he would accept the negotiation, and he recommended Applicant take the plea, but Applicant would not agree. Vaux testified he spent hours explaining this case to Applicant and did his best to ensure Applicant understood the complexities of it. He stated he explained it to Applicant to the best of his ability and did not have concerns with Applicant's ability to understand their conversations.

This Court finds the foregoing testimony by counsel **credible**. This Court further finds that under these circumstances, counsel's advice to Applicant to accept the plea was reasonable under prevailing professional norms. Applicant acknowledged being apprised of the plea but refusing to accept it because he believed he was innocent. Ultimately, it was Applicant's decision to turn down the plea and proceed to trial, and Applicant has not shown counsel's advice regarding the plea was deficient. Likewise, Applicant has not shown what more counsel should have said or

done to persuade Applicant to accept the plea. Based on the foregoing, Applicant has not proven deficiency or prejudice, and this claim is denied.

Failure to object to introduction of 911 calls and preserve issues for appeal[3]

Applicant next contends counsel was ineffective for failing to object to introduction of 911 calls on the grounds of hearsay and confrontation clause, which established a timeline that benefited the State's argument that there was no retreat by the Youngs. He likewise contends counsel was ineffective for not preserving this issue for appeal. This Court finds Applicant has not met his burden of proof on this allegation.

At the PCR hearing, Vaux testified he did not object to the 911 calls and could not think of any ground to object. He explained the State authenticated the calls through the 911 operator, and although they were hearsay, he believed they were admissible under the business records exception. Vaux recalled discussing whether the prejudicial value of the videos outweighed their probative value. When questioned about the third call, Vaux stated he heard both the caller and the operator speaking. When asked whether that call was the first time evidence was introduced showing the parties were shooting at each other, Vaux replied that he believed the call was helpful in that he used it to argue the State did not prove its case. Vaux further explained that the evidence showed three shooting incidents: one at the Young's house, where Robinson shot at the Youngs; one at Bryant Road; and one at Allen Road, where the Youngs shot Robinson's car, and Robinson shot and hit the victim. Vaux explained the solicitor had a model of the area that was drawn to scale, which helped show "how far it was from where the car was that was shot up to . . . where the child was shot." He stated the 911 calls were all placed in approximately the same timeframe, which was to their advantage. Vaux recalled arguing the Youngs had retreated by the time the

[3] This section combines issues two and five from Applicant's statement of issues for trial.

victim was shot, and he was able to use the model to show the distance. Vaux also averred the 911 calls did not support mutual combat. He agreed he could not cross-examine all the 911 callers.

This Court finds Applicant has failed to meet his burden of proving counsel was ineffective for not objecting to the 911 calls. Initially, this Court finds counsel articulated a valid reason for not objecting to the calls in that he was able to use them to support his defense. Further, this Court finds (1) the calls were properly authenticated through the 911 operator, (2) the calls met several exceptions to hearsay, and (3) the probative value of the calls outweighed the danger of unfair prejudice such that it is not reasonably likely the calls would have been excluded on that basis. See 901(a), SCRE ("The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what is proponent claims."); Rule 803(1), SCRE (providing "[a] statement describing or explain an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter," is not excluded by the rule against hearsay); Rule 803(2), SCRE (providing "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition" is not excluded by the rule against hearsay); Rule 803(6), SCRE (providing "[a] memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity" is not excluded by the rule against hearsay); Rule 403, SCRE (providing relevant "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence").

Additionally, this Court finds the 911 calls were non-testimonial and thus would not be barred by the confrontation clause. See Crawford v. Washington, 541 U.S. 36 (2004) (providing the confrontation clause bars *testimonial* statements of a non-testifying witness unless he was unavailable to testify and the defendant had a prior opportunity for cross-examination); Davis v. Washington, 547 U.S. 813, 822 (2006) ("Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution."). Here, the 911 callers reported hearing multiple sets of gunshots in a broad area, and police were gathering information to address an ongoing emergency. Thus, these calls were nontestimonial and would not have been excluded by the confrontation clause. See also State v. Thompson, 420 S.C. 386, 401-02, 803 S.E.2d 44, 52 (Ct. App. 2017) (finding 911 call nontestimonial when victim's "statements on the 911 call were made to obtain police assistance, and the questions during the call were to elicit more information to enable police to assist her").

Based on the foregoing, this Court agrees with counsel's assessment that there was not a viable basis to object that would have excluded the 911 calls. Thus, counsel's performance in this regard was reasonable within prevailing professional norms and not deficient. Likewise, this Court finds Applicant has not set forth an objection that would make it reasonably likely the calls would have been excluded and thus did not prove prejudice. Thus, this claim is denied.

Double jeopardy

Applicant next contends jeopardy attached after the State's first attempt to try all codefendants together, and his subsequent trial violated double jeopardy. Applicant has failed to prove counsel was ineffective or any constitutional violation in this regard.

"The Double Jeopardy Clause of the South Carolina Constitution and the Fifth Amendment to the United States Constitution protect all citizens from being twice put in jeopardy of life or liberty." State v. Rowlands, 343 S.C. 454, 457, 539 S.E.2d 717, 718 (Ct. App. 2000). "A defendant, therefore, may not be prosecuted for the same offense after an acquittal, a conviction, or an improvidently granted mistrial." Id. "Generally, jeopardy attaches when a jury is sworn and impaneled, unless prior to reaching a verdict, the jury is discharged with the defendant's consent or upon some ground of legal necessity." Id.

At the PCR hearing, Applicant testified he believed the jury may have been empaneled when they had the Jackson v. Denno hearing, although he was not sure. Vaux testified the State initially planned to try all codefendants together, but during a pretrial Denno hearing "it came to light that there was . . . an undisclosed video." (PCR 24-25). He explained the trial was subsequently severed. Vaux did not recall whether the jury had been empaneled. He recalled discussing with co-counsel whether jeopardy had attached, and they concluded it had not.

Assistant Solicitor Thornton confirmed the State planned to try all three co-defendants together, but during a pretrial hearing, the solicitor learned of the existence of an audio recording wherein an officer promised Young, Sr. that he would receive a benefit if he took them to the gun. Thornton explained that after that tape was discovered, the State agreed the trial should be severed because it would not be able to use the gun as evidence against Young, Sr. Thornton stated that although a jury had been selected, it had not yet been sworn. He explained it was common for

judges to select a jury and then hold pretrial hearings before swearing the jury. Thornton stated after the State joined in the defendant's motion to sever, the trial court continued the hearing.

This Court finds **credible** Thornton's testimony that the jury had not been sworn at the time the trial court severed and continued the first trial. This Court further finds this testimony consistent with the April 2014 transcript, which does not indicate the jury was sworn.[4] Because the jury was not sworn, jeopardy did not attach. See Rowlands, 343 S.C. at 457, 539 S.E.2d at 718 ("Generally, jeopardy attaches when a jury *is sworn* and impaneled . . . ." (emphasis added)). Thus, Applicant failed to prove counsel was ineffective for not raising a double jeopardy issue. For the same reason, Applicant did not prove any constitutional violation, and this claim is denied.

Ex post facto

Applicant contends the appellate court's ruling here violated the *ex post facto* clause. This Court finds Applicant has not met his burden of proof on this allegation.

At the PCR hearing, Vaux testified he did not consider or raise an *ex post facto* argument. He did, however, move to quash the indictments, arguing mutual combat is not a crime in South Carolina, and the doctrine of transferred intend does not apply to mutual combat.

Appellate counsel Frederick Elliott Quinn testified that when he prepared the brief, it was unclear whether South Carolina appellate courts would recognize the interplay of mutual combat, transferred intent, and accomplice liability. He stated he raised this issue on appeal, although he

[4] This transcript of the April 2014 hearing is part of Young, Sr's Record on Appeal and is before this Court as part of Applicant's case. On April 21, 2014, a jury was selected and then released for the remainder of the day without being sworn. (R. 165-68). Thereafter, the Court held a Denno hearing as to statements made by all three codefendants. (R. 168-331). At the conclusion of the first day, the Court stated, "In recess until 9:30 in the morning, at which time I'll deal with the evidentiary issues. We will bring the jury in. I'll appoint a foreperson and **the jury will be sworn at that time.**" (R. 331, emphasis added). The following day, court began with argument from counsel; the jury was not present. (R. 332-339). During argument, the Court noted there was a "late development which comes at the surprise of everybody"; the Court released the jury and recessed until the following morning. (R. 339-45). Notably, the jury was not sworn. Thereafter, court resumed the following day, and the State joined the motion to sever. The Court granted the motion, continued the case, and released the jury without swearing it. (R. 346-52).

did not frame it as an *ex post facto* violation. Quinn testified he did not consider this an *ex post facto* issue; rather he considered "extensively" whether South Carolina law would recognize murder under a theory of mutual combat as set forth in this case. He testified that in hindsight he would not raise an *ex post facto* issue because (1) it was not preserved and (2) his argument was that South Carolina law did not recognize this legal theory. Quinn testified South Carolina had "numerous cases" recognizing mutual combat, but he did not find any that combined mutual combat, transferred intent, and accomplice liability. He had no criticism of Vaux's argument to the trial court related to mutual combat. When asked whether the appellate court's opinion created new law, Quinn replied, "I cannot go that far. I can say that in my opinion this extends the mutual combat jurisprudence to a new factual situation." (PCR 23).

This Court finds the application of mutual combat to these facts did not violate the *ex post facto* clause.[5] The United States Constitution prohibits states from passing *ex post facto* laws. U.S. Const. Art. I § 10. "[A]n *ex post facto* law 'is an enactment, criminal or penal in nature, which is retrospective and disadvantages the offender affected by it.'" State v. Huiett, 302 S.C. 169, 171, 394 S.E.2d 486, 487 (1990) (quoting United States v. Mest, 789 F.2d 1069, 1071 (4th Cir.1986), Weaver v. Graham, 450 U.S. 24 (1981)). The following constitute *ex post facto* laws:

> 1st. Every law that makes an action done before the passing of the law; and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offense, in order to convict the offender.

Id. at 171, 394 S.E.2d at 487 (quoting Calder v. Bull, 3 U.S. 386, 390 (1798)). A statutory change

[5] The attempted murder charge related to the Youngs' attempt to kill Robinson and did not rely on mutual combat.

to the rules of evidence that would allow a conviction "upon less proof . . . than was required when the offense was committed, might, in respect to that offense," violate the provision against *ex post facto* laws. Hopt v. People, 110 U.S. 574, 590 (1884). However, changes that

> do not increase the punishment, nor change the ingredients of the offense or the ultimate facts necessary to establish guilt, but—leaving untouched the nature of the crime and the amount or degree of proof essential to conviction—only removes existing restrictions upon the competency of certain classes of persons as witnesses, relate to modes of procedure only, in which . . . . the state . . . may regulate at pleasure.

Id.

Here, the murder statute predated the underlying incident. The fatal shooting of the eight-year-old bystander occurred on September 1, 2012, during an ongoing gun battle between the Youngs and Robinson. As to the murder charge, Applicant was indicted under sections 16-3-10 and 16-3-20 of the South Carolina Code. Each of these statutes existed prior to the 2012 incident.

Further, the application of mutual combat under these facts was not a law applied retroactively to Applicant's disadvantage. Mutual combat is a theory of liability; it is not a change in the statutory definition of murder. Further, both the doctrines of mutual combat and accomplice liability existed prior to the 2012 incident. See Young, 429 S.C. at 160, 838 S.E.2d at 518 (2020) ("The doctrine of mutual combat has existed in South Carolina since at least 1843 . . . ."); State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002) ("Under the "hand of one is the hand of all" theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose."). Although our Supreme Court held that it would "extend our jurisprudence" to reach the death of innocent bystanders, that extension was based on well-established and pre-existing legal theories. In fact, it was well-established that one engaged in criminal activity was criminally liable for the actions of co-defendants, and actors engaged in mutual combat were "presumed to

know and intend the consequences that naturally flow from their unlawful acts." Young, 429 S.C. at 161, 838 S.E.2d at 519. Thus, the application of mutual combat to this set of facts did not violate the *ex post facto* clause.

Likewise, the application of mutual combat did not alter the State's burden of proof or the requisite criminal intent. Specifically, the application of mutual combat did not "change the ingredients of [murder] or the ultimate facts necessary to establish guilt." Hopt, 110 U.S. at 590. Rather, the State's burden of proof remained "beyond a reasonable doubt," and the requisite criminal intent remained malice aforethought. Thus, the State was required to prove—beyond a reasonable doubt—that Applicant had malice aforethought. Killing an innocent bystander is a consequence that naturally flows from actors engaged in an ongoing gun battle. Combining the theories of mutual combat and accomplice liability did not alter the State's burden of proof or the requisite criminal intent and thus did not violate the *ex post facto* clause.

Finally, the application of mutual combat to these facts did not increase the penalty. The maximum penalty for murder prior to Applicant's conviction was life. Applicant was sentenced to the minimum sentence for murder—thirty years' imprisonment. Nothing about the application of mutual combat to these facts increased Applicant's penalty for murder.

Based on the foregoing, the application of mutual combat to this fact pattern did not violate the *ex post facto* clause. The statute upon which Applicant was indicted predated the underlying offense, and the theories of liability (mutual combat and accomplice liability) applied by our Supreme Court in Young, Jr.'s case predated the underlying offense. Nothing about this extension was novel or unexpected. Ultimately, the Supreme Court's decision did not "change the ingredients of [murder] or the ultimate facts necessary to establish guilt." Hopt, 110 U.S. at 590.

Thus, it did not violate the *ex post facto* clause.[6]

Jury Charge

Applicant contends counsel was ineffective in handling an objection to a change in the jury charge from the initial charge to the recharge after a jury question. This Court finds Applicant did not meet his burden of proof in this regard.

At trial, the court charged the jury on murder, malice, aforethought, the theory of mutual combat, mutual intent, criminal intent, transferred intent, attempted murder, and first-degree assault and battery. (App. 571-77). In charging mutual combat, the court instructed:

> [M]utual combat exists when there is a mutual intent and willingness to fight between persons or groups of people.
>
> Mutual intent is shown by acts and conduct of the parties and circumstances attending and leading up to the combat. The circumstances necessary to establish mutual combat include whether there is any evidence of preexisting evil or ill will between the parties, or, any dispute between the parties, and whether the combatants agree to be armed because the history of ill will and an agreement to be armed are necessary before a defendant is engaged or deemed to have been engaged in mutual combat.
>
> Now if you find that mutual combat exist in this particular case I tell you that everyone is presumed to know the consequences of his acts. And if one voluntarily enters a mutual combat where deadly weapons are used, know then that they are being used, and if death results to one of the participating parties, everyone engaged in such combat is equally guilty. Regardless of whether he used a deadly weapon or not and regardless of whether he was on one side or another that is, on the side of the one who fires the shot or not, all are equally responsible for the act where all are participating in

[6] To the extent Applicant's claim can be construed as an allegation that appellate counsel was ineffective for not raising this issue, this Court notes the Sixth Amendment right to the effective assistance of counsel does not extend to petitions for rehearing from the Court of Appeals or to petitions for certiorari to the state supreme court. See Folkes v. Nation, 34 F.4th 258, 273 (4th Cir. 2022) ("The Supreme Court [of the United States] has drawn a bright line regarding the constitutional right to counsel between an initial appeal as of right and a subsequent, discretionary appeal. Defendants do not have a constitutional right to counsel to pursue discretionary state appeals or applications for review in the supreme court."); id. (explaining an ineffective assistance of counsel claim cannot be brought based on counsel's failure to file a petition for rehearing form a Court of Appeals decision); Douglas v. State, 369 S.C. 213, 631 S.E.2d 542 (2006) ("We decline to impose a duty on appellate counsel to pursue rehearing and/or certiorari following the decision of the Court of Appeals in a criminal direct appeal."). Thus, Applicant has not shown a constitutional violation by appellate counsel related to this issue.

mutual combat.

(App. 573). Thereafter, the jury asked to be recharged on murder, attempted murder, assault and battery, and mutual combat. (App. 588). The court again charged the jury on murder, malice, aforethought, mutual combat, mutual intent, criminal intent, transferred intent, attempted murder, and first-degree assault and battery. (App. 588-95). Each time, in charging attempted murder, the court referenced its prior definitions of intent and malice aforethought from its murder charge. (App. 575-76, 593). In recharging mutual combat, the trial court charged:

> [M]utual combat exist when there is a mutual intent and a willingness to fight. Mutual intent is manifested or shown by acts and conduct of the parties and the circumstances attending and leading up to the combat itself. The circumstances necessary to establish mutual combat include whether there is any evidence of preexisting ill will or dispute between the two parties; that is, Mr. Young in this case and Mr. Robinson; and whether the combatants agreed to be armed. It requires a history of ill will and an agreement to be armed before a defendant is deemed to have engaged in mutual combat.
>
> Because under the law of mutual combat everyone is presumed to know the consequences of his acts. And if one voluntarily enters into a mutual combat where deadly weapons are used, knowing that they are being used, and death results to one of the participating parties, *or in this case under the State's theory an innocent third party*, everyone engaged in such combat is equally guilty. Regardless of whether he used a deadly weapon or not and regardless of whether he was on one side or another it makes no difference where all are participating in mutual combat all are equally responsible for the natural consequences that are incurred.

(App. 590-91, emphasis added).

Following the recharge, Vaux objected, first requesting the court reinstruct the jury on malice and intent. (App. 595). The Court explained it *did* recharge malice and intent, and its reference to its previous definitions in the attempted murder charge was a reference to the recharge of murder—not a reference to the first charge. (App. 596-97). Vaux then objected to the recharge,

arguing, "Then this time you added in the portion about mutual combat, you added portions of third party which I don't believe you included the first time." (App. 597). The Court agreed it added language. (App. 597). Vaux replied, "And I think that's a comment on the facts and it's an unfair burden if you will on the defendant and I would take exception to that." (App. 597).

At the PCR hearing, Vaux testified Judge Cooper had to fashion a jury charge related to mutual combat, which was discussed at trial. He averred that when the jury requested a recharge, Judge Cooper "realized that he had done something that he needed to adjust a little bit." Vaux believed the charge was a comment on the facts.

This Court finds Applicant has not met his burden of proving counsel was ineffective in this regard. Counsel *did* raise an objection to this charge and argued it was a comment on the facts. Applicant has not set forth what more he believes counsel should have argued and thus did not meet his burden of proving deficiency. Likewise, this Court finds that here, where counsel *did* raise a contemporaneous objection to the recharge—which added additional language—it is not reasonably likely the outcome would have been different had he *further* objected. Overall this Court finds Applicant did not meet his burden of proof in this regard, and this claim is denied.

***Miranda* issue**

At the PCR hearing, Applicant raised as an additional ground an issue related to "whether Miranda rights were actually given" to him. This Court construes this as an allegation that counsel was ineffective for not raising a Miranda challenge to Applicant's statement. This Court further finds Applicant did not prove counsel was ineffective in this regard.

At the pretrial Jackson v. Denno hearing, Investigator Doug Seifert testified he advised Applicant of his Miranda rights by reading them from a card, and he believed Applicant understood them. Investigator Seifert further testified he did not threaten Applicant or make any promises.

(App. 244-48). The State indicated it sought to enter a video recording of Applicant alone in an interrogation room wherein he essentially had a conversation with himself. (App. 256-58). Vaux objected, arguing the probative value of the video was outweighed by the danger of undue prejudice. (App. 258-60). The trial court overruled the objection. (App. 261-62).

At the PCR hearing, Vaux recalled a video of Applicant sitting alone; he stated police were not there questioning him, but they left the video running and Applicant had an incriminating conversation "with himself." He explained was not a confession per se, but it did not help. Vaux stated the statement hurt Applicant's defense of the attempted murder charge specifically. He recalled law enforcement did not have a written Miranda waiver, but an officer testified at the Jackson v. Denno hearing that Applicant was advised of his Miranda rights when he was arrested. Vaux averred the video would not have been excluded based on Miranda because Applicant was not being questioned when he provided the statement; rather, he was in a room alone.

Thornton recalled Applicant was alone in a room and made statements that he "knew how to use a gun very well." Thornton stated the statements indicated Applicant would have shot Robinson if his gun had not jammed. He clarified law enforcement was not in the room when Applicant made the statement.

This Court finds Applicant did not meet his burden of proving counsel was ineffective in for not raising a Miranda issue. Although counsel did not challenge the statement based on Miranda, this Court finds that because the State met its burden by a preponderance of the evidence through Investigator Seifert's testimony, it is not reasonably likely an objection based on Miranda would have led to the exclusion of the statement. Further, this Court finds credible Vaux and Thornton's testimony that Applicant was not being questioned at the time he made the incriminating statements. Based on Investigator Seifert's pretrial testimony that Applicant was

advised of his Miranda rights and the credible testimony that Applicant was not being questioned at the time he made the incriminating statements, this Court agrees with counsel's assessment that the video would not have been excluded based on Miranda. In light of this, this Court finds counsel's decision to challenge the statement through a Rule 403 objection rather than a Miranda challenge was reasonable within prevailing professional norms and not deficient. Thus, Applicant has not shown deficiency or prejudice, and this claim is denied.

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and

2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 25 day of September, 2023.

ROBERT J. BONDS
Presiding Judge
Fourteenth Judicial Circuit

Walterboro, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	

2023 OCT 23 PM 12:01

JERRY ANN ROSENEAU
BEAUFORT COUNTY, SC
CLERK OF COURT

Aaron Scott Young, Jr., Applicant,	)	MOTION FOR RECONSIDERATION
vs.	)	
State of South Carolina, Respondent.	)	Case No.: 2020-CP-07-00792

The above-captioned matter came before the court via an application for post-conviction relief filed by Aaron Scott Young, Jr. (Applicant) on March 26, 2020. This court convened an evidentiary hearing into the matter on March 15, 2023. Applicant was present at the hearing and represented by Tommy A. Thomas, Esquire, and Danielle Dixon, Esquire of the South Carolina Attorney General's Office represented Respondent.

An order granting relief in this matter was signed September 25, 2023 and received on October 10, 2023. Applicant now moves before this court pursuant to SCRCP Rule 59(b) for reconsideration on the bases outlined below.

ARGUMENT

Applicant is informed and believes that reconsideration of this order is necessary and appropriate due to the court's error in denying relief on several of the grounds presented at the hearing, which are addressed below.

1. The Supreme Court's opinion in the direct appeal changed the interpretation of the State's mutual combat and accomplice liability law in order to create an ex post facto violation that led Applicant to be found guilty and serve time for crimes that he did not commit.

Testimony was adduced by all attorney witnesses that extensive research had been done into the individual history and intersection of South Carolina's mutual combat and accomplice

liability laws. Together, they all agreed that they had not seen the doctrines married in a way to produce the outcome seen in Applicant's trial. In particular, this jurisprudence had not been discussed when the victim is a third-party outsider to the combat. Despite this, the Supreme Court issued an opinion extending the doctrine of mutual combat to include liability when a third party becomes a victim. *State v. Aaron Young, Jr.*, Op. 27942, filed March 5, 2020.

In so holding, the Supreme Court not only allowed Applicant's murder conviction to stand, but allowed him to incur a much harsher sentence than if he had been facing either only attempted murder or discharging a weapon. The order of this court misinterprets the importance of this opinion, as well as its function in time. The order, which defines the doctrine of ex post facto, considers only statutory changes rather than alterations to the canon of law that can affect a defendant. For example, "No *ex post facto* violation occurs if a change does not alter "'substantial personal rights', but merely changes 'modes of procedure which do not affect matters of substance'." *Miller v. Florida*, 482 U.S. 423, 430, 107 S.Ct. 2446, 2451(citations omitted). Further, "even though a procedural change may have a detrimental impact on a defendant, a mere procedural change which does not affect substantial rights is not *ex post facto." Dobbert v. Florida,* 432 U.S. 282, 97 S.Ct. 2290, 53 L.Ed.2d 344 (1977). 'In order for the *ex post facto* clause to be applicable, the statute or the provision in question must be criminal or penal in purpose and nature.' *Flemming v. Nestor,* 363 U.S. 603, 80 S.Ct. 1367 (1960). These are all cited by our Supreme Court in *State v. Huiett*, 301 S.C. 169, 171-72, 394 S.E.2d 486, 487 (1990).

Evidence bears out that Applicant never fired his gun at anything other than Robinson's car, and certainly not at the child victim. To hold him responsible for this death by way of a murder conviction and its concordant sentence is not something that would have happened

before the Supreme Court issued this ruling. As such, it is evident that his substantial personal rights are affected by an opinion that is criminal in nature and let his substantial sentence stand. The Court's finding that Applicant's penalty was not increased because the potential penalty for murder is a life sentence is not dispositive of Applicant's argument. The fact is that Applicant was sentenced to thirty years' imprisonment on a murder conviction that would not have existed but for the Supreme Court's extension of this jurisprudence. Otherwise, he would have been acquitted or, ideally, had the murder charge dismissed.

Because the ex post facto doctrine is based in constitutional law, this argument is appropriate for PCR. S.C. Code Ann. 17-27-20(a)(1). Also noteworthy is that no prior counsel could have argued this, because the Supreme Court opinion at issue ended the final stage of the direct appeal process. There was no opportunity before this action for Applicant to challenge this inappropriate extension of law. Based on the foregoing, Applicant requests a reversal of the Court's finding that he is not entitled to relief on this ground and instead to vacate his conviction.

2. Trial counsel's failure to argue that the 911 calls were more prejudicial than probative is ineffective assistance of counsel and this Court erred in denying relief on that ground. Similarly, trial counsel failed to object to confrontation clause issues due to the testimonial nature of the calls and this Court erred in denying relief on that ground.

The main argument made about the 911 tapes is whether they should have been admitted due to their nature as hearsay. Testimony adduced at the hearing from multiple attorney witnesses stated that, under one exception or another, the 911 tapes would come in. Appellate Counsel disagreed, however, and stated he had prepared to proceed on hearsay before realizing it was not preserved. Additionally, no argument was made that the tapes were a violation of Rule 803, SCRE, because their content was more prejudicial than probative. In fact, trial counsel argued the opposite and testified that he believed he could use them to his advantage. If anything, these tapes made it seem like the fight was an all-day affair that ran all over Hilton Head Island.

This is borne out by the Assistant Attorney General's questioning of trial counsel and her confusion over the timeline. PCR Tr. P.66-68. However, we do not know through the prosecution's presentation what these tapes are meant to show. As such, their entry into evidence is violative of Rule 803, SCRE.

The existence of multiple 911 calls, including one with a frenzied witness, was bound to influence the jury toward a negative view of events. Furthermore, no objection was made to the content of these calls in regard to availability of witnesses. If the calls are being introduced for their content, which is the reporting of witnesses that a shootout is happening, then they are clearly testimonial, in contrast to this Court's finding. The Court found that the calls were nontestimonial due to the fact that questions during the call were made to elicit more information to enable police assistance, citing *State v. Thompson*, 420 S.C. 386, 401-02, 803 S.E.2d 44, 52 (Ct. App. 2017) and *Davis v. Washington*, 547 U.S. 813, 822 (2006). However, evidence both at trial and the PCR hearing showed that the content of the calls was more than asking for help – a caller identified a shooter and stated that a car had six or eight bullet holes. This information is not necessary for police assistance yet the jury heard it anyway. This identification should have been challenged by cross-examination like any in-court identification, but it was not.

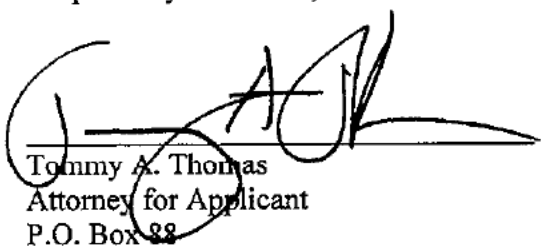
Trial counsel's failure to make these valuable objections was ineffective assistance of counsel. His performance fell below a reasonable standard, especially in light of his testimony at the PCR hearing that he considered these issues but decided not to pursue them. Failure to make these objections led to the jury hearing this evidence that was not able to be challenged by Applicant and, therefore, stayed in their minds as unimpeachable. It is absolutely probable that there would have been a different outcome to the trial were these objections made. To compound this error, by not making the objections, the issue was not preserved for appellate review.

Appellate Counsel testified that they identified and prepared to go forward on the hearsay issue before realizing it was not preserved. As such, trial counsel was ineffective and this Court erred in finding otherwise. The order must be altered and Applicant's conviction must be vacated. . .

Applicant respectfully requests that this court reconsider its findings on these matters and re-issue an order granting relief to Applicant. Should any further briefing or argument be helpful to the Court's decision, Applicant respectfully requests the right and ability to have argument.

In addition, due to the requirement that all motions for reconsideration be filed within ten (10) days of receipt of a Final Order and the complexity of this case Counsel would respectfully request an additional fifteen (15) days to amend this Motion as necessary.

Respectfully submitted,



Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

October 19, 2023

2023 OCT 23 PM 12:01
JEANNIE ANN ROSEREAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNT OF BEAUFORT	)	CASE NO.: 2020-CP-07-00~~798~~ 792
AARON SCOTT YOUNG, JR.	)	
	)	CERTIFICATE OF SERVICE
Applicant,	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I emailed, a copy of a Motion for Reconsideration to the Attorney General's Office, at:

Danielle Dixon, Esq.
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549
Danielle.dixon@scag.gov

Jacquelyn E. Miller
Paralegal to Tommy A. Thomas
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
October 19, 2023

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT
Aaron Scott Young, Jr. #363175, Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2020-CP-07-00792 **RETURN TO APPLICANT'S MOTION FOR RECONSIDERATION**

2023 NOV 17 PM 12:03
JERRI ANN BOCK
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Aaron Scott Young, Jr. (Applicant) on March 26, 2020. On March 15, 2023, an evidentiary hearing convened before the Honorable Robert Bonds. Applicant was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Following the hearing, Judge Bonds issued an order denying relief and dismissing the application with prejudice. Applicant has now filed a motion to reconsider the order of dismissal. Respondent submits the Order of Dismissal properly applied the law and considered the evidence before it, and Applicant failed to identify anything the order overlooked or misapprehended. Thus, Respondent requests the Court deny this motion.

Ex post facto

Applicant first contends the appellate court's ruling "changed the interpretation of the State's mutual combat and accomplice liability law," and the application of murder to these facts violated the *ex post facto* clause. Respondent submits the Order of Dismissal properly considered this issue, and Applicant has not pointed to anything the order overlooked or misapprehended. Thus, this Court should deny Applicant's motion to reconsider this issue.

In arguing this murder conviction violated the *ex post facto* clause, Applicant contends the PCR court "considered only statutory changes rather than alterations to the canon of law that can

affect a defendant." Contrary to that assertion, however, the PCR court considered the factors set forth in Weaver v. Graham, 450 U.S. 24 (1981) for determining what constitutes an *ex post facto* violation and applied those factors to the facts here. The PCR court's analysis is well-reasoned, and Applicant has not set forth any law that undermines the PCR court's analysis of these facts under Weaver. As the PCR court found, the criminal statute for murder and both the doctrines of mutual combat and accomplice liability existed prior to the 2012 incident. See Young, 429 S.C. at 160, 838 S.E.2d at 518 (2020) ("The doctrine of mutual combat has existed in South Carolina since at least 1843 . . . ."); State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002) ("Under the "hand of one is the hand of all" theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose."). Although the Supreme Court held that it would "extend our jurisprudence" to reach the death of innocent bystanders, that extension was based on well-established and pre-existing legal theories. In fact, it was well-established that one engaged in criminal activity was criminally liable for the actions of co-defendants, and actors engaged in mutual combat were "presumed to know and intend the consequences that naturally flow from their unlawful acts." Young, 429 S.C. at 161, 838 S.E.2d at 519. Thus, the application of mutual combat to this set of facts did not violate the *ex post facto* clause.[1]

Likewise, the PCR court properly found the application of mutual combat did not alter the State's burden of proof or the requisite criminal intent. Rather, the State's burden remained "beyond a reasonable doubt," and the criminal intent remained malice aforethought. Killing an innocent bystander is a consequence that naturally flows from actors engaged in an ongoing gun battle. Combining the theories of mutual combat and accomplice liability did not alter the State's

[1] Notably, Appellate counsel Frederick Elliott Quinn testified at the PCR hearing that he could not go as far as to say the Supreme Court's opinion created new law. (PCR 23).

burden or the requisite criminal intent and thus did not violate the *ex post facto* clause. Finally, the application of mutual combat did not increase the penalty. Based on the foregoing, the PCR court properly found the application of mutual combat did not violate the *ex post facto* clause, and the Court should deny Applicant's motion to reconsider.

Failure to object to introduction of 911 calls and preserve issues for appeal

Applicant next contends PCR counsel was ineffective for not arguing the 911 calls (1) were more prejudicial than probative and (2) not objecting based on the confrontation clause due to the testimonial nature of the calls. Respondent submits the PCR court properly considered each of these issues in its Order of Dismissal and properly determined Applicant did not prove counsel was ineffective for failing to object to the 911 calls.

First, the probative value of the 911 calls was not substantially outweighed by the danger of undue prejudice. See Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."). It strains credibility to suggest "we do not know through the prosecutions presentation what these tapes are meant to show." (Mot. 4). Prosecutors commonly introduce 911 calls in criminal trials, as they are probative for proving that the crime occurred, and they provide context and background for the presentation of the evidence. Because it was unlikely an objection on this basis would have been sustained, counsel's decision to not object based on Rule 403 did not fall below prevailing professional norms and was not deficient.

More critically, however, counsel articulated his strategic reason for not objecting to the 911 calls in that they benefitted his strategy. Counsel explained the State had a model of the neighborhood that the shoot-out traversed, and although there were three different shooting incidents, only one of the three incidents triggered any 911 calls. Thus, all the 911 calls were

placed within a five-minute period—notably, during the second "shooting incident," as trial counsel described it.[2] Trial counsel explained he was able to use the five-minute timeframe of the 911 call and the State's model of the neighborhood—which showed the distance between the second and third shooting incident—to argue the Youngs had already retreated at the time the child-victim was fatally shot. As counsel explained, the 911 calls *helped* his timeline. Thus, counsel articulated a strategic reason to not object to the introduction of the calls and was not deficient. Likewise, it is not reasonably likely the calls would have been excluded under Rule 403, SCRE; thus, Applicant cannot show prejudice from counsel's failure to object on this basis.[3]

Additionally, the PCR court properly found the 911 calls were non-testimonial and thus would not be barred by the confrontation clause. See Crawford v. Washington, 541 U.S. 36 (2004) (providing the confrontation clause bars *testimonial* statements of a non-testifying witness unless he was unavailable to testify and the defendant had a prior opportunity for cross-examination); Davis v. Washington, 547 U.S. 813, 822 (2006) ("Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events

[2] Applicant's contentions that (1) the 911 "tapes made it seem like the fight was an all-day affair that ran all over Hilton Head Island" and (2) the Assistant Attorney General's "confusion over the timeline" illustrated this point are not supported by the PCR transcript. PCR counsel clearly explained the 911 calls took place over a five-minute period—all during the second shooting incident—which was clarified by this line of questioning. This is precisely the reason counsel averred the 911 tapes benefited his defense—they compressed the timeline of when the Youngs were involved to a five-minute window, allowing counsel to argue they had retreated by the time the child-victim was fatally shot.

[3] To the extent Applicant is also arguing counsel was ineffective for not objecting to the calls based on hearsay, the Order of Dismissal adequately addressed this issue, and Applicant has not set forth what about this portion of the order was erroneous other than to briefly mention Appellate counsel "had prepared to proceed on hearsay before realizing it was not preserved." Although it is ultimately Applicant's burden to prove his allegations, he has not set forth why he believes the PCR court erred in finding counsel was not ineffective for failing to raise a hearsay objection to the 911 tapes.

potentially relevant to later criminal prosecution."). As the Court noted, the 911 callers reported hearing multiple sets of gunshots, and police were gathering information to address an ongoing emergency. Thus, these calls were nontestimonial and would not have been excluded by the confrontation clause. See also State v. Thompson, 420 S.C. 386, 401-02, 803 S.E.2d 44, 52 (Ct. App. 2017) (finding 911 call nontestimonial when victim's "statements on the 911 call were made to obtain police assistance, and the questions during the call were to elicit more information to enable police to assist her").

Conclusion

Based on the foregoing, the Court should DENY Applicant's motion to reconsider.

Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD ZELENKA
Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

November 13, 2023

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)
) Case # 2020-CP-07-~~798~~ 792
Aaron Scott Young, Jr. #363175,)
)
Applicant / Petitioner)
vs.) **ORDER**
)
State of South Carolina,)
)
Respondent.)

2023 DEC -4 PM 12:19
JERRI ANN ROSEHEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

_____ 1. The application for post-conviction relief is hereby: _____denied _____granted _____under advisement; a formal order will be filed (see below - No.6)

___X__2. Motion(s) was/were heard in this case and the court orders:

_____ The motion to dismiss and/or for summary judgment is hereby _____granted _____denied _____under advisement based upon the _____statute of limitations and/or_____the successive nature of the application or __X___other reason as follows:
__**The Motion to Reconsider is Denied.**

____ 3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

_____ Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.

_____ The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or _____no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

____ 4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed _____ with prejudice _____ without prejudice.

5. Other: _____

_____

____ 6. The court further orders:

____ The ___Attorney General _____Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within 30 days.

_____ Both sides are directed to submit proposed orders to the court and to serve the orders on each other within _____days.

_____ The court does not request proposed orders.

IT IS SO ORDERED.

Robert J. Bonds
Presiding Judge

Date: November 28, 2023

Walterboro, S.C.

Rev 08/08/01

WITNESSES

Inv. L. Albertin-BCSO

ARREST WARRANT NUMBER

2012A0720300113

ACTION OF GRAND JURY

True Bill

Jennifer Snyder
Foreperson of Grand Jury
Date: OCT [illegible] 2014

VERDICT

Ronny Fobo 2/25/15
Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2012GS0701932

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

vs.

Aaron Scott Young Jr

Amended Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2012GS0701932

At a Court of General Sessions, convened on October 30, 2014, the Grand Jurors of Beaufort County present upon their oath:

Murder / Murder

That in Beaufort County on or about September 1, 2012, Aaron Scott Young Jr. did willfully, unlawfully and with malice aforethought, engage in mutual combat with Tyrone Robinson and thereby cause the victim Khalil S. to be shot and killed in the area of Marshland Drive and Allen Road, Hilton Head Island, SC, and that Khalil S. did die in Beaufort County as a proximate result thereof on September 1, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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

Solicitor

True Bill

WITNESSES

B Bromage and L Albertin- BCSO

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

True Bill

Jennifer Snider
Foreperson of Grand Jury
Date: OCT 30 2014

VERDICT

Ben Tobe 2/25/15
Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2014GS0701940

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

vs.

Aaron Young, Jr

Indictment for

Attempted Murder

SC Code: 16-03-0029
CDR Code:3410

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2014GS0701940

At a Court of General Sessions, convened on October 30, 2014 the Grand Jurors of Beaufort County present upon their oath:

Attempted Murder

That in Beaufort County, South Carolina, on or about September 1, 2012 the Defendant, Aaron Young, Jr with intent to kill and malice aforethought, either express or implied, attempted to murder the victim, Tyrone Robinson, in violation of Section 16-03-29 of the Code of Laws of South Carolina (2010, as amended).

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

Solicitor

30, to Life

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS ✓✓
COUNTY OF Beaufort)
STATE VS.)
Aaron Scott Young Jr)
AKA:)
Race: AFRICAN AME Sex: M Age: 21)
DOB: [redacted]1993 SS#: [redacted])
Address:)
City,State,Zip:)
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

INDICTMENT/CASE#: 2012GS0701932
A/W#: 2012A0720300113
Date of Offense: 9/1/2012
S.C. Code § : 16-03-0010; 16-03-0020
CDR Code #: 0116

SENTENCE SHEET

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

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(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: _____ _____ _____ _____ _____
Swanson, Hunter Stowe SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 30 days/~~months~~/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.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014-1970
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

*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 47.9 (Public Def/Prob)	$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	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk K.M. Boone
Court Reporter: WANDA NELSON
Presiding Judge _____
Judge Code: 059
Sentence Date: 2/25/15

SCCA/217 (03/2011)

Up, to 30

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort)
STATE VS.)
Aaron Scott Young Jr)
AKA:)
Race: AFRICAN AMESex: M Age: 21)
DOB: [redacted]1993 SS#: [redacted])
Address:)
City,State,Zip:)
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐)

INDICTMENT/CASE#: 2014GS0701940
A/W#: 2014GS0701940
Date of Offense: 9/1/2012
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

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

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ 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: [signature]

Swearingen, Hunter STONE | SC Bar# | Defendant | Attorney for Defendant | SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 30 ~~days/months/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.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012 - 193X
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐**RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

*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 47.9 (Public Def/Prob)	$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	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$133.90

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk K D Boone
Court Reporter: Wanda Nelson
Presiding Judge [signature]
Judge Code: 054
Sentence Date: 2/25/15

SCCA/217 (03/2011)