

IN THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable George M. McFaddin, Jr., Circuit Court Judge

Case No. 2024-001229

Dexter L. Myers,

Petitioner,

vs.

The State of South Carolina,

Respondent.

APPENDIX

VOLUME I I

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1 second bullet or that third bullet or the fourth bullet or
2 the fifth bullet, those are facts and circumstances that
3 you are allowed to take into consideration when determining
4 malice. Is there a single shot or is there multiple shots?
5 Is there a continuing attempt to do injury or does it cease
6 and desist? Those are all factors when considering malice.
7 Malice may be inferred when conduct showing a total
8 disregard for human life.

9 Now the State also must prove that malice existed at
10 the time the act was done, it must be aforethought, and
11 what does that mean? Listen carefully to the judge because
12 we don't have to prove motive. If you listen to his
13 charge, he is never gonna say it's the responsibility of
14 the State to prove what motive this Defendant has, although
15 I submit we have. We don't have to prove premeditation
16 for this to be murder, although I submit that this was
17 something that was thought about beforehand, but what we
18 must prove is that malice existed at the very time the act
19 occurred. The judge will charge you it need not exist for
20 any appreciable period of time before the commission of the
21 act occurs. Malice may be conceived at the very moment the
22 blow was given. It is sufficient in law where there is a
23 combination of the evil intent and the act producing the
24 result.

25 Now in murder cases there are what's called lesser

1 included offenses and very simply, ladies and gentlemen,
2 if you think that the State has not proved malice, then
3 you may consider lesser included offenses of voluntary
4 manslaughter and involuntary manslaughter, and I want to go
5 over those definitions in this case. What is voluntary
6 manslaughter? Voluntary manslaughter, most simply, can be
7 defined as the intentional killing of another without
8 malice, but more directly the judge may define it in this
9 manner. The State must prove beyond a reasonable doubt
10 that the Defendant took the life of another in a sudden
11 heat of passion based on sufficient legal provocation.
12 Both heat of passion and sufficient legal provocation must
13 be present at the time of the killing to constitute
14 voluntary manslaughter. A sudden heat of passion may for a
15 time affect a person's self-control or temporarily disturb
16 a person's reason. It must be the type that would make an
17 ordinary person unable to coolly reflect on his actions and
18 would produce an uncontrollable impulse to do violence.
19 Sufficient legal provocation must be the type that would
20 make a person of ordinary and reasonable caution to become
21 enraged and lose control temporarily. If the heat of
22 passion has cooled or if there's enough time between the
23 provocation, if any, and the killing for the passion of a
24 reasonable person to cool, the killing would not be
25 voluntary manslaughter. In deciding whether they had a

1 reasonable period to cool off, you should consider all
2 the circumstances. You may consider the nature of the
3 provocation, if any, the Defendant's mental and physical
4 state, and the circumstances and relationships between the
5 parties. Very simply, voluntary manslaughter, a typical
6 example is if someone is in a bar and they're playing pool
7 and someone comes up and grabs a pool stick and starts
8 beating them mercifully on the head, the person being
9 beaten reacts and pulls out a knife and stabs the other
10 person immediately, that's a type of legal provocation.
11 It's not that the person who does the stabbing is there
12 with the intent to shoot or to kill or to stab, but because
13 of acts by the victim, that would reduce murder to
14 manslaughter.

15 Now in addition to that the judge will charge you that
16 another lesser included is involuntary manslaughter and
17 it's kind of akin to a reckless accident. Involuntary
18 manslaughter is the unintentional killing of another
19 without malice while engaged in an unlawful activity that
20 is not a felony, but does not naturally intend to cause
21 death or great bodily harm, or the unintentional killing of
22 another without malice while engaged in a lawful activity
23 with a reckless disregard for the safety of others.
24 Unintentional means the Defendant did not intend for anyone
25 to be killed or seriously injured. So it is an

1 unintentional killing. I'll give you an example of this.
2 There's a wooded area next to, say, Carowinds and someone's
3 out there shooting for deer and they don't consider that
4 the bullet can travel further than the parameters of that
5 wooded area and it goes into Carowinds and kills someone.
6 That was not an intentional act, it was an unintentional
7 act, but because the shooter acted with reckless disregard,
8 he was reckless in his actions, he would be accountable
9 for that homicide. In other words, his recklessness makes
10 what's an accident and elevates it to a crime.

11 Now the judge will also charge you in this case the
12 defense has brought up several defenses. At one point
13 it's self-defense, at one point it's accident. Those are
14 actually separate and distinct defenses, albeit they've
15 become commingled based on what the Defendant testified to.
16 What is the law for a crime of accident? And these are
17 going to apply to both charges. I'm just bringing them up
18 now and I'll get to attempted murder in a minute. The law
19 recognizes that the Defendant has raised the defense of
20 accident. An act may be excused on the grounds of accident
21 if it is shown that the act was unintentional, that the
22 Defendant was acting lawfully and that reasonable care was
23 used by the Defendant in the handling of the weapon. The
24 burden is on the State to prove beyond a reasonable doubt
25 that the act was not an accident. Ladies and gentlemen,

1 by any stretch of the imagination this is not an accident.
2 This wasn't an accidental one shot. He shot multiple
3 times. Mahogany had two to three bullet wounds in her, in
4 her. The victim had three separate, one to the back, and
5 I'll get to self-defense in a minute, all distance shots.
6 I ask you, I beg you, to look at the physical evidence in
7 this case to try to corroborate what the Defendant said
8 because, ladies and gentlemen, when you look at these facts
9 either it's murder or he's not guilty in law based on the
10 evidence before you, so you must determine which evidence
11 is credible.

12 And speaking of self-defense, the judge will charge
13 you that the Defendant has raised a self-defense type of
14 claim, although he says the gun went off accidentally. I'm
15 not sure how that works. To prove self-defense -- and the
16 burden is, again, on the State to disprove self-defense.
17 Self-defense typically has four different parts that must
18 be met because it's a complete defense. All four parts
19 must be there for a person to be excused on self-defense.
20 The State must disprove at least one of these elements I'm
21 getting ready to go through. We don't have to disprove
22 every other one, although I submit in this case, ladies and
23 gentlemen, it's not a close call, but we must disprove at
24 least one of these and if any one of these we can prove
25 that the Defendant did not meet, then self-defense is not

1 an available defense in the same way that accident is not
2 an available defense if we disprove it.

3 Self-defense, number one, that the Defendant was
4 without fault in bringing on the difficulty; that he
5 actually believed he was in imminent danger of losing his
6 life or sustaining serious bodily injury, or he actually
7 was in imminent danger of losing his life, and if the
8 defense is based on his actual belief of imminent danger,
9 that a reasonable, prudent man of ordinary firmness and
10 courage would have entertained the same belief. Now if his
11 defense is based on being in actual and imminent danger,
12 the circumstances were such as would warrant a man of
13 ordinary prudence, firmness and courage to strike the fatal
14 blow in order to save himself from serious bodily injury or
15 losing his life.

16 And, finally, ladies and gentlemen, and this was the
17 victim's home. He had taken in these young men. They had
18 been there for months because Mahogany was trying to help
19 out. That he had no other probable means of avoiding
20 danger, a duty to retreat, than what he did. His testimony
21 is incredible, not believable. Think about all of the
22 different stories he came up with starting as soon as he
23 left and got in that car with that young woman who he paid
24 money to take him across town to get away from the scene,
25 continuing when he's first confronted, I wasn't there.

1 Well, maybe you have evidence I was there. Okay, change
2 it. Maybe change it again, change it again, change it
3 again. I beg you, why does his story have to change?
4 Because the truth makes him a murderer. One, without
5 fault, that he believed he was in danger, that a normal --
6 a reasonable person would have believed the same thing,
7 and that he had a duty to retreat. I submit, ladies and
8 gentlemen, he hasn't met any of those elements.

9 The judge will also tell you though a person cannot
10 be required to make an exact calculation of the degree or
11 amount of force that may be needed to avoid death. The
12 Defendant has a right to use the force needed to avoid
13 death and serious bodily harm. The force used in
14 self-defense does not have to be limited to the degree and
15 amount of force used by the victim. The Defendant has the
16 right to use so much force which appears to be necessary
17 for complete self-protection and which a person of ordinary
18 reason and firmness would have believed to be needed to
19 prevent death or serious bodily harm. Self-defense doesn't
20 apply here because that means that he intentionally shot
21 and according to this Defendant's last couple of stories,
22 it went off accidentally. In fact, the common theme in
23 this case when he finally admitted to being there after
24 denying any knowledge, after saying he went to buy
25 marijuana, doesn't know what happened, is the gun did him

1 in. It just kept going off and if the gun didn't go off by
2 itself, well, then why not just blame Dajuan Harris. He's
3 gone. Self-defense means the person intentionally acted in
4 order to protect himself. That is not what we have here.

5 The Defendant also has a right to act on appearances.
6 If it appeared that he was in danger, then he has a right
7 to defend himself. If he believed he was in imminent
8 danger or a reasonable, prudent person of ordinary firmness
9 and courage would have the same belief. He has a right to
10 act on appearances even though they may have been mistaken.
11 It is for you to decide. The Defendant doesn't have to
12 wait until an assailant gets the drop on him. He has a
13 right to act under the law of self-preservation and prevent
14 his assailant from getting the drop on him. The Defendant
15 doesn't have to wait before acting in self-defense. Again,
16 according to this Defendant he was merely tussling and the
17 gun went off accidentally because of Dajuan.

18 The issues in this case, ladies and gentlemen, pretty
19 much -- the lesser includes and everything, but pretty much
20 either this is murder and it happened like Mahogany told
21 you, it is corroborated by the evidence, or he should be
22 free because he didn't do anything wrong. As he told you,
23 he's the victim in this case.

24 On attempted murder, what's the definition of that? A
25 person who, with intent to kill, attempts to kill another

1 person with malice aforethought -- and I'm not gonna go
2 back over malice aforethought and express or inferred;
3 again, all those terminologies apply to attempted murder as
4 well -- either express or implied commits the offense of
5 attempted murder. Now the judge will charge that in
6 attempted murder the State must prove a specific intent
7 to kill and the law he will charge will say that a
8 specific intent to kill is an element of attempted murder.
9 Specific intent means the Defendant consciously intended
10 the completion of acts comprising the attempted offense.
11 Intent means intending the result which actually occurs,
12 not accidentally or involuntary. The law always recognizes
13 that accidents -- say if I'm lawfully carrying a gun and
14 the guns falls out of my pocket and it goes off and shoots
15 someone, that is an accident. Not what we have here. The
16 law recognizes that no one shall be culpable for that if
17 it's a true accident. Intent may be shown by acts and
18 conduct of the Defendant and other circumstances which you
19 may naturally and reasonably infer intent. Intent may
20 also be inferred when it is demonstrated the Defendant
21 voluntarily and willfully commits an act, the natural
22 tendency of which is to destroy another's life.

23 The judge will tell you that if you do not feel like
24 we have met the elements of malice or intent to kill or
25 attempted murder, then you may consider one lesser included

1 on attempted murder, and very simply, ladies and gentlemen,
2 the definition of that is assault and battery of a high
3 and aggravated nature. So simply if you do not think that
4 this was a malicious killing or attempted killing, then
5 you may consider whether a person commits the offense of
6 assault and battery of a high and aggravated nature if the
7 person unlawfully injures another person and the act is
8 accomplished by means that will likely produce death or
9 great bodily injury. Well, there's no question this was
10 death or great bodily injury. Shooting people does that.
11 So those are the laws on that.

12 Now in this case you're also allowed to consider the
13 Defendant's statements. Some of those were oral, some of
14 those were reduced to writing. And before considering any
15 of that, it's important, the judge may tell you, that you
16 must -- we must show that those statements were voluntary.
17 In this case, that's not hard because the Defendant said
18 they were voluntary, but in considering that you can
19 consider the age and mental condition of the Defendant, you
20 may consider whether or not he was deprived of any rights
21 and, most specifically, the judge may charge you that you
22 may consider whether or not he was advised of his Miranda
23 rights, and that's why we went over those with you.
24 Because every defendant's rights should be protected.
25 That's the Constitution and that's the way it should be.

1 In this case, there is no dispute that this defendant was
2 advised of his rights, that he waived those rights, that he
3 gave statements and even got the police to come back so he
4 could give another one when he started reading his own
5 statement and realized it wasn't gonna work. So that's why
6 we through that whole litany of questioning.

7 Now in every case we also must prove criminal intent.
8 In order to establish criminal liability or responsibility,
9 criminal intent is required. For these examples, the
10 mental state required to be proved by the State for a
11 particular crime may be purpose, intent, knowledge,
12 recklessness or criminal negligence. Criminal intent must
13 be proved by the State beyond a reasonable doubt. It's
14 always a matter that must be determined by the jury from
15 the circumstances surrounding the situation. There's no
16 way to prove intent to a mathematical certainty. There's
17 no way that medical science can dissect a person's brain
18 and determine what that person had in mind. So the law
19 says criminal intent may be inferred from the circumstances
20 shown to have existed. This is how you're to make a
21 determination whether or not the element that requires
22 intent was present. It is not necessary to establish
23 intent by direct and positive evidence, but intent may be
24 established by inference the same way as any other fact by
25 taking into consideration the acts of the parties and all

1 the facts and circumstances of the case. Criminal intent
2 is a mental state, a conscious wrongdoing. It is up to you
3 to determine what the Defendant intended to do based upon
4 the circumstances that are shown to have existed. Criminal
5 intent can arise from an action or a failure to act. It
6 may arise from negligence, recklessness or indifference to
7 duty or to the consequences that are considered by the law
8 to be equivalent of criminal intent. In other words, you
9 must look at all the circumstances, what the credible
10 evidence shows, and I beg you, judge Mahogany. What does
11 she have to gain or to lose? This is her brother that she
12 took in when no one else, his father or his mother, would.
13 This case is all about intent.

14 You also heard from experts in this case and the judge
15 will tell you that because of certain training or expertise
16 in a certain area some people can get up here and give
17 opinions. Lay witnesses such as myself can't. I'm not an
18 expert in any area, but they are allowed to get up there
19 because they have the training and to give opinions. And
20 remember the testimony of this pathologist, it's crucial,
21 as well as the crime scene, as well as everything else
22 Ms. Walker will talk to you about. The expert testimony,
23 you can believe an expert or you don't have to believe an
24 expert, but you can always look at the underlying reasons
25 for their expert opinion and do they make sense. Does it

1 all add up? And I submit, ladies and gentlemen, when you
2 consider all the evidence in this case the only possible
3 conclusion is it happened like Mahogany said it happened,
4 that this was murder.

5 Now, finally, I want to talk to you a little bit about
6 credibility because that's what this case boils down to
7 because, again, either this young man, Dexter Myers,
8 murdered or attempted to murder two people or he's not
9 guilty. Based on the testimony, his testimony, because
10 if you believe, I guess, his last story -- well, I guess
11 his latest version, then you should find him not guilty
12 because he's the victim, according to him, not Dajuan
13 Harris, who's in a grave, who was supporting him at the
14 time. Not Mahogany, who actually worked for a living.
15 Credibility. The judge will instruct you in some language
16 similar to this, I don't know if this is exact, credibility
17 simply means believability. It becomes your duty as jurors
18 to analyze and evaluate the evidence and determine which
19 evidence convinces you of its truth.

20 In determining the believability of the witnesses who
21 have testified in this case, you may believe one witness
22 over several witnesses or several witnesses over one
23 witness. You may believe part of the testimony of a
24 witness and reject the remaining part of that same witness.
25 You may believe the testimony of a witness in its entirety

1 or reject it in its entirety. You may consider whether any
2 witness has exhibited to you interest, bias, prejudice or
3 other motive in this case. You may also consider the
4 appearance and manner of a witness while on the stand or
5 their demeanor. Bias, prejudice. If this was an accident,
6 or the self-defense/accident combination. Why did Dexter
7 Myers flee the scene? Why did he not just drop the gun,
8 but hide the gun in the woods? Why did he tell his brother
9 not to talk? And I can go on and on and on.

10 I beg you, ladies and gentlemen, judge each witness's
11 credibility. The defense has absolutely no burden, but
12 once they put up witnesses you judge them the same way you
13 do any witness that takes the stand. And I submit, ladies
14 and gentlemen, that once you determine what evidence in
15 this case is credible or believable that you will have to
16 follow the law and apply that law and when you do that, the
17 law as the judge gives it to you, you must find him guilty
18 for what he did. He murdered one person, Dajuan Harris,
19 and he tried to kill the only other surviving parent of
20 that one-year-old and that four-year-old. All we ask is
21 that you hold him responsible for his choices, his actions,
22 his decisions, but whatever reason he did it, we just ask
23 that you take the law as the judge gives it to you and
24 apply it to the facts, the credible evidence in this case.
25 Thank you.

1 **THE COURT:** Does the jury need a break before we
2 continue? All right. Ms. Pinnock.

3 **MS. PINNOCK:** Thank you, Your Honor. May it please
4 the Court?

5 Good morning. Nobody is going to tell you that
6 July 2, 2014, was not a tragic day. Nobody is going to
7 tell you that Dajuan Harris lost his life too soon. He was
8 twenty-three, he had two kids, he's married. He's a son,
9 he's a brother. Nobody's gonna try and tell you that's not
10 a sad thing, a tragic thing, to happen. Nobody's gonna try
11 and tell y'all that Mahogany's life didn't change forever
12 that day. The entire family's life changed forever that
13 day. But because it's sad and because it's tragic and
14 because it never should have happened does not make it
15 murder and it does not make it attempted murder. None of
16 that stuff has anything to do with the courthouse. The
17 emotions, the sadness, the loss, the anger, the tears from
18 the stand, none of that has anything to do with what your
19 job is in this courtroom. Your job is to take the facts
20 and apply the law.

21 And it sounds very difficult. It's a very difficult
22 thing to do because we're all human beings. We all
23 experience things in life, but you can't let your emotions,
24 you can't let any emotion you heard on the stand, any
25 emotion you heard in the back of the courtroom, none of

1 that matters. What matters is what's in evidence, what was
2 testified to and the law that the judge is gonna give you.
3 Because as Aristotle said, the law is reason free from
4 passions. You can't bring that in here. You can't take
5 that back there. When you go back there, when the judge
6 gives you the law, when it's time for you to decide if the
7 State has proven their case beyond a reasonable doubt,
8 leave your emotions in your chairs. Take the law, take the
9 evidence and take the facts as you heard them. That's all
10 you can do. Those are your tools.

11 A lot of people came and testified in this trial. And
12 I'm not gonna go back through everybody, but I do want to
13 talk about a few specific people that you heard from, and
14 I want to start with Mahogany, Dexter's sister, Dajuan's
15 wife, and she was in the apartment and something --
16 something Ms. Campbell kept saying is take the credible
17 testimony, take the believable testimony and apply it to
18 the law when the judge gives it to you. So she told you
19 her version of what happened here, but you judge her just
20 like you judge anybody else. She's got her own reasons for
21 coming in here and telling you what she told you and if you
22 really listened and think about what she said, what she
23 said happened doesn't make sense.

24 She told you she got up that morning, the baby woke
25 up. She's up, trying to get the child to go back to

1 sleep. As we know, babies don't care what their parents
2 want to do, so she was up. So she gets up and is cooking
3 breakfast. At some point she goes to get Dajuan.
4 Everybody is supposed to be sitting at the kitchen table
5 eating breakfast. She asked him about jelly on toast,
6 gives him the toast with jelly on it and then is either
7 leaning over or bending down, but she's making her plate
8 of food, and she says that's when she hears a pow, pow,
9 pow, and she looks up and she says she sees Dexter with a
10 gun. Dajuan had been shot. If you listen to what she
11 said, Dajuan had been shot, she looks up, Dexter has the
12 gun and Dexter then shot her. And she runs away. She
13 falls to the ground, jumps up and runs out of the house.

14 The State provided you the information you need to
15 show that Mahogany -- what she said doesn't make sense
16 because it did not happen that way. They showed you
17 pictures of the kitchen table, they showed you pictures of
18 the kitchen, they showed you pictures of the living room,
19 of the bathroom, but this is the kitchen table. They
20 showed you where the kitchen is compared to the kitchen
21 table. This is the stove. This is the stove that Mahogany
22 says she was standing at. This chair is where she said
23 Dajuan was sitting. Crime scene investigators didn't walk
24 in and sit the chair up. They didn't walk in and move the
25 table away from where she was standing. She was literally

1 standing right beside him and she says she doesn't see
2 anything. That did not happen. Dajuan Harris was not
3 sitting at the table when he was shot. He wasn't.

4 If you remember the testimony of Dr. Durso, she
5 described the shot to the neck, immediate distress. He
6 would have been at least losing consciousness within a
7 minute, but Mahogany says she hears pow, pow, pow. Dajuan
8 did not stand up, push his chair in, not knock over a
9 plate, a cup, nothing, and then walk to the bedroom and
10 lock the door. If you get shot, if you're sitting in a
11 chair, you're jumping up, not calmly standing and pushing
12 your chair in and leaving. What she said happened is not
13 how it happened and I don't know -- I don't know why. I
14 have no explanation as to why she was saying what she's
15 saying. I don't know why or what she's trying to minimize
16 or cover. I don't know. But the pictures that they
17 provided you, the crime scene investigators, that shows
18 you that that didn't happen. He was not shot at the table.
19 She would have seen it because she was there, so there
20 would be some evidence of it where there's not. So, yes,
21 judge credibility, consider the testimony with the evidence
22 that you have when you make your decision about whether or
23 not they've proven and reached their burden.

24 And it was said that in this case, in any case, the
25 State welcomes their burden of proof. The truth of the

1 matter is they don't have a choice. They can't reject
2 it, they can't lessen it. The burden is on them and is
3 always on them to prove every case beyond a reasonable
4 doubt. And the judge, he will give you the definition
5 of reasonable doubt. When I explain reasonable doubt --
6 because as lawyers we just make words up and then spend a
7 lot of time trying to explain it, so when I talk about
8 reasonable doubt, it's hesitation. It's that simple. If
9 you hesitate for a split second, that's all it takes. That
10 is reasonable doubt. And every single one of y'all are
11 reasonable people and I know y'all have been paying
12 attention, we've been watching. Some of this stuff is
13 hard to listen to and hard to see in others, but every
14 single one of you has been paying attention. So hold
15 them to their burden. Don't get lost in everything else
16 they're going to try and tell you. How many times did we
17 hear about the one-year-old and the four-year-old? How
18 many times did the children come up? The children are of
19 no consequence to what happened when the shots were fired.
20 None. That's the emotion they want you to get lost in.
21 That's the only reason the children keep coming up.
22 Nothing to do with what happened when the shots went off.
23 Don't get lost. Don't let them cloud your judgment. Don't
24 do it. Hold them to their burden, what the law demands
25 that you use as your tools.

1 You heard from investigator Bouknight. He talked
2 about blood spatter. I think I got it right that time.
3 Blood spatter. And what he said, there's -- there's some
4 drops on the door, there's some drops on the wall. He said
5 first that it was moving in a direction away from the point
6 of origin. I completely agree with that. I'm not gonna
7 disagree with him, he knows what he's talking about, and
8 that's considered like an impact pattern. You know,
9 impact. But impact does not mean something hitting. It
10 does not mean a physical contact. He told you that
11 (coughing) that's impact. The air, the pressure behind the
12 air leaving my lungs, is impact and that can create the
13 pattern that was on those walls. I completely agree with
14 that.

15 Dr. Durso told you the same thing and the way that
16 she described, you know, through her autopsy, the injury,
17 the internal injuries that Dajuan had, it completely
18 explains what happened and why there's blood on the wall
19 and on the door in that bedroom. Dajuan Harris was in
20 the bedroom, he was there, and unfortunately as he was
21 succumbing to his injuries the blood exited his mouth when
22 he coughed. He would have been struggling and that is
23 horrible. I cannot imagine what that must feel like. I
24 don't ever want anybody to have to try to imagine that,
25 but that explains it. It makes sense.

1 You heard from Investigator Beeler. He's another
2 crime scene investigator who took the swabs of the gun.
3 I'm not gonna pick up the gun again, but he took two swabs.
4 He told you one from the top barrel area and one from the
5 grip, the trigger, hammer area, right? So one from up here
6 in this general area and one from down here. He told you
7 that he submitted those for DNA and then when Agent Grant
8 testified, she's the DNA analyst, she got two swabs, one
9 labeled top cylinder, the other one labeled from gun.
10 Dexter's DNA, his blood, is on the top of that gun. We
11 know that Dexter had the gun in his hand, we know that, but
12 what we also know is that Dajuan's DNA is on that gun.
13 Dexter didn't put it there. You can't do that. Dajuan's
14 DNA on the other swab that was submitted to Agent Grant is
15 on this gun. It was this swab that matched Dajuan Harris.
16 His hands were on the gun.

17 We were also able -- we were also able to establish
18 that Dexter submitted his clothes for DNA testing and he
19 had blood on his clothes. A lot of it was his blood
20 because he had injuries. He had a pretty gaping, bleeding
21 injury to his right hand. They also photographed the
22 injury to his left hand. So, yes, Dexter Myers' DNA was
23 on his clothes. We know this. There's was also a spot of
24 Dajuan Harris' DNA on his clothes. Dexter didn't put it
25 there. They had to be close enough for that DNA to be

1 transferred to his shirt and they were struggling over
2 that gun. That's when the DNA was transferred.

3 Now I spoke with -- I can't remember if it was
4 Investigator or Agent Metz, the ballistics tester, and we
5 talked about, you know, just the general makeup, the
6 properties of the gun, and with revolvers, you know, they
7 are very different from automatic weapons. They've got a
8 barrel that has to turn, so there's that space in the front
9 and the back and on top that lets the barrel turn. That
10 gap is important and I got into it a little bit with
11 Investigator Metz, then I spoke more about it with Agent
12 Sturkie for the GSR, gunshot residue, because they both
13 explained to you guys that when the hammer of the gun hits
14 the primer of the bullet there is a -- I don't want to say
15 a small explosion, but it ignites, and then the gas expands
16 and that pushes the bullet out of the barrel. But all the
17 gas and all the powder has to go somewhere, it's got to get
18 out, so the powder and the gas leaves that gun with the
19 openings. Any opening it can find it leaves the gun. Now
20 the majority of the powder on the gun tries to get through
21 the barrel, it tries to go forward, but because of the way
22 bullets -- I guess the way they're made, not everything can
23 go forward, sometimes powder is pushed back, and generally
24 the powder that's pushed back is called primer powder. And
25 primer powder is important because the primer on the bullet

1 is what's facing the person with the gun. That's what the
2 hammer hits to shoot the bullet. So that powder, it moves
3 back out of the gun. It's got to go somewhere.

4 And when they did the GSR testing, when they tested
5 Dexter's hands, when they tested Dajuan's hands, Dexter
6 had GSR on his hands on the back of both because we know
7 he fired the gun, but Dajuan, Agent Sturkie couldn't say
8 he had GSR on his hands because he only had two out of
9 the three elements, but two of those elements that are
10 consistent with primer powder, the one in the back, that
11 exits the back, were on his hands and he knew it was primer
12 because they're shaped differently. So three ways to
13 transfer gunshot residue. You fire a gun, you're in the
14 vicinity of the gun or you touch something that has it on
15 it. He grabbed the back of that gun. It's on his palm and
16 it's on the back of his hands. They tested it after they
17 collected it and they found it. Two out of the three
18 particles. It doesn't just jump on you from ten feet away
19 or however far they're gonna say this marksman, Dexter this
20 marksman shooter, is from him. It got on his hands when he
21 grabbed the gun. That's what happened.

22 And then we have Dr. Durso. Dr. Durso performed the
23 autopsy. You know, she came in and told us there were
24 three gunshot wounds. She cannot say which shot happened
25 first, but we definitely know which one was the fatal one.

1 That was the one through the neck and nobody is disagreeing
2 with that. But she told you when she did her external exam
3 there were other injuries that she -- that she noted; on
4 the neck, on the head, a busted lip, on the arm. One of
5 those she said yes, that looked postmortem, but the other
6 ones she gave an opinion that those could have been caused
7 in a number of different ways. She could not say that it
8 was caused if he fell, she could not say that they were not
9 caused before the shots were fired, they could have been
10 caused after the shots were fired. We don't know because
11 she cannot tell you that. So don't let anybody try and
12 tell you that she is certain, that she's giving you the
13 cause, the timing or anything else of when those other
14 injuries occurred because she told you that she can't. She
15 can't. Because they were postmortem, she had seen the
16 patterns before in fall victims, does not mean that it did
17 not happened before that. So if you're struggling, if
18 you're fighting, you can get scratches on your neck. If
19 you're fighting and you get punched, you can get a busted
20 lip. All of those things can cause those injuries.

21 They're not proof that it didn't happen. They're there.
22 It's up to you to decide when do you think those happened.

23 There was also talk about defensive wounds. Defensive
24 wounds she said you typically look for on the hands and on
25 the arms. Dajuan didn't have any injuries on his hands.

1 Defensive wounds she described as being wounds that are --
2 that are done if somebody is being attacked. You would see
3 them put their hands up, arms up, trying to cover their
4 face, trying to protect themselves. Dajuan Harris didn't
5 have any injuries on his hands. Dexter did. He had
6 injuries on both of his hands. One of them he had to get
7 stitched up. They had pictures of both of them. We're not
8 making this up.

9 And yesterday Dexter took the stand and we all know,
10 we have heard from -- I lost count of how many witnesses
11 were called to tell you that when Dexter Myers was first
12 interviewed he lied and he lied badly. Anybody who has
13 half -- half -- any kind of sense about -- who doesn't
14 have any knowledge about guns, knows a gun can't shoot by
15 itself. We know that. They called witness after witness
16 after witness to tell you what we told you at the beginning
17 is that Dexter Myers lied. We told you that. And he got
18 on the stand yesterday and admitted to you that he did it
19 himself and he told you what he told law enforcement when
20 he gave that last statement. I can't change what he said,
21 I can't make it go away. He acknowledged that he said it
22 and he acknowledged that it was a lie and the reason he
23 said he lied was because he thought they wouldn't believe
24 him. Now I don't know if we all would be in this room, if
25 we would have spent the last week together, if Dexter had

1 just told them what happened. I don't know if they would
2 have arrested him or not. I don't know. He should have
3 just told them what happened, but he didn't. So I don't
4 know if we'd all be sitting here. I don't know if we'd be
5 arguing in front of you trying to show you this is not
6 murder if Dexter had just told them what happened, but what
7 we do know is that the arrest warrants for Dexter were
8 taken out before he was even found. Nobody -- nobody cared
9 what Dexter had to say, so I kind of believe the fact that
10 he believed that nobody would believe him. I kind of
11 understand that. They spoke to one person, walked through
12 an apartment and took out an arrest warrant. Nobody cared
13 what he had to say. So I can't say I don't kind of
14 understand. They were gonna arrest him anyway.

15 Now Dexter has been charged with murder. I'm not
16 gonna go through all the definitions. That's the judge's
17 job. After I finish talking, my one and only time to talk
18 to you guys directly, Ms. Walker is gonna get up and she's
19 going to address y'all on what they believe the evidence
20 shows and then the judge will give you the law. So I'm not
21 gonna go back through every definition of everything, but
22 the State has to prove malice. The State has to prove that
23 there is no legal justification for what happened. They
24 have to. They have to prove that to you. It's called
25 disproving. The State has to disprove self-defense, so

1 they have to prove to you with the same standard, the
2 highest standard in our legal system, beyond a reasonable
3 doubt, that Dexter was not justified in what he did. And
4 there can be sarcasm, there can be ugly looks, there can be
5 finger points, none of that matters. They have to prove to
6 you from the evidence in this case that there's no legal
7 justification for what happened. And when Dexter saw
8 Dajuan go for that gun, the law allows him to protect
9 himself. The law allows him to try and stop him from
10 getting that gun. That is the self-defense. There is no
11 question about it. If you believe somebody is going to get
12 a gun and potentially kill you, you have the right to act,
13 and that is what he did. That is why this is self-defense
14 and not murder. That is why this is self-defense and no
15 intent to kill Mahogany. None. Because you have a right,
16 everybody has a right, to not let somebody get a gun first
17 and then see what they're gonna do later. Law enforcement
18 hesitantly but finally agreed when -- if you walk into a
19 scene not knowing what you're going to, you have the right
20 and they are trained to pull their weapon at the ready.
21 If there's a threat, they neutralize the threat. If they
22 are put in a position where they feel as though they are
23 in danger to the point of justifying deadly force, then
24 they neutralize the threat. It is the right to protect
25 yourself. It applies to them, it applies to Dexter, it

1 applies to everybody. It is our right to do that. You
2 don't have to wait to see what somebody else does. You
3 don't.

4 Attempted murder is specific intent. The State has to
5 show you that Dexter intended that he was trying to kill
6 Mahogany Harris. That's just not true. If you think about
7 it, it was briefly mentioned, and I'm sure Ms. Walker is
8 going to discuss it, they're going to tell you that Dexter
9 and Dajuan were not close to each other, they were not
10 struggling when the shots went off. He's shooting at a
11 range. If he is this good of a marksman and if he is not
12 engaged, struggling with Dajuan when the shots are being
13 fired, then Mahogany would not have been shot in the leg.
14 If he was aiming to shoot her, to kill her with the aim
15 that they're saying he has, it would not be an attempted
16 murder. There is no intent to kill. He didn't walk up,
17 point a gun at her and pull the trigger and miss and hit
18 her in the leg. That didn't happen. What happened is the
19 gun went off while they were fighting over it. That is
20 what happened. That makes sense. Being shot at a kitchen
21 table does not make sense. Waking up at 8:20 in the
22 morning and deciding I'm gonna blow my family away doesn't
23 make sense. They've been living there for five months,
24 they lived together when they were kids, so on this day I
25 just wake up and I decide I'm going to just kill everybody?

1 Over what? Being told to leave the apartment? That
2 doesn't make sense. It doesn't allow you to live there
3 longer. That makes no sense.

4 So what we're asking you, all we can ask you to do, is
5 the same thing that Ms. Campbell just asked you to do, the
6 same thing the judge is gonna ask you to do. Take the
7 facts as they've been given to you in this case, free from
8 emotions, free from passion, apply the law. You're gonna
9 have a lot of stuff to discuss. Apply the law and you will
10 see that this is not murder. You will see that there is no
11 intent to kill. It's not attempted murder. Dexter acted
12 in the way the law allows him to act. When Dajuan went for
13 that gun and he went to stop him from getting it, that is
14 acting in self-defense. That's what that is. Dexter is
15 not guilty of murder and he's not guilty of attempted
16 murder. Thank you.

17 **THE COURT:** Anyone need a break before we continue?
18 All right. Ms. Walker.

19 **MS. WALKER:** May it please the Court, Your Honor?

20 Good afternoon. Before I talk to y'all about facts of
21 this case, I want to join Ms. Campbell and thank y'all for
22 your attention and time this week. I know as you were
23 driving to the courthouse on Monday in preparation for your
24 jury duty, you may have been anticipating, you know, what
25 sort of case you were going to be on. Was it going to be

1 some sort of drug dealing, maybe a car wreck? At that
2 point in time as you were driving here, there was no way
3 for you to anticipate that you would be hearing about a
4 man's final moments as he was eating breakfast with his
5 family. There was no way for you to anticipate that and
6 as you were anticipating what type of case you would be
7 sitting on, Ms. Campbell, Mr. Shellenberg and I were
8 sitting around and we were anticipating what type of
9 defense would used in this case because Mr. Myers is not
10 bound by facts, he's not bound by truth. He's bound by
11 what's convenient for him at the moment, so it was hard to
12 anticipate what his defense would be. Would it be the
13 initial defense of I wasn't even there, I have no idea what
14 you're talking about? Or would it be the, I guess, third
15 or fourth story that he told? I had the gun in my hand, my
16 palm was open and the gun just kept going off. Magically
17 it didn't hit Shamaray, magically it didn't hit him, but
18 that magic gun just kept going off. Or would it be his
19 third story? He had to do it, he had no other choice. He
20 was attacked, he had to act in self-defense. And as he
21 took the stand yesterday amid bouts of amnesia it became
22 clear that his story was a combination of the gun
23 accidentally went off and I had to act in self-defense,
24 and I will talk to you about his testimony and about his
25 statements, but before I talk to you about what this

1 Defendant said, I want to talk to you about the credible
2 evidence in the case.

3 In order to prove to you the crimes of murder and
4 attempted murder beyond a reasonable doubt, in order to
5 leave you firmly convinced of Dexter Myers' guilt, we
6 brought forth evidence and witnesses to testify. We
7 started with the next door neighbor. Do you remember
8 Ms. Brown on Monday? She heard shots and then she heard
9 someone banging on her door and when she opened the door,
10 it was her neighbor Mahogany. And Mahogany came in and she
11 was excited, she was scared, she was nervous. She was
12 trying to get back to her children who were still in that
13 apartment, and they placed that 9-1-1 call. And in that
14 moment she says my brother shot my husband and my brother
15 shot me. His name is Dexter Myers. Right when it just
16 happened she doesn't come up with some sort of story. She
17 tells what just happened to her. It wasn't that there was
18 a struggle over a gun, it wasn't that the gun accidentally
19 went off. Judge her credibility. At this point what would
20 be the purpose of her coming in here and sending her little
21 brother to prison for murder? What's the purpose in that?
22 What's her motive in that? It's not gonna bring her
23 husband back. Why would she do that unless it's the truth?

24 You heard from the responding deputies. They were the
25 first two to arrive on the scene, deputies David Fairbanks

1 and Zachary Brunson. They tell you they went in there,
2 they made contact with Ms. Brown, they made contact with
3 Mahogany. They were both upset. There were two children
4 in the home. And we're not talking to you about the
5 children to make you feel sympathy for them, to make you
6 feel sorry for them. We're talking to you about the
7 children because they were there. They're a part of the
8 story. You don't ignore children because Ms. Pinnock wants
9 you to. The evidence of the children is everywhere in that
10 apartment. But they went in to clear the house. And,
11 remember, this is when she started going on about, you
12 know, when you went into that apartment did you have your
13 guns drawn? Were you at the ready? They said yes, we
14 didn't know what we were going into. They were clearing
15 an apartment because someone had just shot two people.
16 Yes, they had their guns drawn. And when they get back to
17 that back bedroom, and they can open every door in the
18 house except for that one, that's the one that they have
19 to kick in, remember? Because the victim has gone back in
20 there. He's become scared and is running in his own house
21 and barricading himself in his own bedroom because is he
22 shooting people. He's fallen face down and they find him
23 in a pool of his own blood. Because, remember, no matter
24 how much they want this to be a struggle, the only blood
25 that's found in that hallway, that's found in that bedroom,

1 no blood in the living room, that blood belongs to Dajuan
2 Harris. Dexter himself told you in one -- in his statement
3 to police officers that he cut his hands when he was
4 running through the bushes. He wasn't fleeing the scene,
5 he was just trying to get out of there. His blood isn't in
6 the apartment. His blood is on the gun because he had it
7 with him when he was running through the woods, as he was
8 getting rid of evidence. Or actually he wasn't getting
9 rid of evidence. He saw a cop car and then his gun just
10 slipped out of his hand at that point in time.

11 In order to introduce you to the crime scene, we
12 brought in crime scene investigators. They were the ones
13 who went in and collected and documented the evidence
14 and they took the pictures of the crime scene. And
15 Ms. Pinnock wants you to believe that the crime scene is
16 not corroborated, it does not corroborate Mahogany's
17 testimony. Remember she said he was sitting there at
18 breakfast. He had the one-year-old on his lap, he hasn't
19 started eating his breakfast yet, but that he had started
20 feeding her. Do you see the little Dora the Explorer plate
21 there? Grits have been eaten. He was sitting at that
22 table. He was feeding his daughter. She was sitting on
23 his lap. This is his plate that he hadn't started eating
24 yet and this is the one-year-old's plate. Her testimony
25 is corroborated. She wants to say, you know, those chairs

1 should be knocked over. The door beside the chair has been
2 knocked over. And I don't know what Mr. Myers did in that
3 house after everyone had fled, what he got out of that
4 closet -- he definitely went over there to get his shoes --
5 what chairs he moved around or what he moved around on that
6 table, but what Mahogany says happened at that kitchen
7 table is corroborated by those pictures. And that there's
8 another thing that you can -- you can see here. The living
9 room is on this side. There's a wall here that separates
10 the living room and the kitchen. You can see the wall
11 clearly in this picture. She's shot in the kitchen.
12 There's a projectile under the refrigerator. There's a
13 bullet under the refrigerator. It's corroborated by her
14 being shot in the kitchen. Do you remember there were
15 projectiles collected that we can account for in this case?
16 Here's where she was fixing her own breakfast, do you
17 remember? Toast she was making for her husband, it's on
18 the floor. Her shoe where she fell backwards is still
19 there. She was shot in the kitchen. The projectile was
20 found over here under the refrigerator. She wasn't coming
21 at Mr. Myers as he would have you believe. She was still
22 in the kitchen fixing breakfast for everybody in the house,
23 including him.

24 And in addition to the kitchen, they also documented
25 the living room. They took pictures of the living room

1 where this great struggle took place. Where the Defendant
2 is struggling for his life. He's in a fight for his life.
3 They're on the couch. They're wrestling. He has to
4 wrestle to get from up under the victim in this case.
5 They're fighting over a gun. This living room should be
6 in absolute disarray. This is where the fight's taking
7 place. The bassinet is still upright, the TV hasn't been
8 knocked over, and this is where Shamaray is sleeping,
9 remember? Because Shamaray didn't wake up according to
10 Dexter Myers while they're fighting over this gun and this
11 struggle for survival in this living room. Shamaray should
12 have been trampled. Not only that. There should be blood
13 all over that living room and there isn't. The struggle
14 didn't happen in the living room. They didn't even knock
15 the remote control off the couch they were struggling on.
16 It's still there.

17 Ms. Pinnock said I was gonna get up here and tell
18 you that there was no struggle. There was a struggle over
19 the gun. The victim's blood is on the gun, which tells
20 reasonable, sensible people with common sense that he was
21 shot before he ever touched that gun. He's shot and he's
22 trying to protect his children and his wife who are in the
23 home and there's a struggle over that gun. It's in the
24 pictures, but the struggle doesn't take place in the living
25 room. The struggle takes place as the victim in this case

1 is trying to barricade himself in this bedroom. Remember,
2 he's still bleeding down there. He eventually gets that
3 door locked and collapses, but look at the door handle
4 on the outside? Do you see how it's bent down, it's
5 indented? Because he's still trying to get in to make
6 sure he finished the job. There's a struggle over that
7 gun. He's already been shot. He's bleeding on the door,
8 he's bleeding on the wall and he's bleeding on the gun,
9 and the Defendant is trying to get into that room. That's
10 what the pictures in this case show. That's what the
11 evidence in this case shows.

12 Out of the six bullets that were fired from that gun,
13 we have the projectiles from five of them. Remember, two
14 of them were found in the victim at autopsy, two of them
15 were found in the home. Remember, one of them is found
16 under the refrigerator that we talked about, and one of
17 them is found out in the hallway in that breezeway that's
18 leading to Ms. Emma Brown's apartment because as his sister
19 is fleeing he's still trying to shoot her. It went right
20 in the direction that she went and luckily in this case it
21 didn't go into another apartment where another family was
22 eating breakfast. It fell harmlessly on that breezeway
23 floor. In this case, no matter how much Ms. Pinnock wants
24 to wish it away, the pictures corroborate what Mahogany
25 says happened.

1 You heard from Investigator Cavanagh. She's the one
2 who went to the location where the victim was -- where
3 Dexter Myers was found hiding out, that Charles Street
4 location. She found the towel and the napkin that he used
5 to wrap his hand that he admitted he cut not in a struggle
6 but as he was running through the bushes and trees to get
7 rid of the gun. She took those pictures and she documented
8 that. And you also heard from the investigator who took
9 pictures of Dexter that day because the investigators
10 wanted to -- to document what he looked like, remember? He
11 should be a mess. He should be bloody, bruised, battered.
12 According to him, he's getting hit repeatedly in the face.
13 That's his testimony yesterday. His shirt should be torn.
14 It's not even wrinkled. No injuries to his face. No one
15 was hitting this man. A close-up of his face. He is in a
16 fight for his life and comes out of it with a cut on his
17 hand and he told you how he got that cut and it wasn't in
18 any struggle inside of the apartment.

19 You heard from Shamaray and I guess -- Shamaray loves
20 his brother. He gave a statement to law enforcement
21 officers, and that statement you will have back there with
22 you as you deliberate, and in that statement he said that
23 his brother was holding the gun and that the gun just kept
24 going off. And what's interesting about that statement
25 that Shamaray gave is that it's the exact same thing that

1 Dexter said that Dexter is now admitting that's a lie.
2 It's either a huge coincidence or after Mahogany fled the
3 scene and Dajuan was dying in the back bedroom they got
4 together on the story, which I'll submit to you is what
5 happened because two people don't come up with the exact
6 same admitted lie. And now like his brother Dexter,
7 Shamaray really doesn't remember what happened. According
8 to Dexter he shouldn't because while this grand struggle
9 is going on he's asleep on the living room floor. Judge
10 Shamaray's credibility.

11 You heard from Roshaunda Dumas. She's the young lady
12 that gave him a ride away from the scene across town. She
13 patted him down, checked his ID and gave him a ride, and
14 he told her that he got into a fight with his girlfriend.
15 And that's not because of some fear of law enforcement.
16 She's not law enforcement. That's because he can't tell
17 her I just blew away my brother-in-law and killed my
18 sister. I got into a fight with my girlfriend. That was
19 the first lie that he told that day and there's no fear
20 of law enforcement that can explain that lie away.

21 You heard from Mahogany. She took her brothers in
22 when their own parents wouldn't. She told them at some
23 point, it was after that text message she received from
24 her husband, I think your brothers are trying to bring a
25 gun in here, that they needed to get out of that house by

1 July. This happened July 2nd. I'm sure she regrets not
2 having kicked them out before that. Judge her credibility.
3 See what reason she has to lie to try to frame her own
4 brother, whom she clearly cared about and loved and took
5 into her home, for murder. She has no motive to make
6 anything up. She had no motive to lie to the 9-1-1
7 operators or to lie to Ms. Brown. Her story has been
8 consistent from July 2nd until now. There haven't been
9 six iterations of her story like there has been of Dexter
10 Myers.

11 You heard from experts in this case. Rachel Grant,
12 the DNA expert. The victim's blood is on the gun. He's
13 shot before he ever touches the gun. The victim's blood is
14 strewn throughout the house and there is a faint part of
15 blood on the inside of the shirt the Defendant was wearing
16 that day. Had it come from this struggle, it would have
17 been on the outside. He wasn't wearing the shirt inside
18 out. I don't know when that blood got there, she said she
19 can't date it, but they were all living in that same house
20 and that drop of blood was on the inside of his shirt.
21 Don't be confused by insinuations that it was somewhere
22 else.

23 You heard from Amanda Metz. She's the ballistics
24 expert in this case. The gun was working properly, that it
25 would likely not eject a bullet when pulled -- when that

1 trigger was pulled as opposed to anything else. He -- he
2 got six bullets out of that gun. Imagine how many times he
3 had to fire, how many times he had to pull the trigger.
4 That blue shirt that she examined that the victim had on,
5 it didn't have any gunpowder on it, that shot to the back.
6 They were not in close proximity at that point in time. I
7 submit that's when he was running down the hallway and he
8 got shot in the back. And that shot in the back is key,
9 right? Because Ms. Pinnock wants to make this about law
10 enforcement and self-defense and how law enforcement reacts
11 when they are in danger. When law enforcement shoots
12 people in the back as they're running away, they get
13 arrested and charged with murder, too. Just like this
14 Defendant did in this case. He shot him in the back at a
15 distance. That's not self-defense. That is malice.
16 That's murder.

17 You heard from Dr. Durso. And I think there was a
18 question from Mr. Bailey during his cross-examination,
19 you know, you meet with the prosecutors and they tell you
20 what they want you to say. I think she made it very clear
21 that she does not care about my opinion when giving hers.
22 Not only did she meet with us, she met with the defense
23 attorneys in this case, and she does not base her findings
24 on passion, on preference for one side or the other. She
25 says she bases them on science and they are not refuted in

1 this case. The Defendant shot the victim at a distance in
2 the back, shot him in the head, and that wound -- and that
3 wound did not penetrate the skull, but that the fatal shot
4 was the one through the throat and it would have been
5 spewing blood out. And you can see that blood as he's
6 running down the hallway. That means he would have had a
7 minute and a half to struggle and you see the struggle at
8 that door. That there is no soot or stippling on the
9 victim in this case, which means that it was not close
10 contact. Mr. Bailey tried to get her to say you could wipe
11 away stippling and soot and that's just not true. She
12 refuted that. Had it been close contact, you would have
13 seen those things on the victim's body. This was at a
14 distance. And he had gunpowder -- or gunshot residue,
15 particles of gunshot residue, on his hands. Tyler Sturkie
16 from SLED said that that can happen up to eighteen feet
17 away from a victim of a gunshot wound and the Defendant
18 in this case, despite wrapping his hands in towels and
19 wrapping his hands in shirts, still had GSR on him. It's
20 undisputed who fired the shots in this case.

21 And you heard from Justin Britt, who was the arresting
22 officer in this case. You want to start talking about
23 motive? Ms. Pinnock wants to know why he would wake up one
24 morning and decide to kill his family. Justin Britt told
25 you he said I have no love for Mahogany, I don't owe an

1 explanation of this to my family, I am God, were his words.
2 Motive? And the motive became blindingly clear when he
3 took the stand. Do you remember when I asked him about his
4 relationship with his sister? And he went on and on about
5 how his mother put her on a pedestal and no matter what she
6 did was right, no matter what he did was wrong, that his
7 mother preferred his sister over him. This is the oldest
8 motive for murder known to man. It's a sibling rivalry.
9 The motive in this case was to kill his sister. He shot
10 her three times. Dajuan Harris was collateral damage. He
11 tried to kill her, he just didn't succeed. He attempted to
12 murder her, he was just unsuccessful.

13 You heard from Scott McDonald, Captain Scott McDonald
14 with the sheriff's department, and he was involved in the
15 interviews of the Defendant, and you're going to have
16 those, and the first thing that the Defendant says is that
17 he wasn't there because at that point in time he doesn't
18 know that there's a survivor. He knows Shamaray's not
19 gonna tell on him. He knows the four-year-old and the
20 one-year-old aren't talking, so he says he wasn't there.
21 Then he says he was there, but he went to go buy weed. He
22 didn't need to leave the house to buy weed, his weed is in
23 this jar that was found in the living room. And once he
24 decides that he can't go with I wasn't there because
25 there's a surviving witness, he starts talking to the

1 police on a written statement. He signs that he
2 understands his rights and that he wants to waive them.
3 He went to Eau Claire High School, twelfth grade slash GED,
4 and that he can read and write. They told him that before
5 they ask him any questions that they needed to understand
6 -- that he needed to understand his rights. You have the
7 right to remain silent. Anything you say can be used
8 against you in court. You have the right to talk to a
9 lawyer for advice before we ask you any questions and have
10 a lawyer with you during any questioning. If you cannot
11 afford a lawyer, one will be appointed for you before any
12 questioning if you wish. If you decide to answer questions
13 now without a lawyer present, you still have the right to
14 stop answering at any time. You also have the right to
15 stop answering at any time until you talk to a lawyer. He
16 signed there. I have read the statement of my rights and
17 understand what my rights are. I am willing to talk and
18 answer questions. I understand and know what I am doing.
19 No promises have been made to me and no pressure or
20 coercion of any kind has been used against me. And then
21 he started giving -- so the first version was that he got
22 in a fight with his girlfriend, the second version was that
23 he wasn't there, the third version was that he was there
24 but he left to go buy weed, so we're on his fourth version
25 of events in this written statement.

1 The truth doesn't usually change four times, or six in
2 this case, but here we go. Do you know where you are right
3 now? Some business with the sheriff's department. What
4 did you eat prior to this interview? Arby's. A roast beef
5 sandwich, curly fries and Sprite. How do you feel and do
6 you know what you're doing? I feel scared and nervous.
7 Yeah, I know what I'm doing. Please explain what occurred
8 this morning in the apartment at Brook Pines. I first woke
9 up and the gun was on the living room floor. The gun is
10 always kept on the floor when someone is home or under the
11 couch when no one is there.

12 So under his version of events, there's a one-year-old
13 and a four-year-old in this house and they always just keep
14 a gun that's very dangerous and magically goes off on the
15 living room floor. They have the gun for protection.
16 White Boy, is what he calls his brother-in-law, picked the
17 gun up off the floor because he thought one of the kids
18 might get it. That's what I am figuring. He never said
19 it. When he picked it up, I told him to be careful because
20 the hammer was cocked back on it. The gun is either broke
21 or something because the hammer is always back. When I
22 told him to be careful, and he knew to be, and said yeah,
23 yeah, right, and then put the gun back in my hand. I had
24 already gotten up and was standing up in the living room.
25 White Boy then put the gun back in my right hand and as

1 soon as it hit my hand and before he could turn completely
2 around, it went off.

3 All I heard was White Boy yell ahh, ahh, and put
4 his hands up over his head. The gun went off a few more
5 times and my sister was hit and I saw her fall on the
6 counter and then to the ground. My brother then put his
7 arms around me and the gun fell on the floor. I don't
8 know where Bro went, but my sister was yelling. My
9 brother started yelling that I had just fucked my life up.
10 Excuse my language, but I'm just reading this Defendant's
11 statement. The babies were crying and screaming and now
12 everyone was screaming. I then panicked and my brother
13 picked the gun up off the floor and was going to put it in
14 his pocket. I told him to give it to me and I knew I had
15 to get rid of it. Everyone is still screaming and my
16 brother was still freaking out.

17 I then left with the gun and was walking down Broad
18 River when I saw a CPD car coming. Once the CPD car passed
19 me and turned into Brook Pines, it dropped out of my hand,
20 so I just left it there. So not only does the gun -- does
21 the gun just randomly go off at points, but the gun knows
22 when law enforcement is around and decides to drop out of
23 the Defendant's hand. I then walked back down to the Brook
24 Pines and went and got a girl, Shaunda, to give me a ride.
25 She was driving a black Jeep and we left over to

1 El Cheapo's. Shaunda then drove me to [REDACTED]
2 and dropped me off. I bought her a pack of cigarettes for
3 the ride. As we were leaving the apartment complex, she
4 asked what the fuck was going on.

5 Can you describe the gun that was used in this
6 incident? It was black and the hammer was cocked back. It
7 was a revolver. Did you have an argument with White Boy or
8 your sister this morning? No, sir. Did you intentionally
9 shoot White Boy and your sister? No. All I remember once
10 was he shot -- once he was shot he was running all into
11 stuff in the apartment, which is also not true because
12 stuff in the apartment should be knocked over and tossed,
13 and it's not, unless he put that back together before he
14 left the crime scene. Why did you run from the scene and
15 not call for help? Because I watch the First 48 and know I
16 cannot get around this. Nobody will listen to me that this
17 is an accident. I'm not playing the racist card, but I'm
18 black. Was the clothing that you had on when you were
19 arrested the same as you were wearing when this incident
20 occurred? Yeah. There was a blue shirt and paper towel
21 with blood on it at Charles Street. Was that yours? I
22 used the blue shirt and the paper towel to clean up the
23 blood from the cut on my left hand. I cut my hand running
24 through the woods. What were you thinking after White Boy
25 and your sister was shot? I was scared. I was thinking

1 this gun has fucked my life up. I was thinking I had a
2 career. I don't even know -- I didn't even know they were
3 dead. I even said to God what he got me into. Because at
4 this point and at every point throughout his defense, it's
5 been everybody else's fault except his. It's Dajuan's
6 fault for picking up the gun, it his sister's fault for
7 coming at him. It's law enforcement's fault because he
8 couldn't tell them the truth because they wouldn't believe
9 him. It's the gun's fault because it magically went off,
10 it's the gun's fault because it slipped out of his hand,
11 and it's God's fault because what had God gotten him into.
12 Blame everybody but the murderer is Dexter's theory of this
13 case.

14 What do you think should happen to you for this? I
15 don't think I should get off for this. My family has
16 always been dysfunctional and this gun has fucked my life
17 up. Is there anything else you'd like to add? That it was
18 an accident. I didn't mean to do this. I know the judge
19 is going to burn me. I submit to you he burned himself.

20 But once he goes back to the holding cell and once he
21 starts thinking about it, and even Dexter realizes that
22 this story ain't gonna add up, that guns don't just go off
23 on their own, he decides to come back with -- I think we're
24 at the sixth version of events. Did you tell the full
25 truth during the statement that you provided? No. What

1 happened this morning inside the apartment? I was asleep
2 and I woke up. When I woke up, I was getting my day
3 started. I was going to get my moped. I was still lying
4 on the couch and still had the cover over my head. I could
5 hear my sister in the kitchen slamming cabinets doors and
6 drawers and I knew she was mad. I took the white covers
7 off my head when she walked into the room. When she came
8 back out of the room she started slamming plates on the
9 kitchen table. That's when White Boy came out and said
10 "Yeah" and he looked at her and then looked at me. By this
11 point all he's done is look at him. And I said "Man" back
12 to him, meaning get the fuck on. When I said "Man" -- and
13 this has harsh language in it, but, again, I apologize.
14 When I said "Man", this nigger said "What's up?", and he
15 was going for the shit. When he was reaching for it, I
16 grabbed it and my finger went through the loop and his hand
17 was on the nose.

18 And, remember, he -- he agreed with that yesterday
19 when he testified. He said he had his hand through this
20 loop and that the victim's hand was on the nose of the gun
21 and that's when the first shot went off. Dajuan Harris'
22 hand should have been blown off, but according not only to
23 this statement, but what he verified from the witness stand
24 yesterday. Now Ms. Pinnock tried to get up here and get
25 him to walk the statement back, but he was very certain

1 on cross-examination, it's one of the only things he
2 remembered and was certain about, the victim's hand on the
3 nose of the gun when that shot goes off. The victim's hand
4 should have been blown off and it wasn't. When he was
5 reaching for it, I grabbed it and my finger was through the
6 loop and his hand was on the nose. That's when the gun
7 went off. I saw him hold his face and he was still coming
8 at me. I was able to get him from under him -- I was able
9 to get from under him and when I got off the couch, I shot
10 him again and that's when my sister came at me and she got
11 shot, too. She didn't come at him. She's in the kitchen.
12 You see where her shoes are where she's fallen backwards.
13 The pictures and physical evidence, despite Ms. Pinnock's
14 biggest wishes, hopes and dreams, corroborate Mahogany's
15 story and they absolutely refute what the Defendant says
16 happened.

17 Why did you shoot your sister? She was coming at me
18 after I shot him. Why did you shoot White Boy, Dajuan
19 Harris, the second time? That nigger had been on me.
20 Remember he was on top of him, they were on the couch, but
21 according to Dr. Durso she can't tell you exactly how far
22 away, but she knows it was more than eighteen inches away.
23 He wasn't on top of him. There was no struggle on the
24 couch. The Defendant isn't fighting for his life on that
25 couch. The victim's blood isn't streaming down from those

1 gunshots on that couch. Do you think he was on you because
2 he was shot already? No, he was still talking to me. He
3 was mad still. He was mad when he came out the room. Were
4 you asked to move out recently by your sister? No, not
5 recently. That shit happened in April. Do you feel that
6 White Boy and your sister were mad that you were going to
7 buy a moped? Yeah, the moped, and there was more shit.
8 Have you ever had any altercations with White Boy? No, I
9 have known him since we were young. You have never had
10 any problems with White Boy? No, we have never had any
11 problems. There are only problems when my sister Mahogany
12 is mad. When she is mad, everyone is mad. He kind of hit
13 on that resentment he had for her despite everything she's
14 done for him. Mahogany's good deed in taking him in did
15 not go unpunished.

16 How long have you lived with your sister and White Boy
17 and the answer to that question is ever since February.
18 That's when I came home from Job Corps. Is she the only
19 family member that will allow you to live with her? She
20 took us in because of my brother's SSI check. Have you
21 had any problems with your sister recently? No, I don't
22 put my hands on my sister. Why were you not truthful in
23 your first statement? Because I felt as if y'all were not
24 going to believe me. What would you like to say to White
25 Boy and your sister? I'm very sorry. What happened was

1 not my intention. When did you get the gun? It had been
2 in the house for more than a week. What kind of gun was
3 it? It was a revolver. I don't know what caliber it was.
4 It was black with the hammer already back on it. Why did
5 you run from the apartment? My thought process, that I
6 was going to be looked at wrong. I was living in these
7 people's house. Did you talk to your brother after you
8 left the apartment? No. Did your brother witness the
9 incident? He caught the ending of it. He was sleeping on
10 the floor of the living room. Because, remember, he still
11 has him asleep during this massive struggle that takes
12 place in the living room. When they're fighting over a
13 gun Shamaray just sleeps through that whole thing. The
14 living room was where this incident occurred, correct?
15 Yeah, the living room. Is there anything you'd like to
16 add to this statement? My intention was not to kill
17 nobody. My intentions were not to kill nobody. Is this
18 statement the truth to your knowledge? Yeah, this is the
19 real one.

20 But even that changed when he took the stand because
21 he had kind of a selective cross-examination-induced
22 amnesia. Because he can remember everything pretty
23 clearly on direct examination when Ms. Pinnock is asking
24 him questions, but when I began to ask him questions his
25 memory became sluggish. He admitted to lying in the first

1 statement. He said that everything that he said in the
2 second statement was the truth. But, remember, when he
3 was up here he couldn't really remember -- he couldn't
4 tell you where the struggle was, he couldn't tell you who
5 was standing where. He wouldn't even necessarily say it
6 was in the living room. He wouldn't say the closet was
7 the closet. And then his own mouth got him in trouble
8 because I asked him about the things that he said on those
9 recordings from the jail. That he didn't have to threaten
10 people anymore because he had been on the news. His name
11 was patent in the streets. That he acknowledged to having
12 slumped that nigger, talking about his brother-in-law. He
13 doesn't have to play games with people anymore because he
14 caught a body. Everything would be good from now on
15 because people knew who he was, they had seen him on the
16 news.

17 Like I said, ladies and gentlemen, this is the oldest
18 motive in the book. Jealousy causing one sibling to try to
19 kill another. He failed at that, but he did succeed in
20 killing Dajuan Harris. He shot him three times. He shot
21 at his sister three times. So this case does come down to
22 credibility as every other attorney who's talked to you
23 today has said. You either believe the evidence in this
24 case, you believe Mahogany, or you believe one of this
25 Defendant's six or seven versions of events. If you

1 believe the evidence, if you believe the investigation,
2 if you believe Mahogany, then you find him guilty. You
3 hold him accountable for what he did. If you believe his
4 evolving story, then you let him go and you find him not
5 guilty. I submit to you that in this case when you
6 accidentally leave behind a surviving witness who can come
7 in and testify against you and tell you what happened and
8 that when that evidence is corroborated by the physical
9 evidence, that the State has met its burden. We ask you
10 to hold this Defendant accountable for what he did and to
11 find him guilty of the murder of his brother-in-law and
12 the attempted murder of his sister. Thank you.

13 **THE COURT:** We're gonna take just about ten minutes
14 and then I'll give you instruction and you can go back and
15 have lunch and begin deliberations, okay? So please go to
16 your jury room right now, but don't begin any discussions.
17 I'll bring you back in just a few minutes.

18 (Whereupon, the jury retires to the jury room at
19 12:47 PM.)

20 **THE COURT:** We'll take ten minutes.

21 (Recess taken.)

22 **BAILIFF:** Court come to order. Remain seated.

23 **THE COURT:** All right. Bring the jury in, please.

24 (Whereupon, the jury returns to the courtroom at
25 1:00 PM.)

1 **BAILIFF:** Jurors seated, Your Honor.

2 **THE COURT:** Thank you. Ladies and gentlemen, you
3 have heard and seen all of the evidence to be presented in
4 the case, as well as the final summations of the lawyers,
5 and, therefore, it now becomes my duty and obligation to
6 instruct you on the law that's applicable.

7 If we can get everybody seated, I'll continue. Nobody
8 else is to come in or leave.

9 It's now my obligation and duty to instruct you on
10 the law that's applicable in the case and then you'll be
11 asked to go back and begin with your deliberations, and
12 through that process you will examine all the evidence,
13 decide the facts, apply the law and arrive at a fair and-
14 just decision, whatever that decision may be.

15 It is your exclusive duty to determine what the facts
16 are. You do that through your own common sense examination
17 and evaluation of all the testimony and the other evidence
18 received during the course of this trial. And you twelve
19 jurors alone will decide what weight, value and effect to
20 give to any particular witness's testimony or even portions
21 of that testimony, but your sole objective it is to
22 consider all of the testimony and evidence presented during
23 the case, to fairly decide the facts, apply the law and
24 arrive at a fair and just decision, whatever that decision
25 may be.

1 Now as you know in this case, the Defendant has been
2 accused of two separate and distinct offenses, although
3 they are alleged to have arisen out of one particular
4 event or course of events, which the State alleges
5 occurred on July the 2nd of 2014, but there are two
6 separate indictments and you'll be rendering two separate
7 and distinct decisions as it relates to those indictments
8 and your verdicts may be the same and they may be
9 different, and that will depend obviously upon your
10 determination of the facts as it relates to that charge
11 and then your application of the law as I'll have provided
12 it to you.

13 But the Defendant is charged in one indictment with
14 the crime of murder. The State alleging that he did kill
15 Dajuan Harris with malice aforethought by means of a
16 gunshot and that Mr. Harris died as a proximate result of
17 that gunshot wound. And he's also charged with attempted
18 murder and that he did with intent to kill attempt to kill
19 Mahogany Speech-Harris with malice aforethought.

20 As you know, as to each of those indictments and the
21 charges contained therein, he's entered a plea of not
22 guilty and that plea of not guilty has placed upon the
23 State the burden of proving the allegations that they have
24 made in each of those indictments, the burden of proving
25 each of the essential elements of the crime that they have

1 alleged against the Defendant and, therefore, the burden
2 is upon the State to establish the Defendant's guilt to the
3 satisfaction of you twelve jurors beyond a reasonable doubt
4 before any verdict of guilty could be returned.

5 The indictments are not evidence in the case. They
6 don't establish anything, they don't prove anything. I
7 think I told you at the trial's beginning they're simply
8 the means by which any person charged with a crime is
9 brought into this court and put on notice as to what that
10 crime is by way of the indictments. The indictments,
11 however, will be in the jury room with you, but as I say
12 they're not evidence, they don't prove anything, but they
13 will be in the jury room because it's on the back of each
14 of those indictments, Madam Forelady, that you're gonna be
15 asked to indicate the jury's unanimous decision as relates
16 to that particular charge, but other than serving as the
17 verdict form, the indictment serves no purpose so far as
18 you jurors are concerned.

19 The burden is never upon a defendant to prove that he
20 or she is not guilty or to prove that he or she is innocent
21 because in many cases it might not be possible. The burden
22 is always upon the State because they brought the charge to
23 establish the Defendant's guilt to your satisfaction beyond
24 a reasonable doubt. It is a vital, important and cardinal
25 rule of law that every defendant in a criminal trial, and

1 it does not matter how serious the offense might be for
2 which that person stands charged, a person charged with a
3 crime is always presumed innocent of that charge and that
4 presumption of innocence remains with any defendant as it
5 does with this defendant from the time that he is placed
6 under arrest and throughout the course of the criminal
7 process and even throughout the course of the actual trial
8 in the case. That presumption of innocence will be with
9 Mr. Myers even as you go back into your jury room to begin
10 your deliberations in this case and that presumption of
11 innocence will be with him in that jury room and it will be
12 with him forever unless you twelve jurors determine that
13 he's no longer entitled to that presumption of innocence.
14 In other words, after you've considered all of the evidence
15 in the case and you've determined the facts and after
16 determining the facts you apply the law that I will have
17 provided you, if you twelve jurors unanimously determine
18 that his guilt as to a particular charge has been proven
19 beyond a reasonable doubt, then he would no longer be
20 entitled to that presumption of innocence as it relates to
21 that charge, but it is only if, unless and until you are
22 satisfied of his guilt beyond a reasonable doubt that the
23 presumption of innocence would no longer be applicable.

24 Now while the State does have the burden of proving
25 the Defendant's guilt to your satisfaction beyond a

1 reasonable doubt, that doesn't mean that the State has to
2 prove his guilt beyond all doubt or beyond any possible
3 doubt, but it does require the State to prove his guilt to
4 your satisfaction beyond a reasonable doubt. And the term
5 reasonable doubt should be given its plain and ordinary
6 meaning. A reasonable doubt is the kind of doubt that
7 would cause a reasonable person to hesitate to act upon the
8 information provided. Proof beyond a reasonable doubt is
9 proof that leaves you firmly convinced of the Defendant's
10 guilt. There are very few things in the world that we know
11 with absolute certainty and in criminal cases the law does
12 not require proof that overcomes every possible doubt. If
13 based on your consideration of the evidence in this case
14 you are firmly convinced that the Defendant is guilty of a
15 crime proven by the State, then you must find the Defendant
16 guilty of that crime. If, on the other hand, you think
17 there is a real possibility that the Defendant is not
18 guilty, you must give the Defendant the benefit of the
19 doubt and find him not guilty of that particular charge.

20 The Defendant is entitled to any reasonable doubt that
21 arises from the evidence or a lack of evidence in the case
22 and if upon any factual issue essential to a finding of a
23 verdict of guilty you have some reasonable doubt as to how
24 that issue should be resolved, it would be your duty to
25 resolve that reasonable doubt in favor of the Defendant.

1 And, therefore, if upon your consideration of the whole
2 case you have a reasonable doubt as to his guilt as it
3 relates to a particular charge, it is your duty and
4 obligation to find him not guilty of that charge. And
5 at the same time after you've considered the evidence,
6 decided the facts and applied the law if you have no
7 reasonable doubt as to his guilt as it relates to a
8 particular charge, then it would be your corresponding
9 duty to find him guilty of that charge where it has been
10 proven to your satisfaction beyond a reasonable doubt.

11 The same law that provides that you are the judges of
12 the facts also provides that I am the judge of the law.
13 That simply means that nobody's going to tell you how to
14 arrive at your determination of the facts in this case.
15 You do that, as I've already stated, through the exercise
16 of good judgment and common sense conscientiously applied
17 to the testimony and evidence received during the course
18 of the trial. You must, however, under your oath as a
19 juror accept the law as I provide it to you as being the
20 law that you are to apply in the case. In other words,
21 you're never to concern yourself with what you thought the
22 law was before you came to serve as a juror this week or
23 what you think the law ought to be. Under your oath as a
24 juror, you must accept the law as I provide it to you as
25 being the law that you are to apply in the case. Then you

1 take that law and you apply it to the facts as you twelve
2 jurors determine those facts to be in order to arrive at
3 your ultimate decision in the case.

4 Now as I've told you, you are the sole judges of the
5 facts in this case. You are the finders of the facts. You
6 make that decision based upon your common sense evaluation
7 of the testimony and evidence received during the course
8 of the trial and it is your sole obligation and duty and
9 function to determine what the facts are. Because you are
10 the judges of the facts you are, therefore, necessarily the
11 sole judges of the credibility or the believability of each
12 witness that has testified during the course of the trial.
13 And so there are several factors which you should consider
14 in arriving at your determination or assessment as to a
15 witness's credibility and believability, and I'm going to
16 go over those factors with you.

17 You should consider the demeanor of the witness.
18 That is how the witness appeared to you when the witness
19 testified from that witness stand. Was the witness
20 straightforward in responding to questions or was the
21 witness hesitant or evasive in responding to questions that
22 were asked of that witness? Simply put, did the witness
23 appear to you to be telling the truth and to have knowledge
24 of the facts to which that witness has testified. You
25 should also consider whether or not the testimony of a

1 witness is consistent or is it inconsistent with that
2 witness's own testimony provided on the witness stand or
3 is it consistent or inconsistent with other statements
4 made by that same witness, whether it be in court or
5 outside of court. You should also consider whether or not
6 the testimony of a witness is consistent or inconsistent
7 with other witnesses' testimony or other evidence received
8 during the course of the trial. You should also consider
9 how the witness came to know the facts to which a
10 particular witness has testified to. In other words, what
11 was that witness's opportunity and ability to perceive the
12 existence of those facts to which that witness has
13 testified by having previously used his or her senses, and
14 then what is the ability of that witness to be able to come
15 into court and to accurately recollect to you as to what
16 they had previously perceived. You should also consider
17 any bias or prejudice or interest that a witness might have
18 with respect to a case. In other words, do you find some
19 reason that a particular witness would come into court and
20 would testify one way or another to help or hurt one side
21 or the other? And you may also consider any interest that
22 the witness might have in the outcome if you determine that
23 a witness does have such an interest and you find that
24 that interest would bear upon that particular witness's
25 credibility. You should also consider whether or not the

1 testimony of the witness is strengthened or whether it's
2 weakened by other testimony or other evidence received
3 during the course of the trial.

4 Now during the course of this trial you've heard some
5 testimony that has been received from persons who were
6 qualified as experts in a particular field. Understand
7 that I have an obligation to determine whether or not a
8 person can testify as an expert, but the fact that I
9 qualify an expert and allow them to testify in an opinion
10 form should be not be taken by you as any indication by me
11 as to how I think you ought to consider that witness's
12 testimony. You've got to judge the credibility and the
13 believability of an expert witness just as you do any
14 other witness. And so when a witness is qualified as an
15 expert. If you think that their testimony is not based
16 upon sufficient qualifications or education, training,
17 experience, skill or a proper consideration of the facts
18 that relate to this particular case, then you can reject
19 that expert's opinion in its entirety or you may choose to
20 believe some portion of it and reject some other portion
21 just like you do any other witness that has testified
22 during the course of the trial. Because you are the
23 finders of the facts and because you are the judges of the
24 credibility of each witness, you are permitted to believe
25 as much or as little of what a witness has testified to

1 as you deem appropriate and, therefore, you may believe
2 everything that a witness has testified to, you may choose
3 to believe none. You may believe one portion of a
4 witness's testimony and reject some other portion of that
5 same witness's testimony. You may believe one witness as
6 opposed to several or several as opposed to one, but
7 whatever your good judgment and common sense tells you is
8 the most believable and credible testimony is the testimony
9 you should accept and you should reject any testimony or
10 other evidence that you find not to be credible or
11 believable. Again, your sole objective in this case is
12 to render a fair and impartial decision based upon your
13 consideration of the evidence, your determination of the
14 facts and the application of the law that I will have
15 provided you.

16 Now in this case, as you know, the Defendant is
17 charged in two separate indictments with the crimes of
18 murder and with attempted murder. I'm gonna begin my
19 instruction on the law as it relates to the crime of
20 murder. That's just -- I just chose it that way. It's
21 just a random choice. You don't have to consider the
22 offenses in that way. You can consider the indictments in
23 any order which you'd like to, but I've got to give them
24 to you in some order. And it helps me, quite frankly, to
25 shorten the instruction up a little bit doing it this way.

1 But the Defendant is charged in one indictment with
2 the crime of murder. And murder is a statutory offense,
3 as is attempted murder, and statutory offense just means
4 that they're codified in the Code of Laws which are these
5 number of blue binders you see behind me on the bookshelf.
6 Every year the Legislature meets in session from January to
7 June. When they meet, they pass a number of laws and rules
8 and regulations that govern our conduct in a variety of
9 ways. Some of those laws they pass are criminal penalty
10 statutes. In other words, they define a crime, they
11 prohibit us from engaging in certain types of conduct, and
12 where we are found to have engaged in that conduct in
13 violation of that statute, then it subjects us to some
14 sort of punishment or penalty for a violation of the
15 statutes. Please understand, however, that you are never
16 to be concerned with punishment or penalty. That's not
17 something that you decide and that's not to enter into
18 your deliberations. Your sole obligation and duty under
19 your oath as a juror is to determine whether or not the
20 Defendant has been proven guilty of the crime alleged in
21 the indictment that is defined in the statute and you do
22 that without any consideration for any punishment, penalty
23 or other consequence of your decision.

24 Murder is defined in Section 16-3-10 of the South
25 Carolina Code of Laws as the killing of any person with

1 malice aforethought, either express or implied. Express
2 or implied means how you determine whether or not malice
3 exists. But murder is the killing of any person with
4 malice aforethought, either express or implied. In order
5 for you to find the Defendant guilty of the crime of
6 murder, it would be necessary that the evidence in this
7 case establishes to your satisfaction beyond a reasonable
8 doubt that the Defendant did commit some act or acts which
9 proximately caused the death of the decedent. In this
10 case, that would be Dajuan Harris, and that that killing
11 was done with malice aforethought.

12 Malice aforethought is an essential element of the
13 crime of murder. Malice as an essential element of the
14 crime of murder is a state of mind connoting an ill will
15 and having the intent to do harm. Intent means the state
16 of a person's mind which directs his actions towards a
17 specific object or goal, and intent would include those
18 consequences which represent the very purpose for which an
19 act is done, as well as those consequences which are known
20 to be substantially certain to result whether actually
21 intended or not. Malice is a technical term importing
22 wickedness and excluding just cause or legal excuse. It
23 is something which springs from depravity, from a heart
24 devoid of social duty and fatally bent on mischief. It is
25 a state of mind indicating an extreme disregard for or an

1 extreme indifference to human life. Malice may be likewise
2 defined as a state of mind which indicates a formed purpose
3 and design to do a wrongful act under circumstances that
4 exclude any legal right to do it.

5 The words express and implied malice do not mean
6 different finds of malice, but simply the manner in
7 which malice may be shown to have existed, that is to say
8 either by direct evidence directly proving malice or by
9 circumstantial evidence, that is proof of facts or
10 circumstances from which you might reasonably infer the
11 existence of malice. And, of course, an inference is
12 simply a deduction of fact that may logically and
13 reasonably be drawn from the proof of some other fact or
14 set of facts. In other words, you may infer that a
15 particular event occurred or that a particular fact exists
16 based upon the proof of sufficient factual circumstances
17 which would reasonably warrant your arriving at a
18 particular conclusion. Malice may be expressed as where
19 there is an express threat to kill or a lying in wait or
20 where the circumstances show directly that an intent to
21 kill was entertained by the killer. Malice may be
22 inferred, but though no express intent to kill is proven
23 by direct evidence where the facts and the circumstances
24 which have been proven by the evidence in this case
25 satisfying you beyond a reasonable doubt that malice was

1 present in the mind of the Defendant at the time that
2 the killing took place. The existence of malice may be
3 inferred from acts, declarations and conduct of the
4 Defendant, as well as from any other circumstances shown
5 to have existed at the time of the event and from which
6 you might reasonably infer the existence of malice, as
7 often the state of a person's mind can only be proven by
8 circumstances.

9 Malice as an essential element of the crime of murder
10 does not necessarily require proof of an ill will or a
11 hatred toward the particular individual that is killed,
12 nor does it necessarily require proof of an actual or a
13 specific intent to take human life, but rather it means a
14 state of mind accompanying conduct signifying a general
15 malignant recklessness and an extreme disregard for or an
16 extreme indifference to human life. Even if the facts
17 proven are sufficient to give rise to an inference of
18 malice, such an inference is simply an evidentiary fact
19 to be taken into consideration by you twelve jurors along
20 with all of the other evidence in the case and you may give
21 those inferences such weight, if any, that you determine
22 they should receive, if any. The State is required to
23 prove malice just as it must prove any other essential
24 element of the crime of murder and it is for you twelve
25 jurors to determine if it has been proven based upon your

1 consideration of the evidence in the case.

2 It's also essential that there not only be malice,
3 but that it be malice aforethought. The law does not,
4 however, require that malice must exist for any appreciable
5 length of time before the commission of an act which causes
6 a fatal result. Indeed, it might be conceived at the very
7 moment the fatal act is committed. It is sufficient in the
8 law so long as the State does prove beyond a reasonable
9 doubt both the existence of malice and the commission of an
10 act or acts by the Defendant which causes the fatal result.

11 While the State must prove beyond a reasonable doubt
12 that a killing did occur accompanied by the element of
13 malice aforethought in order for you to find the Defendant
14 guilty of murder, it is not necessary for the State to
15 prove any motive for such a killing. Motive is not an
16 essential element of the crime of murder which must be
17 proven, although there may be evidence relating to such a
18 fact introduced during the trial of the case.

19 Now an indictment for murder may also include a lesser
20 included offense, and in this case I will be charging you
21 on two lesser included offenses of the crime of murder,
22 and those two lesser included offenses are voluntary
23 manslaughter and involuntary manslaughter. I have to
24 instruct you on the law that's applicable depending upon
25 what you determine the facts to be and where those facts

1 are susceptible to more than one determination, then I have
2 to provide you the law on each of those and then you make
3 the determination as to whether or not the Defendant has
4 been proven guilty of any of those particular offense,
5 whether it be the charge set forth in the indictment itself
6 or some lesser or included offense to that charge. So you
7 may find the Defendant guilty of the lesser included
8 offense where the evidence in the case warrants it. In
9 other words, the Defendant who's been charged with the
10 crime of murder may also be found -- or may be found
11 guilty of only the lesser included offense of voluntary
12 manslaughter or of involuntary manslaughter whether or not
13 those offenses are actually set forth in the indictment
14 itself.

15 So now I'll instruct you on the law it as relates to
16 manslaughter and what is manslaughter. Manslaughter is
17 defined as an unlawful killing of a human being without the
18 element of malice, either express or implied. While the
19 element of malice must be proven in order for the Defendant
20 to be found guilty of the crime of murder, malice is not
21 an element of the offense of voluntary manslaughter or
22 of involuntary manslaughter. Voluntary manslaughter is
23 defined in the law as the unlawful killing of another human
24 being which is committed in a sudden heat of passion,
25 provoked by a sufficient legal provocation. It is an

1 unlawful killing committed in the sudden heat of passion
2 provoked by a sufficient legal provocation. The law
3 recognizes that a sudden heat of passion arising out of
4 exasperation, rage, anger, sudden resentment, fear or
5 terror, may for the time being affect the self-control
6 of an individual temporarily disturbing the ability to
7 properly reason creating an uncontrollable impulse to do
8 violence and, therefore, the law reduces the crime from
9 that of murder to that of voluntary manslaughter provided
10 that the sudden heat of passion arose from a sufficient
11 legal provocation. The law does not reduce from murder to
12 voluntary manslaughter every homicide that is committed in
13 the heat of passion. It must be the heat of passion justly
14 excited by a sufficient legal provocation. If a sufficient
15 legal provocation does not exist, then the killing even
16 committed in the heat of passion is murder and is not
17 voluntary manslaughter. The sudden heat of passion
18 arrived by a sufficient legal provocation which may
19 reduce a homicide from that of murder to that of voluntary
20 manslaughter need not be something which dethrone reason
21 entirely or shut out knowledge and volition, but it
22 must be such heat of passion provoked by such facts or
23 circumstances as would naturally disturb the sway of
24 reason and the ability of an ordinary, reasonable and
25 prudent person to properly reason rendering his mind

1 incapable of cool reflection and producing what according
2 to human experience may be described as an uncontrollable
3 impulse to do violence.

4 You are further instructed that no mere words alone,
5 however insulting or offensive, would ever constitute a
6 sufficient legal provocation or justify the use of deadly
7 force in retaliation. If, however, such words are
8 accompanied by overt threatening or hostile acts or by a
9 physical encounter, then such conduct may give rise to
10 a sufficient legal provocation depending upon the
11 circumstances of the case and reduce the offense from
12 that of murder to that of voluntary manslaughter.

13 In determining whether an act resulting in the death
14 of another was impelled by a heat of passion aroused by a
15 sufficient legal provocation or by malice, you should take
16 into consideration all of the surrounding circumstances
17 and conditions which accompanied the event. And,
18 therefore, as I have stated, voluntary manslaughter is an
19 unlawful homicide committed in the absence of malice but
20 in a sudden heat of passion aroused by a sufficient legal
21 provocation.

22 The crime of involuntary manslaughter is also a lesser
23 included offense of the crime of murder. Involuntary
24 manslaughter is defined as an unintentional killing of
25 another person without malice while engaged in a lawful

1 activity with a reckless disregard for the safety of
2 others. Unintentional means that the Defendant was acting
3 without malice and did not intend to kill or seriously
4 injure anyone, but acted recklessly in the handling of a
5 dangerous instrumentality which resulted in the death of
6 another person. A reckless disregard for the safety of
7 others and the term "recklessness" refers to a state of
8 mind in which a person consciously acts not withstanding
9 knowledge that his conduct creates a risk to the safety
10 of another person. Before the Defendant could be found
11 guilty of involuntary manslaughter, it would be necessary
12 that the evidence in the case establishes to your
13 satisfaction beyond a reasonable doubt that the Defendant
14 did without malice unintentionally kill another person
15 while he was engaged in a lawful activity but in a reckless
16 disregard for the safety of others.

17 I am now gonna instruct you on the law relating to
18 the indictment charging the Defendant with the crime of
19 attempted murder. With regard to that indictment, I will
20 also be charging you -- or included in that instruction
21 will be a charge on the law of a lesser included offense,
22 that lesser included offense being assault and battery of a
23 high and aggravated nature. So I'll instruct you on the
24 law of attempted murder and then the law -- the lesser
25 included offense of assault and battery of a high and

1 aggravated nature.

2 Section 16-3-29 of the Code of Laws of South Carolina
3 provides that a person who, with intent to kill, attempts
4 to kill another person with malice aforethought, either
5 express or implied, commits the offense of attempted
6 murder. In order for you to find the Defendant guilty
7 of the crime of attempted murder, it would be necessary
8 that the evidence in this case has established to your
9 satisfaction beyond a reasonable doubt that the Defendant,
10 Dexter Myers, did with malice aforethought and a specific
11 intent to kill commit some overt act or acts in an attempt
12 to kill Mahogany Speech-Harris. An attempt is the
13 commission of an overt act or acts which are done in
14 furtherance of the intent to do a specific thing which
15 tends towards the accomplishment of the intended goal, but
16 which falls short of completion. An attempt to commit a
17 crime means an effort towards or the doing of an act or
18 acts which directly move toward the completion of the
19 commission of the crime intended. In this case, it is
20 alleged to be the crime of murder.

21 Attempted murder does require the element of malice
22 aforethought. Malice aforethought, again, as an essential
23 element of the crime of attempted murder -- it's a little
24 bit different than with the crime of murder, but malice
25 aforethought as an essential element of the crime of

1 attempted murder is, again, a technical term importing
2 wickedness and excluding just cause or legal excuse. It
3 is something which springs from depravity, from a heart
4 devoid of social duty and fatally bent on mischief. It is
5 a state of mind indicating an extreme disregard for, or an
6 extreme indifference to, a human life. It is a state of
7 mind which indicates a form and purpose and design to do a
8 wrong act under circumstances that exclude any legal right
9 to do it.

10 As in the case of murder, the law does not require
11 that malice must exist for any appreciable length of time
12 before the commission of an act or acts constituting the
13 offense of attempted murder. Indeed, it may be conceived
14 at the very moment that those acts are committed. It is
15 sufficient in the law so long as the State does prove
16 beyond a reasonable doubt both malice aforethought
17 accompanying acts constituting the attempt to commit
18 murder.

19 With regard to the charge of attempted murder, a
20 specific intent to kill is an essential element of the
21 crime of attempted murder. A specific intent to kill means
22 that the Defendant did consciously intend the commission
23 of the acts that constitute the attempt to commit murder.
24 Intent means the State of a person's mind which directs his
25 actions towards a specific object or goal and intended

1 result. And intent would include those consequences which
2 represent the very purpose for which an act is done, as
3 well as all of those consequences which are known to be
4 substantially certain to result from such conduct. The
5 element of intent to kill may also be inferred from acts,
6 declarations and conduct of the Defendant, as well as from
7 any other circumstances established by the evidence in this
8 case and from which you might reasonably infer such an
9 intent as often a person's intent may only be established
10 by circumstantial evidence. Therefore, in order to
11 establish the crime of attempted murder, it is necessary
12 that the evidence in this case establishes to your
13 satisfaction beyond a reasonable doubt that the Defendant
14 did with malice aforethought and a specific intent to kill
15 commit some overt act or acts in the attempt to kill
16 Mahogany Speech-Harris without justification or legal
17 excuse.

18 Again, a crime alleging the offense of -- excuse me.
19 An indictment alleging the offense of attempted murder may
20 also include a lesser included offense. In this case,
21 I'll be instructing you on the lesser included offense of
22 assault and battery of a high and aggravated nature.
23 Again, that's a statutory offense. That offense is set
24 forth in 6-3-600. Subsection B of that section provides
25 that a person is guilty of the crime of assault and battery

1 of a high and aggravated nature if a person unlawfully
2 injures another person and great bodily injury to an
3 another person results or the injurious act is accomplished
4 by means likely to produce death or great bodily injury.
5 And the term great bodily injury is defined under the law
6 as bodily injury which causes a substantial risk of death
7 or which causes serious permanent disfigurement or a
8 protracted loss or impairment of the function of a bodily
9 member are -- or -- and so assault and battery of a high
10 and aggravated nature is committed when a person unlawfully
11 injures another person and great bodily injury to that
12 person results or the acts constituting the injury are
13 accomplished by means likely to produce death or great
14 bodily injury.

15 Now in this case, there has been presented evidence
16 raising what is known in the law as the defense of
17 self-defense. The law recognizes the right of every person
18 to defend himself from death or from sustaining serious
19 bodily harm and to do this a person may use such force as
20 is reasonably necessary even to the point of taking human
21 life under the appropriate circumstances. The right of
22 self-defense is founded upon necessity, either actual or
23 reasonably apparent necessity, and it is a complete defense
24 to a charge of an unlawful homicide or assault and the
25 existence of self-defense entitles a person charged with

1 the commission of an unlawful homicide or assault to a
2 verdict of not guilty. Although the Defendant has raised
3 the defense of self-defense, the burden of proof is not on
4 the Defendant to prove the existence of such a defense
5 because, as I've previously instructed you, the burden is
6 always on the State to prove the Defendant has committed
7 the crime that they allege he committed and this burden
8 would, therefore, necessarily require that the State prove
9 beyond a reasonable doubt the absence of self-defense.

10 In your consideration as to whether or not
11 self-defense does exist in this case, you are instructed
12 that there are four essential elements that make up the
13 defense of self-defense. First of all, it must be shown
14 that the Defendant was without fault in bringing on the
15 immediate difficulty which necessitated the use of deadly
16 force against another person that resulted in the death or
17 assault of another. In other words, the Defendant cannot
18 provoke, initiate or otherwise through his own fault bring
19 about a difficulty and then claim the right of self-defense
20 in the use of deadly force in repelling an attack which was
21 caused by his own provocation.

22 As to the second element, a person is entitled to
23 defend one's self against death or the infliction of
24 reasonably anticipated unlawful serious bodily harm and
25 in doing so may use such force as is reasonably necessary

1 even to the point of using deadly force. Where deadly
2 force is employed in response to any assault, it must be
3 shown that at the time that the deadly force was employed
4 the Defendant actually believed that he was in imminent
5 danger of losing his life or sustaining serious bodily
6 harm or that the Defendant actually was in such imminent
7 danger. The term imminent danger meaning immediate or
8 present danger.

9 As to the third element, you are instructed that if a
10 defense of self-defense is based upon a belief of imminent
11 danger, then it must be shown that the Defendant's belief
12 was a reasonable one. That a reasonable prudent person of
13 ordinary firmness and courage would have entertained the
14 same belief if that person had been acting under the same
15 or similar circumstances as established by the evidence in
16 this case. If the Defendant actually was in imminent
17 danger, then it must be shown that the circumstances are
18 such that would warrant a person of ordinary reason and
19 courage to act as the Defendant did act in order to save
20 himself from death or suffering serious bodily injury.
21 Deadly force in repelling any assault is only appropriate
22 when necessary and may only be exercised when the Defendant
23 entertains a reasonable belief that he is about to sustain
24 a loss of life or serious bodily harm or he actually is in
25 danger of sustaining death or serious bodily harm. The

1 law of self-defense also encompasses preventative action
2 taken to protect one's self from sustaining bodily injury
3 provided such action is taken in anticipation of an
4 immediate danger of bodily injury and such action is in
5 response to that immediate threat. A defendant has the
6 right to act on appearances. He may be mistaken. The law
7 does not hold someone to a fine assessment of the actual
8 danger as might be accomplished having an adequate time to
9 properly reflect provided, however, that he has acted as a
10 person of ordinary reason, firmness and courage would have
11 acted or should have acted in meeting the appearance of the
12 danger. In other words, a person acting in self-defense
13 does not have to wait until his or her aggressor gets the
14 advantage for one always has the right to act under the law
15 of self-preservation and to prevent one's assailant from
16 getting the advantage over him or her. There is, however,
17 a requirement of objectivity. That is the belief of the
18 necessity to act must be reasonable; that is it must be
19 such that a reasonable and prudent person if acting under
20 the same or similar circumstances as established by the
21 evidence in the case would have also reasonably believed it
22 and had been warranted and so acted.

23 As to the fourth element, it must be shown that the
24 Defendant had no other means of avoiding the danger of
25 losing his life or sustaining serious bodily harm other

1 than to act as he did in these particular circumstances
2 because, as I've stated, self-defense is founded upon
3 necessity. It is, therefore, a person's duty to avoid the
4 use of deadly force where it is possible to avoid such
5 action even to the extent of retreating from one's
6 adversary if such can be done without increasing the danger
7 to one's self. In other words, to avoid the necessity of
8 using deadly force against another, the person assaulted
9 must retreat from the aggressor unless it is shown that by
10 retreating the Defendant would increase the danger of
11 sustaining serious bodily injury or loss of life to
12 himself.

13 In this case, the Defendant has also raised what is
14 known as the defense of accident. An accident -- excuse
15 me. An act may be excused on the ground of accident if
16 it is shown by the evidence in the case that the death
17 or injury occurring to another was unintentional, the
18 Defendant was acting lawfully and the Defendant exercised
19 reasonable care in the handling of a dangerous
20 instrumentality that caused death or injury to another
21 person. As in the case of self-defense, there is no burden
22 on the Defendant to prove the defense of accident. The
23 burden is on the State to prove that the Defendant
24 committed a crime that was not a result of an accident as
25 I have defined that legal term for you.

1 So, again, in order to -- for the defense of
2 accident to be made out, it must be shown that the acts
3 committed were unintentional -- or excuse me -- the death
4 or the injury that occurred was unintentional, that the
5 Defendant was acting lawfully and that the Defendant
6 exercised reasonable care in the handling of a dangerous
7 instrumentality that resulted in the death or caused
8 injury to another.

9 Now if you have a reasonable doubt as to the
10 Defendant's guilt after considering all of the evidence
11 received during the course of this trial, including any
12 evidence relating to the issue of self-defense and/or
13 accident, then it would be your duty to resolve that doubt
14 in favor of the Defendant and to find him not guilty. If,
15 on the other hand, you have no reasonable doubt as to the
16 Defendant's guilt as it relates to a particular crime,
17 after considering all of the evidence received during the
18 trial of this case, including any evidence relating to the
19 issue of self-defense and/or accident, then it would be
20 your duty to find the Defendant guilty of that crime where
21 it has been proven to your satisfaction beyond a reasonable
22 doubt based upon my instruction already provided to you as
23 to the elements of those particular offenses.

24 Now, Madam Forelady and ladies and gentlemen of the
25 jury, I am not in any way concerned with what your

1 decisions are, but you are instructed that your verdict
2 must be unanimous. All twelve of you must be in agreement
3 before any decision may be rendered and returned to the
4 Court. Madam Forelady, as you have been told, these
5 indictments will be in the jury room with you solely to
6 serve as the verdict forms in the case. You'll see on the
7 back of each indictment -- you can't see it from there,
8 but on the back of each indictment in the lower left-hand
9 corner there's the word "verdict" and it's beneath that
10 word that you'll be indicating the jury's unanimous
11 decision as relates to that particular indictment.

12 Now I have prepared somewhere a sheet that I think
13 will help you so far as understanding what the various
14 potential verdict forms are which you are going to be able
15 to consider in this case, and I'll send it back with the
16 indictments themselves, but with respect to Indictment
17 2014-5482, that's the indictment for murder, there are four
18 potential verdict forms. Those four potential verdict
19 forms include guilty, guilty of voluntary manslaughter,
20 guilty of involuntary manslaughter, and not guilty. So you
21 just render one verdict, but it can be any one of those
22 four. That will obviously depend, again, upon the facts as
23 you determine them to be and the law that's applicable.

24 With respect to the indictment for attempted murder,
25 there will be three potential verdict forms. Those forms

1 are guilty, guilty of assault and battery of a high and
2 aggravated nature, and not guilty. So, again, you indicate
3 that form, whichever you find to be appropriate, on the
4 back of the indictment. You're also called upon to sign
5 your name as foreperson and date the indictments. You're
6 the only juror that needs to sign the verdict form.

7 Now during the course of the jury deliberations, there
8 may come a time where you have some question about the
9 evidence or testimony or you may even wonder if something
10 else exist. You might come up with something and say
11 well, if we had that we think it would help. Well, please
12 understand that no additional evidence can be received now
13 that you're going back to begin your deliberations. So
14 don't ask me about something else that you don't have
15 unless it was something that was introduced and it just
16 happens not to be there, but we'll verify the exhibits
17 before they go back. But if you think there's something
18 else out there, you still can't have it. So don't ask me
19 about that because even if it does exist you're not able to
20 get it because the case is now closed.

21 If you do ever have a question about the testimony of
22 a witness, we can bring you back into the courtroom to have
23 a witness's testimony replayed in whole or in part if that
24 will assist you in answering some question that you may
25 have. I don't have transcripts of the testimony, but if

1 you want to hear a witness's testimony replayed, the court
2 reporter will locate that witness's testimony and we'll
3 bring you back into the courtroom and you can listen to
4 that witness's testimony again, as I say, in whole or just
5 in part if that's all you need.

6 If you ever have a question about the law that is
7 applicable, I am permitted to answer those questions. So
8 if at any time you -- you think you need a re-instruction
9 on the law that I've already given or you need an
10 additional explanation or clarification of the law that
11 I've provided you, I'll be happy to provide you with
12 that re-instruction, that additional explanation or
13 clarification if that will be helpful.

14 Madam Forelady, if at any time you need to address
15 some comment to me, if you'll simply -- if you or a fellow
16 juror have some difficulty, problem or question, if you'll
17 write it on a piece of paper, give it to the bailiff,
18 the bailiff will provide it to me and I'll address it
19 appropriately.

20 I don't know if we have smokers on the jury. If we
21 do, you can't smoke in the jury room, but if you do need a
22 smoke, the bailiff will take you outside to accomplish that
23 purpose, but you are instructed that no deliberations may
24 take place unless all twelve jurors are present in the jury
25 room so that all may participate. So if at any time a

1 juror is absent, you know, for any authorized purpose, the
2 deliberations have to stop. They may only resume when all
3 are present so that all may participate.

4 Your lunches I'm confident, but not certain, are
5 here. You can begin your deliberations and eat while
6 you deliberate or you can eat and then begin your
7 deliberations. I don't care how you do that. That's up
8 to you. You do it however you see fit. I think that's
9 all I have right now, but in the event I have neglected
10 to provide you with something I was supposed to, I'm sure
11 one of these lawyers have made note of that fact and I'm
12 sure they'll address that to my attention and if I need to
13 bring you back, I'll do so and if I don't need to bring
14 you back, I'll simply send word by way of the bailiff that
15 you may begin with your deliberations and in that event the
16 bailiff will bring to the jury all of the exhibits which
17 have been introduced during the trial and to you, Madam
18 Forelady, he'll also bring the indictments which serve as
19 the verdict form and he'll also bring the document which I
20 have prepared so that you can remember what the various
21 potential verdict forms are.

22 One thing let me point out to you. On the potential
23 verdict forms, the one word "guilty" means guilty of the
24 charge in the indictment. If you find the Defendant only
25 to be guilty of a lesser included offense, then it's the

1 verdict form that says guilty of that offense and you write
2 it out. And, of course, if the Defendant has been -- has
3 not been proven guilty of any criminal offense beyond a
4 reasonable doubt, then the verdict form is not guilty.

5 All right. I'll ask you to please go to your jury
6 room, but don't begin your deliberations. Now the two
7 alternate jurors, I'm gonna ask you to stay with me
8 because I don't know what might happen during the course
9 of deliberations and it might be that one or both of you
10 will be called upon to take a juror's place. I don't know
11 how good the lunches are. Maybe somebody might get sick,
12 I don't know, but one of you might be needed. So what
13 I'll ask you to do, the bailiff will take you to a separate
14 room together. You'll be provided your lunches there and
15 you'll have lunch there, but you're still not to talk about
16 the case. You're only permitted to talk about the case if
17 you're involved in jury deliberations, and you're not, so
18 you can't talk about the case yet because you're not
19 involved in those deliberations so don't discuss it while
20 you're sequestered separate and apart from the twelve
21 primary jurors, okay?

22 All right. Please be excused and I'll send you word
23 when to begin your deliberations.

24 (Whereupon, the jury retires to the jury room at
25 1:52 PM.)

1 **THE COURT:** Are there any exceptions taken to the
2 instruction or requests or additions to the instructions
3 by the State?

4 **MS. WALKER:** No, Your Honor.

5 **THE COURT:** By the defense?

6 **MS. PINNOCK:** No, sir.

7 **THE COURT:** Thank you. Let me ask y'all -- I'll show
8 you these potential verdict form documents that I'm gonna
9 send back. Y'all have a look at them. And also please
10 verify all of the exhibits before they go back.

11 All right. Y'all verify the exhibits, please.

12 (Recess taken.)

13 (Whereupon, the evidence was received by the jury and
14 deliberations commenced at 3:54 PM.)

15 **THE BAILIFF:** All rise.

16 **THE COURT:** All right. Bring the jury in, please.

17 (Court's Exhibit Number 4, a jury note, was marked for
18 identification.)

19 (Whereupon, the jury returns to the courtroom at
20 4:45 PM.)

21 **BAILIFF:** The jury's seated, Your Honor.

22 **THE COURT:** All right. Thank you.

23 Madam Forelady, I understand from the note that the
24 jury is asking for some clarity on the difference between
25 voluntary manslaughter and involuntary manslaughter. All

1 right. So I'm gonna instruct you again on what constitutes
2 voluntary manslaughter and involuntary manslaughter and
3 then you'll be asked to go back and continue. And if what
4 I provide you is not sufficient to assist you in answering
5 your question, you be sure and let me know and I'll bring
6 you back to give you further information, okay?

7 Voluntary manslaughter is defined as the unlawful
8 killing of another human being which is committed in a
9 sudden heat of passion provoked by a sufficient legal
10 provocation. The law recognizes that a sudden heat of
11 passion arising out of exasperation, rage, anger, sudden
12 resentment, fear or terror, may for the time being affect
13 the self-control of an individual temporarily disturbing
14 the ability to properly reason creating an uncontrollable
15 impulse to do violence and, therefore, reduces the crime
16 from that of murder to that of voluntary manslaughter
17 provided that the sudden heat of passion arose from a
18 sufficient legal provocation. The sudden heat of passion
19 aroused by sufficient legal provocation which may reduce
20 an unlawful homicide from that of murder to that of
21 manslaughter need not be something which dethrones reason
22 entirely or shuts out knowledge or volition, but it must
23 be such heat of passion provoked by such facts or
24 circumstances as would naturally disturb the ability of
25 an ordinary, reasonable and prudent person to properly

1 reason rendering his mind enable of cool reflection and
2 reducing what according to human experience may be
3 described as an uncontrollable impulse to do violence.
4 Therefore, as stated, involuntary manslaughter is an
5 unlawful homicide committed in the absence of malice, but
6 in a sudden heat of passion, aroused by a sufficient legal
7 provocation.

8 Involuntary manslaughter is defined as the
9 unintentional killing of another person without malice
10 while engaged in a lawful activity with a reckless
11 disregard for the safety of others. Unintentional means
12 that the Defendant was acting without malice and did not
13 intend to kill or seriously injure anyone, but acted
14 recklessly in the handling of a dangerous instrumentality
15 which resulted in the death or injury to some other
16 person. A reckless disregard for the safety of others and
17 recklessness refers to a state of mind in which a person
18 consciously acts notwithstanding knowledge that his conduct
19 creates a risk to the safety of another person. Before the
20 Defendant can be found guilty of involuntary manslaughter,
21 it would be necessary that the evidence establishes to your
22 satisfaction beyond a reasonable doubt that the Defendant
23 without malice unintentionally killed another person while
24 he was engaged in a lawful activity, but with a reckless
25 disregard for the safety of others.

1 All right. So please retire to your jury room.
2 Continue with your deliberations. If you need further
3 guidance, please let me know.

4 (Whereupon, the jury retires to the jury room at
5 4:50 PM to continue their deliberations.)

6 **THE COURT:** Are there any exceptions taken to that
7 additional instruction from the State?

8 **MS. CAMPBELL:** No, Your Honor.

9 **THE COURT:** From the Defendant?

10 **MS. PINNOCK:** No, Your Honor.

11 **THE COURT:** All right. We'll continue to be at ease
12 while they deliberate.

13 (Recess taken.)

14 **THE COURT:** All right. The jury is asking if they can
15 recess tonight and come back tomorrow, so we'll bring them
16 back and let them go home and come back tomorrow.

17 (Court's Exhibit Number 5, a jury note, was marked for
18 identification.)

19 (Whereupon, the jury returns to the courtroom at
20 6:51 PM.)

21 **BAILIFF:** The jury is seated, Your Honor.

22 **THE COURT:** All right. Madam Forelady, I understand
23 from your note that you and your fellow jurors would like
24 to recess for today and come back and resume deliberations
25 in the morning. Is that true?

1 **THE FOREPERSON:** Yes, sir.

2 **THE COURT:** All right. That's certainly permitted.
3 Keep in mind -- and, of course, it's always important that
4 you follow the Court's instructions. It's even most
5 important that you adhere to that instruction once you've
6 begun deliberations. So during the overnight recess, you
7 are to continue to follow the instruction, and that is
8 you're not to have any discussion about this case with
9 anybody in any fashion whatsoever. Do not allow anyone to
10 discuss it with you, don't conduct any research, don't do
11 your own investigation, don't allow yourselves to be
12 exposed to any type of media coverage, do not discuss the
13 case among yourselves. When you come back in the morning,
14 I'll ask you to come back at 9:00. Is that satisfactory
15 for everybody? Come back at 9:00. Do not begin any
16 deliberations until all twelve jurors are present in the
17 jury room. Once all twelve have arrived, then you may
18 resume with your deliberations, okay? And I'll ask the
19 alternates to also please return in the morning at 9:00.

20 All right. Have a good evening. We'll see you in the
21 morning.

22 (Whereupon, the jury retires to the jury room at
23 6:53 PM.)

24 **THE COURT:** Y'all come up here, please.

25 (Proceedings held at the bench; not reported.)

1 **THE COURT:** Court's in recess until nine in the
2 morning.

3 (Whereupon, the proceedings were concluded at
4 6:56 PM.)

5 (Whereupon, the following proceedings were held on
6 September 4, 2015.)

7 (Whereupon, jury deliberations were commenced at
8 9:06 AM.)

9 (Court's Exhibit Numbers 6 and 7, jury notes, were
10 marked for identification.)

11 (Back on the record at 3:50 PM.)

12 **BAILIFF:** All rise.

13 **THE COURT:** Thank you. Be seated. I'm told the jury
14 has reached a decision. Are we ready to receive it?

15 **MS. WALKER:** The State's ready, Your Honor.

16 **MS. PINNOCK:** The defense is ready, Your Honor.

17 **THE COURT:** All right. Bring them in, please.

18 (Whereupon, the jury enters the courtroom at 3:51 PM
19 to report its verdict.)

20 **BAILIFF:** The jury is seated, Your Honor.

21 **THE COURT:** All right. Madam Forelady, have you and
22 your fellow jurors reached a unanimous decision on each of
23 the separate indictments?

24 **THE FOREPERSON:** Yes, sir.

25 **THE COURT:** Have you reflected those decisions on the

1 back of the indictments as requested?

2 **THE FOREPERSON:** Yes, sir.

3 **THE COURT:** And did you sign your name as the
4 foreperson?

5 **THE FOREPERSON:** Yes, sir.

6 **THE COURT:** All right. If you'll please hand those
7 indictments up to me by way of the bailiff.

8 All right. Now, Madam Forelady, what I want you to
9 do, I know you used the verdict form that I gave you, so
10 what I want you to do is if you will please, you and your
11 fellow jurors, go back and I want you to write whatever
12 your decision is on the back of each of these indictments
13 beneath the word where it says "verdict" and be sure that
14 you check, you know, the indictment number and what the
15 charge is when you make that decision.

16 (Whereupon, the jury retires to the jury room at
17 3:52 PM.)

18 (Recess taken.)

19 (Whereupon, the jury returns to the courtroom at
20 3:56 PM.)

21 **BAILIFF:** The jury is seated, Your Honor.

22 **THE COURT:** All right. Madam Forelady, have you
23 indicated the jury's unanimous decisions on back of each
24 of the indictments?

25 **THE FOREPERSON:** Yes, sir.

1 **THE COURT:** If you'll please hand those up by way of
2 the bailiff.

3 You may publish the verdict.

4 **THE CLERK:** Yes. Indictment Number 2014-GS-40-05482,
5 the State of South Carolina versus Dexter L. Myers,
6 indictment for murder. We, the jury, find the Defendant
7 guilty of voluntary manslaughter. Signed, Number 180,
8 Foreperson, September the 4th, 2015.

9 2014-GS-40-5481, the State of South Carolina versus
10 Dexter L. Myers, indictment for attempted murder. We, the
11 jury, find the Defendant guilty. Signed, Number 180,
12 Foreperson, September the 4th, 2015.

13 Madam Forelady, were these your verdicts and verdicts
14 of the entire jury?

15 **THE FOREPERSON:** Yes.

16 **THE CLERK:** Thank you.

17 **THE COURT:** If the decision of the jury as announced
18 is not the decision of any juror, I would ask that you
19 please raise your right hand. All jurors have responded in
20 the affirmative.

21 Does the Defendant wish to have the jury polled?

22 **MS. PINNOCK:** Yes, Your Honor.

23 **THE COURT:** All right. Poll the jury, please, ma'am.

24 **THE CLERK:** Yes, sir, Your Honor.

25 Ladies and gentlemen of the jury, I'm gonna call your

1 motions or other matters you need to address prior to the
2 imposition of sentence?

3 **MS. PINNOCK:** Your Honor, just for -- at this time we
4 would renew, again, all of our -- all the objections and
5 motions we made throughout the trial, Judge. We understand
6 your rulings and we respect your rulings, but we would,
7 again, renew those, specifically for the introduction of
8 Shamaray Myers' statement into evidence and Your Honor
9 moving in under Rule 613 the admission of the text message
10 from Dajuan Harris to Mahogany Harris. We believe that was
11 inadmissible hearsay, Your Honor. So those specifically,
12 but we renew all of our pretrial motions, all objections
13 during trial.

14 Your Honor, we would ask for -- we would ask for a
15 new trial at this point based on the length of their
16 deliberations, Your Honor. I think that does speak that
17 there was reasonable doubt in this case, Your Honor. I
18 understand the jury did reach a verdict, but, Your Honor,
19 we -- at this time we request a new trial.

20 **THE COURT:** Well, it appears they resolved that
21 reasonable doubt in favor of the Defendant when they found
22 him guilty of the lesser included offense. Do you think
23 the deliberations were too long?

24 **MS. PINNOCK:** No, Your Honor. You know, it's one of
25 those things. You know, when they're short, it makes you

1 -- you question and when it's extremely long, it makes you
2 question. I don't know what's the magic time limit, you
3 know --

4 **THE COURT:** I don't know either.

5 **MS. PINNOCK:** It's just one of those things. You
6 never know. They were obviously discussing something.
7 There was obviously questions about something, Judge, and
8 I think that would be reasonable doubt. I understand they
9 did reach a verdict on the lesser included, but I believe
10 there was doubt in this case and I think the length of the
11 deliberations shows that.

12 **THE COURT:** Well, quite frankly, I think the length
13 of the deliberation shows due diligence on the part of the
14 jury in taking their job seriously and doing what they're
15 supposed to do, which is to examine all of the evidence.
16 This was a week-long case and they obviously carefully
17 examined all of the evidence and discussed all of it
18 before they made a decision. And the fact that they did
19 find him guilty of a lesser included offense from the
20 murder indictment shows me that they also discussed the
21 law in relationship to the facts and resolving the doubt
22 in his favor and so it appears to me that the jury's done
23 everything we would want a jury to do, and so your motion
24 is denied.

25 **MS. PINNOCK:** Yes.

1 Honor. And I don't believe -- Dexter, do you want to say
2 anything?

3 **THE DEFENDANT:** It was an accident. It wasn't my
4 intention to do anything or kill anyone. You know, I
5 understand that -- the feelings of the family, you know,
6 and that's mutual, you know, but, like I said, I'm still
7 a human. Whatever your decision is, that's what your
8 decision is, and I'll take my consequences as a man. I
9 mean, that's it.

10 **THE COURT:** Ms. Campbell.

11 **MS. CAMPBELL:** Your Honor, as far as his juvenile
12 record goes, he does have two convictions starting back
13 in 2007. He has a conviction for disturbing schools,
14 another conviction for simple assault and battery, another
15 disturbing schools and a simple assault and battery, and
16 then in 2009 he was convicted on an assault and battery of
17 a high and aggravated nature that was pled down from a
18 criminal sexual conduct charge, and he was in DJJ for a
19 period of time after that. He was twenty years old when
20 this happened.

21 Your Honor, we have spoken to the family. They're
22 kind of overcome with emotion at this point. I spoke to
23 Dajuan Harris' family, his mother, and her family members.
24 They would respectfully ask you that -- you know, he took
25 his life for no reason. Dajuan was a young man that had

1 come up in the same household with him, but he had gotten a
2 job and he was working and he was trying to make himself
3 better. All he wanted to do was take care of his family.
4 That was his priority. He even took these too young men
5 in because they were his wife's siblings and tried to help
6 them out and in return they become disgruntled, got a gun
7 and took his life that morning while he was sitting at a
8 table holding his children, feeding his children, who were
9 one and four at the time.

10 The jury also came back with an attempted murder
11 conviction on Mahogany Harris. I've spoken to Ms. Harris
12 as well and she's very overcome. It's been very difficult
13 for her, but as she says they -- he took her husband from
14 her, the person that was raising their -- they were
15 married, they were raising their children, and they were
16 trying to rise above the life he chose. They took them in
17 because that's what they should do because neither one of
18 his parents would at the time.

19 Your Honor, respectfully we think that consecutive
20 sentences would be appropriate in this case based on the
21 facts and circumstances of this case. This wasn't his
22 first brush with the law and this was something where
23 he emptied the gun and the miracle in this is that the
24 children weren't killed while all these gunshots were
25 going off. That would be all the State has.

1 **THE COURT:** On Indictment 2014-5482, that's the
2 indictment for murder, wherein the jury has found you
3 guilty of voluntary manslaughter, the sentence of the Court
4 is you, Dexter L. Myers, be confined to the South Carolina
5 Department of Corrections for a period of thirty years.

6 Indictment 2014-5481, an indictment for attempted
7 murder, wherein the jury has found you guilty of that
8 offense, the sentence of the Court is you, Dexter L. Myers,
9 be confined to the South Carolina Department of Corrections
10 for a period of twenty years. Those sentences are
11 consecutive, one with the other. Give him credit for
12 any time he's entitled to pursuant to 24-13-40.

13 Mr. Myers, you have a right to appeal the verdict of
14 the jury and the sentence of the Court. You must file any
15 notice of your intention to appeal those decisions within
16 ten days of today's date, so you can discuss that with your
17 lawyers if you'd like. Okay.

18 **MS. WALKER:** Thank you, Your Honor.

19 **THE COURT:** All right. Court's adjourned. We're
20 shutting down.

21 (Proceedings were concluded at 4:17 PM.)
22
23
24
25

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEXTER L. MYERS,

APPELLANT

APPELLATE CASE NO. 2015-001881

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in concluding a text message was a present sense impression, and therefore admissible as an exception to the rule against hearsay, where the state failed to present evidence that (1) the statement described or explained an event or condition; (2) the statement was contemporaneous with the event it was describing; and (3) that the declarant personally perceived the event allegedly described or explained?

STATEMENT OF THE CASE

On August 14, 2014, a Richland County grand jury indicted Appellant for attempted murder (2014-GS-40-5481) and murder (2014-GS-40-5482). R. 610-611; 613-614. The state, represented by Luck Campbell, Meghan Walker, and J.J. Shellenberg, called the case for trial before the Honorable J. Derham Cole and a jury on August 31, 2015. R. 1. Tracy Pinnock, Rhodes Bailey, and Catherine Mubarak represented Appellant. R. 1.

Based on the evidence presented, the judge instructed the jury on murder, voluntary manslaughter, involuntary manslaughter, attempted murder, assault and battery of a high and aggravated nature, self-defense, and accident. R. 564, l. 1 -- R. 581, l. 8.

The jury began deliberating on September 3, 2015, at 3:54 p.m. Approximately an hour later, the jury requested "clarity" on the difference between voluntary manslaughter and involuntary manslaughter. R. 587, ll. 13-25; R. 608. In compliance with the request, the judge re-charged the jury on voluntary manslaughter and involuntary manslaughter. R. 587, l. 25 – R. 589, l. 25. The jury resumed deliberating at 4:50 p.m. R. 590, ll. 4-5. At 6:51 p.m., after deliberating another two hours, the jury requested to go home for the evening and return the following day to continue deliberations. R. 590, l. 19 – 591, l. 1; R. 609. The judge permitted the jurors to retire for the evening at 6:53 p.m. R. 591, ll. 22-23. On September 4, 2015, the jurors returned and commenced deliberating at 9:06 a.m. R. 592, ll. 5-8. At 3:51 p.m., after deliberating for a total of approximately ten hours, the jury delivered its verdicts. R. 592, ll. 18-19. Ultimately, the jury found Appellant guilty of the lesser-included offense of voluntary manslaughter. R. 594, ll. 4-8. The jury found Appellant guilty of attempted murder. R. 594, ll. 9-12.

Judge Cole sentenced Appellant to thirty years' imprisonment for voluntary manslaughter and to twenty years' imprisonment for attempted murder. R. 599, ll. 1-10; R. 612; 615. He ordered the sentences to be served consecutively. R. 599, ll. 10-11.

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

In July of 2014, Appellant was living in an apartment with his sister, Mahogany Speech-Harris, her husband, Dajuan Harris, his brother, Shamaray Myers, and his sister's two daughters. R. 140, ll. 2-7; R. 397, ll. 13-17. Mahogany and her husband shared a bedroom, and the daughters had bedrooms. R. 141, ll. 11-12; R. 398, ll. 8-12. Appellant and Shamaray slept in the living room. R. 141, ll. 13-18; R. 397, l. 25 - R. 398, l. 7; R. 398, ll. 13-14.

According to Mahogany, she awoke early on July 2, 2014, because her younger daughter was crying. R. 141, l. 19 – R. 142, l. 2. Unable to get the daughter to return to sleep, Mahogany got up and started preparing breakfast. R. 142, ll. 2-5; R. 143, ll. 2-15. A short while later, Mahogany's older daughter woke up and joined them for breakfast. R. 143, ll. 13-25. Realizing Dajuan was still in bed, Mahogany along with her younger daughter, went to the master bedroom to wake Dajuan, who then joined them for breakfast. R. 143, l. 23 – R. 144, l. 8. She prepared plates for Dajuan and for her daughters. R. 143, ll. 23-25; R. 144, ll. 9-15. While Dajuan and his daughters were at the table eating, Mahogany was in the kitchen preparing her plate when she heard gunshots, which she initially believed were firecrackers. R. 144, l. 16 – R. 146, l. 7. Then, Mahogany heard Shamaray say, "No, Dexter, no." R. 146, l. 8; R. 146, l. 16; R. 146, l. 21; R. 146, ll. 23-25. When Mahogany looked up, she saw the gun. R. 146, l. 9; R. 146, ll. 21-22. She claimed Appellant pointed the gun at her. R. 147, ll. 2-7. She then fell on the floor. R. 147, ll. 10-14. Mahogany did not see Dajuan – she did not "even remember seeing anything." R. 147, ll. 23-25; R. 148, ll. 4-5. She only saw the gunshots. R. 148, ll. 1-4.

Appellant testified that on the morning of July 2, 2014, he woke up to the sound of loud noises. R. 398, ll. 18-25. He got his phone, checked the time, and got on a social media website. R. 399, ll. 14-21. He heard a door slam in the back of the apartment, and saw Mahogany rush out of

the room. R. 400, ll. 1-6. Dajuan was following her. R. 400, ll. 11-13. Appellant turned his attention to Dajuan when he heard Dajuan's aggressive tone. R. 401, ll. 7-25. The two then exchanged words. R. 402, ll. 1-24. Dajuan went for a gun that was on the living room floor. R. 402, ll. 24-25; R. 403, ll. 3-7. Fearing what Dajuan would do, Appellant also went for the gun. R. 403, ll. 8-17. Although Dajuan got the gun first, the two struggled for control of it. R. 403, l. 18 - R. 404, l. 2. During the struggle, the gun fired. R. 404, ll. 3-6. As the two continued to fight, more shots were fired. R. 404, l. 7 - R. 406, l. 7. Mahogany approached them and was shot as well. R. 405, ll. 13-19; R. 406, ll. 3-12.

After the shooting, Appellant left the apartment. R. 408, ll. 1-2. Mahogany ran across the hall to her neighbor's apartment. R. 17, ll. 17-24; R. 148, ll. 16-19. From there, the neighbor called for help. R. 18, ll. 19-20; R. 148, ll. 20-22. The police arrived quickly, and began search for Appellant. R. 24, ll. 7-19. Later that day, the police found Appellant at the home of his friend. R. 408, ll. 18-21; R. 409, l. 25 - R. 410, l. 3. Although Appellant initially lied to the police by denying involvement, Appellant eventually told the police about the struggle over the gun and the shooting of Dajuan and Mahogany. R. 412, l. 5 - R. 414, l. 5; R. 603.

Ultimately, Dajuan died from injuries he sustained as a result of gunshot wounds from the struggle with Appellant. R. 37, ll. 1-21; R. 321, ll. 4-6. Mahogany suffered minor injuries from two to three gunshot wounds to her leg. R. 149, ll. 2-15; R. 199, ll. 13-20.

Thus, it was undisputed that Appellant shot Dajuan and Mahogany. The only questions for the jury to resolve concerning were whether Appellant committed murder or attempted murder, a lesser offense, or whether his conduct was excused based on self-defense or accident. Therefore, evidence of Appellant's intent was central to the jury's determination.

ARGUMENT

The trial judge erred in concluding a text message was a present sense impression, and therefore admissible as an exception to the rule against hearsay, where the state failed to present evidence that (1) the statement described or explained an event or condition; (2) the statement was contemporaneous with the event it was describing; and (3) that the declarant personally perceived the event allegedly described or explained.

Relevant facts

When the state initially called Mahogany to testify, she mentioned that after the shooting, she “was going through [her] text messages” and saw a text message allegedly from Dajuan, which she turned over to law enforcement. R. 149, l. 20 – R. 150, l. 4. Prior to Mahogany testifying a second time, defense counsel informed the judge of a “matter of law.” R. 293, ll. 5-6. Thereafter, the parties engaged in a bench conference, which was not reported. R. 293, l. 8. The state called Mahogany to testify the second time concerning a text message only. According to Mahogany, she went through the text messages on her cell phone sometime after the shooting. R. 293, ll. 17-19. She found a text message that caught her attention. R. 293, ll. 23-25. As a result, she contacted a detective at the Richland County Sheriff’s Office about the text message. R. 293, ll. 20-22. When the state attempted to introduce the text message, defense counsel objected. R. 294, ll. 1-12. The judge overruled the objection. R. 294, l. 13.¹

¹ Defense counsel renewed her objection at the close of the state’s case, specifically explaining the text message should not have been admitted as it was not permissible as an exception to the hearsay rule. R. 391, ll. 14-20. After the defense’s presentation, defense counsel renewed her objections and motions as well. R. 469, ll. 15-17. Defense counsel made sure to renew her motions and objections after the state’s reply witness testified. R. 492, ll. 11-21. Finally, after the jury’s verdict, defense counsel moved for a new trial and explained one of the bases for the motion was the trial judge’s erroneous admission of the text message as inadmissible hearsay. R. 595, ll. 3-13.

Mahogany was permitted to testify regarding the content of the message and the message was admitted as an exhibit. R. 294, l. 10 – R. 295, l. 1; R. 607. The message stated: “Where you at your brothers around there talking a whole lot of shit like they said they going to burn me and the kids I think they trying to buy a gun because I heard them talking about it and good luck.” R. 607; see also, R. 294, l. 23 – R. 295, l. 1 (Mahogany read the text message to the jurors in which she corrected at least one misspelled word and the court reporter added punctuation presumably based upon Mahogany’s inflections when reading the message). Mahogany claimed the text message was from Dajuan despite no evidence being presented of his phone number or her phone number. R. 294, ll. 6-9. In fact, the message itself only indicates “*Husband My” and does not reveal the sender or recipient. R. 607. Although not revealed on direct examination, Mahogany admitted on cross-examination that the text message was dated March 21, 2014. R. 295, ll. 10-13; R. 607. She further admitted she did not contact the police or anyone about this information at the time. R. 295, l. 14 – R. 296, l. 2.

At the first opportunity, defense counsel put the basis for the objection on the record. Defense counsel explained the text message was hearsay and did not fit within any of the exceptions. R. 350, ll. 10-24. Further, defense counsel argued Appellant was unable to confront or cross-examine the alleged author of the text message. R. 350, ll. 14-15. The state argued the text message was a “present sense impression of the sender of the text message” and was “authenticated by the witness that it was from her husband.” R. 351, ll. 2-5. In response, defense counsel cited State v. Parvin, 413 S.C. 497, 777 S.E.2d 1 (Ct. App. 2015) to support her argument. R. 351, ll. 7-9. Defense counsel explained that in order for the present sense impression exception to apply, the state must establish that the statement describes or explains an event or condition made while the declarant was perceiving the event or condition, or

immediately thereafter. R. 351, ll. 11-15. Further, defense counsel explained the “three elements for the foundation of the admission of that statement.” R. 351, ll. 15-17. According to defense counsel, the state was required to show: “The first being the statement must describe or explain an event or condition, the statement must be contemporaneous with the event, and third, the declarant must have personally perceived the event.” R. 351, ll. 17-21. Defense counsel explained that “[n]one of those elements were presented to the Court.” R. 351, l. 21. Specifically, no evidence had been presented of *when* “this alleged conversation between [Appellant] and his brother occurred.” R. 351, ll. 22-24. There was no evidence of the time of the alleged conversation or even if the conversation occurred on the same day as the text message. R. 351, ll. 24-25.

Discussion

“Hearsay is not admissible.” Rule 802, SCRE. “‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. The state argued, and the judge apparently found, the text message was admissible as a present sense impression. R. 350, l. 25 – R. 351, l. 5. However, the trial judge erred in finding the text message admissible as a present sense impression.

The Rules of Evidence permit the introduction of statements “describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter” as an exception to the bar against hearsay. Rule 803(1), SCRE. “There are three elements to the foundation for the admission of a hearsay statement as a present sense impression: (1) the statement must describe or explain an event or condition; (2) the statement must be contemporaneous with the event; and (3) the declarant must have personally perceived the event.” State v. Hendricks, 408 S.C. 525, 533, 759 S.E.2d 434, 438 (Ct. App. 2014); see also, United States

v. Mitchell, 145 F.3d 572, 576 (3rd Cir. 1998). The state failed to present evidence to satisfy any of the three elements.

Descriptive

By the Rule's very language, the proffered statement must describe or explain an event or condition. The South Carolina Supreme Court held a statement by an alleged victim that he planned to meet the defendant for a drug deal was not admissible as a present sense impression because the statement was "regarding a *future* event and not a statement regarding something contemporaneously perceived." State v. Griffin, 339 S.C. 74, 78 n. 3, 528 S.E.2d 668, 670 n. 3 (2000)(emphasis in original). Importantly, the statement must not concern an opinion or draw a conclusion; rather, the statement must "explain, elucidate or in some way characterize the nature of the event." State v. Blackburn, 271 S.C. 324, 328, 247 S.E.2d 334, 337 (1978)(explaining how a statement would not be admissible under the present sense impression of Rule 803 of the Federal Rules of Evidence due to conclusory nature). The text message admitted into evidence failed to demonstrate that it was a description or explanation of an event or condition, and the state failed to present any additional evidence to support such a conclusion.

The very nature of the text message demonstrated it was a *conclusion* when the author stated "I think." According to the text message, the author thought "they trying to buy a gun because I heard them talking about it." The author did not describe *what* he heard the individuals, whom are not identified specifically, talking about; rather, he explained the *conclusion* he drew from whatever, if anything, he heard.

Additionally, the author stated "your brothers around tthere talking a whole lot of shit like they said they going to burn me and the kids." There was no indication of which brother made the comment allegedly heard by the author. Certainly, both did not speak at exactly the same time and

say the exact same thing. In light of the author's use of the term "like" preceding his statement regarding what he heard, it is entirely possible that he was not providing an example of the "talking a whole lot of shit," but he was providing an analogy and, therefore, the statement attributed to the brothers was not a statement at all, but was the author's comparison.

Contemporaneity

In State v. Burroughs, 328 S.C. 489, 499, 492 S.E.2d 408, 413 (Ct. App. 1997), this Court held a statement given nearly ten hours after the alleged incident was not made while the declarant was perceiving the event or condition, or immediately thereafter, as required by the Rule. The South Carolina Supreme Court made clear that in order for a statement to fall within the present sense impression exception, the record must contain evidence of when the event or condition occurred in order to establish the statement was made while the declarant was perceiving the event or condition or immediately thereafter. State v. Garcia, 334 S.C. 71, 77 n. 4, 512 S.E.2d 507, 510 n.4 (1999).

The text message, and the record as a whole, are completely devoid of any evidence to suggest *when* the author of the text message heard the information described in the message, if the author ever did. The text message was dated March 21, 2014, but there was no evidence provided at all regarding when the information within the text message occurred. According to the author, Mahogany's brothers were "around there talking a whole lot of shit like they said they going to burn me and the kids." The author did not say when the brothers were talking. The conversation allegedly heard by the author may have occurred hours, days, weeks, or even months prior to the text message. It clearly transpired prior to the writing of the text message as evidenced by the use of the past tense "said" and was not being described in the text message as it was occurring.

The author also claimed to have “heard them talking about it.” There was no indication of when the author heard the brothers talking. Although the assumption is that the author heard the brothers talking about a gun, the author did not identify “it,” specifically in the text message or when the conversation about “it” occurred. Again, the use of the past tense supports the conclusion that the conversation occurred prior to the execution of the text message, but offers no other clues as to when the conversation actually took place.

Personally perceive

This Court has emphasized that the declarant actually perceive the event or condition described. In State v. Hendricks, 408 S.C. 525, 533, 759 S.E.2d 434, 438 (Ct. App. 2014), this Court held statements during a 911 call by a mother concerning her daughter’s allegations of rape were not a present sense impression because the mother did not perceive the rape. The Supreme Court likewise emphasized the necessity that the declarant actually perceive or witness the event or condition in State v. Davis, 371 S.C. 170, 180 n. 9, 638 S.E.2d 57, 63 n. 9 (2006) where the record contained insufficient evidence that the declarant witnessed the shooting.

The text message described the brothers being “around there.” It appears the author meant “around there.” In other words, the author was describing the brothers as being in some place different from the author. Thus, if the brothers, who were allegedly “talking a whole lot of shit,” were doing so “around there,” then the author could not have personally perceived the conversation. Rather, the author would have described the brothers as being “around here” to explain how the author was aware of the contents of the conversation. In light of the author’s choice of words to describe the brothers as “talking a whole lot of shit” “around there,” the author was explaining that the brothers were talking outside of his presence.

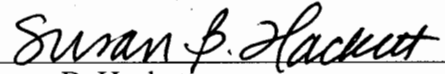
The second part of the text message concerning buying a gun does not explain what the author actually heard. Instead, the author explained his conclusion, "I think they trying to buy a gun" based upon what he heard, "I heard them talking about it." The author did not describe what he actually heard, therefore, this part of the statement could not be what the author actually perceived.

The trial judge erred in admitting the text message as a present sense impression because the state failed to present evidence that (1) the statement described or explained an event or condition; (2) the statement was contemporaneous with the event it was describing; and (3) that the declarant personally perceived the event allegedly described or explained.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of May, 2018.

CERTIFICATE OF COUNSEL

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

May 11, 2018

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
J. Derham Cole, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DEXTER L. MYERS,

APPELLANT

APPELLATE CASE NO. 2015-001881

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blich, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 11th day of May, 2018.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of May, 2018.

[Signature] (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case Tracking No. 2015-001881

The State,

Respondent,

vs.

Dexter L. Myers,

Appellant.

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not err in admitting a text message from the deceased victim containing a present sense impression. Further, any possible error is entirely harmless.

STATEMENT OF THE CASE

On August 14, 2014, the Richland County Grand Jury indicted Appellant for attempted murder and murder. He proceeded to trial before the Honorable J. Derham Cole and a jury on August 31, 2015. On September 4, 2015, the jury found Appellant guilty of attempted murder as charged and of the lesser included offense of voluntary manslaughter. The trial court sentenced Appellant to thirty years' imprisonment for voluntary manslaughter and twenty years for attempted murder; the sentences to be served consecutively.

STATEMENT OF FACTS

Mahogany Speech-Harris, the victim of the attempted murder charge, lived in an apartment with her husband Dajuan Harris, the victim of the murder charge; their two children; and her two brothers, one of which is Appellant. (T.223; R.140). Appellant and his brother had lived with Mahogany off and on for about three years, but had been told in March 2014 that they needed to move out. (T.223-224; R.140-141). Mahogany and Harris had a bedroom, their daughters had a bedroom, and her brothers slept in the living room. (T.224; R.141).

The brothers were still living in the apartment in July 2014. On July 2, 2014, one of the children could not sleep so Mahogany got up to fix breakfast. (T.225; R.142). She took her youngest daughter with her to wake up Harris and have him join them to eat. (T.226-227; R.143-144). Harris and the children were at the table and began eating. According to Mahogany, there were no arguments between her and her brothers or anyone and her brothers that morning. (T.231; 233-234; R.148; 150-151). Mahogany turned to fix her own breakfast and heard "something go pow, pow." (T.228-229; R.145-146). She said it sounded like fireworks, but then she heard her brother saying: "No, Dexter, no" and when she looked up she saw the gun. (T.229; R.146). Mahogany never saw her husband, she only saw Appellant and indicated: "He just kept shooting" (T.230-231; R.147-148).

Mahogany ran across the hall to her neighbor's apartment to call 911. (T.231; R.148). Her neighbor heard three gunshots. (T.93; R.17). Thereafter, Mahogany ran into her apartment "screaming and hollering 'My brother shot my husband.'" (T.94; R.18). Mahogany told her neighbor she had been shot and her neighbor indicated Mahogany was bleeding. (T.94; R.18).

Master Deputy Fairbanks was the first responder on the scene. He found Mahogany at her neighbor's apartment. He indicated Mahogany had been shot in the leg. (T.99; R.23). He

entered the other apartment and found Harris locked in the bedroom. (T.99-100; R.23-24). After kicking the door open, they found Harris leaning up against the door. (T.100; R.24).

EMS arrived and located Harris. He was “wedged behind the door lying prone in a pool of blood with obvious . . . trauma to his face and chest area.” (T.119-120; R.36-37). Harris was not breathing, his pupils were fixed and dilated, and he was “cold.” According to EMS, he was “obviously dead.” (T.120; R.37). They then approached Mahogany who had five holes in her outer thigh and buttocks area from where she had been shot. (T.121; R.38). According to the ER doctor, Mahogany had 2-3 gunshot wounds. (T.284; R.199).

The pathologist performed the autopsy on Harris. (T.404; R.306). She indicated Harris had a gunshot wound to the left side of his head, which exited on the right back of the head. Another gunshot wound to the right side of his neck. Finally, there was a gunshot wound to his lower back. (T.406; R.308). She indicated the gunshot to the head was nonfatal as it missed the brain. (T.410-411; R.312-313). The bullet that entered through the neck perforated his trachea, then perforated the major subclavian artery, went through the left upper lobe of the lung, and ultimately entered the soft tissue left arm. (T.412; R.314). The gunshot to the neck was the fatal gunshot. (T.412-413; R.314-315). The final gunshot entered the lower back and twice hit the small intestine. (T.413; R.315).

After the shooting, Appellant fled the apartment. (T.510; R.408). He sought a ride from a neighbor who happened to be leaving at the time. (T.214; R.131). She gave Appellant a ride from the Apartment complex. He told her he was in a fight with his girlfriend and he “just wanted to get away.” (T.215; R.132). Appellant was later apprehended at a friend’s house. (T.324; 510; 512; R.233; 408; 410).

Captain McDonald interviewed Appellant after he was apprehended. After being read his Miranda rights, Appellant agreed to speak with Captain McDonald. Appellant initially denied any involvement and any knowledge of the shooting. He even denied being present. (T.328; R.237). After being confronted with some of the facts that the officers knew from Mahogany, Appellant continued to deny involvement. His story changed to indicate he was at the apartment that morning but had gotten up and left to buy some marijuana and had not returned. (T.329; R.238). Appellant's story changed again as the questioning continued. His third version indicated he was present at the apartment, awakened in the living room, and found a gun on the floor. Appellant indicated the gun was a dangerous gun because the hammer was always cocked. He said he picked it up and it just went off and struck Harris. Appellant told Captain McDonald he had the gun in his hand and it "kept going off and struck Mahogany." (T.329; R.238).

Eventually, Appellant led other investigators to where he had disposed of the gun. (T.331; R.240). After returning, he again spoke with Captain McDonald and gave a written statement which differed from his prior statements. He indicated they have a gun at the apartment for protection and keep it under the couch in the living room. Appellant stated Harris picked up the gun so none of the children would get it. (State's Exhibit 2; T.332; R.241; 600). Harris put the gun in Appellant's hand after Appellant warned him about the hammer being cocked. Appellant explained the gun just went off and hit Harris, and then it went off a few more times and it hit Mahogany. (State's Exhibit 2; T.333; R.242; 600). He indicated there was no argument with Harris that morning and that he did not intentionally shoot Harris. (State's Exhibit 2; T.334; R.243; 600).

Appellant later gave a second written statement. (State's Exhibit 3; T.582; R.480; 603). In this statement, Appellant indicated Mahogany entered the kitchen mad and followed by

Harris. Harris then looked at him and he said “man” meaning move on to Harris. Harris was coming at him and going for the gun. (State’s Exhibit 3; T.583; R.481; 603). Appellant said he grabbed the gun and it went off shooting Harris. He said Harris was still on him so he shot him again. His sister then came at him and Appellant shot her. (State’s Exhibit 3; T.584; R.482; 603). This is a similar version of events to the one Appellant testified to at trial, but he had difficulties remembering many details of the events. (T.519-523; R.417-421).

The trial court ultimately charged the jury with murder, voluntary manslaughter, and involuntary manslaughter as it related to the death of Harris. The court charged both attempted murder and assault and battery of a high and aggravated nature as it related to the wounds sustained by Mahogany. The court also charged the jury with defenses of accident and self-defense. (T.666-684; R.563-581). The jury found Appellant guilty of voluntary manslaughter as to Harris and attempted murder as to Mahogany.

ARGUMENT

I. The trial court did not err in admitting a text message from the deceased victim containing a present sense impression. Further, any possible error is entirely harmless.

Appellant contends the trial court erred in admitting a text message sent from the deceased victim to his wife because it was inadmissible hearsay. The text message fell under an exception to hearsay as a present sense impression. Further, any error in the admission of the message is entirely harmless.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001); State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003). “The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006); State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Pagan, 369 S.C. at 208, 631 S.E.2d at 265; State v. McDonald, 343 S.C. 319, 540 S.E.2d 464 (2000). “A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.” State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). “Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict.” State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

Merits

Hearsay is defined as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c),

SCRE. “Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute.” Rule 802, SCRE.¹ One such exception allows for the admission of a present sense impression. See Rule 803(1), SCRE (“A statement describing or explaining an event or condition while the declarant was perceiving the event or condition, or immediately thereafter.”).

“There are three elements to the foundation for the admission of a hearsay statement as a present sense impression: (1) the statement must describe or explain an event or condition; (2) the statement must be contemporaneous with the event; and (3) the declarant must have personally perceived the event.” State v. Hendricks, 408 S.C. 525, 533, 759 S.E.2d 434, 438 (Ct. App. 2014). The exception is modeled after the Federal Rules of Evidence. See Rule 803 cmt., SCRE. The Note provided by the Advisory Committee to the 1972 proposed rules explains the inclusion of the present sense impression exception: “The underlying theory of Exception [paragraph] (1) is that substantial contemporaneity of event and statement negate the likelihood of deliberate or conscious misrepresentation.” Rule 803 cmt., FRE.

In March, several months before the shooting, Mahogany received a text message from Harris. The message read: “Where you at your brothers around there talking a whole lot of shit like they said they going to burn me and the kids I think they trying to buy a gun because I heard them talking about it and good luck.” (State’s Exhibit 223; T.392-393; R.294-295; 607). The text message in this case can be read to be a description and explanation of an ongoing or recent event perceived by Harris. He starts the message by asking where Mahogany was currently located—“Where you at”—then indicates “your brothers around there [sic] talking a whole lot of

¹ Whether a misstatement or a misrepresentation, it is interesting to note Appellant’s brief only includes a portion of Rule 802. (Appellant’s Brief at 10). The quote includes the first part of the Rule: “Hearsay is not admissible,” but omits the most significant portion of Rule 802 for purpose of this appeal: “except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute.” Clearly, this case involves one of the exceptions to the inadmissibility of hearsay—the present sense exception.

shit” again indicating presently talking. He gives an example of the “shit” they are talking by saying “they said they going to burn me and the kids” which reads as an explanation or description of the recent event being discussed. He describes the remainder of the discussion among the brothers indicating “I think they trying to buy a gun because I heard them talking about it” and ends by wishing his wife “good luck” for the interview she had the day of the text. (T.392-393; State’s Exhibit 223; R.294-295; 607). The discussion can clearly be read as a contemporaneous description and explanation of the discussion going on between Mahogany’s brothers. It does not need to be a live transcription of the events as seems to be argued by Appellant.

The trial court found it was a contemporaneous description meeting the definition of present sense impression. After being presented the argument that the text was not made at the same time as the event, the court still allowed the message into evidence, thereby finding the message was made at the time of the event—the “talking a whole lot of shit” by Mahogany’s brothers. Accordingly, the trial court found the message met the requirements of a present sense impression and this ruling is not so clearly incorrect that it amounts to an abuse of discretion.

Further, even if the statement was improperly admitted as a present sense impression, in order to constitute reversible error Appellant must demonstrate prejudice from its admission. State v. Parvin, 413 S.C. 497, 504, 777 S.E.2d 1, 4 (Ct. App. 2015). Even if improper hearsay evidence is admitted, any error in the admission of the hearsay evidence is subject to a harmless error analysis and only warrants reversal if it results in actual prejudice. State v. Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006). Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991).

Importantly, Appellant has not argued in his brief how he was prejudiced by the admission of the text messages. As a result, he has not demonstrated reversible error. See State v. Vick, 384 S.C. 189, 199, 682 S.E.2d 275, 280 (Ct. App. 2009) (“Further, the improper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice.”); see also, State v. Wasson, 299 S.C. 508, 510, 386 S.E.2d 255, 256 (1989) (stating the burden is on the defendant to show not only error but resulting prejudice from jurors’ reading of trial-related newspaper article); Keller v. Pearce-Young-Angel Co., 253 S.C. 395, 399, 171 S.E.2d 352, 355 (1969) (“The burden is, of course, upon the appellant to show not only error but resulting prejudice.”); Cumbie v. Cumbie, 245 S.C. 107, 117, 139 S.E.2d 477, 482 (1964) (finding an argument without merit when “the burden here was on appellant not only to show error, but resulting prejudice, and his argument on appeal does not even suggest wherein he was prejudiced”). Because Appellant has failed to demonstrate any prejudice from the admission of the text messages, this Court should not find reversible error.

Additionally, any error is entirely harmless in this case. Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008); see also, State v. Garner, 389 S.C. 61, 67–68, 697 S.E.2d 615, 618 (Ct. App. 2010) (“[I]mproper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice. Such error is deemed harmless when it could not have reasonably affected the result of the trial, and an appellate court will not set aside a conviction for such insubstantial errors.” (citation and internal quotation marks omitted)). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see also, State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) (“No

definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.”). “When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

The text messages from months before the shooting, at most, indicated a possible malice toward Harris by Appellant and demonstrated premeditation. Both factors are only relevant to a determination of the murder charge. The jury rejected a verdict of murder, requiring malice aforethought and premeditation, and instead convicted Appellant of voluntary manslaughter. The texts, admittedly from March and several months before the shooting occurred, could not have contributed to the heat of passion found by the jury that existed in July. Accordingly, the jury’s verdict finding Appellant killed Harris in the sudden heat of passion provoked by sufficient legal provocation in July could not have been impacted in any way by text messages referencing Appellant “talking shit” and possibly buying a gun months before in March.

Additionally, nothing in the text messages referenced Mahogany and could not have established any malice or other intent to cause her harm. The texts specifically referenced only Harris and the kids. Accordingly, even if the texts were admitted in error, Appellant cannot demonstrate how they prejudicially impacted the jury’s verdict finding him guilty of attempted murder as to Mahogany when the texts did not involve Mahogany in any way.

Accordingly, this Court should find the trial court did not abuse his discretion in admitting the text messages as present sense impressions because they were statements describing or explaining an event; contemporaneous with the event; and personally perceived by Harris. Even if the statements were improperly admitted Appellant has failed to demonstrate any

alleged prejudice suffered by their admission, so this Court should not find reversible error. Finally, even if error, this Court should find any error harmless because the texts, at most, were applicable to the elements of malice and premeditation for the charge of murder, and the jury convicted Appellant of voluntary manslaughter and not murder.

CONCLUSION

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

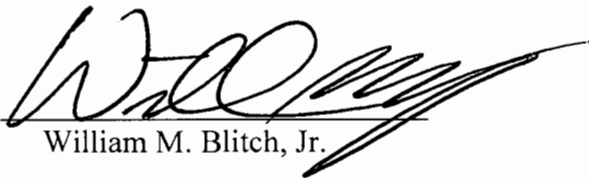
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DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

BY:



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Office of the Attorney General
Post Office Box 11549
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ATTORNEYS FOR RESPONDENT

May 4, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case Tracking No. 2015-001881

RECEIVED
MAY 04 2018
SC Court of Appeals

The State,

Respondent,

vs.

Dexter L. Myers,

Appellant.

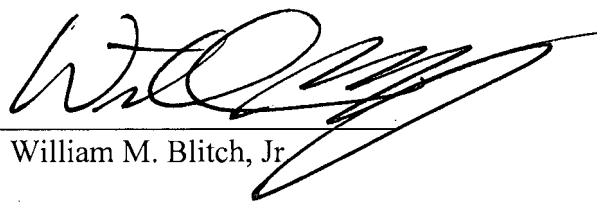
CERTIFICATE OF COUNSEL

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

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Attorney General

BY:



William M. Blitch, Jr.

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

ATTORNEYS FOR RESPONDENT

May 4, 2018

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

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

The State, Respondent,

v.

Dexter L. Myers, Appellant.

Appellate Case No. 2015-001881

Appeal From Richland County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2019-UP-119
Submitted February 1, 2019 – Filed March 27, 2019

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Senior
Assistant Attorney General William M. Blitch, Jr., and
Solicitor Daniel E. Johnson, all of Columbia, for
Respondent.

PER CURIAM: Dexter Lamons Myers appeals his convictions of voluntary manslaughter and attempted murder, arguing the trial court erred in admitting a text message under the present sense impression exception to the rule against

hearsay. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); *State v. Price*, 368 S.C. 494, 499, 629 S.E.2d 363, 366 (2006) ("The rule against hearsay prohibits the admission of evidence of an out of court statement to prove the truth of the matter asserted unless an exception to the rule applies."); Rule 803(1), SCRE (providing a present sense impression exception to the rule against hearsay defined as "[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter"); *State v. Parvin*, 413 S.C. 497, 504, 777 S.E.2d 1, 4 (Ct. App. 2015) (finding error in the admission of hearsay under the present sense impression exception because there was no evidence of the time that had elapsed between the statement and the time of the perceived incident); *State v. Vick*, 384 S.C. 189, 199, 682 S.E.2d 275, 280 (Ct. App. 2009) ("[T]he improper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice.").

AFFIRMED.¹

LOCKEMY, C.J., and SHORT and MCDONALD, JJ., concur.

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

FORM 5

STATE OF SOUTH CAROLINA)

County of Richland)

Dexter L. Myers)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2019CP400 2444

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2019 MAY -1 PM 3:36
CLERK OF COURT
CORPUS G.S.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence Richland County Court House
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder 2014-GS-40-05481
 - (b) Attempt Murder 2014-GS-40-05482

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) September 4, 2015 Consecutive
- (b) September 4, 2015 Consecutive
- (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?
- _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. March 28, 2019
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State vs Myers 2015-001881
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/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 1-6
- (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 1-6
- (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? NA
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NA
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NA
- (d) any other petitions, motions or applications in this or any other Court? NA
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. NA
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. NA
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

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

- i. NA
- 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?

NA

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

(a) which grounds have been presented:

- i. NA
- ii. _____
- iii. _____

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

- i. NA
- 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) Ineffective Assistance Trial Counsel
(b) _____
(c) _____

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

(a) your arraignment and plea? _____
(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. Tracy Pinnock

ii. Rhode Bailey

iii. Catherine Mubarak
Susan B. Hackett

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

i. Trial

ii. Trial

iii. Trial
Appeal

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

New Trial

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

NA

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Dexter L. Myers, 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.

Dexter Myers

SWORN to and subscribed before me this 5
day of April, 2019.

R. D. J. Walden (L.S.)
Notary Public

My Commission Expires: 9-30-26

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

I, Dexter Myers, 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.

Dexter L. Myers
Applicant

SWORN or affirmed to and subscribed before me this

5 day of April, 2019.

Bruce W. Wademan
Notary Public

My Commission Expires: 9-30-26

Counsel was Ineffective By:

- ① Not Objecting to Trace Evidence Examination off Victim Clothing and Didn't Hire A Expertise on my Behalf to Show it was a Close Encounter / Struggle. *Frazier vs. State*
- ② Counsel was Ineffective for Not properly Instructing me and knowing I was illiterate in the law, never proper Ascertained whether or Not I Actually understood or Comprehended all of the Issues and motions in my Trial.
- ③ My Defense Attorney Did not try to have my case Settled and falsified that A plea of 15 yrs would Be given if I plea But never Brought me to sign A plea Deal.
- ④ Counsel was Ineffective for Not Objecting to Trial Judge Improperly Instructing the Jury Merely Re-instructing Jurors on lesser Included offenses.
- ⑤ My Defense Attorney Did not Conscientiously gather any Information the Lease of the Apartment which was Ineffective.
6. Prosecutor Misconduct.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

DEXTER L. MYERS, #365377
Applicant,

V.

STATE OF SOUTH CAROLINA
Respondent.

IN THE COURT OF COMMON PLEAS
PLEAS 5th JUDICIAL CIRCUIT.

GROUND FOR POST CONVICTION
RELIEF.

Case No.: 2019-CP-40-2444

The Applicant submits these Ineffective Assistance of Counsel claim
for Post Conviction Relief.

"NEWLY DISCOVERED EVIDENCE."

Applicant received and found out about the Newly Discovered Evidence,
in a letter dated 17 April 2019, from a Mr. Steve D. Tuttle, from the South
Carolina Department of Archives and History, in which he states, "I checked
the following Acts that you requested and found that each Act does not have
a visible impression of the Great Seal. 1993 Act No. 184 and 1995 Act No. 7.

No visible Seal Attached. Missing Seal makes State laws invalid and uncons-
titutional Bills.

South Carolina Great Seal missing, from over 100 laws. South Carolina
Seal's absent from laws.

"No Bill or Joint Resolution shall have the "force of law" until it shall
have been read three times and on three several days in each house, has had
the Great Seal of the State affixed to it, and has been signed by the
President of the Senate and the Speaker of the House of Representatives.

It's Ineffective Assistance of Counsel. The Constitution guarantee
Effective Assistance of Counsel.

RICHLAND COUNTY
FILED

2019 JUL 23 AM 10:54

JEANETTE W. McBRIDE
CLERK
C.P. 5th J.D.C.

It's Prosecutorial Misconduct by the Richland County Solicitor's Office, and a fundamental miscarriage of justice.

Which places me false imprisonment, it's misconduct in office, the Richland Solicitors Office has used these invalid, null, and void laws to punish me.

These laws have been invalid, null and void for twenty-five (25) years today without the "Great Seal Affixed to Them" voluntary manslaughter, murder, assault with intent to kill attempted murder. (1993-94 Bill-3151)

ARTICLE III., Section 18, of the South Carolina Constitution plainly states, "No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it..."

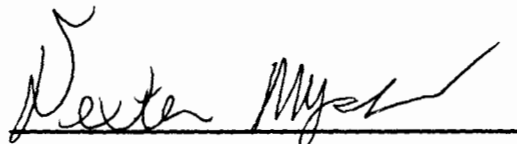
This is a mockery of justice, and obstruction of justice, this is a subject-matter-jurisdiction issue, which can be litigated at timely or anytime and cannot be waived by either party, and should be ruled on Sua Sponta.

SEE EXHIBITS:

1. Letter from the South Carolina Department of Archives and History, dated 17 April 2019;
2. Pgs. of Bill 3151;
3. Pg. 4/108;
4. Copy of Great Seal;
5. Copy of Attorney General. 4013, Pg. 85;
6. S.C. CONST. ART. III., §18 Formalities of Acts.

Conclusion.

Wherefor, Applicant prays his sentence of (50) years be vacated.



DEXTER L. MYERS, #365377

July 17, 2019.

R MYERS # 365377
REDEMPTION KEY
Rumple, SC 29899

July 18th 2019

E: ^Pfileing.

DEAR HON CLERK.

PLEASE STAMP CLOCK AND ^PFILE, THIS AMENDMENT.
AND SERVE COPY BACK TO ME.

SINCERELY

9/9 Dexter Myers

CC: ^Pfile

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND.

DEXTER L. MYERS, #365377
Applicant,

v.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

GROUND FOR POST CONVICTION
RELIEF.

Case No.: 2019-CP-40-2444

The Applicant submits these Ineffective Assistance of Counsel claims for
Post Conviction Relief.

COUNSEL WAS INEFFECTIVE FOR NOT INVESTIGATING THE LAWS ON §16-3-29.
ATTEMPTED MURDER. BECAUSE THE LAW IS INVALID AND VOID.

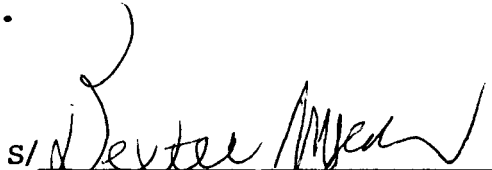
SEE: Editors Notes.

"Whereas, it, state's, were ever in the 1976 Code of Law reference is
made to the common law offense of Assault and Battery of a High Aggravated
Nature, it means Assault and Battery with Intent to Kill, as contained in
repealed section 16-3-620, and except for references in section 16-1-60 and
section 17-25-45, wherever in the 1976 Code reference is made to Assault
and Battery with Intent to Kill, it means Attempted Murder as defined in
section 16-3-29."

Attempted Murder, is an invalid and void law, No Seal, No Law, Assault
and Battery with intent to kill, has "NEVER" been affixed with the GREAT
SEAL OF SOUTH CAROLINA, so the repeal from the law, to Attempted Murder,
Section 16-3-29, is no law, and places Applicant illegally and wrongfully
imprisonment since the day of sentence and conviction.

CONCLUSION.

Applicant prays sentence is vacated.


DEXTER L. MYERS, #365377
386 Redemption Way
McCormick C.I.
McCormick, S.C. 29899

RICHLAND COUNTY
FILED

2019 AUG -6 PM 3:50

ANETTE W. McBRIDE
C.C.P.S., REC.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Dexter Myers, #365377,

Applicant,

v.

State of South Carolina,

Respondent,

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)
)

) 2019-CP-40-2444
)
)

) **RETURN & MOTION FOR A MORE**
) **DEFINITE STATEMENT**
) **(Counsel Appointed)**
)
)

In response to Dexter Myers's (Applicant) action for post-conviction relief (PCR) commenced May 1, 2019, the State makes this return:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the August 2014 term of the Richland County Grand Jury for attempted murder (2014-GS-40-5481) and murder (2014-GS-40-5482). Applicant was represented by Assistant Public Defenders Tracy Pinnock, J. Rhodes Bailey, and Catherine Mubarak. Assistant Solicitors Luck Campbell, Meghan Walker, and J. J. Shellenberg prosecuted the case.

Applicant's case proceeded to a jury trial from August 31 to September 4, 2015, before Judge J. Derham Cole. The jury convicted Applicant to the lesser-included offense of voluntary manslaughter and as indicted for attempted murder. Judge Cole sentenced Applicant to serve an aggregate term of fifty years' imprisonment—twenty years for attempted murder and thirty years' for voluntary manslaughter. Applicant appealed.

Appellate Defender Susan B. Hackett represented Applicant on appeal and briefed the following issue:

1. Did the trial judge err in concluding a text message was a present sense impression, and therefore admissible as an exception to the rule against hearsay, where the state failed to present that (1) the statement described or explained an event or condition; (2) the statement was contemporaneous with the event it was describing; and (3) that the declarant personally perceived the event allegedly described or explained?

The case was submitted on briefs to the Court of Appeals on February 1, 2019; thereafter, on March 27, 2019, the Court of Appeals affirmed Applicant's convictions and sentences. *State v. Myers*, Op. No. 2019-UP-119 (S.C. Ct. App. filed Mar. 27, 2019). The case was remitted back to the circuit court on April 17, 2019.

Applicant timely commenced this PCR action on May 1, 2019.

II. FACTS

Applicant was charged with the attempted murder of his sister, Mahogany Speech-Harris (Speech-Harris), and the murder of his brother-in-law, Dajuan Harris (Harris). Speech-Harris lived in an apartment with Harris, their two children, Applicant, and her other brother. Tr. 223. Applicant and his brother had lived with Speech-Harris periodically for three years, but were told in March 2014 they needed to move out. Tr. 223-24. Speech-Harris and Harris had a bedroom, their daughters had a bedroom, and her brothers slept in the living room. Tr. 224.

In July 2014, the brothers were still living in the apartment. On July 2, 2014, one of the children could not sleep so Speech-Harris got up to fix breakfast. Tr. 225. She took her youngest daughter with her to wake up Harris and have him join them to eat. Tr. 226-27. Harris and the children were at the table and began eating. According to Speech-Harris, there were no arguments between her and her brothers or anyone and her brothers that morning. T. 231; 233-34. Speech-

Harris turned to fix her own breakfast and heard “something go pow, pow.” Tr. 228-229. She said it sounded like fireworks, but then she heard her brother saying: “No, Dexter, no” and when she looked up she saw the gun. T. 229. Speech-Harris never saw her husband, she only saw Applicant and indicated: “He just kept shooting . . .” T. 230-31.

Speech-Harris ran across the hall to her neighbor’s apartment to call 911. T. 231. Her neighbor heard three gunshots. Tr. 93. Thereafter, Speech-Harris ran into the neighbor’s apartment “screaming and hollering ‘My brother shot my husband.’” Tr. 94. Speech-Harris told her neighbor she had been shot and her neighbor indicated Speech-Harris was bleeding. Tr. 94).

Master Deputy Fairbanks was the first responder on the scene. He found Speech-Harris at her neighbor’s apartment. He indicated Speech-Harris had been shot in the leg. Tr. 99. He entered the other apartment and found Harris locked in a bedroom. Tr. 99-100. After kicking the door open, he found Harris leaning up against the door. Tr. 100.

EMS arrived and located Harris. He was “wedged behind the door lying prone in a pool of blood with obvious . . . trauma to his face and chest area.” Tr. 119-20. Harris was not breathing, his pupils were fixed and dilated, and he was “cold.” According to EMS, he was “obviously dead.” Tr. 120. EMS then approached Speech-Harris who had five holes in her outer thigh and buttocks area from where she had been shot. Tr. 121. According to the ER doctor, Speech-Harris had two-to-three gunshot wounds. Tr. 284.

The pathologist performed the autopsy on Harris. Tr. 404. She indicated Harris had: a gunshot wound to the left side of his head, which exited on the right back of his head; another gunshot wound to the right side of his neck; and a gunshot wound to his lower back. Tr. 406. The pathologist indicated the gunshot wound to the head was nonfatal as it missed the brain. Tr. 410-11. The bullet that entered through Harris’s neck perforated his trachea, then perforated the major

subclavian artery, went through the left upper lobe of the lung, and ultimately entered the soft tissue of his left arm. Tr. 412. The gunshot to the neck was the fatal gunshot. Tr. 412-13. The final gunshot entered Harris's lower back and twice hit his small intestine. Tr. 413.

After the shooting, Applicant fled the apartment. Tr. 510. He sought a ride from a neighbor who happened to be leaving at the time. Tr. 214. This neighbor gave Applicant a ride from the Apartment complex. Applicant told her he was in a fight with his girlfriend and he "just wanted to get away." Tr. 215. Applicant was later arrested at a friend's house. Tr. 324; 510; 512.

Captain McDonald interviewed Applicant after he was arrested. After being *Mirandized*,¹ Applicant agreed to speak with Captain McDonald. Applicant initially denied any involvement and any knowledge of the shooting, and further denied being present. Tr. 328. Even after being confronted with some of the facts that the officers knew from Speech-Harris, Applicant continued to deny involvement. However, Applicant's story changed to indicate he was at the apartment that morning but had gotten up and left to buy some marijuana and had not returned by the time of the incident. Tr. 329. Applicant's story changed again as the questioning continued. His third version indicated he was present at the apartment, awakened in the living room, and found a gun on the floor. Applicant indicated the gun was a dangerous gun because the hammer was always cocked. He said he picked it up and it just went off and struck Harris. Applicant told Captain McDonald he had the gun in his hand and it "kept going off and struck Speech-Harris." Tr. 329.

Eventually, Applicant led other investigators to where he had disposed of the gun. Tr. 331. After returning, he again spoke with Captain McDonald and gave a written statement which differed from his prior statements. He indicated they have a gun at the apartment for protection and keep it under the couch in the living room. Applicant stated Harris picked up the gun so none

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

of the children would get it. T. 332. Harris put the gun in Applicant's hand after Applicant warned him about the hammer being cocked. Applicant explained the gun just went off and hit Harris, and then it went off a few more times and it hit Speech-Harris. T.333. He indicated there was no argument with Harris that morning and that he did not intentionally shoot Harris. Tr. 334.

Applicant later gave a second written statement. Tr. 582. In this statement, Applicant indicated Speech-Harris entered the kitchen mad with Harris in tow. Harris then looked at him and he said "man" which Applicant took to mean that Harris wanted him to move. Harris was coming at him and going for the gun. Tr. 583. Applicant said he grabbed the gun and it fired, shooting Harris. He said Harris was still on him so he shot him again. Speech-Harris then charged Applicant, and Applicant shot her. Tr. 584. This is a similar version of events to the one Applicant testified to at trial, but, at trial, he had difficulties remembering many details of the events. Tr. 519-23.

The trial court ultimately charged the jury with murder, voluntary manslaughter, and involuntary manslaughter as it related to the killing of Harris. The trial court charged both attempted murder and assault and battery of a high and aggravated nature (ABHAN) as it related to the wounds sustained by Speech-Harris. The trial court also charged accident and self-defense. Tr. 666-84. The jury convicted Applicant of voluntary manslaughter for killing Harris and attempted murder as to Speech-Harris.

III. ALLEGATIONS

Applicant claims he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
 - a. Failing to object to the trace evidence examination of the victim's clothing;
 - b. Failing to hire an expert to show it was a close encounter / struggle;
 - c. Failing to properly advise Applicant regarding the issues and motions in his trial;

- d. Counsel never attempted to have Applicant's case settled and conveyed a false plea offer of fifteen years but never brought Applicant to accept the plea offer;
 - e. Failing to object to the trial court only re-charging the jurors on lesser-included offense; and
 - f. Failing to obtain any information regarding the lease of the apartment.
2. Prosecutorial Misconduct.

Applicant requests relief in the form of a new trial.

Attached to this return and incorporated herein are the Richland County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the trial transcript, and the records of this PCR action.

IV. RESPONSE TO INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant's allegations of ineffective assistance of trial counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625.

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689.

“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort 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.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant’s mere speculation about what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice. *Id.*

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”).

V. MOTION FOR A MORE DEFINITE STATEMENT

Applicant alleges prosecutorial misconduct; however, Applicant has failed to assert any facts sufficient to support this allegation. Section 17-27-50 of the South Carolina Code provides a PCR application shall “specifically set forth the grounds upon which the application is based,” and be supported by “[f]acts within the personal knowledge of the applicant.” Further, it is Applicant’s counsel’s duty to “insure that all available grounds for relief are included in the application and shall amend the application if necessary.” Rule 71.1, SCRCP.

Because Applicant has failed to allege facts sufficient to support his claim of prosecutorial misconduct, the State moves for Applicant, through counsel, to provide a more definite statement pursuant to section 17-27-50 and Rule 71.1, SCRCP.

VI. ANY FUTURE AMENDMENTS & INVOCATION OF DISCOVERY

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*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Id.* at 24 (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.”).

Pursuant to section 17-27-150 of the South Carolina Code, 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. Further, 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. As noted above, 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. *See Love, supra*.

VII. ANY AND ALL OTHER ALLEGATIONS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VIII. CONCLUSION

WHEREFORE, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMUEL L. KEY
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

2/25, 2020

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Dexter L. Myers #365377,) CASE NO.:2019-CP-400-2444
)

Applicant,)

vs.)

MOTION TO AMEND APPLICANT'S
POST-CONVICTION RELIEF
APPLICATION

The State of South Carolina,)

Respondent.)

2020 APR -8 AM 10:39
FILED
CLERK OF COURT
RICHLAND COUNTY
S.C.

The Applicant hereby Amends Answer to number (9) and (10) his Application for Post-Conviction Relief to state the following:

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

(A) the Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I § 14 of the South Carolina Constitution.

10. State concisely and in the same order the facts which support each ground set out in (9):

(A) The Applicant was provided with deficient representation by his Attorney in that the conduct of his Attorney was objectively unreasonable under the circumstances Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the Applicant proceeding was prejudiced, and it is reasonable probability pursuant to Strickland 466 U.S. at 694, defense counsel was ineffective based on one or more of the following:

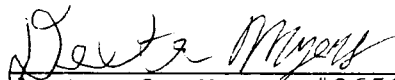
1. Counsel was ineffective for abandonment in critical stage by failure to object to the Trial Judge improper Jury Instruction on Voluntary manslaughter. See Trans. Pg 690-692 Lines 4-7.

2. Trial counsel was ineffective for failing to secure Expert Witness on Gunshot residue and Trace evidence to challenge the State's theory of murder.

3. trial counsel was ineffective for not requesting a Mental Examination pursuant to S.C. Code §44-23-440(c) when he knew that the Applicant had a lengthy record of psychiatric treatment that would have shown sufficient doubt of Applicant's competence to assist his counsel in preparing his defence.

4. Trial counsel was ineffective for failing to secure an Plea Agreement of 15 years that he disclosed to my Family Members that I would have accepted because it would have resulted in my receiving a lesser sentence.

Dated: March 31, 2020



Dexter L. Myers #365377
Murray Unit
4460 Broad River Rd
Columbia, SC 29210

STATE OF SOUTH CAROLINA)
COUNT OF RICHLAND)
DEXTER L. MYERS #365377)
Applicant,)
Vs.)
State of South Carolina,)
Respondent.)

THE COURT OF COMMON PLEAS
CASE NO.: 2019-CP-40-2444

AMENDMENT TO
POST CONVICTION RELIEF
APPLICATION

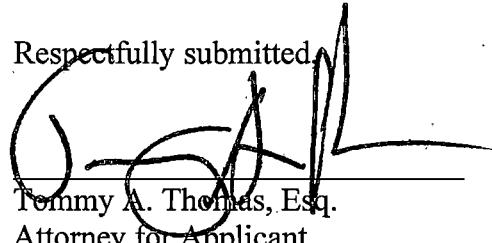
2022 NOV -7 PM 2:30
RICHLAND COUNTY
FILED

The Applicant above named in the aforementioned matter, through his Attorney, Tommy A. Thomas, respectfully moves to amend his original Post Conviction Relief Application as follows:

1. That Trial Counsel's theory of defense was self defense and that this incident was an accident.
2. That an offer was made at Trial for a plea to thirty (30) years. That the Jury had been out for a day and a half before reaching a verdict. The Applicant is informed and believes that he was ill advised regarding accepting the plea offer.
3. The Applicant was found guilty of Voluntary Manslaughter and Attempted Murder and received consecutive sentences totaling Fifty (50) years.
4. Trial Counsel filed a Motion for Reconsideration. This Motion for Reconsideration was not ruled upon until several years after conviction. That due to this passing of time, trial counsel failed to provide the Court with a transcript of the trial. Nor did she brief the Court on their position and reasons why Applicant should be granted reconsideration. No oral argument was made before the Court regarding the Motion.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tommy A. Thomas', written over a horizontal line.

Tommy A. Thomas, Esq.
Attorney for Applicant

P.O. Box 88
Irmo, SC 29063
(803) 732-5507

November 2, 2022

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2019-CP-40-2444
	)	
	)	
DEXTER MYERS,	)	
	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT,	)	

January 11, 2022
Columbia, South Carolina

BEFORE:

THE HONORABLE GEORGE M. MCFADDIN, JR., JUDGE.

APPEARANCES:

TOMMY THOMAS, ESQ.
Attorney for the Applicant

D. RUSSELL BARLOW, II, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KAREN AMBROZIAK
Official Court Reporter

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(No exhibits were introduced)

> > > < < <

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1 MR. BARLOW: May it please the Court, Your Honor.
2 Russ Barlow on behalf of the State of South Carolina.
3 This is the Post Conviction Relief matter of Dexter Myers
4 versus the State, case number 2019-CP-40-2444 out of
5 Richland County.

6 Applicant was indicted at the August 2014 term of the
7 Richland County grand jury for attempted murder,
8 2014-GS-40-5481, and murder, 2014-GS-40-5482. Applicant
9 was represented by Assistant Public Defenders Tracy
10 Pinnock, J. Rhodes Bailey and Catherine Mubarak; Assistant
11 Solicitors Luck Campbell, Meg Walker and J.J. Shellenburg
12 prosecuting the case. Applicant's case proceeded to a
13 jury trial on August 31st to September 4th, 2015, before
14 Judge J. Durham Cole.

15 The jury convicted Applicant to the lesser-included
16 offense of voluntary manslaughter and that's indicted for
17 attempted murder. Judge Cole sentenced Applicant to serve
18 an aggregate term of 50 years imprisonment, 20 years for
19 attempted murder and 30 years for voluntary manslaughter.
20 Applicant appealed.

21 Appellate defender, Susan B. Hackett, perfected
22 Applicant's appeal, and the case was submitted on briefs
23 to Court of Appeals on February 1st, 2019. Thereafter, on
24 March 27th, 2019, the Court of Appeals affirmed
25 Applicant's convictions and sentences.

1 State v. Myers, opinion number by 2019-1.9,
2 March 27th, 2019. The remittitur was returned on
3 April 17th, 2019. And, Your Honor, let me hand up that
4 packet. I apologize. This is on this case.

5 THE COURT: Thank you.

6 MR. BARLOW: Yes, sir. Applicant timely commenced
7 this PCR action on May 1st, 2019, where Applicant asserted
8 he is being held in custody unlawfully, alleging
9 ineffective assistance of counsel for failing to object to
10 the trace evidence examination of victim's clothing, for
11 failing to hire an expert to show it was close encounter
12 and struggle, for failing to properly advise Applicant
13 regarding the issues and motions in his trial.

14 Counsel never attempted to have Applicant's case
15 settled and conveyed a false plea offer of 15 years, but
16 never brought Applicant to accept the plea offer, failing
17 to object to the trial court, only recharging the jurors
18 on the lesser-included offense and for failing to obtain
19 any information regarding the release of the apartment.

20 As another claim, he filed prosecutorial misconduct.
21 Applicant requested relief in the form of a new trial.
22 Respondent filed his return and motion for a more definite
23 statement on April 8th, 2020.

24 Thereafter, Applicant, through counsel, amended his
25 application for PCR on November 7th, 2022, to allege the

1 following: That trial counsel's theory of defense was
2 self-defense and that this incident was an accident, that
3 an offer was made at trial for a plea of 30 years, that
4 the jury had been out for a day-and-a-half before reaching
5 a verdict.

6 The Applicant is informed and believes that he was
7 ill advised regarding accepting the plea offer. The
8 Applicant was found guilty of voluntary manslaughter and
9 attempted murder and received consecutive sentences
10 totaling 50 years, and trial counsel filed a motion for
11 reconsideration.

12 This motion for reconsideration was not ruled upon
13 until several years after conviction, that due to this
14 passing of time, trial counsel failed to provide the Court
15 with a transcript of the trial nor disagreed on their
16 position and reasons why Applicant should be grant
17 reconsideration. No oral argument was made before the
18 Court regarding the motion.

19 At this time, Your Honor, we would ask that counsel
20 state for the record which allegations he intends to move
21 forward on.

22 THE COURT: Mr. Thomas.

23 MR. THOMAS: Good morning, Your Honor.

24 THE COURT: How are you?

25 MR. THOMAS: Your Honor, we intend to move forward on

1 all of these issues. We will be very brief in regards to
2 those.

3 THE COURT: All of --

4 MR. THOMAS: All the issues, Your Honor, as stated by
5 the Attorney General in the original application for Post
6 Conviction, as well as they're only actually two issues
7 that are involved in the amended application. We intend
8 to go forward on those, as well, Your Honor.

9 MR. BARLOW: And, Your Honor, it was my understanding
10 that they were not moving forward on prosecutorial
11 misconduct. And I released the --

12 MR. THOMAS: I'm sorry. That is correct, Your Honor.
13 When I said all the issues, I meant all the issues except
14 for the prosecutorial misconduct.

15 THE COURT: All right, sir. I'm ready.

16 MR. THOMAS: May it please the Court. We'd call
17 Dexter Myers to the stand.

18 DEXTER MYERS, after being duly sworn,
19 testified as follows:

20 THE BAILIFF: All right. Have a seat here. Watch
21 your step up. State your full name for the record.

22 THE WITNESS: Dexter Myers.

23 DIRECT EXAMINATION:

24 BY MR. THOMAS:

25 Q Dexter, can you hear me?

1 A I can hear you.

2 Q Okay. Good. Dexter, you filed an application for
3 Post Conviction Relief?

4 A Correct.

5 Q Okay. And, roughly, when you were arrested, I don't
6 need the exact day, but when were you arrested?

7 A I was arrested July 2nd, 2014.

8 Q All right, sir. And what were you charged with?

9 A I was charged with murder and attempted murder.

10 Q Okay. And those were the only two charges?

11 A That was the only two charges.

12 Q That's significant enough. And you went to trial?

13 A I did.

14 Q And you were convicted?

15 A Of voluntary manslaughter and attempted murder.

16 Q Okay. And the voluntary manslaughter was a lesser
17 included?

18 A Yes, sir.

19 Q Okay. What kind of sentence did you receive?

20 A I received a consecutive sentence.

21 Q Consecutive?

22 A Yeah, I received a consecutive sentence.

23 Q And what did you receive on the voluntary
24 manslaughter?

25 A I received 30 years on voluntary manslaughter.

1 Q And what did you receive on the attempted murder
2 charge?

3 A Twenty years.

4 Q So off total sentence of what?

5 A Fifty years.

6 Q Fifty years?

7 A Yes, sir.

8 Q Do you know when your max-out is?

9 A Not at this moment, but as I kind of -- as I
10 remember, it was like 2059 or something like that as far
11 as like that's the only thing I probably could remember.

12 Q And do you know, roughly, how old you would be when
13 you max-out?

14 A Probably like 64 or 67, something like that.

15 Q And you're how old now?

16 A Oh, I just turned 29.

17 Q How old were you when all this happened?

18 A I was 20.

19 Q Twenty?

20 A Yeah, I was 20 years old.

21 Q Now, you did file an appeal?

22 A Yes, sir, I did.

23 Q And that was handled by Appellate Defense?

24 A Yes, sir.

25 Q And did you win your appeal?

1 A No, sir.

2 Q And after the appeal, you filed for Post Conviction?

3 A Yes, sir.

4 Q And you and I have talked about this. Post
5 Conviction carries some consequences to it. In other
6 words, if you were to win your Post Conviction, you are
7 asking for a new trial?

8 A Of course.

9 Q And your conviction to be overturned?

10 A I guess it could.

11 Q Now, you could be taken back and tried for murder,
12 and you could receive a higher sentence than what you've
13 already received?

14 A I understand.

15 Q Okay. You understand that. Based upon that, you
16 still want to go forward today?

17 A I do.

18 Q All right. Now, Dexter, briefly, tell us about what
19 the State said happened in this case?

20 A Well, the State made it seem like I just murdered
21 someone, like, they just, basically, put it as, like, I
22 premeditated this and I meant to do it. So they put it as
23 to the jurors and to the -- you know, the people who were
24 there, like, I murdered him intentionally, so that's what
25 it was really.

1 Like, there was no -- they made it seem like I was
2 voluntary manslaughter. I had to do it through a whole
3 jury getting that. So it was like, they, basically, took
4 me to trial on murder and attempted murder. They felt
5 like I committed murder.

6 Q So you were living where at the time?

7 A I was living in Brook Pines off Broad River Road.

8 Q And who were you living with?

9 A I was with my sister and her husband.

10 Q Okay. And who all -- how many people were living
11 there in that apartment?

12 A As the time I can remember, it was probably like me,
13 my sister, her husband and kids and my little brother.

14 Q All right. And your little brother was there, too?

15 A Uh-huh.

16 Q And this happened one morning?

17 A Yes, sir, it happened one morning.

18 Q All right. And who was it that got killed?

19 A My sister's husband got killed.

20 Q All right. Did your sister -- did she get shot?

21 A Yes. Yes, sir, in that instance, she had gotten
22 shot.

23 Q All right. But where was she shot?

24 A I don't even -- like, as far as like then, even to
25 now, it was said when we was going to trial, it said

1 multiple times, she was shot in plenty of places because I
2 haven't never really talked to her. But it said she was
3 just shot below the waist and stuff like that. That's all
4 I know.

5 Q And she was treated at the hospital and released?

6 A Yes, she was, she was.

7 Q Okay. Okay. Now, did you -- you were taken to the
8 detention center. Did you make bond?

9 A No, I never got a bond.

10 Q How long were you in the detention center?

11 A Like 14 months.

12 Q And you hired an attorney or you had an attorney
13 appointed to represent you?

14 A I had attorneys appointed to be represented -- I had
15 attorneys to me to be represented by.

16 Q And who was appointed to represent you?

17 A Ms. Tracy Pinnock was my Public Defender while I was
18 in the county jail, but when I was going to trial, it was
19 Catherine Mubarak and Rhodes Bailey.

20 Q Who was the attorney that you spoke with most of the
21 time?

22 A Ms. Tracy Pinnock.

23 Q Okay. Now, with you being in the detention center,
24 this was during Covid?

25 A Was it during Covid?

1 Q Yeah.

2 A No, this was like 2015. I don't think -- I ain't
3 never heard of Covid.

4 Q Okay. When did you go to trial?

5 A I went to trial, like, 2015.

6 Q All right. So. You went prior to Covid?

7 A Yes, sir.

8 Q Now, how many times did Ms. Pinnock come and visit
9 with you?

10 A As far as like when I was in the county jail, like, I
11 hadn't saw her, like, many times, like, until my trial
12 date. It was, like, four times up until my trial and
13 that's when I started seeing her on my trial date. I
14 think she came to visit me, like, four times and that
15 fourth time, she was -- her last time, she told me,
16 basically, was a plea of whatever it was for and they had
17 a State witness who was supposed to, you know, volunteer a
18 statement on me and they was telling me to take 30 minutes
19 or go to trial. And that's what it was.

20 Q All right. We'll talk about your pleas, but when you
21 would meet Ms. Pinnock, what would you talk about?

22 A Really, it was, like, really nothing. It was just,
23 basically, like, you know -- because I had made a
24 statement and, also, my case as far as myself, not nobody
25 else, but she was just, like, you know, she feel like I

1 shouldn't have made a statement in my case, you know what
2 I'm saying, telling them what happened.

3 She just figure I should have just got locked up, you
4 know, just saying nothing. But I had made a statement to
5 her myself. And that's just really what it was. That was
6 the problem that it was it. But other than that, it
7 wasn't really nothing. Like I said, she had told me
8 somebody had volunteered a statement.

9 I was trying go up for bond, and then when I tried to
10 go up for bond, they told me they had a person that was
11 testifying on me. And they wanted me to take 30 minutes
12 or go to trial.

13 Q Okay. Now, did you -- so this was always going to be
14 a trial or did you -- you did talk to her about plea
15 offers?

16 A I asked for a plea offer, like, as far as, like, you
17 know, reasonable plea offers, but, you know what I'm
18 saying, I don't know if Luck Campbell ever took it or
19 whatever. But like I said, when I went to trial, that's
20 when they said something about a plea offer after that.
21 Before that, I asked, but it was never nothing just put on
22 the table or nothing like that.

23 Q All right. Let's talk about -- it's a little bit
24 ahead, but let's talk about your plea offers. When you
25 and I discussed this, were there two plea offers?

1 A No.

2 Q Okay.

3 A As far as like what you mean were there two plea
4 offers?

5 Q What was the deal with a 15 -- was it a 15 --

6 A It was a 15-year plea offer, like, while I was in
7 trial. The day the jury was asking for clarification on
8 deliberations, they came to me. They came to me. They
9 was like, "Myers, how much time would you be willing to
10 do?"

11 I said, "Shoot. Time served."

12 They were, like, "No. Be reasonable."

13 So I was like, "Well, what you think? How would 15
14 years be?"

15 "Would you sign it if we bring you 15 years?"

16 And I was, like, "Of course, I will sign it if you
17 bring me 15 years."

18 They were, like, "All right. We'll bring it."

19 They put me back in the holding cell downstairs and
20 they left. So when they left out, I was in the holding
21 cell. I went to sleep. So the next thing I know, I was
22 waking back up, they were pulling me out and like, hey,
23 you've got to come back upstairs for jury clarification on
24 deliberation again. So I'm, like, all right.

25 When I came back up here, it was over with. I was,

1 like, "So what's going on?"

2 They was like, "You are about to be sentenced."

3 I'm, like, "I'm about to be sentenced?"

4 They was like, "Yeah."

5 Luck Campbell basically went to my sister, and my
6 sister told them, "We don't want him to get 15 years. I
7 want him to get the maximum because he killed my husband."
8 And that's what was done. They never put no 15 years on
9 the table. I guess that's what it was.

10 Q So you were hoping for 15?

11 A Well, yes, I guess. I guess as far as what they told
12 me and I guess that's how it happened.

13 Q All right. Now, but there was a 30-year plea offer
14 that was made, 30?

15 A Yeah, they said 30 mandatory or go to trial. That's
16 what she said, something about 30 mandatory or go to
17 trial.

18 Q And did you discuss that with Ms. Pinnock?

19 A Yeah. Ms. Pinnock is the one that told me that.

20 Q Okay. Did you accept that offer?

21 A No, sir, I didn't accept it.

22 Q Okay. Now, going back to when you were in the
23 detention center, did you go over the discovery with your
24 attorney? Do you know the word discovery means?

25 A As far as -- yeah, as of now, like, I know what

1 you're saying. As far as motion discovery?

2 Q Yes, sir.

3 A No, I didn't even really look at it. Like I said, we
4 talked about me making my statement as far as multiple
5 statements and the statement I made on the incident. And
6 I guess by me making multiple statements and making a
7 statement on myself, that's where she felt like I messed
8 up at. So, you know, that's just what -- we just talked
9 about it.

10 Q All right.

11 A There was stuff I didn't even know about until I went
12 to trial. All of this ballistic, the pathology, I didn't
13 know nothing about that until I started going to trial. I
14 was like, oh, they had that and other stuff I started
15 hearing about. I ain't never really sat down and focused
16 about stuff like that.

17 Q Now, did you go over those reports, the ballistic
18 reports and the pathology reports?

19 A No, no, sir, not as far as I can remember. Because
20 like I said, I didn't even know who those people were
21 until I went to trial.

22 Q All right. Now, what is your educational level?

23 A As far as even now, like -- well, even then, like, I
24 ain't finished school. I ain't even finished school.
25 When I was on the street, like, I had job, like I told

1 them, but I haven't finished school period.

2 Q Have you had any mental health issues?

3 A Yes, sir, they knew that. I've been on mental health
4 since I was a child.

5 Q Have you?

6 A Yes, sir.

7 Q Do you know what your diagnosis is?

8 A Even now, like, you know, like a lot of stuff
9 happened, but like I said, ADHD. I've been bipolar,
10 schizophrenic, stuff like that, you know, just -- not PTSD
11 and stuff like, but I'm saying even that time, like, ADHD,
12 bipolar, schizophrenic and things of that nature.

13 Q Did you tell Ms. Pinnock about that?

14 A Yeah, because they asked me on the stand. I had told
15 them that before I even got on the stand. I'm, like, man,
16 you know, I'm figuring if I'm on mental health in the
17 county jail or anything or when I was mental health on the
18 street, like I'm feeling -- she probably knew because I
19 was on mental health, and mental health was helping me in
20 the county jail.

21 Q Now, when you were working with her in preparing your
22 case for trial, did you understand what was going on?

23 A No, I didn't. I didn't understood what was going on.
24 Like I said, my counsel was telling me what to do, so I
25 went off what they told me to do.

1 Q So, basically, what you were doing is what
2 Ms. Pinnock advised you, that's what you did?

3 A Yes, sir, I was just doing what my counsel told me to
4 do.

5 Q You didn't have any codefendants, did you?

6 A No, sir, I didn't have any codefendants.

7 Q Your brother was not charged?

8 A No, sir, he was never charged.

9 Q Okay. Now, you made some allegations both in your
10 application and my amended application. I'd like to go
11 through some of those with you. Now, you talked about the
12 issue about you had the right to be in the apartment when
13 this happened and you made some comments to me about being
14 on the lease?

15 A Yeah, I felt like counsel, you know, was ineffective
16 on that part because she never even tried to gather a
17 lease or see if I was there, supposed to be there because
18 the State was saying that I supposedly got put out, I
19 wasn't supposed to be there. I wasn't welcome there. My
20 sister was saying that I wasn't supposed to be there.

21 But as far as, you know, I felt like if she would
22 have just got the lease and everything. Because before I
23 -- what I know in my mind my sister told me, like, she put
24 me on a lease.

25 So I don't understand, like, what they were saying I

1 was not supposed to be there and I was unwelcome. And
2 they said that I was told leave. They were just making it
3 like I wasn't supposed to be there.

4 So like I said, if she would have got the lease, it
5 would show, like, hey I wasn't just there to kill no one.
6 I didn't just come home unwelcome and kill him. It was
7 not like that.

8 Q So what was the importance of the allegations that
9 they had asked you to leave?

10 A The State had said that my sister told had told me to
11 leave. They said they put me out, I guess, things of that
12 nature that they were making it seem like I was not
13 supposed to be there.

14 Like, I had no reason to be there. Like, I just came
15 and someone home and I murdered this person. Like, that's
16 what they made it seem like. Like, I wasn't supposed to
17 be there. Like, I was told to get out prior to that
18 incident and stuff like that.

19 Q Right. And did you talk to Ms. Pinnock about that?

20 A Did I talk to Ms. Pinnock about --

21 Q Yeah, about you being -- that you had a right to be
22 in the apartment?

23 A At the trial, I did, but, you know, like, it was too
24 late then, like, it was too late. By that time, I was
25 looking at her, like, why you making it seem like I wasn't

1 supposed to be there.

2 I was speaking with her in my mind. I'm thinking,
3 like, hey, I was on the lease, but no one had got the
4 lease to even see if I was there, supposed to be there,
5 you know, stuff like that.

6 Q Okay. All right. Now, but you didn't -- do you know
7 whether or not Ms. Pinnock looked into that prior to your
8 trial?

9 A I don't think she did. I don't think she did.

10 Q Okay. Now, how about as far as a theory of defense?
11 How was she going to defend you? Do you know?

12 A Like I say, it was really like me -- it was like me
13 taking the stand to let these people know I didn't murder
14 this man the way that they said it. So it was only to,
15 like I said, my self-defense immunity and whatever, I
16 guess stand your ground hearing.

17 It was told for me to waive that hearing so I
18 wouldn't give up the defense of me having to testify on
19 myself in my trial, which was me testifying saying that I
20 didn't just -- I killed this man, I didn't just murder
21 him. That was only defense I had.

22 Q So you were saying that this was in self-defense?

23 A Yes, sir.

24 Q Okay. And you talked to Ms. Pinnock about that?

25 A I talked to her about that.

1 Q And, I guess, you're talking about, what, a stand
2 your ground motion?

3 A I guess that's what it was, stand your ground,
4 self-defense motion at that time. I guess that's what it
5 was.

6 Q All right. Did you have a stand your ground hearing?

7 A No, sir. I was told to waive it, so that's what I
8 did, waived.

9 Q That's what Ms. Pinnock told you to do?

10 A Yes, sir.

11 Q Okay. Now, what happened that morning? There was a
12 struggle between?

13 A Yes, sir. Like I said, that morning -- it happened
14 early in the morning, so it was like -- I guess my sister
15 had came out the room. I don't know what they had going
16 on as far as their end, but my sister was coming out the
17 room and he came out.

18 All I can remember is he looked at me, you know what
19 I'm saying, he just came at me on some stuff, like, you
20 know what I'm saying, like, dude, like what? It was like
21 tension in the air, but, you know, I don't know what they
22 had going on, an argument, whatever. So like I said,
23 there was gun in the house. You know what I'm saying,
24 there was a gun inside the house. There was a gun on the
25 floor.

1 Q Whose gun was it?

2 A It wasn't my gun. It was there. Like I told them,
3 it was never my gun. My sister knew about that gun being
4 in the house. It was in the house, you know. It was, I
5 guess, whatever gun was supposed to be there. Everyone
6 knew because it was there. It was not my gun. Like I
7 told them, it was not my gun. If that's the case, I would
8 have been charged with a gun. I was never charged with no
9 gun because I told them it wasn't my gun.

10 Q Right. Right. Now, there was -- it was your belief
11 and, I guess, your testimony, as well, that there was a
12 struggle?

13 A Yes, sir.

14 Q And so describe this actual event. Was it an
15 accident or what was going on?

16 A Okay. Like I said, when he came out the room, you
17 know, he said things to me as far as, like, you know what,
18 what's up, things like that. And then like I said, he
19 went for this gun.

20 So when he went for this gun, you know, my mind was
21 thinking like whoa, like, you know, I was scared. So it
22 was like weird -- his reaction. He reacted, so I was
23 like, oh, man, I'm trying to prevent this from going on,
24 whatever he's fixing to do.

25 So when that happened, we just got the -- it was just

1 a full -- both of us got to going at a gun. And like I
2 said, we were into this whole situation where I blacked
3 out and I could just hear people screaming and I was
4 tussling and fighting. And I just hear stuff going pow,
5 pow, stuff like that. That's what I can remember.

6 Q All right. And you talked to your defense attorney
7 about all this?

8 A Yes, sir, I told her about all that.

9 Q Did she ever tell you about -- and I know -- about
10 how she was going to use these in defense of you? Did
11 y'all discuss that?

12 A No, no, not really, it wasn't nothing like that. Me
13 and her never discussed anything as far as like that.

14 Q Well, what did you understand, if anything, that was
15 going to happen at trial?

16 A I ain't understood nothing. I just knew I was going
17 to trial on murder and attempted murder and I could
18 possibly be facing life.

19 Q Yeah.

20 A That's just all I knew. And I was told to take 30
21 minutes. I felt like I didn't do it in the way they said,
22 so I wasn't taking 30 mandatory.

23 Q Now, you said that you were facing potential life?

24 A Yes, sir.

25 Q Which would be life without parole?

1 A Yes, sir.

2 Q You understood that?

3 A I understood that.

4 Q Okay. Did you ever talk with Ms. Pinnock about the
5 risks involved and what she thought was your risk as far
6 as being convicted and what she thought your risk was in
7 regards to receiving that ultimate sentence of life
8 without parole?

9 A You're saying like --

10 Q Did she talk to you about what she thought your
11 chances of being convicted were and what she thought your
12 chances of receiving that maximum sentence were?

13 A I'm going to be honest with you, if it wasn't for
14 that jury, I don't think -- I feel like if it wasn't for
15 that, they was really going to do what they were going to
16 do. They were going to probably find me guilty of murder.
17 You know, I just -- and me taking the stand on my own
18 saying -- like on my end -- you know, some people, you
19 know, they felt like I shouldn't have did that because I
20 guess they felt like oh, I messed up. I felt like I was
21 telling the truth. This is my own way to let these people
22 know that I didn't murder this man the way they said it.

23 Q Was by you taking the stand?

24 A By me taking the stand.

25 Q And you did take the stand?

1 A And I did took the stand.

2 Q Now, you've also made some allegations that
3 Ms. Pinnock was ineffective in regards to what you call
4 trace elements -- or trace evidence examination. And one
5 of those was the clothing?

6 A Had counsel secured an expert witness to demonstrate
7 that gunshot residue was on both victim's hands and my
8 hands, that the gun was discharged during the struggle,
9 also, trace evidence on victim's clothing and my clothing,
10 the outcome of my trial would have been different.

11 Q And she didn't do that?

12 A She didn't do that.

13 MR. THOMAS: Your Honor, just for the Court's
14 information, the references to the clothing are on Page
15 421 and 422 of the transcript.

16 BY MR. THOMAS:

17 Q Now, you had also -- go ahead.

18 A Also, like I said, well, me saying at Page 267 where
19 the State didn't do no examination on the victim's
20 clothing period.

21 Q Okay. Now, you and I talked about powder, gunpowder
22 residue?

23 A Yes, sir.

24 Q And we were talking about GSR testing?

25 A Yes, sir.

1 Q And what did you feel like was important in regards
2 to the gunpowder testing?

3 A Gunpowder testing, they were just making it seem like
4 I had gunpowder on my hands and he didn't have no
5 gunpowder. Out of gunpowder evidence, you got three
6 elements.

7 You know, I got found with three elements on my hand.
8 He got found with two out of three, which was -- you know
9 what I'm saying, it was gunpowder, it just wasn't that
10 distinctive. So they weren't, basically, trying to say
11 no, that's not gunpowder.

12 If you're around a gun and you been around a gun,
13 you're going to get some type of paraphernalia of
14 gunpowder, you know, things like that. But, you know,
15 like I said, they were trying to make it seem like okay, I
16 got gunpowder on my hand, but he doesn't have any
17 gunpowder, period. That's not gunpowder.

18 Q Right. Okay. And that was testified to by an
19 analysis of an expert from SLED?

20 A That was testified by an expert from SLED that he had
21 two out of three elements and I had three elements.

22 Q And do you feel like your attorney was prepared to
23 cross-examine that expert on that evidence?

24 A No, no, sir, she wasn't.

25 Q Why not?

1 A Because at the time, like I said, the State didn't
2 even do their examination. They were just making it seem
3 like I just murdered this person, trying to find every
4 way, like, hey, he shot this person from a distance. It
5 wasn't no struggle.

6 And she was, basically, not even prepared for that
7 because she had to tell me once I heard all this, like,
8 just put it on your PCR. And it was, like, hey, okay, the
9 State didn't do any examination on the clothing or the GSR
10 kit fully to the point where they knew that this actually
11 was gunpowder particles. She didn't do her part as far as
12 on that level of securing an expert witness to demonstrate
13 that gunshot residue was on both our hands.

14 Q All right, sir. Now, do you remember the testimony
15 of the medical doctor that did the autopsy?

16 A I think it was the lady -- I don't know her name, I
17 don't know her name, I don't know her name.

18 Q Do you remember her talking about the distance of the
19 gun from the body or from the victim?

20 A As I looked through my transcript and we were talking
21 about that, I understand where they were saying, like, as
22 far as -- you talking about, like, gunshot entry wounds?

23 Q Yeah. We're talking about the soot and what they
24 call stippling or stippling, the gunpowder on the skin of
25 the victim?

1 A Yeah.

2 Q Do you remember that?

3 A Like, as far as I heard him say, like, you know, you
4 can't get any type of gunpowder on your hands or no type
5 of particle if you're not close by a gun, like, if you're
6 not in the distance of that gunpowder being fired or gun
7 being fired.

8 Q Okay. Right.

9 MR. THOMAS: Your Honor, just for Court's
10 information, that's on Page 419 of the transcript, and it
11 may be for a couple of pages.

12 BY MR. THOMAS:

13 Q Now, did you understand any of the testimony from the
14 pathologist about how far the gun was from the victim when
15 he was shot?

16 A No, sir, no, I didn't understand. That was, like,
17 too far fetched. As far as me listening to him and trying
18 to -- I'm not good with stuff like that, so I was, like,
19 really listening, but it was kind of, like, hard for me to
20 understand what they were saying because I don't
21 understand stuff like that.

22 Q All right. Did you talk to your attorney about that?

23 A Like I said, I asked her in court, like, don't you
24 think if it's two out of three elements, that's gunpowder
25 or that's something like that? And like I said, with the

1 trace evidence and everything, with them not doing the
2 testing on the victim's clothing and stuff, she just told
3 me to put it on my PCR.

4 Q So what do you think that would have been shown, the
5 fact there was gunpowder on both your hand and the
6 victim's hand?

7 A That would have shown that the gun was discharged
8 during the struggle.

9 Q Right. And do you feel like she adequately presented
10 that on your behalf?

11 A No, sir.

12 Q Now, there was also some testimony about the
13 condition of the gun. What, if anything, do you know
14 about the gun's condition?

15 A The gun wasn't in good condition. Like, it wasn't --
16 it wasn't -- it wasn't like it was a brand new gun. It
17 wasn't like it was in fair condition. I guess when they
18 had it, like, when I seen him hold it up, the handle and
19 stuff was broken. I don't know. It was not no good
20 condition gun.

21 Q All right. And how about as far as the trigger of
22 the gun?

23 A They were saying, you know, I guess six-pound trigger
24 or something like that, but, like I say, me not knowing
25 what they know about guns, I just felt like that gun could

1 have just -- like, if you would have just messed with it
2 or tapped it, it could have easily like went off. It
3 wasn't in no good condition.

4 MR. THOMAS: Your Honor, the testimony in regards to
5 the gun trigger is on Page 383.

6 THE COURT: Yes, sir.

7 BY MR. THOMAS:

8 Q Now, you also make allegations in your application
9 about improper jury instruction. And what do you think
10 was improper about the instruction?

11 A Counsel was ineffective for failure to object to
12 improper jury instructions on voluntary manslaughter. The
13 trial judge misconstrued voluntary manslaughter evidence
14 with involuntary manslaughter statute. The jury asked for
15 clarification on the difference between voluntary
16 manslaughter and involuntary manslaughter. The trial
17 judge improperly instructed the jury by saying as stated
18 involuntary manslaughter is the unlawful homicide
19 committed in the absence of malice, but in the sudden heat
20 of passion aroused by sufficient legal provocation. By a
21 trial judge saying --

22 MR. BARLOW: Your Honor, objection, is he reading
23 from something?

24 THE WITNESS: No, no, sir.

25 MR. BARLOW: Okay.

1 THE WITNESS: By trial judge saying as stated
2 involuntary manslaughter is an unlawful homicide committed
3 in the absence of malice, but in the sudden heat of
4 passion aroused by sufficient legal provocation did not
5 give clarification. And counsel should have objected to
6 this error. Had counsel objected to this error, the
7 outcome of my trial would have been different.

8 BY MR. THOMAS:

9 Q The jury sent a note back; is that right?

10 A Yes, sir.

11 Q And they sent the note back to the judge?

12 A They sent the note back to the judge asking him on
13 clarification on the difference between voluntary
14 manslaughter and involuntary manslaughter.

15 Q Right. And so you feel like the trial judge gave an
16 improper explanation in regards to the difference between
17 voluntary and involuntary manslaughter?

18 A Yes, sir. Like I said, the trial judge misconstrued
19 voluntary manslaughter evidence with involuntary
20 manslaughter statute.

21 MR. THOMAS: All right. Your Honor, just for the
22 court's information, that's Page 690 and 692.

23 THE COURT: Yes, sir.

24 BY MR. THOMAS:

25 Q And you believe that counsel's failure to object had

1 what kind of result on you, on your situation?

2 A By me not knowing at that time, I found out after I
3 came to prison and got my transcript that it was not
4 objected on, and like I said, the jury, they -- that was
5 deliberation, so they asked for clarification. They were
6 already in there deliberating.

7 They came back up asking for clarification because
8 they didn't really have an understanding of voluntary
9 manslaughter, involuntary manslaughter. So that left me
10 in -- I didn't know what was going on at that time because
11 I didn't hear what was said.

12 I wasn't good with the law. I didn't know. So it
13 left me like in a disadvantage. I couldn't do nothing.
14 And then it was like the jurors, they were just led by the
15 judge. So the judge gave that improper instruction and it
16 was never objected on and had to clear it up. So that's
17 what happened.

18 Q And you felt like you could have been found guilty of
19 involuntary?

20 A I felt like if he said involuntary manslaughter is an
21 unlawful homicide committed in the absence of malice, but
22 in the sudden heat of passion aroused by sufficient legal
23 provocation, then they probably thought that was
24 involuntary manslaughter.

25 Q All right. You're talking about involuntary or

1 voluntary manslaughter?

2 A They said that involuntary manslaughter, which that's
3 voluntary manslaughter evidence. He told them that
4 involuntary manslaughter by giving the clarification on
5 voluntary manslaughter.

6 Q All right.

7 A He said that involuntary manslaughter is an unlawful
8 homicide committed in the absence of malice aroused by --
9 committed in the sudden heat of passion aroused by
10 sufficient legal provocation. And that's what he left.
11 He said as stated, involuntary manslaughter is an unlawful
12 homicide committed in the absence of malice, but in the
13 sudden heat of passion aroused by sufficient legal
14 provocation.

15 Q All right. Now, you feel like you should have had a
16 mental evaluation?

17 A Had counsel requested competency evaluation, the
18 records would have shown I was mentally incompetent, that
19 I had a record of psychiatric treatment and my trial would
20 have been different.

21 Q And do you feel like that interfered with your
22 ability to work with your attorney?

23 A I felt like it had a -- I felt like it had an effect
24 on that and, like, me not understanding just my trial at
25 all. Like, it had an effect.

1 Q Now, you and I have talked about it and you've
2 indicated to me that you feel like your attorney was
3 ineffective for not negotiating on your behalf a plea
4 agreement?

5 A Yes, sir.

6 Q And how do you feel that she was ineffective in not
7 doing that?

8 A Because, like, it was times when I asked -- I asked
9 them to -- I was like, hey, if you get me 20 years, I'll
10 that and go. I'll take 22. I'll take 20 years. I'll
11 take 25 and I'll go.

12 It was, like, oh, I guess, they would -- they was oh,
13 she's not going to do that. Then they waited until, like
14 I said, come at me, like, would you take 15 years. It was
15 like a day -- like, matter of fact, the time when I did
16 the deliberation, when I was going to deliberation, you
17 know, like I said, I came back upstairs and that's when
18 they told me I was getting sentenced. I still knew that I
19 was in the deliberation phase, but they never really tried
20 to get me to plea from the 30 mandatory I heard.

21 Q Well, you didn't have an offer for 30, 30 mandatory;
22 is that correct?

23 A Yeah, that's what I heard in the beginning. Like, I
24 had 30 mandatory. I could take that or go to trial.

25 Q Why didn't you accept that?

1 A Because I felt like, you know, I ain't meant to kill
2 this person. Then I was thinking in my mind like 30
3 mandatory, that's, basically, like murder. Y'all going to
4 be convicting me of murder. I was pleading to murder.

5 Q So was there an understanding from Ms. Pinnock as to
6 what you were likely to receive at trial?

7 A Yeah, I could be receiving life sentence. I could be
8 receiving life, plus whatever with the attempted murder.

9 Q Did she explain the difference to you between,
10 basically, the 30-year mandatory and the life without
11 parole?

12 A No. No. I just know it was 30 mandatory.
13 Basically, saying 30 mandatory, I'm going to be doing 30
14 day-for-day.

15 Q And you have -- instead of a 30, you have a 50?

16 A I have a 50.

17 Q How did you make a decision to take the stand and
18 testify?

19 A Like I said, when I was with the stand your ground
20 and she was telling me to waive that, it was told to me,
21 like they said, hey, is your plaintiff going to take the
22 stand. They asked my lawyer that, but she had already
23 told me she wanted me to take the stand.

24 Before I had even took the stand, she came to see me
25 the day before and was asking me, like, you know, what she

1 was going to ask me as far as the questions she was going
2 to ask me, cross-examine me. I was, basically, like, told
3 to take the stand so I could get my view out there to the
4 juror.

5 Q And she discussed with you the pros and cons of
6 taking the stand and testifying?

7 A No, she wanted me to take the stand so she could
8 cross-examine me.

9 Q Okay. All right. Now, did you prepare for your
10 testimony? Did you kind of go through with her what about
11 questions she was going to ask you?

12 A She came, like, the day before I took stand. Well,
13 she came that night before the day before.

14 Q All right. Now, a motion for reconsideration of your
15 sentence was filed, are you aware of that?

16 A Yeah, I was aware. I was aware.

17 Q Did you discuss that at all with your attorney?

18 A She just told me that as far as after my trial was
19 over, that she would put in a motion for reconsideration.
20 And, like I said, she came to visit me and, you know,
21 that's just what it was, but it was not nothing that I
22 kind of like understood.

23 It was like, really, okay. I was going up the road,
24 so I was really hoping whatever she did on her part
25 because I felt like it was over.

1 Q All right. All right. So you just knew one had been
2 filed?

3 A Yeah, I just knew one had been filed.

4 Q Now, Dexter, you and I talked about this. Is there
5 anything else that you would like to bring to the
6 attention of the court? Is there anything that you feel
7 like I might have forgotten or not explored fully on your
8 behalf?

9 A I felt like, you know, also, counsel was ineffective
10 for failure to object to the prosecutor bringing up my
11 juvenile record, you know, to get my time ran consecutive.
12 And, you know, they was bringing up charges in my juvenile
13 record that didn't really have nothing do with my charge,
14 just to get my time.

15 Q Okay. All right. Anything further, Dexter?

16 A No, sir.

17 MR. THOMAS: All right. Your Honor, I have nothing
18 further.

19 THE COURT: All right.

20 MR. BARLOW: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 MR. BARLOW: Thank you, Your Honor.

23 CROSS-EXAMINATION:

24 BY MR. BARLOW:

25 Q Good afternoon, Mr. Myers. You're here today

1 alleging ineffective assistance of your trial counsel,
2 correct?

3 A Correct.

4 Q And I just want to confirm for the record that you
5 understand that the relief available to you today that
6 this court can provide you is a new trial on everything
7 you were charged on, correct?

8 A Correct.

9 Q And do you realize what the maximum exposure you're
10 facing at a new trial is?

11 A I guess it's life, life plus 30, life plus whatever.

12 Q Correct, life plus 30. And you got 50, correct?

13 A Correct.

14 Q But knowing that you're facing life plus 30
15 potentially, you're willing to move forward?

16 A I'm willing to move forward.

17 Q So I'm going to go kind of in order or try to, but --
18 of how the allegations were laid out, but I want to start
19 with Ms. Pinnock was your trial counsel, correct?

20 A Correct.

21 Q And did she review discovery with you?

22 A Like I said, the only thing that was reviewed with me
23 was the statement I made upon myself, multiple statements
24 I made upon myself.

25 Q How many times did she meet with you?

1 A Like four times up until when I was supposed to go to
2 bond court, then it was told to me that I had -- or
3 somebody wrote a statement on me and then they were
4 pushing me to go to trial and saying that I had, you know,
5 somebody telling on me or take 30 mandatory or go to
6 trial.

7 Q So she did not only review your statement, but she
8 also reviewed the statement that someone wrote on you?

9 A No, I never even seen the statement. She just told
10 me that the State had a witness that volunteered a
11 statement on me. And that's when she -- I ain't never
12 know the person's name, knew who he was until I came to
13 court.

14 Q So the four plus times that you met, you only
15 reviewed your statement?

16 A Yeah, I only reviewed my statement.

17 Q On all four times, that's all you reviewed?

18 A That's all I ever had her tell me, about me making a
19 statement, that's what messed me up.

20 Q So one of your allegations is failure to object to
21 the trace evidence examination of the victim's clothing.
22 What objections should counsel have made?

23 A She didn't make no objections.

24 Q What objections should she have made?

25 A Like I said, had counsel secured an expert witness to

1 demonstrate that gunshot residue was on both victim's
2 hands and my hands --

3 Q Let me stop right there. What I'm asking you is what
4 -- your allegation was failure to object to trace evidence
5 examination of the victim's clothing?

6 A Well, whatever I wrote down, I felt like she should
7 have not made an objection. She should have secured an
8 expert witness to do an examination on the clothing, on
9 the victim's clothing.

10 Q Okay. But do you recall testimony from the coroner
11 regarding the gunshot residue -- regarding the gunshot
12 through the clothing and that related to the distance?

13 A Like I said, that time I was listening to them, I
14 know what I heard Ms. Luck Campbell and Ms. Megan and them
15 say and they, also, asked the person who was doing the
16 trace evidence that he said -- they said they never
17 gave -- the State never gave us any clothing on the victim
18 to examine.

19 Q Well, you bring up the hand issue. Let's go there.
20 So you recall that there was testimony brought out that
21 the victim in this case or your brother-in-law, the
22 decedent, that they found two elements of GSR on his hand,
23 correct, on one of his hands?

24 A Yeah, but I was told -- what I heard them saying was
25 that it was two out of three elements of, I guess,

1 particles found on his hands. It was three out of three
2 elements found on my hands.

3 MR. BARLOW: Your Honor, for reference, it's Page 254
4 and, also, Page 626 of the record.

5 BY MR. BARLOW:

6 Q And they found two of the elements on your hands,
7 right?

8 A No, they found three out of three elements on my
9 hands, which they said it was gunpowder. And they found
10 two out of three elements on his hands. And they were
11 trying to say they didn't know what it was or wasn't
12 gunpowder. They didn't know what it was.

13 Q But do you understand that it takes all three
14 elements to be present to have the GSR marked as GSR?

15 A No, I didn't understand that, but I knew, like, when
16 they said I had three out of three elements, they were
17 saying that it was gunpowder on my hands, but they wasn't
18 quite sure that he had any type of particle or gunpowder
19 on his hand, period.

20 Q So they positively identified that you had GSR, but
21 they could not positively identify that the victim, the
22 decedent in this case, had GSR on his hand?

23 A Yes, sir.

24 Q But -- let's see. And you recall that trial counsel
25 argued that in her closing, that because the decedent had

1 two particles of GSR on his hand, that it was when he
2 grabbed that gun. That was one of her arguments in
3 closing?

4 A As me thinking back, I don't really -- I don't kind
5 of like remember that she said that, but I know as far as
6 what I know is, like, not -- I don't remember as far as if
7 she said it, but she might have done if that's what you're
8 saying, but I don't remember that.

9 MR. BARLOW: Your Honor, for reference, that's Page
10 626.

11 THE COURT: Yes, sir.

12 BY MR. BARLOW:

13 Q All right, so we can move on. So failure to hire an
14 expert to show it was a close encounter and struggle. Do
15 you recall the State presenting some evidence with regard
16 to the gunshots that occurred, that the coroner testified
17 it was not a close encounter shot?

18 A No, because everything they were saying, it was like
19 they were making it seem like -- I'm just saying, like,
20 the gun, they had, they were making it seem like my sister
21 was shot, like, four or five times and he was shot, like,
22 five times, but I was like how can you make out -- you
23 know what I mean, like, that gun is not -- no gun had ten
24 shots on it, seven or eight shots.

25 Q For the record, actually, do you recall that your

1 brother-in-law was shot three times?

2 A Yeah.

3 Q They recovered two of the three bullets from his
4 body?

5 A Yeah.

6 Q And your sister was shot three times?

7 A I guess. But they were making every entry wound and
8 exit wound seem like it was a shot. Like, that's how many
9 times she was shot. And I guess that's when I was, like,
10 man, I don't see how you can shoot a person five times and
11 shoot this person three times.

12 Q Do you recall the testimony, though, regarding the
13 wounds and that there was no stippling?

14 A Stippling as in?

15 Q Stippling that occurs when the gunshot is close to
16 the person?

17 A Oh, close to the skin?

18 Q Right. And that's how they determined that this was
19 not a close encounter shot?

20 A Yeah, I remember the pathology lady -- I think it was
21 the pathology lady, she was saying something -- she was
22 saying something like that.

23 Q So it's your testimony that your counsel should have
24 hired an expert to counter the State's --

25 A Yeah, she should have had an expert to -- counsel

1 should have secured an expert to demonstrate that it was
2 gunshot residence on both victim's hand and my hand, that
3 the gun was discharged during a struggle. Also, trace
4 evidence on the victim's clothing and my clothing and the
5 outcome of my trial would have been different.

6 Q All right. Moving along, the next allegation was
7 failing to properly advise Applicant regarding the issues
8 and motions in his trial. What issues did trial counsel
9 fail to advise you of?

10 A Like -- when you're saying issues, you're saying,
11 like, she didn't advise me of, like, okay, if I take this
12 self-defense hearing, it might would have got me -- I
13 probably wouldn't have had to go through a trial.

14 I probably would have got found guilty of
15 self-defense. But I waived the hearing because it was
16 like she said she didn't want me to take that hearing
17 because she felt like it would have gave up my defense for
18 taking a stand.

19 Q So you waived your stand your ground hearing?

20 A Yeah.

21 Q And whose choice was that to do that?

22 A That was her telling me and that was what I was told
23 to do, my choice. That was what she told me to do, so
24 that's what I did.

25 Q And you also claim that she failed to properly advise

1 you on motions in the trial. Which motions did trial
2 counsel fail to properly explain?

3 A Like, I didn't understand certain things. Like, I
4 just was hearing her say. And I just was like what that
5 mean, like, certain things I remember her saying to the
6 judge. She wanted to go forward with this motion and
7 certain motions.

8 I just heard the judge say -- he would say certain
9 things like, I guess, he wasn't letting it go through and
10 stuff like that. I didn't know what she meant by some of
11 those motions.

12 I didn't know what was really, you know, supposed to
13 be -- I don't understand that stuff that she had going on,
14 like, which y'all be doing with lawyers and stuff that
15 y'all have going on, I didn't understand it.

16 Q All right. Let me jump to the condition of the gun.
17 On direct, you testified that the gun was not in good
18 condition, correct?

19 A Correct.

20 Q Do you recall that the handgun expert that tested the
21 gun, it was a single and double action gun. Do you recall
22 that?

23 A Single and double action gun? Like, I don't even
24 know. When you're saying stuff like that, I know as far
25 as when you're saying an automatic and, you know what I'm

1 saying, stuff like that.

2 Q Would you agree that they tested the gun to see if it
3 was in working order?

4 A Agree that they tested the gun to see if it was in
5 working order?

6 Q Uh-huh.

7 A I don't know. No, I don't know. I guess that was
8 just their analyst of what they figured the gun was.

9 Q Do you recall testimony that the gun was within --
10 the hammer and the trigger pulls were all within the
11 manufacturer's specifications?

12 A Specifications, as far as like they're saying.

13 Q Normal operating specifications?

14 A Yeah, as far as on that level, if you're saying
15 that's what he said, I guess that's what y'all said, that
16 the gun was up to standard, I guess.

17 Q But you said that the gun was not, that the hammer
18 was broken, correct? That's what you said on direct.

19 A Yeah, if you had that gun right now, y'all still got
20 that gun in evidence, that gun don't look like -- I'm just
21 saying it didn't look like it was in no good condition to
22 say it was up to standard.

23 Q But do you recall that the expert did testify that it
24 was in good working order?

25 A Well, I'm saying, like I said, his analyst, he

1 probably said that, so that's what was said on his behalf.

2 MR. BARLOW: Your Honor, for your reference, that's
3 Page 383 of the transcript.

4 BY MR. BARLOW:

5 Q Moving along. Your next allegation was counsel never
6 attempted to have Applicant's case settled, a plea offer
7 of 15 years, but never brought Applicant to accept the
8 plea offer. Is it your testimony that you were offered --
9 that an offer of 15 was made, but it was never brought to
10 you?

11 A Yeah, it was never, like -- like I said, when I was
12 downstairs at the bottom, they all came to me, like, "How
13 much time would you do?"

14 I was like, "Man, time served."

15 They were like, "You know, let's be reasonable."

16 I was, like, "Reasonable? How much time would y'all
17 expect me to do?"

18 So they was like, "Would you take 15 years?"

19 I was like, "Yeah, I would take 15 years."

20 So they was, like, "If we bring you 15 years right
21 now, would you sign it?"

22 I was like, "Yeah, I'll sign it." So when I got put
23 back in the holding tank down there, I was sitting there
24 thinking they about to come back. I dozed off. Then the
25 officer popped the door and was like, "Hey, you got to

1 come back upstairs."

2 I'm like, "For what?"

3 He's like "For jury deliberations. They need
4 clarifications on deliberations."

5 I was, like, all right. So when I got up here, I sat
6 right there. I was, like, "Where the 15-year plea at?"

7 "Luck didn't put it on the table. She asked your
8 sister, and your sister said what she said."

9 Q When did that occur?

10 A That occurred the day of my trial. That occurred the
11 day of my sentencing. Before I came up here and was
12 sentenced, they told me that before the jury finished
13 deliberating. That's what they told me before all that.

14 Q Now, was it 30 years they offered you --

15 A No, 30 years is what she came before I even went to
16 trial. She said, You take 30 mandatory or go to trial.
17 And I said, I'm going to trial. So when I was in trial
18 during the deliberation phase, before the judge and them
19 told me I was sentenced, that day when I came up here, I
20 did not know I was fixing to be sentenced.

21 They told me that Luck didn't put it on the table
22 because she asked my sister -- and my sister and them can
23 verify that. And they came -- she came to them, was like
24 we're going to give them 15 years, what do you think about
25 this? No, I don't want him to catch 15 years because he

1 killed my husband. Give him the max. That's what was
2 said.

3 Q I guess I'm a little confused because on direct, you
4 testified that nothing was offered before trial, but you
5 also testified that you had a 30-year plea offer offered
6 before trial.

7 A I had 30-mandatory plea offer or go to trial.

8 Q Okay. Okay. Thank you. All right. So the next
9 allegation is failing to object to the trial court only
10 recharging the jury on the lesser included offense. And
11 tell me what objection trial counsel should have made.

12 A Trial counsel's failure to object to trial judge
13 improper jury instruction on voluntary manslaughter where
14 a trial judge misconstrued voluntary manslaughter elements
15 with involuntary manslaughter statute, where he said to
16 the jury where he -- when they asked for clarification on
17 the difference between voluntary manslaughter and
18 involuntary manslaughter, Page 290 -- it would be 296,
19 Lines 4 through 7, where he said, as stated, involuntary
20 manslaughter, where he was giving the voluntary
21 manslaughter instructions, he said as stated, involuntary
22 manslaughter is an unlawful homicide committed in the
23 absence of malice but in the sudden heat of passion
24 aroused by sufficient legal provocation.

25 She never objected to that, like, I object, Your

1 Honor, that's not -- you know, however she was supposed to
2 have did, but she didn't object to that. They let that go
3 on.

4 Q But he did charge them on voluntary and involuntary
5 manslaughter, right?

6 A He charged me with voluntary -- he charged me with
7 voluntary and involuntary. When they asked for
8 clarification on the difference between voluntary and
9 involuntary, that's what he was giving. He was giving
10 them the clarification on voluntary manslaughter and
11 involuntary manslaughter.

12 MR. BARLOW: Your Honor, the recharge is Page 691 and
13 692 for the record.

14 THE COURT: Yes, sir.

15 BY MR. BARLOW:

16 Q Okay. Failing to obtain any information regarding
17 the lease of the apartment. Is it your testimony that you
18 were on the lease?

19 A Well, my testimony was that as far as I knew, like,
20 before it happened July 2nd, like, I knew, like, before
21 all that happened, yeah. I knew before all that happened.

22 Q Is it your testimony today that you were on that
23 lease?

24 A That's my testimony.

25 Q Okay. Do you recall testifying at trial that you

1 were never -- that you never signed a lease, you had never
2 done anything like that?

3 A No, I never signed a lease, but I know my sister had
4 told me she put me on the lease. Like, before all that
5 happened, they were saying oh, yeah, you weren't supposed
6 to be there. I know I never signed a lease because it was
7 in her name, but I know she told me she put me on the
8 lease before all of that. That's why I was like how
9 wasn't I supposed to be there?

10 Q But you never signed a lease?

11 A No, I never signed no lease. I never signed no
12 lease, period.

13 Q So how was the signature or how were you being on the
14 lease, how is this relevant?

15 A Like, if you ever do anything, I'm guessing, of that
16 nature, the people who put you on that as far as, like,
17 you know what I'm saying, her husband, he never signed no
18 lease, but he was on the lease. No one never signed --

19 Q Were you employed at the time?

20 A No, sir.

21 Q And how did you come to stay with your sister?

22 A I came from a whole other state and my sister allowed
23 me. Like, she allowed me, you know what I'm saying. So
24 it was like -- I've been like coming back and forth,
25 coming back and forth, coming back and forth. And this

1 time, I came back into the state, you know, my sister had
2 allowed me.

3 Q Did your sister -- was your sister planning on
4 kicking you out?

5 A As far as they was saying stuff like, you normally --
6 like, y'all saying around that time, that's what she did.
7 No, like nah, you know what I'm saying. She never told me
8 no, you got to get out of there that morning or day
9 before.

10 Y'all were going back to the text message, I guess,
11 you know what I'm saying, whatever y'all were saying that
12 she did in April. This whole situation happened in July.

13 Q So your sister was never throwing your stuff outside?

14 A No, not currently. My sister did it prior before,
15 like I told her, before I came back to stay with her that
16 time, I had been out before, like, before then. But other
17 than that, no, not around the time I was staying there,
18 she never did that.

19 Q Okay. You gave some testimony on self-defense and
20 how that was the theory of this. Do you still maintain
21 your act was out of self-defense or was it an accident?

22 A I feel like, you know, it was an accident, accident
23 and self-defense. I felt like accident and self-defense.
24 You know, that was kind of like the same thing. Like I
25 said, self-defense, I felt like if a person -- if he was

1 trying to harm me, I feel like yeah -- I didn't just wake
2 up one morning and kill him or murder him like people
3 said. Like, no, I didn't just do it like that.

4 Q Well, on direct, you said that you blacked out. So
5 at which point did you black out?

6 A I blacked out when he was going for the gun and we
7 started, like, struggling for it. That's when I had
8 blacked out, like I told you.

9 Q So you don't remember anything after the struggle?

10 A No, like, as far as -- all I can remember is, you
11 know, like you going through stuff like that, it's like I
12 just hear -- like, everything is going loud, just a lot of
13 commotion going on.

14 Q Beg the Court's indulgence.

15 (Pause.)

16 Do you recall that the solicitor, while the jury was
17 out, offered 30 years?

18 A No. The Solicitor never came at me with no 30 years.
19 She never told me no plea of 30 years when the jury walked
20 out, none of that. Like I said on direct, 30 mandatory
21 before I went to trial. After that, it was a 15-year plea
22 the day that they were supposed to be sentencing me. I
23 thought when I was coming up, they were still doing the
24 clarification on my deliberation. Then they told me I was
25 getting sentenced. They never came at me with no 30 years

1 or nothing.

2 Q Okay.

3 A I kept asking Ms. Pinnock, can you tell Ms. Luck I'll
4 take 20, I'll take 22. Ms. Luck, I never know when she
5 came with no 30 years. She never even told me no 30
6 years.

7 Q Do you understand that Ms. Pinnock does not dictate
8 what offer the solicitor makes? It's the solicitor that
9 brings the offer, not Ms. Pinnock, correct?

10 A I understand as far as now, but when I was saying
11 that then, like, I was telling her to ask Ms. Luck would
12 she give me 20, 22. You know, would she go back -- you
13 know what I'm saying, just talk to her about it, but no,
14 she never -- after the 30 mandatory, she never came to me
15 and said nothing else about no plea until that 15.

16 Q All right. And in regards to taking the stand, you
17 gave some testimony that she did not explain to you your
18 rights regarding taking the stand and testifying, correct?

19 A Correct. I just took the stand because that's what I
20 felt like -- like I said, I was told to take the stand.
21 But I took the stand because I felt like that was also
22 getting them to know my point of view. Not -- y'all just
23 said I murdered this person, so I was like, okay, no,
24 that's not how it happened.

25 Q Do you recall the trial judge explaining to you your

1 rights regarding taking the stand?

2 A No, like, what you mean? Like giving me my rights as
3 far as telling me --

4 Q To remain silent and that you have the right to
5 remain silent. That you did not have to take the stand,
6 that it's your choice --

7 A Yeah, as far as -- I remember him saying stuff like
8 that before I got on the stand.

9 Q So the judge did inform you of --

10 A Yeah.

11 Q -- of what you were waiving?

12 A The judge asked me, I guess, like -- like, when I
13 came up here, he said you're going to tell the truth. I
14 remember stuff like that. And him, you know, I guess,
15 advising me on things like that.

16 MR. BARLOW: Your Honor, for reference, that's Page
17 492 of the record.

18 Q And trial counsel filed a motion for reconsideration.
19 It sat for a little over two years with the judge. And
20 that judge, essentially, denied that motion for
21 reconsideration, correct?

22 A I guess he did.

23 Q But your argument is that it prejudiced you. And I
24 want to know how that prejudiced you?

25 A You mean, like how it prejudiced me for him denying

1 -- in my case, you know what I'm saying, you give someone
2 consecutive time and they all happened at the same time.
3 I didn't just go out there and shot this person one time
4 or then go out and shot this person like ten, 20 minutes
5 after.

6 It all happened in the same sequence. So I felt like
7 he didn't even give me a chance to reconsider or give me a
8 chance of my time being concurrent or anything. So it was
9 like, yeah, it was prejudice, you know. And I didn't know
10 as far as she making those types of motions of
11 reconsideration and me really hurried or anything.

12 Q There's been some testimony here today about your
13 competency. Is it that you were not competent to stand
14 trial?

15 A Yeah, I wasn't competent to stand trial because I
16 didn't know anything as far as nothing that was really
17 going on. I was just led by counsel to do what I was
18 supposed to do. Like I said, I went to trial because I
19 felt like hey, you're telling me to take 30 mandatory plea
20 of murder and I didn't murder this person. I felt in my
21 heart I didn't murder him.

22 MR. BARLOW: Beg the court's indulgence.

23 THE COURT: Yes, sir.

24 MR. BARLOW: Nothing further, Your Honor.

25 THE COURT: Mr. Thomas.

1 MR. THOMAS: Your Honor, may it please the Court.
2 Just one or two questions.

3 REDIRECT EXAMINATION:

4 BY MR. THOMAS:

5 Q You were asked about your name being on the lease of
6 the apartment. Do you remember that?

7 A Yes, sir.

8 Q All right. And you were also asked why that was
9 important. The State's motive was that you had an
10 argument with the victim about you were supposed to leave?

11 A Yeah, that's what they were saying, that the victim
12 told -- my sister told me to leave and that she was,
13 basically, putting -- like, I wasn't supposed to be there,
14 that's what they were saying. Basically, I was in
15 someone's home unwelcome. I wasn't supposed to be there,
16 was told to leave. So I was, like, how? If you tell
17 someone to leave as far as that happened, like, like I was
18 saying, July 2nd, if y'all bring up somebody was supposed
19 to leave months before, why were they still there? Why
20 wasn't the police contacted?

21 Q And was that true?

22 A Like, what you mean?

23 Q That you were supposed to leave?

24 A No, I wasn't supposed to leave. No, sir, that was
25 not true.

1 Q And did you talk with Ms. Pinnock about that, as far
2 as you had the right to be there?

3 A Yeah, I felt like I had a right to be there.
4 Because, like I said, all that my sister had to -- she
5 paid rent every month. You pay rent every month when you
6 stay in an apartment.

7 She told me before all that happened, like, man,
8 Dexter, I'm don't want you to leave. You know what I'm
9 saying. It wasn't no problems or nothing. So it was like
10 when y'all were saying I wasn't supposed to be there, I
11 was told to leave. You mean I was told to leave that day
12 or I was told to leave when? When I was told to leave?
13 Y'all said months prior to something. Like, that doesn't
14 add up.

15 Q All right. You were also asked by the Attorney
16 General in regards to the condition of the gun?

17 A Yes, sir.

18 Q And in one of your statements that you made, did you
19 say that the gun just went off?

20 A Yeah, like, that's what -- like I told them just like
21 this, when this man went for that gun and all that stuff
22 started happening, that gun was going off, you know what
23 I'm saying.

24 When I mean it's going off, it's -- they said a
25 six-pound trigger, that's not nothing, like, you know what

1 I'm saying, y'all acting like that's hard, a six-pound
2 trigger. That's not hard. Like, it ain't like you
3 showing the gun in evidence. It was not no gun like you
4 was hanging, everything was together. So anything can
5 happen, guns go off. Plenty of guns go off. It don't
6 matter whatever gun it is, it goes off --

7 Q Okay.

8 A -- if do you anything as far as messing with it.
9 People kill people for playing with guns or just messing
10 with a gun, and it just goes off. So that's why I'm
11 saying just go off, that's what it was doing. So it would
12 hit him, her. That's what it was doing.

13 It was not like I intentionally shot her, or I meant
14 to shoot this man. I was thinking in my mind, "This man's
15 fixing to shoot me. He's going to kill me."

16 Q Now, you were asked about -- I think the term blacked
17 out was used, but you also said that you didn't remember
18 after a certain point.

19 A Uh-huh.

20 Q How long -- can you give us an idea of how long all
21 of this took?

22 A Like, it was -- like, something like that -- stuff
23 like that happened fast. It was like, you know, I did
24 like a -- I want to say, like, three to five minutes.
25 Stuff be quick like this.

1 So it really happened to the point where it seemed
2 like it happened and it didn't happen. So it happened so
3 quick to the point, like, what in the world? Like, did
4 this happen? Like, what happened, you know what I mean.
5 Everybody was like so panicked.

6 I was, like, man, I ain't -- I didn't even know this
7 man was dead or nothing like that. I didn't know my
8 sister was hit. I was, like, man, what in the world. It
9 happened quick. It didn't just happen like no 30 minutes
10 or an hour. It happened very quick, you know what I'm
11 saying.

12 There were calls -- just look at the time that the
13 people were on the scene and called. This happened early
14 in the morning. They came early. So it ain't like I shot
15 this man 30 minutes to an hour, and then they came 30
16 minutes to an hour. It all happened very quick.

17 MR. THOMAS: Okay. Your Honor, I have no further
18 questions.

19 THE COURT: Mr. Barlow.

20 MR. BARLOW: Very briefly, Your Honor.

21 RE CROSS-EXAMINATION:

22 BY MR. BARLOW:

23 Q Mr. Myers, did you pay rent at that apartment?

24 A I gave my sister money to pay rent. Yes, I gave her
25 money to pay rent. And that was like the first three

1 months, too.

2 Q Do you recall telling the court on cross-examination
3 that your sister was the only one paying bills?

4 A As far as --

5 Q And your sister was the one that paid rent and that
6 you did not?

7 A Meaning that she the only one paying rent. As far as
8 what you saying, she the one that takes the money to go
9 pay the rent because, yes, that's the only thing she
10 supposed to do.

11 Q Were you employed?

12 A No, I wasn't employed. But as far as that level,
13 like, no, I wasn't employed.

14 Q But you were able to pay rent?

15 A Yeah, I was able to pay rent.

16 MR. BARLOW: Nothing further, Your Honor.

17 THE COURT: Mr. Thomas?

18 MR. THOMAS: Just one question, Your Honor.

19 FURTHER REDIRECT EXAMINATION:

20 BY MR. THOMAS:

21 Q Dexter, were you receiving any kind of disability
22 check?

23 A That's what he just trying to make it seem like. My
24 brother was receiving disability and I was his
25 beneficiary, so I was over his check.

1 Q So there was money coming in?

2 A Yeah.

3 MR. THOMAS: No further questions, Your Honor.

4 THE COURT: Mr. Barlow?

5 MR. BARLOW: Nothing from the State, Your Honor.

6 THE COURT: All right. Let us please take a break
7 for about 15 minutes.

8 (WHEREUPON, a short break was taken.)

9 MR. THOMAS: Your Honor, if it please the Court,
10 we're going to call Ms. Tracy Pinnock to the stand.

11 TRACY PINNOCK, after being duly sworn,
12 testified as follows:

13 THE BAILIFF: Have a seat, please, ma'am. State your
14 full name for the record and spell your last name.

15 THE WITNESS: Tracy Pinnock, P-I-N-N-O-C-K.

16 MR. THOMAS: May it please the Court.

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION:

19 BY MR. THOMAS:

20 Q Ms. Pinnock, thank you for being here today. You had
21 an opportunity to represent Dexter Myers?

22 A I did.

23 Q And were you his original attorney originally
24 appointed?

25 A I believe so.

1 Q So you were with them kind of the whole time he was
2 in the detention center?

3 A Yes.

4 Q Did you have an opportunity, I would assume you did,
5 to go see him while he was in detention?

6 A I did.

7 Q Do you remember how many times you spoke him?

8 A One second, I can check my notes.

9 Q Okay.

10 A So it looks like my first meeting with him was in
11 July of 2014. And then approximately, I would say, 15 to
12 18 times.

13 Q Okay. During those time that you met, were you able
14 to develop a theory of defense?

15 A We were.

16 Q And what was that theory?

17 A So it was kind of a hybrid theory of self-defense and
18 accidental because we had two separate issues going on
19 with two different victims, so it was a hybrid
20 self-defense accident.

21 Q So the accident portion of it -- and I'm just asking
22 because I'm not really sure that I know. The accident
23 portion of it would have pushed him into an involuntary
24 manslaughter situation?

25 A Yeah, involuntary manslaughter. That's what we were

1 kind of gunning for.

2 Q Right.

3 A Well, it was kind of complicated because it was a
4 hybrid situation with the self-defense and the accident.
5 So with Mr. Duane Harris, the deceased, we argued both
6 self-defense and accident, self-defense on the initial
7 encounter.

8 Q Yeah.

9 A And then the death itself being an accident.

10 Q Right.

11 A For the second victim, Ms. Harris, it was an accident
12 argument for her case.

13 Q Right, okay.

14 A Does that make sense?

15 Q Yeah, it does. Because she, of course, did not pass
16 away?

17 A Right.

18 Q She was just -- she was injured, but treated and
19 released?

20 A Yes.

21 Q Now, as far as plea offers, were there any plea
22 offers that were made?

23 A Before the trial, my notes -- according to my notes,
24 no. I had conversations with the prosecutors to see if
25 they were going to be offering him something, but I don't

1 have anything indicating that an offer was made prior to
2 the trial starting.

3 Now, later on, there was discussion about possible
4 pleas, but nothing before we pretty much completed the
5 trial and the jury was out deliberating.

6 Q Okay. And the jury was out for kind of an extended
7 period of time or what was it?

8 A It was about a day-and-a-half, I think. They went
9 out at some point in the afternoon, broke for the evening,
10 came back nine o'clock that next morning. And it was
11 later in the afternoon, three, four o'clock before they
12 said they had a verdict.

13 Q And so was there a 30-year plea offer, I guess, made
14 in that interim?

15 A There was. Now, when it happened exactly, I can't
16 say, you know, at this time. It was during jury
17 deliberations. I don't recall if it was the night that
18 they broke or that morning when they came back, but that
19 did come up as an option for Mr. Myers at that point.

20 Q Okay. And that was the 30 mandatory?

21 A Yes, they were not agreeing to reduce it at that
22 point.

23 Q And that, basically, was a plea to murder?

24 A Yes.

25 Q Okay. Now, Dexter testified about a 15. Do you

1 remember that?

2 A So I think -- I know the 15 -- yeah, talking about
3 the 15 and 20, all of that came up during our
4 conversations as something he would consider doing.

5 Q Right.

6 A When we got the 30-year offer during deliberations, I
7 know that we discussed just back and forth with him in
8 that brief period of time that we were dealing with this
9 new development, the offer. Everything was happening
10 pretty quickly because he was downstairs in the holding
11 cell.

12 The Solicitors were in their office. The family
13 members of the deceased and the injured were in the main
14 office and we were running back and forth between
15 everybody. So there was discussion about different
16 options outside of the 30. I can't specifically say if we
17 talked about 15, but I know there were different numbers
18 thrown out there that we were discussing back and forth.

19 Q And this was developing during the period of time
20 that the jury was still out?

21 A Yes.

22 Q Was there ever a 15 that was made or --

23 A A firm offer, no.

24 Q Okay.

25 A I don't recall there ever being a firm 15 being made.

1 Q And what did -- I guess, do you know, I mean, what
2 did Dexter understand during this period of time? Did you
3 feel like he was -- I'm not sure competent is the correct
4 word, but I'll use it anyway. Do you feel like he was
5 competent, that he understood kind of the process and what
6 was going on in regards to the plea situation?

7 A Just for that specific?

8 Q Yes, ma'am.

9 A It's kind of hard for me to say, honestly. Like I
10 said, everything was happening very fast. All the
11 conversations I had with Dexter leading up to the trial
12 starting were lengthy. We would discuss things multiple
13 times, you know, in detail sometimes, going over the same
14 thing two or three times.

15 Q Right.

16 A The conversations that were happening as far as this
17 offer and what was going on at that point, like I said,
18 were happening extremely fast because we did not know if
19 the jury was going to be coming back. So we would get a
20 piece of information, we would go discuss it with him very
21 quickly, run back upstairs, have another conversation. So
22 I can't -- I honestly can't say. It was very fast at that
23 point.

24 Q And, obviously, hindsight is 20/20, but at the time
25 that you were there, you felt like the 30 was something

1 that he should have taken?

2 A I mean, knowing what he's sentenced to now?

3 Q Yeah.

4 A Yeah, I mean, it would have been a better situation
5 for him to be sentenced to 30 versus the 50 that he got.

6 Q Right.

7 A I don't know exactly -- I can't say exactly what our
8 conversations with him were when it was presented to him
9 because I don't have any notes about that, so I don't know
10 what exactly I said to him. I don't know exactly what his
11 response was, but in hindsight, I mean, he should have
12 taken the 30.

13 Q Right. Now, do you remember, did you make a
14 recommendation that he accept the 30?

15 A I don't remember. I don't know if I was leaning on
16 him to take it. I don't know if I told him not to take
17 it. I honestly do not remember the details of those
18 conversations.

19 Q We all get some sort of feeling about two things,
20 what the chances of conviction at trial are and two, what
21 we think could happen in regards to a sentence. Were you
22 able to kind of develop or formulate that in this case?

23 A So from the time I received discovery and from my
24 conversations with Mr. Myers, I honestly didn't believe
25 from the beginning that it should have been charged as

1 murder.

2 Q All right.

3 A So that was my biggest issue with this case, you
4 know, from the beginning was I did not believe he should
5 have been charged with murder. Did I think it was -- I
6 mean, I have to advise people it's possible that you're
7 going to get convicted of it.

8 Did I believe he would have been convicted of that
9 charge? You know, I thought that was not very likely in
10 my mind, but I couldn't guarantee anything because
11 anything could happen at trial.

12 Q Right.

13 A Did I think a conviction to something was possible?
14 I have to answer yes, because there's always a possibility
15 of being convicted.

16 Q And was that thought something between involuntary
17 and voluntary?

18 A Yes.

19 Q Okay. All right. And in a way, the jury did come
20 back with voluntary?

21 A Yes, they did.

22 Q And what did you think about the charge of the
23 attempted murder?

24 A I don't really remember. To be honest, with the
25 charge for Mr. Harris, it shouldn't happen, but it did. A

1 lot of the focus was placed on that one because it was a
2 more serious charge. That one stands out in my mind. I
3 don't remember what my initial thoughts were for that one.

4 Q Yeah, that one jumped out at me, too, just looking at
5 the transcript. Is there something that you felt like
6 could have been charged? Is there a lesser included to
7 attempted murder?

8 A There is. He could have been charged with assault
9 and battery high and aggravated or assault and battery
10 first.

11 Q And I can't remember, did you argue those lesser
12 includeds should have been charged?

13 A I looked through the transcript back when we were
14 scheduled originally and I do believe there was a lesser
15 charge of assault and battery high and aggravated.

16 Q Okay.

17 A But the judge did not give one on assault and battery
18 first. And I would have to go back and look at my jury
19 charges, I think I got them in the box, to see if we even
20 asked for assault and battery first.

21 Q Now, I guess, with the theory of defense being either
22 one, self-defense or two, some sort of accident, then how
23 did you approach those -- the forensic reports, the
24 pathology and the ballistics?

25 A I'm sorry, what do you mean?

1 Q Let me rephrase that. Obviously, you would have had
2 the autopsy report and the ballistic report prior to
3 trial?

4 A Yes.

5 Q And in reviewing those documents, what was your plans
6 in regards to presenting a defense or, basically,
7 addressing those issues that were in those reports?

8 A Okay. So I think with the autopsy report, what we
9 were trying to establish out of that is there was -- you
10 couldn't testify as to how far, you know, Mr. Myers and
11 Mr. Harris were when the gun started going off. The
12 pathologist was not able to testify which injury happened
13 first.

14 So we were hoping to use that to stop the State from
15 saying he had the fatal wound first versus the nonfatal
16 wounds. So to establish that she couldn't time anything
17 and say which one happened first, second or third.

18 The ballistics -- I recall her being -- we talked to
19 the GSR folks. There were particles found on Mr. Myers'
20 hands. There were particles founds on Mr. Harris' hands.
21 So we wanted to use that to establish that they -- you
22 know, at some point, Mr. Harris touched the gun. Because
23 the State was trying to argue that there was no struggle.
24 He never touched the gun.

25 So we tried to use that to establish that he did, in

1 fact, have contact with the weapon after it was shot or
2 when it was being shot. I don't recall anything specific
3 that I asked or that we thought about as far as clothing
4 or anything like that.

5 Q Did you do a reconstruction? Were you able to do
6 that?

7 A I did not hire an expert for reconstruction.

8 Q All right. Did you think about it or did you think
9 that that would have been beneficial?

10 A I mean, honestly, I didn't think about it. It never
11 crossed my mind to hire a reconstruction --

12 Q Okay. And, I guess, as far as ballistics, we would
13 be talking about the gunpowder and the distance of the
14 shots. Did you think about trying to challenge or would
15 it have been beneficial to challenge those -- the
16 information that was in the documents, the two reports?

17 A I don't recall there being anything in there that we
18 wanted to challenge --

19 Q Right.

20 A -- so to speak. I think there were things that we
21 wanted to try to use for our defense versus challenging
22 it.

23 Q Okay. Okay.

24 A So that's why I don't recall objecting to anything in
25 those reports for that reason.

1 Q All right. And did you consider about having another
2 autopsy done or possibility of any other ballistic
3 examination?

4 A No, I never considered scheduling another autopsy.
5 And the weapon -- I never tried to get it retested. I
6 didn't think about getting it retested. What I recall
7 about the weapon from when we were in the courtroom, it
8 was not what you would consider a new weapon.

9 Q Right.

10 A It was fairly rusted. I do believe that there were
11 loose pieces to it. At some point, I was holding on --
12 you know, I had picked the gun up during the
13 cross-examination of the witness and when I did that, my
14 finger touched the trigger and the hammer fell.

15 I vividly recall everybody in the jury box jumping
16 because the gun was pointing at the jury box. That was my
17 lesson to never point a weapon at a jury box again, so I
18 always point it away even though it wasn't loaded. The
19 weapon was there. The report allowed us to use certain
20 information. So I never tried to get it retested, but the
21 condition of the weapon was not in good condition.

22 Q Right. Because Dexter had made -- in his statement,
23 he had said a couple of times that the gun just went off?

24 A Yes.

25 Q And I was wondering what your thought was about that

1 issue in preparing that for trial. Were you going to use
2 that or how were you going use that?

3 A So there were actually two statements that Mr. Myers
4 gave. The first statement -- I don't have a good memory,
5 so I apologize. The first statement, we just had to
6 acknowledge was not true.

7 I believe his second statement was the most
8 consistent with what he testified to during the trial.
9 And by circumstances, my handling of the gun during the
10 cross-examination of the State's ballistics experts, I
11 think, supported what Dexter was trying to say in his
12 statement, that it was a very easy gun to go off. So
13 that's how it kind of fell together, I guess, during the
14 trial.

15 Q Right. Were you able to use that? I remember
16 reading that and I remember the judge making a comment.
17 But were you able to use the fact that the hammer did fall
18 while you were holding it?

19 A I would have to look back at the transcript to see if
20 I brought it up during my closing or not. I think I did.
21 If it's in there, do you know where it might be?

22 Q I don't remember.

23 A Okay. Would you like for me to look?

24 Q Well, can you do that real quickly?

25 A Sure. I apologize, I'm trying to figure out what

1 page it starts.

2 Q Okay.

3 A All right. So I do start addressing the gun and the
4 fight between Mr. Myers and Mr. Harris --

5 Q Yes, ma'am.

6 A -- starting at the -- Line 17 on Page 624 of the
7 transcript that I have. And then I continue to talk about
8 the gun and the makeup of it through -- and the GSR
9 through Line 21 on Page 626. Scanning through it quickly,
10 I don't see --

11 Q Okay.

12 A -- that I talked about the looseness of the trigger
13 when it went off.

14 Q I don't remember it, but I could certainly be wrong.
15 The other thing that I noticed was the thing about the
16 ballistics person testifies roughly on 383 of the
17 transcript talking about the trigger pull. And they did
18 test the panels that it took to -- single action and
19 double action.

20 They testify that they did not do a drop test, which
21 was I think on Page 384, did that jump out at you or did
22 you have any question about -- because I think there were
23 some -- in the statements, there was something about the
24 gun being dropped?

25 A I'm sorry, no.

1 Q Okay.

2 A I have no recollection of that. I would have to go
3 back and research what a drop test is.

4 Q All right. So you don't remember them testifying
5 that they were not asked to do a drop test on the gun?

6 A No, sir. I mean, it's in here, but I don't have
7 independent memory of it.

8 Q Okay. All right. Now, what else, if anything, were
9 you going to do in regards to try to show either the
10 self-defense or the accident? I mean, we talk about the
11 gun, the distance, the gun possibly going -- you know,
12 easily to fire or there being some problems with the guns.
13 Was there anything else that you were thinking in regard
14 to your strategy about trying to point out to the jury
15 that this was a self-defense or, at worst, an accident?

16 A I mean, the only thing -- the only other thing we
17 could do was have Mr. Myers testify. The only other, I
18 guess, willing participant as far as witnesses go was
19 Heidi Harris.

20 Q Right.

21 A And she was the victim in the case. So the only
22 other person that could give any sort of explanation of
23 what happened inside the house was Mr. Myers. So I was
24 hoping that that, along with the issues with the gun, the
25 particles, I hoped that would be enough.

1 I know in some of these -- a lot of these cases, it
2 can come down to a battle of the experts when you're
3 dealing with science, but I did not put any experts on the
4 stand.

5 Q Okay.

6 A That could have changed it, but I didn't call
7 anybody.

8 Q I know this is hindsight, but in hindsight, would you
9 have done anything differently?

10 A Yes. Hindsight is always 20/20 when you're dealing
11 with trials. I think because of the scientific nature and
12 the specifics with the GSR and the ballistics and
13 specialized knowledge with that and with crime scene, I
14 think having somebody who could competently testify about
15 it as an expert could have given us what we needed for Mr.
16 Myers to establish the self-defense and accident claim.

17 Like I said, I didn't put any experts on the stand.
18 The only witness we called was Mr. Myers to testify.

19 Q Right.

20 A So if I could go about it over again, I would have
21 put an expert up.

22 MR. THOMAS: Your Honor, if I could beg the Court's
23 indulgence.

24 THE COURT: Yes, sir.

25 (Pause.)

1 MR. THOMAS: Your Honor, I just have one further
2 question.

3 BY MR. THOMAS:

4 Q In regards to the note that came back from the jury
5 about the confusion about the voluntary and involuntary
6 manslaughter?

7 A Yes.

8 Q Did you feel like that the judge's explanation was
9 appropriate or have you looked at that?

10 A I mean, I looked over it. I did not recall a note
11 coming back until I saw the complaint and went back and
12 looked at the transcript.

13 Q Right.

14 A It appears that the judge just recharged what he had
15 originally charged. I can't really say whether or not
16 that provided the jury any sort of clarification because
17 it was the same charge that they were given originally
18 that they were confused about, but I also don't see where
19 I objected or asked for anything extra to be said to the
20 jury at that point.

21 Q Okay.

22 A So I don't know if it provided clarification or not.

23 Q And you feel -- I mean, obviously, there was some
24 confusion between the jury and the two crimes?

25 A Yes.

1 Q Right. Okay. Is there anything else that you felt
2 like you could have asked the judge to charge?

3 A I'm not really sure. I would have to --

4 Q Okay.

5 A I'm not really sure. I don't know if recharging
6 gives any sort of clarification when they say they're
7 confused about something that you've already charged on.

8 Q Right.

9 A We probably should have requested something as far as
10 clarification instead of just rereading it. And I believe
11 the transcript even says, you know, if this doesn't answer
12 your question, you know, let me know, but all he did was
13 reread --

14 Q Okay.

15 A -- the original thing that created the problem.

16 MR. THOMAS: Your Honor, I have no further questions.

17 THE COURT: All right, sir.

18 Mr. Barlow.

19 MR. BARLOW: Thank you, Your Honor.

20 CROSS-EXAMINATION:

21 BY MR. BARLOW:

22 Q All right. Ms. Pinnock, how long have you been
23 practicing law?

24 A I got sworn in in 2008, so this will be 14 years.

25 Q And how much of that has been criminal law?

1 A All of it.

2 Q And on direct, you testified that you had met with
3 Applicant somewhere between 15 and 18 times, correct?

4 A Yes.

5 Q And in those meetings, did you review the discovery
6 with him?

7 A I did.

8 Q Would you say that you reviewed all the discovery
9 that you had with him?

10 A I mean, I believe that I did. My first notes about
11 reviewing discovery was in October of 2014. I don't know
12 how much I had at that point, but I believe I would have
13 gone through all the discovery leading up to the trial,
14 yes.

15 Q Do you feel that you were prepared for trial?

16 A Yes, I do.

17 Q Beg the Court's indulgence.

18 (Pause.)

19 I want to talk to you about the competency claims
20 that have been made today. He's said that he does not
21 feel he was competent. And you testified that everything
22 at the plea -- not the plea, but at the sentencing or just
23 before sentencing when the offer was made went really
24 fast, correct?

25 A Yes.

1 Q But everything leading up to that point, at any time,
2 did you have any reason to believe he was not competent or
3 did not understand what you were explaining to him?

4 A Not competent to the point where he would need to be
5 committed, no. But like I said, the conversations that I
6 have had with Mr. Myers throughout my representation of
7 time, they were lengthy. We didn't have, you know, short
8 five, ten minute just check-ins. So throughout
9 conversations, we would go over certain topics more than
10 once. But did I think that he needed to be committed for
11 not being competent? No, I did not think he was to that
12 degree of incompetence by any means because I did not
13 elect to have him evaluated. But did our conversations
14 take some explaining sometimes? Yes. Does that answer
15 your question?

16 Q Sure.

17 A Okay.

18 Q And I believe you testified that there was -- that
19 you do sort of remember a 15 to 20. There was something
20 talked about that with the years, but you did have
21 discussions with the Solicitor's Office regarding the
22 plea, correct?

23 A Right, so the 15 to 20, there were lots of
24 conversation about different numbers. Before the trial
25 started, talking to them trying to get something worked

1 out and during the deliberation process when they did make
2 that offer, numbers were being thrown all over the place.

3 So I'm fairly confident in saying that the number 15
4 came up. I'm fairly confident in saying the number 20
5 came up. The only official offer that was made was the 30
6 and that was during jury deliberations. But there were
7 conversations about possible pleas before anything ever
8 happened.

9 Q Okay. I want to ask you about the gun. You did
10 testify that the gun when you handled it, it was very --
11 was the gun not secured?

12 A It had a lock on it.

13 Q But the hammer still fell on it?

14 A Yeah. It was kind of funny, I was talking to, it was
15 either the ballistics or the GSR person and we were
16 describing, you know, where people's hands were -- it
17 might have even been a CSI person talking about when they
18 took the swabs. And I picked it up -- the solicitor had
19 used it, I picked it up and I was just kind of motioning,
20 holding it up. And I hit the trigger and the hammer fell
21 and everybody in the jury box jumped.

22 Q Do you recall Applicant leaving the home with the gun
23 and dropping the gun when he saw the police outside?

24 A I recall it being that he dropped the gun in the
25 woods after he had left the apartment complex.

1 Q Do you recall how long it was outside before they
2 recovered it?

3 A I don't recall if he was arrested on the same
4 evening, but I believe that law enforcement found it on
5 the day that they took him into custody. He told them
6 where it was located.

7 Q And I know there's been some testimony about your --
8 about hindsight here today. For instance, today, you
9 would hire someone to maybe reconstruct, correct?

10 A Yeah, I mean, a reconstructionist because of the
11 setting itself from the photographs that were taken by the
12 crime scene folks, I mean, a reconstructionist would have
13 been helpful because that was part of our issue, was the
14 setup of the house and what wasn't out of order --

15 Q I'm sorry, I didn't mean to interrupt you.

16 A I just want to make sure that I -- I wasn't going to
17 say anything. I did not hire a reconstructionist. I did
18 consult with other experts, but I just did not call them
19 to testify.

20 Q Do you recall the type of experts you consulted with?

21 A I believe I had -- I consulted with the pathologist
22 just for the autopsy, and then I consulted with a
23 ballistics GSR, but I did not call either one of those
24 witnesses to testify.

25 Q Do your notes reflect that any of those witnesses

1 would have been helpful?

2 A Ballistics and GSR, absolutely.

3 Q Would have been a help to your case?

4 A Yes.

5 Q Do you recall why you didn't call them?

6 A I do not.

7 MR. BARLOW: Beg the Court's indulgence.

8 (Pause.)

9 Nothing further, Your Honor.

10 THE COURT: Mr. Thomas.

11 MR. THOMAS: Your Honor, I have nothing further.

12 THE WITNESS: You may step down.

13 THE COURT: Mr. Thomas.

14 MR. THOMAS: Your Honor, I have no further witnesses.

15 THE COURT: Mr. Barlow.

16 MR. BARLOW: Beg the Court's indulgence, Your Honor.

17 (Pause.)

18 Your Honor, the State has no witnesses.

19 THE COURT: All right. This was a lengthy hearing
20 today. I will take it under consideration. You will get
21 my ruling as soon as I get it generated.

22 MR. THOMAS: Thank you, Your Honor.

23 (Whereupon, the proceedings were concluded.)

24

25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 11th day of
January, 2022.

July 5, 2023

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

Judge's Decision



State of South Carolina
Circuit Court Judge, At-Large, Seat 1

GEORGE M. MCFADDIN, Jr.
JUDGE

215 N. HARVIN STREET
SUMTER, SOUTH CAROLINA 29150

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DATE: 8 FEBRUARY 2023

TO: D. RUSSELL BARLOW, ESQ.
TOMMY THOMAS, ESQ.

RE: DEXTER MYERS v. STATE OF SC
RULING MEMORANDUM FROM PCR HEARING

This PCR application hearing was held before me on January 11, 2023. Petitioner was present with his attorney and Petitioner testified. I have reviewed the notes and the file information. I respectfully do not grant Petitioner the relief he seeks.

In a PCR hearing, the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence. SCRCP 71.1(e). This means that the hearing judge sits as a fact-finder who assigns believability to evidence, testimony and exhibits, offered at trial.

Petitioner offered several allegations of ineffective assistance of counsel at the hearing. I did not find Petitioner convincing in his allegations regarding the ineffective nature of his trial attorney. I found, considering all of the evidence at the hearing, that his trial counsel offered "reasonably effective assistance" under "prevailing professional norms. Cherry v. State, 300 SC at 317 (1989), citing Strickland v. Washington, 466 U.S. 668 (1984); Butler v. State 286 S.C. 441 (1985). There is a presumption that counsel was effective, and the applicant must show prejudice to receive relief. Prejudice is defined as a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

Further, I do not find any presumptions of prejudice as noted in Cronic v. U.S., 446 U.S. 648 (1984); Nance v. Ozmint, 367 S.C. 547 (2006). I wish to add that this case was "fact heavy" and that

trial counsel actions and decisions were based upon strategic decision. See Roseboro v. State, 317 SC 292 (1996). See also Solomon v. State, 347 SC 635 (2001) regarding strategic trial management.

Please, Mr. Barlow, prepare a proposed order addressing the several issues raised by Petitioner and his able attorney. Additional findings and conclusions and applicable case law may be included provided the record and hearing allow for this request. Please address each allegation. I will review the order upon receipt and will sign if acceptable. This is a ruling memorandum. It is not the final order in this matter.

I appreciate your patience.

Respectfully submitted.

/gmmjr

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Dexter L. Myers, #365377,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

) CASE NO. 2019-CP-40-2444
)

**ORDER OF DISMISSAL
WITH PREJUDICE**

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:

Solicitors:

Date of Hearing:
Court Reporter:

Hon. George M. McFaddin, Jr.
Tommy A. Thomas, Esq.
D. Russell Barlow, II, Esq.
Tracy E. Pinnock, Esq.
J. Rhodes Bailey, Esq.
Catherine Mubarak, Esq.
K. Luck Campbell, Esq.
Meghan Walker, Esq.
J.J. Shellenberg, Esq.
January 11, 2023
Karen Ambroziak

JEANETTE W. McBRIDE
C.C.P. G.S. & F.C.

2024 JUL 25 AM 9:47

FILED

RICHLAND COUNTY

This matter comes before the Court by way of Dexter L. Myers's (Applicant) application for post-conviction relief (PCR) filed on May 1, 2019. Respondent, the State of South Carolina, made its Return and Motion for a More Definite Statement on February 28, 2020, requesting an evidentiary hearing to resolve the claims as set forth in the application. On November 7, 2022, Applicant, through appointed post-conviction relief counsel, Tommy A. Thomas, Esquire, filed an Amendment to Post-Conviction Relief Application asserting additional claims of ineffective assistance of trial counsels.

An evidentiary hearing was convened on January 11, 2023, at the Richland County Courthouse before the Honorable George M. McFaddin, Jr. Applicant was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney General D. Russell Barlow, II, represented

Respondent. At the hearing, Applicant proceeded forward on the claims set forth in his original and amended applications. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Tracy E. Pinnock, Esquire.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the August 2014 term of the Richland County Grand Jury for attempted murder (2014-GS-40-5481) and murder (2014-GS-40-5482). Applicant was represented by Fifth Circuit Assistant Public Defenders Tracy E. Pinnock, J. Rhodes Bailey, and Catherine Mubarak, Esquires. Fifth Circuit Assistant Solicitors K. Luck Campbell, Meghan Walker, and J.J. Shellenberg, Esquires prosecuted the case.

Applicant proceeded to a jury trial from August 31—September 4, 2015, before the Honorable J. Derham Cole. The jury convicted Applicant of the lesser-included offense of voluntary manslaughter and as indicted for attempted murder. Judge Cole sentenced Applicant to serve an aggregate term of fifty years' imprisonment—twenty years for attempted murder and thirty years for voluntary manslaughter. On September 9, 2015, Trial Counsel filed a motion to reconsider. On May 2, 2017, the trial court denied the motion to reconsider.

Applicant filed a timely Notice of Appeal. Appellate Defender Susan B. Hackett represented Applicant on appeal and briefed the following issue:

1. Did the trial judge err in concluding a text message was a present sense impression, and therefore admissible as an exception to the rule against hearsay, where the state failed to present that (1) the statement described or explained an event or condition; (2) the statement was contemporaneous with the event it was describing; and (3) that the declarant personally perceived the event allegedly described or explained?

The case was submitted on briefs to the Court of Appeals on February 1, 2019. On March 27, 2019, the Court of Appeals affirmed Applicant's convictions and sentences. State v. Myers, Op. No. 2019-UP-119 (Ct. App. filed Mar. 27, 2019). The Remittitur was returned to the circuit court on April 17, 2019.

FACTS GIVING RISE TO THE CONVICTION

Applicant was charged with the attempted murder of his sister, Mahogany Speech-Harris (Victim 2), and the murder of his brother-in-law, Dajuan Harris (Victim 1). Victim 2 lived in an apartment with Victim 1, their two children, Applicant, and her other brother. (Trial Tr. p. 223). Applicant and his brother had lived with Victim 2 periodically for three years but were told in March 2014 that they needed to move out. (Trial Tr. pp. 223 – 224). Victim 2 and Victim 1 had a bedroom, their daughters had a bedroom, and her brothers slept in the living room. (Trial Tr. p. 224).

In July 2014, the brothers were still living in the apartment. On July 2, 2014, one of the children could not sleep, so Victim 2 got up to make breakfast. (Trial Tr. p. 225). She took her youngest daughter with her to wake up Victim 1 and have him join them to eat. (Trial Tr. pp. 226 – 227). Victim 1 and the children were at the table and began eating. According to Victim 2, there were no arguments between her and her brothers or anyone and her brothers that morning. (Trial Tr. pp. 231; 233 – 234). Victim 2 turned to fix her own breakfast and heard, "Something go pow, pow." (Trial Tr. pp. 228 – 229). She said it sounded like fireworks, but then she heard her brother

saying: "No, Dexter, no," and when she looked up, she saw the gun. (Trial Tr. p. 229). Victim 2 never saw her husband; she only saw Applicant and indicated: "He just kept shooting" (Trial Tr. pp. 230 – 231).

Victim 2 ran across the hall to her neighbor's apartment to call 911. (Trial Tr. p. 231). Her neighbor heard three gunshots. (Trial Tr. p. 93). Thereafter, Victim 2 ran into the neighbor's apartment, "screaming and hollering 'My brother shot my husband.'" (Trial Tr. p. 94). Victim 2 told her neighbor she had been shot, and her neighbor indicated that Victim 2 was bleeding. (Trial Tr. p. 94).

Master Deputy Fairbanks was the first officer on the scene. He found Victim 2 at her neighbor's apartment. He indicated Victim 2 had been shot in the leg. (Trial Tr. p. 99). He entered the other apartment and found Victim 1 locked in a bedroom. (Trial Tr. pp. 99-100). After kicking the door open, he found Victim 1 leaning up against the door. (Trial Tr. p. 100).

EMS arrived and located Victim 1. He was "wedged behind the door lying prone in a pool of blood with obvious . . . trauma to his face and chest area." (Trial Tr. pp. 119 – 120). Victim 1 was not breathing, his pupils were fixed and dilated, and he was "cold." According to EMS, he was "obviously dead." (Trial Tr. p. 120). EMS then approached Victim 2, who had five holes in her outer thigh and buttocks area from where she had been shot. (Trial Tr. p. 121). According to the ER doctor, Victim 2 had two-to-three gunshot wounds. (Trial Tr. p. 284).

The pathologist performed the autopsy on Victim 1. (Trial Tr. p. 404). She indicated Victim 1 had a gunshot wound to the left side of his head, which exited on the right back of his head; another gunshot wound to the right side of his neck; and a gunshot wound to his lower back. (Trial Tr. p. 406). The pathologist indicated the gunshot wound to the head was nonfatal as it missed the brain. (Trial Tr. pp. 410 – 411). The bullet that entered through Victim 1's neck

perforated his trachea, then perforated the major subclavian artery, went through the left upper lobe of the lung, and ultimately entered the soft tissue of his left arm. (Trial Tr. p. 412). The gunshot to the neck was the fatal gunshot. (Trial Tr. pp. 412 – 413). The final gunshot entered Victim 1's lower back and hit his small intestine twice. (Trial Tr. p. 413).

After the shooting, Applicant fled the apartment. (Trial Tr. p. 510). He sought a ride from a neighbor who happened to be leaving at the time. (Trial Tr. p. 214). This neighbor gave Applicant a ride from the Apartment complex. Applicant told her he was in a fight with his girlfriend and he "just wanted to get away." (Trial Tr. p. 215). Applicant was later arrested at a friend's house. (Trial Tr. pp. 324; 510; 512).

Captain McDonald interviewed Applicant after he was arrested. After reading Applicant his Miranda¹ rights Applicant agreed to speak with Captain McDonald. Applicant initially denied any involvement and any knowledge of the shooting and further denied being present. (Trial Tr. p. 328). Even after being confronted with some of the facts that the officers knew from Victim 2, Applicant continued to deny involvement. However, Applicant's story changed to indicate he was at the apartment that morning but had gotten up and left to buy some marijuana and had not returned by the time of the incident. (Trial Tr. p. 329). Applicant's story changed again as the questioning continued. His third version indicated he was present at the apartment, awakened in the living room, and found a gun on the floor. Applicant indicated the gun was a dangerous gun because the hammer was always cocked. He said he picked it up, and it just went off and struck Victim 1. Applicant told Captain McDonald he had the gun in his hand, and it "kept going off and struck [Victim 2]." (Trial Tr. p. 329).

¹ Miranda v. Arizona, 384 U.S. 436 (1966).



Eventually, Applicant led other investigators to where he had disposed of the gun. (Trial Tr. p. 331). After returning, he again spoke with Captain McDonald and gave a written statement which differed from his prior statements. He indicated they had a gun at the apartment for protection and kept it under the couch in the living room. Applicant stated Victim 1 picked up the gun so none of the children would get it. (Trial Tr. p. 332). Victim 1 put the gun in Applicant's hand after Applicant warned him about the hammer being cocked. Applicant explained the gun just went off and hit Victim 1, and then it went off a few more times, and it hit Victim 2. (Trial Tr. p. 333). He indicated there was no argument with Victim 1 that morning and that he did not intentionally shoot Victim 1. (Trial Tr. p. 334).

Applicant later gave a second written statement. (Trial Tr. p. 582). In this statement, Applicant indicated Victim 2 entered the kitchen mad with Victim 1 in tow. Victim 1 then looked at him and said, "Man," which the Applicant took to mean that Victim 1 wanted him to move. Victim 1 was coming at him and going for the gun. (Trial Tr. p. 583). Applicant said he grabbed the gun, and it fired, shooting Victim 1. He said Victim 1 was still on him, so he shot him again. Victim 2 then charged Applicant, and Applicant shot her. (Trial Tr. p. 584). This is a similar version of events to the one Applicant testified to at trial, but, at trial, he had difficulties remembering many details of the events. (Trial Tr. pp. 519 – 523).

The trial court ultimately charged the jury with murder, voluntary manslaughter, and involuntary manslaughter as it related to the killing of Victim 1. The trial court charged both attempted murder and assault and battery of a high and aggravated nature (ABHAN) as it related to the wounds sustained by Victim 2. The trial court also charged accident and self-defense. (Trial Tr. pp. 666 – 684). The jury convicted Applicant of voluntary manslaughter for killing Victim 1 and attempted murder as to Victim 2.

CURRENT ACTION BEFORE THIS COURT

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

1. Ineffective assistance of counsel:
 - a. Failing to object to the trace evidence examination of the victim's clothing;
 - b. Failing to hire an expert to show it was a close encounter/struggle;
 - c. Failing to properly advise Applicant regarding the issues and motions in his trial;
 - d. Counsel never attempted to have Applicant's case settled and conveyed a false plea offer of fifteen years but never brought Applicant to accept the plea offer;
 - e. Failing to object to the trial court only re-charging the jurors on lesser-included offense; and
 - f. Failing to obtain any information regarding the lease of the apartment.
2. ~~Prosecutorial Misconduct.~~²

On May 15, 2019, the Richland County Clerk of Court appointed Lir P. Derieg, Esquire, to represent Applicant in his PCR action. On July 23, 2019, Applicant filed, while represented by counsel, a filing captioned "Grounds for Post Conviction Relief." On August 6, 2019, Applicant filed another filing captioned "Grounds for Post Conviction Relief." On April 8, 2020, Applicant filed a filing captioned "Motion to Amend Applicant's Post-Conviction Relief Application."

On November 7, 2022, Applicant, through retained counsel, amended his PCR application adding the following additional claims for relief:

3. That Trial Counsel's theory of defense was self-defense and that this incident was an accident.
4. That an offer was made at Trial for a plea to thirty (30) years. That the Jury had been out for a day and a half before reaching

² Applicant withdrew the allegation of prosecutorial misconduct at the evidentiary hearing. (PCR Tr. p. 6).

a verdict. The Applicant is informed and believes that he was ill advised regarding accepting the plea offer.

5. The Applicant was found guilty of Voluntary Manslaughter and Attempted Murder and received consecutive sentences totaling Fifty (50) years.
6. Trial Counsel filed a Motion for Reconsideration. This Motion for Reconsideration was not ruled upon until several years after conviction. That due to this passing of time, trial counsel failed to provide the Court with a transcript of the trial. Nor did she brief the Court on their position and reasons why Applicant should be granted reconsideration. No oral argument was made before the Court regarding the Motion.

Before this Court is the Richland County Clerk of Court general sessions records from the underlying conviction, the complete trial transcript, Applicant's complete records from his appeal, Applicant's records from the South Carolina Department of Corrections, and the records of this PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act³ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

³ S.C. Code Ann. §§ 17-27-10 to -160.

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. 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), SCRPC; 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 v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord. Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n 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." Strickland, 466 U.S. at 691. To meet this burden,

counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112.

Finally, 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 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. 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. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

This Court further finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant, she rendered adequate assistance and exercised reasonable professional judgment in her representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every

effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS ON THE MERITS

- Allegation 1a:** Trial Counsel failed to object to the trace evidence examination of the victim's clothing.
- Allegation 1b:** Trial Counsel failed to hire an expert to show it was a close encounter struggle.
- Allegation:** Trial Counsel failed to consult and call an expert witness in GSR and ballistics.⁴

Applicant alleged Trial Counsel's representation was constitutionally ineffective for failing to object to the trace evidence examination of the Victim's clothing. Applicant also alleged Trial Counsel failed to hire an expert witness in GSR, ballistics, and accident reconstruction. This Court finds these allegations are without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if

⁴ This allegation was not pled; rather, it was raised for the first time at the evidentiary hearing.

professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

Also, "[a]n 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." Strickland, 466 U.S. at 691. To establish prejudice, Applicant is required to show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have

been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel should have gotten an expert witness to show that gunshot residue (GSR) was present on both of the Victim's hands and his clothing. Applicant testified that had Trial Counsel done that, the result of his trial would have been different. (PCR Tr. p. 25). Applicant testified that the SLED expert at trial testified that Applicant had three of the three elements of GSR on his person and the Victim had two of the three elements. (PCR Tr. p. 26). Applicant testified that Trial Counsel was not prepared to cross-examine the SLED expert. (PCR Tr. p. 26). Applicant testified that Trial Counsel told him to "just put it on your PCR" when the State did not examine the Victim's clothing or "GSR kit fully." (PCR Tr. p. 27). Applicant testified that Trial Counsel did not "do her part" in "securing an expert witness to demonstrate that gunshot residue was on both [Applicant's and the Victim's] hand." (PCR Tr. p. 27).

Applicant testified that the pathologist testified at trial, but he did not understand anything that was said by the pathologist. (PCR Tr. p. 28). Applicant testified that he asked Trial Counsel at trial if there were two elements present then that showed GSR present. (PCR Tr. pp. 28 – 29). Applicant testified that he thought it would have shown there was a struggle when the gun discharged. (PCR Tr. p. 29). Applicant testified that the gun was not in good shape and "it could have easily like went off." (PCR Tr. pp. 29 – 30).

On cross-examination, Applicant testified that Trial Counsel should have objected to the examination of the trace evidence on the clothing and secured an expert in GSR. (PCR Tr. pp. 39 – 40). Applicant testified that they positively identified GSR on his hands but could not positively

identify GSR on the Victim's hands. (PCR Tr. pp. 40 – 41). Applicant testified that he could not recall that Trial Counsel argued in closing that the Victim had two of the three particles that make up GSR on him and he got that on his hands when he grabbed the gun. (PCR Tr. pp. 41 – 42).

On direct examination, Trial Counsel testified that she did not hire an accident reconstruction expert. (PCR Tr. p. 72). Trial Counsel testified that, in hindsight, she thought having an expert to testify on GSR and ballistics could have been helpful in their self-defense and accident claims. (PCR Tr. p. 77). Trial Counsel testified that she would put an expert up if she could do it again.

On cross-examination, Trial Counsel testified that she did consult with a ballistics and GSR expert but could not recall why she did not call them to testify. (PCR Tr. p. 83). Trial Counsel testified that a ballistics and GSR expert could have been helpful to their case. (PCR Tr. pp. 83 – 84).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant presented nothing to this Court to show that had Trial Counsel objected to the examination of the trace evidence on the clothing, it would have been a meritorious objection. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for

exclusion of the evidence). Thus, Applicant has failed to prove deficiency in Trial Counsel's performance, or any prejudice flowing therefrom.

Turning to the next allegations wherein Applicant contends Trial Counsel was deficient for not securing an expert witness in ballistics, GSR, or accident reconstruction. As an initial matter, this Court finds Applicant failed to meet his burden of proof as to this allegation because he did not present the testimony of an expert in any of these fields at the evidentiary hearing, and therefore, he has not established he was prejudiced by Trial Counsel's allegedly deficient representation. See, e.g., Bannister v. State, 509 S.E.2d 807 (1998) (holding "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 from the witness' failure to testify at trial."); Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding a PCR applicant failed to show prejudice from his Trial Counsel's failure to hire an expert because he failed to have an expert testify at his PCR hearing), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Additionally, Trial Counsel testified that, in hindsight, she would handle Applicant's trial differently. However, this Court must scrutinize Trial Counsel's performance in a highly deferential manner, making every effort "to eliminate the distorting effects of hindsight" and "evaluate the conduct from Trial Counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. Here, it is Applicant's burden to prove his claims, and Applicant presented no experts to this Court to establish had Trial Counsel hired experts, the results of his trial would have been different. Mere speculation and conjecture are not sufficient to substantiate an allegation that counsel's deficient performance was prejudicial. See Harris v. State, 377 S.C. 66, 659 S.E.2d 140 (2008), abrogated on other grounds by Smalls v. State, 422 S.C. 174,

810 S.E.2d 836 (2018).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED**.

Allegation 1c: Trial Counsel failed to properly advise Applicant regarding the issues and motions in his trial.

Applicant alleged Trial Counsel's representation was constitutionally ineffective for failing to properly advise Applicant regarding the issues and motions in his trial. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel never discussed his defenses with him. (PCR Tr. p. 23).

Applicant testified that he did not understand what Trial Counsel was doing in her motions because he did not understand what lawyers "have going on." (PCR Tr. p. 45).

On direct examination, Trial Counsel testified that when she met with Applicant they were able to devise a defense strategy. (PCR Tr. p. 63). Trial Counsel testified that leading up to trial, her conversations with Applicant were lengthy and she explained some things two or three times with him. (PCR Tr. p. 67).

Findings

As an initial matter, this Court finds Applicant's testimony **not credible**. This Court further finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. Also, this Court finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. This Court finds Trial Counsel **credibly** testified that she and Applicant in their meetings were able to craft a defense strategy. Notably, Applicant has presented no credible evidence to this Court that Trial Counsel did not discuss the issues in the case and the motions made in his case.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED and DISMISSED**.

A handwritten signature in black ink, appearing to be a stylized 'D' or 'B' followed by a flourish.

Allegation 1d:

Trial Counsel never attempted to have Applicant's case settled and conveyed a false plea offer of fifteen years but never brought Applicant to accept the plea offer.

Amended Allegation:

Trial Counsel misadvised Applicant on rejecting the plea offer of thirty (30) years, where Applicant received fifty (50) years at trial.

Applicant alleged Trial Counsel's representation was constitutionally ineffective for misadvising him to reject a plea offer of thirty (30) years, where he received fifty (50) years at trial. This Court finds these allegations are without merit.

A defendant has the right to effective assistance of counsel during the plea-bargaining process. Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419 (2009), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), overruled on other grounds by Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000).); Lafler v. Cooper, 566 U.S. 156, 162 (2012) (quoting McMann v. Richardson, 397 U.S. 759, 771 (1970)). Misadvising a defendant such that he rejects a plea offer and instead proceeds to trial may constitute deficient performance. See, e.g., Lafler, 566 U.S. at 161 (counsel misadvised defendant "that the prosecution would be unable to establish his intent to murder [the victim] because she had been shot below the waist."); Lee v. United States, 582 U.S. 357 (2017) (counsel misadvised a noncitizen defendant that he would not be deported as a consequence of his guilty plea). To show prejudice from the improvident rejection of a plea offer based upon the misadvice of counsel, an applicant must show (1) that but for the ineffective advice there is a reasonable probability the plea offer would have been presented to the court, (2) that the court would have accepted its terms, and (3) that the conviction, sentence, or both would have been less severe under the terms of the plea than was in fact imposed. Lafler, 566 U.S. at 164.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he asked for a plea offer but there was never one offered until trial. (PCR Tr. p. 13). Then, the following colloquy with Applicant occurred:

Q All right. Let's talk about -- it's a little bit ahead, but let's talk about your plea offers. When you and I discussed this, were there two plea offers?

A No.

Q Okay.

A As far as like what you mean were there two plea offers?

Q What was the deal with a 15 -- was it a 15 --

A It was a 15-year plea offer, like, while I was in trial. The day the jury was asking for clarification on deliberations, they came to me. They came to me. They was like, "Myers, how much time would you be willing to do?"

I said, "Shoot. Time served."

They were, like, "No. Be reasonable."

So I was like, "Well, what you think? How would 15 years be?"

"Would you sign it if we bring you 15 years?"

And I was, like, "Of course, I will sign it if you bring me 15 years."

They were, like, "All right. We'll bring it."

They put me back in the holding cell downstairs and they left. So when they left out, I was in the holding cell. I went to sleep. So the next thing I know, I was waking back up, they were pulling me out and like, hey, you've got to come back upstairs for jury clarification on deliberation again. So I'm, like, all right. When I came back up here, it was over with. I was, like, "So what's going on?" They was like, "You are about to be sentenced." I'm, like, "I'm about to be sentenced?" They was like, "Yeah." Luck Campbell basically went to my sister, and my sister told them, "We don't want him to get 15 years. I want him to get the maximum because he killed my husband." And that's what was done. They never put no 15 years on the table. I guess that's what it was.

Q So you were hoping for 15?
A Well, yes, I guess. I guess as far as what they told me and I guess that's how it happened.
Q All right. Now, but there was a 30-year plea offer that was made, 30?
A Yeah, they said 30 mandatory or go to trial. That's what she said, something about 30 mandatory or go to trial.
Q And did you discuss that with Ms. Pinnock?
A Yeah. Ms. Pinnock is the one that told me that.
Q Okay. Did you accept that offer?
A No, sir, I didn't accept it.

(PCR Tr. pp. 13 – 15).

Q Now, you and I have talked about it and you've indicated to me that you feel like your attorney was ineffective for not negotiating on your behalf a plea agreement?
A Yes, sir.
Q And how do you feel that she was ineffective in not doing that?
A Because, like, it was times when I asked -- I asked them to - - I was like, hey, if you get me 20 years, I'll that and go. I'll take 22. I'll take 20 years. I'll take 25 and I'll go. It was, like, oh, I guess, they would -- they was oh, she's not going to do that. Then they waited until, like I said, come at me, like, would you take 15 years. It was like a day -- like, matter of fact, the time when I did the deliberation, when I was going to deliberation, you know, like I said, I came back upstairs and that's when they told me I was getting sentenced. I still knew that I was in the deliberation phase, but they never really tried to get me to plea from the 30 mandatory I heard.
Q Well, you didn't have an offer for 30, 30 mandatory; is that correct?
A Yeah, that's what I heard in the beginning. Like, I had 30 mandatory. I could take that or go to trial.
Q Why didn't you accept that?
A Because I felt like, you know, I ain't meant to kill this person. Then I was thinking in my mind like 30 mandatory, that's, basically, like murder. Y'all going to be convicting me of murder. I was pleading to murder.
Q So was there an understanding from Ms. Pinnock as to what you were likely to receive at trial?
A Yeah, I could be receiving life sentence. I could be receiving life, plus whatever with the attempted murder.
Q Did she explain the difference to you between, basically, the 30-year mandatory and the life without parole?

- A No. No. I just know it was 30 mandatory. Basically, saying 30 mandatory, I'm going to be doing 30 day-for-day.
- Q And you have -- instead of a 30, you have a 50?
- A I have a 50.

(PCR Tr. pp. 34 – 35).

On cross-examination, Applicant testified that he was downstairs in holding and he was asked if he would take fifteen years—to which he told them that he would take it if they brought it to him. (PCR Tr. p. 48). Applicant testified that he dozed off and was awoken by an officer because he had to go back upstairs before jury deliberations had ended. Id. Applicant testified he asked where the fifteen-year offer was and was told that the Solicitor had removed the offer. Id. Applicant testified that they offered him thirty years, and he declined that offer and went to trial. Id. Applicant testified that Victim 2 told the Solicitor that she wanted Applicant to get the max, so the fifteen-year offer was never on the table. (PCR Tr. pp. 48 – 49).

On direct examination, Trial Counsel testified that there were no plea offers prior to trial. (PCR Tr. pp. 64 – 65). Trial Counsel testified that at some point during the trial, there was a solid offer for thirty years. (PCR Tr. p. 65). Trial Counsel testified that while she and Applicant discussed different numbers that he would be willing to accept, there was never a firm offer of fifteen years. (PCR Tr. p. 66). Trial Counsel testified that, in hindsight, Applicant should have accepted the thirty-year plea offer, but she could not recall their exact conversations at that time because everything was happening so fast. (PCR Tr. pp. 67 – 68).

Findings

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, supra. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any

resulting prejudice from that alleged deficiency. See Butler, supra. Trial Counsel **credibly** testified that no fifteen (15) year offer was ever extended or on the table for consideration. While Trial Counsel testified that Applicant would be in a better position had he taken the thirty (30) year plea offer—she also testified that her assessment was based on hindsight. See Strickland, 466 U.S. at 689 ("It is all too tempting for a defendant to second-guess counsel's assistance after conviction or 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.).

Additionally, this Court finds Trial Counsel's representation objectively reasonable under the prevailing professional norms. Trial Counsel presented the offer to Applicant, and Applicant refused the offer. Lastly, this Court finds that while Trial Counsel could not recall specifics, Applicant presented no credible evidence to this Court that Trial Counsel misadvised Applicant on the plea offer. Notably, Applicant testified that he was offered the thirty year plea off, but he rejected it.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 1e: Trial Counsel failed to object to the trial court only re-charging the jurors on lesser-included offense.

Applicant alleged Trial Counsel's representation was constitutionally ineffective for failing to object to the trial court only recharging the jurors on the lesser-included offense. This Court finds this allegation to be without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n 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." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).



When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). In reviewing a trial judge's jury instructions, the court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). "[A] charge is sufficient if, when considered as a whole, it covers the law applicable to the case. State v. Burton, 302 S.C. 494, 498, 397 S.E.2d 90, 92 (1990) (citing State v. Rabon, 275 S.C. 459, 272 S.E.2d 634 (1980)). If the charge "is substantially correct and covers the law [it] does not require reversal." State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (citing State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996)).

Trial

After receiving a note from the jury for clarification on the difference between voluntary and involuntary manslaughter, the trial court recharged the jurors as follows:

So I'm gonna instruct you again on what constitutes voluntary manslaughter and involuntary manslaughter and then you'll be asked to go back and continue. And if what I provide you is not sufficient to assist you in answering your question, you be sure and let me know and I'll bring you back to give you further information, okay?

Voluntary manslaughter is defined as the unlawful killing of another human being which is committed in a sudden heat of passion provoked by a sufficient legal provocation. The law recognizes that a sudden heat of passion arising out of exasperation, rage, anger, sudden resentment, fear or terror, may for the time being affect the self-control of an individual temporarily disturbing the ability to properly reason creating an uncontrollable impulse to do violence and, therefore, reduces the crime from that of murder to that of voluntary manslaughter provided that the sudden heat of passion arose from a sufficient legal provocation. The sudden heat of passion aroused by sufficient legal provocation which may reduce an unlawful homicide from that of murder to that of manslaughter need not be something which dethrones reason entirely or shuts out knowledge or volition, but it must be such heat of passion provoked by such facts or circumstances as would naturally disturb the ability of an ordinary, reasonable and prudent person to properly reason rendering his mind enable of cool reflection and reducing what according to human experience may be described as an uncontrollable impulse to do violence. Therefore, as stated, ***involuntary manslaughter*** is an unlawful homicide committed in the absence of malice, but in a sudden heat of passion, aroused by a sufficient legal provocation.

Involuntary manslaughter is defined as the unintentional killing of another person without malice while engaged in a lawful activity with a reckless disregard for the safety of others. Unintentional means that the Defendant was acting without malice and did not intend to kill or seriously injure anyone, but acted recklessly in the handling of a dangerous instrumentality which resulted in the death or injury to some other person. A reckless disregard for the safety of others and recklessness refers to a state of mind in which a person consciously acts notwithstanding knowledge that his conduct creates a risk to the safety of another person. Before the Defendant can be found guilty of involuntary manslaughter, it would be necessary that the evidence establishes to your satisfaction beyond a reasonable doubt that the Defendant without malice unintentionally killed another person while he was engaged in a lawful activity, but with a reckless disregard for the safety of others.

All right. So please retire to your jury room. Continue with your deliberations. **If you need further guidance, please let me know.**

(Trial Tr. pp. 691 – 693) (emphasis added).

PCR Evidentiary Hearing

On direct examination, Applicant testified that counsel failed to object to the improper jury instruction on voluntary manslaughter. (PCR Tr. p. 30). Applicant testified that the trial judge "misconstrued voluntary manslaughter evidence with involuntary manslaughter statute." Id.

Applicant testified to the following:

"[The] trial judge saying as stated involuntary manslaughter is an unlawful homicide committed in the absence of malice, but in a sudden heat of passion aroused by sufficient legal provocation did not give clarification. And counsel should have objected to this error. Had counsel objected to this error, the outcome of my trial would have been different."

(PCR Tr. pp. 30 – 31). Applicant testified that the jury sent a note asking for clarification on the difference between voluntary and involuntary manslaughter. (PCR Tr. p. 31).

Findings

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, supra. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. Here, the record provides that in recharging the jury on voluntary and involuntary manslaughter, the trial court inadvertently inserted involuntary in the last sentence of the voluntary charge. The trial court went on to correctly charge involuntary manslaughter. This Court finds the jury instructions, when considered as a whole, were correct, and the isolated one-word mishap does not rise to the requisite prejudice to reverse Applicant's convictions and sentences. See State v. Jackson, 297 S.C. 523,

377 S.E.2d 570 (1989) (recognizing that jury instructions must be considered as a whole and if as a whole, they are free from error, any isolated portions that might be misleading do not constitute reversible error).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 1f: Trial Counsel failed to obtain any information regarding the lease of the apartment.

Applicant alleged Trial Counsel's representation was constitutionally ineffective for failing to investigate the information on the lease of the apartment. This Court finds this allegation is without merit.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to

investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Trial

On cross-examination, Victim 2 testified that she told Applicant in March 2014 that he had until July 2014 to be out of the apartment. (Trial Tr. p. 394).

On cross-examination of Applicant, the following colloquy occurred regarding the lease:

Q. So I guess in this entire relationship you've kind of been victimized by your sister. She's threatened you?

- A. Well, she told you on the stand what she did. She came home going crazy, right? That's what she said when she got on the stand, right? She came home -- she came home going crazy throwing my stuff out, right?
- Q. You were living in her apartment, right?
- A. Yeah, but --
- Q. What -- what rent were you paying?
- A. But what she told, it's not -- it's not -- it's confusing how you trying put it, but what she told you prior to her doing it, she had hearsay that we was buying a gun, right? That's hearsay. That's like I tell you somebody just said that about you, but you're gonna slap that person because I told you that? Now you're in jail because of what you heard or you got an assault charge because of what you heard.
- Q. You were living in her apartment, right?
- A. Yeah.
- Q. Were you paying rent?
- A. Occasionally she asked for rent. She asked for rent. She asked for rent.
- Q. And you would pay rent?
- A. No, I ain't -- I ain't give her nothing. I ain't give her nothing.
- Q. Right.
- A. Yeah.
- Q. And so at some point she wanted you to get out?
- A. No, that's what she say out of her mouth. Today I heard that out of her mouth.
- Q. So that day when she was putting your clothes outside, she didn't want you to leave?
- A. No, she did not do that. She say she start putting clothes -- it never -- it never -- your clothes out the -- for you to put someone out, you need a thirty day notice if their name's on the lease. That's how Investigator Truluck say he knew that I stayed there because my name was on the lease. So for you to put someone out, you've got to give them thirty days, right?
- Q. **So your testimony now is that your name was on the lease of that apartment.**
- A. **That's what he said.**
- Q. **I'm asking you if your name was on the lease of that apartment?**
- A. **I don't know.**
- Q. **Did you go sign a lease?**
- A. **No, ma'am, I never signed a lease. I never mess with anything dealing with that.**
- Q. **Okay. And at some point it was just -- you understood it to be your sister's apartment, right?**

- A. Yes, ma'am.
Q. She was the one paying the bills?
A. If you want to -- if you want to say that.
Q. Were you paying the bills?
A. No, ma'am.
Q. Okay. And at some point she asked you to leave?
A. Not leave. That's what I'm saying she said out of her mouth. She never said Dexter, you're gonna leave.
Q. So in none of your statements to police would you say that she asked you to leave?
A. Can you find that statement?
Q. I'm asking you.
A. No, ma'am.
Q. What about when they said were you asked to move out recently by your sister and you said no, not recently, that shit happened in April? So she did ask you to leave?
A. No, she didn't ask me to leave.
Q. Okay. So you never got asked to leave the apartment?
A. No.

(Trial Tr. pp. 562 – 564) (emphasis added).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel was ineffective because she never investigated the lease of the apartment to see if he was supposed to be in the apartment or not. Applicant testified that the State tried to imply that Applicant was not supposed to be at the apartment. (PCR Tr. pp. 19 – 20). Applicant testified that he did not "think" Trial Counsel looked into it. (PCR Tr. p. 20).

On cross-examination, Applicant testified that he never signed a lease, but Victim 2 told him she put him on the lease. (PCR Tr. pp. 50 – 51).

On recross-examination, Applicant testified that he gave Victim 2 money to pay rent for the first three months. (PCR Tr. pp. 60 – 61). Applicant testified that on cross-examination when he said he did not pay rent and Victim 2 did pay rent—he meant Victim 2 took the money to pay rent, not him. (PCR Tr. p. 61). Applicant testified that he was not employed at the time, but he

was able to pay rent. Id.

Findings

As an initial matter, this Court finds Applicant's testimony in this allegation **not credible**. For instance, Applicant testified at the evidentiary hearing that he gave Victim 2 rent money for the three months he was living there, yet at trial he testified that he never gave her any rent money—he gave her nothing. Applicant went so far as to testify that he had money coming in—thus, he could potentially pay rent—because he was the beneficiary of his brother's disability check. (PCR Tr. pp. 60 – 61). Again, at trial, Applicant testified that Victim 2 attempted to collect rent from him, but he never gave her anything.

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant has further failed to present any probative evidence to this Court that he, in fact, was listed on the lease and what that would have done to have changed the outcome of his trial.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Amended Allegation: Trial Counsel filed a Motion to Reconsider but failed to provide the trial court with a transcript and failed to argue the motion to the trial court.

Applicant alleged Trial Counsel's representation was constitutionally ineffective for failing to provide the trial court with a transcript and failing to argue the motion for reconsideration. This Court finds this allegation to be without merit.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel told him she filed a motion to reconsider. (PCR Tr. p. 37).

On cross-examination, Applicant testified that he was prejudiced because the shootings all happened at once and the trial judge did not give him a chance to make his sentences concurrent. (PCR Tr. p. 56).

Findings

As an initial matter, there is no professional obligation to file a motion for reconsideration of a sentence absent a specific legal reason to do so. In South Carolina, a trial judge is given wide discretion in determining what sentence should be imposed and whether multiple sentences should run consecutively or concurrently. See State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (S.C. Ct. App. 1997); see also 21 Am.Jur.2d Criminal Law § 552 (1981) (trial court has the power to order sentences to be served consecutively). The sentence imposed on Applicant was not an illegal sentence, nor was there any allegation that the trial court acted with partiality, prejudice, oppression, or corrupt motive when sentencing Applicant. Id.

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Trial Counsel filed Applicant's motion to reconsider. Whether any argument before the trial judge or providing a copy of the trial transcript to the trial court would have changed the ruling on the motion to reconsider is pure speculation. Mere speculation and conjecture are not sufficient to substantiate an allegation that counsel's deficient performance was prejudicial. See Harris v. State, 377 S.C. 66, 659 S.E.2d 140 (2008), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

ALLEGATIONS NOT PLED BUT RAISED AT THE EVIDENTIARY HEARING

Allegation: Trial Counsel Failed to have a competency evaluation completed on Applicant prior to trial.

Applicant alleged Trial Counsel's representation was constitutionally ineffective for failing to have a competency evaluation completed before trial. This Court finds this allegation to be

without merit.

In order for a defendant to be competent to stand trial, he must have "sufficient present ability to consult with his lawyer with a reasonable degree of relational understanding" and must have a "rational as well as factual understanding of the proceedings against him." Ramirez v. State, 413 S.C. 351, 366, 776 S.E.2d 101, 110 (S.C. Ct. App. 2015) (citing Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992)), rev'd on other grounds, Ramirez, at 22, 795 S.E.2d at 845; Dusky v. United States, 362 U.S. 402 (1960) (per curiam) (internal quotations omitted). A defense attorney may reasonably rely upon his own perceptions in determining whether a mental competency evaluation is required. Jeter, at 233, 417 S.E.2d at 596.

If an applicant for post-conviction relief establishes that his counsel's performance was deficient due to counsel's failure to request a mental competency evaluation when one was warranted, the applicant must then demonstrate that there is a reasonable probability he was incompetent at the time of trial in order to be entitled to relief. See Ramirez, at 22, 795 S.E.2d at 845 (applying this prejudice standard in a case in which applicant pleaded guilty but mentally ill after one mental evaluator concluded he was competent to stand trial, but another concluded applicant was severally mentally retarded) (citation omitted).

"Due process of law prohibits the conviction of a person who is mentally incompetent." Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992). An accused is competent to stand trial if he or she has sufficient capability to consult with his or her lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings. Id., 308 S.C. at 232, 417 S.E.2d at 596. "The focus of a competency inquiry is the defendant's mental capacity; the question is whether he [or she] has the *ability* to understand the proceedings."

Garren v. State, 423 S.C. 1, 14, 813 S.E.2d 704, 711 (2018) (quoting Godinez v. Moran, 509 U.S. 389 (1993)).

As to the deficiency prong under Strickland, an attorney may reasonably rely upon his or her own perceptions of a defendant in determining whether or not their client should be mentally evaluated. Jeter, 308 S.C. at 233, 417 S.E.2d at 596. When establishing Strickland prejudice in the context of counsel's failure to request a mental competency evaluation, the applicant need only show a reasonable probability that he was incompetent at the time of the original proceeding. Garren, 423 S.C. at 12, 813 S.E.2d at 710 (citing Ramirez v. State, 419 S.C. 14, 21, 795 S.E.2d 841, 845 (2017)). As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable mental health issues which undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. Id., 423 S.C. at 13-14, 813 S.E.2d at 711.

An applicant alleging incompetence *in fact* must show by a preponderance of the evidence that he was incompetent at the time of his original proceedings. Id., 423 S.C. at 16, 813 S.E.2d 704, 713; Hall v. Catoe, 360 S.C. 353, 358, 601 S.E.2d 335, 338 (2004).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he had "been on mental health since a child." (PCR Tr. p. 17). Applicant testified to the following:

- Q Do you know what your diagnosis is?
- A Even now, like, you know, like a lot of stuff happened, but like I said, ADHD. I've been bipolar, schizophrenic, stuff like that, you know, just -- not PTSD and stuff like, but I'm saying even that time, like, ADHD, bipolar, schizophrenic and things of that nature.
- Q Did you tell Ms. Pinnock about that?
- A Yeah, because they asked me on the stand. I had told them that before I even got on the stand. I'm, like, man, you know, I'm figuring if I'm on mental health in the county jail or

anything or when I was mental health on the street, like I'm feeling -- she probably knew because I was on mental health, and mental health was helping me in the county jail.

Q Now, when you were working with her in preparing your case for trial, did you understand what was going on?

A No, I didn't. I didn't understand what was going on. Like I said, my counsel was telling me what to do, so I went off what they told me to do.

(PCR Tr. p. 17).

Applicant testified that Trial Counsel should have had a competency evaluation completed on him prior to trial because "the records would have shown [he] was mentally incompetent." (PCR Tr. p. 33). Applicant testified that he "had a record of psychiatric treatment" and his "trial would have been different." (PCR Tr. p. 33). Applicant testified that he did not understand what was going on at trial because of his mental incompetence. (PCR Tr. p. 33).

On cross-examination, Applicant testified that he was not competent to stand trial because he did not know anything and was just following Trial Counsel's lead. (PCR Tr. p. 56).

On cross-examination, Trial Counsel testified that she did not think Applicant needed to be evaluated for competency based on her interactions with Applicant. (PCR Tr. p. 81).

Findings

As an initial matter, this Court finds Applicant's testimony **not credible** and Trial Counsel's testimony **credible** on this issue. This Court further finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. Trial Counsel **credibly** testified that based on her interactions and observations of Applicant that she did seek a competency evaluation because she did not think one was necessary.

Additionally, Applicant failed to introduce any credible evidence that Trial Counsel's decision fell below an objective standard of reasonableness.

This Court finds Trial Counsel reasonably relied upon her own perception that Applicant's mental competency was not disputed and did not warrant a request for an evaluation. See Garren v. State, 423 S.C. 1, 13, 813 S.E.2d 704, 710 (2018) (finding that counsel reasonably relied upon his own perceptions of his client's competency because, based on counsel's interactions with his client, he believed that a competency evaluation was not needed, believed that his client was competent, and continued to believe that his client was competent at his plea hearing). Simply put, Applicant has failed to show any deficiency in Trial Counsel's representation because Applicant has provided no evidence Trial Counsel should have questioned his mental competency at the time of his trial.

Furthermore, this Court finds Applicant has failed to show any resulting prejudice from Trial Counsel's decision in not having Applicant's mental competency evaluated. Applicant has not demonstrated that there was a reasonable probability that he would have been found incompetent if his competency had been evaluated before his trial. Applicant's testimony did not establish that he lacked the sufficient ability at the time to consult with Trial Counsel with a reasonable degree of relational understanding about his criminal case or the consequences of proceeding with his trial. Applicant's assertion that he suffered prejudice from the lack of a competency examination is purely speculative. See Garren, at 13, 813 S.E.2d at 711 (finding that there was no evidence to support the PCR court's finding that Garren suffered prejudice from his defense attorney's failure to have Garren's mental competency evaluated because Garren did not introduce evidence at his PCR hearing that there was a reasonable likelihood that he would have been found incompetent if the evaluation had been conducted).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Trial Counsel failed to advise Applicant on taking the stand and testifying.

Applicant alleged Trial Counsel was constitutionally ineffective for failing to advise Applicant on taking the stand and testifying in his own defense. This Court finds this allegation to be without merit.

"The right to testify on one's own behalf at a criminal trial is guaranteed by the Fifth, Sixth, and Fourteenth Amendments." State v. Wright, 416 S.C. 353, 372, 785 S.E.2d 479, 489 (Ct. App. 2016) (citing Rock v. Arkansas, 483 U.S. 44, 51-52 (1987)). "The decision to testify or not is a perilous one. If a defendant does not testify, he foregoes the opportunity to tell the jury his version of events. [However], if a defendant chooses to testify, he subjects himself to cross-examination, including possible impeachment with prior convictions." Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). "If a defendant chooses not to take the stand in his own defense, the trial judge must, if requested, instruct the jury that the defendant's failure to testify cannot be held against him or considered by the jury in any manner during its deliberations." Id. "A defendant's decision to testify or not must be made with knowledge of the consequences of either choice." Id.

This right may be waived, and all that is necessary for a defendant to waive the right is to **know** that a right to testify exists. United States v. McMeans, 927 F.2d 162, 163 (4th Cir. 1991).

Trial

At trial, the following colloquy occurred before Applicant took the stand:

THE COURT: Okay. Have you talked with your client about his right to testify or not?

MS. PINNOCK: I have, Your Honor.

THE COURT: You have?

MS. PINNOCK: Yes, sir.

THE COURT: And what does he indicate to you he wishes to do?

MS. PINNOCK: He has indicated that he would like to testify in his own defense.

THE COURT: All right. Mr. Myers, you understand when you're charged with a crime, you have an absolute right to remain silent. Have you been instructed on that?

THE DEFENDANT: Yes, sir.

THE COURT: You understand that you don't have to take the witness stand and testify, you don't have to make any statement, you don't have to answer any questions. However, should you make a decision to take the witness stand and testify, you've got to answer not only your lawyer's questions, but you'll have to answer any questions asked of you by the prosecutor, to the extent that they're relevant, even if the responses to those questions might tend to prove you guilty. Do you understand your right to testify?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand you'll have to be cross-examined by the prosecution?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand you'll have to answer their questions also even if they tend to prove you guilty of some crime?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that nobody can make you testify? That it's your choice?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that if you choose not to testify I'll instruct the jury that they cannot hold that against you or consider it in any way?

THE DEFENDANT: Yes.

THE COURT: Have you had plenty of time to talk with your lawyers about your decision to testify or not?

THE DEFENDANT: Yes, sir.

THE COURT: Have they discussed with you the advantages and disadvantages of testifying, as well as not testifying?

THE DEFENDANT: Yes.

THE COURT: And do you appreciate what those advantages and disadvantages are?

THE DEFENDANT: Yes, sir.

MS. PINNOCK: Do you understand?

THE DEFENDANT: Yes.

THE COURT: And you have made a decision about whether or not you'll testify?

THE DEFENDANT: Yes, sir.

THE COURT: And what is that decision?

THE DEFENDANT: I'm gonna testify.

THE COURT: And is that a decision that you've made of your own free will and accord?

THE DEFENDANT: Can you say that again?

THE COURT: Is that a decision that you have made of your own free will and accord?

THE DEFENDANT: Oh, yes, sir.

THE COURT: And are you satisfied with your decision?

THE DEFENDANT: Yes, sir.

THE COURT: You've had plenty of time to reflect upon it?

THE DEFENDANT: Yes, sir.

THE COURT: Has anybody forced you into that decision?

THE DEFENDANT: No, sir.

THE COURT: Has anyone even suggested what decision you should make?

THE DEFENDANT: No, sir.

THE COURT: You made that decision on your own?

THE DEFENDANT: Yes, sir.

THE COURT: And you're satisfied with it?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Thank you.

(Trial Tr. pp. 491 – 494).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel told him to testify so he could tell his story to the jury. (PCR Tr. pp. 35 – 36). Applicant testified that Trial Counsel came the day or night before he was to take the stand to prepare him for it. (PCR Tr. p. 36).

On cross-examination, Applicant testified that he took the stand so he could tell his version to the jury. (PCR Tr. p. 54). Applicant testified that he recalled the trial court reviewing his rights before he took the stand. (PCR Tr. p. 55).

Findings

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court further finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds Applicant was fully aware of his right to testify and the advantages and disadvantages of doing so. The record reflects Applicant engaged in a thorough colloquy with the trial court and knowingly chose to assert his right to testify.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial

Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Trial Counsel failed to meet with Applicant a sufficient number of times.

Applicant alleged Trial Counsel's representation was constitutionally ineffective for failing to meet with Applicant a sufficient number of times. This Court finds this allegation to be without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

South Carolina case law has established that even if counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). Mere speculation and conjecture are not insufficient to substantiate an allegation that counsel's deficient performance

was prejudicial. See Harris v. State, 377 S.C. 66, 659 S.E.2d 140 (2008), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel met with him about four times before his trial date, and then he saw her on his trial date. (PCR Tr. p. 12).

On cross-examination, Applicant testified that Trial Counsel only met with him four times up until he went to bond court. (PCR Tr. p. 39).

On direct examination, Trial Counsel testified that her notes reflected that she met with Applicant for the first time in July of 2014 and then fifteen to eighteen more times after that. (PCR Tr. p. 63).

Findings

As an initial matter, this Court finds the testimony of Trial Counsel **credible** and the testimony of the Applicant **not credible**. This Court further finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, supra. Also, this Court finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. Trial Counsel **credibly** testified that she met with Applicant fifteen to eighteen times after their initial meeting. See Campbell, Olson, and Easter, supra.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or

omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Trial Counsel failed to review discovery with Applicant.

Applicant alleged Trial Counsel's representation was constitutionally ineffective for failing to have a competency evaluation completed before trial. This Court finds this allegation to be without merit.

An applicant who alleges his or her defense attorney was ineffective in failing to spend more time preparing or providing a copy of the discovery materials must demonstrate prejudice by showing what evidence could have been discovered or what other defenses could have been pursued. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. Id. (citing David v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he did not really look at discovery. (Trial Tr. p. 16). Applicant testified that there was stuff he did not know about until he went to trial. Id.

Applicant testified there were reports and stuff he did not know about until trial started. Id.

On cross-examination, Applicant testified that Trial Counsel only went over the multiple statements he made to police. (PCR Tr. p. 38).

On cross-examination, Trial Counsel testified that she reviewed discovery with Applicant. (PCR Tr. p. 80).

Findings

As an initial matter, this Court finds the testimony of Trial Counsel **credible** and the testimony of the Applicant **not credible**. This Court further finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, supra. Also, this Court finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. Trial Counsel **credibly** testified that she went over discovery with Applicant. Furthermore, Applicant has failed to present what evidence or defenses could have been discovered had Trial Counsel further reviewed discovery with Applicant.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Trial Counsel failed to object to Applicant's juvenile record being brought up by the prosecutor so that his time would be run consecutively.

Applicant alleged Trial Counsel was constitutionally ineffective for failing to object to the prosecutor bringing up his juvenile record so that his time would be run consecutively. This Court finds this allegation to be without merit.

"At sentencing, a judge has an obligation to consider information material to punishment." Hayden v. State, 283 S.C. 121, 123, 322 S.E.2d 14, 15 (1984) (citing State v. Sullivan, 267 S.C. 610, 230 S.E.2d 621 (1976)). "A sentencing judge 'may appropriately conduct an inquiry broad in scope, largely unlimited as to either the kind of information he may consider, or the source from which it may come.'" Hayden, 283 S.C. at 123, 322 S.E.2d at 15 (quoting United States v. Tucker, 404 U.S. 443 (1972)); see State v. Cantrell, 250 S.C. 376, 379-80, 158 S.E.2d 189, 191 (1967) (sentencing judge entitled to "inquire into any relevant facts in aggravation or mitigation of punishment" so that he "is the possession of the fullest information possible concerning the defendant's life and characteristics." (citations omitted).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel was ineffective for failing to object to the prosecutor bringing up his juvenile record and using it to have his time run consecutively.



Findings

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. This Court finds that Trial Counsel cannot be deficient for failing to object when there was no legal basis for the objection.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Trial Counsel failed to challenge the ballistics reports.

Applicant alleged Trial Counsel's representation was constitutionally ineffective for failing to challenge the ballistics reports. This Court finds this allegation to be without merit.



PCR Evidentiary Hearing

On direct examination, Trial Counsel testified that she did not recall anything in the ballistics reports that they wanted to challenge. (PCR Tr. p. 72). Trial Counsel testified that she did not object to the reports because they used information within them in Applicant's defense. Id.

Findings

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, supra. This Court finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. This Court finds Trial Counsel **credibly** testified that they used information from the ballistics reports to support Applicant's theory of the case. This Court finds Trial Counsel's strategic reasoning to be well within the range of reasonable professional judgment and Trial Counsel's performance here was not deficient.

Furthermore, any contention from Applicant that Trial Counsel should have objected to the reports is also unfounded. This Court cannot find a legal basis for an objection. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or

omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED and DISMISSED**.

Allegation: Trial Counsel failed to properly advise Applicant on whether or not to waive his stand-your-ground hearing.

Applicant alleged Trial Counsel's representation was constitutionally ineffective for improperly advising Applicant about a stand-your-ground (SYG) hearing. This Court finds ~~this~~ allegation to be without merit.

Protection of Persons and Property Act⁵ (the Act) provides the following:

- (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:
 - (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
 - (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.
- (B) The presumption provided in subsection (A) does not apply if the person:
 - (1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or

⁵ S.C. Code Ann. § 16-11-410 to -450.

occupied vehicle including, but not limited to, an owner, lessee, or titleholder;

- (C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

The General Assembly enacted the Act to codify the common law Castle Doctrine. State v. Curry, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013). "Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity." Id. at 371, 752 S.E.2d at 266. "This includes all elements of self-defense, save the duty to retreat." Id.

"[T]he legislature intended defendants be shielded from trial if they use deadly force as outlined under the Act." State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). Thus, upon motion, the issue of immunity under the Act must be decided prior to trial. Id. A party seeking immunity under the Act must show entitlement to immunity by a preponderance of the evidence. Id. at 411, 709 S.E.2d at 665. Moreover, the Act is predicated on the absence of aggression or fault on the defendant's part in bringing on the difficulty. State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), citing State v. Grantham, 224 S.C. 41, 45, 77 S.E.2d 291, 292 (1953). Notably, the Act is a procedural provision that "does not contain any substantive provisions of law"; thus, it "is not relevant to the work of a jury." State v. Marin, 404 S.C. 615, 625, 745 S.E.2d 148, 154 (Ct. App. 2013). A defendant must establish four things in asserting self-defense:

- (1) the defendant must be without fault in bringing on the difficulty.

- (2) the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.
- (3) if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life.
- (4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense.

A trial court must consider the elements of self-defense in determining whether a defendant is entitled to immunity. State v. Glenn, 429 S.C. 108, 118, 838 S.E.2d 491, 496 (2019), citing Curry, 406 S.C. at 371-72, 752 S.E.2d at 266-67.

Trial

THE COURT: All right. Do y'all have pre-trial motions you need to have addressed?

MS. PINNOCK: Yes, Your Honor. I can hand up -- well, to begin with, Your Honor, we filed notice seeking to the Solicitor's Office of our intentions of going forward on an immunity hearing under Section 16-11-440(c). It's our position now that we're going to withdraw that request for a hearing and just move forward with the trial.

THE COURT: And you've discussed that hearing with Mr. Myers?

MS. PINNOCK: Yes, sir.

THE COURT: And have you had lengthy discussions about the impact of such a hearing and the potential that it could be granted?

MS. PINNOCK: Yes, Your Honor. We explained the purpose of the hearing. We discussed that with Mr. Myers leading up to us filing the motion. We filed the motion on Thursday afternoon of last week and we explained to him leading up to this week about, you know, what could

happen -- what we believed was going to happen during the motion and what the possible outcomes would be. Like I said, at this point we are changing our position and request to withdraw that motion.

THE COURT: All right. Mr. Myers, have you heard what your lawyer just told me?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Did she explain to you, and your other lawyers, did they explain to you the purpose of an immunity hearing pursuant to 16-11-440?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you understand the purpose of that hearing?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And Ms. Pinnock tells me that y'all have discussed it and that you prefer not to go forward with such a hearing and wish to simply proceed with any other motions that might be necessary to be heard before we select a jury in the case. Is that true?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you understand the significance of waving your right to have a hearing pursuant to 16-11-440?

THE DEFENDANT: Yes, sir.

THE COURT: And you've had plenty of time to discuss that with your lawyers?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you do not wish to proceed with that motion?

THE DEFENDANT: No, Your Honor.

THE COURT: You wish to have the motion withdrawn?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions you need to ask me about that decision?

THE DEFENDANT: No, sir.

THE COURT: Do you need to discuss it with your lawyers further?

THE DEFENDANT: No, sir.

THE COURT: All right. Thank you. What other motions do we have?

(Trial Tr. pp. 15 – 17).



PCR Evidentiary Hearing

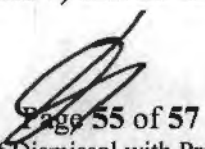
On direct examination, Applicant testified that he was told to waive his SYG hearing. (PCR Tr. p. 21). Applicant testified that Trial Counsel never discussed his defenses with him. (PCR Tr. p. 23).

On cross-examination, Applicant testified that if Trial Counsel had advised him correctly, he could have been found "guilty of self defense" at an SYG hearing. (PCR Tr. p. 44).

Findings

As an initial matter, this Court finds Applicant's testimony **not credible**. This Court further finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. Also, this Court finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Notably, Trial Counsel was not questioned on this claim. Nevertheless, this Court finds Applicant's contention that he would have been successful at an SYG hearing is not supported by the record, and Applicant voluntarily and knowingly withdrew his motion for an SYG hearing.

Moreover, the record provides the trial court conducted a thorough colloquy where Applicant engaged with the trial court. Applicant testified in affirmation that Trial Counsel 1) explained the purpose of an immunity hearing pursuant to the Act; 2) that he and Trial Counsel discussed the hearing and he preferred not to move forward with it; 3) that he understood the significance of waiving his right to an immunity hearing; 4) that he had plenty of time to discuss it with Trial Counsel; 5) that he wished to withdraw his motion for an immunity hearing; 6) that he had no questions for the trial court; and 7) that he did not need any further time to speak with



Trial Counsel. (Trial Tr. pp. 16 – 17). This Court finds, as found *supra*, the record supports Applicant was fully apprised of the rights he was waiving and voluntarily and knowingly withdrew his motion for an SYG hearing.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED and DISMISSED**.

|CONCLUSION PAGE FOLLOWS|

CONCLUSION

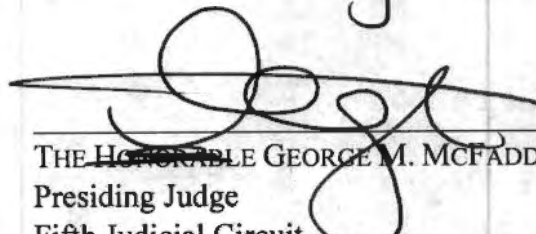
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15th day of July, 2024.


THE HONORABLE GEORGE M. MCFADDIN, JR.
Presiding Judge
Fifth Judicial Circuit

Sumter, South Carolina

WITNESSES

(S) Cris Truluck
- Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010500199

ACTION OF GRAND JURY

TRUE BILL

Michael Boone
Foreperson of Grand Jury
Date:

AUG 14 2014

VERDICT

Guilty

Carolyn McLamere
Foreperson of Petit Jury
Date: 9/4/2014

DOCKET NO. 2014GS4005481

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

AUGUST TERM 2014

42

**THE STATE
vs.**

Dexter L Myers

**Indictment for
Attempted Murder**

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

810

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 RICHLAND)

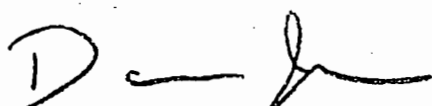
INDICTMENT

At a Court of General Sessions, convened on August 13, 2014, the
Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Dexter L Myers did in Richland County on or about July 2, 2014, did
with the intent to kill, attempt to kill Mahogany Speech-Harris with malice
aforethought, either expressed or implied. All in violation of SC Code of
Laws § 16-3-29 (1976, as amended)

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
 STATE VS.
Dexter L Myers

AKA:

Race: BLACK Sex: M Age: 21DOB: [REDACTED] SS# [REDACTED]Address: [REDACTED]City, State, Zip: Columbia, SC 29210DL#: 103127544 SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Attempted MurderINDICTMENT/CASE#: 2014GS4005481A/W#: 2014A4010500199Date of Offense: 7/2/2014S.C. Code § : 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin 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 ☐ §17-25-45
 w/minor 1st or Lewd Act)
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.

ATTORNEY: Campbell, Luck SC Bar# 13009 Defendant X Dexter Myers Attorney for Defendant [REDACTED] SC Bar# 77508

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 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:☒ 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 ☐ OrderedTotal: \$ — plus 20% fee: \$ —Payment Terms: —☐ Set by SCDPPPS —Recipient: —

*Fine: \$ —
 § 14-1-206 (Assessments 107.5 %) \$ —
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ —
 § 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 \$ —
 § 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 \$ —
 3% to County (if paid in installments) \$ —
 TOTAL \$ —

Clerk of Court/ Deputy Clerk Jeannette H. H. BrindleyCourt Reporter: Bakiso-Ray

SCCA/217 (03/2011)

PTUP —— days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. —May serve W/E beginning —Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ — beginning —\$ — paid to Public Defender FundOther: —

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge [REDACTED]Judge Code: 2053Sentence Date: September 4, 2015

WITNESSES

(S) Cris Truluck
- Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010500200

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date:

AUG 14 2014

VERDICT

Guilty of Voluntary Manslaughter

[Signature]
Foreperson of Petit Jury
Date: 9/4/2015

DOCKET NO. 2014GS4005482

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

AUGUST TERM 2014

42

**THE STATE
vs.**

Dexter L Myers

**Indictment for
Murder / Murder**

**SC Code: 16-03-0010
CDR Code: 0116**

813

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 RICHLAND)

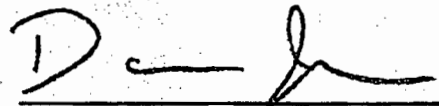
INDICTMENT

At a Court of General Sessions, convened on August 13, 2014, the
Grand Jurors of Richland County present upon their oath:

MURDER

That Dexter L Myers did in Richland County, on or about July 2, 2014, kill
the victim, Dajuan Harris, with malice aforethought, either express or
implied, by means of gunshot, and the victim did die as a proximate result
thereof. All in violation of Section 16-03-0010, S. C. Code of Laws, 1976,
as amended

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

615

COUNTY OF Richland
 STATE VS.
Dexter L Myers

AKA:

Race: BLACK Sex: M Age: 21DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Columbia, SC 29210DL#: 103127544 SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Manslaughter / Voluntary manslaughter

INDICTMENT/CASE#: 2014GS4005482A/W#: 2014A4010500200Date of Offense: 7/2/2014S.C. Code § : 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217

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

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Campbell Luck13005
SC Bar#X. Dexter Myers
Defendant[Signature]
Attorney for Defendant77518
SC Bar#WHEREFORE, the Defendant is committed 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.

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☒ 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
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*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
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§ 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	\$
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning

\$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Jeanette F. H. Brice, Jr.Court Reporter: [Signature]

SCCA/217 (03/2011)

Presiding Judge [Signature]Judge Code: 3053Sentence Date: September 4, 2015