

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Sep 24 2024

S.C. SUPREME COURT

Certiorari to Greenville County

Honorable Grace Gilchrist Knie, Circuit Court Judge

MARQUAL DEVINE GRIFFIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000091

APPENDIX

JOANNA K. DELANY
Appellate Defender

ALAN WILSON
Attorney General

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

MELODY J. BROWN
Senior Assistant Deputy Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201
(803) 734-3727

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED SEPTEMBER 11-13, 2017	1
APPLICATION FOR POST-CONVICTION RELIEF	471
AMENDED APPLICATION FOR PCR.....	491
RETURN AND MOTION FOR A MORE DEFINITE STATEMENT	496
SECOND AMENDED APPLICATION FOR PCR.....	508
PCR HEARING TRANSCRIPT DATED SEPTEMBER 20, 2023.....	512
APPLICANT’S EXHIBIT NO. 1 (JURY CHARGE EXCERPT)	593
APPLICANT’S EXHIBIT NO. 2 (JURY CHARGE EXCERPT)	594
APPLICANT’S EXHIBIT NO. 3 (JURY QUESTION).....	595
APPLICANT’S EXHIBIT NO. 4 (DEFENSE CLOSING EXCERPT).....	596
APPLICANT’S EXHIBIT NO. 5 (JURY CHARGE EXCERPT)	597
APPLICANT’S EXHIBIT NO. 6 (MURDER STATUTE).....	598
APPLICANT’S EXHIBIT NO. 7 (OPENING STATEMENT EXCERPT)	599
APPLICANT’S EXHIBIT NO. 8 (MURDER STATUTE).....	604
APPLICANT’S EXHIBIT NO. 9 (EXCERPT OF REMARKS TO DEFENDANT)	605
RESPONDENT’S POST-HEARING MEMORANDUM.....	606
APPLICANT’S POST-HEARING MEMORANDUM.....	618
ORDER OF DISMISSAL	626
INDICTMENT.....	641
SENTENCE SHEETS	653

[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT: STATE'S EXHIBIT 8 (CD-- JAIL CALL) AND STATE'S EXHIBIT 23 (DVD-- DEFENDANT'S STATEMENT)]

receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, at 670. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690.

A defendant is entitled to the effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy" Jones, at 754.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court

applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. Southerland, at 616, 524 S.E.2d at 836. Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Applicant was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, Applicant must show that, but for appellate counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

Applicant claims his defense attorneys were constitutionally ineffective for failing to object when Judge Gravely allegedly commented upon the facts of the case. A trial judge should “refrain from any comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of witnesses, the guilt of an accused, or any fact in controversy.” State v. Brisbon, 323 S.C. 324, 331, 474 S.E.2d 433, 437 (1996) (citations omitted). The South Carolina Supreme Court has found it improper when a trial court charging a jury on what the State had to prove in order for the evidence of a breathalyzer exam to be admissible evidence commented that the jury had “heard such evidence.” Brisbon, (citing State v. Smith, 288 S.C. 329, 342 S.E.2d 600 (1986), overruled on other grounds by State v. Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019)). The Supreme Court found that it was improper when a trial court, while ruling upon a defendant’s object that testimony was meant only to buttress the victim’s testimony, commented that the victim’s story was not “something she made up between then and now, as you suggested.” Brisbon, at 331-32, 474 S.E.2d at 437 (citing Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987)). The Supreme Court did not find improper a trial court’s instruction that, when the jury was determining the credibility of witnesses, it should take into account whether the defendant was forthright or hesitant because the comment was not an affirmative comment upon the evidence and did not state that the defendant was untruthful. Brisbon, at 330-32, 474 S.E.2d at 437-38. The Supreme Court

found a trial court did not commit reversible error by denying a defendant's request to provide the following examples of legal provocation to the jury:

[P]ulling a knife on a defendant, pointing a gun at a defendant, spitting in a defendant's face, assault of a family members, sudden mutual combat where one of the participants is killed by the other without a previously informed intention to do so, finding one's spouse in the act of adultery, or the deceased having molested a defendant's minor child.

State v. Hughey, 339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000), overruled in part on other grounds by Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009). The requested examples would have elevated specific facts of the facts and constituted a direct instruction upon the facts of that defendant's case because the defendant alleged that a knife was pulled on him, that the victim spit in his face, and that the two engaged in sudden, mutual combat. Id.

In this case, while instructing the jury, Judge Gravely said this about his role and the jury's:

[Y]ou are the sole and exclusive judges of the facts in a case. As a trial judge, I cannot intimate, state, comment on, or make any statement to a trial jury about the facts in a case, because you are the sole judge of that. If, in some way, during this trial, if I inferred or made any comments or anything that would lead you to believe that I had an opinion of these facts, then you are to disregard those, because that is totality your duty and not that of the judge.

Transcript 420. While instructing the jury on malice, Judge Gravely gave as examples of words or actions that could demonstrate the presence of express malice one "lying in wait for a person or any other acts of preparation going to show that the deed was within the defendant's mind" Transcript 435.

Applicant claims his attorneys were constitutionally ineffective for failing to object when Judge Gravely instructed the jury on voluntary manslaughter as the lesser-included offense or murder, rather than instructing it on involuntary manslaughter; further, Applicant alleges the error on the part of his attorneys was compounded because the verdict form did not conform to the lesser-included instruction actually given. A defendant is entitled to a jury instruction on a lesser-included offense if "there is evidence from which it could be inferred [that] a defendant committed

a lesser rather than a greater offense.” State v. Fields, 356 S.C. 517, 522-23, 589 S.E.2d 792, 795 (S.C. Ct. App. 2003) (citing State v. Mathis, 287 S.C. 589, 340 S.E.2d 538 (1986)). “Voluntary manslaughter is the unlawful killing of a human being in a sudden heat of passion upon sufficient legal provocation.” State v. Locklair, 341 S.C. 352, 359, 535 S.E.2d 420, 424 (2000) (citing State v. Johnson, 333 S.C. 62, 508 S.E.2d 29 (1998)). Involuntary manslaughter is either:

(1) [T]he killing of another without malice and unintentionally, but while one is engaged in the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) the killing of another without malice and unintentionally but while engaged in the doing of a lawful act with a reckless disregard of the safety of others.

State v. Tucker, 324 S.C. 155, 170, 478 S.E.2d 260, 268 (1996) (citations omitted). In this case, Judge Gravely instructed the jury on murder. Transcript 434-36. Judge Gravely instructed the jury on the lesser-included offense of involuntary manslaughter, stating that, for it to prove that Applicant was guilty of the offense, it would have to “prove beyond a reasonable doubt that [Applicant] unintentionally killed the victim without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm or that [Applicant] unintentionally killed the victim without malice, while engaged in a lawful activity with reckless disregard for the safety of others.” Transcript 436. Chambers stated to the jury during closing argument that the jury could consider the lesser-included offense of involuntary manslaughter as an alternative to murder. Transcript 413. While instructing the jury on how to fill out the verdict form, he said that, if the jury found Applicant not guilty of murder, it should then consider whether Applicant was guilty of voluntary manslaughter. Transcript 442. Because the jury was instructed in involuntary manslaughter at all other opportunities and because the verdict form read “involuntary manslaughter,” this was presumably a slip of the tongue. Judge Gravely did not instruct the jury on the offense of voluntary manslaughter, and contrary to the allegations of Applicant, the verdict form had options for the jury to choose between murder and involuntary

manslaughter, leaving no contradiction between the jury charge and the verdict form.

Applicant claims his appellate attorney was constitutionally ineffective for failing to argue on appeal that Judge Gravely erred in instructing the jury on murder and the lesser-included offense of involuntary manslaughter but submitting a verdict form to the jury that included a verdict selection only for voluntary manslaughter. The verdict form at Applicant's trial did not contain an option for voluntary manslaughter, only murder and involuntary manslaughter.

Respondent submits that Applicant likely cannot show that he is entitled to post-conviction relief on these claims in light of the strong deference given to defense attorneys in post-conviction relief actions, but requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V. Denial of All Other Claims

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

VI. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, 428 S.C. 231, 238-39, 834 S.E.2d 196, 199-200 (2019), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 245, 834 S.E.2d at 203 (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 S.C. Code Ann. § 17-27-150(a) (2008), an applicant in a noncapital post-conviction relief action may invoke discovery under the South Carolina Rules of Civil Procedure only if granted leave to do so by a court upon a showing of good cause. If Applicant attempts to invoke discovery powers without first obtaining leave to do so by a court upon a showing of good cause, Respondent will oppose those attempts.

VII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to file an amended application in response to the motion for a more definite statement included herein and then convene an evidentiary hearing on the claims.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

By: s/Taylor Zane Smith
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

October 22, 2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	2020-CP-23-2941
	)	
Marqual Devine Griffin, #358328	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
	)	
State of South Carolina,	)	
	)	
Respondent,	)	
_____	)	

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

Sarah M. Henry, Esquire
Sarah Henry Law
406 Pettigru Street
Greenville, SC 29601

DATED this the 22nd day of October, 2020.



 Jennifer Jennison, Administrative Coordinator
 For Respondent

SEP 20 2023

CLERK of COURT
GREENVILLE COUNTYIN THE COURT OF
COMMON PLEAS THIRTEENTH
JUDICIAL CIRCUITSTATE OF SOUTH CAROLINA
COUNTY OF GREENVILLEMARQUAL GRIFFIN (358328),
PLAINTIFF,

VS.

STATE OF SOUTH CAROLINA,
DEFENDANT.

DOCKET NO: 2020-CP-23-02941

AMENDED APPLICATION FOR POST
CONVICTION RELIEF

ENTERED COMPUTER

The application is being brought pursuant to South Carolina Code of Laws Sec 17-27-10 et seq. and should be considered along with the original application filed on June 12, 2020 and the amended application filed on July 20, 2020.

1. The applicant is presently being held as an inmate with the South Carolina Department of Corrections.
2. Applicant was tried in Greenville County Court of General Session from September 11 -13, 2017 before Judge Gravely on the following charges: murder, attempted armed robbery, kidnapping (x2), A&B 1st, possession of a weapon during a violent crime, and Burglary 1st.
3. Applicant was found guilty, and sentenced to 45 years in prison.
4. Applicant did file a direct appeal from his convictions and the remittitur was issued on July 12, 2019
5. The applicant filed the post-conviction relief application in a timely manner.
6. The applicant has filed no action in federal court challenging his convictions.
7. Attorneys Randy Chambers and Dawson Hood represented the applicant at trial on these charges.
8. In this application the applicant seeks an order vacating his sentence and remanding him for a new trial.
9. The applicant is amending his post-conviction relief petition to clarify his prior allegations, and respond to the state's motion for a more definite statement.

10. The applicant alleges that he was denied effective assistance of counsel on both the above charges and submits the following facts to support his allegations:
11. Trial counsel failed to object to and request a mistrial regarding the judge's instructions to the jury on malice, specifically the trial court's instructions improperly expressing an opinion on the facts.
 - a. The trial court's instructions to the jury defining malice included the following language: "Express malice is shown when a person speaks words which express hatred or ill will for another, or when the person prepared beforehand to do the act which was later accomplished; *for example, lying in wait for a person* or any other acts of preparation going to show that the deed was within the defendant's mind would be express malice" (Tr. 435, 8-16, *emphasis added*)
 - b. The trial court also sent a partial written jury charge back with the jury that include the same specific example of a 'person lying in wait'. (Tr. 476)
 - c. Trial counsel failed to object to the trial court using the specific example of a 'person lying in wait', which matched the facts alleged by the State in the trial against Applicant, and failed to request a mistrial.
12. Trial counsel failed to object to and request a mistrial regarding the judge's instructions to the jury that malice could be inferred from "possession of a weapon". (Tr.446-47)(Tr. 449)(Tr. 451)
 - a. Specifically, the trial court brought the jury back, after the initial charge, at the request of the State, and, with no objection from counsel regarding inferred malice, charged the jury as follows: "I want to discuss with you that the law says and this is in the inference of malice— the law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you along with all the other evidence. You may give it such weight as you determine it should receive. A

deadly weapon — again, as I previously defined to you what a deadly weapon. That has been that is to be used in consideration of whether malice was inferred.” (Tr. 450)

- b. The trial attorney also failed to object to the trial court sending a partial written jury charge back with the jury that include the inference of malice from the use of a deadly weapon. (Tr. 456)(Tr. 475)
 - c. Applicant is relying primarily on the holding in *State v. Belcher* which stated that “that where evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon...” *State v. Belcher*, 6B5 S.E.2d 802, 385 S.C. 597 (S.C. 2009).
 - d. Following *Belcher*, the court has continued to uphold and expand that holding in later cases stating that “regardless of the evidence presented at trial, a trial court shall no longer instruct a jury that malice may be inferred from the use of a deadly weapon.” *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (S.C. 2019).
 - e. In the present case there was ample evidence that would have reduced and mitigated the charge of murder. Indeed, the trial court instructed the jury to consider involuntary manslaughter, with no objection by the State. The prejudice to Applicant was compounded by the trial court brining the jury back to re-charging the above jury instruction, and sending the above jury instructions back as part of a partial written set of instruction thereby further emphasizing the importance of the charges to the jury. The charge should have been objected to by the trial attorney.
13. The trial attorney failing to object to the trial court sending a partial written jury charge back with the jury that did not include the entire jury instructions, specifically omitting the burden of proof or the presumption of innocence. (Tr. 456) (Tr. 472-477)

Respectfully Submitted,

s/Sarah M. Henry
SC Bar #77907
406 Pettigru St.
Greenville, SC 29601
478-8324/232-9555 (fax)
sarah@sarahmhenrylaw.com
Attorney for Applicant

September 18, 2023

PROOF OF SERVICE

ON THIS DATE, a copy of this document, Amended Application for Post Conviction Relief, was served by email upon counsel for the State of South Carolina at the following address:

S.C. Attorney General's Office
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211
Office: 803-734-0964
taylor-smith@scag.gov

s/Sarah M. Henry
Date: September 18, 2023

FILED

SEP 20 2023

**CLERK of COURT
GREENVILLE COUNTY**

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 2020CP2302941
)
)
)
MARQUAL D. GRIFFIN)
 APPLICANT)
 vs.) TRANSCRIPT OF RECORD
)
THE STATE)
 RESPONDENT)

September 20, 2023
Greenville, South Carolina

B E F O R E:

THE HONORABLE GRACE G. KNIE, Judge.

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

SARAH HENRY, ESQ.
Attorney for the Applicant

MELODY BROWN, ESQ.
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

INDEX OF WITNESSES

MARQUAL GRIFFIN

Direct By Ms. Henry	26
Cross By Ms. Brown	38
Examination By The Court	49

EDWARD DAWSON

Direct By Ms. Brown	51
Cross By Ms. Henry	57
Redirect By Ms. Brown	64

RANDALL CHAMBERS

Direct By Ms. Brown	66
Cross By Ms. Henry	72
Redirect By Ms. Brown	75

» > ○ < «

Certificate of Reporter	81
-----------------------------------	----

APPLICANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Jury Charge Page 446	13	15
2	Jury Charge Page 450	13	15
3	Question from Jury Page 454	13	15
4	Closing by Mr. Chambers Page 405	13	15
5	Jury Charge Page 435	13	15
6	Murder Statute Page 475	13	15
7	Opening Statement Page 61	13	15
8	Murder Statute Page 475	13	15
9	Transcript Page 381	13	15

All exhibits were retained by the Greenville
County Clerk of Court's office.

1 THE COURT: Okay, the next matter is Marqual
2 Griffin. Okay, counsel, if -- well, first let me go
3 ahead and call the case again. This is the matter of
4 Marqual Griffin vs. The State. It is civil action
5 number 2020-CP-23-2880. And representing Mr. Griffin
6 is Sarah Henry, representing The State is Melody
7 Brown.

8 Sir, if you'd please rise, I want to have you
9 placed under oath. Okay, if you would raise your
10 right hand to so sworn by the clerk.

11 MARQUAL GRIFFIN, after being duly
12 sworn{,} testified as follows:{F}

13 THE CLERK: Thank you.

14 THE COURT: Okay, Ms. Brown, if you are ready to
15 give a brief procedural history.

16 MS. BROWN: Thank you, Your Honor, may it please
17 The Court. Mr. Griffin went to jury trial
18 September 11th through 13th on charges of murder,
19 attempted armed robbery, two counts of kidnapping,
20 count of possession of a weapon during the commission
21 of a violent crime and first degree assault and
22 battery. He was represented by attorneys Randall
23 Chambers and Edward Hood Dawson the third. The jury
24 convicted as charged. Judge Gravely sentenced
25 Mr. Griffin to an aggregate sentence of 45 years. It

1 was 45 years for murder, 10 on armed robbery, 10 for
2 each kidnapping, five on the weapons charge, 10 on
3 the assault charge, 15 for burglary first degree.

4 Mr. Griffin did file for an appeal. He filed a
5 timely notice. Appellate counsel, after review of
6 the transcript, submitted an Anders brief. I,
7 actually, appeared for The State in opposite of
8 opposing counsel. The South Carolina Court of
9 Appeals agreed with appellate counsel, granted
10 appellate counsel's motion to be relieved and
11 dismissed the appeal. The Court issued remitter on
12 July 12th in 2019. The State did file a return and
13 at that point moved for a motion for a more definite
14 statement.

15 Your Honor, we withdraw the motion for a more
16 definite statement, as opposing counsel filed an
17 amendment to the application on or about, I believe,
18 the 18th. And we do have a copy of the amended
19 application that is not included in your packet
20 because it was just received recently. The date of
21 proof of service is September 18th, 2023. But we
22 have no objection to the amendment. With The Court's
23 permission, I'd like to approach and hand up a copy.

24 THE COURT: Yes, ma'am.

25 MS. BROWN: As The Court mentioned earlier,

1 Mr. Griffin is present, he's represented by counsel,
2 and at this time I would defer to opposing counsel
3 for presentation of the case.

4 THE COURT: Okay. Thank you.

5 All right, Ms. Henry.

6 MS. HENRY: Thank you, Your Honor. And before I
7 call Mr. Griffin, I did just want to clarify to with
8 the amended application. Mr. Griffin filed like a
9 pro se application on June 12 of 2020. This
10 application of the amended application, is a
11 clarification for The Court and representation of the
12 issues that we intend to move forward on that he
13 presented; and there are only three.

14 In the amended application it's number 11,
15 number 12 and number 13. Essentially, we're moving
16 forward, we're asking The Court to hear us on the
17 trial counsel's failure to object on failure to
18 request a mistrial, regarding The Judge's
19 instructions to the jury on malice. Specifically,
20 the trial court's instructions improperly expressing
21 an opinion on the facts. Giving an example of lying
22 in wait for another person or any other acts of
23 preparation, as part of his jury instructions.

24 And number 12, which is the second allegation,
25 is that trial counsel failed to object and request a

1 mistrial, related to The Judge's instructions to the
2 jury, that malice could be inferred from the
3 possession of a weapon. And then the last allegation
4 we move forward on is that the trial attorney failed
5 to object to the trial court sending a partial
6 written jury instruction back to the jury, that did
7 not include the entire jury instructions -- the
8 entire jury instructions. Specifically, omitting the
9 burden of proof and the presumption of innocence.
10 Those are the only three issues that we're moving
11 forward on in Mr. Griffin's case.

12 THE COURT: Okay, is that your understanding,
13 Ms. Brown?

14 MS. BROWN: It is, Your Honor.

15 THE COURT: Okay. Does The State need
16 additional time to respond to the amendment or
17 amendments in that today is September the 20th. And
18 this was made on September the 18th. And apparently
19 mailed or emailed on September the 18th.

20 MS. BROWN: It was emailed, Your Honor, and I
21 did receive it on the 18th and I am prepared to go
22 forward with testimony. We do have an agreement to
23 copy certain exhibits from the trial and present it
24 to The Court for The Court's review at a later date.

25 THE COURT: Okay. So do y'all mean bifurcate

1 the hearing or do you just mean that y'all are going
2 to send me some exhibits to review tonight?

3 MS. BROWN: Simply we send you some exhibits but
4 we think it may be Friday before we get that to you.
5 Is that okay with you?

6 THE COURT: Yeah, that's fine, that's fine. But
7 y'all don't want me to reconvene a hearing on it?

8 MS. BROWN: The State does not.

9 MS. HENRY: No, Your Honor. And all of the
10 exhibits that we're going to be giving to The Court
11 are all part of the record. Are part of the original
12 trial transcript and we just couldn't get them to
13 play for this hearing. So we'd like to go over it
14 later.

15 THE COURT: Okay, so that's the telephone call
16 or calls?

17 MS. HENRY: The telephone call and--

18 MS. BROWN: I believe, Ms. Henry, has an extra
19 exhibit.

20 MS. HENRY: Yes. And my client's -- my client
21 didn't testify at the original trial but his
22 interview with the police was played for the jury and
23 we'd like to include that as well.

24 THE COURT: So you don't think that y'all are
25 going to need the benefit of those for your testimony

1 today?

2 MS. BROWN: No, ma'am, we do not. We just want
3 to reference it as part of the record. As much as we
4 would the transcript and certain portions.

5 MS. HENRY: Yes, ma'am. I intend to have my
6 client testify today, the same information, I just
7 want to make it available to The Court. Because
8 that's what -- because we're -- because one of the
9 issues is malice aforethought, it's inferred by the
10 possession of a weapon. It's my understanding that
11 opposing counsel intends to, at least, suggests that
12 there was not enough mitigating information on the
13 record to warrant excluding or warrant an objection
14 to the inference. And I just want to make sure that
15 The Court has the exact testimony from the record
16 that my client gave that allowed The Court to give
17 the involuntary manslaughter jury instruction. And
18 also, in my opinion, would have prohibited the --
19 the -- I'm sorry, I'm not talking very well this
20 morning or afternoon -- would have prohibited the
21 jury instruction on inferred malice that led to the
22 possession of a weapon.

23 THE COURT: Okay. So let's be clear. Which
24 exhibits are y'all going to provide after today? And
25 the reason that I want it on the record now is that I

1 want The Applicant to understand it too. And I want
2 him to tell me he's okay with that.

3 MR. GRIFFIN: Yes.

4 THE COURT: Okay.

5 MS. HENRY: Marqual, this is what we talked
6 about downstairs is that--

7 THE COURT: Okay, I'm going to let you talk to
8 him in just a second.

9 But first, Ms. Brown, what is it exactly that
10 y'all will be supplying on Friday?

11 MS. BROWN: We will be supplying a copy of
12 State's Exhibit 8 from the trial, the CD referenced
13 as jail call. At the request of opposing counsel, we
14 will also be submitting State's Exhibit 22. It is a
15 DVD, Defendant's statement as introduced at trial.

16 THE COURT: And so, I'm sorry, go ahead.

17 MS. BROWN: A point of clarification, if this --
18 if it may help resolve this issue, our position is
19 going to be that the record prevents, in large part,
20 The Applicant from being able to carry his burden of
21 proof of prejudice under Strickland vs. Washington.
22 And that's why we're drawing portions of the record,
23 as much as we would cite to the record.

24 THE COURT: Okay. But again, it's only these
25 two exhibits. And as far as y'all know, there was

1 one jail call entered into evidence and one statement
2 entered evidence? No more statements and no more
3 jail calls?

4 MS. HENRY: Yes, ma'am.

5 THE COURT: At his trial?

6 MS. HENRY: Yes, ma'am.

7 THE COURT: Just want to make it clear that
8 Mr. Griffin knows what we're referring to.

9 Mr. Griffin, do you understand that, apparently,
10 there's been some technical difficult today and so
11 counsel is going to provide to me those things, those
12 statements, for me to listen to later on my own. And
13 I will listen to them before I make a decision. I
14 want you to understand that. I know you don't know
15 me but I take this very seriously, okay? I'm going
16 to listen to everything and read everything. But are
17 you okay with that happening after today?

18 MR. GRIFFIN: Yes, ma'am, yes, ma'am.

19 THE COURT: Do you need anymore time to talk to
20 your lawyer about that part of this?

21 MR. GRIFFIN: No, ma'am. I just -- I just
22 really want to ask about the question about the other
23 statement.

24 (WHEREUPON, Mr. Griffin had an off-the-record
25 conversation with Ms. Henry.)

1 MR. GRIFFIN: Yes, ma'am, it's okay.

2 THE COURT: Okay. So at trial there was one
3 statement admitted and one jail call, that's it?

4 MR. GRIFFIN: Yes, ma'am.

5 THE COURT: All right. So we know what we're
6 talking about?

7 MR. GRIFFIN: Yes, ma'am.

8 THE COURT: Okay.

9 All right, thank you all. Now, you all, you're
10 going to give me the disk or you're going to email
11 that to me or?

12 MS. BROWN: I thought it would be easier to give
13 disks because I can make -- I can have my assistant
14 make the copies all at the same time. We have
15 copies, The Court could have copies. And if The
16 Court prefers, to even mark them as court's exhibits
17 after you listen to them, so that we can also
18 introduce them in the post-conviction relief record.
19 The disks themselves will always remain in the
20 clerk's office in the trial court record. So if Your
21 Honor would be interested in that route, I think that
22 would be helpful to keep everything separate and
23 apart.

24 THE COURT: Okay. And so you're going to
25 provide these to me by hand delivery on Friday here?

1 MS. BROWN: Yes, ma'am.

2 THE COURT: Okay. And I just want to make sure
3 that Madam Court Reporter understands as well -- is
4 it possible to duplicate so that she has a copy and
5 that can be marked as a court's exhibit and then I
6 can have one to take with me?

7 MS. BROWN: I have no objection to that, Your
8 Honor.

9 THE COURT: Okay. And that might make it
10 simpler. Okay. And I don't even know if we're going
11 to have the same court reporter on Friday, I hope we
12 will. But I know those things change too. Okay, so
13 let's continue on, okay.

14 MS. HENRY: All right. Thank you, Your Honor.

15 (WHEREUPON, Applicant's Exhibits Nos. 1-9 were
16 marked for identification only.)

17 MS. HENRY: I wanted to start by -- Your Honor,
18 I'd like to start by introducing Appellate Exhibits
19 1, 2, 3 and 8. These are -- let's see, Exhibits 1, 2
20 and 3 are really just to help The Court. They are
21 excerpts from copies -- or excerpts from the jury
22 charges given during the trial. And they are pages
23 446, 450 and 454 of the original trial transcript.
24 And Appellate's Exhibit 8 is a copy of the written
25 jury instructions that were sent back to the jury and

1 is Page 475 of the appellate record. And then I
2 believe that -- my understanding is that opposing
3 counsel does not have any objection to those being
4 introduced and made part of the record.

5 MS. BROWN: That's correct, Your Honor, no
6 objection.

7 THE COURT: Okay. And so these will be
8 Applicant's, not Appellate Exhibits; right? But
9 Applicant Exhibits 1, 2, 3 and 8?

10 MS. HENRY: Yes, ma'am.

11 THE COURT: Without objection.

12 MS. HENRY: And also Applicant's Exhibits 5, 6,
13 7, 4 and 9. Applicant's Exhibit 5 is Page 435,
14 there's an excerpt from -- also an excerpt from jury
15 charges. Applicant's Exhibit 6 is another jury
16 charge, another written jury charge that was sent
17 back to the jury as part of the record in that same
18 trial. Applicant's Exhibit 7 is Pages 61, 393, 148,
19 215, 400 and 405 of the original trial transcript.
20 Then Appellant Exhibit 9 is Page 381 of the original
21 trial transcript. And I'd ask that these be entered
22 and made part of the court record.

23 THE COURT: Any objection, Ms. Brown?

24 MS. BROWN: I'm sorry, I did not catch the page
25 number of the record for Applicant's 6.

1 MS. HENRY: Four seventy-five of the appellate
2 record.

3 MS. BROWN: Thank you.

4 No objection, Your Honor.

5 THE COURT: Okay. So Applicant's Exhibits 1
6 through 9 are coming in without objection.

7 MS. HENRY: Thank you.

8 THE COURT: And, Ms. Herron, those have already
9 been marked?

10 THE COURT REPORTER: Yes, ma'am.

11 (WHEREUPON, Applicant's Exhibits Nos. 1-9 were
12 admitted into evidence.)

13 THE COURT: All right, so what other matter?
14 Because I know y'all know everybody involved, I
15 don't. So I want to make sure, some folks came in
16 and I certainly welcome anybody coming in the
17 courtroom, okay. But I want to make sure they're not
18 potential witnesses that need to be excluded or
19 sequestered.

20 MS. HENRY: No, Your Honor. The only witness I
21 intend to call is Mr. Griffin. This is Mr. Griffin's
22 father and his aunt.

23 THE COURT: Okay. And they're welcome to be
24 here, I just don't want to mess up if I don't know
25 who they are. Okay, but no motion to sequester or

1 exclude witnesses?

2 MS. BROWN: None from The State, Your Honor.

3 MS. HENRY: No, Your Honor.

4 THE COURT: Okay. All right, thank you.

5 MS. HENRY: All right. And then, Your Honor,
6 just to make it clear why I put those specific
7 excerpts into the record, Exhibits 1, 2, 3 and 8 are
8 referencing the jury charges that The Court made or
9 The Judge initially made related to inferred malice.
10 The lack of objection to the inferred malice by
11 opposing counsel. And excerpt of the written jury
12 instructions that included the incorrect jury
13 instruction that was sent back to the jury. The
14 second packet of exhibits, Exhibit 5, -- Exhibits 5,
15 7 and 9 and 4 are all referencing or excerpts related
16 to the jury charge, related to the specific example
17 that The Court gave to the jury.

18 Specifically, he read into the record for the --
19 for the jury, Lying in wait for a person for any
20 other acts -- or any other acts of preparation are
21 going to show that the deed was within The
22 Defendant's mind would be expressed malice. That was
23 what he read into the record to the jury. That was
24 repeated again on Page 475. The -- I believe Exhibit
25 8, also written out for the jury to take back into

1 chambers, that same phrase.

2 And then pages -- Exhibit 7 is all the
3 references in the -- during the trial. Specifically,
4 to allegations that my client, The Defendant, was
5 lying in wait. It was used in Mr. Culbreath's
6 opening statement on Page 61. What he doesn't know
7 is that The Defendant is hiding around the corner.
8 It was used in the closing argument by Mr. Culbreath.
9 The solicitor on the case, when she finally -- then
10 when she finally cracks open the door, The
11 Defendant's hiding around the corner. He's standing
12 around the corner, that's exactly where he be.

13 It was used in -- it was elicited as part of
14 testimony from April Green. We could -- we could
15 hide -- she testified that they could hide into the
16 side of the house. That she would not be able to see
17 that person from inside. And then she also testified
18 he was behind Kevin. I didn't even get to get a look
19 until he was already in the house. And that's Page
20 148.

21 Kevin Hoffman, another key witness, also
22 testified that when asked, Do you have any idea where
23 this person -- any idea where this person you say
24 just appeared behind you, where he came from?

25 He testified, I'm assuming the side of the

1 house.

2 And then the question was, So you're thinking
3 that -- your thinking is that somebody was just sort
4 of standing out there hoping that someone like you
5 was going to come along and get entry into the house?

6 His answer was, Yes, sir.

7 And then--

8 THE COURT: If you plan to put this in through
9 your witness or -- I mean, I'm happy to read these
10 but are you wanting to have him review them too on
11 the stand or?

12 MS. HENRY: I had not intended to, Your Honor.
13 I don't think that he can really testify to these
14 other peoples statement on the record. That's why
15 I'm putting them in as exhibits to make sure that The
16 Court is aware of the -- the additional testimony by
17 other witnesses in this trial that implicate whether
18 or not Mr. Chambers should have made an objection.

19 THE COURT: Okay.

20 Ms. Brown, any objection to this manner of --

21 MS. BROWN: Your Honor, might I suggest that
22 since this is very much a legal issue, that we be
23 allowed to just submit short briefs after the hearing
24 on the legal issue and reference those pages. So
25 Your Honor can have the page and the argument

1 together at the same time. Perhaps, a page limit of
2 even five to seven pages, just to be able to place
3 everything in context for you.

4 THE COURT: Well, and I'm not opposed to doing
5 that. I'd hate for y'all to have to do more work,
6 that's what I'm trying to avoid for y'all. But I'm
7 going to read the pages as well, I am. I just -- if
8 there's no objection, I'll just allow Ms. Henry to
9 continue. But I just assume this was -- maybe, I
10 should have said it more formally, that normally
11 there would be just a brief opening summation by
12 counsel as to where y'all were headed and then you
13 would call your witness.

14 MS. HENRY: I understand, Your Honor. And I'm
15 to do a summation. I guess I was beginning my case
16 by putting this into evidence and I was going to read
17 this into the record so that The Court was aware of
18 these additional statements that I plan to base my
19 argument on at the end of the case and then call
20 Mr. Griffin.

21 THE COURT: Okay. Well, then--

22 MS. HENRY: -- if this is not working--

23 THE COURT: No, just continue on. If I can --

24 Madam Court Reporter, if I can have those pages
25 that have been marked, I'll follow along.

1 MS. BROWN: Your Honor, if this does intend to
2 go further, I would have an objection because it's
3 going to be somewhat cumulative. Because if we're
4 reading pages, then I would want to read additional
5 pages. I think that would be a little difficult for
6 The Court. And I go back to my suggestion of small
7 written memorandum of brief. I think that's easier
8 to digest and it's less cumulative. Especially,
9 since we're talking about something that's already a
10 part of the record. It does not have to be
11 introduced, there's no objection to it, this is
12 argument on the testimony, essentially.

13 THE COURT: Okay, well, let me just --

14 Ms. Henry, is it just the highlighted portions?

15 MS. HENRY: Yes, ma'am.

16 THE COURT: Okay. So we're almost through with
17 it then, aren't we?

18 MS. HENRY: Yes, ma'am.

19 THE COURT: Okay. I'm sorry, just -- I think
20 we're going to be finish in just a minute. Just
21 based on what -- in looking at this -- okay, so
22 please continue.

23 MS. HENRY: And, Your Honor, I apologize, I'm
24 trying to make this as brief as possible. I just
25 want to put it on the record exactly what excerpts

1 and what portions on the record. I'm asking the
2 court to look at the ones I'm relying on.

3 THE COURT: Yes, ma'am.

4 MS. HENRY: Okay. All right. And then. All
5 right. Then I believe I'm on Exhibit 4. And then
6 the lying in wait was also referenced in closing
7 arguments. And finally, Exhibit 9, where The
8 Court -- The Court explains, and this on Line 14
9 through 18, that they went over the jury charges in
10 chambers and asked Mr. Chambers on Line 23 if he had
11 any objection to any of the jury instructions?

12 And Mr. Chambers said, No, Your Honor.

13 And those are the excerpts that we're relying on
14 regarding the lying in wait allegation.

15 And the second, very briefly, and I can just
16 reference these, Your Honor. Exhibit 1, is the --
17 The State requesting that The Court recharge malice
18 inferred by possession of a weapon. The Court
19 agreeing to do so and agreeing on Line 18 to say,
20 I'll bring them back out and I'll charge them on
21 that. Exhibit No. 2, Page 450, the jury charge that
22 was read into the record by The Court. The specific
23 language includes that the -- that -- and this is in
24 the inference of malice. The law says that if one
25 internationally kills another with a deadly weapon,

1 the implication of malice may arise. That, along
2 with the rest of the highlighted portion of that
3 page, is part of the language that we will be relying
4 on.

5 THE COURT: Okay.

6 MS. HENRY: And then the final page of excerpted
7 trial transcript. Is Page 454, Line 15 through 18,
8 where The Court makes it clear that he has printed
9 only the portions of the charge that talk about that
10 different indictment, the charges themselves. And he
11 sends that back with the jury. And Exhibit 8 is the
12 murder charge that was typed up and written by The
13 Judge and sent back to the jury. Which includes both
14 of -- both the inappropriate example of lying in
15 wait, given the facts of this case. And it also
16 includes the malice can be inferred by the possession
17 of a deadly weapon. And that's all that I plan to
18 read from the excerpts and from that exhibit, Your
19 Honor.

20 THE COURT: Okay. Thank you. And so that is 1
21 through 9?

22 MS. HENRY: Yes, ma'am.

23 THE COURT: Okay. All right. And are you ready
24 to proceed?

25 MS. HENRY: Yes, ma'am.

1 THE COURT: All right.

2 MS. HENRY: And did you want an opening
3 statement or do you want me to just call Mr.Griffin?

4 THE COURT: Whatever is your preference, okay.
5 If you make an opening, I will allow Ms. Brown to
6 make an opening as well.

7 MS. HENRY: Of course. I'll just give you a
8 brief summary then. I understand Ms. Brown will have
9 a rebuttable. Given what I just read into the
10 record, I do want The State -- we have three major
11 arguments. One is that The State was not entitled to
12 a charge that malice can be inferred from use of a
13 deadly weapon. That they aired in charging -- that
14 The Court aired in charging that. And that the trial
15 counsel was ineffective for failing to object to that
16 charge and requesting a mistrial when it is read in.

17 We're also -- and I'll be discussing -- and
18 we'll be eliciting testimony from Mr. Griffin related
19 to the second issue, which is that The State was not
20 entitled to a charge on malice that included the
21 example lie in wait for a person or any other acts of
22 preparation. My client is going to testify and did
23 testify in court that day about mitigating factors
24 that would have prevented or disallowed that
25 particular inference. That trial counsel failed to

1 object to that, failed to request a mistrial when it
2 was not only read to the jury but the jury was
3 brought back out special to have that instruction
4 read to them. And then when that instruction was
5 sent back in writing without -- without the full
6 charge. Including the presumption of innocence and a
7 the burden of proof requirements.

8 That is, essentially, our case. And Mr. Griffin
9 is going to be testifying to what he -- what his
10 statement to the police was, which was played in the
11 record before the jury. And will provide a basis to
12 The Court for the mitigation related to the charge
13 on -- the charge by The Court on malice being
14 inferred and use of a deadly weapon.

15 THE COURT: Thank you, Ms. Brown.

16 MS. BROWN: Thank you, Your Honor. As we stated
17 before, The State's going to rely in large part on
18 the record to show that the evidence is overwhelming
19 of an intentional act. The identification of
20 admission. Mr. Griffin, actually, admits and
21 apologizes for this event. This record will prevent
22 Mr. Griffin from actually carrying his burden of
23 proof under Strickland vs. Washington. He not only
24 has to show some deficiency and failure to object,
25 that sort of thing, he has to show prejudice. All of

1 the arguments that have been presented today for the
2 proposed issues, really go to direct appeal issues.

3 Direct appeal has a different standard of
4 review. Here, in post-conviction relief, we always
5 remain with the Strickland standard. And that's
6 where the record is important because you're looking
7 at it in a different view. For instance, in Jackson
8 vs. State, you have a question of whether some
9 evidence was presented of self-defense. Well, in
10 that particular case some evidence was. There was a
11 witness who said he acted in self-defense,
12 essentially. But when you look at the context of the
13 entirety of the record, our State Supreme Court said
14 while you would have been entitled to the charge and
15 that would have been a reversal on direct appeal, if
16 you had made that argument under Strickland you can't
17 carry your burden of proof. Because that is totally
18 not credible, it is contrary to the forensic
19 evidence, it is contrary to the bulk of the evidence
20 presented at trial. And we're in a similar position
21 here, Your Honor.

22 At trial, The State emphasized the intentional
23 act here. And the evidence of intent. The State did
24 not argue that this was in any way a lesser offense.
25 They did not argue that the motive for going in

MARQUAL GRIFFIN-DIRECT BY MS. HENRY

1 really mattered. What mattered is The Defendant
2 pushing his way in with a gun, willing that gun,
3 murdering the victim, terrorizing, that was
4 intentional. There's no way that anything that has
5 been argued today will be able to carry the burden of
6 proof in light of the record. That would be our
7 position.

8 THE COURT: Okay. Thank you.

9 All right, Ms. Henry.

10 MS. HENRY: Thank you, Your Honor. I call
11 Marqual Griffin.

12 THE COURT: Sir, take your time, okay. Watch
13 your step. Okay, sir, you've already been sworn,
14 make yourself comfortable and this is direct
15 examination. I can't see, is there water down there?

16 THE BAILIFF: I'll pour him a glass, if he'd
17 like some.

18 THE COURT: Okay, you would like water before we
19 start?

20 THE WITNESS: No, ma'am, that's okay.

21 THE COURT: All right, counsel.

22 MS. HENRY: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. HENRY:

25 Q All right. So, Mr. Griffin, you know that --

MARQUAL GRIFFIN-DIRECT BY MS. HENRY

1 you know why you're here?

2 A Yes, ma'am.

3 Q And you were -- you tried your case and you were
4 convicted and sentenced?

5 A Yes, ma'am.

6 Q Okay. And can you tell us who your lead
7 attorney was?

8 A Randall Chambers.

9 Q Okay. And then can you describe your
10 interactions with Mr. chambers?

11 A It was brief, we had a brief encounter. We only
12 met one time.

13 Q And during that time do you feel like you met
14 enough times with Mr. Chambers?

15 A No, ma'am.

16 Q During that time did you -- what did you talk
17 about? Did you discuss your case?

18 A Basically, he just told me he didn't know what
19 was going on, that from, basically, what was written down,
20 that's all he knew. He knew what the news was saying. He
21 didn't know anything else and he was going to come back to
22 talk to me. He never came back to talk to me until trial,
23 until the day of trial. I never seen a motion or none of
24 that. So I didn't know what was going on.

25 Q So you never discussed a plea offer with

MARQUAL GRIFFIN-DIRECT BY MS. HENRY

1 Mr. Chambers?

2 A No, ma'am.

3 Q Okay. Did you ever receive a copy of your
4 discovery?

5 A No, ma'am. Not until five years later with me
6 being in Broad River.

7 Q Okay. Did you have discussion -- you didn't
8 testify at the trial?

9 A No, ma'am.

10 Q Did you have discussions with Mr. Chambers about
11 whether or not you should testify and if you did what that
12 testimony would look like?

13 A Yeah, I asked him but he was like, he don't
14 think I should. That was the day of the trial. He was
15 like, I don't think you should. I don't think you should
16 testify.

17 Q And you're aware that you gave a statement to
18 the police?

19 A Yes, ma'am.

20 Q And you remember that statement?

21 A Yes, ma'am.

22 Q All right. Let's see. All right. So I want
23 you to take The Court back to the date this happened.

24 A Okay. The day of the incident, Mr. -- really
25 [indiscernible] he called me, he said that he had somebody

MARQUAL GRIFFIN-DIRECT BY MS. HENRY

1 wants to buy some drugs. So I was, like, I don't know if
2 I can come over that way right now. He was, like, come on
3 man, come on --

4 MS. BROWN: Your Honor, I'm going to object for
5 relevance. This doesn't go to anything that would be
6 a lesser included offense that was actually charged,
7 that's what we're talking about. There's been no
8 allegation that he was somehow mislead in his waiver
9 of right to testify at trial. It's irrelevant and at
10 this point it couldn't go to carry a burden of proof.
11 And would be extraneous.

12 MS. HENRY: Your Honor, I'm asking these
13 questions to elicit the same testimony or same
14 information that he gave to police during his
15 interview that was displayed to the jury. Just like
16 I said I was going to do before we started this
17 hearing.

18 MS. BROWN: And that, Your Honor, would be
19 cumulative. It also would be interpreting an item
20 that has already been in evidence and accepted as is.

21 THE COURT: I'm going to allow it. And please
22 understand, there's not a jury here. And this is
23 giving some background. But I would limit it as best
24 you can. I know it's difficult for this gentleman to
25 limit it because he doesn't deal in the courtroom

MARQUAL GRIFFIN-DIRECT BY MS. HENRY

1 setting like you all do everyday. But if you could
2 do your best to do that, that would be helpful, okay.

3 MS. HENRY: Yes, ma'am.

4 THE COURT: Okay, please continue, sir.

5 THE WITNESS: After talking to him--

6 BY MS. HENRY:

7 Q Mr. Griffin, just to be really clear, I want you
8 to explain what happened the same way that you explained
9 to the officer.

10 A Okay, okay, okay, okay. Well, basically, after
11 the phone call, I went over there. I went over there. By
12 the time I went over there, Kevin had met with Mr. Harris.
13 And I guess they had something going on. So as soon as
14 I'm walking up, Kevin's walking up too and I say what's up
15 to him.

16 And he said, You have it?

17 I was, like, Yeah--

18 MS. BROWN: Objection to hearsay too, Your
19 Honor, just for the record.

20 THE COURT: Please continue.

21 THE WITNESS: When we were walking in the house,
22 Kevin shoots in the closet. So I was, like, what's
23 he doing? And I ain't say nothing else.

24 BY MS. HENRY:

25 Q Mr. Griffin, let me pause you. In your

MARQUAL GRIFFIN-DIRECT BY MS. HENRY

1 statement to police and in your statement now, is your
2 testimony that you didn't have a gun to Mr. Hoffman's head
3 or Kevin's head --

4 A No, I did not.

5 Q Did you have a gun out --

6 A No, I didn't have the gun out, the gun was in my
7 pocket. As soon as -- okay, this is how it was. Kevin
8 was beside me, when we walked in the gun's in my pocket.
9 I gave April the drugs. Me and April talking. Then
10 Mr. Crouch, he comes out the back and says don't talk like
11 that. So I was, like, I don't mean no disrespect. So me
12 and him get into an altercation. As soon as me and him
13 get into an altercation, he moves out the way behind me.
14 So I felt like he was going to get aggressive so I hit
15 him. And when I hit him we got to fighting. As soon
16 as -- like, he's trying to pick me up but in my mind
17 that's what I'm thinking he doing but he went in my
18 pocket, when he grabbed the gun, I grabbed the gun too.

19 So we tussling over the gun. As soon as we
20 fall behind the couch, the gun already going off when we
21 falling. I stand up. Mr. Shane hits me. And we get to
22 fighting. And after we get to fighting, I pin him down
23 while we're fighting. And April grabs the gun and she put
24 it on my head. As soon as she do that, I let her brother
25 go. He come out from under me, he put me in a headlock.

MARQUAL GRIFFIN-DIRECT BY MS. HENRY

1 And he's like, kill him, kill him, kill
2 him, he's just killed Nate.

3 So I just got on my knees and I looked up.
4 And when I looked up, she cocked the gun and that's when
5 the live head came out. That's why I said that the police
6 never really -- okay, just, basically, after that, I hit
7 the gun, the gun went off, it hit my leg. The next thing
8 I know she ran in the back.

9 Q Mr. Griffin, let me pause you, again, to clarify
10 this. But were you injured during this fight?

11 A Yeah, I was injured.

12 Q Okay. What were your injuries?

13 A My face and my leg. Which the police took
14 pictures of.

15 Q Okay. So you were shot in the leg?

16 A Yes, ma'am.

17 Q And you were --

18 A Grazed on my face.

19 Q Grazed on your face. And then is it also your
20 testimony and what you told police that you didn't -- Nate
21 was shot during the fight?

22 A He -- they -- even our witnesses said that he
23 was shot during the fight when we fell behind the couch.
24 And when I stand up I didn't have no gun in my hand.

25 Q Okay.

MARQUAL GRIFFIN-DIRECT BY MS. HENRY

1 A Me and Mr. Shane, we got into fighting.

2 Q Okay. And at the end of the fight, did you
3 still have the gun?

4 A No, I didn't have the gun. April had the gun.
5 And after she -- she dislodged it, the live head came out.
6 So that's when I figured, okay, then she fixing to kill
7 me. So I was like, I'm just going to try one more thing.
8 When I hit the gun, the gun went off. So when the gun
9 went off, she thought she shot me in the face. So she ran
10 in the back room.

11 Q Okay. And did she still have the gun when she
12 left?

13 A She had the gun when she went in the back room.
14 So when I got up, me and Shane was fighting, again. He
15 run out the house. When he run out the house, I come back
16 in. I checked the man, he's still bleeding. So when I
17 went to the back and I'm telling her, call the ambulance,
18 call the ambulance.

19 And she's like, No, no, no, no, no, no.

20 And that's when I was on the phone and I
21 was just, like, give my, you know, give me my stuff back,
22 give my stuff, give me my stuff --

23 Q When you say stuff --

24 A Stuff that I gave to her.

25 Q You talking about the drugs you gave her?

MARQUAL GRIFFIN-DIRECT BY MS. HENRY

1 A Yes, ma'am.

2 Q That you thought were bad?

3 A Yes, ma'am.

4 Q Okay. And when you went back to confront April,
5 was she on the phone?

6 A I couldn't tell. I couldn't even tell you that.
7 Because when I'm talking to her, she's talking back to me,
8 we were having a conversation.

9 Q You were present during your trial?

10 A Yes, ma'am.

11 Q Do you remember the telephone call between her
12 and Mr. White that was played for the jury?

13 A Yes, I remember that. But she had headphones
14 in.

15 Q Okay.

16 A She never had no phone in her hand, she had
17 headphones in. That's what made me like -- I thought she
18 was listening to music when I was talking to her. But
19 then she was replying to what I was saying when I put the
20 drugs in my hand. And I was, like, basically, all I had.

21 Q And you're aware of the allegation during the
22 trial that you attacked April. Her testimony that you
23 attacked her and that you stomped her face?

24 A Yes, ma'am.

25 Q Okay. And her allegation, also, that that was

MARQUAL GRIFFIN-DIRECT BY MS. HENRY

1 all recorded on her call with Mr. White?

2 A Yes, ma'am.

3 Q All right. And what's your response to that, is
4 that what happened?

5 A That's a lie. Because simple fact is if I would
6 have stomped her or anything, it would have been more than
7 just her face, you understand me? It would have been more
8 than just swollen eyes. Her nose would have been
9 bleeding, her mouth would have been bleeding, a lot more
10 would have went on. When I smacked the gun, it hit her in
11 the face. And then when I was telling her to call the
12 ambulance, she was screaming, no, no, no, no. And like,
13 stop hitting me, stop hitting me. And I'm like, what are
14 you talking about? I'm like, call the ambulance. And
15 that's what made me run out of the house. When I got the
16 door opened, I ran out the house. Her brother was coming
17 in when I was going out.

18 Q How big is Nathan?

19 A Probably 6'4, maybe 260, at the most.

20 Q And do you remember the medical examiners
21 testimony?

22 A Not too much or just a little bit, not too much.

23 Q Okay. And can you describe your relationship
24 and interactions with Mr. Dawson?

25 A Mr. Dawson?

MARQUAL GRIFFIN-DIRECT BY MS. HENRY

1 Q Uh-huh.

2 A Don't know him. I met him one time and the next
3 day I went to trial.

4 Q Okay. All right. Is there anything else that
5 you want to tell The Court about what happened or
6 specifically in relation to your PCR claims?

7 A Basically, you saying, like, the incident or
8 what happened at trial?

9 Q Either one. Is there anything else that you
10 want to tell The Court at all about what happened in that
11 house that relates to your PCR claims?

12 A Basically, I feel like -- I feel like the
13 situation at hand wasn't what people explained it was.
14 Like malice, no, it wasn't malice because how could it be
15 malice if I don't know this person. I met this person
16 earlier that day and we talked. Because I knew -- I knew
17 who Mr. White was. Me and Mr. White had done a lot of
18 business together. But his wife or girlfriend, whatever
19 you want to call her, I don't know her like that. But I
20 done talk to her previous times and we done, you know, did
21 deals. Which I never met Nathan, I never met the brother.
22 I did see them earlier that day when me and her had our
23 exchange. I never seen them. So when I came back, when
24 they was in there, that's the main reason why I was
25 talking to her. Like, okay, this is what was going on,

MARQUAL GRIFFIN-DIRECT BY MS. HENRY

1 this is what I need, man. I'm going to give you this.

2 And that's when the whole altercation happened.

3 But other than that, like, with Ms. Brown,
4 with her explaining that I admit to doing something wrong.

5 No. All I said was I'm sorry for the situation that
6 happened to her grandson. Because simple fact is that
7 that shouldn't have happened. Nothing like that should
8 have ever happened anyways, you know. Even if I wasn't
9 dealing drugs or doing drugs, something like that should
10 have never even happened.

11 Q And you're referencing the -- so after you were
12 convicted there was a sentencing hearing?

13 A Yes, ma'am.

14 Q Okay. And during that sentencing hearing you
15 addressed The Judge and--

16 A Ms. Crouch--

17 Q Yeah. And you're referencing the apology that
18 you made?

19 A Uh-huh.

20 Q And explained to The Court that the apology was
21 for the incident?

22 A Yes, ma'am. It wasn't malice. I was just
23 explaining to her that I didn't mean for that to happen.

24 Q Okay. So your feeling was that this was
25 involuntary--

MARQUAL GRIFFIN-CROSS BY MS. BROWN

1 A Uh-huh.

2 Q -- manslaughter. And that this was not murder
3 and that your apology was in line with that?

4 A Yes, ma'am. Yes, ma'am.

5 MS. HENRY: Okay. Okay. Give me one second,
6 Mr. Griffin. All right, I don't have any other
7 questions right now, if you'd answer any of
8 Ms. Brown's questions.

9 THE COURT: Cross-examination.

10 MS. BROWN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. BROWN:

13 Q Mr. Griffin.

14 A Yes, ma'am.

15 Q You told us a few facts today, and I assume in
16 your opinion, I assume should have been presented at
17 trial; right?

18 A Yes, ma'am.

19 Q Is that -- and you were present throughout the
20 trial; correct?

21 A Yes, ma'am.

22 Q And The Judge spoke to you directly about your
23 right to testify; correct?

24 A He kind of sort of -- because I really didn't
25 understand.

MARQUAL GRIFFIN-CROSS BY MS. BROWN

1 Q Let's see. So when The Judge says, It's totally
2 your decision whether you testify or you don't testify,
3 you understand your rights?

4 And you said, Yes, sir.

5 What did you mean?

6 A Because of the simple fact, that's why I looked
7 at Mr. Chambers because this is something that he just
8 told me to say.

9 Q What did he tell you to say?

10 A He was, like, dude, just tell them you're not
11 going to testify. But I didn't understand what was going
12 on. I thought that was -- that's, basically, what I was
13 supposed to do anyway. Because this was part of the case.
14 And, like, The Judge had told me, he said, yeah,
15 everything's wrong on your -- the date and this and that.
16 So this is supposed to have been a mistrial. And he said
17 that before he asked me about to testify.

18 Q What date is wrong?

19 A The date of the incident. They said the date of
20 the incident happened January -- no, I was locked up.
21 January 4, 2015, that's when they kept writing on all the
22 incident papers. When they said why haven't you wrote in
23 2016 if he's been locked up in 2016 for the crime? Which
24 The Judge said with that, that mean that--

25 Q And help me out a little bit, how does that

MARQUAL GRIFFIN-CROSS BY MS. BROWN

1 effect your decision to tell your story at trial when you
2 were given the opportunity to do so?

3 A Because I feel like I should listen to what my
4 lawyer said. Because I never represented myself before.
5 Now, I don't know nothing about courts or whatever my
6 lawyer told me to do. That's, basically, what I was
7 planning on doing. And what I did.

8 Q And it was, basically, just because the lawyer
9 told you to?

10 A Yes, ma'am.

11 Q Not because your criminal record may have come
12 up?

13 A No, ma'am, I don't have a criminal record.

14 Q On Page 379 of the transcript, The Judge asked
15 The Solicitor, what's the criminal record?

16 A Yes, ma'am.

17 Q Your Honor, within 10 years, five year -- excuse
18 me, five prior convictions for burglary third and one
19 felon in possession in federal court. And that's related
20 to this case?

21 A Yes, ma'am.

22 Q So you did have a record; didn't you?

23 A No, that's not a record but--

24 Q That's not a record?

25 A That's something that happened but--

MARQUAL GRIFFIN-CROSS BY MS. BROWN

1 Q Something that--

2 A -- given me the third degree burglaries because
3 simple fact that they never said I did it, I just pled to
4 it to go home. I never did the charges.

5 Q So you lied to The Court?

6 A Basically. Just to go ahead and go home. But
7 the possession of a weapon, that was only based off of
8 this crime. And they said for me to go ahead and plead to
9 the federal case, for me not to get my case ran wild
10 [verbatim]. If I would have pled to The State first, then
11 it was going to be ran wild. So I would have had to do
12 every sentence that they gave me separately. So I would
13 have had to go to The State, do that separately. And go
14 to the federal system and do that separately. So it was a
15 lose/lose situation either way it went. So that's mainly
16 why I just went on ahead and pled to the federal system.

17 And the federal system said that, okay,
18 with your pleading today, they can't use the same
19 indictment, which that's what The Judge told me. He said,
20 you're here to be convicted of six indictments, not seven,
21 six indictments. The seventh indictment was possession of
22 a weapon. Which was still used in the trial. So either
23 way, it was a lose/lose situation. So I don't really
24 say--

25 Q So in federal court you tell them that the state

MARQUAL GRIFFIN-CROSS BY MS. BROWN

1 court is wrong. If you go to state court, you tell them
2 the federal court's wrong?

3 A No. I don't say that it's wrong, I just feel
4 like it's, basically, the same incident. So you're going
5 to get time for either one.

6 Q Let's go back to what you told us today. You
7 admit that you went into the home of another person and
8 you had a gun on you?

9 A Yes, ma'am.

10 Q Okay. You had that gun. And that was the gun
11 that was used in what you called a struggle?

12 A Yes, ma'am.

13 Q The gun taken away from you was your gun?

14 A Yes, ma'am.

15 Q You were the only one to introduce a gun into
16 this household?

17 A Yes, ma'am.

18 Q Okay. And then when you were talking at
19 sentencing to The Judge and you were telling us that you
20 were just apologizing in general; right?

21 A Yes, ma'am.

22 Q That's basically what you said; right?

23 A Yes, ma'am.

24 Q Let's look at that, it's on Page 465 of the
25 record here.

MARQUAL GRIFFIN-CROSS BY MS. BROWN

1 I never meant for that to happen to nobody.

2 I never meant for that to happen, is not
3 I'm sorry in general; is it?

4 A You can't say that, you can, though. But like I
5 told Ms. Crouch that I am sorry for her son -- for her
6 grandson loss and her loss and her family loss. Which you
7 can say that's not saying sorry but she knew what I meant.
8 Because the simple fact is my emotions was getting the
9 best of me while I was speaking. So I couldn't just be
10 like, oh, yeah, yeah, I'm so sorry, so sorry. I was
11 trying to explain to them what was really going on. Like,
12 it wasn't malice. I didn't mean for your grandchild to be
13 hurt. I didn't go there with a malice intent and I didn't
14 go over there for nobody to be hurt. Which I just felt
15 like, okay, if this is a drug deal, I'm going to get in
16 trouble for that either way it go because I don't even
17 need to be selling drugs, I shouldn't be selling drugs
18 either way it go. So with me doing that, both of it was
19 wrong. That's all I was, basically, telling her.

20 Q Would you agree with me that taking a gun to a
21 drug deal is a bad idea?

22 A No, ma'am.

23 Q Not a bad idea?

24 A No, ma'am because the --

25 Q You don't think --

MARQUAL GRIFFIN-CROSS BY MS. BROWN

1 A -- simple fact that is --

2 THE COURT: One at a time, please.

3 THE WITNESS: I'm sorry, I'm sorry.

4 BY MS. BROWN:

5 Q You don't think it might result in some
6 violence?

7 A No, ma'am, no, ma'am. It doesn't. It doesn't.

8 Q There's a murder here.

9 A It only results in violence if that's the
10 mindset of everybody that's right there. Which that
11 wasn't -- that wasn't the mindset of the people that was
12 in there and me. The one that, basically, told me to sell
13 them that, yeah. Because they said that they was going to
14 set me up and kill me just to get high. Which they all
15 was in cahoots on the situation. But I didn't think --
16 I'm thinking, why would I try to rob this person, I have
17 no mask or gloves on and they can identify me. That would
18 be crazy. In broad daylight. So that's why I'm saying
19 with them saying that I went to rob somebody, that's not
20 true.

21 Q No burglary, no robbery --

22 A No, ma'am --

23 Q -- nothing like that?

24 A No, ma'am. I just -- I just took the charge for
25 that. I just pled to burglaries. So The Judge told me if

MARQUAL GRIFFIN-CROSS BY MS. BROWN

1 I get another burglary, that's a life sentence.

2 Q What about on Page 466 when you're talking to
3 The Judge at sentencing and you say, I never did
4 burglaries but I hung with them guy that did so--

5 A And I took that charges.

6 Q -- with me being involved with them, it was hand
7 of one hand of all.

8 A By me knowing them and by me speaking with them
9 or by me -- or man, you want to go get something to eat
10 together? That that's the hands of one hands of all.
11 Because I was around that person. That person could have
12 already had just, basically, like saying I'm a convicted
13 felon, he's a convicted felon, hands of one hands of all.
14 I'm around him, I'm going to still get in trouble. It
15 doesn't matter if I'm not doing nothing wrong, I'm still
16 going to get in trouble. I can say hey to them and still
17 get in trouble.

18 Q So it would be a bad idea to hang with people
19 who did burglaries, wouldn't it?

20 A Yes, ma'am.

21 Q But you didn't?

22 A Uh--

23 Q According to your statement.

24 A Before? Before but after that, no, I didn't
25 hang with anybody.

MARQUAL GRIFFIN-CROSS BY MS. BROWN

1 Q Okay. Let me ask you, do you remember Terry
2 Harris?

3 A Yes, ma'am.

4 Q Do you remember Terry Harris testifying at
5 trial?

6 A Yes, ma'am.

7 Q And this is on Page 362 of the record. Terry
8 Harris testified that you told them you were planning to
9 do a lick that day?

10 A No.

11 Q No, he didn't testify to that?

12 A He didn't testify to that. What he said was,
13 they asked him, they said, So what did Mr. Griffin tell
14 you? He said he was going to go get some money. And he
15 was like, yeah, I dropped him off. So how is that saying
16 you're going to go do a lick, which the police said, what
17 is a lick? And he was, like, I don't know. I guess it's
18 a robbery.

19 MS. HENRY: Your Honor, objection. He didn't
20 testify to this. He can't comment on what this other
21 guy testified to. It's in the record. I'm not sure
22 of what the relevance of this is and it seems like
23 hearsay to me.

24 THE COURT: Ms. Brown.

25 MS. BROWN: He's tried to tell a story that is

MARQUAL GRIFFIN-CROSS BY MS. BROWN

1 outside of the facts that have already been
2 determined by the trial itself. I'm pointing out
3 that his story has severe credibility issues. It's
4 proper cross-examination, Your Honor.

5 THE COURT: Okay. I'm going to allow it as
6 being cross-examination. But you all please remember
7 we have one court reporter who is trying to make a
8 transcript. So y'all need to speak one at a time.
9 Okay. Don't hurry to answer.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Ms. Brown.

12 BY MS. BROWN:

13 Q Okay. So I think at the end of the day, we
14 agree that Terry Harris said, He said he was going to get
15 some money or something?

16 A See, that's what I'm saying. So how -- okay, if
17 I sell drugs and I'm going to go sell some drugs to
18 somebody, that's, basically, going to get some money;
19 right? If you really read the statements and you was in
20 trial, you will see that they're asking him, did this man
21 tell you he's going to go rob somebody?

22 He says, No.

23 They said, So you don't know what a lick
24 is?

25 He was like, I don't know.

MARQUAL GRIFFIN-CROSS BY MS. BROWN

1 He was like, So that's not a robbery?

2 He said, You can say that.

3 That's why I'm, basically, saying, like, he
4 could say anything he want to say because the simple fact
5 is he's on the run for crimes. Which that's why I didn't
6 hang with him. But if I meet you a couple of times or I
7 say, hey, how you doing? How do you know me? Because you
8 know my name?

9 Which he says, Oh, yeah, I know him from
10 around the way.

11 But you -- if I stayed nowhere near you,
12 how can you know me?

13 Q Okay, Mr. Griffin. And you're saying that you
14 did not discuss the case, meet with your attorney more
15 than once?

16 A Maybe twice, maybe twice. And we didn't even
17 talk long because it was maybe 10 people in the section
18 that we was in. So we couldn't talk about the case.
19 Because we talk about the case, then they would know the
20 case. So he just told me he would talk to me again. And
21 two years later I go to trial.

22 Q And how about Mr. Dawson?

23 A Never even talked to him.

24 Q Never met him?

25 A I met him, I ain't talk to him, though.

MARQUAL GRIFFIN-EXAMINATION BY THE COURT

1 Q How did you meet him?

2 A Ms. Tracy brought him and told me to tell him
3 what the case is about.

4 And I asked him, Have you seen the motion?

5 He said, No, I ain't look at no motion.

6 So I said, I don't want to talk.

7 Q Isn't it true that Mr. Dawson and Mr.~Chambers
8 met with you together?

9 A No, they didn't meet with me.

10 Q You don't remember meeting before trial --

11 A No --

12 Q -- a week before trial?

13 A I remember meeting with Ms. Tracy. I remember
14 talking to Mr. Randall at trial. I don't remember meeting
15 with him because he never said anything.

16 MS. BROWN: No further questions, Your Honor.

17 THE COURT: Redirect?

18 MS. HENRY: No, ma'am.

19 THE COURT: Okay. Sir, that concludes your
20 testimony today, watch your step.

21 THE WITNESS: Thank you.

22 THE COURT: Oh, I do have one question, sir.

23 EXAMINATION

24 BY THE COURT:

25 Q April -- I have, actually, four questions. Five

MARQUAL GRIFFIN-EXAMINATION BY THE COURT

1 questions. April is April Green?

2 A Yes, ma'am.

3 Q Kevin is Kevin Hoffman?

4 A Yes, ma'am.

5 Q The decedent is Nathan Crouch?

6 A Yes, ma'am.

7 Q Shane is Shane Baron?

8 A Yes, ma'am.

9 Q And White is Gerald White?

10 A Yes, ma'am.

11 Q Who was incarcerated at the time?

12 A Yes, ma'am.

13 Q Gotcha.

14 Okay, any follow-up questions on what I
15 just asked?

16 MS. HENRY: No, Your Honor.

17 MS. BROWN: None from The State.

18 THE COURT: Thank you, sir, please watch your
19 step.

20 Next witness, please.

21 MS. HENRY: Your Honor, we have no further
22 witnesses.

23 THE COURT: Any motions at this time?

24 MS. BROWN: Your Honor, we do ask The Court to
25 consider striking the revision of facts to the extent

EDWARD DAWSON-DIRECT BY MS. BROWN

1 that it is a new story for The Court to consider on
2 the evidence of guilt. 17-27-20 prevents the receipt
3 of evidence that tests the guilty verdict in and of
4 itself. It's not a retrial. So we do ask The Court
5 to consider that.

6 THE COURT: I will consider it, thank you.

7 Any other motions?

8 MS. BROWN: None from The State, Your Honor.

9 MS. HENRY: No, Your Honor.

10 THE COURT: Okay.

11 Is The State ready, The Respondent?

12 MS. BROWN: We are, Your Honor. The State would
13 call Mr. Edward H. Dawson the third.

14 THE CLERK: Mr. Dawson, place your left hand on
15 the Bible, raise your right hand.

16 EDWARD DAWSON, after being duly
17 sworn{,}testified as follows:{F}

18 THE CLERK: Thank you, you may be seated.

19 Please state your name for the record.

20 THE WITNESS: Edward Hood Dawson, the third.

21 DIRECT EXAMINATION

22 BY MS. BROWN:

23 Q Good afternoon, sir.

24 A Good afternoon.

25 Q Would you tell The Court how you came on to the

EDWARD DAWSON-DIRECT BY MS. BROWN

1 defense team in this particular case?

2 A Sure. I was relatively still new to the public
3 defender's office, I hadn't been there for too long. At
4 the time, John Mauldin was the circuit public defender.
5 And because he wanted me to gain some trial experience and
6 he knew that Mr.~Chambers had this trial coming up, he
7 asked me to sit second chair with Mr.~Chambers. I think
8 it was probably a couple of weeks beforehand, I guess. So
9 that was my main role and how I became to be involved.

10 Q And can you tell us a little bit about your
11 visits with the client?

12 A Sure. I don't recall, necessarily, every single
13 visit. I do recall myself and Mr.~Chambers visiting with
14 Mr. Griffin ahead of trial, sometime that week beforehand,
15 at least. And then I know that myself, I believe, I went
16 down to the holding cell the morning of trial to talk with
17 him while Mr. Chambers was doing some issues with the
18 jury. And then Mr.~Chambers and I met with him several
19 times in the holding cell. In particular, we went over
20 his right to testify at length. I would submit that it
21 was probably, at least, an half of hour that we were in
22 the holding cell talking with him about that before Judge
23 Gravely spoke with him.

24 Q Do you recall Mr. Griffin had questions and
25 asked you questions about that right to testify.

EDWARD DAWSON-DIRECT BY MS. BROWN

1 A He did. He asked several questions and tried to
2 answer all of them as best we could.

3 Q Did you advise him one way or the other?

4 A If I remember correctly, we told him that there
5 were certain dangers in him testify. Particularly, with
6 his prior criminal record. We didn't want that to
7 necessarily come out and him to be impeached with that.
8 We did tell them that, if I remember correctly, that was
9 probably not in his best interest to testify but we didn't
10 instruct him one way or the other to do that. We left
11 that up to him entirely.

12 Q Okay. During the course of the trial and
13 leading up to The State resting, did you revisit whether
14 The Defense should have Mr. Griffin testify?

15 A Yes. We talked with him several times through
16 the course of the trial. I know Mr. Chambers and I talked
17 about it several times. You know, on our own after the
18 various days.

19 Q Okay. And going over discovery, did you,
20 yourself, familiarize yourself with the discovery and what
21 The Defense would be?

22 A I did. I read all of it several times leading
23 up to trial.

24 Q But you were second chair?

25 A Correct.

EDWARD DAWSON-DIRECT BY MS. BROWN

1 Q Did you make any of The Defense decisions?

2 A I was not the one making the final call, that
3 was Mr.~Chambers. But we discussed every decision that
4 was made.

5 Q Were you with Mr.~Chambers when you were
6 discussing the jury charge?

7 A We discussed the jury charge between the two of
8 us and then there was also a, I guess, you call it charge
9 conference in chambers prior to Judge Gravely, actually,
10 giving the charges.

11 Q And my artful question was trying to get to the
12 in chambers conversations. Do you recall what the parties
13 discussed?

14 A I don't recall the specifics of it. I remember
15 going over the charges in general. But to be honest, I
16 couldn't recall, specifically, what was said.

17 Q Do you recall a request for any lesser include
18 offense to murder?

19 A If I remember correctly, I do believe that
20 Mr.~Chambers asked for the lesser included.

21 Q Do you remember the basis for it?

22 A Based on Mr. Griffin's testimony that he felt
23 like he was attacked by the other individuals in the house
24 on that day.

25 Q And that was the recorded statement that was

EDWARD DAWSON-DIRECT BY MS. BROWN

1 played, is what you mean by testimony?

2 A Correct, yes, ma'am.

3 Q When you reviewed -- excuse me, strike that, I'd
4 like to start that one again. When you were discussing
5 the jury charge and how it would be worded, did you submit
6 your own wording to the judge?

7 A Me, specifically, or me and Mr.~Chambers
8 together?

9 Q Either one or the defense team as a whole,
10 however you would like to describe it.

11 A Sure. I don't recall if we submitted particular
12 wording or not to be quite honest. Mr.~Chambers may be
13 able to speak to that.

14 Q Did you hear anything within the charge that was
15 a incorrect statement of the law in your opinion?

16 A No.

17 Q Would you have objected if you had heard
18 something that you believe to be incorrect?

19 A Yes.

20 Q You didn't have a theory that you didn't want to
21 object and stop the Judge, you would have objected if you
22 heard something wrong?

23 A I would have either objected or slid a note to
24 Mr.~Chambers. As he was the one really making the
25 objections based on the general practice of how trials go.

EDWARD DAWSON-DIRECT BY MS. BROWN

1 Q Okay. And you've heard here today -- you've
2 been in the audience today, correct?

3 A Yes, ma'am.

4 Q And you've heard Mr. Griffin talking about
5 taking the gun into the house?

6 A Yes, ma'am.

7 Q Was that always your understanding?

8 A It was always our understanding that he did have
9 a gun with him when he into the house, yes.

10 Q And was it your understanding that his motive
11 was to take the money from the inhabitants of the home?

12 A Our understanding, as Mr.~Chambers stated in his
13 opening statement, if you look through the transcript, was
14 that Mr. Griffin had been to the house earlier in the day,
15 had purchased some drugs. He determined at some point
16 during the day that he thought that they were bad for
17 whatever reason. So he was coming back to get his money
18 back. So yes he was going to get money.

19 Q Did Mr. Griffin give you any witnesses that you
20 were unable to locate?

21 A Not that I recall, no.

22 Q Were there any witnesses that you found on your
23 own that you thought would benefit The Defense that you
24 ultimately decided not to present?

25 A Not that I recall.

EDWARD DAWSON-CROSS BY MS. HENRY

1 Q Was there any basis for a motion for a new trial
2 from some perceived error in your opinion?

3 A Not at the time, no. Then looking back through
4 the transcript again, no.

5 MS. BROWN: Thank you, sir.

6 No further questions, Your Honor.

7 THE COURT: Cross-examination.

8 MS. HENRY: Yes, Your Honor, just briefly.

9 CROSS-EXAMINATION

10 BY MS. HENRY:

11 Q Hey, Mr. Dawson.

12 A Hey.

13 Q Okay, just a couple of questions, real specific
14 one. So it's your testimony that you fully participated
15 in this trial, that you and Randy discussed the decisions
16 that were made regarding objections, jury instructions and
17 the way the trial was going to progress?

18 A That's how I recall it, yes.

19 Q Okay. So -- and I think you were here when I
20 read this into the record earlier but one of the jury
21 instructions that was given to -- that was given to the
22 jury and was read by The Court was, specifically, and I'm
23 just going to read it out loud again to help you remember
24 this. But as part of as -- as one of the examples that
25 was given by The Court to describe malice to the jury.

EDWARD DAWSON-CROSS BY MS. HENRY

1 The Court said, For example, Lying in wait
2 for a person or any other acts in preparation going to
3 show that the deed was within The Defendant's mind would
4 be expressed malice.

5 And you don't see anything wrong -- so let
6 me back it up. So that was the jury instruction that was
7 read into the record with no objection from either you or
8 Mr.~Chambers. And I'm just going to ask -- I think I read
9 this into the record as well but there were a lot of
10 specific facts that were presented at this trial for
11 evidence that was presented at this trial that alleged
12 that The Defendant in that case, or that Mr. Griffin, was,
13 in fact, hiding, lying in wait, had hidden himself beside
14 the side of the house, waiting for Kevin Hoffman to arrive
15 to then follow Mr. Hoffman in the house, that was The
16 State's entire theory of the case and how this happened;
17 is that right?

18 A As far as I remember, yes.

19 Q Okay. All right. And then Kevin Hoffman
20 testified to that, April Green testified to that. It
21 looks like Mr. Culbreath mentioned it in both his opening
22 and his closing as a main tenant of The State's allegation
23 against The Defendant. And one of the main factors that
24 they were listing or using against The Defendant to
25 demonstrate malice. And you and, I'm assuming based on

EDWARD DAWSON-CROSS BY MS. HENRY

1 your conversations with Mr.~Chambers, did not see an issue
2 with The Court including that as a specific example in his
3 representation to the jury to define malice?

4 A I guess not, no.

5 Q Okay. All right. And had you guys done any
6 research or had any case law or anything else prepared to
7 push back on specific examples that were introduced by The
8 State as being listed as part of the jury instructions?
9 Had you done any kind of preparation or any kind of case
10 law research about any of those issues?

11 A I believe, if I remember correctly, I do believe
12 that Mr.~Chambers asked me to do some research at some
13 point before the charge conference, yes.

14 Q And as part of that case law and that research,
15 was it related to those kind of issues about the jury
16 charges and how you wanted those presented?

17 A I don't recall, specifically, what I researched
18 but I believe that there was a piece of it that was part
19 of the jury charges, yes.

20 Q Related to this issue?

21 A Which issue?

22 Q The one I just read into the record.

23 A Lying in wait?

24 Q Uh-huh.

25 A I don't recall if I, specifically, researched

EDWARD DAWSON-CROSS BY MS. HENRY

1 that one. Specifically, no.

2 Q Okay. All right. Then I'm going to ask you too
3 about the inferred malice. So, like, again, it looks like
4 inferred malice was not included with the original jury
5 charges. For some reason The Court missed that paragraph
6 or didn't read it when he read the original instructions
7 to the jury. Again, this is Page 446 and this is already
8 part of the record and has been put into evidence. But
9 Mr. Culbreath came back and said, you know, hey, I think
10 that was included, I'd like for that to be included. It
11 looks like The Judge agreed. And Mr. Chambers made no
12 objection to -- at least, made no objection to including
13 the inferred malice charge. The jury was brought back in
14 and that specific portion that included the inferred
15 malice [indiscernible] use of a deadly weapon was read to
16 the jury. Essentially, by itself without the rest of the
17 jury instructions. Had you -- at this point in the trial,
18 you already knew and Mr. Chambers knew that because -- of
19 course, these had already been read into the record and
20 read to the jury, but you had already received a jury
21 instruction on involuntary manslaughter?

22 A I believe that's correct, yeah.

23 Q And that was part of what Mr. Chambers argued in
24 his closing was that this wasn't murder, this was
25 involuntary manslaughter?

EDWARD DAWSON-CROSS BY MS. HENRY

1 A Correct.

2 Q Okay. And the basis for -- or the basis for
3 receiving a lesser included would be that you would put
4 enough evidence into the record to support a finding from
5 the jury on that lesser included? I mean, that's the
6 basis for receiving that charge; is that right?

7 A As far as I know, yes.

8 Q Okay. All right. So you and Mr.~Chambers and
9 through the witnesses, The State's witnesses and through
10 whatever information was put before the jury, at least,
11 according to both The State, you didn't object to you
12 receiving the jury charge or the voluntary manslaughter.
13 And from The Judge who gave you the charge on the
14 involuntary manslaughter, at least, agree that there was
15 enough mitigating information to -- to warrant the lesser
16 included?

17 A If I remember correctly, I believe that we felt
18 like that there was sufficient evidence in there for that
19 charge, yes.

20 Q And then do you remember what -- do you remember
21 what evidence you thought created that lesser include
22 validation? Or allowed more mitigation in that -- that
23 vain between murder and involuntary manslaughter?

24 A I couldn't tell you necessarily, specifically.
25 But I do remember Mr. Chambers had some pretty thorough

EDWARD DAWSON-CROSS BY MS. HENRY

1 cross-examination where he was pointing some of these
2 issues out. So I believe that we felt like Mr. Chambers
3 had listed enough on cross-examination to have that
4 charge.

5 Q Okay. And some of that cross-examination he
6 did, would that include conversations with the medical
7 examiner -- medical examiner pointing out that there
8 was -- there was stippling marks on, at least, one of the
9 injuries stating that -- showing that when the bullet had
10 been fired, the gun was incorrectly closed, suggesting a
11 struggle with it. That that portion of the story was
12 accurate?

13 A I don't remember that evidence necessarily,
14 specifically. But I would assume that that would have
15 been part of it, yeah.

16 Q Okay. And then had you -- had y'all done any
17 research or investigation into the basis for receiving a
18 malice charge -- implied malice based on possession of a
19 deadly weapon prior to trial?

20 A Any research?

21 Q Yes.

22 A I don't recall, specifically.

23 Q Okay. And were you aware of any case law that
24 made it inappropriate for that to be charged?

25 A I don't recall.

EDWARD DAWSON-CROSS BY MS. HENRY

1 Q Okay. All right. And then do you remember any
2 discussion between either your or Mr. Chambers about
3 objecting to that inferred malice charge?

4 A I don't recall that specifically, no.

5 Q Okay. And you're also aware that The Judge
6 chose to send back written -- partial written instructions
7 to the jury?

8 A I believe that's correct.

9 Q Okay. And those are also part of the record
10 that those charges just included the instructions for the
11 definitions of the actual charges and did not include
12 presumption of innocence, burden of proof or any of the
13 rest of the charges -- or any of the rest of the jury
14 charges that were originally read to the jury?

15 A I believe that's, ultimately, what happened.
16 However, I do seem to recall Mr. Chambers asking for the
17 charges in their entirety to go back at some point.

18 Q Okay. And, at the time, do you know whether or
19 not Mr. Chambers objected and as part of the written
20 instructions, both the inappropriate example and
21 commentary on the facts related to the lying in wait; and
22 also, the charge on malice inferred by the possession of a
23 deadly weapon, both of those were also sent back as part
24 of the limited jury instructions that were written and
25 sent back to the jury by The Judge. Do you remember any

EDWARD DAWSON-REDIRECT BY MS. BROWN

1 objection, specific to those two issues, that Mr. Chambers
2 made when that was written out and sent back to the jury?

3 A I really don't recall. That was too long ago.

4 MS. HENRY: All right, I don't have any other
5 questions. Thank you, Mr. Dawson.

6 THE WITNESS: Thank you.

7 THE COURT: Any redirect?

8 MS. BROWN: Yes, ma'am.

9 REDIRECT EXAMINATION

10 BY MS. BROWN:

11 Q Mr. Dawson, you were asked a couple of questions
12 about possible examples of lying in wait. You were asked
13 about Mr. Griffin going to the house earlier. And you
14 were asked about him, kind of push again, behind another
15 person being outside; correct?

16 A Correct.

17 Q Is that not also evidence of planning?

18 A It could be, yes.

19 Q Yeah. And lying in wait is, generally, waiting
20 for somebody to come to you, in a colloquial sense;
21 correct?

22 A I would agree with that.

23 Q Uh-huh. He went to their house?

24 A Correct.

25 Q Didn't he. But either way, there's ample

EDWARD DAWSON-REDIRECT BY MS. BROWN

1 evidence of expressed malice, taking the examples we just
2 went over; correct?

3 A I would tend to agree with that, yes.

4 Q And I think you said earlier that you had to
5 have evidence in the record that the jury would believe,
6 and I may have misheard this, to get a charge. Isn't the
7 evidence, actually, any evidence to get a jury charge?

8 A That's correct. If I stated earlier there's a
9 jury to believe, that's inaccurate, just evidence in the
10 record.

11 Q And in talking about the shots, you were going
12 over some of the shots, that some of them were close, that
13 may have supported being in close vicinity when the shot
14 was fired; right?

15 A Yes.

16 Q The shot in the back of the head was not close,
17 was it?

18 A I don't recall that shot, specifically, I don't.

19 Q Okay. Do you recall -- would it refresh your
20 recollection to hear that that shot was, at least, two
21 feet away and no stippling?

22 A I do remember the distance being an issue. That
23 seems to be, if I remember correctly, what was testified
24 to, yes.

25 MS. BROWN: Thank you, sir.

RANDALL CHAMBERS-DIRECT BY MS. BROWN

1 No further questions, Your Honor.

2 THE COURT: Okay, thank you.

3 Any objection to this gentleman stepping down
4 and being excused? I think he's been here since
5 around 11 o'clock today.

6 MS. BROWN: No, Your Honor.

7 THE COURT: Sir, you are free to go, thank you
8 for your patience.

9 THE WITNESS: Thank you.

10 THE COURT: Next witness.

11 MS. BROWN: The State calls Mr. Randall
12 Chambers, please.

13 THE CLERK: Please place your left hand on the
14 Bible, raise your right hand.

15 RANDALL CHAMBERS, after being duly
16 sworn{,}testified as follows:{F}

17 THE CLERK: Thank you, you may be seated.
18 Please state your name for the record.

19 THE WITNESS: My name is Randall Lee Chambers.

20 DIRECT EXAMINATION

21 BY MS. BROWN:

22 Q Good afternoon, sir.

23 A Good afternoon.

24 Q Do you recall representing Mr. Griffin in this
25 case?

RANDALL CHAMBERS-DIRECT BY MS. BROWN

1 A I do recall that.

2 Q Okay. And you recall that the trial was
3 September of 2017?

4 A I do. Let me just say, before we get too far
5 into it, and I apologize. One of the reasons I wasn't
6 able to come early, and I'm not sure why or how this
7 happened, I was probably subpoenaed. But for some reason
8 this wasn't on my calender and I didn't realize it until I
9 got a phone call from Judge Knie's assistance that I was
10 supposed to be here. So my level of preparation is
11 probably not what it would have been had I been aware of
12 that. But yeah, I remember representing Mr. Griffin and
13 that sounds like the correct date.

14 Q And thank you for that. And we appreciate you
15 coming. Now, when this trial was held back in
16 September 2017, for the record, can you give us a very
17 short summary of what your experience would have been at
18 that time?

19 A With him, specifically, or just in general?

20 Q In general. Well, let me limit it to criminal
21 law, criminal defense, what would your experience be, sir?

22 A Oh, my level of experience over all?

23 Q At that time.

24 A Yeah, that -- well, I've been doing criminal
25 defense since I started to practice law except the six

RANDALL CHAMBERS-DIRECT BY MS. BROWN

1 years I spent as a prosecutor. I was a defense counsel
2 both at trial and appellate level, as a Navy JAG from '88
3 to '92. I worked in the 13th Circuit Solicitor's Office
4 from '92 to '98. And then I went into private practice
5 where I did primarily criminal defense since 1998. Part
6 of that, you know, obviously, I took a good many probably
7 retained cases, but over the years -- at that particular
8 time, I think the way that I came into contact with
9 Mr. Griffin and represented him is, I was on a contract
10 with the 13th Circuit Public Defender's Office to do,
11 basically, part-time work for them. They assigned a
12 certain number of cases and pay me a flat rate every year
13 and then I would handle those cases.

14 Q And knowing that you had not had an opportunity
15 to review a file or anything like that, can you give us a
16 ballpark figure of how many times that you met with
17 Mr. Griffin?

18 A I don't remember, independently, but I can tell
19 you that and my practice is, that I see them as often as I
20 need to. So I would have met with him several times over
21 the years. It's usually less at the beginning. But then
22 as we get into plea negotiations, there will be meetings
23 either at the jail or -- even at that time, I think they
24 were still bringing people over to the courthouse and you
25 could go downstairs and talk to them. So I would have met

RANDALL CHAMBERS-DIRECT BY MS. BROWN

1 with him several times over the years. I couldn't give
2 you an exact number. And certainly, once it was
3 determined that we were going to go to trial, I would have
4 met with him with greater frequency to, basically, bring
5 him up-to-date and prepare him for what was going on.

6 Q In speaking with Mr. Griffin, did you ever get
7 the impression that he wanted to plead guilty?

8 A I don't recall that. I don't remember -- again,
9 I'll be honest, I'm sure that there was a plea offer at
10 some point. Apparently, they never offered us voluntary
11 manslaughter because that was, essentially, what we were
12 shooting for when we went to trial. Because there was,
13 you know, there was -- or even involuntary, one of two.
14 But I don't think there was ever -- if there was an offer
15 there was never one that he wanted to take. So it was
16 pretty clear that we were going to go to trial on that
17 case.

18 Q Okay. And it is your practice to review the
19 discovery that you receive from the solicitor's office
20 with your client?

21 A Yeah, absolutely. And if they want it, I will
22 provide them with a copy. Although, I would always
23 caution them in sharing anything with anybody in the jail
24 or discussing it with anybody.

25 Q Okay. And you were in the courtroom a little

RANDALL CHAMBERS-DIRECT BY MS. BROWN

1 earlier, sir, when Mr. Dawson was testifying. And I
2 understand Mr. Dawson was brought on for experience?

3 A I believe that's right. He also helped me in
4 preparation of the trial and was helpful during the course
5 of the trial.

6 Q And you had no problem in giving him tasks to
7 do, whether it was legal research or opinion, that sort of
8 thing?

9 A I was happy to let him do whatever I thought
10 that he could do and wanted to do.

11 Q And there's been some reference this afternoon
12 about a in chambers meeting before the jury charge was
13 settled out. Do you recall that in chambers meeting?

14 A I don't recall it, specifically, but it's a
15 pretty common practice with most of the judges. And I
16 know it is with Judge Gravely. I've done that several
17 times with him over the years.

18 Q Do you recall if you were the party who asked
19 for involuntary manslaughter to be charged?

20 A Probably, yeah.

21 Q And did you fashion your arguments around the
22 hope that you could convince the jury about voluntary
23 manslaughter?

24 A Absolutely. I mean, what I recollect about this
25 case -- and again, I think there was a recorded statement

RANDALL CHAMBERS-DIRECT BY MS. BROWN

1 by my client that was played, which I'm always happy when
2 the prosecution does that. Where my client, essentially,
3 told a series of events that would have led itself, not --
4 certainly not premeditated murder but to, at most,
5 voluntary manslaughter and hopefully an involuntary
6 manslaughter.

7 Q And do you recall talking to Mr. Griffin before
8 he made the decision not to testify?

9 A I always talk to clients before they make that
10 decision. I don't remember my discussion with him,
11 specifically. But it's a big decision. Frankly, it's one
12 that I struggle with from a tactical standpoint. But --
13 and I always make sure the client knows, it's your
14 decision. If you tell me you want to testify -- in fact,
15 I testified in a case here yesterday where a client had
16 testified over my objection. To his -- to my client. I
17 will sometimes let them know that I don't necessarily
18 think it's in their best interest. And I may have done
19 that in this case. Because, especially, if he had already
20 give his version of events and it was a recorded statement
21 that came into the jury, I always look at that as --
22 especially, if it fits with our defense, I always look at
23 that as we've gotten our story out there and my client
24 doesn't have to be subject to cross-examination. And if I
25 don't put up any evidence, I get last argument. So

RANDALL CHAMBERS-CROSS BY MS. HENRY

1 sometimes I'll try to lead the client in that direction.
2 But I always make it clear to them, as so does The Judge,
3 that you have the right to testify, if you want to take
4 the stand, you can. If my client indicated to me that he
5 wanted to do that, I would have prepared him, as best I
6 could, to do that.

7 Q And do you recall after sentencing, whether
8 Mr. Griffin tried to contact you about some aspect of the
9 trial?

10 A Do not recall that at all.

11 Q Have you ever received any communication from
12 him since sentencing?

13 A I can't tell you for sure that I have but I
14 don't recall it.

15 MS. BROWN: No further questions, thank you very
16 much.

17 THE COURT: Cross-examination.

18 MS. HENRY: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. HENRY:

21 Q Mr. Chambers, stop me if you can't hear me. I
22 just have a couple of quick questions. You heard the
23 questions that I asked Hood about the two objections?

24 A I did.

25 Q Okay. So, you know, the first one that The

RANDALL CHAMBERS-CROSS BY MS. HENRY

1 Applicant's alleging that you should have made is about --
2 related to The Court using that specific example, lying in
3 wait or any other acts of preparation going to show that
4 the deed was within The Defendant's mind would be
5 expressed malice. Why didn't -- given the fact that that
6 was The State's case, right, that, specifically, your
7 client was hiding or lying in wait for Kevin to get there
8 and then planning to follow Kevin inside the house and
9 that was their theory. Why didn't you object to the -- to
10 The Court on that specific example?

11 A Well, I believe, that they had introduced
12 through testimony, although, you know, I had
13 cross-examined him as much as I could and it differed from
14 what our theory of the case was, but I believe they had
15 offered up some evidence that would have supported that
16 charge. My hope was that it would have -- that it was not
17 enough to overcome reasonable doubt. So clearly, at that
18 time, I didn't find it objectionable or I would have
19 objected to it. But I can always be wrong and if I was
20 wrong in this case, then I hope The Court takes that into
21 consideration. Certainly, I don't have any objection to
22 Mr. Griffin getting a new trial, if that's what comes of
23 it.

24 Q Okay. And then I've got the same question on
25 the malice implied by possession of a deadly weapon. Now,

RANDALL CHAMBERS-CROSS BY MS. HENRY

1 there was definitely a deadly weapon in this case, no
2 question that there was. The case law seems to suggests
3 that The State isn't entitled to the charge if there is
4 mitigating or ameliorating evidence that would have
5 lessened the charge of homicide to something else. And it
6 seems like, in this case, that you were given the charge
7 of involuntary manslaughter to no objection from The
8 State. And I just wondered why you didn't object to the
9 inclusion of that as part of the charge?

10 A I mean, I don't know. And clearly, I didn't
11 object, again, it's because I didn't think it was
12 objectionable. But I, certainly, could have been wrong
13 about that.

14 Q Okay. And then, again, the same question, the
15 two of those. And it's just -- I'm assuming it's the same
16 answer as to why you didn't object to that being sent back
17 to the jury in writing?

18 A Yeah, I mean, you know, I -- obviously, if I
19 didn't object to it, I just didn't think, at the time,
20 think that it was objectionable. Trust me, if I'm going
21 into trial, if there's any issue, legal, factual,
22 evidentiary issue that I can use to try and get some sort
23 of relief for my client, ultimately, to either get my
24 client acquitted or get my client found guilty of
25 something lesser than the charge, I'm going to try to

RANDALL CHAMBERS-REDIRECT BY MS. BROWN

1 explore that. But, you know, despite that, I think I'm a
2 pretty good lawyer, I do mistakes. And I may have made a
3 mistake in this case. I don't know.

4 MS. HENRY: All right, no further questions.

5 Thank you, Mr. Chambers.

6 THE COURT: Any redirect?

7 MS. BROWN: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. BROWN:

10 Q You were asked about some of the case law
11 suggesting that a inference charge shouldn't be given if
12 there's some lesser offense or excuse. Are you aware that
13 that has been steadily changing over the last few years?

14 A I'm not aware of that. Unlike my friend, Rauch
15 Wise, who seems to be a great depository of legal
16 knowledge when it comes to various cases and stuff, I
17 still, every time I have a case, I have to dig in a do all
18 the research and things on it. So I can't say that I'm
19 aware of that but I'll trust you if say that's what's
20 happening.

21 Q Well, if you might remember the case name of The
22 State v. Belcher, a few years ago, the Supreme Court has
23 been--

24 A Yeah, I do recall Belcher.

25 Q You remember Belcher?

RANDALL CHAMBERS-REDIRECT BY MS. BROWN

1 A Yeah.

2 Q And State v. Burdette, if that rings a bell.

3 A It does.

4 Q In 2019, the Supreme Court just said, okay, it
5 doesn't matter about the lesser offense or any excuse or
6 something like that, we're going to call it under state
7 law, we don't want this charged.

8 A Okay. If that's the law then, you know, I can't
9 disagree with it.

10 Q And that was, approximately, two years after
11 your trial.

12 A Okay.

13 Q And were you ever in doubt of the fact from
14 anything your client told you or anything you learned from
15 the solicitor's office, that your client pushed in that
16 house, hiding behind another person, carrying a gun to get
17 money?

18 A No. I mean, that's consistent with what he said
19 in the statement that he gave.

20 Q Thank you, sir.

21 A And I would say consistent with anything he may
22 have told me during the course of my representation.

23 MS. BROWN: Thank you, sir, I appreciate that.

24 No further questions.

25 THE COURT: Okay, anything else of this witness?

RANDALL CHAMBERS-REDIRECT BY MS. BROWN

1 MS. HENRY: No, Your Honor.

2 THE COURT: Okay, thank you.

3 Any objection to the witness being excused?

4 MS. HENRY: No, ma'am.

5 MS. BROWN: Not at all.

6 THE COURT: Thank you for appearing, sir.

7 MS. BROWN: Your Honor, with the exception of
8 some exhibits that we discussed earlier, The State
9 has nothing further.

10 THE COURT: Okay.

11 MS. HENRY: Nothing further from The Defense
12 either, Your Honor.

13 THE COURT: Okay. And just to be clear, there
14 were no motions to be made by either side now that
15 both have rested?

16 MS. BROWN: Simply renew the motion we made
17 earlier, Your Honor.

18 THE COURT: Okay.

19 MS. HENRY: No, Your Honor. I believe I passed
20 up a case law that I was relying on in this case, as
21 well as copies of those cases to The Court at the
22 beginning of this. And a copy of my amended
23 application. I would just ask that The Court
24 consider those.

25 THE COURT: Okay, thank you.

1 Any summation? You're not required to, again,
2 but I don't want you to feel like you don't have an
3 opportunity. You don't have to.

4 MS. BROWN: Your Honor, if I may, I would prefer
5 the opportunity to submit a short memorandum, if The
6 Court could allow it.

7 THE COURT: Okay, any objection to that?

8 MS. HENRY: Your Honor, we've agreed to submit
9 the -- the additional testimony. I would just prefer
10 to have a summation as opposed to just doing an
11 additional brief. It's certainly up to The Court.

12 THE COURT: Okay. Do you object to Ms. Brown
13 submitting a brief and you doing a oral summation?

14 MS. HENRY: No, Your Honor. If we're going do a
15 brief, I feel like I have to reply to it.

16 THE COURT: Okay. And so the brief is going to
17 be addressing the excerpts from the transcript that
18 were read in at the beginning. I will limit the
19 brief to--

20 MS. BROWN: May I suggest a limit of 10?

21 THE COURT: Sure, okay. But that would be
22 excluding any attachments with the exhibits, okay.
23 Because the exhibits themselves are, at least, nine
24 pages because they're nine exhibits. But I think
25 that one them had five pages.

1 MS. HENRY: Fourteen pages, Your Honor.

2 THE COURT: Okay. So that's fine. How much
3 time do y'all need? Anybody got any big trips
4 planned, anything like that? I'd hate to interfere
5 with that kind of thing.

6 MS. HENRY: I do. I leave on Saturday for three
7 weeks to go out of state but I can work on this while
8 I'm gone. I have all the case law so just whenever
9 The Court thinks needs to be due.

10 THE COURT: Ms. Brown.

11 MS. BROWN: I really wouldn't want somebody to
12 have to work on something while they're out of state,
13 that's very difficult. Would it offend The Court to
14 give us perhaps 45 days in this instance, knowing
15 that opposing counsel will be out for three weeks?

16 THE COURT: No, it won't. I know this is very
17 important to Mr. Griffin. And I don't want y'all to
18 feel like you haven't been given enough time.

19 MS. HENRY: Your Honor, I can do it in 15 days,
20 I can do it while I'm gone, I really can. It is not
21 a imposition, I have already done all the research,
22 it's just putting it all together in a digestible
23 brief. I really can. I just don't want you to lose
24 your memory of the hearing waiting for the brief. I
25 know you're going to hear a lot of other cases in

1 between.

2 THE COURT: Okay.

3 So, Ms. Brown, your brief within 10 days and
4 then the responsive brief within five after that,
5 would that work?

6 MS. BROWN: Yes, ma'am.

7 THE COURT: Okay.

8 MS. HENRY: Yes, Your Honor.

9 THE COURT: Email them to each other and to, of
10 course, to me and my staff. And they don't have to
11 create, you know, the ten commandments coming
12 forward. I'm reading, I'm going to be up on it,
13 okay. And so feel free not to reinvent the wheel,
14 all right. Okay, anything else?

15 MS. HENRY: No, ma'am.

16 MS. BROWN: Nothing from The State, Your Honor.

17 THE COURT: Okay. And so just to be clear,
18 though, as to Mr. Griffin, he understand that the --
19 that those two exhibits are coming in and they're
20 going to be -- I'm going to be here in the next two
21 days anyway, so that's the reason they're saying
22 Friday they'll just hand them to me. Do you
23 understand?

24 MR. GRIFFIN: Yes, ma'am.

25 THE COURT: All right, do you got any questions

1 about that?

2 MR. GRIFFIN: No, ma'am.

3 THE COURT: Okay. All right, I do wish you the
4 very best in the future, sir.

5 MR. GRIFFIN: Thank you, you too.

6 (WHEREUPON, the proceedings were concluded.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth 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 Greenville County, South Carolina, on the
20th day of September, 2023.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

April 12, 2024

APRIL P. HERRON, Court Reporter

1 **THE COURT:** All right. Any objections or
2 exception to the jury charge by the State?

3 **MR. CULBREATH:** Your Honor, really just a
4 question, to start with.

5 **THE COURT:** Okay.

6 **MR. CULBREATH:** I sometimes can't hear very
7 well. Did you mention in the charge with regard
8 to the malice, possession of a weapon? I didn't
9 hear that part. I did hear the --

10 **THE COURT:** Let me look back and see
11 exactly how I charged it. (Pause.)

12 No, I don't think I did that. (Pause.)

13 I don't believe I have anything about
14 malice can be inferred. (Pause.)

15 For some reason, I -- for some reason, I
16 think when we were adjusting it, I left that
17 paragraph out. For some reason, I left that
18 paragraph out of there. I'll bring them back
19 out, and I'll charge them on that. Anything else
20 from the State?

21 **MR. CULBREATH:** No, Your Honor.

22 **THE COURT:** All right.

23 **MR. CHAMBERS:** Two things. One, Your Honor,
24 obviously, if you're going to add that to your
25 charge, I want to ask that you read the whole

2 9.19.83

1 I want to discuss with you that the law
2 says -- and this is in the inference of malice
3 -- the law says if one intentionally kills
4 another with a deadly weapon, the implication of
5 malice may arise. If facts are proved beyond a
6 reasonable doubt sufficient to raise an
7 inference of malice to your satisfaction, this
8 inference would be simply an evidentiary fact to
9 be taken into consideration by you along with
10 all the other evidence. You may give it such
11 weight as you determine it should receive. A
12 deadly weapon -- again, as I previously defined
13 to you what a deadly weapon. That has been --
14 that is to be used in consideration of whether
15 malice was inferred.

16 Now, also, when I discussed with you the
17 right of a defendant, I want to make sure you
18 understand, and emphasize the fact that he did
19 not testify. I may have referenced failure, but
20 that is not to have any type of inference. But
21 he has an absolute right not to testify. The
22 fact that he did not testify is not a factor for
23 you to be -- not a factor to be considered by
24 you in any way in your deliberations and in your
25 consideration of the question of whether he's

1 That's, again -- I don't remember if that's one
2 of the pieces of evidence. If it is in evidence
3 there, we're -- we thought we had a computer
4 that y'all could take back there, but we're kind
5 of having some technical difficulties with that.
6 We're going to still work on that. If it's
7 something, again, you want to listen to, we'll
8 either send something back that y'all can listen
9 to it on or we may have to bring you back out to
10 listen to that. We thought we had it set up,
11 otherwise. I'm sorry about that part.

12 Write out the law for each indictment. I
13 apologize for this. I can't -- I was asking
14 y'all for seven different indictments, and that
15 makes perfect sense. What I have done is I have
16 printed only the portions of my charge that
17 talks about the different indictment, the
18 charges, so I will send that back with you.

19 Time of the phone calls to Gerald White
20 and 911. Again, if y'all need to review any of
21 the testimony on that, we'll let you do that. I
22 can not really respond to any factual questions.
23 You must rely on what's into evidence.

24 So, transcript of interrogation of
25 defendant. Again, there's not a transcript. If

Closing Argument by Mr. Chambers

492023

1 dresser in the bedroom. Police didn't get it the
2 first time. They had to come back on a
3 subsequent trip and get it. That belies common
4 sense. I don't have a good explanation for it.

5 But you know, here's the thing, that's what
6 I'm talking about when I talk about doubt.
7 That's what I'm talking about when I talk about
8 you searching for the truth. It is true that
9 Marqual Griffin, like a lot of people when they
10 originally started talking to him, told
11 something that wasn't true. He wasn't going to
12 admit that he was over there. He knew something
13 bad had happened.

14 Then, he told what actually happened, that
15 he had been by there earlier in the day to buy
16 drugs. It makes a lot of sense. April Green sold
17 a lot of drugs out at that house. He went to
18 smoke what he got, and it was no good. He's
19 pissed. He's going to go back and recoup his
20 loss, if he can. And he goes armed, because
21 guess what, these are drug dealers. It's
22 reasonable to expect that they are going to have
23 guns in that house. They're probably not going
24 to be too happy with that. You want to protect
25 yourself when you go over there. That doesn't

Jury Charge

1 previous evil intent and the act.

2 Malice aforethought may be either express
3 or inferred. These terms, "express" and
4 "inferred" do not mean different kinds of
5 malice, but merely the manner in which malice
6 may be shown to exist. That is, either by
7 direct evidence or by inference from the facts
8 and circumstances which are proved. Express
9 malice is shown when a person speaks words which
10 express hatred or ill will for another, or when
11 the person prepared beforehand to do the act
12 which was later accomplished; for example, lying
13 in wait for a person or any other acts of
14 preparation going to show that the deed was
15 within the defendant's mind would be express
16 malice.

17 If one intentionally kills another during
18 the commission of a felony, the inference of
19 malice may arise. If facts are proven beyond a
20 reasonable doubt, sufficient to raise an
21 inference of malice to your satisfaction, this
22 inference will be simply an evidentiary fact to
23 be taken into consideration by you, the jury,
24 along with other evidence in the case, and you
25 may give it such weight as you decide it should

69923

MURDER § 16-03-0010

THE DEFENDANT IS CHARGED WITH MURDER. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT.

MALICE IS HATRED, ILL-WILL, OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE, AND WITH AN INTENT TO INFLECT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT.

MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXISTS FOR ANY PARTICULAR LENGTH OF TIME BEFORE THE ACT IS COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE AND AT THE TIME OF THE ACT IS COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

MALICE AFORETHOUGHT MAY BE EITHER EXPRESS OR INFERRED. THESE TERMS, "EXPRESS" AND "INFERRED" DO NOT MEAN DIFFERENT KINDS OF MALICE, BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST. THAT IS, EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER, OR WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED; FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESS MALICE.

THE LAW SAYS IF ONE INTENTIONALLY KILLS ANOTHER WITH A DEADLY WEAPON, THE IMPLICATION OF MALICE MAY ARISE. IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT, SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTION, THIS INFERENCE WOULD BE SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU, THE JURY, ALONG WITH OTHER EVIDENCE IN THE CASE, AND YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE. A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE.

FELONY MURDER INFERENCE

IF ONE INTENTIONALLY KILLS ANOTHER DURING THE COMMISSION OF A FELONY, THE INFERENCE OF MALICE MAY ARISE. IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF

Opening Statement by Mr. Culbreath

7 9/19/23 61

1 little bit.

2 So Kevin and his friend Clint head over to
3 April's house, as he's done many times before.
4 Pull up in front. April knows he's coming.
5 They've done this before. They pull up in front.
6 He goes to the door and he knocks. They know
7 she's got the heroin because he was there
8 earlier that day. He was there and he knows how
9 much it costs. What he doesn't know is that the
10 defendant is hiding around the corner.

11 So Kevin comes to the door and knocks like
12 he does. April knows he's there. The door opens.
13 The transaction begins. Only this time, Kevin
14 feels a push from behind. In he goes. In behind
15 him comes this defendant armed with a pistol,
16 who takes it out, starts yelling for everybody
17 to get down because he means business.

18 He comes into the house. April's in the
19 house. He knew April was there. He didn't know
20 her brother was there, Shane, who was seated on
21 the couch. He also didn't know her friend Nathan
22 was there, who was in the back room. So in he
23 comes, telling people to get down, showing that
24 he means business, demanding money, demanding
25 drugs. Out comes Nathan. The one thing he didn't

(1)

1 there.

2 Then, when she finally cracks open the
3 door, the defendant's hiding around the corner.
4 Look at the picture. He's standing around the
5 corner. That's exactly where he'd be. That door
6 opens up. The transaction starts. In he goes.
7 That's burglary, that's a robbery, that's
8 intent.

9 Let's talk about Nathan a little bit. He
10 wants to talk about Nathan coming out. What does
11 he do? What's the testimony about what Nathan
12 did? Hands up. First thing he does, before he
13 puts his hands up, he pushes April out of the
14 way. That's what he's trained to do. We're
15 talking about a United States Marine combat
16 veteran, hit an IED, came back disabled. Had
17 some trouble reentering. Is he perfect? No. None
18 of us are. But he knew what to do when an armed
19 person comes at you.

20 He got her out of the way. He came towards
21 Marqual. He steps forward, hands up. What
22 happens? Shane told you as best he could. Don't
23 think people go through this experience and
24 aren't traumatized. Don't think that. This is a
25 -- you've heard that call. That was very

1 right?

2 A We could hide into the side of the house.

3 Q But you could see that as you walk up
4 front, can you not?

5 A I wouldn't be able to see it from inside.

6 Q Okay.

7 A Somebody from the outside may.

8 Q You said you don't know whether Kevin knew
9 Marqual or not?

10 A No, I don't know. I can't speak for him.

11 Q Even to this day, you don't know.

12 A I don't know.

13 Q And so you say that he came in and he did
14 not have his face covered, right?

15 A No, he just had a hood on.

16 Q A hood, but you could clearly see his face?
17 He did not in any way try to obscure his face, right?

18 A He was behind Kevin. I didn't get to even
19 get a look at him until he was already in the house
20 with a gun in my face.

21 Q Okay. So you are saying as soon as he came
22 in, he put a gun in your face, right?

23 A Yes.

24 Q Okay. Was he -- where was he when he put a
25 gun in your face?

1 Q You -- when you pulled up, you didn't see
2 anybody anywhere, did you?

3 A No, sir.

4 Q In fact, you told Investigator Howard,
5 didn't you, that you saw no suspicious people, in
6 fact, saw no people out front or around there
7 anywhere?

8 A Yes, sir.

9 Q And it's a pretty wide open area. There's
10 no trees or bushes or anything like that, right?

11 A No, sir.

12 Q And it wasn't dark at that point?

13 A I don't believe so. I'm not sure if it was
14 dark or not.

15 Q But -- and did she open the door before you
16 realized somebody was behind you?

17 A Yeah. She was opening the door.

18 Q Okay. Any idea where this person you say
19 just appeared behind you, where he came from?

20 A I'm assuming the side of the house.

21 Q Okay. So your thinking is that somebody was
22 just sort of standing out there hoping that somebody
23 like you was going to come along and get entry into
24 the house?

25 A Yes, sir.

4

1 to find the truth. You can't find the truth in
2 this case if you're left with doubt. If there's
3 doubt, then you reach a not guilty verdict. Any
4 doubt has to go in favor of Marqual Griffin.

5 That's how the system works. That's how
6 it's supposed to work. In this court, if a
7 person leaves here with a criminal conviction,
8 it's possible that they will be deprived of
9 their liberty. As a result, they have this high
10 standard.

11 Now, the Solicitor had very specific theory
12 of this case, one where Marqual Griffin,
13 essentially, went to that place at [REDACTED]
14 [REDACTED] laying in wait at the side of the house,
15 waiting for an opportunity that might arise that
16 he could go into the house and rob them, of
17 course, not knowing if anybody would show up, of
18 course, not knowing if he would ever have that
19 opportunity. He just decided he would go out
20 there and he would hang out by that house until
21 somebody came up to allow him access.

22 As you've heard, we know he had been there
23 before. He said that -- when he was talking to
24 the investigator when they videotaped him, he
25 indicated he had gone by there earlier and he

5

8 9.19.23

MURDER § 16-03-0010

THE DEFENDANT IS CHARGED WITH MURDER. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT.

MALICE IS HATRED, ILL-WILL, OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE, AND WITH AN INTENT TO INFLICT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT.

MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXISTS FOR ANY PARTICULAR LENGTH OF TIME BEFORE THE ACT IS COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE AND AT THE TIME OF THE ACT IS COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

MALICE AFORETHOUGHT MAY BE EITHER EXPRESS OR INFERRED. THESE TERMS, "EXPRESS" AND "INFERRED" DO NOT MEAN DIFFERENT KINDS OF MALICE, BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST. THAT IS, EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER, OR WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED; FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESS MALICE.

THE LAW SAYS IF ONE INTENTIONALLY KILLS ANOTHER WITH A DEADLY WEAPON, THE IMPLICATION OF MALICE MAY ARISE. IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT, SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTION, THIS INFERENCE WOULD BE SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU, THE JURY, ALONG WITH OTHER EVIDENCE IN THE CASE, AND YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD RECEIVE. A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR SUBSTANCE WHICH IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE.

FELONY MURDER INFERENCE

IF ONE INTENTIONALLY KILLS ANOTHER DURING THE COMMISSION OF A FELONY, THE INFERENCE OF MALICE MAY ARISE. IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF

1 and then I'd like to see the attorneys. We'll
2 discuss charge and verdict in the back. We'll
3 take a brief break, maybe five minutes. Y'all
4 are welcome to come back whenever.

5 MR. CULBREATH: Yes, sir.

6 (The Court goes off the record at approximately
7 10:14 a.m.)

8 (The Court goes on the record at approximately
9 10:59 a.m.)

10 THE COURT: Anything before we bring the
11 jury in? Y'all want to discuss the --

12 Sorry, Mr. Griffin. Didn't mean not to wait
13 on you.

14 Anything from the State? We went over -- in
15 chambers, went over the jury charges. We made
16 some adjustments based on discussions. But if
17 there are any exceptions or objections from the
18 State?

19 MR. CULBREATH: Your Honor, based on our
20 discussions in chambers, no, sir.

21 THE COURT: All right. Anything from the
22 defendant?

23 MR. CHAMBERS: No, Your Honor.

24 THE COURT: All right. Any -- y'all should
25 have -- I believe y'all have gotten a copy of

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

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

Marqual Griffin, #358328,

Case No.: 2020-CP-23-02941

Applicant,

v.

**RESPONDENT'S POST- HEARING
MEMORANDUM**

State of South Carolina,

Respondent.

ENTERED COMPUTER

23 OCT 17 AM 11:32
Brice Garrett CDC SUL SC

This matter is before the Court by a post-conviction relief (PCR) application filed on June 12, 2020, and amended on September 18, 2023.¹ Applicant's case was heard on September 20, 2023, in the Greenville County Courthouse. Applicant was present and represented by counsel, Sarah M. Henry, Esq., At the conclusion of the hearing, this Court allowed the parties to submit brief memoranda addressing each of the claims. Respondent now files its memorandum and submits that relief should be denied for the following reasons:

Allegation 1: Trial counsel failed to object to and request a mistrial regarding the judge's instructions to the jury on malice, specifically the trial court's instructions improperly expressing an opinion on the facts.

Applicant alleges the trial court should not have explained express malice by using the example of a person "lying in wait," as he contends that was a comment on the facts of his case. He alleges trial counsel should have objected to the charge and to the written charge with the same example going into the jury room. Respondent disagrees and submits that counsel was not deficient by declining to object to the jury instruction primarily because the instruction was not a comment on the facts but a definition of terms in the statute that did not emphasize, endorse, or

¹ Respondent did not object to the amendment, and the amendment sets out detailed claims upon which Applicant proceeded at the hearing. Therefore, Respondent construes the claims of the amendment as only those claims that should be addressed, superseding and replacing any and all claims previously alleged in the initial *pro se* filing.

encourage a preference. Applicant fails to show deficient performance. Further, if deficient performance could be shown, there is no prejudice because there was other, undisputed evidence of malice including taking a loaded gun into a house where drugs were sold, uninvited, with intent to commit armed robbery. Violence was sure to follow, and it did. *See generally State v. Williams*, 427 S.C. 246, 251, 830 S.E.2d 904, 907 (2019) (“intentionally bringing a loaded, unlawfully-possessed pistol to an illegal drug transaction is ‘calculated to produce a violent occasion.’”).

The Jury Instruction:

Malice aforethought may be either express or inferred. These terms, “express” and “inferred” do not mean different kinds of malice, but merely *the manner* in which malice may be shown to exist. That is, either by direct evidence or by inference from the facts and circumstances *which are proved*. Express malice is shown when a person speaks words which express hatred or ill will for another, or when the person prepared beforehand to do the act which was later accomplished; *for example*, lying in wait for a person *or any other acts of preparation* going to show that the deed was within the defendant’s mind would be express malice.

(Trial Tr., at 435; *see also* 475) (emphasis added).

Additionally, the trial judge instructed:

If one intentionally kills another during the commission of a felony, the inference of malice may arise. If facts are proven beyond a reasonable doubt, sufficient to raise an inference of a malice to your satisfaction, this inference will be simply an evidentiary fact to be taken into consideration by you the jury, along with other evidence in the case, and you may give it such weight as you decide it should receive.

(Trial Tr., at 435-36).

Further, in this same charge, the trial judge instructed that the jury, several times, that the State had the burden of proving the elements of the charges beyond a reasonable doubt, (Trial Tr., at 415, 417-18, 422, 427); that the jury was the “sole and exclusive judges of the facts in a case,” (Trial Tr., at 419-20); that proof may be received by either direct or circumstantial evidence, (Trial

Tr., at 421); that the State must prove “criminal intent” which “must be determined by the jury from the circumstances surrounding the situation,” (Trial Tr., at 427); and, that “criminal intent may be inferred from the circumstances shown to have existed,” (Trial Tr., at 427). The trial judge additionally charged, after discussing the sufficiency of the instructions given at that point:

... In discussing the elements of murder, as I said, one of the requirements of murder is that the State must prove beyond a reasonable doubt that the act is committed with malice - - with malice aforethought. It may be either express or inferred. These terms - - do not mean different kinds of malice, but merely the manner.

I want to discuss with you that the law says - - and this is in the inference of malice - - the law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you along with all the other evidence. You may give it such weight as you determine it should receive. A deadly weapon - - again, as I previously defined to you what a deadly weapon. That has been - - that is to be used in consideration of whether malice was inferred.

(Trial Tr., at 449). Trial counsel requested that the judge read the entirety of the charge again, instead of supplementing the charge, which the trial judge declined to do, but trial counsel did not object to the charge as given. (*See* Trial Tr., at 446-48, 449 and 451).

Further, the jury, during deliberations, requested the court “write out” the law as to each charge. (Trial Tr., at 454 and 471). The trial judge “printed only the portions of [the] charge that talks about the different indictments, the charges” and sent that back to the jury room. (Trial Tr., at 454 and 472-77). Counsel did not object to this response. (Trial Tr., at 456).

Statutory Definition:

“Murder” is the killing of any person with malice aforethought, either express or implied.

S.C. Code Ann. § 16-3-10.

Standard of Review for Ineffective Assistance Claims:

To show a violation of the Sixth Amendment, an applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, at 694. It is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689.

Prohibition on Comments on the Facts:

Comments on the facts violate the separate roles of the judge and jury and are prohibited. *See* S.C. Const. art. V, § 21 (“Judges shall not charge juries in respect to matters of fact, but shall declare the law.”). “A jury instruction is a comment on the facts when it expresses the court’s opinion of a case, thereby imposing the court’s belief on the jury in a way likely to influence it.” *State v. Brown*, 438 S.C. 146, 151–52, 881 S.E.2d 771, 774 (Ct. App. 2022). In essence, a “[j]udge violates” the prohibition “when he expresses ... his own opinion upon the force and effect of the testimony, or any part of it, or intimates his views of the sufficiency or insufficiency of the evidence in whole or in part.” *State v. Thorne*, 237 S.C. 248, 251, 116 S.E.2d 854, 855 (1960).

Discussion:

Respondent submits that the testimony at the PCR evidentiary hearing supports that counsel was well-experienced in criminal law and had well-prepared for the trial. Part of that preparation was knowing the facts of the case. The evidence at trial established that Applicant pushed into the victim’s home by subterfuge, not that he engaged in a classic example of “lying in wait” for her to return to the home. As such, counsel could reasonably deem the charge not a

specific comment on the facts of this case and not expressly detrimental. In fact, counsel urged the jury to treat the State's argument inferring "lying in wait" as an overreach, inconsistent with the evidence. (Trial Tr., at 400-401). Moreover, the instruction also noted "any other acts of preparation," and did not urge the jury to give weight to a particular fact.² But even so, there is a difference here from the cases Applicant submits in support of his argument.

Here, the charge at issue explained the difference between express or inferred malice, terms that are included in the basic definition of murder. In the *Belcher* and *Burdette* Applicant cites, in addition to addressing a different instruction, was addressing an instruction that pointed to one fact – intentional use of a gun – and relief was not premised on the constitutional prohibition regarding comments on the facts, but confusion in the charge and under the authority of the Supreme Court pursuant to the common law. *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009) ("jury charge is not place for purposeful ambiguity"); *State v. Burdette*, 427 S.C. 490, 502-03, 832 S.E.2d 575, 582 (2019) ("jury instruction that malice may be inferred from the use of a deadly weapon is an improper court-sponsored emphasis of a fact in evidence—that the deed was done with a deadly weapon—and it should no longer be permitted" but "decid[ing] this issue solely under the common law; pursuant to our policy-making role under the common law").

Further, the instruction does not suffer from the ills associated with instructions the courts have held improper. The instruction was not misleading. *Belcher*, at 610, 685 S.E.2d at 809 (charge that "if one intentionally kills another with a deadly weapon" only a "half-truth" because "malice includes the absence of justification, excuse and mitigation"). Further still, there is no qualifier in the charge to indicate weight of the evidence, like the "strong evidence of intent"

² Further still, the instructions continually left the fact finding in the province of the jury and repeated underscored the State's burden of proof. *See, supra* at pp. 2-3.

instruction found to be “either a comment on the facts or an improper expression of the trial judge’s view of the weight of the evidence....” *State v. Cheeks*, 401 S.C. 322, 329, 737 S.E.2d 480, 484 (2013). Nor is there any language erroneously indicating an inference is “presumed” from a fact. *See Tate v. State*, 351 S.C. 418, 425–26, 570 S.E.2d 522, 526 (2002).

And, again, trial counsel was aware of the facts of this case – Applicant pushed his way into April Green’s home brandishing a gun, demanding to know what they had, terrorizing the occupants, hitting Green with his gun, fighting with her brother, Shane Barron, and eventually shooting and killing her friend, Nathan Crouch. (*See* Trial Tr., at 98-103; 120; 170-79; 193-94; *see also* State’s Exhibit 8). Ms. Green was selling drugs from the home. A customer named Kevin came by twice that day. One transaction happened without incident. In the second, she opened the door for him to complete another drug buy when Applicant pushed in, holding a gun to Kevin’s head. (State’s Exhibit 9; *see also* Trial Tr., at 171-72; 189). Barron testified that he held the opinion that Kevin was an accomplice as Kevin was allowed to slip away. (Trial Tr., at 191).

Kevin Hoffman testified that he had knocked on the door and made the transaction and then “somebody” came up, said “get down,” but Kevin was unsure if the gun was to the back of his head, or the person’s hands were on him, but he ran and hid until he could make a break for the front door and leave. (Trial Tr., at 209-13). He denied being involved. (Trial Tr., at 214). He denied seeing anyone “suspicious” around the home as he approached. (Trial Tr., at 215).

Terry Harris, a friend who knew Applicant from “smok[ing] and chill[ing] together, testified that Applicant told him that he intended to “get some money or something,” a “lick,” which he understood to mean robbery. (Trial Tr., at 362). Harris further testified that, though he declined to aid in the robbery, he and his partner gave Harris a ride. He knew Applicant had a gun. Harris was charged with attempted armed robbery for his part and pled guilty. (Trial Tr., at 363-

69). He also testified that Kevin Hoffman was speaking with Applicant before the crimes. (Trial Tr., at 374).

Applicant maintained at trial that he entered the home with a gun to get money back from a drug deal. (See Trial Tr., at 409).

The jury convicted him of attempted armed robbery; assault and battery, first degree; two counts of kidnapping; first degree burglary; possession of a weapon during the commission or attempt to commit a violent crime; and murder. (Trial Tr., at 458-59). At sentencing, Applicant repeatedly accepted responsibility and apologized: “... *I’m sorry. I never meant for none of this to happen ... I’m sorry. I never meant for nobody to be taken from their family. ... If I could change everything that happened, I wish I could. I wish I could go back and make better decisions... I can’t speak bad on nobody because pretty much, it’s my fault... I’m sorry from the bottom of my heart. I never meant to make your family hurt. ...* (Trial Tr., at 464-65) (emphasis added). He also stated “I never meant for that to happen to nobody... never meant for the situation to go that far,” (Trial Tr., at 465 and 466), and “if I could just change it, If I could do it all over again, it would be way different,” but at the time he was in need of money, “It was just so much pressure on me about being homeless and not being able to do for my daughter,” (Trial Tr., at 466). He stated that it was not planned to “rob these people,” but “was just heat of the moment. It just happened.” (Trial Tr., at 467). As to the trial, he stated “it just prove that I did something wrong. I’m sorry for that. I mean, I can’t take it back.” (Trial Tr., at 468).

In light of the facts at trial, and considering the jury instructions as a whole, Applicant has not shown that counsel was deficient. Notably, there is no controlling, on point case law that counsel overlooked, nor a professional norm that was ignored. See *Strickland*, at 688 (“The proper

measure of attorney performance remains simply reasonableness under prevailing professional norms.”). Applicant cannot carry his burden of proof.

That counsel is not deficient ends the *Strickland* inquiry. *Strickland*, 466 U.S. at 700 (“Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.”). It should do so here. But the record fully and fairly demonstrates in these discrete circumstances, there is no *Strickland* prejudice. There is significant, other evidence of malice. It is undisputed that Applicant went in with a gun to take by force items in the victim’s home. Malice is supported by the use of the weapon, the burglary and the armed robbery.³ There is no likelihood that the definitional instruction at issue was so harmful in the case as to allow Applicant to show a reasonable probability of a different result had counsel objected. See *State v. Gibson*, 416 S.C. 260, 265, 786 S.E.2d 121, 124 (2016) (to determine *Strickland* prejudice where counsel does not object to a faulty charge, a court will consider whether the “instruction contributed to the verdict”); see *State v. Stanko*, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013), *overruled by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019) (finding error harmless where “evidence of malice ... not limited to” the “use of a deadly weapon”). Applicant cannot carry his burden of proof under *Strickland* for either deficient performance or prejudice.

Allegation 2: Trial counsel failed to object to and request a mistrial regarding the judge’s instructions to the jury that malice could be inferred from “possession of a weapon.”

Applicant jury trial was held September 11-13, 2017. There was no objection to the charge regarding possible inference of malice from the intentional killing with a deadly weapon. (Trial Tr., at 450). Applicant alleges the instruction violates *Belcher* and *Burdette*. He also alleges prejudice is shown because involuntary manslaughter was charged. Respondent disagrees and

³ The permissible inference of malice from the commission of a felony instruction was recently upheld. *State v. Brown*, 438 S.C. 146, 152, 881 S.E.2d 771, 774 (Ct. App. 2022).

submits that trial counsel was not deficient by declining to object primarily because there was no evidence supporting a lesser included offense.

Respondent acknowledges that *Burdette* removed the limitation in *Belcher* that the instruction could still be given in where there was not excuse or lesser offense at issue. However, *Burdette* was issued in July 2019, well after the 2017 trial. Consequently, counsel cannot be deficient in declining to object under *Burdette*. See *Strickland*, at 689. (“A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.”). At the time of the trial, that charge could not be given where evidence was presented that would tend to reduce the crime but “remain[ed] a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder....” *Belcher*, at 612, 685 S.E.2d at 810. Also at the time, the charge could be harmless. Applicant cannot show *Strickland* prejudice.

First, though the judge instructed on involuntary manslaughter, the facts did not support it. Without question, Applicant was armed going into the home, uninvited, with the intent to take something from the occupants – a fact counsel acknowledged at trial and Applicant admitted at sentencing, and again admitted at the PCR hearing. As a matter of law the charge was defeated: Involuntary manslaughter “the unintentional killing of another without malice while engaged in either (1) the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm, or (2) the doing of a lawful act with a reckless disregard for the safety of others.” *State v. Scott*, 414 S.C. 482, 487, 779 S.E.2d 529, 531 (2015). Failure to qualify under the definition will defeat the necessity of the charge. *State v. Brewton*, 437 S.C. 44, 55–56, 876 S.E.2d 141, 147 (Ct. App. 2022); see also *State v. Wharton*, 381 S.C. 209, 216, 672

S.E.2d 786, 789 (2009) (even if gun was not “intentionally fire[d]” where defendant “committed an unlawful act that would naturally tend to cause death or great bodily harm” the charge is not warranted). Burglary and attempted armed robbery make it impossible to meet either prong. Thus, under *Belcher*, there could be no error. Second, as set out above, there was overwhelming evidence of malice separate and apart from simple use of the weapon, most importantly, the felonies committed. Again, Applicant cannot carry his burden of proof under *Strickland*.

Allegation 3: The trial attorney failed to object to the trial court sending a partial written jury charge back with the jury that did not include the entire jury instructions, specifically omitting the burden of proof or the presumption of innocence.

The trial judge did not merely send the instructions back but answered the specific question the jury posed during deliberations. There is no error where “the recharge was properly limited to answering the jury’s question.” *State v. Anderson*, 322 S.C. 89, 94, 470 S.E.2d 103, 106 (1996).

Applicant’s argument lacks merit.

Conclusion

Based on the foregoing, Respondent submits that this Court should deny relief.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
mbrown@scag.gov

By: s/Melody J. Brown
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-6305

October 9, 2023

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

Marquel Griffin, #358328,)
)

C/A No. 2020-CP-23-2941

Applicant,)
)

v.)
)

AFFIDVAIT OF SERVICE

State of South Carolina,)
)

Respondent.)
)

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

Sarah M. Henry, Esquire
 406 Pettigru Street
 Greenville, South Carolina 29601

DATED this 9th day of October, 2023.



Angela Brown,
 Administrative Coordinator

23 OCT 17 AM 11:32
 Brice Garrett CJC GUL SC



23 OCT 17 AM 11:32
Brice Garrett CDO SUL SC

ALAN WILSON
ATTORNEY GENERAL

October 9, 2023

The Honorable Brice Garrett
Greenville County Clerk of Court
305 E. North Street
Greenville, South Carolina 29601

Re: Marquel Griffin, #358328 v. State of South Carolina
Case No. 2020-CP-23-2941

Dear Ms. Garrett:

Enclosed please find, for filing in your office, Respondent's Post Hearing Memorandum, along with a Certificate of Service in reference to the above-mentioned case.

Thank you for your assistance in this matter.

Sincerely,

Angela Brown, Legal Assistant to:
Melody J. Brown
Senior Assistant Deputy Attorney General

MJB/abb
Enclosure

cc: The Honorable Grace G. Knie (via email only)
Sarah M. Henry, Esquire (via email and US Mail w/copy of enclosures)
Victim Advocacy Division (with copy of enclosures)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

MARQUAL GRIFFIN (358328),
PLAINTIFF,

VS.

STATE OF SOUTH CAROLINA,
DEFENDANT.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

DOCKET NO: 2020-CP-23-02941

APPLICANT'S POST-HEARING
MEMORANDUM

ENTERED COMPUTER

This matter is before the Court by post-conviction relief application filed on June 12, 2020, and amended on September 18, 2023. The merits hearing was held on September 20, 2023 at the Greenville County Courthouse. Applicant was present and represented by counsel, Sarah M. Henry, Esq, and the State was represented by Melody J. Brown, Esq. At the conclusion of the case, at the petition of the State, the Court allowed the parties to each submit brief memorandum addressing the caselaw and claims. Applicant now submits his memorandum alleging that relief should be granted for the following reasons:

Allegation 1: Trial counsel failed to object to and request a mistrial regarding the judge's instructions to the jury on malice, specifically the trial court's instructions improperly expressing an opinion on the facts.

The state alleged through multiple witnesses, as well as opening and closing statements, that the Applicant had committed this crime by lying in wait for one of the witnesses in order to enter the home. In the State's opening statement Mr. Culbreath told the jury "What he doesn't know is that the defendant is hiding around the corner." (Tr. 61) April Green testified that Applicant likely hid around the side of the house testifying "we could hide into the side of the house... I wouldn't be able to

20230918 PM 01:59
ENTERED COMPUTER

see it from the inside.” (Tr. 148) Another state witness, Kevin Hoffman, testified that Applicant just appeared behind him from the side of the house, and that he believed that Applicant was waiting out there to get entry into the house. (Tr. 215) In closing argument the State further alleged “then, when she finally cracks open the door, the defendant’s hiding around the corner. . . He’s standing around the corner.” (Tr. 393) The State’s focus on Applicant’s ‘lying in wait’ was addressed by trial counsel in his closing as he pointed out to the jury that “the Solicitor has a very specific theory of this case, one where Marqual Griffin, essentially, went to that place ... laying in wait at the side of the house, waiting for an opportunity that might arise that he could go into the house.” (Tr. 400)

The trial court charged the jury as follows: “Express malice is shown when a person speaks words which express hatred or ill will for another, or when the person prepared beforehand to do the act which was later accomplished; *for example, lying in wait for a person* or any other acts of preparation going to show that the deed was within the defendant’s mind would be express malice” (Tr. 435, *emphasis added*) The trial court also sent a partial written jury charge back that include the same language and example of malice as “lying in wait for a person”. (Tr. 475-6)

The above charge was error because charges on the facts violate the separate roles of the judge and jury and are prohibited. See S.C. Const. Art. 5, Sec 21 (“Judges shall not charge juries in respect to matter of fact, but shall declare the law.”)

In State v. Hughey, the Defendant was tried for murder and received jury charges on both murder and voluntary manslaughter. Hughey requested specific

examples of heat of passion be included as part of the charge to the jury including “pulling a knife on a defendant, pointing a gun at a defendant, spitting in a defendant’s face.” *State v. Hughey*, 339 SC 439, 529 SE 2d 721 (2000) The trial court correctly refused. The SC Supreme Court agreed stating “the requested examples constitute a direct charge on the facts because Hughey alleges that a knife was pulled on him, Jackson spit in his face, and there was sudden mutual combat. The requested jury charge elevates the specific facts of the case, such as spitting in a person’s face, to an acceptable act of legal provocation.” See *State v. Hughey* at 451.

To show a violation of the Sixth Amendment, an applicant must show that counsel’s representation fell below an objective reasonableness standard, and but for counsel’s error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984)

Trial counsel failed to object to the jury charge when it was initially proposed by the court, after it was read aloud to the jury, and then again when it was sent back to the jury in writing during their deliberations.

At the PCR hearing trial counsel testified that he did not know why he did not object to this portion of the jury charge, that he had not done any specific caselaw research on the issue, and was unfamiliar with *State v. Hughey*.

The trial court’s jury instruction on malice in this case constituted a direct charge on the facts, which is prohibited by the constitution and caselaw. Failing to object to a jury charge that elevates the specific facts of the case, such as lying in wait, to an acceptable act of legal malice is unquestionably prejudicial to the Applicant, and is ineffective assistance of counsel. Applicant has demonstrated

deficient performance and prejudice under *Strickland*, and is entitled to post conviction relief and a new trial.

Allegation 2: Trial counsel failed to object to and request a mistrial regarding the judge's instructions to the jury that malice could be inferred from "possession of a weapon".

The trial court brought the jury back, after the initial charge and charged the jury as follows: "I want to discuss with you that the law says and this is in the inference of malice— the law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you along with all the other evidence. You may give it such weight as you determine it should receive. A deadly weapon — again, as I previously defined to you what a deadly weapon. That has been that is to be used in consideration of whether malice was inferred." (Tr. 450) The trial court also sent this language back in written form to the jury during deliberations further emphasizing the importance of implied malice being inferred by the use of a deadly weapon to the jury, without objection from trial counsel. (Tr. 456)(Tr. 475)

This charge was an error. In *State v. Belcher* the court states "that where evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon..." *State v. Belcher*, 685 S.E.2d 802, 385 S.C. 597 (S.C. 2009).

Following *Belcher*, the court has continued to uphold and expand that holding in later cases stating that “regardless of the evidence presented at trial, a trial court shall no longer instruct a jury that malice may be inferred from the use of a deadly weapon.” *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (S.C. 2019).

In the present case there was ample evidence that would have reduced and mitigated the charge of murder. Indeed, the trial court instructed the jury on involuntary manslaughter, with no objection by the State. During his testimony at the PCR hearing trial counsel testified that he felt that the involuntary manslaughter charge was supported by the evidence, and based on the Applicant’s recorded statement to police that was played for the jury by the State. Trial counsel also testified that he did not know why he did not object to the inclusion of the deadly weapon inference.

At the time this case was tried *Belcher* was controlling law, and the court should have followed the law in *Belcher*.

Belcher was violated when this trial court instructed the jury that they could inference malice from the use of a deadly weapon. The court in *Belcher* was clear “that where evidence is presented that would reduce, mitigate, excuse or justify a homicide ... juries *shall not* be charged that malice may be inferred from the use of a deadly weapon.” *State v. Belcher*, 685 S.E.2d 802, 385 S.C. 597 (S.C. 2009) (*emphasis added*) In the present case the Applicant had presented mitigating testimony through his statement to police played for the jury by the State, the trial court clearly felt there was enough evidence to reduce the charge and gave Applicant a jury charge on involuntary manslaughter, the State clearly felt there was enough

evidence to support an involuntary manslaughter charge as they made no objection to the charge, trial counsel testified that the involuntary manslaughter charge was based on Applicant's statement played at trial, and the state presented no evidence or testimony to the contrary at the post-conviction relief hearing. There is a clear basis for mitigation in this case. Given the controlling caselaw in *Belcher* the deadly weapon inference for malice should not have been charged. Failing to object to this jury charge is unquestionably prejudicial to the Applicant, and is ineffective assistance of counsel under the *Strickland* standard. Applicant has demonstrated deficient performance and prejudice, and is entitled to post conviction relief and a new trial.

Allegation 3: The trial attorney failing to object to the trial court sending a partial written jury charge back with the jury that did not include the entire jury instructions, specifically omitting the burden of proof or the presumption of innocence.

The jury sent back a series of requests, among them, a request for the court to "write out the law for each indictment" (Tr. 471) The trial court sent back only the jury instructions related to the charges themselves, and did not include law on presumption of innocence, burden of proof, defendant's right not to testify, or reasonable doubt. (Tr. 456) (Tr. 472-477)

The jury charges that were sent back also contained the court's instructions on malice improperly expressing an opinion on the facts, and incorrectly instructing the jury that malice could be inferred from "possession of a weapon in this case.

This constitutes impermissible burden shifting to the Applicant and gives disproportionate weight to the charges sent back to the jury which significantly

prejudiced the Applicant's case. Failure to object to sending back piecemeal and incorrect jury instructions is ineffective assistance of counsel. Applicant is entitled to post conviction relief.

Conclusion

Based on the foregoing, Applicant submits that he is entitled to post conviction relief.

Respectfully Submitted,

s/Sarah M. Henry
SC Bar #77907
406 Pettigru St.
Greenville, SC 29601
478-8324/232-9555 (fax)
sarah@sarahmhenrylaw.com
Attorney for Applicant

October 18, 2023

23 OCT 18 PM3:59
Brice Garrett CDC GUL SC

PROOF OF SERVICE

ON THIS DATE, a copy of this document, Amended Application for Post Conviction Relief, was served by email upon counsel for the State of South Carolina at the following address:

S.C. Attorney General's Office

Melody J. Brown

Rembert C. Dennis Building

Post Office Box 11549

Columbia, South Carolina 29211

Office: 803-734-6305

mbrown@scag.gov

s/Sarah M. Henry

Date: Oct 18 2023

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FOR THE THIRTEENTH JUDICIAL CIRCUIT
 COUNTY OF GREENVILLE)

Marqual Griffin, #358328,) Case No.: 2020-CP-23-02941
)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

ENTERED COMPUTER

24 JAN 9 PM 3:45
 Bryce Garrett COC SUL SC

This matter is before the Court by way of a post-conviction relief (PCR) application filed on June 12, 2020, and amended on September 18, 2023.¹ Applicant's case was heard on September 20, 2023, in the Greenville County Courthouse. Applicant was present and represented by counsel, Sarah M. Henry, Esq., Senior Assistant Deputy Attorney General Melody J. Brown represented the State. At the conclusion of the hearing, this Court allowed the parties to submit memoranda addressing each of the claims. After consideration of the testimony given at the hearing, and after reviewing and considering the record, arguments and memoranda presented by counsel, along with the controlling case law, this Court finds that Applicant has failed to carry his burden of proof. Consequently, this Court DENIES relief for the specific reasons set out in this order.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections in the Broad River Correctional Institution pursuant to orders of commitment from the Greenville County Clerk of Court. During its March of 2016 term, the Greenville County Grand Jury indicted

¹ This Court finds that the amendment superseded the prior claims and will address only those claims as presented by Applicant's PCR counsel. This is consistent with the presentation and the arguments presented by counsel.

Applicant for murder (2016-GS-23-002335), attempted armed robbery (2016-GS-23-002330), two counts of kidnapping (2016-GS-23-002332-002333), possession of a weapon during the commission of a violent crime (2016-GS-23-002335), and first degree assault and battery (2016-GS-23-002331). During its June of 2017 term, the Grand Jury indicted Applicant for first-degree burglary (2016-GS-23-002334). Applicant was represented by Randall Lee Chambers, Esq., and Edward Hood Dawson, III, Esq. Assistant Solicitors Andrew Scott Culbreath and Elizabeth Morrow Gary, both of the Thirteenth Circuit Solicitor's Office, prosecuted the case.

A jury trial was held September 11-13, 2017, before the Honorable Perry H. Gravely. The jury found Applicant guilty as indicted. (Trial Tr., at 458-460). Judge Gravely sentenced Applicant to imprisonment as follows, with all sentences running concurrently: 45 years for murder; 10 for attempted armed robbery; 10 for first-degree assault and battery; 15 for first-degree burglary; 10 on each kidnapping conviction; and 5 for possession of a weapon. (Trial Tr., at 469). Applicant timely appealed.

Direct Appeal

Assistant Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense represented Applicant on appeal. Counsel filed a no-merit brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and argued that the trial judge erred by instructing the jury that malice could be inferred from the use of a deadly weapon. Counsel also moved to be relieved from appointment. The South Carolina Court of Appeals granted appellate counsel's motion and dismissed the appeal. *State v. Griffin*, Op. No. 2019-UP-226 (S.C. Ct. App. filed June 26, 2019) (per curiam). The Court of Appeals issued the remittitur on July 12, 2019.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the PCR evidentiary hearing and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance Claims

For claims that trial counsel provided ineffective assistance, this Court is guided by the familiar *Strickland* test: To show a violation of the Sixth Amendment, an applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, at 694. It is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is the applicant's burden to prove, by a preponderance of the evidence, that he is entitled to relief. Rule 71.1 (e), SCRPC. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”).

This Court finds considering the record and testimony and exhibits from the PCR evidentiary hearing, that Applicant has failed to carry his burden of proof for the below reasons.

Allegation 1: Trial counsel failed to object to and request a mistrial regarding the judge's instructions to the jury on malice, specifically the trial court's instructions improperly expressing an opinion on the facts.

Applicant alleges the trial court should not have explained express malice by using the example of a person “lying in wait,” as he contends that was a comment on the facts of his case.

He further alleges that trial counsel should have objected to the charge and to the written charge with the same example going into the jury room. This Court has reviewed the jury instructions at issue:

Malice aforethought may be either express or inferred. These terms, “express” and “inferred” do not mean different kinds of malice, but merely *the manner* in which malice may be shown to exist. That is, either by direct evidence or by inference from the facts and circumstances *which are proved*. Express malice is shown when a person speaks words which express hatred or ill will for another, or when the person prepared beforehand to do the act which was later accomplished; *for example*, lying in wait for a person *or any other acts of preparation* going to show that the deed was within the defendant’s mind would be express malice.

(Trial Tr., at 435; *see also* 475) (emphasis added). And also:

If one intentionally kills another during the commission of a felony, the inference of malice may arise. If facts are proven beyond a reasonable doubt, sufficient to raise an inference of a malice to your satisfaction, this inference will be simply an evidentiary fact to be taken into consideration by you the jury, along with other evidence in the case, and you may give it such weight as you decide it should receive.

(Trial Tr., at 435-36).

Further, in this same charge, the trial judge instructed the jury, several times, that the State had the burden of proving the elements of the charges beyond a reasonable doubt, (Trial Tr., at 415, 417-18, 422, 427); that the jury was the “sole and exclusive judges of the facts in a case,” (Trial Tr., at 419-20); that proof may be received by either direct or circumstantial evidence, (Trial Tr., at 421); that the State must prove “criminal intent” which “must be determined by the jury from the circumstances surrounding the situation,” (Trial Tr., at 427); and, that “criminal intent may be inferred from the circumstances shown to have existed,” (Trial Tr., at 427).

The trial judge additionally charged, after reviewing the sufficiency of the instructions given at that point with the parties:

... In discussing the elements of murder, as I said, one of the requirements of murder is that the State must prove beyond a reasonable doubt that the act is committed with malice - - with malice aforethought. It may be either express or inferred. These terms - - do not mean different kinds of malice, but merely the manner.

I want to discuss with you that the law says - - and this is in the inference of malice - - the law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you along with all the other evidence. You may give it such weight as you determine it should receive. A deadly weapon - - again, as I previously defined to you what a deadly weapon. That has been - - that is to be used in consideration of whether malice was inferred.

(Trial Tr., at 449). Trial counsel requested that the judge read the entirety of the charge again, instead of supplementing the charge, which the trial judge declined to do, but trial counsel did not object to the charge as given. (*See* Trial Tr., at 446-449 and 451).

Further, the jury, during deliberations, requested the court “write out” the law as to each charge. (Trial Tr., at 454 and 471). The trial judge “printed only the portions of [the] charge that talks about the different indictments, the charges” and sent that back to the jury room. (Trial Tr., at 454 and 472-77). Counsel did not object to this response. (Trial Tr., at 456).

Analysis

Comments on the facts violate the separate roles of the judge and jury and are prohibited. *See* S.C. Const. art. V, § 21 (“Judges shall not charge juries in respect to matters of fact, but shall declare the law.”). “A jury instruction is a comment on the facts when it expresses the court’s opinion of a case, thereby imposing the court’s belief on the jury in a way likely to influence it.” *State v. Brown*, 438 S.C. 146, 151–52, 881 S.E.2d 771, 774 (Ct. App. 2022). In essence, a “[j]udge violates” the prohibition “when he expresses ... his own opinion upon the force and effect of the

testimony, or any part of it, or intimates his views of the sufficiency or insufficiency of the evidence in whole or in part.” *State v. Thorne*, 237 S.C. 248, 251, 116 S.E.2d 854, 855 (1960). However, that is not the case here. It simply is not a comment on the facts when the trial court explains a principle of law. *See generally State v. Philips*, 73 S.C. 236, 53 S.E. 370, 371 (1906) (“In properly defining a reasonable doubt, it cannot be successfully contended that the presiding judge charged upon the facts.”).

Initially, though, the Court finds based on trial counsel’s credible testimony at the PCR evidentiary that lead counsel, Mr. Chambers, was well-experienced in criminal law and had well-prepared for the trial. Part of that preparation was knowing the facts of the case. The evidence at trial established that Applicant pushed into the victim’s home by subterfuge, not that he engaged in a classic example of “lying in wait” for her to return to the home. As such, counsel could reasonably deem the charge not a specific comment on the facts of this case and not expressly detrimental. In fact, counsel urged the jury to treat the State’s argument inferring “lying in wait” as an overreach, inconsistent with the evidence. (Trial Tr., at 400-401). Moreover, the instruction also noted the jury could consider “any other acts of preparation,” and did not urge the jury to give weight to a particular fact.² *See State v. Jackson*, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989) (“a trial judge should refrain from all comment which tends to indicate to the jury his opinion on the credibility of the witnesses, the weight of the evidence, or the guilt of the accused.”). In his post-hearing memorandum, Applicant relies in large measure on *State v. Hughey*, 339 S.C. 439, 452, 529 S.E.2d 721, 728 (2000), *overruled on other grounds by Rosemond v. Catoe*, 383 S.C. 320, 680 S.E.2d 5 (2009). His reliance on that case is misplaced.

² Further still, the instructions continually left the fact finding in the province of the jury and repeatedly underscored the State’s burden of proof. *See, supra* at p. 4.

In *Hughey*, the defendant requested particular and multiple examples that went directly to the facts of his own case:

Hughey requested that specific examples of legal provocation be provided to the jury. Specifically, Hughey requested the following examples of legal provocation: pulling a knife on a defendant, pointing a gun at a defendant, spitting in a defendant's face, assault of a family member, sudden mutual combat where one of the participants is killed by the other without a previously informed intention to do so, finding one's spouse in the act of adultery, or the deceased having molested a defendant's minor child. The requested examples constitute a direct charge on the facts because Hughey alleges that a knife was pulled on him, Jackson spit in his face, and there was sudden mutual combat. The requested jury charge elevates the specific facts of the case, such as spitting in a person's face, to an acceptable act of legal provocation.

Id., at 452, 529 S.E.2d at 728.

First, Hughey's specific requests rested not on standard charging language, but a series of handpicked circumstances unique to Hughey's case. In comparison, the charge given here mirrors that used in other cases. *See, e.g., State v. Burdette*, 427 S.C. 490, 498-499, 832 S.E.2d 575, 580 (2019) (referencing same charge given); *State v. Kelsey*, 331 S.C. 50, 78, 502 S.E.2d 63, 77 (1998) (noting favorable jury instruction including: "Proof of malice may be express or direct, such as, where there is evidence of previous threats or evidence of lying in wait."). There was no further definition of "lying in wait" or particular act that would constitute "lying in wait." Hughey is not comparable. Second, because no error occurred, the Hughey court did not consider prejudice, or the possibility of harmless error on the facts of the case. *See Gibson v. State*, 416 S.C. 260, 265, 786 S.E.2d 121, 124 (2016), *overruled by State v. Burdette, supra*³ (to determine *Strickland* prejudice where counsel does not object to a faulty charge, a court will consider whether the

³ The case was overruled specifically as to application of a harmless error analysis to a charge on the inference of malice from use of a deadly weapon. *See Burdette*, 427 S.C. at 504, 832 S.E.2d at 583.

“instruction contributed to the verdict”). Even improper comments by the trial judge must carry prejudice to warrant relief. *See Litchfield Co. of S.C. v. Sur-Tech, Inc.*, 289 S.C. 247, 253, 345 S.E.2d 765, 768 (Ct. App. 1986) (should an instruction offend the constitutional provision prohibiting comments on the facts, it is still required, even on direct appeal, to show prejudice to warrant reversal). Again, Applicant’s reliance on *Hughey* in these circumstances is misplaced.

Simply, the charge at issue here explained the difference between express or inferred malice, terms that are included in the basic definition of murder. *See* S.C. Code § 16-3-10. And the language was used was language commonly used in such instructions. *See Burdette, supra, Kelsey, supra*. There is no indication of deficient performance. Applicant simply has not shown that counsel representation was contrary to “prevailing professional norms.” *Strickland*, at 688.

Applicant also relies upon the *Belcher* and *Burdette* line of cases to show deficient performance. However, these cases do not aid Applicant in meeting his burden of proof either.

In addition to addressing a different instruction (those cases addressed an instruction that pointed to one fact that could well-be the only fact supporting malice, *i.e.*, intentional use of a gun),⁴ those cases were not premised on the constitutional prohibition regarding comments on the facts. Rather, our Court recognized confusion in the charge and ultimately directed, under the authority of the Supreme Court pursuant to the common law, that lower courts may not instruct that “malice may be inferred from the use of a deadly weapon.” *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009) (“jury charge is not place for purposeful ambiguity”); *State v. Burdette*, 427 S.C. at 502-03, 832 S.E.2d at 582 (“jury instruction that malice may be inferred from

⁴ Of course, the extension of *Belcher* and *Burdette* that would have to occur to make the argument relevant in context of a different instruction would be new precedent and not relevant to a *Strickland* analysis.

the use of a deadly weapon is an improper court-sponsored emphasis of a fact in evidence—that the deed was done with a deadly weapon—and it should no longer be permitted” but “decid[ing] this issue solely under the common law; pursuant to our policy-making role under the common law”). Further, the charge at issue here does not suffer from the ills associated with instructions the courts have generally held to be improper. The instruction was not misleading. *Belcher*, at 610, 685 S.E.2d at 809 (charge that “if one intentionally kills another with a deadly weapon” only a “half-truth” because “malice includes the absence of justification, excuse and mitigation”). Further still, there is no qualifier in the charge to indicate weight of the evidence, like the “strong evidence of intent” instruction found to be “either a comment on the facts or an improper expression of the trial judge’s view of the weight of the evidence....” *State v. Cheeks*, 401 S.C. 322, 329, 737 S.E.2d 480, 484 (2013). Nor is there any language erroneously indicating an inference is “presumed” from a fact. *See Tate v. State*, 351 S.C. 418, 425–26, 570 S.E.2d 522, 526 (2002).

And, again, trial counsel was aware of the facts of this case – Applicant pushed his way into April Green’s home brandishing a gun, demanding to know what they had, terrorizing the occupants, hitting Green with his gun, fighting with her brother, Shane Barron, and eventually shooting and killing her friend, Nathan Crouch. (*See* Trial Tr., at 98-103; 120; 170-79; 193-94; *see also* State’s Exhibit 8). Ms. Green was selling drugs from the home. A customer named Kevin came by twice that day. One transaction happened without incident. In the second, she opened the door for him to complete another drug buy when Applicant pushed in, holding a gun to Kevin’s head. (State’s Exhibit 9; *see also* Trial Tr., at 171-72; 189). Barron testified that he held the opinion that Kevin was an accomplice as Kevin was allowed to slip away. (Trial Tr., at 191).

Kevin Hoffman testified that he had knocked on the door and made the transaction and then “somebody” came up, said “get down,” but Kevin was unsure if the gun was to the back of his head, or the person’s hands were on him, but he ran and hid until he could make a break for the front door and leave. (Trial Tr., at 209-13). He denied being involved. (Trial Tr., at 214). He denied seeing anyone “suspicious” around the home as he approached. (Trial Tr., at 215).

Terry Harris, a friend who knew Applicant from “smok[ing] and chill[ing] together, testified that Applicant told him that he intended to “get some money or something,” a “lick,” which he understood to mean robbery. (Trial Tr., at 362). Harris further testified that, though he declined to aid in the robbery, he and his partner gave Harris a ride. He knew Applicant had a gun. Harris was charged with attempted armed robbery for his part and pled guilty. (Trial Tr., at 363-69). He also testified that Kevin Hoffman was speaking with Applicant before the crimes. (Trial Tr., at 374).

Applicant maintained at trial that he entered the home with a gun to get money back from a drug deal. (See Trial Tr., at 409).

The jury convicted him of attempted armed robbery; assault and battery, first degree; two counts of kidnapping; first degree burglary; possession of a weapon during the commission or attempt to commit a violent crime; and murder. (Trial Tr., at 458-59). Notably, at sentencing, Applicant repeatedly accepted responsibility and apologized: “... *I’m sorry. I never meant for none of this to happen ... I’m sorry. I never meant for nobody to be taken from their family. ... If I could change everything that happened, I wish I could. I wish I could go back and make better decisions... I can’t speak bad on nobody because pretty much, it’s my fault... I’m sorry from the bottom of my heart. I never meant to make your family hurt. ...* (Trial Tr., at 464-65) (emphasis added). He also stated “I never meant for that to happen to nobody... never meant for the situation

to go that far,” (Trial Tr., at 465 and 466), and “if I could just change it, If I could do it all over again, it would be way different,” but at the time he was in need of money, “It was just so much pressure on me about being homeless and not being able to do for my daughter,” (Trial Tr., at 466). He stated that it was not planned to “rob these people,” but “was just heat of the moment. It just happened.” (Trial Tr., at 467). As to the trial, he stated “it just prove that I did something wrong. I’m sorry for that. I mean, I can’t take it back.” (Trial Tr., at 468).

Considering the facts at trial, and the jury instructions as a whole, Applicant has not shown that counsel’s representation was deficient. Notably, there is no controlling, on point case law that counsel overlooked, nor a professional norm that was ignored. *See Strickland*, at 688 (“The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.”). Applicant cannot carry his burden of proof.

That counsel is not deficient ends the *Strickland* inquiry. *Strickland*, 466 U.S. at 700 (“Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.”). However, this Court also finds that there is no *Strickland* prejudice.

In addition to the fact that counsel contested that the facts supported a classic “lying in wait” scenario, there is significant, other evidence of malice in the record. It is undisputed that Applicant went in with a gun to take by force items in the victim’s home. Malice is supported by the use of the weapon, the burglary and the armed robbery.⁵ There is no likelihood that the

⁵ Our Supreme Court has expressly instructed that courts may consider that malice may be inferred from the use of a deadly weapon in non-jury context. *Burdette*, at 503, 832 S.E.2d at 583. Further, the permissible inference of malice from the commission of a felony instruction was recently upheld. *State v. Brown*, 438 S.C. 146, 152, 881 S.E.2d 771, 774 (Ct. App. 2022).

definitional instruction at issue was so harmful in the case as to allow Applicant to show a reasonable probability of a different result had counsel objected. *See Gibson, supra*; *State v. Stanko*, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013), *overruled by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019) (finding *Belcher* error harmless where “evidence of malice ... not limited to” the “use of a deadly weapon”). Further, Applicant cannot escape his repeated admissions of going to a drug-related transaction and his admissions at sentencing.

First, having admittedly taken a gun into a hostile situation (even if for a purpose other than murder) makes a claim of self-defense, accident, or a lesser offense highly unlikely. *See State v. Williams*, 427 S.C. 246, 255, 830 S.E.2d 904, 909 (2019) (“as a matter of law—Williams’ act of taking the pistol to the drug deal was a violation of law that produced the violent occasion”) (citing *State v. Smith*, 391 S.C. 408, 415, 706 S.E.2d 12, 16 (2011) (as to accident) and *State v. Burriss*, 334 S.C. 256, 265, 513 S.E.2d 104, 109 (1999) (as to requirement that possession of weapon be “merely incidental” in “arming himself in self-defense))). Second, even when error would normally be prejudicial, the fact of admission of guilt in open court weighs heavily in finding no basis to reverse. *See State v. Wiley*, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010). *See also State v. Sroka*, 267 S.C. 664, 665, 230 S.E.2d 816, 817 (1976) (“We affirm because the guilt of the appellant is conclusively shown by the record and any alleged error could not have been prejudicial. Any doubt about the correctness of this conclusion is eliminated by the admission of appellant in open court, after conviction ...”). The cited admissions confirm both the applicability of the legal bars noted and the existence of other specific evidence of malice upon which the lack of prejudice rests.

Again, Applicant failed to carry his burden of proof and is not entitled to any relief.

Allegation 2: Trial counsel failed to object to and request a mistrial regarding the judge's instructions to the jury that malice could be inferred from "possession of a weapon."

Applicant's jury trial was held September 11-13, 2017. There was no objection to the charge regarding possible inference of malice from the intentional killing with a deadly weapon. (Trial Tr., at 450). Applicant alleges the instruction violates *Belcher* and *Burdette*, thus counsel should have objected. Further, Applicant alleges prejudice is shown because involuntary manslaughter was charged. However, under a *Strickland* analysis, this Court must be careful to view the alleged error in context of the time of the trial. *Strickland*, at 689 ("A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time."). This Court recognizes that *Burdette* removed the limitation in *Belcher* that the instruction could still be given in where there was no excuse or lesser offense at issue. Yet Applicant's reliance on *Burdette* for his *Strickland* claim is misplaced because *Burdette* was issued in July 2019, well after the 2017 trial. Consequently, counsel cannot be deficient in declining to object under *Burdette*.

At the time of the trial, that charge could not be given in a certain circumstance – when there was evidence presented that would tend to reduce the crime. However, the charge "remain[ed] a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder...." *Belcher*, at 612, 685 S.E.2d at 810. Respondent submits that trial counsel was not deficient by declining to object primarily because there was no evidence supporting a lesser included offense. This Court agrees with Respondent.

First, though the judge instructed on involuntary manslaughter, the facts did not support it. Without question, Applicant was armed going into the home, uninvited, with the intent to take

something from the occupants – a fact counsel acknowledged at trial and Applicant admitted at sentencing, and again admitted at the PCR hearing. As a matter of law the charge was defeated: Involuntary manslaughter “the unintentional killing of another without malice while engaged in either (1) the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm, or (2) the doing of a lawful act with a reckless disregard for the safety of others.” *State v. Scott*, 414 S.C. 482, 487, 779 S.E.2d 529, 531 (2015). Failure to qualify under the definition will defeat the necessity of the charge. *State v. Brewton*, 437 S.C. 44, 55–56, 876 S.E.2d 141, 147 (Ct. App. 2022); *see also State v. Wharton*, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009) (even if gun was not “intentionally fire[d]” where defendant “committed an unlawful act that would naturally tend to cause death or great bodily harm” the charge is not warranted). Burglary and attempted armed robbery make it impossible to meet either prong. Thus, under *Belcher*, there could be no error. *Belcher*, at 610-612, 685 S.E.2d at 809 (recognizing error could be harmless though finding error not harmless in that case where self-defense at issue and “it is entirely conceivable that the only evidence of malice was Belcher’s use of a handgun”). Consequently, Applicant has failed to show either objection or moving for a mistrial was warranted.

Second, as set out above, there was overwhelming evidence of malice separate and apart from simple use of the weapon, most importantly, the felonies committed – acts for which he admitted guilt in open court at sentencing. Had it been error under the *Belcher* theory, it could only have been considered harmless error pre-*Burdette*. *See generally Stanko*, 402 S.C. at 264, 741 S.E.2d at 714 (finding harmless in error where the evidence of malice was not limited to use of a deadly weapon). Even so, Applicant has not shown deficient performance, and he is not entitled to any relief.

Allegation 3: The trial attorney failed to object to the trial court sending a partial written jury charge back with the jury that did not include the entire jury instructions, specifically omitting the burden of proof or the presumption of innocence.

Applicant alleges that sending only a limited portion of the original charge back to the jury was error, potentially shifting the burden or placing undue emphasis on the portion sent back. However, the trial judge did not merely send limited instructions back *sua sponte*; rather, he responded to the specific request from the jury – for law on the indicted offenses. (See Trial Tr., at 453-456). There is no error where “the recharge was properly limited to answering the jury’s question.” *State v. Anderson*, 322 S.C. 89, 94, 470 S.E.2d 103, 106 (1996). Consequently, there was simply no basis for counsel to lodge an objection. Applicant has failed to show deficient performance under *Strickland*. He is not entitled to any relief.

CONCLUSION

For the above reasons, this Court finds that Applicant has failed to carry his *Strickland* burden of proof.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief is denied and dismissed with prejudice; and,
2. Applicant is remanded to the custody of Respondent for completion of his sentence.

AND IT IS SO ORDERED this 27th day of December, 2023.



GRACE GILCHRIST KNIE
Presiding Judge

Copy mailed to
Attorney <u>General and Sarah Henry</u>
on <u>1</u> / <u>9</u> / <u>2024</u>

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED ARMED ROBBERY

MAR 22 2016

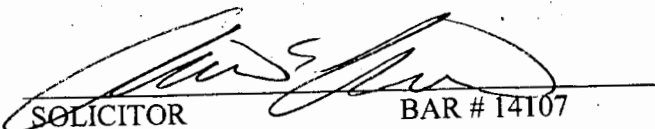
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That MARQUAL DEVINE GRIFFIN did in Greenville County, on or about the 27th day of December, 2015, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, attempt to take by means of force or intimidation, goods or monies from the person or presence of Nathan Crouch and/or April Green. This is in violation of §16-11-330 of the South Carolina 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.


SOLICITOR

BAR # 14107

WITNESSES

Henry Hammett

Greenville County Sheriffs Office

2/4/2016

ARREST WARRANT NUMBER

2016A2330200771

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pade
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-
ASC

002330

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March

TERM 2016

THE STATE

vs.

MARQUAL DEVINE GRIFFIN

Indictment for

0026

ATTEMPTED ARMED ROBBERY

VIOLATION § 16-11-0330

ENTERED
ACCT.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

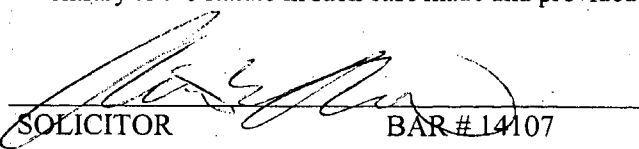
At a Court of General Sessions, convened on **MAR 22 2016** the Grand Jurors of Greenville

County present upon their oath:

That MARQUAL DEVINE GRIFFIN did in Greenville County, on or about the 27th day of December, 2015, unlawfully seize, abduct, confine, inveigle, decoy or carry away SHANE BARRON, without the authority of law.

This is in violation of §16-3-910 of the South Carolina 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.


SOLICITOR

BAR #14107

WITNESSES

Henry Hammett

Greenville County Sheriffs Office

2/4/2016

ARREST WARRANT NUMBER

2016A2330200768

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pich

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-
ASC

002332

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March TERM 2016

THE STATE

vs.

MARQUAL DEVINE GRIFFIN

Indictment for

0095

KIDNAPPING

VIOLATION § 16-03-0910

ENTERED
ACCT. 10/1

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on

MAR 22 2016

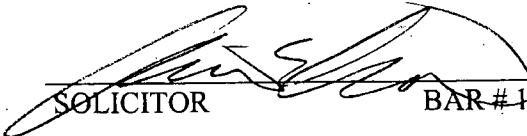
the Grand Jurors of Greenville

County present upon their oath:

That MARQUAL DEVINE GRIFFIN did in Greenville County, on or about the 27th day of December, 2015, unlawfully seize, abduct, confine, inveigle, decoy or carry away APRIL GREEN, without the authority of law.

This is in violation of §16-03-0910 of the South Carolina 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.


SOLICITOR

BAR # 14107

WITNESSES

Henry Hammett

Greenville County Sheriffs Office

2/4/2016

ARREST WARRANT NUMBER

2016A2330200769

ACTION OF GRAND JURY

TRUE

Thomas J. Pridemore

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-

ASC

002333

The State of South Carolina

— County of Greenville

COURT OF GENERAL SESSIONS

March

TERM 2016

THE STATE

vs.

MARQUAL DEVINE GRIFFIN

Indictment for

0095

KIDNAPPING

VIOLATION § 16-03-0910

ENTERED
ACCT. *LBH*

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ASSAULT AND BATTERY 1ST DEGREE

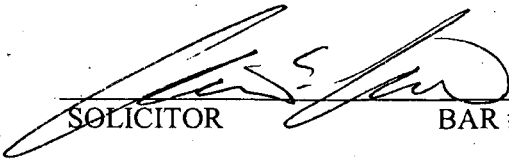
At a Court of General Sessions, convened on
County present upon their oath:

MAR 22 2016

the Grand Jurors of Greenville

That MARQUAL DEVINE GRIFFIN did in Greenville County, on or about the 27th day of December, 2015, offer or attempt to injure APRIL GREEN with the present ability to commit the act, and the act was accomplished by means likely to produce death or great bodily injury, and/or the act occurred during the commission of a robbery, burglary, kidnapping or theft. This is in violation of §16-03-0600 of the South Carolina 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.


SOLICITOR

BAR # 14107

WITNESSES

Henry Hammett

Greenville County Sheriffs Office

2/4/2016

ARREST WARRANT NUMBER

2016A2330200770

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Padgett

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-

ASC

002331

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March

TERM 2016

THE STATE

vs.

MARQUAL DEVINE GRIFFIN

Indictment for

3412

ASSAULT AND BATTERY 1ST DEGREE

VIOLATION § 16-03-0600

**ENTERED
ACCT.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
MURDER AND POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on **MAR 22 2016** the Grand Jurors of Greenville
County present upon their oath:

COUNT ONE

MURDER

That MARQUAL DEVINE GRIFFIN did in Greenville County, on or about the 27th day of December, 2015, unlawfully and with malice aforethought kill NATHAN CROUCH by means of shooting him with a handgun, and that NATHAN CROUCH died as a proximate result thereof. This is in violation of §16-03-0010 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That MARQUAL DEVINE GRIFFIN did in Greenville County, on or about the 27th day of December, 2015, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Murder. This is in violation of §16-23-0490 of the South Carolina 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.


SOLICITOR

BAR # 14107

WITNESSES

Henry Hammett

Greenville County Sheriffs Office

1/4/2016

ARREST WARRANT NUMBER

2016A2330200109, 2016A2330200110

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pridemore

FOREMAN

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-

ASC

002335

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

March

TERM 2016

THE STATE

vs.

MARQUAL DEVINE GRIFFIN

Indictment for

0116, 0549

MURDER AND POSSESSION OF A WEAPON
DURING THE COMMISSION OF A VIOLENT
CRIME

VIOLATION § 16-03-0010 and §16-23-0490

ENTERED
ACCT

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
BURGLARY FIRST DEGREE

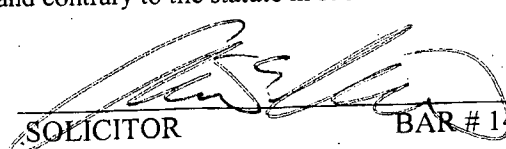
At a Court of General Sessions, convened on
County present upon their oath:

JUN 27 2017

the Grand Jurors of Greenville

That MARQUAL DEVINE GRIFFIN did in Greenville County, on or about the 27th day of December 2015, willfully and unlawfully enter the dwelling of APRIL GREEN located at [REDACTED] Perry Rd., [REDACTED] Greenville, South Carolina, without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: the defendant was armed with a deadly weapon and/or did cause physical injury to a person who was not a participant in the crime. This is in violation of §16-11-0311 of the South Carolina 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.


SOLICITOR

BAR # 14107

WITNESSES

Henry Hammett

Greenville County Sheriffs Office

2/4/2016

ARREST WARRANT NUMBER

2016A2330200767

**ACTION OF GRAND JURY
TRUE BILL**

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

**AMENDED INDICTMENT
DOCKET NO. 2016-GS-23-002334**

ASC

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2017

THE STATE

vs.

MARQUAL DEVINE GRIFFIN

Amended Indictment for
0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

**ENTERED
ACCT.**

6

653

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Marqual Devine Griffin
AKA:
Race: BLACK Sex: M Age: 26
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Robbery, Attempted Armed Robbery

INDICTMENT/CASE#: 2016GS2302330
A/W#: 2016A2330200771
Date of Offense: 12/27/2015
S.C. Code §: 16-11-0330(B)
CDR Code #: 0026

RECEIVED

SEP 25 2017
SC Court of Appeals

SENTENCE SHEET

☒ CONVICTED OF or PLEADS

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026
☐ 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.

ATTEST: 14107
Culbreath, Andrew SC Bar# Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 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: 9/13/17
☐ 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 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS

PTUP days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Recipient:
*Fine:
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 61.6 (Public Def/Probation) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 3.75
TOTAL \$ 138.75

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/ Deputy Clerk Paul S. Wickens
Court Reporter: Johnson
SCCA/217 (07/2016)

Presiding Judge
Judge Code: 2755
Sentence Date: 9-13-17

Paul S. Wickens
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 9/21/2017

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

STATE VS.

Marqual Devine Griffin

AKA:

Race: BLACK Sex: M Age: 26

DOB: SS#

Address:

City, State, Zip: Greenville, SC 29617-2365

DL#: SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder (gs)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2302335

A/W#: 2016A2330200109

Date of Offense: 12/28/2015

S.C. Code § 16-03-0010, 0020

CDR Code #: 0116

SEP 25 2017

SENTENCE SHEET SC Court of Appeals

☒ CONVICTED OF or ☐ PLEADS

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

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

Culbreath, Andrew 14107 SC Bar#

Defendant

CHAMBERS, RANDALL

65302

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 950 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 formonths/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 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fcc: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL

\$ 128.75

PTUP

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/ Deputy Clerk

Court Reporter: Johnson

SCCA/217 (07/2016)

Paul B. Wickensamer

Presiding Judge

Judge Code: 27537

Sentence Date: 9-13-17

ENTERED
ACCT.A. B. Wickensamer
Clerk of Court C.P. & G.S.
Greenville County, SC

Dated 9/21/2017

0-5 JV

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Marqual Devine Griffin
AKA:
Race: BLACK Sex: M Age: 26
DOB: SS#
Address:
City, State, Zip: Greenville, SC 29617-2365
DL#: SID#
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Weapons / Poss. Weapon During Violent Cr

INDICTMENT/CASE#: 2016GS2302335
A/W#: 2016A2330200110
Date of Offense: 12/28/2015
S.C. Code § : 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or PLEADS

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ 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: 14107 65302
Culbreath, Andrew SC Bar# Defendant CHAMBERS, RANDALL SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 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: 9/13/17
☐ 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine:
§ 14-1-206 (Assessments 107.5 %)
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 61.6 (Public Def/Probation) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 35.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

PTUP days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ☐
May serve W/E beginning
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Paul S. Wikenheim
Court Reporter: Johnson
SCCA/217 (07/2016)

Presiding Judge My H My
Judge Code: 2755
Sentence Date: 9/13/17

9/13/17
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.
Marqual Devine Griffin
AKA:
Race: BLACK Sex: M Age: 26
DOB: SS.
Address:
City, State, Zip: Greenville, SC 29617-2365
DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping (gs)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2302332
A/W#: 2016A2330200768
Date of Offense: 12/27/2015
S.C. Code § : 16-03-0910
CDR Code #: 0095

RECEIVED

SEP 25 2017
SC Court of Appeals

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ 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.

ATTEST: 14107
Culbreath, Andrew SC Bar# Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 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: 9/13/17
☐ 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
Proviso 61.6 (Public Def/Probation)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$ 3.75

TOTAL \$ 128.75

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☒

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Paul B. Widensma
Court Reporter: Johnson
SCCA/217 (07/2016)

Presiding Judge
Judge Code: 2755
Sentence Date: 9/13/17

A Certified Copy
Paul B. Widensma
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 9/21/2017

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
Marqual Devine Griffin

AKA:

Race: BLACK Sex: M Age: 26DOB: 11 SS#

Address:

City, State, Zip: Greenville, SC 29617-2365

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping (gs)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2302333A/W#: 2016A2330200769Date of Offense: 12/27/2015S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

X CONVICTED OF or ☐ PLEADS

0-30 JV
RECEIVED
 SEP 25 2017
 SC Court of Appeals

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ 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:

Culbreath, Andrew

14107

SC Bar#

Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 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: 9/13/17☐ 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 (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	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>

TOTAL

\$ 120.75

Clerk of Court/ Deputy Clerk

Court Reporter: Johnson

SCCA/217 (07/2016)

Paul S. Wickens

Presiding Judge

Judge Code: 2755Sentence Date: 9/13/17PTUP 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 Fund

Other:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Certified Copy
Paul S. Wickens
 Clerk of Court C.P. & G.S.
 Greenville County, SC
 Dated 9/13/2017

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
 STATE VS.
Marqual Devine Griffin

AKA:

Race: BLACK Sex: M Age: 26DOB: SS#

Address:

City, State, Zip: Greenville, SC 29617-2365DL#: SID#*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Burglary, First Degree

INDICTMENT/CASE#: 2016GS2302334A/W#: 2016A2330200767Date of Offense: 12/27/2015S.C. Code §: 16-11-0311CDR Code #: 0079

SENTENCE SHEET

RECEIVED

SEP 25 2017
SC Court of Appeals☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ 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.

ATTEST:

14107

Culbreath, Andrew

SC Bar#

Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Probation) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ 375

TOTAL

\$ 120.75

Clerk of Court/ Deputy Clerk

Paul B. Winkensma

Court Reporter: Johnson

SCCA/217 (07/2016)

 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,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge

Judge Code: 2755Sentence Date: 9/13/17

Paul B. Winkensma
 Clerk of Court C.P. & G.S.
 Greenville County, SC
 Dated 9/21/2017